

# Immigration and Asylum Act 1999

## CHAPTER 33

*Note: The material reproduced below is limited to what is relevant to this volume, comprising s. 115 & s. 123.*

An Act to make provision about immigration and asylum; to make provision about procedures in connection with marriage on superintendent registrar's certificate; and for connected purposes. [11th November 1999]

### Exclusions

[<sup>1</sup>115.—(1) No person is entitled [<sup>2</sup>to universal credit under Part 1 of the Welfare Reform Act 2012 or] to income-based jobseeker's allowance under the Jobseekers Act 1995 [<sup>3</sup>or to state pension credit under the State Pension Credit Act 2002 [<sup>4</sup>or to income-related allowance under Part 1 of the Welfare Reform Act 2007 (employment and support allowance) [<sup>5</sup>or to personal independence payment]]] or to—

Exclusion from benefits.

- (a) attendance allowance,
- (b) severe disablement allowance,
- (c) [<sup>6</sup>carer's allowance],
- (d) disability living allowance,

*S. 115(1)(e) [(e) income support,] has been repealed by Sch. 14 of the Welfare Reform Act 2012 (c. 5), but kept in force for transitional purposes. See art. 9 of the S.I. 2013/358 for details of when to apply.*

- (e) [...<sup>7</sup>]
- (f) [...<sup>8</sup>],
- (g) [...<sup>8</sup>],
- (h) a social fund payment,
- (i) child benefit,
- (j) [...<sup>7</sup>]
- (k) [...<sup>7</sup>]

*S. 115(1)[(j) housing benefit, or (k) council tax benefit,] (j) & (k) has been repealed by Sch. 14 of the Welfare Reform Act 2012 (c. 5), but kept in force for transitional purposes. See art. 9 of the S.I. 2013/358 for details of when to apply.*

under the Social Security Contributions and Benefits Act 1992 while he is a person to whom this section applies.

(2) .....

(3) This 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

<sup>1</sup> S. 115 came into force on 1.1.00 for regulation making purposes.

<sup>2</sup> Words inserted in s. 115(1) (29.4.13) by para. 53(b) of Sch. 2 to the Welfare Reform Act 2012 (c. 5).

<sup>3</sup> Words in s. 115(1) inserted (2.7.02) for certain purposes, otherwise prosp.) by State Pension Credit Act 2002 (c. 16), ss. 4(2), 22(3); S.I. 2002/1691, art. 2(d).

<sup>4</sup> Words in s. 115(1) inserted (27.10.08) by the Welfare Reform Act 2007 (c. 5), Sch. 3, para. 19.

<sup>5</sup> Words in 115(1) inserted (8.4.13) by the Welfare Reform Act 2012 (c. 5), Sch. 9, para. 44(a).

<sup>6</sup> In s. 115(1)(c) words "invalid care allowance" substituted by "carer's allowance" (1.9.02 for the purpose of exercisers power to make subordinate legislation, 1.4.03 for all other purposes by para. 3(c) of the Schedule to S.I. 2002/1457).

<sup>7</sup> S. 115(1)(e), (j) & (k) repealed (8.4.13) by the Welfare Reform Act 2012 (c. 5), Sch. 14.

<sup>8</sup> S. 115(1)(f) & (g) repealed (8.4.03) by the Tax Credits Act 2002 (c. 21), Sch. 6.

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(4) Regulations 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

(5) In relation to [<sup>1</sup>child benefit], “prescribed” means prescribed by regulations made by the Treasury

(6) In relation to the matters mentioned in subsection (2) (except so far as it relates to [<sup>2</sup>child benefit]), “prescribed” means prescribed by regulations made by the Department

(7) Section 175(3) to (5) of the Social Security Contributions and Benefits Act 1992 (supplemental powers in relation to regulations) applies to regulations made by the Secretary of State or the Treasury under subsection (3) as it applies to regulations made under that Act.

(8) .....

(9) “A person subject to immigration control” means a person who is not a national of an EEA State and who—

- (a) requires leave to enter or remain in the United Kingdom but does not have it;
- (b) has leave to enter or remain in the United Kingdom which is subject to a condition that he does not have recourse to public funds;
- (c) has leave to enter or remain in the United Kingdom given as a result of a maintenance undertaking; or
- (d) has leave to enter or remain in the United Kingdom only as a result of paragraph 17 of Schedule 4.

(10) “Maintenance undertaking”, in relation to any person, means a written undertaking given by another person in pursuance of the immigration rules to be responsible for that person’s maintenance and accommodation.

.....

Back-dating of benefits where person recorded as refugee.

**123.—**(1) This section applies if—

- (a) a person is recorded by the Secretary of State as a refugee within the meaning of the Refugee Convention; and
- (b) before the refugee was so recorded, he or his dependant was a person to whom section 115 applied.

(2) Regulations may provide that a person mentioned in subsection (1)(b) may, within a prescribed period, claim the whole, or any prescribed proportion, of any benefit to which he would have been entitled had the refugee been so recorded when he made his claim for asylum.

(3) Subsections (5) and (6) apply if the refugee has resided in the areas of two or more local authorities and he or his dependant makes a claim under the regulations in relation to housing benefit.

(4) Subsections (5) and (6) also apply if the refugee has resided in the areas of two or more local authorities in Great Britain and he or his dependant makes a claim under the regulations in relation to council tax benefit.

(5) The claim must be investigated and determined, and any benefit awarded must be paid or allowed, by such one of those authorities as may be prescribed by the regulations (“the prescribed authority”).

(6) The regulations may make provision requiring a local authority who are not the prescribed authority to supply that authority with such information as they may reasonably require in connection with the exercise of their functions under the regulations.

<sup>1</sup> Words in s. 115(5) substituted (26.2.03, 1.4.03 and 7.4.03) by Sch. 4, para. 21 of the Tax Credits Act 2002 (c. 21).

<sup>2</sup> Words in s. 115(6) substituted (26.2.03, 1.4.03 and 7.4.03) by Sch. 4, para. 21 of the Tax Credits Act 2002 (c. 21).

(7) The regulations may make provision in relation to a person who has received support under this Part or who is a dependant of such a person—

- (a) for the determination, or for criteria for the calculation, of the value of that support; and
- (b) for the sum which he would be entitled to claim under the regulations to be reduced by the whole, or any prescribed proportion, of that valuation.

(8) The reductions permitted by subsection (7) must not exceed the amount of the valuation.

(9) “Regulations” means—

- (a) in relation to jobseeker’s allowance under the Jobseekers Act 1995, regulations made by the Secretary of State under that Act or the Social Security Administration Act 1992;
- (b) in relation to jobseeker’s allowance under the Jobseekers (Northern Ireland) Order 1995, regulations made by the Department under that Order or the Social Security Administration (Northern Ireland) Act 1992;
- [<sup>1</sup>(ba) in relation to child benefit (and guardian’s allowance), regulations made by the Treasury;]
- (c) in relation to a benefit [<sup>1</sup>(apart from child benefit and guardian’s allowance)] under the Social Security Contributions and Benefits Act 1992 [<sup>2</sup>or state pension credit], regulations made by the Secretary of State under that Act [<sup>2</sup>, the Social Security Administration Act 1992 (c. 5) or the State Pension Credit Act 2002];
- (d) in relation to a benefit [<sup>1</sup>(apart from child benefit and guardian’s allowance)] under the Social Security Contributions and Benefits (Northern Ireland) Act 1992, regulations made by the Department under that Act or the Social Security Administration (Northern Ireland) Act 1992.

<sup>1</sup> Para. (ba) inserted and words in para. (c) and (d) inserted (26.2.03, 1.4.03, 7.4.03) by Sch. 4, para. 22 of the Tax Credits Act 2002 (c. 21).

<sup>2</sup> Words inserted & substituted in s. 123(9) (2.7.02) for the purposes of exercising power to make regulations or orders by the State Pension Credit Act 2002 (c. 16), Sch. 2, para. 42.

