

Nationality, Immigration and Asylum
Act 2002

Schedule 3 – Withholding and
withdrawal of support

Keeling Schedule

Showing changes which would be effected by the
Immigration Bill local authority support measures
in Schedules 8 and 9.

(HL Bill 79, ordered to be printed, 2 December
2015)

This schedule has been prepared by the Home Office. It is intended for illustrative purposes only to assist the reader of the Bill to understand the changes to Schedule 3 of the Nationality, Immigration and Asylum Act 2002 which would be made by the Bill.

Notes

When text is **repealed or omitted** – text is struck through and presented in red text

When new text is **inserted**

- Text is surrounded with square brackets and inserted in red text

When existing text is **substituted**

- Text to be replaced is struck through and presented in red text. The text replacing it is presented straight afterwards enclosed with square brackets and also in red text

SCHEDULE 3
WITHHOLDING AND WITHDRAWAL OF SUPPORT

1. Ineligibility for support

- (1) A person to whom this paragraph applies shall not be eligible for support or assistance under—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29) (local authority: accommodation and welfare),
 - (b) section 45 of the Health Services and Public Health Act 1968 (c. 46) (local authority: welfare of elderly),
 - (c) section 12 or 13A of the Social Work (Scotland) Act 1968 (c. 49) (social welfare services),
 - (d) Article 7 or 15 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)) (prevention of illness, social welfare, &c.),
 - (e) section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006 (social services),
 - (f) section 29(1)(b) of the Housing (Scotland) Act 1987 (c. 26) (interim duty to accommodate in case of apparent priority need where review of a local authority decision has been requested),
 - (g) section 17, 23C, 23CA, 24A or 24B of the Children Act 1989 (c. 41) (welfare and other powers which can be exercised in relation to adults),
- [(ga) in relation only to a person to whom this paragraph applies by virtue of paragraph 7B—
- (i) section 23CZA of that Act (arrangements for certain former relevant children to continue to live with former foster parents), or
 - (ii) regulations under section 23D of that Act (personal advisers),]
- (h) Article 18, 35 or 36 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) (welfare and other powers which can be exercised in relation to adults),
 - (i) sections 22, 29 and 30 of the Children (Scotland) Act 1995 (c. 36) (provisions analogous to those mentioned in paragraph (g)),
 - (j) section 188(3) or 204(4) of the Housing Act 1996 (c. 52) (accommodation pending review or appeal),
 - (k) section 2 of the Local Government Act 2000 (c. 22) (promotion of well-being),
 - (ka) section 1 of the Localism Act 2011 (local authority's general power of competence),
 - (l) a provision of the Immigration and Asylum Act 1999 (c. 33),
 - (m) a provision of this Act, or
 - (n) Part 1 of the Care Act 2014 (care and support provided by local authority).

(2) A power or duty under a provision referred to in sub-paragraph (1) may not be exercised or performed in respect of a person to whom this paragraph applies (whether or not the person has previously been in receipt of support or assistance under the provision).

[(2A) In the case of the provisions referred to in sub-paragraph (1)(ga), sub-paragraph (2) applies only in relation to a person to whom this paragraph applies by virtue of paragraph 7B.]

(3) An approval or directions given under or in relation to a provision referred to in sub-paragraph (1) shall be taken to be subject to sub-paragraph (2).

[1A

(1) A person to whom this paragraph applies is not eligible for assistance under section 23C(4)(b), 23CA(4) or 24B(2)(b) of the Children Act 1989 (grants to meet expenses connected with education or training) which consists of a grant to enable the person to meet all or part of the person's tuition fees.

(2) The duty in section 23C(4)(b) or 23CA(4) of that Act and the power in section 24B(2)(b) of that Act may not be exercised or performed in respect of a person to whom this paragraph applies so as to make a grant to enable the person to meet all or part of the person's tuition fees.

(3) This paragraph applies to a person in England who is aged 18 or over and who—
(a) has leave to enter or remain in the United Kingdom which has been granted for a limited period,
(b) is an asylum-seeker, or
(c) has made an application for leave to enter or remain in the United Kingdom which has not been withdrawn or determined.

(4) In this paragraph "tuition fees" means fees payable for a course of a description mentioned in Schedule 6 to the Education Reform Act 1988.]

2. Exceptions

(1) Paragraph 1 does not prevent the provision of support or assistance—

(a) to a British citizen, or

(b) to a child, or

(c) under or by virtue of regulations made under paragraph 8, 9 ~~or 10~~ [10, 10A or 10B] below, or

[(ca) under section 95A or 98A of the Immigration and Asylum Act 1999 (support for failed asylum-seekers etc), or]

(d) in a case in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1, or

(e) in circumstances in respect of which, and to the extent to which, regulations made by the Secretary of State disapply paragraph 1.

(2) Regulations under sub-paragraph (1)(d) may confer a discretion on the Secretary of State.

(3) Regulations under sub-paragraph (1)(e) may, in particular, disapply paragraph 1 to the provision of support or assistance by a local authority to a person where the authority—

- (a) has taken steps in accordance with guidance issued by the Secretary of State to determine whether paragraph 1 would (but for the regulations) apply to the person, and
 - (b) has concluded on the basis of those steps that there is no reason to believe that paragraph 1 would apply.
- (4) Regulations under sub-paragraph (1)(d) or (e) may confer a discretion on an authority.
- (5) A local authority which is considering whether to give support or assistance to a person under a provision listed in paragraph 1(1) shall act in accordance with any relevant guidance issued by the Secretary of State under sub-paragraph (3)(a).
- (6) A reference in this Schedule to a person to whom paragraph 1 applies includes a reference to a person in respect of whom that paragraph is disapplied to a limited extent by regulations under sub-paragraph (1)(d) or (e), except in a case for which the regulations provide otherwise.
- 3.** Paragraph 1 does not prevent the exercise of a power or the performance of a duty if, and to the extent that, its exercise or performance is necessary for the purpose of avoiding a breach of—
 - (a) a person's Convention rights, or
 - (b) a person's rights under the Community Treaties.
- [3A.]** Notwithstanding paragraph 3, paragraph 1(1)(g) prevents a local authority in England from providing support or assistance under section 17 of the Children Act 1989 to a person in respect of a child if —
 - (a) the support or assistance is of a type that could be provided to the person by virtue of paragraph 10A (see paragraph 10A(7)), and
 - (b) support is being provided to the person by virtue of paragraph 10A or there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph.
- 3B.** Notwithstanding paragraph 3, paragraph 1(1)(g) prevents a local authority in England from providing support or assistance under section 23C, 23CA, 24A or 24B of the Children Act 1989 to a person if—
 - (a) support is being provided to the person by virtue of paragraph 10B or section 95A of the Immigration and Asylum Act 1999, or
 - (b) there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph or section.
- 3C.** Notwithstanding paragraph 3, paragraph 1(1)(ga) prevents a local authority in England from providing support or assistance under a provision mentioned in paragraph (ga) to a person if—
 - (a) support is being provided to the person by virtue of paragraph 10B or section 95A of the Immigration and Asylum Act 1999, or

- (b) there are reasonable grounds for believing that support will be provided to the person by virtue of that paragraph or section.”]

4. First class of ineligible person: refugee status abroad

- (1) Paragraph 1 applies to a person if he—
- (a) has refugee status abroad, or
 - (b) is the dependant of a person who is in the United Kingdom and who has refugee status abroad.
- (2) For the purposes of this paragraph a person has refugee status abroad if—
- (a) he does not have the nationality of an EEA State, and
 - (b) the government of an EEA State other than the United Kingdom has determined that he is entitled to protection as a refugee under the Refugee Convention.

5. Second class of ineligible person: citizen of other EEA State

- Paragraph 1 applies to a person if he—
- (a) has the nationality of an EEA State other than the United Kingdom, or
 - (b) is the dependant of a person who has the nationality of an EEA State other than the United Kingdom.

6. Third class of ineligible person: failed asylum-seeker

- (1) Paragraph 1 applies to a person [in Wales, Scotland or Northern Ireland] if—
- (a) he was (but is no longer) an asylum-seeker, and
 - (b) he fails to cooperate with removal directions issued in respect of him.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).

7. Fourth class of ineligible person: person unlawfully in United Kingdom

- Paragraph 1 applies to a person [in Wales, Scotland or Northern Ireland] if—
- (a) he is in the United Kingdom in breach of the immigration laws within the meaning of section 50A of the British Nationality Act 1981, and
 - (b) he is not an asylum-seeker.

~~7A. Fifth class of ineligible person: failed asylum-seeker with family~~

- ~~(1) Paragraph 1 applies to a person if—~~
- ~~(a) he—~~

- ~~(i) is treated as an asylum-seeker for the purposes of Part VI of the Immigration and Asylum Act 1999 (c. 33) (support) by virtue only of section 94(3A) (failed asylum-seeker with dependent child), or~~
 - ~~(ii) is treated as an asylum-seeker for the purposes of Part 2 of this Act by virtue only of section 48(2),~~
- ~~(b) the Secretary of State has certified that in his opinion the person has failed without reasonable excuse to take reasonable steps—~~
 - ~~(i) to leave the United Kingdom voluntarily, or~~
 - ~~(ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,~~
- ~~(c) the person has received a copy of the Secretary of State's certificate, and~~
- ~~(d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.~~
- ~~(2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).~~
- ~~(3) For the purpose of sub-paragraph (1)(d) if the Secretary of State sends a copy of a certificate by first class post to a person's last known address, the person shall be treated as receiving the copy on the second day after the day on which it was posted.~~
- ~~(4) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).~~

[7B. Sixth class of ineligible person: person in England without leave to enter or remain

- (1) Paragraph 1 applies to a person in England if—
 - (a) under the Immigration Act 1971, he requires leave to enter or remain in the United Kingdom but does not have it, and
 - (b) he is not an asylum-seeker.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).]

[7C. Seventh class of ineligible person: transitional cases

- (1) Paragraph 1 applies to a person if—
 - (a) the person is a transitionally-supported person (see sub-paragraph (3)),

- (b) the Secretary of State has certified that, in the Secretary of State's opinion, the person has failed without reasonable excuse to take reasonable steps—
 - (i) to leave the United Kingdom voluntarily, or
 - (ii) to place himself in a position in which he is able to leave the United Kingdom voluntarily,
 - (c) the person has received a copy of the Secretary of State's certificate, and
 - (d) the period of 14 days, beginning with the date on which the person receives the copy of the certificate, has elapsed.
- (2) Paragraph 1 also applies to a dependant of a person to whom that paragraph applies by virtue of sub-paragraph (1).
- (3) A person is a "transitionally-supported person" if—
- (a) accommodation is provided for the person by virtue of section 4 of the Immigration and Asylum Act 1999 as that section has effect by virtue of paragraph 44 of Schedule 8 to the Immigration Act 2016 or
 - (b) support is provided for the person under section 95 of the Immigration and Asylum Act 1999 by virtue of section 94(5) of that Act, as that provision has effect by virtue of paragraph 45 of that Schedule.
- (4) For the purpose of sub-paragraph (1)(d), if the Secretary of State sends a copy of a certificate by first class post to a person's last known address, the person is treated as receiving the copy on the second day after the day on which it was posted.
- (5) The Secretary of State may by regulations vary the period specified in sub-paragraph (1)(d).]

8. Travel assistance

The Secretary of State may make regulations providing for arrangements to be made enabling a person to whom paragraph 1 applies by virtue of paragraph 4 or 5 to leave the United Kingdom.

9. Temporary accommodation

- (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person to whom paragraph 1 applies pending the implementation of arrangements made by virtue of paragraph 8.
- (2) Arrangements for a person by virtue of this paragraph—
 - (a) may be made only if the person has with him a dependent child, and
 - (b) may include arrangements for a dependent child.

10.

- (1) The Secretary of State may make regulations providing for arrangements to be made for the accommodation of a person if—
 - (a) paragraph 1 applies to him by virtue of paragraph 7, and
 - (b) he has not failed to cooperate with removal directions issued in respect of him.
- (2) Arrangements for a person by virtue of this paragraph—
 - (a) may be made only if the person has with him a dependent child, and
 - (b) may include arrangements for a dependent child.

[10A. Accommodation and subsistence etc: England

- (1) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person to whom paragraph 1 applies by virtue of paragraph 7B(1) and—
 - (a) who is destitute,
 - (b) who has with him a dependent child,
 - (c) who is not a relevant failed asylum seeker, and
 - (d) in relation to whom condition A, B, C or D is satisfied.
- (2) A person is a “relevant failed asylum seeker” for the purposes of sub-paragraph (1)(c) if the person is a failed asylum seeker within the meaning of Part 6 of the Immigration and Asylum Act 1999 and—
 - (a) the person is receiving support under section 95A of that Act,
 - (b) the person has made an application for such support which has not been refused, or
 - (c) there are reasonable grounds for believing such support would be provided to the person if an application by the person for such support were made.
- (3) Condition A is that—
 - (a) the person has made an application for leave to enter or remain in the United Kingdom and has not withdrawn the application,
 - (b) where regulations under this paragraph require that the application must be of a kind specified in the regulations for this condition to be satisfied, the application is of that kind, and
 - (c) the application has not been determined.
- (4) Condition B is that—
 - (a) the person has appealed under section 82(1),
 - (b) the appeal is not one that, by virtue of section 92(6), must be continued from outside the United Kingdom, and
 - (b) the appeal is pending within the meaning of section 104.
- (5) Condition C is that—

- (a) the person's appeal rights are exhausted, and
 - (b) he has not failed to cooperate with arrangements that would enable him to leave the United Kingdom.
- (6) Condition D is that a person specified in regulations under this paragraph is satisfied that the provision of support is necessary to safeguard and promote the welfare of a dependent child.
- (7) Regulations under this paragraph may specify—
 - (a) factors which a person specified by virtue of subparagraph (6) may or must take into account in making a determination under that sub-paragraph;
 - (b) factors which such a person must not take into account in making such a determination.
- (8) Arrangements for a person by virtue of this paragraph may include arrangements for a dependant.
- (9) The support that may be provided under arrangements by virtue of this paragraph may take the form of—
 - (a) accommodation;
 - (b) subsistence in kind, or cash or vouchers to pay for subsistence.
- (10) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999 (meaning of "destitute") apply for the purposes of this paragraph as they apply for the purposes of that section.
- (11) For the purposes of sub-paragraph (3) regulations under this paragraph may provide for circumstances in which—
 - (a) a person is to be treated as having made an application for leave to enter or remain in the United Kingdom (despite not having made one);
 - (b) a person is to be treated as not having made such an application where the Secretary of State is satisfied that the application made is vexatious or wholly without merit.
- (12) For the purposes of sub-paragraph (5) a person's appeal rights are exhausted at the time when—
 - (a) he could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
 - (b) no appeal brought by him is pending within the meaning of section 104.

10B.

- (1) The Secretary of State may make regulations providing for arrangements to be made for support to be provided to a person to whom paragraph 1 applies by virtue of paragraph 7B(1) and—
 - (a) who is a former relevant child within the meaning of section 23C of the Children Act 1989,
 - (b) who is not a relevant failed asylum seeker, and
 - (c) in relation to whom condition A, B or C is satisfied.
- (2) A person is a "relevant failed asylum seeker" for the purposes of sub-paragraph (1)(b) if the person is a failed asylum seeker within the meaning of Part 6 of the Immigration and Asylum Act 1999 and—
 - (a) the person is receiving support under section 95A of that Act,
 - (b) the person has made an application for such support which has not been refused, or

- (c) there are reasonable grounds for believing such support would be provided to the person if an application by the person for such support were made.
- (3) Condition A is that—
 - (a) the person is destitute,
 - (b) the person has made an application for leave to enter or remain in the United Kingdom and has not withdrawn the application,
 - (c) where regulations under this paragraph require that the application must be of a kind specified in the regulations for this condition to be satisfied, the application is of that kind, and
 - (d) the application has not been determined.
- (4) Condition B is that—
 - (a) the person is destitute,
 - (b) the person has appealed under section 82(1),
 - (c) the appeal is not one that, by virtue of section 92(6), must be continued from outside the United Kingdom, and
 - (d) the appeal is pending within the meaning of section 104.
- (5) Condition C is that—
 - (a) the person's appeal rights are exhausted, and
 - (b) a person specified in regulations under this paragraph is satisfied that support needs to be provided to the person.
- (6) Regulations under this paragraph may specify—
 - (a) factors which a person specified by virtue of paragraph (b) of sub-paragraph (5) may or must take into account in making a determination under that paragraph;
 - (b) factors which such a person must not take into account in making such a determination.
- (7) The support that may be provided under arrangements by virtue of this paragraph may, in particular, take the form of—
 - (a) accommodation;
 - (b) subsistence in kind, or cash or vouchers to pay for subsistence.
- (8) Subsections (3) to (8) of section 95 of the Immigration and Asylum Act 1999 (meaning of "destitute") apply for the purposes of this paragraph as they apply for the purposes of that section.
- (9) For the purposes of sub-paragraph (3) regulations under this paragraph may provide for circumstances in which—
 - (a) a person is to be treated as having made an application for leave to enter or remain in the United Kingdom (despite not having made one);
 - (b) a person is to be treated as not having made such an application where the Secretary of State is satisfied that the application made is vexatious or wholly without merit.
- (10) For the purposes of sub-paragraph (5) a person's appeal rights are exhausted at the time when—

- (a) he could not bring an appeal under section 82 (ignoring any possibility of an appeal out of time with permission), and
- (b) no appeal brought by him is pending within the meaning of section 104.]

11. Assistance and accommodation: general

Regulations under paragraph 8, 9 ~~or 10~~ [10, 10A or 10B] may—

- (a) provide for the making of arrangements under a provision referred to in paragraph 1(1) or otherwise;
- (b) confer a function (which may include the exercise of a discretion) on the Secretary of State, a local authority or another person;
- (c) provide that arrangements must be made in a specified manner or in accordance with specified principles;
- (d) provide that arrangements may not be made in a specified manner;
- (e) require a local authority or another person to have regard to guidance issued by the Secretary of State in making arrangements;
- (f) require a local authority or another person to comply with a direction of the Secretary of State in making arrangements.

12.

- (1) Regulations may, in particular, provide that if a person refuses an offer of arrangements under paragraph 8 or fails to implement or cooperate with arrangements made for him under that paragraph—
 - (a) new arrangements may be made for him under paragraph 8, but
 - (b) new arrangements may not be made for him under paragraph 9.
- (2) Regulations by virtue of this paragraph may include exceptions in the case of a person who—
 - (a) has a reason of a kind specified in the regulations for failing to implement or cooperate with arrangements made under paragraph 8, and
 - (b) satisfies any requirements of the regulations for proof of the reason.

13. Offences

- (1) A person who leaves the United Kingdom in accordance with arrangements made under paragraph 8 commits an offence if he—
 - (a) returns to the United Kingdom, and
 - (b) requests that arrangements be made for him by virtue of paragraph 8, 9 ~~or 10~~ [10, 10A or 10B].

- (2) A person commits an offence if he—
- (a) requests that arrangements be made for him by virtue of paragraph 8, 9 ~~or 10~~ [10, 10A or 10B],
and
 - (b) fails to mention a previous request by him for the making of arrangements under any of those paragraphs.
- (3) A person who is guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding six months.

14. Information

- (1) If it appears to a local authority that paragraph 1 applies or may apply to a person in the authority's area by virtue of paragraph 6, ~~7 or 7A~~ [7, 7B or 7C], the authority must inform the Secretary of State.
- (2) A local authority shall act in accordance with any relevant guidance issued by the Secretary of State for the purpose of determining whether paragraph 1 applies or may apply to a person in the authority's area by virtue of paragraph 6, ~~7 or 7A~~ [7, 7B or 7C].

15. Power to amend Schedule

The Secretary of State may by order amend this Schedule so as—

- (a) to provide for paragraph 1 to apply or not to apply to a class of person;
[(aa) to modify any of the classes of person to whom paragraph 1 applies;]
- (b) to add or remove a provision to or from the list in paragraph 1(1);
- (c) to add, amend or remove [, or modify the application of,] a limitation of or exception to paragraph 1.
[(d) to enable regulations to be made providing for arrangements to be made for support to be provided to a class of person to whom paragraph 1 applies;
- (e) to apply paragraph 1A in relation to Wales;
- (f) to make provision which has a similar effect to paragraph 1A and which applies in relation to Scotland or Northern Ireland.]

16. Orders and regulations

- (1) An order or regulations under this Schedule must be made by statutory instrument.
- (2) An order or regulations under this Schedule may—
- (a) make provision which applies generally or only in specified cases or circumstances or only for specified purposes;
 - (b) make different provision for different cases, circumstances or purposes;

- (c) make transitional provision;
 - (d) make consequential provision (which may include provision amending [, ~~repealing or revoking~~] a provision made by or under this or another Act).
- (3) An order under this Schedule, regulations under paragraph 2(1)(d) or (e) or other regulations which include consequential provision amending an enactment shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) Regulations under this Schedule to which sub-paragraph (3) does not apply shall be subject to annulment in pursuance of a resolution of either House of Parliament.

17. Interpretation

- (1) In this Schedule—

~~“asylum-seeker” means a person—~~

~~(a) who is at least 18 years old,~~

~~(b) who has made a claim for asylum (within the meaning of section 18(3)), and~~

~~(c) whose claim has been recorded by the Secretary of State but not determined,~~

~~[“asylum-seeker” has the meaning given by section 18.]~~

“Convention rights” has the same meaning as in the Human Rights Act 1998 (c. 42),

“child” means a person under the age of eighteen,

“dependant” and “dependent” shall have such meanings as may be prescribed by regulations made by the Secretary of State,

“EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

“local authority”—

(a) in relation to England and Wales, has the same meaning as in section 129(3),

(b) in relation to Scotland, has the same meaning as in section 129(4), and

(c) in relation to Northern Ireland, means a health service body within the meaning of section 133(4)(d) and the Northern Ireland Housing Executive (for which purpose a reference to the authority’s area shall be taken as a reference to Northern Ireland),

“the Refugee Convention” means the Convention relating to the status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

“removal directions” means directions under Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry, &c.), under Schedule 3 to that Act (deportation) or under section 10 of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom).

- (2) For the purpose of the definition of “asylum-seeker” in sub-paragraph (1) a claim is determined if—

- (a) the Secretary of State has notified the claimant of his decision,
 - (b) no appeal against the decision can be brought (disregarding the possibility of an appeal out of time with permission), and
 - (c) any appeal which has already been brought has been disposed of.
- (3) For the purpose of sub-paragraph (2)(c) an appeal is disposed of when it is no longer pending for the purpose of—
- (a) Part 5 of this Act, or
 - (b) the Special Immigration Appeals Commission Act 1997 (c. 68).
- (4) The giving of directions in respect of a person under a provision of the Immigration Acts is not the provision of assistance to him for the purposes of this Schedule.