

IN THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

Before Upper Tribunal Judge Poynter

DECISION

The appeal does not succeed.

The decision of the First-tier Tribunal given at Cardiff on 1 August 2017 under reference SC188/17/02409 did not involve the making of any material error on a point of law.

Therefore that decision continues to have effect, so that:

1. The claimant is not entitled to housing benefit from and including 25 April 2016;
2. The claimant has been overpaid the sum of £877.30 as housing benefit for the period from 25 April 2016 to 7 August 2016; and
3. That overpayment is recoverable in full from the claimant.

REASONS FOR DECISION

Introduction

1. The claimant appeals to the Upper Tribunal with my permission, against the above decision of the First-tier Tribunal. That decision confirmed an earlier decision by Cardiff City Council, which was to the same effect as I have set out above.
2. Neither party has requested an oral hearing of the appeal to the Upper Tribunal and I am satisfied that I can decide this appeal fairly and justly without holding such a hearing.
3. The appeal is about whether the claimant is a “person subject to immigration control”. If so, he is excluded from entitlement to non-contributory social security benefits—including housing benefit—by section 115 of the Immigration and Asylum Act 1999. In that case, he has been overpaid housing benefit and there is a further issue about whether that overpayment is recoverable from him.
4. I have set out the relevant parts of section 115 at paragraph 8 below. The other statutory provisions that are material to my decision are set out—as they were

worded at the time the First-tier Tribunal had to consider—in the Appendix to this decision.

5. When discussing those provisions, I will refer to:
 - (a) the Immigration Act 1971 as “the Immigration Act”;
 - (b) the Interpretation Act 1978 as “the Interpretation Act”;
 - (c) the Social Security Contributions and Benefits Act 1992 as “the Contributions and Benefits Act”
 - (d) the Immigration and Asylum Act 1999 as “the 1999 Act”;
 - (e) the Nationality, Immigration and Asylum Act 2002 as “the 2002 Act”;
 - (f) the Immigration, Asylum and Nationality Act 2006 as “the 2006 Act”; and
 - (g) the Housing Benefit Regulations 2006 as “the Regulations”.

Where I refer to a numbered regulation without giving further context, the reference is to the provision of the Regulations with that number.

The facts of the case

6. The First-tier Tribunal decided that the facts of the case were as follows:
 - “(a) [The claimant] is a Nigerian national.
 - (b) He had discretionary leave to remain in the UK which expired on 13 August 2015.
 - (c) Before his discretionary leave expired he applied for an extension to his leave on Human Rights grounds on 7 August 2015. He remained in the UK pending a decision on his extension application, as was his right.
 - (d) The Secretary of State for the Home Department rejected his human rights application on 9 November 2015. She wrote to him to inform him of the decision.
 - (e) On 26 November 2015 [the claimant] appealed against that Home Office decision. Once his appeal was lodged he continued to have leave to remain in the UK pending a decision on his appeal.
 - (f) The leave he had for that period pending appeal was automatic under section 3C or 3D of the Immigration Act 1971. After 26 November 2015 the only basis on which he had leave to remain in the UK was one or other of those sections.
 - (g) He applied for Housing Benefit on 22 April 2016, and it was awarded and put in payment. When he applied, he told the local authority

about his Nigerian nationality. He did not tell them about his immigration status at the time of his claim.

- (h) City of Cardiff Council learnt about his refusal of leave and is pending appeal around 25 August 2016, and stopped his housing benefit then.
- (i) The appellant went into the Council's Central Library Hub on 1 September 2016 to bring in the 9 November 2015 Home Office decision and reasons for refusal letter I find that he did not go in before that tell them about his immigration status and that he had an immigration appeal underway.
- (j) His immigration appeal was heard on 6 September 2016 and decided in his favour (though with 'no recourse to public funds') on 8 September 2016."

7. It is also relevant—and not in dispute—that the claimant was born in 1976, and therefore has yet to attain the qualifying age for state pension credit. In those circumstances, his entitlement to—and liability to repay overpayments of—housing benefit is governed by the scheme for people of working age established by the Regulations, rather than the special scheme for older people established by the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006.

Section 115

8. The relevant parts of section 115 of the 1999 Act are as follows:

"Exclusion from benefits

115.—(1) No person is entitled to ...

(j) housing benefit, ...

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 satisfy such conditions, as may be prescribed.

(4)-(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) ...”

(The regulations made under section 115(3) are the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000. Nothing in those regulations affects this decision.)

9. The appeal concerns section 115(9)(d). As the First-tier Tribunal found (at paragraph (f) of its findings), the claimant had leave to remain in the United Kingdom at the relevant time, so section 115(9)(a) did not apply. He was not subject to a “no recourse to public funds” condition and his leave was not given as a result of a maintenance undertaking. So section 115(9)(b) and (c) did not apply either.

10. It followed that the claimant was not a person subject to immigration control unless it was concluded that he had leave to remain “only as a result of paragraph 17 of Schedule 4”.

11. And there was a potential obstacle to any such conclusion. Paragraph 17 of Schedule 4 had been repealed by paragraph 1 of Schedule 9 to the 2002 Act with effect from 1 April 2003: see the Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order (SI 2003/754).

12. How, then, could it be said that the claimant had leave to remain as a result of paragraph 17 of Schedule 4 when that paragraph had ceased to exist?

The First-tier Tribunal’s decision

13. Nevertheless, the First-tier Tribunal decided that the claimant was a person subject to immigration control.

14. The judge held that, although paragraph 17 of Schedule 4 of the 1999 Act had been repealed, the reference in sub-paragraph (d) to that paragraph must—by virtue of both section 159 of the 2002 Act and section 17(2) of the Interpretation Act—be taken as being to section 3C or section 3D of the Immigration Act.

15. Given his finding that, from 26 November 2015, the only leave the claimant had was “automatic under section 3C or 3D of the Immigration Act 1971”, it followed that the claimant fell within section 115(9)(d) as so interpreted.

16. In the alternative, the judge decided that the claimant was a “person from abroad” within regulation 10 of the Regulations, on the basis that he did not have a right to reside in the UK and therefore had no entitlement to housing benefit treated

for housing benefit purposes as not being liable to make payments in respect of a dwelling.

The grounds of appeal

Was the claimant a person subject to immigration control?

17. The first ground of appeal relates to whether the First-tier Tribunal was correct to decide that the claimant was not entitled to housing benefit because he was excluded from entitlement by section 115(1) and (9)(d) of the 1999 Act.

18. It is submitted (and I summarise) that the First-tier Tribunal misconstrued section 115 because, as a matter of immigration law, where a person is granted leave pending an immigration appeal under section 3C of the Immigration Act, any conditions attached to the previous grant of leave continue unchanged. Therefore, as the claimant was not subject to a “no recourse to public funds” condition before the basis of his leave changed, he was not subject to such a condition afterwards.

19. When considering the application for permission to appeal, I did not find that ground of appeal persuasive and that is still my view. In my judgment, it is based on a misunderstanding of section 115(9) of the 1999 Act.

20. Conditions (a) to (d) in that provision are disjunctive: a person is subject to immigration control if *any* of the conditions apply to him. As Nigeria is not an “EEA State”, the claimant is excluded from entitlement to housing benefit even if only one of those conditions is satisfied.

21. For the reasons I give below, the condition in sub-paragraph (d) applies to the claimant. It is irrelevant that sub-paragraph (b)—which excludes those whose leave is subject to the condition that they should not have recourse to public funds—may not also apply.

22. However, I gave permission because I considered that the question whether the reference to “paragraph 17 of Schedule 4” to the 1999 Act in section 115(9)(d) of that Act should now be read as a reference to section 3C or 3D of the Immigration Act is one which is suitable for consideration by the Upper Tribunal. Although I consider the answer to be straightforward, I am unaware of any direct authority on the point.

Official error

23. The second ground of appeal only arises if the first is unsuccessful and the claimant has therefore been overpaid benefit. It relates to whether that overpayment is recoverable from the claimant.

24. All overpayments of housing benefit are recoverable unless they “arose in consequence of an official error”: see regulation 100(2) of the Regulations. However, it is submitted on behalf of the claimant that Cardiff made an official error in this case because he disclosed his Nigerian nationality when he claimed housing benefit and Cardiff made no further enquiries about it.

25. I also gave permission to appeal on this ground.

Reasons for the Upper Tribunal's decision

Was the claimant a person subject to immigration control?

Interpretation of section 115(9)(d) of the 1999 Act

26. In my judgment, the combined effect of section 118 of, and paragraph 1 of Schedule 9 to, the 2002 Act was to repeal and re-enact paragraph 17 of Schedule 4 to the 1999 Act.

27. Under the latter provision, taken together with section 69(1) of the 1999 Act, where a person appealed against “a decision to vary, or to refuse to vary, any limited leave to enter or remain in the United Kingdom”, the leave to which the appeal related continued in effect.

28. Although the drafting differs, section 3C(1) and (2)(b) and (c) of the Immigration Act, as substituted by section 118 of the 2002 Act, have substantially the same effect. And they came into force at the same time as paragraph 17 of Schedule 4 was repealed.

29. In those circumstances, section 17(2) of the Interpretation Act applies unless “the contrary intention appears”.

30. And, in my judgment, there is nothing in the legislation that indicates any contrary intention.

31. Therefore the reference in section 115(9)(d) of the 1999 Act to paragraph 17 of Schedule 4 to that Act must be construed as a reference to that provision as re-enacted in section 3C(1) and (2)(b) and (c) of the Immigration Act. The First-tier Tribunal was correct so to decide.

Application to the facts of the appeal

32. The claimant was granted discretionary leave to remain on 13 August 2012. As that leave was limited as to duration—it was expressed to expire on 13 August 2015—it was “a limited leave to enter or remain in the United Kingdom” within section 3(3) of the Immigration Act.

33. Therefore, when the claimant applied for that limit to be extended on 7 August 2015, the correct legal analysis is that he was making an application under section 3(3)(a) of the Immigration Act to vary limited leave “by ... enlarging or removing the limit on its duration”. As that application was made before the limited leave expired, section 3C was engaged.

34. At the time of the claim for housing benefit, the Home Secretary had refused to vary the claimant's leave. As a result, the claimant had no leave to remain in the UK except under section 3C(1) and (2)(b) and (c).

35. That is the exact situation envisaged by section 115(9)(d) as construed in accordance with the Interpretation Act. It follows that the claimant was a person subject to immigration control and was excluded from entitlement to housing benefit by section 115(9)(d).

36. The First-tier Tribunal was therefore also correct to decide that the claimant was not entitled to housing benefit.

Section 3D of the Immigration Act

37. However—although the error was immaterial, given what I say above—the First-tier Tribunal was not correct to hold that the reference in section 115(9)(d) to paragraph 17 of Schedule 4 must alternatively be construed as a reference to section 3D of the Immigration Act.

38. Section 3D applied to those whose leave to remain in the UK had either been revoked or had been varied with the result that they had to leave the United Kingdom.

39. The section had the effect that, where a timeous appeal was made against the revocation or variation decision, the former leave was extended until the appeal was decided.

40. Section 3D was inserted into the Immigration Act by section 11(5) of the 2006 Act with effect from 31 August 2006. It remained in force until 30 November 2016, when it was repealed by section 64(1) of the Immigration Act 2016. The enactment of section 3D was therefore not part of the process of the repeal and re-enactment of paragraph 17 of Schedule 4 to the 1999 Act by the 2002 Act. Moreover, section 3D was a new provision and not a re-enactment of previous law. Therefore section 17(2) of the Interpretation Act had no application and the reference to paragraph 17 in section 115(9) is not to be interpreted as a reference to section 3D.

41. Those whose leave was extended by section 3D were not subject to immigration control:¹ see *GO v Her Majesty's Revenue and Customs* (CHB) [2018] UKUT 328 (AAC).

42. In any event, the First-tier Tribunal was correct to decide that section 3D is not relevant in this case. The claimant's leave to remain was neither revoked nor varied to his detriment. Section 3D had no application where, as here, the Home Secretary's decision was a *refusal* to vary leave.

Interpretation of section 159 of the 2002 Act

43. The conclusion that section 115(9)(d) applies to the claimant by virtue of the Interpretation Act, means that it is unnecessary for me to decide whether the same result follows from section 159 of the 2002 Act.

Was the claimant a person from abroad?

44. It is, however, necessary for me to comment on the Tribunal's alternative basis for its decision on the entitlement issue, namely that the claimant was also a "person from abroad".

¹ Unless, perhaps, their pre-continuation leave was subject to the condition that they should not have recourse to public funds or had been given as a result of a maintenance undertaking.

45. Having decided that the claimant was a person subject to immigration control, the First-tier Tribunal did not have to consider whether he was also a person from abroad. But it did so anyway. And, unfortunately, that part of its decision was wrong.

46. The claimant was **not** a person from abroad because:

- (a) he satisfied regulation 10(2) by being actually habitually resident in the United Kingdom (he had lived in the UK since April 2010);
- (b) he satisfied regulation 10(3) by having a right to reside in the UK under section 3C of the Immigration Act; and
- (c) that right to reside was not excluded by regulation 10(3A).

Apart from those who fall within section 115(9)(a) of the 1999 Act because they do not have leave to enter or remain in the United Kingdom at all, many of those who are subject to immigration control will not also be persons from abroad because they will have conditional or limited leave and will have a right to reside in the UK as a result.

47. That is not to say that people in those circumstances are entitled to non-contributory benefits. The point is that whether they or not they are “from abroad” is a question that does not even arise because they are subject to a prior exclusion as being “subject to immigration control”.

Is the overpayment of housing benefit recoverable?

48. As the claimant was not entitled to the housing benefit he received, it follows that he has been overpaid and I must therefore consider the second ground of appeal.

49. Regulation 100 of the Regulations provides that all overpayments of housing benefit are recoverable unless they arose in consequence of an “official error”: see page 18 in the Appendix below.

50. When I gave permission to appeal, I asked:

“Did Cardiff make an official error by failing to investigate [the claimant’s] immigration status when he declared in his original housing benefit claim form that he was Nigerian (page 2 of the First-tier Tribunal bundle)?

Given the decision of the House of Lords in *Kerr v Department of Social Development*, [2004] UKHL 23 (also reported as R 1/04 (SF)), was it legally correct for the FTT (in effect) to have visited adverse consequences on [the claimant] for having omitted to answer questions that he was not asked? Ought Cardiff not to have asked those questions? Is it relevant that by not doing so, they were failing to play their role in the co-operative decision making process envisaged by Kerr?

It may also be relevant that in *CIS/1697/2004*, Mr Deputy Commissioner Wikeley (as he then was) held (at paragraph 20) that it was for the Secretary of State (the decision maker in that appeal) to prove that the

claimant “was a person subject to immigration control”, not for her to demonstrate that she fell outside that category”.

51. Cardiff resists that conclusion. Its response to the appeal in the Upper Tribunal states:

“When [the claimant] submitted his Housing Benefit application form on 22nd April 2016, he also submitted, by way of supporting documentation a letter from the Home Office dated 13th August 2015 ..., To show he had applied for an extension of his leave to remain, prior to the expiry of his initial grant.

At this time, [the claimant] would also have been in possession of a letter from the Home Office dated 9th November 2015 ... which confirmed that [his] application for leave to remain had been refused by the Home Office. He did not however, provide this letter to Cardiff Council at the time of his application, nor did he inform the Council of his refusal.

[The claimant] had also signed a statement ... to say that he was in the process of applying for leave to remain again as his Visa had run out, as of 13th August 2015. Based on the information as completed on the Housing Benefit claim form along with the signed statement and supporting documentation provided, Cardiff Council concluded that [the claimant] was entitled to receive Housing Benefit as he had applied for an extension of his leave to remain, prior to the date of his initial grant and that the application was outstanding.

Cardiff Council submits that the statement signed by [the claimant] along with the copy of the letter he provided and the absence of the second letter, amounts to what reasonably appeared to be sufficiently clear information and evidence, demonstrating [the claimant’s] entitlement to Housing Benefit. It therefore had no reason to enquire further and does not consider that it made any error in not doing so.”

52. There is considerable force in that response. For the reasons Cardiff give, when he claimed housing benefit, the letter dated 13 August 2015 did not set out the true position as regards the claimant’s immigration status. Even if the claimant had no deliberate intention to deceive the Council on this point, providing a copy of that letter without also providing a copy of the 9 November 2015 letter—or at least explaining what had happened since 13 August 2015—was materially misleading.

53. Nevertheless, I am not convinced that Cardiff did not make a mistake by failing to enquire further. They were presented with evidence from the Home Office that an application had been made 8 months previously and no objective evidence as to what, if any, decision had been made on that application. The claimant may not have appreciated the relevance of the Home Secretary’s refusal of his application to vary his limited leave to remain. He may have regarded the appeal against that refusal as just being a further step in the application process. It may be that, by providing a copy of the letter of 13 August 2015, the claimant intended Cardiff to understand that—as in one sense was the case—the application had been made, but had not been finally decided. At the very least, it would have been prudent for Cardiff to have

asked the claimant in as many words whether the Home Office had decided the application.

54. However, it is unnecessary for me to decide that point. Even if I assume for the sake of argument, the Cardiff's omission to make further enquiries was mistake, it was not an "official error".

55. Regulation 100(3) defines an official error as "a mistake made whether in the form of an act or omission by ... the relevant authority ... *where the claimant ... did not cause or materially contribute to that mistake, act or omission*" (my emphasis).

56. It could be argued that the claimant did not cause or contribute to Cardiff's omission to make further enquiries and that therefore he did not cause or contribute to the *mistake* that led to the overpayment, as regulation 100(3) seems to require.

57. One possible response to that is that, even if Cardiff did make an official error, the overpayment did not arise in consequence of that error but, rather, because the claimant had provided misleading information in support of his claim.

58. There is also another way of looking at the matter. In *R (Sier) v Cambridge City Council Housing Benefit Review Board* [2001] EWCA Civ 1523, Simon Brown LJ (as he then was) said:

"In my judgment a single composite question falls to be asked under regulation [100(3)]. One must ask: "was the overpayment the result a wholly uninduced official error, or was it rather the result of the claimant's own failings, ..."

59. Whether or not he realised it, and whether or not Cardiff should have asked further questions, the information that the claimant provided in support of his claim for housing benefit was incomplete and misleading. It cannot be said that the overpayment was the result of a wholly uninduced official error and it follows from *Sier* that the First-tier Tribunal was correct to decide that the overpayment was recoverable.

Conclusion

60. For all those reasons, my decision is as set out on page 1 above.

(Signed on the original)

Richard Poynter
Judge of the Upper Tribunal

11 December 2018

Appendix

Immigration Act 1971

Part I

Regulation of Entry into and Stay in United Kingdom

General provisions for regulation and control.

3.—(1) Except as otherwise provided by or under this Act, where a person is not a British citizen

- (a) he shall not enter the United Kingdom unless given leave to do so in accordance with the provisions of, or made under, this Act;
- (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;
- (c) if he is given limited leave to enter or remain in the United Kingdom, it may be given subject to all or any of the following conditions, namely—
 - (i) a condition restricting his employment or occupation in the United Kingdom;
 - (ia) a condition restricting his studies in the United Kingdom;
 - (ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds;
 - (iii) a condition requiring him to register with the police;
 - (iv) a condition requiring him to report to an immigration officer or the Secretary of State; and
 - (v) a condition about residence.
- (2) ...
- (3) In the case of a limited leave to enter or remain in the United Kingdom,—
 - (a) a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and

- (b) the limitation on and any conditions attached to a person's leave (whether imposed originally or on a variation) shall, if not superseded, apply also to any subsequent leave he may obtain after an absence from the United Kingdom within the period limited for the duration of the earlier leave.

...

Continuation of leave pending variation decision

3C.—(1) This section applies if—

- (a) a person who has limited leave to enter or remain in the United Kingdom applies to the Secretary of State for variation of the leave,
- (b) the application for variation is made before the leave expires, and
- (c) the leave expires without the application for variation having been decided.

(2) The leave is extended by virtue of this section during any period when—

- (a) the application for variation is neither decided nor withdrawn,
- (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
- (c) an appeal under that section against that decision is pending (within the meaning of section 104 of that Act).

(3) Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom.

(4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.

(5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).

(6) In this section a reference to an application being decided is a reference to notice of the decision being given in accordance with regulations under section 105 of that Act (notice of immigration decision).

Continuation of leave following revocation

3D.—(1) This section applies if a person's leave to enter or remain in the United Kingdom—

- (a) is varied with the result that he has no leave to enter or remain in the United Kingdom, or
 - (b) is revoked.
- (2) The person's leave is extended by virtue of this section during any period when—
- (a) an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 could be brought, while the person is in the United Kingdom, against the variation or revocation (ignoring any possibility of an appeal out of time with permission),
 - (b) an appeal under that section against the variation or revocation, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act), or
 - (c) an administrative review of the variation or revocation—
 - (i) could be sought, or
 - (ii) is pending.
- (3) A person's leave as extended by virtue of this section shall lapse if he leaves the United Kingdom.
- (4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.
- (5) In this section—
- “administrative review” means a review conducted under the immigration rules;
- the question of whether an administrative review is pending is to be determined in accordance with the immigration rules.

Interpretation Act 1978

Repealing enactments

Repeal and re-enactment.

17.—(1) Where an Act repeals a previous enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force.

(2) Where an Act repeals and re-enacts, with or without modification, a previous enactment then, unless the contrary intention appears,—

(a) any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted;

- (b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision.

Social Security Contributions and Benefits Act 1992

Part VII

Income-Related Benefits

Housing benefit

130.—(1) A person is entitled to housing benefit if—

- (a) he is liable to make payments in respect of a dwelling in Great Britain which he occupies as his home; ...

Interpretation ... and supplementary provisions

137.—(1) ...

(2) Regulations may make provision ...—

...

- (i) for treating any person who is liable to make payments in respect of a dwelling as if he were not so liable; ...”

Immigration and Asylum Act 1999

Part IV

Appeals

Variation of limited leave to enter or remain

61. A person may appeal against a decision to vary, or to refuse to vary, any limited leave to enter or remain in the United Kingdom which he has if, as a result of that decision, he may be required to leave the United Kingdom within 28 days of being notified of the decision.

Schedule 4

Appeals

Part II

Effect of appeals

Continuation of leave

17.—(1) While an appeal under section 61 or 69(2) is pending, the leave to which the appeal relates and any conditions subject to which it was granted continue to have effect.

(2) A person may not make an application for a variation of his leave to enter or remain while that leave is treated as continuing to have effect as a result of sub-paragraph (1).

(3) For the purposes of section 61 or 69(2), in calculating whether, as a result of a decision, a person may be required to leave the United Kingdom within 28 days, a continuation of leave under this paragraphs is to be disregarded.

Nationality, Immigration and Asylum Act 2002

Part 5

Appeals in respect of Protection and Human Rights Claims

Right of appeal to the Tribunal

82.—(1) A person (“P”) may appeal to the Tribunal where—

- (a) ...
- (b) the Secretary of State has decided to refuse a human rights claim made by P, ...”

Interpretation

113.—(1) In this Part, unless a contrary intention appears—

...

“Human rights claim” means a claim made by a person to the Secretary of State at a place designated by the Secretary of State that to remove the person from or require him to leave the United Kingdom or to refuse him entry into the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention)”. The application made by the claimant on 7 August 2015 was a human rights claim.

Part 8

General

Applied provision

159.—(1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of—

- (a) another provision of the Act which contains the provision, or
- (b) another Act.

(2) The amendment or reference shall have effect in relation to the provision as applied.

(3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

Housing Benefit Regulations 2006

Part 2

Provisions affecting entitlement to housing benefit

Persons from abroad

10.—(1) A person from abroad who is liable to make payments in respect of a dwelling shall be treated as if he were not so liable ...

(2) In paragraph (1), “person from abroad” means, subject to the following provisions of this regulation, a person who is not habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland.

(3) No person shall be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless he has a right to reside in (as the case may be) the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland other than a right to reside which falls within paragraph (3A).

(3A) A right to reside falls within this paragraph if it is one which exists by virtue of, or in accordance with, one or more of the following—

- (a) regulation 13 of the Immigration (European Economic Area) Regulations 2006;
- (b) regulation 14 of those Regulations, but only in a case where the right exists under that regulation because the person is—
 - (i) a jobseeker for the purpose of the definition of “qualified person” in regulation 6(1) of those Regulations, or
 - (ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker;
- (bb) regulation 15A(1) of those Regulations, but only in a case where the right exists under that regulation because the claimant satisfies the criteria in regulation 15A(4A) of those Regulations;
- (c) Article 6 of Council Directive No. 2004/38/EC;
- (d) Article 45 of the treaty on the Functioning of the European Union (in a case where the person is seeking work in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland); or

- (e) Article 20 of the Treaty on the Functioning of the European Union (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of the substance of their rights as a European Union citizen).

Part 12

Overpayments

Recoverable overpayments

100.—(1) Any overpayment, except one to which paragraph (2) applies, shall be recoverable.

(2) ... this paragraph applies to an overpayment which arose in consequence of an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

(3) In paragraph (2), overpayment which arose in consequence of an official error means an overpayment caused by a mistake made whether in the form of an act or omission by—

- (a) the relevant authority;
- (b) an officer or person acting for that authority;
- (c) an officer of—
 - (i) the Department for Work and Pensions; or
 - (ii) Revenue and Customs,acting as such; or

(d) a person providing services to the Department for Work and Pensions or to the Commissioners for Her Majesty's Revenue and Customs,

where the claimant, a person acting on his behalf or any other person to whom the payment is made, did not cause or materially contribute to that mistake, act or omission.

(4) ...