

Status: This version of this provision is prospective.

Changes to legislation: Nationality, Immigration and Asylum Act 2002, Section 44 is up to date with all changes known to be in force on or before 26 April 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) View outstanding changes



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 3

OTHER SUPPORT AND ASSISTANCE

PROSPECTIVE

44 Destitute asylum-seeker

(1) Section 94 of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker) shall be amended as follows.

(2) In subsection (1) for the definition of “asylum-seeker” substitute—

““asylum-seeker” means a person—

- (a) who is at least 18 years old,
- (b) who is in the United Kingdom,
- (c) who has made a claim for asylum at a place designated by the Secretary of State,
- (d) whose claim has been recorded by the Secretary of State, and
- (e) whose claim has not been determined;”.

(3) In subsection (1) for the definition of “dependant” substitute—

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

- (a) is in the United Kingdom, and
- (b) is within a prescribed class;”.

(4) For subsection (3) substitute—

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- “(3) A claim for asylum shall be treated as determined for the purposes of subsection (1) at the end of such period as may be prescribed beginning with—
- (a) the date on which the Secretary of State notifies the claimant of his decision on the claim, or
 - (b) if the claimant appeals against the Secretary of State’s decision, the date on which the appeal is disposed of.
- (3A) A person shall continue to be treated as an asylum-seeker despite paragraph (e) of the definition of “asylum-seeker” in subsection (1) while—
- (a) his household includes a dependant child who is under 18, and
 - (b) he does not have leave to enter or remain in the United Kingdom.”
- (5) Omit subsections (5) and (6).
- (6) The following shall be substituted for section 95(2) to (8) of the Immigration and Asylum Act 1999 (c. 33) (support for destitute asylum-seeker: interpretation)—
- “(2) Where a person has dependants, he and his dependants are destitute for the purpose of this section if they do not have and cannot obtain both—
- (a) adequate accommodation, and
 - (b) food and other essential items.
- (3) Where a person does not have dependants, he is destitute for the purpose of this section if he does not have and cannot obtain both—
- (a) adequate accommodation, and
 - (b) food and other essential items.
- (4) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State must have regard to any matter prescribed for the purposes of this subsection.
- (5) In determining whether accommodation is adequate for the purposes of subsection (2) or (3) the Secretary of State may not have regard to—
- (a) whether a person has an enforceable right to occupy accommodation,
 - (b) whether a person shares all or part of accommodation,
 - (c) whether accommodation is temporary or permanent,
 - (d) the location of accommodation, or
 - (e) any other matter prescribed for the purposes of this subsection.
- (6) The Secretary of State may by regulations specify items which are or are not to be treated as essential items for the purposes of subsections (2) and (3).
- (7) The Secretary of State may by regulations—
- (a) provide that a person is not to be treated as destitute for the purposes of this Part in specified circumstances;
 - (b) enable or require the Secretary of State in deciding whether a person is destitute to have regard to income which he or a dependant of his might reasonably be expected to have;
 - (c) enable or require the Secretary of State in deciding whether a person is destitute to have regard to support which is or might reasonably be expected to be available to the person or a dependant of his;

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- (d) enable or require the Secretary of State in deciding whether a person is destitute to have regard to assets of a prescribed kind which he or a dependant of his has or might reasonably be expected to have;
- (e) make provision as to the valuation of assets.”

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Changes and effects yet to be applied to :

- s. 44 repealed by [2016 c. 19 Sch. 11 para. 41\(a\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket amendment words substituted by [S.I. 2011/1043 art. 34](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(1)(1A) substituted for s. 18(1) by [2016 c. 19 Sch. 11 para. 31\(2\)](#)
- s. 22A inserted by [2022 c. 36 s. 13\(7\)](#)
- s. 27(ba) inserted by [2022 c. 36 s. 13\(10\)](#)
- s. 51(2)(d) and word inserted by [2016 c. 19 Sch. 11 para. 26\(6\)](#)
- s. 55(2)(aa) inserted by [2016 c. 19 Sch. 11 para. 26\(7\)](#)
- s. 62(3A) inserted by [2023 c. 37 s. 11\(8\)](#)
- s. 80A(5A) inserted by [2023 c. 37 s. 10\(8\)](#)
- s. 82A inserted by [2022 c. 36 s. 23\(1\)](#)
- s. 94(6B) inserted by [2006 c. 13 s. 13](#)
- s. 106(2)(ua) inserted by [2007 c. 30 s. 19\(3\)](#)
- s. 107(2A) inserted by [2022 c. 36 Sch. 3 para. 5\(a\)](#)
- s. 126(2A) inserted by [S.I. 2019/745 reg. 12\(3\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 12(2)(3) omitted immediately before IP completion day by virtue of [S.I. 2020/1309](#), regs. 1(2)(a), 48)
- Sch. 3 para. 1(1)(ga) inserted by [2016 c. 19 Sch. 12 para. 2\(2\)](#) (This Act is amended by [S.I. 2020/1309](#), Sch. 1 para. 3(a))
- Sch. 3 para. 1(2A) inserted by [2016 c. 19 Sch. 12 para. 2\(4\)](#) (This Act is amended by [S.I. 2020/1309](#), Sch. 1 para. 3(b))
- Sch. 3 para. 1A inserted by [2016 c. 19 Sch. 12 para. 3](#)
- Sch. 3 para. 2(1)(ca) inserted by [2016 c. 19 Sch. 12 para. 4\(3\)](#)
- Sch. 3 para. 2A inserted by [2016 c. 19 Sch. 12 para. 5](#)
- Sch. 3 para. 3A-3C inserted by [2016 c. 19 Sch. 12 para. 6](#)
- Sch. 3 para. 7B7C and cross-headings inserted by [2016 c. 19 Sch. 12 para. 9](#)
- Sch. 3 para. 10A10B inserted by [2016 c. 19 Sch. 12 para. 10](#) (This Act is amended by [S.I. 2020/1309](#), Sch. 1 para. 3(c))
- Sch. 3 para. 15(aa) inserted by [2016 c. 19 Sch. 12 para. 14\(2\)](#)
- Sch. 3 para. 15(d)-(f) inserted by [2016 c. 19 Sch. 12 para. 14\(4\)](#)
- Sch. 3 para. 7C(1)(c) word substituted by [S.I. 2019/745 reg. 12\(5\)\(d\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 12(5)(a)(c)(d) omitted immediately before IP completion day by virtue of [S.I. 2020/1309](#), regs. 1(2)(a), 48)
- Sch. 5 para. 3(1) Sch. 5 para. 3 renumbered as Sch. 5 para. 3(1) by [2005 c. 4 Sch. 4 para. 407\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))
- Sch. 5 para. 3(2)-(4) inserted by [2005 c. 4 Sch. 4 para. 407\(4\)](#) (This amendment not applied to [legislation.gov.uk](#). The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))

- Sch. 5 para. 3(1) words inserted by [2005 c. 4 Sch. 4 para. 407\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). The "original amending provision" is already fully in force, see Sch. 4 paras. 361, 407(5))