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## STATUTORY INSTRUMENTS

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### 2000 No. 636

## SOCIAL SECURITY

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

<i>Made</i>	- - - -	<i>7th March 2000</i>
<i>Laid before Parliament</i>		<i>13th March 2000</i>
<i>Coming into force</i>	- -	<i>3rd April 2000</i>

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<sup>M1</sup>, sections 64(1), 68(4), 70(4), 71(6), 123(1)(a), (d) and (e), 135(1), 136(3) and (4), 137(1)<sup>M2</sup> and (2)(i) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992<sup>M3</sup>, section 5(1)(a) and (b), 189(1) and (4) and 191<sup>M4</sup> of the Social Security Administration Act 1992<sup>M5</sup>, sections 12(1) and (2), 35(1)<sup>M6</sup> and 36(2) and (4) of the Jobseekers Act 1995<sup>M7</sup> 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<sup>M8</sup> 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<sup>M9</sup> hereby make the following Regulations:

#### Marginal Citations

- M1** 1999 c. 33. Section 167 is cited because of the meaning given to the word "prescribed".
- M2** Section 137(1) is cited because of the meaning given to the word "prescribed".
- M3** 1992 c. 4.
- M4** Section 191 is cited because of the meaning given to the word "prescribe".
- M5** 1992 c. 5.
- M6** Section 35(1) is cited because of the meaning given to the word "prescribed".
- M7** 1995 c. 18.
- M8** See section 173(5)(b) of the [Social Security Administration Act 1992 \(c. 5\)](#).
- M9** See section 176(2)(b) of the [Social Security Administration Act 1992 \(c. 5\)](#).

*Status: Point in time view as at 07/04/2003.*

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## 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;

<sup>M10</sup>“the Attendance Allowance Regulations” means the Social Security (Attendance Allowance) Regulations 1991 ;

<sup>M11</sup>“the Claims and Payments Regulations” means the Social Security (Claims and Payments) Regulations 1987 ;

<sup>M12</sup>“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992 ;

<sup>M13</sup>“the Council Tax Benefit Regulations” means the Council Tax Benefit (General) Regulations 1992 ;

<sup>M14</sup>“the Disability Living Allowance Regulations” means the Social Security (Disability Living Allowance) Regulations 1991 ;

<sup>M15</sup>“the Housing Benefit Regulations” means the Housing Benefit (General) Regulations 1987 ;

<sup>M16</sup>“the Income Support Regulations” means the Income Support (General) Regulations 1987 ;

<sup>M17</sup>“the Invalid Care Allowance Regulations” means the Social Security (Invalid Care Allowance) Regulations 1976 ;

<sup>M18</sup>“the Jobseeker’s Allowance Regulations” means the Jobseeker’s Allowance Regulations 1996 ;

<sup>M19</sup>“the Persons from Abroad Regulations” means the Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 ;

<sup>M20</sup>“the Severe Disablement Allowance Regulations” means the Social Security (Severe Disablement Allowance) Regulations 1984 .

(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.

### Modifications etc. (not altering text)

**C1** Reg. 1(3) modified (7.4.2003 for specified purposes) by [The Child Benefit and Guardian’s Allowance \(Administration\) Regulations 2003 \(S.I. 2003/492\)](#), regs. 1, 43, **Sch. 3 Pt. 1** (with regs. 1(2), 44)

### Marginal Citations

**M10** S.I. 1991/2740.

**M11** S.I. 1987/1968.

**M12** 1992 c. 4.

**M13** S.I. 1992/1814.

**M14** S.I. 1991/2890.

**M15** S.I. 1987/1971.

**M16** S.I. 1987/1967.

- M17 S.I. 1976/409.
- M18 S.I. 1996/207.
- M19 S.I. 1996/30.
- M20 S.I. 1984/1303.

## 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, 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, [<sup>F1</sup>carer’s 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.

(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, 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, [<sup>F1</sup>carer’s 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.

(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) 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.

### Textual Amendments

- F1 Words in reg. 2 substituted (1.4.2003) by [Social Security Amendment \(Carer's Allowance\) Regulations 2002 \(S.I. 2002/2497\)](#), reg. 1(b), Sch. 2 paras. 1, 2

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### **Amendment of the Income Support Regulations**

3.—(1) The Income Support Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “housing benefit expenditure” there shall be inserted the following definition—

““Immigration and Asylum Act” means the Immigration and Asylum Act 1999 <sup>M21</sup>,”  
and

(b) the definition of “immigration authorities” shall be omitted.

(3) In paragraph (3)(a) of regulation 4ZA <sup>M22</sup>, for the words “ regulation 70(3)(a)” there shall be substituted the words “ paragraph 1 of Part I of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 ”.

(4) In regulation 21 (special cases)—

(a) in paragraph (1) for the words “regulation 21ZA” there shall be substituted the words “ regulation 21ZB ”;

(b) in paragraph (3) the first definition of “person from abroad” shall be omitted;

(c) in paragraph (3), after the opening words, there shall be inserted the following definition—

““partner of a person subject to immigration control” means a person—

(i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or

(ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000; and

(iii) who is a member of a couple and his partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to her for the purposes of exclusion from entitlement to income support;” and

(d) in paragraph (3) in the second definition of “person from abroad” the word “also” shall be omitted.

(5) For regulation 21ZA (treatment of refugees) <sup>M23</sup> after the heading there shall be substituted the following regulation—

**“21ZB.—**(1) This paragraph applies to a person who has submitted a claim for asylum on or after 3rd April 2000 and who 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) Subject to paragraph (3), a person to whom paragraph (1) applies, who claims income support within 28 days of receiving the notification referred to in paragraph (1), shall have his claim for income support determined as if he had been recorded as a refugee on the date when he submitted his claim for asylum.

(3) The amount of support provided under section 95 or 98 of the Immigration and Asylum Act, including support provided by virtue of regulations made under Schedule 9 to that Act, by the Secretary of State in respect of essential living needs of the claimant and his dependants (if any) as specified in regulations made under paragraph 3 of Schedule 8 to the Immigration

and Asylum Act shall be deducted from any award of income support due to the claimant by virtue of paragraph (2).”.

- (6) In regulation 40 (calculation of income other than earnings)–
- (a) at the beginning of paragraph (4) there shall be inserted the words “ Subject to paragraph (5) ”;
- (b) in paragraph (4) for the words following “paragraph (1)” there shall be substituted the following sub-paragraphs–
- “(a) any payment to which regulation 35(2) <sup>M24</sup> or 37(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act;”;
- (c) after paragraph (4) there shall be added the following paragraph–
- “(5) In the case of a claimant who is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, there shall not be included as income to be taken into account under paragraph (1) the amount of support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.
- (7) In regulation 70 (urgent cases)–
- (a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph–
- “(a) a claimant to whom paragraph (2A) applies (persons not excluded from income support under section 115 of the Immigration and Asylum Act);”;
- (b) after paragraph (2) there shall be inserted the following paragraph–
- “(2A) This paragraph applies to a person not excluded from entitlement to income support under section 115 of the Immigration and Asylum Act by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 except for a person to whom paragraphs 3 and 4 of Part I of the Schedule to those Regulations applies.”; and
- (c) paragraphs (3) <sup>M25</sup>, (3A) <sup>M26</sup> and (3B) shall be omitted.
- (8) In regulation 71 (applicable amounts in urgent cases)–
- (a) in paragraph (1)(d), for the words “paragraph 17” there shall be substituted the words “ paragraph 16A ”; and
- (b) in paragraph (2), for the words “paragraph (3)” in each place where they occur, there shall be substituted the words “ paragraph 2A ”.
- (9) In Schedule 1B (prescribed categories of person)–
- (a) after paragraph 18, there shall be inserted the following paragraph–
- “**18A.** A person to whom regulation 21ZB (treatment of refugees) applies by virtue of regulation 21 ZB(2) from the date his claim for asylum is made until the date the Secretary of State makes a decision on that claim.”;

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- (b) in paragraph 21, for the words “regulation 70(3)” there shall be substituted the words “regulation 70(2A)”.
- (10) After paragraph 16 of Schedule 7 (applicable amounts in special cases)–
- (a) in column (1) there shall be inserted the following paragraph–
- “ Partner of a person subject to immigration control**
- (a) A claimant who is the partner of a person subject to immigration control.
- (b) Where regulation 18 (polygamous marriages) applies and the claimant is a person–
- (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
- (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000; and
- (iii) who is a member of a couple and one or more of his partners is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to her for the purposes of exclusion from entitlement to income support.”;
- (b) in column (2) there shall be inserted the following paragraph–
- (a) The amount applicable in respect of the claimant only under regulation 17(1) (a) plus that in respect of any child or young person who is a member of his family and who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act, and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to income support, any amounts which may be applicable to him under regulation 17(1)(b), (c) or (d) plus the amount applicable to him under regulation 17(1)(e), (f) and (g) or, as the case may be, regulation 19 or 21.
- (b) The amount determined in accordance with that regulation or regulation 19 or 21 in respect of the claimant and any partners of his and any child or young person for whom he or his partner is treated as responsible, who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to income support.”.
- (11) In paragraph 17 of Schedule 7 (applicable amounts in special cases) for the words in column (1) there shall be substituted the words “ person from abroad ” and for the words in column (2) there shall be substituted the word “ nil ”.
- (12) In paragraph 21 of Schedule 9 (treatment of income in kind) <sup>M27</sup>–
- (a) in sub-paragraph (1) for the words “Subject to sub-paragraph (2)” there shall be substituted the words “ Subject to sub-paragraphs (2) and (3) ”;
- (b) in sub-paragraph (1) after the words “except where” there shall be added the following words–
- “regulation 40(4)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act in the calculation of income other than earnings) or”;
- (c) after sub-paragraph (2) there shall be added the following sub-paragraph–

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“(3) The first exception under sub-paragraph (1) shall not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act and the income in kind is support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

(13) In paragraph 57 of Schedule 9 (disregards in the calculation of income other than earnings) and paragraph 49 of Schedule 10 (capital to be disregarded) for the words “regulation 21ZA” there shall be substituted the words “regulation 21ZB”.

#### Marginal Citations

**M21** 1999 c. 33.

**M22** Regulation 4ZA was inserted by regulation 4 of S.I. 1996/206.

**M23** Regulation 21ZA was inserted by regulation 3 of S.I. 1996/1517.

**M24** Regulation 35(2) is amended by regulation 2(5) of S.I. 1999/1509.

**M25** Paragraph (3)(c) of regulation 70 was substituted by regulation 8(3)(a) of S.I. 1996/30.

**M26** Paragraph (3A)(a) and (b) of regulation 70 were substituted by regulation 8(3)(c) and (d) of S.I. 1996/30.

**M27** Paragraph 21 is substituted by regulation 35 of S.I. 1988/663.

#### Amendment of the Jobseeker’s Allowance Regulations

4.—(1) The Jobseeker’s Allowance Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(3) (interpretation) after the definition of “housing benefit expenditure” there shall be inserted the following definition—

““Immigration and Asylum Act” means the Immigration and Asylum Act 1999<sup>M28</sup>.”.

(3) In regulation 85(4) (special cases)—

- (a) the first definition of “person from abroad” shall be omitted;
- (b) in the second definition of “person from abroad” the word “also” shall be omitted; and
- (c) at the beginning of paragraph (4), after the opening words, there shall be inserted the following definition—

““partner of a person subject to immigration control” means a person—

- (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
- (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000; and
- (iii) who is a member of a couple and his partner is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to her for the purposes of exclusion from entitlement to jobseeker’s allowance;”

(4) In regulation 103(6) (calculation of income other than earnings)<sup>M29</sup> for the words following “paragraph (1)” there shall be substituted the following sub-paragraphs—

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- “(a) any payment to which regulation 98(2)(a) to (e) or 100(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.
- (5) In regulation 147 (urgent cases)–
- (a) in paragraph (2) for sub-paragraph (a) there shall be substituted the following sub-paragraph–
- “(a) a claimant to whom paragraph (2A) applies (persons not excluded from income-based jobseeker’s allowance under section 115 of the Immigration and Asylum Act);”;
- (b) after paragraph (2) there shall be inserted the following paragraph–
- “(2A) This paragraph applies to a person not excluded from entitlement to income-based jobseeker’s allowance under section 115 of the Immigration and Asylum Act by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 except for a person to whom paragraphs 3 and 4 of Part I to the Schedule to those Regulations applies.”; and
- (c) paragraph (3), (4) and (5) shall be omitted.
- (6) In regulation 148(1)(d) (applicable amount in urgent cases) for the words “ paragraph 14” there shall be substituted the words “ paragraph 13A ”.
- (7) After paragraph 13 of Schedule 5 (applicable amounts in special cases)–
- (a) in column (1) there shall be inserted the following paragraph–
- “ Partner of a person subject to immigration control**
- (a) A claimant who is the partner of a person subject to immigration control.
- (b) Where regulation 84 (polygamous marriages) applies and the claimant is a person–
- (i) who is not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act; or
- (ii) to whom section 115 of that Act does not apply by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000; and
- (iii) who is a member of a couple and one or more of his partners is subject to immigration control within the meaning of section 115(9) of that Act and section 115 of that Act applies to her for the purposes of exclusion from entitlement to income-based jobseeker’s allowance.”;
- (b) in column (2) there shall be inserted the following paragraph–
- (a) The amount applicable in respect of the claimant only under regulation 83(a) plus that in respect of any child or young person who is a member of his family and who is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to jobseeker’s allowance, any amounts which may be applicable to



him under regulation 83(b), (d) or (e) plus the amount applicable to him under regulation 87(2) or (3) or, as the case may be, regulation 85 or 86.

- (b) The amount determined in accordance with that regulation or regulation 85 or 86 in respect of the claimant and any partners of his and any child or young person for whom he or his partner is treated as responsible, who are not subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act and to whom section 115 of that Act does not apply for the purposes of exclusion from entitlement to jobseeker's allowance.”.

(8) In paragraph 14 of Schedule 5, for the words in column (1) there shall be substituted the words “person from abroad” and for the words in column (2) there shall be substituted the word “nil”.

(9) In paragraph 22 of Schedule 7 (treatment of income in kind)–

- (a) in sub-paragraph (1) for the words “Subject to sub-paragraph (2)” there shall be substituted the words “Subject to sub-paragraphs (2) and (3)”;

- (b) in sub-paragraph (1) after the words “except where” there shall be added the following words–

“regulation 103(6)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act in the calculation of income other than earnings) or”; and

- (c) after sub-paragraph (2) there shall be added the following sub-paragraph–

“(3) The first exception under sub-paragraph (1) shall not apply where the claimant is the partner of a person subject to immigration control and whose partner is receiving support provided under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act and the income in kind is support provided in respect of essential living needs of the partner of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

#### Marginal Citations

M28 1999 c. 33.

M29 Regulation 103(6) is amended by regulation 23 of S.I. 1996/1517.

### Amendment of the Claims and Payments Regulations

5.—(1) The Claims and Payments Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (3C) of regulation 4 (making a claim for benefit)<sup>M30</sup> for the words “regulation 21ZA(2)” there shall be substituted the words “regulation 21ZB(2)”.

(3) In paragraph (4D) of regulation 6<sup>M31</sup> (date of claim) for sub-paragraphs (a) and (b) there shall be substituted the following words–

“on the date on which his claim for asylum was recorded by the Secretary of State as having been made.”.

(4) In paragraph (8) of regulation 19 (time for claiming benefit) for the words “regulation 21ZA(2)” there shall be substituted the words “regulation 21ZB”.

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#### Modifications etc. (not altering text)

- C2** Reg. 5 modified (7.4.2003 for specified purposes) by [The Child Benefit and Guardian's Allowance \(Administration\) Regulations 2003 \(S.I. 2003/492\)](#), regs. 1, 43, **Sch. 3 Pt. 1** (with regs. 1(2), 44)

#### Marginal Citations

- M30** [Regulation 4\(3C\)](#) was inserted by regulation 7(b)(ii) of [S.I. 1996/2431](#).  
**M31** [Regulation 6\(4D\)](#) was inserted by regulation 7(c) of [S.I. 1996/2431](#).

### Amendment of the Housing Benefit Regulations

**6.—(1)** The Housing Benefit Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation) after the definition of "housing association" there shall be inserted the following definition—

““Immigration and Asylum Act" means the Immigration and Asylum Act 1999<sup>M32</sup>”.

(3) In regulation 7A (persons from abroad)—

- (a) paragraphs (2), (3), (4)(a), (b), (c), (d), (e)(iv), (v) and (vi), (f) and (g), (4A), (5)(a), (b) and (c) and (5A) shall be omitted;
- (b) in paragraph (6) the words “Paragraphs (3)(b) and (4A)” shall be substituted by the words “Paragraph 1 of Part I of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000.”; and
- (c) in paragraph (7) the definitions of the “Common Travel Area” and the “Convention relating to the Status of Refugees” shall be omitted.

(4) In paragraph (4) of regulation 33 (calculation of income other than earnings) for the words following “paragraph (1)” there shall be substituted the following sub-paragraphs—

- “(a) any payment to which regulation 28(2) (payments not earnings) applies; or
- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.

(5) In Schedule A1 (treatment of claims for housing benefit by refugees)—

- (a) in paragraph 1(1)(b) for the words following paragraph (ii) there shall be substituted the following words “his claim for housing benefit shall be treated as having been made on the date specified in sub-paragraph (2)”;
- (b) in paragraph 1(2) for heads (a) and (b), there shall be substituted the following words—  
“on the date on which his claim for asylum was recorded by the Secretary of State as having been made.”;
- (c) after paragraph 1 there shall be inserted the following paragraph—

**“ Appropriate authority to whom a claim for housing benefit by a refugee shall be made and time for making a claim**

**2A.—(1)** A claim for housing benefit made by a refugee on or after 3rd April 2000 for the relevant period may be made to the appropriate authority for the area in which the

dwelling which the claimant occupied as his home was situate and in respect of which he was liable to make payments.

(2) Where the claimant has occupied more than one dwelling as his home in the relevant period, only one claim for housing benefit shall be made in respect of that period and such a claim shall be made to the authority for the area in which the dwelling occupied by the refugee is situate and in respect of which he was liable to make payments when, after he is notified that he has been recorded by the Secretary of State as a refugee, he makes a claim for housing benefit.

(3) The appropriate authority to which a claim for housing benefit is made in accordance with this paragraph, shall determine the claimant's entitlement to that benefit for the whole of the relevant period.

(4) A claim for housing benefit to which this paragraph refers, shall be made within 28 days of a claimant receiving notification from the Secretary of State that he has been recorded as a refugee.

(5) Regulation 72(15) of these Regulations (backdating of claims) shall not have effect with respect to claims to which this Schedule applies.”; and

(d) paragraph 2 shall be omitted.

(6) In paragraph 21 of Schedule 4 (treatment of income in kind) after the words “income in kind” there shall be added the following words—

“except where regulation 33(4)(b) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies”.

(7) In paragraph 62 of Schedule 4 and paragraph 51 of Schedule 5 for the words “regulation 21ZA” there shall be substituted the words “regulation 21ZB”.

#### Marginal Citations

M32 1999 c. 33.

### Amendment of the Council Tax Benefit Regulations

7.—(1) The Council Tax Benefit Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) (interpretation) after the definition of “housing benefit” there shall be inserted the following definition—

““Immigration and Asylum Act” means the Immigration and Asylum Act 1999<sup>M33</sup>.”.

(3) In regulation 4A—

(a) paragraphs (2), (3), (4)(a), (b), (c), (d), (e)(iv), (v) and (vi), (f) and (g), (4A), (5)(a), (b) and (c) and (5A) shall be omitted;

(b) in paragraph (6) the words “paragraphs (3)(b) and (4A)” shall be substituted by the words “Paragraph 1 of Part I of the Schedule to, and regulation 2 as it applies to that paragraph of, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000.”; and

(c) in paragraph (7) the definitions of the “Common Travel Area” and the “Convention relating to the Status of Refugees” shall be omitted.

(4) In paragraph (5) of regulation 24 (calculation of income other than earnings) for the words following “paragraph (1)” there shall be substituted the following sub-paragraphs—

“(a) any payment to which regulation 19(2) (payments not earnings) applies; or

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- (b) in the case of a claimant who is receiving support under section 95 or 98 of the Immigration and Asylum Act including support provided by virtue of regulations made under Schedule 9 to that Act, the amount of such support provided in respect of essential living needs of the claimant and his dependants (if any) as is specified in regulations made under paragraph 3 of Schedule 8 to the Immigration and Asylum Act.”.
- (5) In Schedule A1 (treatment of claims for council tax benefit by refugees)–
- (a) in paragraph 1(1)(b) for the words following head (ii) there shall be substituted the following words “ his claim for council tax benefit shall be treated as having been made on the date specified in sub-paragraph (2) ”;
- (b) in paragraph 1(2) for sub-paragraphs (a) and (b), there shall be substituted the following words–
- “on the date on which his claim for asylum was recorded by the Secretary of State as having been made.”;
- (c) after paragraph 1 there shall be inserted the following paragraph–

**“ Appropriate authority to whom a claim for council tax benefit by a refugee shall be made and time for making a claim**

**2A.—**(1) A claim for council tax benefit made by a refugee on or after 3rd April 2000 for the relevant period may be made to the appropriate authority for the area in which the dwelling which the claimant occupied as his home was situate and in respect of which he was liable for council tax.

(2) Where the claimant has occupied more than one dwelling as his home in the relevant period, only one claim for council tax benefit shall be made in respect of that period and such a claim shall be made to the authority for the area in which the dwelling occupied by the refugee is situate and in respect of which he was liable to make payments when, after he is notified that he has been recorded by the Secretary of State as a refugee, he makes a claim for council tax benefit.

(3) The appropriate authority to which a claim for council tax benefit is made in accordance with this paragraph, shall determine the claimant’s entitlement to that benefit for the whole of the relevant period.

(4) A claim for council tax benefit to which this paragraph refers, shall be made within 28 days of a claimant receiving notification from the Secretary of State that he has been recorded as a refugee.

(5) Regulation 72(15) of these Regulations (backdating of claims) shall not have effect with respect to claims to which this Schedule applies.”; and

(d) paragraph 2 shall be omitted.

(6) In paragraph 22 of Schedule 4 (treatment of income in kind) after the words “income in kind” there shall be added the following words–

“except where regulation 24(5) (provision of support under section 95 or 98 of the Immigration and Asylum Act in the calculation of income other than earnings) applies”.

(7) In paragraph 62 of Schedule 4 and paragraph 51 of Schedule 5 for the words “ regulation 21ZA” there shall be substituted the words “ regulation 21ZB ”.

**Marginal Citations**

**M33** 1999 c. 33.

### **Amendment of the Invalid Care Allowance Regulations**

8.—(1) The Invalid Care Allowance Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 9(1) for sub-paragraph (aa) there shall be substituted the following sub-paragraph—

“(ia) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>M34</sup> or section 115 of that Act does not apply to him for the purposes of entitlement to invalid care allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and”.

(3) Paragraph (1A) of regulation 9 shall be omitted.

#### **Marginal Citations**

M34 1999 c. 33.

### **Amendment of the Severe Disablement Allowance Regulations**

9.—(1) The Severe Disablement Allowance Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 3(1) for head (ia) of sub-paragraph (a) there shall be substituted the following head—

“(ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>M35</sup> or section 115 of that Act does not apply to him for the purposes of entitlement to severe disablement allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and”.

(3) Paragraph (1B) of regulation 3 shall be omitted.

#### **Marginal Citations**

M35 1999 c. 33.

### **Amendment of the Attendance Allowance Regulations**

10.—(1) The Attendance Allowance Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) for head (ia) of sub-paragraph (a) there shall be substituted the following head—

“(ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>M36</sup> or section 115 of that Act does not apply to him for the purposes of entitlement to attendance allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and”.

(3) Paragraph (1A) of regulation 2 shall be omitted.

#### **Marginal Citations**

M36 1999 c. 33.

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## Amendment of the Disability Living Allowance Regulations

11.—(1) The Disability Living Allowance Regulations shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(1) for head (ia) of sub-paragraph (a) there shall be substituted the following head—

“(ib) he is not a person subject to immigration control within the meaning of section 115(9) of the Immigration and Asylum Act 1999<sup>M37</sup> or section 115 of that Act does not apply to him for the purposes of entitlement to disability living allowance by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and”.

(3) Paragraph (1A) of regulation 2 shall be omitted.

### Marginal Citations

M37 1999 c. 33.

## 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) who has not ceased to be an asylum seeker by virtue of paragraph (5).

(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 Convent 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.
- 12.—**(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<sup>M38</sup>, as the case may be, those provisions shall continue to have effect, for the purposes of entitlement to attendance allowance, disability living allowance, [F2 carer's allowance], severe disablement allowance or child benefit, as the case may be, until such time as—



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- (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 <sup>M39</sup>, 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.

#### Textual Amendments

**F2** Words in [reg. 12](#) substituted (1.4.2003) by [Social Security Amendment \(Carer's Allowance\) Regulations 2002 \(S.I. 2002/2497\)](#), [reg. 1\(b\)](#), [Sch. 2 paras. 1, 2](#)

#### Marginal Citations

**M38** [S.I. 1976/965](#). Regulation 14B was inserted by [S.I. 1996/2327](#) and amended by [S.I. 1996/2530](#).

**M39** [1998 c. 14](#).

#### Revocations

- 13.**—(1) The provisions specified in the following paragraphs of this regulation are revoked.
- (2) Regulation 12(3) of the Persons from Abroad Regulations.
  - (3) Regulation 14B of the Child Benefit (General) Regulations 1976.

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

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



## 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, a social fund payment, housing benefit or council tax benefit*

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 <sup>M40</sup>) 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.

#### Marginal Citations

M40 Cmd. 9512.

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## PART II

*Persons not excluded under section 115 of the Immigration and Asylum Act from entitlement to attendance allowance, severe disablement allowance, [F<sup>3</sup> carer's allowance], disability living allowance a social fund payment or child benefit*

### Textual Amendments

**F3** Words in Sch. Pt. II substituted (1.4.2003) by [Social Security Amendment \(Carer's Allowance\) Regulations 2002 \(S.I. 2002/2497\)](#), reg. 1(b), Sch. 2 paras. 1, 2

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 <sup>M41</sup>.

### Marginal Citations

**M41** OJ No. L1, 3.1.1994, p.3.

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 <sup>M42</sup> of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts <sup>M43</sup> providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.

### Marginal Citations

**M42** Article 310 EC (ex Article 238).

**M43** OJ No. C340, 10.11.97, p.1.

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

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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).

Regulation 12 makes provision for transitional arrangements and savings.

Regulation 13 makes provision for revocations.

These Regulations do not impose a charge on business.

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