Draft Regulations laid before Parliament under section 166(5) of the Immigration and Asylum Act 1999, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

IMMIGRATION AND ASYLUM

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

Made - - - -	*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 (**1**) 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 (**2**) 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 (**3**); and

(**1**) 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).

(**2**) 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.

(**3**) 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) (**4**),

(b) paragraph 22 of that Schedule (**5**), or

(c) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation) (**6**).

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 (**7**) 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 (**8**),

(ii) in Scotland, pursuant to Chapter 58 of the Rules of the Court of Session 1994 (**9**) or

(iii) in Northern Ireland, and has been granted leave pursuant to Order 53 of the Rules of Supreme Court (Northern Ireland) 1980 (**10**); 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 (**11**).

(**4**) 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.

(**5**) 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.

(**6**) 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.

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

(**8**) 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).

(**9**) 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).

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

(**11**) 1998 c.42.