

2005 No. 7

IMMIGRATION

**The Asylum Seekers (Reception Conditions)
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, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Asylum Seekers (Reception Conditions) Regulations 2005 and shall come into force on 5th February 2005.

(2) These Regulations shall only apply to a person whose claim for asylum is recorded on or after 5th February 2005.

Interpretation

2.—(1) In these Regulations—

- (a) “the 1999 Act” means the Immigration and Asylum Act 1999(c);
- (b) “asylum seeker” means a person who is at least 18 years old who has made a claim for asylum which has been recorded by the Secretary of State but not yet determined;
- (c) “claim for asylum” means a claim made by a third country national or a stateless person that to remove him or require him to leave the United Kingdom would be contrary to the United Kingdom’s obligations under the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol(d);
- (d) “family members” means, in so far as the family already existed in the country of origin, the following members of the asylum seeker’s family who are present in the United Kingdom and who are asylum seekers or dependants on the asylum seeker’s claim for asylum:
 - (i) the spouse of the asylum seeker or his unmarried partner in a stable relationship;

(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.

(d) The Convention relating to the Status of Refugees (“the Refugee Convention”) is contained in United Nations Treaty Series No. 2545, volume 189 at page 137 and applied to those who became refugees as a result of events occurring before 1st January 1951. It came into force on 22nd April 1954. The 1967 Protocol relating to the Status of Refugees is contained in United Nations, Treaty Series No. 8791, volume 606 at page 267. It amends the Refugee Convention so that it also applies to those who become refugees as a result of events occurring on or after 1st January 1951 and it came into force on 4th October 1967.

- (ii) the minor child of the couple referred to in paragraph (2)(d)(i) or of the asylum seeker as long as the child is unmarried and dependent on the asylum seeker;
 - (e) “Immigration Acts” has the same meaning as in section 44 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004(a); and
 - (f) “third country national” means a person who is not a national of a member State.
- (2) For the purposes of these Regulations—
- (a) a claim is determined on the date on which the Secretary of State notifies the asylum seeker of his decision on his claim or, if the asylum seeker appeals against the Secretary of State’s decision, the date on which that appeal is disposed of; and
 - (b) an appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts.

Families

3.—(1) When the Secretary of State is providing or arranging for the provision of accommodation for an asylum seeker and his family members under section 95 or 98 of the 1999 Act(b), he shall have regard to family unity and ensure, in so far as it is reasonably practicable to do so, that family members are accommodated together.

(2) Paragraph (1) shall only apply to those family members who confirm to the Secretary of State that they agree to being accommodated together.

(3) This regulation shall not apply in respect of a child when the Secretary of State is providing or arranging for the provision of accommodation for that child under section 122 of the 1999 Act(c).

Provisions for persons with special needs

4.—(1) This regulation applies to an asylum seeker or the family member of an asylum seeker who is a vulnerable person.

(2) When the Secretary of State is providing support or considering whether to provide support under section 95 or 98 of the 1999 Act to an asylum seeker or his family member who is a vulnerable person, he shall take into account the special needs of that asylum seeker or his family member.

(3) A vulnerable person is—

- (a) a minor;
- (b) a disabled person;
- (c) an elderly person;
- (d) a pregnant woman;
- (e) a lone parent with a minor child; or
- (f) a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence;

who has had an individual evaluation of his situation that confirms he has special needs.

(4) Nothing in this regulation obliges the Secretary of State to carry out or arrange for the carrying out of an individual evaluation of a vulnerable person’s situation to determine whether he has special needs.

Asylum support under section 95 or 98 of the 1999 Act

5.—(1) If an asylum seeker or his family member applies for support under section 95 of the 1999 Act and the Secretary of State thinks that the asylum seeker or his family member is eligible for support under that section he must offer the provision of support to the asylum seeker or his family member.

(a) 2004 c. 19.

(b) Section 95 was amended by section 44 of the Nationality, Immigration and Asylum Act 2002 (c. 41) but the amendments are not yet in force.

(c) Section 122 was amended by section 47 of the Nationality, Immigration and Asylum Act 2002 but the amendments are not yet in force.

(2) If the Secretary of State thinks that the asylum seeker or his family member is eligible for support under section 98 of the 1999 Act he must offer the provision of support to the asylum seeker or his family member.

Tracing family members of unaccompanied minors

6.—(1) So as to protect an unaccompanied minor's best interests, the Secretary of State shall endeavour to trace the members of the minor's family as soon as possible after the minor makes his claim for asylum.

(2) In cases where there may be a threat to the life or integrity of the minor or the minor's close family, the Secretary of State shall take care to ensure that the collection, processing and circulation of information concerning the minor or his close family is undertaken on a confidential basis so as not to jeopardise his or their safety.

(3) For the purposes of this regulation—

- (a) an unaccompanied minor means a person below the age of eighteen who arrives in the United Kingdom unaccompanied by an adult responsible for him whether by law or custom and makes a claim for asylum;
- (b) a person shall be an unaccompanied minor until he is taken into the care of such an adult or until he reaches the age of 18 whichever is the earlier;
- (c) an unaccompanied minor also includes a minor who is left unaccompanied after he arrives in or enters the United Kingdom but before he makes his claim for asylum.

Home Office
10th January 2005

Des Browne
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations together with the inclusion of a new Part 11B in the Immigration Rules (HC 395) and amendments made to the Asylum Support Regulations 2000 (S.I. 2000/704) 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.hmso.gov.uk.

These Regulations apply to asylum seekers who make a claim for asylum under the Refugee Convention on or after 5th February 2005. Both asylum seeker and claim for asylum are defined in regulation 2.

Regulation 3 requires the Secretary of State to have regard to family unity when he is providing accommodation for asylum seekers under section 95 or 98 of the Immigration and Asylum Act 1999 (“the 1999 Act”). Where possible, and providing the family agrees, family members should be accommodated together. Family members are defined in regulation 2 so as to include a spouse or partner in a stable relation and any unmarried dependent minor children of either the asylum seeker himself or of the couple. Regulation 3 does not apply, however, if the Secretary of State is providing accommodation for a child in the family under section 122 of the 1999 Act.

Regulation 4 requires the Secretary of State to take account of the special needs of a vulnerable person when he is providing or considering whether to provide support under section 95 or 98 of the 1999 Act. A vulnerable person is defined as someone, such as an elderly person or a lone parent who has had an assessment that confirms he does have special needs. Paragraph (4) makes it clear that the Secretary of State is not obliged to carry out such an assessment.

Regulation 5 requires the Secretary of State to offer support under section 95 or 98 to an asylum seeker (or his family member) if the Secretary of State thinks that he is eligible for it.

Regulation 6 requires the Secretary of State to endeavour to trace the family members of an unaccompanied asylum seeking child. If there is a threat to the safety of either the child or his family members enquiries must take place on a confidential basis.

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