

2000 No. 636

SOCIAL SECURITY

The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

Made - - - - - 7th March 2000

Laid before Parliament 13th March 2000

Coming into force 3rd April 2000

The Secretary of State for Social Security, in exercise of the powers conferred upon him by sections 115(3), (4) and (7), 123(5) and (6), 166(3) and 167 of the Immigration and Asylum Act 1999(a), sections 64(1), 68(4), 70(4), 71(6), 123(1)(a), (d) and (e), 135(1), 136(3) and (4), 137(1)(b) and (2)(i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(c), section 5(1)(a) and (b), 189(1) and (4) and 191(d) of the Social Security Administration Act 1992(e), sections 12(1) and (2), 35(1)(f) and 36(2) and (4) of the Jobseekers Act 1995(g) and of all other powers enabling him in that behalf, by this Instrument, which contains only regulations made by virtue of, or consequential upon, the Immigration and Asylum Act 1999 and which is made before the end of the period of six months beginning with the coming into force of that Act(h) and, in so far as they relate to housing benefit and council tax benefit, with the agreement of such organisations appearing to him to be representative of the authorities concerned that consultation should not be undertaken(i) hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000.

(2) These Regulations shall come into force on 3rd April 2000.

(3) In these Regulations—

“the Act” means the Immigration and Asylum Act 1999;

“the Attendance Allowance Regulations” means the Social Security (Attendance Allowance) Regulations 1991(j);

“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987(k);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992(l);

(a) 1999 c. 33. Section 167 is cited because of the meaning given to the word “prescribed”.

(b) Section 137(1) is cited because of the meaning given to the word “prescribed”.

(c) 1992 c. 4.

(d) Section 191 is cited because of the meaning given to the word “prescribe”.

(e) 1992 c. 5.

(f) Section 35(1) is cited because of the meaning given to the word “prescribed”.

(g) 1995 c. 18.

(h) See section 173(5)(b) of the Social Security Administration Act 1992 (c. 5).

(i) See section 176(2)(b) of the Social Security Administration Act 1992 (c. 5).

(j) S.I. 1991/2740.

(k) S.I. 1987/1968.

(l) 1992 c. 4.

Regs. 1-2

¹Words inserted and added in reg. 1(3) and 2(1) by reg. 69(2) & (3)(a) of S.I. 2008/1554 as from 27.10.08.

“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992(a);

“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations 1991(b);

▶¹“the Employment and Support Allowance Regulations” means the Employment and Support Allowance Regulations 2008;◀

“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987(c);

“the Income Support Regulations” means the Income Support (General) Regulations 1987(d);

“the Invalid Care Allowance Regulations” means the Social Security (Invalid Care Allowance) Regulations 1976(e);

“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996(f);

“the Persons from Abroad Regulations” means the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996(g);

“the Severe Disablement Allowance Regulations” means the Social Security (Severe Disablement Allowance) Regulations 1984(h);

▶¹“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (unemployment and support allowance).◀

(4) In these Regulations, unless the context otherwise requires, a reference—

- (a) to a numbered regulation or Schedule is to the regulation in, or the Schedule to, these Regulations bearing that number;
- (b) in a regulation or Schedule to a numbered paragraph is to the paragraph in that regulation or Schedule bearing that number.

Persons not excluded from specified benefits under section 115 of the Immigration and Asylum Act 1999

2.—(1) For the purposes of entitlement to income-based jobseeker’s allowance, income support, a social fund payment, housing benefit or council tax benefit under the Contributions and Benefits Act, ▶¹income-related employment and support allowance◀▶²or state pension credit under the State Pension Credit Act 2002(i),◀ as the case may be, a person falling within a category or description of persons specified in Part I of the Schedule is a person to whom section 115 of the Act does not apply.

(2) For the purposes of entitlement to attendance allowance, severe disablement allowance, invalid care allowance, disability living allowance, a social fund payment or child benefit under the Contributions and Benefits Act, as the case may be, a person falling within a category or description of persons specified in Part II of the Schedule is a person to whom section 115 of the Act does not apply.

(3) For the purposes of entitlement to child benefit, attendance allowance or disability living allowance under the Contributions and Benefits Act, as the case may be, a person in respect of whom there is an Order in Council made under section 179 of the Social Security Administration Act 1992 giving effect to a reciprocal agreement in respect of one of those benefits, as the case may be, is a person to whom section 115 of the Act does not apply.

²Words inserted in reg. 2(1) by reg. 6(2) of S.I. 2003/2273 as from 6.10.03.

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- (a) S.I. 1992/1814.
 - (b) S.I. 1991/2890.
 - (c) S.I. 1987/1971.
 - (d) S.I. 1987/1967.
 - (e) S.I. 1976/409.
 - (f) S.I. 1996/207.
 - (g) S.I. 1996/30.
 - (h) S.I. 1984/1303.
 - (i) 2002 c. 15.

(4) For the purposes of entitlement to—

- (a) income support, a social fund payment, housing benefit or council tax benefit under the Contributions and Benefits Act ►¹or income-related employment and support allowance, ◀ as the case may be, a person who is entitled to or is receiving benefit by virtue of paragraph (1) or (2) of regulation 12 of the Persons from Abroad Regulations is a person to whom section 115 of the Act does not apply;
- (b) attendance allowance, disability living allowance, invalid care allowance, severe disablement allowance, a social fund payment or child benefit under the Contributions and Benefits Act, as the case may be, a person who is entitled to or is receiving benefit by virtue of paragraph (10) of regulation 12 is a person to whom section 115 of the Act does not apply.
- ²(c) state pension credit under the State Pension Credit Act 2002, a person to whom sub-paragraph (a) would have applied but for the fact that they have attained the qualifying age for the purposes of state pension credit, is a person to whom section 115 of the Act does not apply. ◀

¹Words inserted in reg. (4)(a) & (5) by reg. (3)(b) & (c) of S.I. 2008/1554 as from 27.10.08.

²Sub-para (4)(c) & paras. (7) & (8) inserted by reg. 6(3) & (4) of S.I. 2003/2274 as from 6.10.03.

(5) For the purposes of entitlement to income support by virtue of regulation 70 of the Income Support Regulations (urgent cases), to jobseeker's allowance by virtue of regulation 147 of the Jobseeker's Allowance Regulations (urgent cases) ►¹, to employment and support allowance by virtue of regulation 162 of the Employment and Support Allowance Regulations (urgent cases) ◀ or to a social fund payment under the Contributions and Benefits Act, as the case may be, a person to whom regulation 12(3) applies is a person to whom section 115 of the Act does not apply.

(6) For the purposes of entitlement to housing benefit, council tax benefit or a social fund payment under the Contributions and Benefits Act, as the case may be, a person to whom regulation 12(6) applies is a person to whom section 115 of the Act does not apply.

►²(7) For the purposes of entitlement to state pension credit under the State Pension Credit Act 2002, a person to whom paragraph (5) would have applied but for the fact that they have attained the qualifying age for the purposes of state pension credit, is a person to whom section 115 of the Act does not apply.

(8) Where paragraph 1 of Part I of the Schedule to these Regulations applies in respect of entitlement to state pension credit, the period for which a claimant's state pension credit is to be calculated shall be any period, or the aggregate of any periods, not exceeding 42 days during any one period of leave to which paragraph 1 of Part I of the Schedule to these Regulations applies. ◀

[Regulation 3 makes various amendments to S.I. 1987/1967.]

[Regulation 4 makes various amendments to S.I. 1996/207.]

[Regulation 5 makes various amendments to S.I. 1987/1968.]

[Regulation 6 makes various amendments to S.I. 1987/1971.]

[Regulation 7 makes various amendments to S.I. 1992/1814.]

[Regulation 8 amends regulation 9 of S.I. 1976/409.]

[Regulation 9 amends regulation 3 of S.I. 1984/1303.]

[Regulation 10 amends regulation 2 of S.I. 1991/2740.]

[Regulation 11 amends regulation 2 of S.I. 1991/2890.]

Transitional arrangements and savings

12.—(1) Paragraph (2) shall apply where, in relation to a claim for income support, a social fund payment, housing benefit or council tax benefit, as the case may be, a person has submitted a claim for asylum on or before 2nd April 2000 and is notified that he has been recorded by the Secretary of State as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.

(2) Where this paragraph applies—

- (a) regulation 21ZA of the Income Support Regulations (treatment of refugees) shall continue to have effect as if regulation 3(4)(a), (5) and (9) had not been made;
- (b) regulations 4(3C), 6(4D) and 19(8) of the Claims and Payments Regulations shall continue to have effect as if regulation 5 had not been made;
- (c) paragraphs 1 and 2 of Schedule A1, paragraph 62 of Schedule 4 and paragraph 51 of Schedule 5 to the Housing Benefit Regulations (treatment of claims for housing benefit by refugees) shall continue to have effect as if regulation 6(5) and (7) had not been made; and
- (d) paragraphs 1 and 2 of Schedule A1, paragraph 62 of Schedule 4 and paragraph 51 of Schedule 5 to the Council Tax Benefit Regulations (treatment of claims for council tax benefit by refugees) shall continue to have effect as if regulation 7(5) and (7) had not been made.

(3) Regulation 70 of the Income Support Regulations and regulation 147 of the Jobseeker's Allowance Regulations, as the case may be, shall apply to a person who is an asylum seeker within the meaning of paragraph (4) ¹, regulation 162 of the Employment and Support Allowance Regulations ¹ who has not ceased to be an asylum seeker by virtue of paragraph (5).

¹Words inserted in reg. 12(3) by reg. 69(4) of S.I. 2008/1554 as from 27.10.08.

(4) An asylum seeker within the meaning of this paragraph is a person who—

- (a) submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum on or before 2nd April 2000 to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made before that date; or
- (b) on or before 2nd April 2000 becomes, while present in Great Britain, an asylum seeker when—
 - (i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change of circumstances that he would not normally order the return of a person to that country; and
 - (ii) he submits, within a period of three months from the date that declaration was made, a claim for asylum to the Secretary of State under the Convention relating to the Status of Refugees, and
 - (iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made; and
- (c) in the case of a claim for jobseeker's allowance, holds a work permit or has written authorisation from the Secretary of state permitting him to work in the United Kingdom.

(5) A person ceases to be an asylum seeker for the purposes of this paragraph when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.

(6) For the purposes of regulation 7A of the housing Benefit Regulations and regulation 4A of the Council Tax Benefit Regulations, a person who is an asylum seeker within the meaning of paragraph (7) who has not ceased to be an asylum seeker by virtue of paragraph (8), is not a person from abroad within the meaning of paragraph (1) of those regulations.

(7) An asylum seeker within the meaning of this paragraph is a person who—

- (a) submits on his arrival (other than on his re-entry) in the United Kingdom from a country outside the Common Travel Area a claim for asylum on or before 2nd April 2000 to the Secretary of State that it would be contrary to the United Kingdom's obligations under the Convention for him to be removed or required to leave, the United Kingdom and that claim is recorded by the Secretary of State as having been made before that date, or

- (b) on or before 2nd April 2000 becomes, while present in Great Britain, an asylum seeker when—
- (i) the Secretary of State makes a declaration to the effect that the country of which he is a national is subject to such a fundamental change of circumstances that he would not normally order the return of a person to that country; and
 - (ii) he submits, within a period of three months from the date that declaration was made, a claim for asylum to the Secretary of State under the Convention relating to the Status of Refugees; and
 - (iii) his claim for asylum under that Convention is recorded by the Secretary of State as having been made.

(8) A person ceases to be an asylum seeker for the purposes of this paragraph when his claim for asylum is recorded by the Secretary of State as having been decided (other than on appeal) or abandoned.

(9) In paragraphs (4) and (7) “the Common Travel Area” means the United Kingdom, the Channel Islands, the Isle of Man and the Republic of Ireland collectively and “the Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 2(1) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.

(10) Where, before the coming into force of these Regulations, a person has claimed benefit to which he is entitled or is receiving benefit by virtue of regulation 12(3) of the Persons from Abroad Regulations or regulation 14B(g) of the Child Benefit (General) Regulations 1976(a), as the case may be, those provisions shall continue to have effect, for the purposes of entitlement to attendance allowance, disability living allowance, invalid care allowance, severe disablement allowance or child benefit, as the case may be, until such time as—

- (a) his claim for asylum (if any) is recorded by the Secretary of State as having been decided or abandoned; or
- (b) his entitlement to that benefit is revised or superseded under section 9 or 10 of the Social Security Act 1998(b), if earlier,

as if regulations 8, 9, 10 and 11 and paragraph (2) or paragraph (3), as the case may be, of regulation 13, had not been made.

(11) In the Persons from Abroad Regulations—

- (a) in paragraph (1) of regulation 12, after the words “shall continue to have effect” there shall be inserted the words “(both as regards him and as regards persons who are members of his family at the coming into force of these Regulations)”; and
- (b) notwithstanding the amendments and revocations in regulations 3, 6 and 7, regulations 12(1) and (2) of the Persons from Abroad Regulations shall continue to have effect as they had effect before those amendments and revocations came into force—

[Regulation 13 revokes regulation 12(3) of S.I. 1996/30 and regulation 14B of S.I. 1976/965.]

Signed by authority of the Secretary of State for Social Security.

Hugh Bayley
Parliamentary Under-Secretary of State,
Department of Social Security

7th March 2000

(a) S.I. 1976/965. Regulation 14B was inserted by S.I. 1996/2327 and amended by S.I. 1996/2530.

(b) 1998 c. 14.

SCHEDULE

Regulation 2

PERSONS NOT EXCLUDED FROM CERTAIN BENEFITS UNDER
SECTION 115 OF THE IMMIGRATION AND ASYLUM ACT 1999

PART I

Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to income-based jobseeker's allowance, income support ►¹Income-Related Employment and Support Allowance, ◀ a social fund payment, housing benefit or council tax benefit

¹Words inserted in heading to Part 1 of the Schedule by reg. 69(5) of S.I. 2008/1554 as from 27.10.08.

1. A person who—

- (a) has limited leave (as defined in section 33(1) of the Immigration Act 1971) to enter or remain in the United Kingdom which was given in accordance with the immigration rules (as defined in that section) relating to—
- (i) there being or there needing to be, no recourse to public funds, or
 - (ii) there being no charge on public funds,

during that period of limited leave; and

- (b) having, during any one period of limited leave (including any such period as extended), supported himself without recourse to public funds, other than any such recourse by reason of the previous application of this sub-paragraph, is temporarily without funds during that period of leave because remittances to him from abroad have been disrupted, provided there is a reasonable expectation that his supply of funds will be resumed.

2. A person who has been given leave to enter or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation and who has not been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later and the person or persons who gave the undertaking to provide for his maintenance and accommodation has, or as the case may be, have died.

3. A person who—

- (a) has been given leave to enter or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation; and
- (b) has been resident in the United Kingdom for a period of at least five years beginning on the date of entry or the date on which the undertaking was given in respect of him, whichever date is the later.

4. A person who is a national of a state which has ratified the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953(a)) or a state which has ratified the Council of Europe Social Charter (signed in Turin on 18th October 1961) and who is lawfully present in the United Kingdom.

(a) Cmd. 9512.

PART II

Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to attendance allowance, severe disablement allowance, invalid care allowance, disability living allowance a social fund payment or child benefit

1. A member of a family of a national of a State contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993(a).
2. A person who is lawfully working in Great Britain and is a national of a State with which the Community has concluded an agreement under Article 310(b) of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts(c) providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.
3. A person who is a member of a family of, and living with, a person specified in paragraph 2.
4. A person who has been given leave to enter, or remain in, the United Kingdom by the Secretary of State upon an undertaking by another person or persons pursuant to the immigration rules within the meaning of the Immigration Act 1971, to be responsible for his maintenance and accommodation.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made either by virtue of, or in consequence of, provisions in the Immigration and Asylum Act 1999 (c. 33) “the Immigration and Asylum Act” which includes provision for new arrangements for the support of asylum seekers.

These Regulations are made before the end of the period of six months beginning with the coming into force of the relevant provisions of the Act and are therefore exempted from the requirement in section 172(1) of the Social Security Administration Act 1992 (c. 5) to refer proposals to make these Regulations to the Social Security Advisory Committee and are made without reference to that Committee.

Regulation 1 makes provision relating to commencement, citation and interpretation.

Regulation 2 and the Schedule to these Regulations make provision for certain people not to be excluded from entitlement to benefits under section 115 of the Immigration and Asylum Act who would otherwise be excluded under that section.

Regulations 3 to 11 make consequential amendments to the Income Support (General) Regulations 1987 (S.I. 1987/1967); the Jobseeker’s Allowance Regulations 1996 (S.I. 1996/207); the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987/1968); the Housing Benefit (General) Regulations 1987 (S.I. 1987/1971); the Council Tax Benefit (General) Regulations 1992 (S.I. 1992/1814); the Social Security (Invalid Care Allowance) Regulations 1976 (S.I. 1976/409); the Social Security (Severe Disablement Allowance) Regulations 1984 (S.I. 1984/1303); the Social Security (Attendance Allowance) Regulations 1991 (S.I. 1991/2740) and the Social Security (Disability Living Allowance) Regulations 1991 (S.I. 1991/2890).

(a) OJ No. L1, 3.1.1994, p. 3.

(b) Article 310 EC (ex Article 238).

(c) OJ No. C340, 10.11.97, p. 1.

Regulation 12 makes provision for transitional arrangements and savings.

Regulation 13 makes provision for revocations.

These Regulations do not impose a charge on business.