

**EXPLANATORY MEMORANDUM TO THE
IMMIGRATION (ELIGIBILITY FOR ASSISTANCE) (SCOTLAND AND
NORTHERN IRELAND) (REVOCATION) REGULATIONS 2005**

2005 No. 2412

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations revoke the Immigration (Eligibility for Assistance) (Scotland and Northern Ireland) Regulations 2000 (S.I. 2000/705) (“the 2000 Regulations”).

2.2 These Regulations have the effect of revoking the 2000 Regulations on 12th December 2005 in Scotland, and on 3rd October 2005 in Northern Ireland. As such, access to social assistance legislation in Scotland and Northern Ireland for asylum-seekers who claimed asylum before 3rd April 2000 or who were provided with assistance under certain child welfare provisions immediately before 3rd April 2000 is ended. The exception to this is any pre 3 April 2000 asylum seeker supported under sections 7 and 8 of the Mental Health (Scotland) Act 1984, for reasons explained in paragraph 4.7 below. For such cases, the 2000 Regulations will be revoked on 5 October 2005.

2.3 Local authorities and health and social services trusts responsible for the support of asylum-seekers who claimed asylum before 3rd April 2000, or those provided with assistance under certain child welfare provisions immediately before 3rd April 2000, will only be able to support adult asylum-seekers and their dependants if they fall within their relevant social assistance legislation as amended by section 120 (in respect of Scotland) or section 121 (in respect of Northern Ireland) of the Immigration and Asylum Act 1999 (“the 1999 Act”). In other words, only if the previously supported person can be found to have a care need. In the absence of a care need and, if eligible, they may be supported by the Secretary of State under section 95 of the 1999 Act (also known as “NASS support”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

General

4.1 The 2000 Regulations had provided for the disapplication of sections 115 and 122(5) of the 1999 Act in relation to certain persons in Scotland and Northern Ireland.

Disapplication of section 115 of the 1999 Act

4.2 Sections 120 and 121 of the 1999 Act closed off access to assistance under certain legislative provisions to persons to whom section 115 of the same Act applied.

This includes asylum-seekers. Sections 120 and 121 came into force on 3rd April 2000 and did not have any retrospective effect. Section 115(3) states that that section “applies to a person subject to immigration control unless he falls within such category or description, or satisfies such conditions, as may be prescribed”, and subsection (4) states that “regulations made under subsection (3) may provide for a person to be treated for prescribed purposes only as not being a person to whom this section applies”.

4.3. The 2000 Regulations had been made under sections 115(3) and (4) and, (in regulations 2,3 and 4) provided that section 115 did not apply in Scotland or Northern Ireland on and after 3rd April 2000 to persons who had claimed asylum before that date and who until then, were not eligible for certain social security benefits. Such persons would have been before that date eligible for assistance under the Social Work (Scotland) Act 1968, the Mental Health (Scotland) Act 1984 or the Health and Personal Social Services (Northern Ireland) Order 1972. The 2000 Regulations had preserved that eligibility on and after 3rd April 2000. The 2000 Regulations were the first (and until these Regulations, only) exercise of the regulation-making power in sections 115(3) and (4).

Disapplication of section 122(5) of the 1999 Act

4.4 Section 122 of the 1999 Act places a duty on the Secretary of State to offer and, if the offer is accepted, provide support under section 95 for the children and other minor dependants of asylum-seekers who are in need. He is to provide them with adequate accommodation and their essential living needs. By subsection (5), local authority social services departments may not provide assistance under specified child welfare provisions where the Secretary of State is complying with this duty or there are reasonable grounds for believing that he would be required to provide support were an application for section 95 support to be made to him. Subsection (11) provides that “in such circumstances as may be prescribed, subsection (5) does not apply.” Regulation 5 of the 2000 Regulations was the first and only exercise of subsection (11) until regulation 3 of these Regulations.

Purpose of the 2005 Regulations

4.5 These Regulations are therefore being made in order to end the disapplication of section 115 and 122(5) of the 1999 Act to the persons specified in the 2000 Regulations. The effect of that is that those specified persons would now fall to be either supported by the Secretary of State (if eligible) under his asylum support scheme or by their local authority or health and social services trust if they have a care need. Local authorities and health and social services trusts will also retain responsibility for the care of children in specific circumstances; see paragraph 8.2.

4.6 These Regulations only extend to Scotland and Northern Ireland because in England and Wales, similarly-placed persons have been provided with support under the “interim provisions” scheme. This has existed since 6th December 1999 (the legislative basis for which is the Asylum Support (Interim Provisions) Regulations 1999, S.I. 1999/3056, “the Interim Provisions Regulations”) and gives local authorities in England and Wales a duty to support asylum-seekers who are eligible for the purposes of those Regulations.

4.7 It will be explained more in part 7 of this memorandum, but the principal reason why these Regulations are being made is in order to equalise the legislative

position for support of such asylum-seekers across the UK. Presently, the interim provisions scheme is being ended on a phased basis across England and Wales (as mentioned at paragraph 7.5 of the Explanatory Memorandum to the Asylum Support (Interim Provisions) (Amendment) Regulations 2005, S.I. 2005/595). Once the regulations to which this memorandum relate are fully commenced and the interim provisions transfer is complete in England and Wales, the legislative basis for the support of asylum-seekers in the UK will be consistent. As such, the Secretary of State (initially through local authorities or health and social services trusts providing support under section 98 of the 1999 Act) will be able to support these asylum-seekers from 3rd October 2005 (in the case of a person in Northern Ireland) or 12th December 2005 (in the case of a person in Scotland). The one exception to this is if a person has been provided with social assistance by a local authority in Scotland under sections 7 or 8 of the Mental Health (Scotland) Act 1984. Such a person will be supportable by the Secretary of State from 5th October 2005. This is because the Mental Health (Scotland) Act 1984 will be repealed in its entirety from that date, to be replaced by the Mental Health (Care and Treatment)(Scotland) Act 2003, the main provisions of which will come into force on that date.

5. Extent

This instrument extends to Scotland and Northern Ireland only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 When the National Asylum Support Service (NASS) was set up in April 2000, it was intended that it should support all destitute asylum seekers until their cases were determined. However, at that time, many thousands of cases (families or single asylum seekers) were being supported by local authorities in England, Wales and Scotland, and health and social services trusts in Northern Ireland. Transferring so many cases to NASS on its inception was not possible, so the local authorities and health and social services trusts continued to provide support under the legislation described in section 4 above. It was thought that all such cases would be decided (and hence support would no longer be required) over the course of a few months or so, but though the numbers have naturally dwindled over time as cases are decided, about one hundred and fifty remain in Scotland and Northern Ireland (and more in England and Wales). Local authorities and trusts have to maintain staff to support these increasingly small numbers, and it is no longer cost effective for them to do so.

Therefore, in general, local authorities and trusts are supportive of the plans to transfer support to NASS. It now makes administrative sense to undertake a phased transfer of these remaining cases, where eligible, to NASS support. (Cases being supported by local authorities in England and Wales are also being transferred to NASS support, and the legislation which provides for the general ending of the period during which interim provisions support can be provided (S.I. 2005 No. 595, The Asylum Support (Interim Provisions) (Amendment) Regulations 2005) is already in force and provides that the period will end on 3rd April 2006. See paragraph 4.7 above.)

7.2 NASS has fully engaged all the relevant local authorities and health and social services trusts, to achieve as smooth a transfer as possible. Although asylum is a

reserved matter, NASS's plans have been discussed with the devolved administrations, who are content. It should be noted that NASS has already had some experience of moving quite large groups of people from one area (where they may have been settled for some time) to another, when it has ceased arrangements with particular accommodation providers. These moves have raised broadly similar issues to those presently raised by NASS's plans to move asylum seekers who have until now been supported by local authorities or health and social services trusts.

7.3 NASS has set up the Interim Scheme Project to effect the transfer of support for asylum seekers from local authorities and trusts throughout the United Kingdom to NASS. Information about the project is available to the stakeholders on the following website:

http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support/stakeholders/projects/interim_scheme_project/interim_scheme_project.html. This includes Q&A addressing many of the concerns expressed by the local authorities, health trusts, voluntary sector and support claimants themselves.

7.4 There is some opposition to the plan among parts of the voluntary sector and asylum seekers themselves, as most people will be required to move home. As explained above (in paragraph 7.1), it is not cost-effective for local authorities and trusts to continue to support small numbers of asylum seekers, so, regrettably, the moves will be necessary. This is because NASS only provides accommodation in defined locations ("dispersal areas"). For people in London and the south east, longer distance moves will be required as this is not a dispersal area, but otherwise NASS will try to ensure that people are moved as short a distance as possible. If already in a dispersal area, NASS will try to find accommodation locally, or in one of the nearest dispersal areas. In some circumstances it may be possible for people to remain in the accommodation they currently occupy.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is that local authorities (in Scotland) and health and social services trusts (in Northern Ireland) will no longer be responsible for supporting asylum seekers except:

- where they or their dependants have particular care needs, or
- where the local authority or health and social services trust has specific responsibility for the support of children (broadly, unaccompanied asylum seeking children, or children whose parents or guardians are unable to support them).

8.3 There will be no significant financial effect on these authorities and trusts. This is because NASS currently refunds them, by means of grants made under section 110 of the 1999 Act, for their support of asylum seekers and their dependants pursuant to the forms of social assistance which are being closed off to these persons by virtue of these regulations.

8.4 There may be some savings to public funds more generally. Each case is examined for eligibility before NASS support is offered, and indications from early work in England and Wales are that a sizeable percentage of those currently supported by local authorities and trusts will be found ineligible for support under section 95,

because a final decision as to the asylum status of the applicant has already been made.

9. Contact

Kirsty Robertson Macdonald of the NASS Central Information & Advice Unit of the Home Office can answer any queries regarding the instrument. She may be contacted via telephone number 020 8633 0267.