

2005 No. 1379

IMMIGRATION

**The Displaced Persons (Temporary Protection)
Regulations 2005**

<i>Made</i> - - - -	<i>18th May 2005</i>
<i>Laid before Parliament</i>	<i>24th May 2005</i>
<i>Coming into force</i> - -	<i>15th June 2005</i>

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. These Regulations may be cited as the Displaced Persons (Temporary Protection) Regulations 2005 and shall come into force on 15th June 2005.

Interpretation

2.—(1) In these Regulations—

- (a) “the 2002 Act” means the Nationality, Immigration and Asylum Act 2002^(c);
- (b) “claim for asylum” has the same meaning as in section 18 of the 2002 Act;
- (c) “consular officer” has the same meaning as in article 2 of the Consular Fees (No.2) Order 1999^(d);
- (d) “entry clearance” has the same meaning as in article 2 of the Consular Fees (No.2) Order 1999;
- (e) “local authority” means—
 - (i) in England and Wales, a district council, a county council, a county borough council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; and
 - (ii) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994^(e);
- (f) “registered social landlord”—

^(a) The European Communities (Designation) (No.5) Order 2004 (S.I. 2004/2642) designates the Secretary of State in matters relating to immigration, asylum, refugees and displaced persons.

^(b) 1972 c.68.

^(c) 2002 c.41.

^(d) S.I. 1999/3132, to which there are amendments not relevant to these Regulations.

^(e) 1994 c.39.

- (i) in England and Wales, has the same meaning as in Part I of the Housing Act 1996(a); and
- (ii) in Scotland, means a body in the register maintained under section 57 of the Housing (Scotland) Act 2001(b);
- (g) “registered housing association” has the same meaning, in relation to Northern Ireland, as in Part II of the Housing (Northern Ireland) Order 1992(c);
- (h) “temporary protection” means limited leave to enter or remain granted pursuant to Part 11A of the Immigration Rules(d); and
- (i) “Temporary Protection Directive” means Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof(e).

Means of subsistence

3.—(1) Any person granted temporary protection as a result of a decision of the Council of the European Union made pursuant to Article 5 of the Temporary Protection Directive shall be deemed for the purposes of the provision of means of subsistence to have been granted leave to enter or remain in the United Kingdom exceptionally, outside the Immigration Rules.

(2) Subject to paragraph (3), paragraph (1) shall cease to apply on the date when the period of mass influx of displaced persons to which the grant of temporary protection relates ends in accordance with Chapter II of the Temporary Protection Directive.

(3) Paragraph (1) shall continue to apply for a period not exceeding 28 days from the date referred to in paragraph (2) for as long as the conditions in paragraph (4) are satisfied and the person is in the United Kingdom.

(4) Those conditions are—

- (a) the person’s grant of temporary protection has expired; and
- (b) the person is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include co-operating with a voluntary return programme.

4. “Means of subsistence” in regulation 3 means any means of subsistence governed by—

- (a) Part VII of the Social Security Contributions and Benefits Act 1992(f);
- (b) Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(g);

(a) 1996 c.52; section 1 was amended by the Government of Wales Act 1998 (c.38), Schedule 16, paragraphs 82(1)(a), 83(2), 83(3) and 83(4)

(b) 2001 asp 10.

(c) S.I. 1992/1725 (N.I.15), to which there are amendments not relevant to these Regulations.

(d) HC 395; relevant amending instrument is HC 194.

(e) OJ No L 212, 7.8.2001, p12.

(f) 1992 c.4. Part VII is amended by the Local Government Finance Act 1992 (c.14), Schedule 9, paragraphs 1 to 9 and Schedule 14; the Social Security (Incapacity for Work) Act 1994 (c.18), Schedule 1, paragraphs 31 and 32 and Schedule 2; the Local Government etc (Scotland) Act 1994 (c.39), Schedule 13, paragraph 174 and Schedule 14; the Jobseeker’s Act 1995 (c.18), Schedule 2, paragraphs 30 to 35 and Schedule 3; the Tax Credits Act 1999 (c.10), Schedule 1; The Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), Schedule 3, paragraph 28; the Welfare Reform and Pensions Act 1999 (c.30), Schedule 8, paragraph 28 and the State Pension Credit Act 2002 (c.16), Schedule 1, paragraph 2 and Schedule 2, paragraphs 2 to 4.

(g) 1992 c.7. Part VII was amended by the Registered Homes (Northern Ireland) Order 1992 (S.I. 1992/3204 (N.I. 20)), Schedule 1, paragraph 5; the Social Security (Amendment) (Northern Ireland) Order 1993 (S.I. 1993/1579 (N.I. 10)), Article 3(2); the Social Security (Incapacity for Work (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), Article 12(2) and (3), Schedule 1, paragraph 32 and Schedule 2; the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)), Schedule 2, paragraphs 13(2) and (5), 14(a) and (b), 15, 16, 17 and 18(2) and (3); the Tax Credits Act 1999 (c. 10), Schedule 1; the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), Schedule 8, paragraph 26 of Part IV and Schedule 10, Part IV.

- (c) sections 1 and 3 of Part I of the Jobseekers Act 1995(a);
- (d) articles 3 and 5 of Part II of the Jobseekers (Northern Ireland) Order 1995(b);
- (e) the State Pension Credit Act 2002(c); or
- (f) the State Pension Credit Act (Northern Ireland) 2002(d).

Housing: provision of accommodation

5.—(1) The Secretary of State may provide, or arrange for the provision of, accommodation for any person granted temporary protection.

(2) Subject to paragraph (3), paragraph (1) shall cease to apply on the date when the period of mass influx of displaced persons to which the grant of temporary protection relates ends in accordance with Chapter II of the Temporary Protection Directive.

(3) Paragraph (1) shall continue to apply for a period not exceeding 28 days from the date referred to in paragraph (2) for as long as the conditions in paragraph (4) are satisfied and the person is in the United Kingdom.

(4) Those conditions are—

- (a) the person's grant of temporary protection has expired; and
- (b) the person is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include co-operating with a voluntary return programme.

6. A local authority or the Northern Ireland Housing Executive may provide accommodation for those granted temporary protection in accordance with arrangements made by the Secretary of State under regulation 5.

7. When exercising his power under regulation 5 to provide, or arrange for the provision of, accommodation, the Secretary of State—

- (a) shall have regard to the desirability, in general, of providing, or arranging for the provision of, accommodation in areas in which there is a ready supply of accommodation; and
- (b) shall not have regard to any preference that those who have been granted temporary protection or their dependants may have as to the locality in which the accommodation is to be provided.

Housing: requests for assistance

8.—(1) This regulation applies if the Secretary of State asks—

- (a) a local authority;
- (b) the Northern Ireland Housing Executive;
- (c) a registered social landlord; or
- (d) a registered housing association in Northern Ireland

to assist him in the exercise of his power under regulation 5 to provide, or arrange for the provision of, accommodation.

(a) 1995 c.18; sections 1 and 3 are amended by the Welfare Reform and Pensions Act 1999 (c.30), sections 59 and 88 and the State Pension Credit Act 2002 (c.16), Schedule 2, paragraphs 37 and 38.

(b) S.I. 1995/2705 (N.I.15); Articles 3 and 5 were amended by the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I.1999/3147 (N.I. 11)), Schedule 7, paragraph 3(2), (3), (4) and (5), and Schedule 10, Part V, and the State Pension Credit Act (Northern Ireland) 2002 (c. 14), Schedule 2, paragraph 25.

(c) 2002 c.16 was amended by the Civil Partnership Act 2004 (c.33) (prospectively, on a date to be appointed), Schedule 24, and the Income Tax (Earnings and Pensions) Act 2003 (c.1), sections 722 and 723 and Schedule 6.

(d) 2002 c.14 (N.I.) was amended by the Income Tax (Earnings and Pensions) Act 2003 (c. 1), Schedule 6, paragraph 267 and the State Pension Credit Regulations (Northern Ireland) 2003 (S.R. 2003 No.28), regulation 16.

(2) The body to whom the request is made shall co-operate in giving the Secretary of State such assistance in the exercise of that power as is reasonable in the circumstances.

(3) This regulation does not require a registered social landlord to act beyond his powers.

(4) The Secretary of State shall pay to a body listed in regulation 8(1) any costs reasonably incurred by that body in assisting the Secretary of State to provide, or arrange for the provision of, accommodation.

9. A local authority or the Northern Ireland Housing Executive shall supply to the Secretary of State such information about its housing accommodation (whether or not occupied) as the Secretary of State may request.

Housing: direction by the Secretary of State

10.—(1) If the Secretary of State considers that a local authority or the Northern Ireland Housing Executive has suitable housing accommodation, the Secretary of State may direct the authority or the Executive to make available such accommodation as may be specified in the direction for a period so specified to the Secretary of State for the purpose of providing accommodation under regulation 5.

(2) The Secretary of State shall pay to a body to which a direction is given costs reasonably incurred by the body in complying with the direction.

(3) Any such direction is enforceable, on an application made on behalf of the Secretary of State, by injunction or, in Scotland, by an order under section 45(b) of the Court of Session Act 1988(a).

11. Housing accommodation shall be suitable for the purposes of regulation 10 if it is—

- (a) unoccupied;
- (b) likely to remain unoccupied for the foreseeable future if not made available; and
- (c) appropriate for the accommodation of persons with temporary protection or is capable of being made so with minor work.

12.—(1) If the housing accommodation specified in a direction under regulation 10 is not appropriate for the accommodation of persons with temporary protection but is capable of being made so with minor work, the Secretary of State may require the directed body to secure that the work is carried out without delay.

(2) The Secretary of State shall meet the reasonable cost of carrying out the minor work.

13. Before giving a direction under regulation 10, the Secretary of State shall consult—

- (a) such local authorities, local authority associations and other persons as he thinks appropriate in respect of a direction given to a local authority;
- (b) the Northern Ireland Housing Executive in respect of a direction given to the Executive;
- (c) the National Assembly of Wales in respect of a direction given to a local authority in Wales; and
- (d) the Scottish Ministers in respect of a direction given to a local authority in Scotland.

Housing: rent liability

14. A person with temporary protection who is provided with accommodation under regulation 5 shall be liable to make periodical payments of, or by way of, rent in respect of the accommodation provided and, in relation to any claim for housing benefit by virtue of regulation 3, such payments shall be regarded as rent for the purposes of regulation 10(1)(a) of the Housing Benefit (General)

(a) 1988 c.36.

Regulations 1987(a) and regulation 10(1)(a) of the Housing Benefit (General) Regulations (Northern Ireland) 1987(b).

Housing: notice to vacate

15.—(1) A tenancy, licence or right of occupancy granted in order to provide accommodation under regulation 5 shall end on the date specified in a notice to vacate complying with paragraph (2) regardless of when the tenancy, licence or right of occupancy could otherwise be brought to an end.

(2) A notice to vacate complies with this paragraph if it is in writing and it specifies as the notice period a period of at least 7 days from the date of service by post of the notice to vacate.

Claims for asylum

16.—(1) This regulation shall apply when a person granted temporary protection makes a claim for asylum which is recorded by the Secretary of State.

(2) When considering under section 55(1)(b) of the 2002 Act whether he is satisfied that the person has made his claim for asylum as soon as reasonably practicable after his arrival in the United Kingdom, the Secretary of State may disregard any time during which the person benefited from a grant of temporary protection.

Consular fees

17. Where a consular officer is satisfied that a person outside the United Kingdom will benefit from a grant of temporary protection on arrival at a port of entry in the United Kingdom, that person shall not be required to pay any fee prescribed by the Consular Fees (No.2) Order 1999 in connection with an application for entry clearance.

SCHEDULE

Consequential amendments

The Protection from Eviction Act 1977

1. In section 3A of the Protection from Eviction Act 1977(c) (excluded tenancies and licences), after subsection (7B) insert—

“(7C) A tenancy or licence is excluded if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.”.

The Housing (Northern Ireland) Order 1983

2. In Schedule 2 to the Housing (Northern Ireland) Order 1983(d) (tenancies which are not secure tenancies), after paragraph 3A insert—

(a) S.I. 1987/1971.

(b) S.R. 1987/461.

(c) 1977 c.43; section 3A was inserted by the Housing Act 1988 (c.50), section 31, and amended by the Immigration and Asylum Act 1999 (c.33), Schedule 14, paragraph 73, and by the Immigration and Asylum Act 2002 (c.41), section 32(5); there are other amendments which are not relevant to these Regulations.

(d) S.I. 1983/1118 (N.I.15); relevant amending instruments are S.I. 1988/1990 (N.I.23) and S.I. 2003/412 (N.I.2); also amended by the Immigration and Asylum Act 1999 (c.33), Schedule 14, paragraph 78.

“Accommodation for persons with Temporary Protection

3B. A tenancy is not a secure tenancy if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.”

The Rent (Scotland) Act 1984

3. In section 23A of the Rent (Scotland) Act 1984(**a**) (excluded tenancies and occupancy rights), after subsection (5A) insert—

“(5B) Nothing in section 23 of this Act applies to a tenancy or right of occupancy if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.”

The Housing Act 1985

4. In Schedule 1 to the Housing Act 1985(**b**) (tenancies which cannot be secure tenancies), after paragraph 4A insert—

“Accommodation for persons with Temporary Protection

4B. A tenancy is not a secure tenancy if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.”

The Housing (Scotland) Act 1988

5. In Schedule 4 to the Housing (Scotland) Act 1988(**c**) (tenancies which cannot be assured tenancies), after paragraph 11B insert—

“Accommodation for persons with Temporary Protection

11C. A tenancy granted under arrangements for the provision of accommodation for persons with temporary protection made under the Displaced Persons (Temporary Protection) Regulations 2005.”

The Housing Act 1988

6. In Schedule 1 to the Housing Act 1988(**d**) (tenancies which are not assured tenancies), after paragraph 12A insert—

“Accommodation for persons with Temporary Protection

12B.—(1) A tenancy granted by a private landlord under arrangements for the provision of accommodation for persons with temporary protection made under the Displaced Persons (Temporary Protection) Regulations 2005.

(2) “Private landlord” means a landlord who is not within section 80(1) of the Housing Act 1985.”

(a) 1984 c.58; section 23A was inserted by the Housing (Scotland) Act 1988 (c.43), section 40; subsection (5A) of section 23A was inserted by the Immigration and Asylum Act 1999 (c.33), Schedule 14, paragraph 79.

(b) 1985 c.68; paragraph 4A of Schedule 1 was inserted by the Immigration and Asylum Act 1999 (c.33), Schedule 14, paragraph 81.

(c) 1988 c.43; paragraph 11A was inserted by the Housing (Scotland) Act 2001 (asp 10), Schedule 10, paragraph 14; paragraph 11AA was inserted by the Housing Act 1988 (c.50), Schedule 17, paragraph 90; paragraph 11B was inserted by the Immigration and Asylum Act 1999(c.33), Schedule 14, paragraph 87.

(d) 1988 c.50; paragraph 12A of Schedule 1 was inserted by the Immigration and Asylum Act 1999 (c.33), Schedule 14, paragraph 88.

The Homelessness (England) Regulations 2000

7. The Homelessness (England) Regulations 2000(a) shall be amended as follows.

8. In regulation 3 (classes of persons subject to immigration control who are eligible for housing assistance), for paragraph (1)(i) substitute—

“Class I – a person who is on an income-based jobseeker’s allowance or in receipt of income support and is eligible for that benefit 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.”.

9. In regulation 3, after paragraph (3) insert—

“(4) In paragraph (1)(i) (Class I), “means of subsistence” has the same meaning as in regulation 4 of the Displaced Persons (Temporary Protection) Regulations 2005.”.

The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000

10. The Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000(b) shall be amended as follows.

11. In Article 8 (homelessness – Northern Ireland), for paragraph (1)(a) substitute—

“Class S – a person who is on an income-based jobseeker’s allowance or in receipt of income support and is eligible for that benefit 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.”.

12. In article 8, after paragraph (2) insert—

“(3) In paragraph (1)(a) (Class S), “means of subsistence” has the same meaning as in regulation 4 of the Displaced Persons (Temporary Protection) Regulations 2005.”.

13. In article 9 (homelessness – Scotland), for paragraph (1)(a) substitute—

“Class U – a person who is on an income-based jobseeker’s allowance or in receipt of income support and is eligible for that benefit 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.”.

(a) S.I. 2000/701, amended by S.I. 2004/1235.

(b) S.I. 2000/706.

14. In article 9, after paragraph (2)(d) insert—

“(e) In paragraph (1)(a) (Class U), “means of subsistence” has the same meaning as in regulation 4 of the Displaced Persons (Temporary Protection) Regulations 2005.”.

The Housing (Scotland) Act 2001

15. In Schedule 1 to the Housing (Scotland) Act 2001(a) (tenancies which are not Scottish secure tenancies), after paragraph 10 insert—

“Accommodation for persons with Temporary Protection

11. A tenancy is not a Scottish secure tenancy if it is granted in order to provide accommodation under the Displaced Persons (Temporary Protection) Regulations 2005.”.

Home Office
18th May 2005

Tony McNulty
Minister of State

(a) 2001 asp 10.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, together with a new Part 11A in the Immigration Rules (HC 395), the Education (Student Fees and Support) Temporary Protection (Scotland) Amendments Regulations 2005 (SSI 2005/217), the Further Education Bursaries (Scotland) Direction 2005 and the Education Maintenance Allowances (Scotland) Direction 2005, implement Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof (OJ L 212, 7.8.2001, p12) ("the Directive"). Some parts of the Directive do not require implementation as consistent provisions already exist in domestic legislation. A transposition note has been prepared and is published together with the explanatory memorandum for these Regulations on HMSO's website: www.hmso.gov.uk.

These Regulations apply to people with a grant of temporary protection under Part 11A of the Immigration Rules.

Regulation 3 allows those with temporary protection to claim means of subsistence under the provisions specified in regulation 4.

Regulations 5 to 15 provide a framework for the provision of housing to those with temporary protection. Regulation 5 confers a power on the Secretary of State to provide or arrange for the provision of accommodation, regulation 6 confers a power to provide accommodation on local authorities and the Northern Ireland Housing Executive and regulation 7 sets out those factors that the Secretary of State shall consider and those he shall disregard when exercising his power.

Regulation 8 requires the bodies listed to co-operate if asked by the Secretary of State to assist in the provision of housing and regulation 9 requires the bodies listed to give the Secretary of State information requested about their housing accommodation.

Regulation 10 contains a power for the Secretary of State to direct a listed body to make suitable housing available. Regulation 11 contains the types of housing which will be suitable and regulation 12 contains a power to direct the body to carry out minor work necessary to make the housing suitable, for which the Secretary of State will pay the reasonable cost. Regulation 13 requires the Secretary of State to consult before issuing a direction under regulation 10.

Regulation 14 provides that a person with temporary protection who is housed by the Secretary of State under these Regulations will be liable to pay rent and regulation 15 contains a notice to vacate provision.

Section 55 of the Nationality, Immigration and Asylum Act 2002 provides that the Secretary of State may not provide or arrange for the provision of support to an asylum claimant if he is not satisfied that the asylum claim was made as soon as reasonably practicable after the claimant's arrival in the United Kingdom. Regulation 16 provides that the Secretary of State may disregard any time during which an asylum claimant had temporary protection when considering whether the asylum claim was made late for the purposes of support.

Regulation 17 provides that those who are granted temporary protection will not be charged a visa fee for entry into the United Kingdom.

The Schedule to these Regulations contains consequential amendments which exclude those with temporary protection from provisions granting protection from eviction, security of tenure and access to homelessness assistance.

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