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STATUTORY INSTRUMENTS

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**2008 No. 1768**

**IMMIGRATION  
HOUSING, ENGLAND  
HOUSING, SCOTLAND  
HOUSING, NORTHERN IRELAND**

The Persons subject to Immigration Control (Housing Authority  
Accommodation and Homelessness) (Amendment) Order 2008

<i>Made</i>	- - - -	<i>3rd July 2008</i>
<i>Laid before Parliament</i>		<i>8th July 2008</i>
<i>Coming into force</i>	- -	<i>7th August 2008</i>

The Secretary of State, in exercise of the powers conferred by sections 118, 119 and 166(3) of the Immigration and Asylum Act 1999(1), makes the following Order:

**Citation and Commencement**

1. This Order may be cited as the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) (Amendment) Order 2008 and shall come into force on 7th August 2008.

**Amendment of the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000**

2.—(1) The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000(2) is amended as follows.

(2) In article 2 (interpretation)—

- (a) omit the definition of “the 1995 Act”; and
- (b) omit the definition of “limited leave”.

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(1) 1999 c. 33. Section 118(1)(b) was amended by section 43(3) of the Immigration, Asylum and Nationality Act 2006. The Secretary of State can exercise the power under section 118 in relation to England, Scotland and Northern Ireland but not Wales: see article 2 of and the entry for section 9 of the Asylum and Immigration Act 1996 (c. 49) in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). See also section 17 of the Interpretation Act 1978 (c. 30) (sections 118 and 119 re-enact, with modifications, section 9 of the 1996 Act). Section 9 of the 1996 Act, in so far as it extended to England and Wales, was amended by paragraph 3 of Schedule 16, and Parts VII and VIII of Schedule 19, to the Housing Act 1996 (c. 52).

(2) S.I. 2000/706, relevant amending orders are S.I. 2005/1379 and S.I. 2006/2521.

(3) In article 3 (housing authority accommodation—England, Scotland and Northern Ireland), omit paragraph (e).

(4) In article 7 (homelessness—Scotland and Northern Ireland) for sub-paragraph (1)(a) substitute the following—

“(a) the classes specified in article 3(a) to (d) (Class A, Class B, Class BA, Class C and Class D);”.

(5) For article 8 (homelessness—Northern Ireland substitute the following—

“The following is a class of person specified for the purposes of section 119(1) of the 1999 Act in respect of Northern Ireland—

Class T—a person who is an asylum-seeker and—

- (a) who was in Northern Ireland when the Secretary of State made a declaration to the effect that the country of which that person is a national is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country;
- (b) who made a claim for asylum which is recorded by the Secretary of State as having been made within a period of three months from the day on which that declaration was made; and
- (c) whose claim for asylum has not been recorded by the Secretary of State as having been either decided (other than on appeal) or abandoned.”.

(6) For article 9 (homelessness—Scotland) substitute the following—

“The following is a class of person specified for the purposes of section 119(1) of the 1999 Act in respect of Scotland—

Class V—a person who is an asylum-seeker and—

- (a) who was in Great Britain when the Secretary of State made a declaration to the effect that the country of which that person is a national is subject to such a fundamental change in circumstances that he would not normally order the return of a person to that country;
- (b) who made a claim for asylum which is recorded by the Secretary of State as having been made within a period of three months from the day on which that declaration was made; and
- (c) whose claim for asylum has not been recorded by the Secretary of State as having been either decided (other than on appeal) or abandoned.”.

### **Transitional provisions**

3.—(1) Article 2(3) shall not have effect in relation to an applicant whose application for a tenancy of, or licence to occupy, housing accommodation under the accommodation provisions is made before 7th August 2008.

(2) Articles 2(4), (5) and (6) shall not have effect in relation to an applicant whose application for accommodation or assistance under the homelessness provisions is made before 7th August 2008.

Home Office  
3rd July 2008

*Liam Byrne*  
Minister of State

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## EXPLANATORY NOTE

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

This Order amends the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 [S.I. 2000/706](#) (“the 2000 Order”) which specifies, in accordance with sections 118, 119 and 166(3) of the Immigration and Asylum Act 1999, certain categories of person subject to immigration control who may be eligible for housing authority accommodation or homelessness assistance.

Article 3 of the 2000 Order specifies categories of persons subject to immigration control who are eligible for housing authority accommodation in England, Scotland and Northern Ireland and article 7 of the 2000 Order specifies categories of persons subject to immigration control who are eligible for homelessness assistance in Scotland and Northern Ireland. This Order amends the 2000 Order so that persons subject to immigration control are not, by virtue of being:

- (a) a national of a state which has ratified the European Convention on Social and Medical Assistance 1953<sup>(3)</sup> or the European Social Charter 1961<sup>(4)</sup>;
- (b) lawfully present in the United Kingdom; and
- (c) habitually resident in the Common Travel Area,

eligible for housing authority accommodation in England, Scotland and Northern Ireland (article 2(3)) and homelessness assistance in Scotland and Northern Ireland (article 2(4)).

Article 8 of the 2000 Order specifies categories of persons subject to immigration control who are eligible for homelessness assistance in Northern Ireland and article 9 of the 2000 Order specifies categories of persons subject to immigration control who are eligible for homelessness assistance in Scotland. This Order amends the 2000 Order so that persons subject to immigration control are not eligible for homelessness assistance in Northern Ireland (article 2(5)) and Scotland (article 2(6)) by virtue of being a person who is on an income based jobseeker’s allowance or in receipt of income support and who is eligible for such allowance or support other than because:

- (i) he has limited leave to enter or remain in the United Kingdom which was given in accordance with the relevant immigration rules and he is temporarily without funds because remittances to him from abroad have been disrupted; or
- (ii) he has been deemed by regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005 to have been granted leave to enter or remain in the United Kingdom exceptionally for the purposes of the provision of means of subsistence.

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<sup>(3)</sup> European Treaty Series No. 14, Paris, 11 December 1953.

<sup>(4)</sup> European Treaty Series No. 35, Turin, 18 October 1961.