

**2005 No. 11**

**IMMIGRATION**

**The Asylum Support (Amendment) Regulations 2005**

*Made* - - - - - *10th January 2005*

*Laid before Parliament* *14th January 2005*

*Coming into force* - - *5th February 2005*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to immigration, asylum, refugees and displaced persons, in exercise of the powers conferred upon him by that section, and of the powers conferred on him by Schedule 8 to the Immigration and Asylum Act 1999(c), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Asylum Support (Amendment) Regulations 2005 and shall come into force on 5th February 2005.

**Amendment of the Asylum Support Regulations 2000**

2. The Asylum Support Regulations 2000(d) shall be amended as follows.

3. In regulation 3—

(a) after regulation 3(5) there shall be inserted:

“(5A) Where the Secretary of State makes further enquiries under paragraph (5) the applicant shall reply to those enquiries within five working days of his receipt of them.

(5B) The Secretary of State shall be entitled to conclude that the applicant is not co-operating with his enquiries under paragraph (5) if he fails, without reasonable excuse, to reply within the period prescribed by paragraph (5A).

(5C) In cases where the Secretary of State may not entertain an application for asylum support he shall also discontinue providing support under section 98 of the Act.”.

(b) after regulation 3(6) there shall be inserted:

“(7) For the purposes of this regulation, working day means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(e) in the locality in which the applicant is living.”.

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(a) S.I. 2004/2642 designates the Secretary of State in matters relating to immigration, asylum, refugees and displaced persons.

(b) 1972 c. 68.

(c) 1999 c. 33. Paragraph 12c of Schedule 8 was amended by section 57 of the Nationality, Immigration and Asylum Act 2002 (c. 41). Paragraphs 2 and 6 of Schedule 8 are repealed by section 45(3) of that Act, but that provision is not yet in force.

(d) S.I. 2000/704, to which there are amendments not relevant to these Regulations.

(e) 1971 c. 80.

4. After regulation 17, there shall be inserted:

**“Recovery of asylum support**

17A.—(1) The Secretary of State may require a supported person to refund asylum support if it transpires that at any time during which asylum support was being provided for him he was not destitute.

(2) If a supported person has dependants, the Secretary of State may require him to refund asylum support if it transpires that at any time during which asylum support was being provided for the supported person and his dependants they were not destitute.

(3) The refund required shall not exceed the monetary value of all the asylum support provided to the supported person or to the supported person and his dependants for the relevant period.

(4) In this regulation the relevant period is the time during which asylum support was provided for the supported person or the supported person and his dependants and during which he or they were not destitute.

(5) If not paid within a reasonable period, the refund required may be recovered from the supported person as if it were a debt due to the Secretary of State.”.

5. In regulation 19 (Breach of conditions: decision whether to provide support)—
- (a) in paragraph (1) for “the extent to which any” there shall be substituted “the extent to which a”;
  - (b) for paragraph (2) there shall be substituted:

“(2) A relevant condition is one which makes the provision of asylum support subject to actual residence by the supported person or a dependant of his for whom support is being provided in a specific place or location.”.

6. For regulation 20 (Suspension or discontinuation of support) there shall be substituted:

**“Suspension or discontinuation of support**

20.—(1) Asylum support for a supported person and any dependant of his or for one or more dependants of a supported person may be suspended or discontinued if—

- (a) support is being provided for the supported person or a dependant of his in collective accommodation and the Secretary of State has reasonable grounds to believe that the supported person or his dependant has committed a serious breach of the rules of that accommodation;
- (b) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has committed an act of seriously violent behaviour whether or not that act occurs in accommodation provided by way of asylum support or at the authorised address or elsewhere;
- (c) the supported person or a dependant of his has committed an offence under Part VI of the Act;
- (d) the Secretary of State has reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has abandoned the authorised address without first informing the Secretary of State or, if requested, without permission;
- (e) the supported person has not complied within a reasonable period, which shall be no less than five working days beginning with the day on which the request was received by him, with requests for information made by the Secretary of State and which relate to the supported person’s or his dependant’s eligibility for or receipt of asylum support including requests made under regulation 15;
- (f) the supported person fails, without reasonable excuse, to attend an interview requested by the Secretary of State relating to the supported person’s or his dependant’s eligibility for or receipt of asylum support;
- (g) the supported person or, if he is an asylum seeker, his dependant, has not complied within a reasonable period, which shall be no less than ten working days beginning with the day on which the request was received by him, with a request for information made by the Secretary of State relating to his claim for asylum;

- (h) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has concealed financial resources and that the supported person or a dependant of his or both have therefore unduly benefited from the receipt of asylum support;
- (i) the supported person or a dependant of his for whom support is being provided has not complied with a reporting requirement;
- (j) the Secretary of State has reasonable grounds to believe that the supported person or a dependant of his for whom support is being provided has made a claim for asylum (“the first claim”) and before the first claim has been determined makes or seeks to make a further claim for asylum not being part of the first claim in the same or a different name; or
- (k) the supported person or a dependant of his for whom support is being provided has failed without reasonable excuse to comply with a relevant condition.

(2) If a supported person is asked to attend an interview of the type referred to in paragraph (1)(f) he shall be given no less than five working days notice of it.

(3) Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the particular situation of the person concerned and particular regard shall be had to whether he is a vulnerable person as described by Article 17 of Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers<sup>(a)</sup>.

(4) No person’s asylum support shall be discontinued before a decision is made under paragraph (1).

(5) Where asylum support for a supported person or his dependant is suspended or discontinued under paragraph (1)(d) or (i) and the supported person or his dependant are traced or voluntarily report to the police, the Secretary of State or an immigration officer, a duly motivated decision based on the reasons for the disappearance shall be taken as to the reinstatement of some or all of the supported person’s or his dependant’s or both of their asylum support.

(6) For the purposes of this regulation—

- (a) the authorised address is—
  - (i) the accommodation provided for the supported person and his dependants (if any) by way of asylum support; or
  - (ii) if no accommodation is so provided, the address notified by the supported person to the Secretary of State in his application for asylum support or, where a change of address has been notified to the Secretary of State under regulation 15 or under the Immigration Rules<sup>(b)</sup> or both, the address for the time being so notified;
- (b) “collective accommodation” means accommodation which a supported person or any dependant of his for whom support is being provided shares with any other supported person and includes accommodation in which only facilities are shared;
- (c) “relevant condition” has the same meaning as in regulation 19(2);
- (d) “reporting requirement” is a condition or restriction which requires a person to report to the police, an immigration officer or the Secretary of State and is imposed under—
  - (i) paragraph 21 of Schedule 2 to the Immigration Act 1971 (temporary admission or release from detention)<sup>(c)</sup>;

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(a) OJ L31 6.2.03 p18.

(b) HC 395.

(c) 1971 c. 77. Sub-paragraph (2) was amended by the Immigration Act 1988 (c. 14), section 10 and paragraphs 6 and 10 of the Schedule. Sub-paragraphs (3) and (4) were inserted by the Asylum and Immigration Act 1996 (c. 49), section 12(1), Schedule 2, paragraph 10. Sub-paragraph 4(a) was amended by section 169(1) and (3), by Schedule 14 paragraphs 43, 62(1) and (4), and Schedule 16 to the Immigration and Asylum Act 1999.

- (ii) paragraph 22 of that Schedule(a); or
- (iii) paragraph 2 or 5 of Schedule 3 to that Act (pending deportation)(b).
- (e) “working day” has the same meaning as in regulation 3(7) save that the reference to the applicant shall be a reference to the supported person or his dependant.”.

7. After regulation 20 there shall be inserted—

**“Temporary Support**

**20A.** Regulations 19 and 20 shall apply to a person or his dependant who is provided with temporary support under section 98 of the Act in the same way as they apply to a person and his dependant who is in receipt of asylum support and any reference to asylum support in regulations 19 and 20 shall include a reference to temporary support under section 98.”.

8. In regulation 21(1) for “Where—” there shall be substituted “Subject to regulation 20(5) where—”.

Home Office  
10th January 2005

*Des Browne*  
Minister of State

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- (a) Paragraph 22 was amended by the Asylum and Immigration Act 1996 section 12(1), Schedule 2, paragraph 11(1) and the Immigration and Asylum Act 1999 section 169(1) and Schedule 14, paragraphs 43 and 63. Paragraph 22 has been amended by the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, section 26(7), Schedule 2, Part 1, paragraphs 1(1) and 2(a), but the amendment is not yet in force.
  - (b) Paragraph 2 was amended by the Criminal Justice Act 1982 (c. 48), section 64 and Schedule 10; the Immigration Act 1988, section 10 and the Schedule; the Asylum and Immigration Act 1996 section 12(1) and Schedule 2, paragraph 13; the Immigration and Asylum Act 1999 section 54; the Nationality, Immigration and Asylum Act 2002, section 114(3) and Schedule 7, paragraph 7; and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 section 34. Paragraph 5 was inserted by the Criminal Justice Act 1982, section 64 and Schedule 10, paragraph 2.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Asylum Support Regulations 2000 (S.I. 2000/704) (“2000 Regulations”) and together with the Asylum Seekers (Reception Conditions) Regulations 2005 (which come into force at the same time as these Regulations) and the inclusion of a new Part 11B in the Immigration Rules (HC 395) make the provision which is necessary for the implementation of Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers (OJ L31 6.2.03 p 18) (“the Directive”). Many parts of the Directive do not require implementation as consistent provision is already made in existing domestic legislation. A transposition note has been prepared and is published together with the explanatory memorandum for this instrument on HMSO’s website: [www.hmsso.gov.uk](http://www.hmsso.gov.uk).

Under regulation 3 of the 2000 Regulations, the Secretary of State may make further enquiries about a person’s application for asylum support. Regulation 3 of these Regulations adds to that regulation and, in particular, it provides for when an applicant must respond to those enquiries and the conclusion that may be reached if he does not. New regulation 3(5C) also makes it clear that if the Secretary of State decides not to entertain an application for asylum support he shall also discontinue any temporary support which is being provided under section 98 of the Immigration and Asylum Act 1999 (“temporary support”).

Regulation 4 inserts a new regulation 17A which provides that the Secretary of State may request a refund from a supported person if it transpires that he was not destitute, or his dependants were not destitute, at a time when he or they were in receipt of asylum support. If necessary, this can be enforced as if it were a debt due to the Secretary of State.

Regulation 5 amends regulation 19 so as to limit the definition of relevant condition to a condition that an asylum seeker lives in a particular place. Regulation 19 provides that the extent to which a person has complied with a relevant condition may be taken into account when deciding whether to provide or continue to provide asylum support. Breach of a relevant condition is also a ground on which support may be suspended or discontinued under regulation 20 (see below).

Regulation 6 substitutes a new regulation 20 and sets out amended grounds on which asylum support may be discontinued or suspended (and by virtue of regulation 7 these grounds also apply to the suspension or discontinuation of temporary support). Paragraph (1) sets out in sub-paragraphs (a) to (k) the circumstances in which support may be discontinued or suspended. Paragraphs (3), (4) and (5) all make provision for the way in which decisions to suspend or discontinue support must be made and the circumstances in which a decision to reinstate support must be made. Paragraph (6) contains definitions for the purposes of regulation 20. In particular, the definition of authorised address is expanded to include the address that an asylum seeker must now notify under the new part 11B of the Immigration Rules and collective accommodation is defined so as to include shared accommodation, including that where facilities only (such as a kitchen or common area) are shared. This is intended to reflect the definition of accommodation centre in Article 2(1) of the Directive (“any place used for the collective housing of asylum seekers”). A different term is used in these Regulations so as to avoid confusion with the term accommodation centre used in the Nationality, Immigration and Asylum Act 2002.

Regulation 8 amends regulation 21 so that the non-entertainment provisions contained in that regulation do not apply when a decision to discontinue support has been made under paragraphs 1(d) or (i). This is to reflect the obligation to reconsider the resumption of support provided in new regulation 20(5) and referred to above.





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