



Statutory Document No. 131/07

THE SOCIAL SECURITY ACT 2000

THE SOCIAL SECURITY LEGISLATION (APPLICATION)
(No. 4) ORDER 2007

Approved by Tynwald 20th March 2007

Coming into operation in accordance with Article 1

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Social Security Act 2000(a), and of all other enabling powers, the following Order is hereby made:-

Citation and commencement

1. (1) This Order may be cited as the Social Security Legislation (Application) (No. 4) Order 2007 and shall, subject to section 2(1) of the Social Security Act 2000, come into force as provided for in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall be deemed to have come into force on 1st April 2007.

Interpretation

2. (1) In this Order “the applied legislation” means the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(b).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;

(a) 2000 c.5; (b) S.I. 2006/636.

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- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Social Security Act 2000 or section 1 of the Pension Schemes Act 1995(a) (Acts of Tynwald) shall be construed as a reference to that legislation as it has effect in the Island.

Application to the Island of the applied legislation

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

(a) 1995 c.11.

SCHEDULE

This Schedule sets out the text of regulations 1, 2, 4 and 8 to 11 of, and the Schedule to, the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

STATUTORY INSTRUMENTS

2000 No. 636

SOCIAL SECURITY

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

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 *1st April 2007*.

(3) In these Regulations-

"the Attendance Allowance Regulations" means the Social Security (Attendance Allowance) Regulations 1991;

"the Contributions and Benefits Act" means the Social Security Contributions and Benefits Act 1992;

"the Disability Living Allowance Regulations" means the Social Security (Disability Living Allowance) Regulations 1991;

"the Income Support Regulations" means the Income Support (General) (*Isle of Man*) Regulations **2000**;

"the Invalid Care Allowance Regulations" means the Social Security (Invalid Care Allowance) Regulations 1976;

"the Jobseekers Act" means the Jobseekers Act 1995;

"the Jobseeker's Allowance Regulations" means the Jobseeker's Allowance Regulations 1996;

"the Severe Disablement Allowance Regulations" means the Social Security (Severe Disablement Allowance) Regulations 1984.

(3A) In the Schedule to these Regulations-

(a) a reference to "the Immigration Act 1971" is to that Act as extended to the Isle of Man by the Immigration (Isle of Man) Order 1991¹; and

¹ S.I. 1991/2630.

- (b) a reference to “the immigration rules” is to the rules laid down by the Lieutenant-Governor under the Immigration Act 1971 (see section 3(2) of that Act) as so extended.

(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.

Persons not excluded from specified benefits under section 20C of the Jobseekers Act or section 150E of the Contributions and Benefits Act

2. (1) For the purposes of entitlement to income-based jobseeker's allowance *under the Jobseekers Act*, a person falling within a category or description of persons specified in Part I of the Schedule is a person to whom section 20C of the *Jobseekers Act* does not apply.

(1A) For the purposes of entitlement to –

- (a) *income support,*
- (b) *a payment in respect of maternity expenses, or*
- (c) *an exceptional needs grant or a budgeting loan,*

under the Contributions and Benefits Act, a person falling within a category or description of persons specified in Part I of the Schedule is also a person to whom section 150E of the Contributions and Benefits Act does not apply.

(2) For the purposes of entitlement to –

- (a) attendance allowance,
- (b) severe disablement allowance,
- (c) [carer's allowance],
- (d) disability living allowance, or
- (e) 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 150E of the *Contributions and Benefits Act* does not apply.

(3) For the purposes of entitlement to –

- (a) child benefit,
- (b) attendance allowance, or
- (c) 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 150E of the *Contributions and Benefits Act* does not apply.

(4) to (6) *Omitted.*

Amendment of the Income Support Regulations

3. Omitted.

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) Omitted.

(3) In regulation 85(4) (special cases) *in the appropriate place in the alphabetical order insert 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 20C(4) of the *Jobseekers Act*; or
- (ii) to whom section 20C of *the Jobseekers 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 20C(4) of *the Jobseekers Act* and section 20C of that Act applies to her for the purposes of exclusion from entitlement to jobseeker's allowance;"

(4) to (6) Omitted.

(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

13A.

- (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 20C(4) of the *Jobseekers Act*; or
 - (ii) to whom section 20C of *the Jobseekers 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 20C(4) of *the Jobseekers Act* and section 20C 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-

"13A.

- (a) *The sum of –*

- (i) *the amount applicable in respect of the claimant only under regulation 83(1)(a) (personal allowances in respect of person or couple), and*
 - (ii) *any amounts which may be applicable to him under regulation 83(1)(b) (personal allowances in respect of children and young persons) 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 20C(4) of the Jobseekers Act and to whom section 20C of that Act does not apply for the purposes of exclusion from entitlement to jobseeker's allowance, and*
 - (iii) *any amounts which may be applicable to him under regulation 83(1)(d) (premiums other than the lone parent premium), and*
 - (iv) *the amount applicable to him under regulation 83(1)(c) (housing costs) or, as the case may be, any of regulations 84A to 86 (applicable amounts for boarders, persons in certain accommodation free of charge, special cases and persons in residential accommodation).*
- (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 20C(4) of the *Jobseekers Act* and to whom section 20C of that Act does not apply for the purposes of exclusion from entitlement to jobseeker's allowance."

(8) *Omitted.*

(9) In paragraph 29 of Schedule 7 (treatment of income in kind)-

(a) and (b) *omitted;*

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

"(3) The reference in sub-paragraph (1) to "income in kind" does not include a payment to a third party made in respect of the claimant which is used by the third party to provide benefits in kind to the claimant."

Amendment of the Claims and Payments Regulations

5. *Omitted.*

Amendment of the Housing Benefit Regulations

6. *Omitted.*

Amendment of the Council Tax Benefit Regulations

7. *Omitted.*

Amendment of the Invalid Care Allowance Regulations

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

(2) In regulation 9(1) *after* sub-paragraph (a) there shall be *inserted* the following sub-paragraph-

"(ia) he is not a person subject to immigration control within the meaning of section 150E(4) of the *Contributions and Benefits Act* or section 150E of that Act does not apply to him for the purposes of entitlement to [carer's allowance] by virtue of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000, and".

(3) *Omitted.*

Amendment of the Severe Disablement Allowance Regulations

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

(2) In regulation 3(1) *after* head (i) of sub-paragraph (a) there shall be *inserted* the following head-

"(ib) he is not a person subject to immigration control within the meaning of section 150E(4) of the *Contributions and Benefits Act* or section 150E 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) *Omitted.*

Amendment of the Attendance Allowance Regulations

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

(2) In regulation 2(1) *after* head (i) of sub-paragraph (a) there shall be *inserted* the following head-

"(ib) he is not a person subject to immigration control within the meaning of section 150E(4) of the *Contributions and Benefits Act* or section 150E 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) *Omitted.*

Amendment of the Disability Living Allowance Regulations

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

(2) In regulation 2(1) *after* head (i) of sub-paragraph (a) there shall be *inserted* the following head-

"(ib) he is not a person subject to immigration control within the meaning of section 150E(4) of the Immigration and Asylum Act 1999 or section 150E 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) *Omitted.*

Transitional arrangements and savings

12. *Omitted.*

Revocations

13. *Omitted.*

SCHEDULE

Regulation 2

PERSONS NOT EXCLUDED FROM CERTAIN BENEFITS UNDER SECTION 20C OF THE JOBSEEKERS ACT OR SECTION 150E OF THE CONTRIBUTIONS AND BENEFITS ACT

PART I

Persons not excluded under section 20C of the Jobseekers Act from entitlement to income-based jobseeker's allowance and persons not excluded under section 150E of the Contributions and Benefits Act from entitlement to income support, a payment in respect of maternity expenses, an exceptional needs grant or a budgeting loan

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 *Isle of Man* which was given in accordance with the immigration rules 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 –

- (a) has been given leave to enter, or remain in, the *Isle of Man* by the *Lieutenant-Governor* upon an undertaking by another person or persons pursuant to the immigration rules to be responsible for his maintenance and accommodation; and
- (b) has not been resident in the *Isle of Man* 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 *Isle of Man* by the *Lieutenant-Governor* upon an undertaking by another person or persons pursuant to the immigration rules to be responsible for his maintenance and accommodation; and
- (b) has been resident in the *Isle of Man* 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) a state which has ratified the European Convention on Social and Medical Assistance (done in Paris on 11th December 1953); or

- (b) 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 Isle of Man.

PART II

Persons not excluded under section 150E of the Contributions and Benefits Act from entitlement to attendance allowance, severe disablement allowance, [carer's allowance], disability living allowance or child benefit

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.
2. A person who –
 - (a) is lawfully working in *the Isle of Man*; and
 - (b) is a national of a State with which the Community has concluded an agreement under Article 310 of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families.
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 *Isle of Man* by the *Lieutenant-Governor* upon an undertaking by another person or persons pursuant to the immigration rules to be responsible for his maintenance and accommodation.

Made 6th February 2007



Minister for Health and Social Security

EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Social Security Act 2000 enables the Department, by Order, to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Social Security Contributions and Benefits Act 1992 and the Jobseekers Act 1995 (both Acts of the United Kingdom Parliament which have effect in the Isle of Man) and to any statutory instrument made or having effect as if made under either of those Acts.
3. New section 150E of the Social Security Contributions and Benefits Act 1992 and new section 20C of the Jobseekers Act 1995 (as they have effect in the Isle of Man) contain explicit provision providing that, with effect from 1st April 2007, ordinarily, persons subject to immigration control are not to be entitled to certain social security benefits payable under those Acts (referred to in the Isle of Man immigration rules as “public funds”).
4. Under subsection (1) of section 150E a person cannot become entitled to any of the following benefits while they are a person to whom that section applies –
 - attendance allowance,
 - severe disablement allowance,
 - carer’s allowance,
 - disability living allowance,
 - income support,
 - family income supplement,
 - disability working allowance,
 - a payment in respect of maternity expenses,
 - an exceptional needs grant or a budgeting loan,
 - child benefit, or
 - a winter bonus or an additional winter bonus.
5. Section 150E applies to a person subject to immigration control unless they fall within such category or description, or satisfy such conditions, as may be prescribed by regulations. As a consequence, a person subject to immigration control may still qualify for a public fund benefit in certain circumstances.
6. Regulations may also provide for a person not to be treated as a person to whom section 150E applies, but only for the purposes set out in those regulations.
7. In section 150E “a person subject to immigration control” means a person who is not a national of an EEA State and who—
 - requires leave to enter or remain in the Isle of Man but does not have it; or

- has leave to enter or remain in the Isle of Man which is subject to a condition that they do not have recourse to public funds; or
 - has leave to enter or remain in the Isle of Man as a result of another person giving a written undertaking to maintain and accommodate the person subject to immigration control; or
 - has leave to enter or remain in the Isle of Man while their appeal against an immigration decision is pending.
8. **The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (regulations 1, 2, 4 and 8 to 11 and the Schedule only)**
- 8.1 These Regulations now specify the categories and description a person subject to immigration control must fall into in order to become entitled to a public fund benefit or an income-based jobseeker's allowance (as the case may be).
- 8.2.1 Regulation 1 provides for the commencement, citation and interpretation of the Regulations.
- 8.2.2 In particular, paragraph (3A) of regulation 1 provides that, in the Schedule to the Regulations, reference to "the Immigration Act 1971" is to that Act of the United Kingdom Parliament as extended to the Isle of Man by the Immigration (Isle of Man) Order 1991 and reference to "the immigration rules" is to the rules Made by the Lieutenant-Governor under that Act (as extended to the Isle of Man).
9. *Persons subject to immigration control not excluded from entitlement to certain social security benefits*
- 9.1 Regulation 2 and the Schedule to the Regulations specify the category or description of persons who are subject to immigration control who are not to be excluded from entitlement to public funds benefits or income-based jobseeker's allowance.
10. *Persons subject to immigration control not excluded from entitlement to income-based jobseeker's allowance, income support, payments in respect of maternity expenses, exceptional needs grants or budgeting loans*
- 10.1 Regulation 2(1) and (1A) provides that persons who fall within any category or description mentioned in Part I of the Schedule to the Regulations are not to be excluded from entitlement to income-based jobseeker's allowance, income support, a payment in respect of maternity expenses, an exceptional needs grant or a budgeting loan.
- 10.2 Those categories and descriptions are –
1. A person with limited leave to enter or remain in the Isle of Man on condition that they have no recourse to public funds and who has supported themselves without recourse to public funds, but who is temporarily without funds because the supply of funds due to him from abroad has been disrupted, provided there is a reasonable expectation that the supply of funds will be resumed.
 2. A person with indefinite leave to enter or remain in the Isle of Man on the basis of an undertaking given by another person that they will be responsible for their maintenance and accommodation and who has been in the Isle of Man for less than 5 years or that undertaking was given less than 5 years ago, where the person who gave that undertaking has died.
 3. A person in the same circumstances as those in 2, but where five years have passed since the person first became resident in the Isle of Man or the undertaking was given.

4. A person lawfully present in the Isle of Man 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) or a state which has ratified *the Council of Europe Social Charter* (signed in Turin on 18th October 1961). As well as the EEA states, this includes Croatia, Turkey, the former Yugoslav Republic of Macedonia and Ukraine.
11. *Persons subject to immigration control not excluded from entitlement to attendance allowance, severe disablement allowance, carer's allowance, disability living allowance or child benefit*
- 11.1 Regulation 2(2) provides that persons who fall within any category or description mentioned in Part II of the Schedule to the Regulations are not excluded from entitlement to attendance allowance, severe disablement allowance, carer's allowance, disability living allowance or child benefit notwithstanding their being a person subject to immigration control.
- 11.2 Those categories and descriptions are –
1. a member of the family of an EEA national or of Switzerland;
 2. a person (and any other member of their family who is living with them) lawfully working in the Isle of Man who is a citizen of a state with which the European Community has an agreement concerning social security. This applies to the citizens of Algeria, Morocco, Tunisia and Turkey;
 3. a person given leave to enter or to remain in the Isle of Man granted on the basis that another person has undertaken to be responsible for their maintenance and accommodation.
- 11.3 Regulation 2(3) provides that persons are also not excluded from entitlement to attendance allowance, disability living allowance or child benefit if they are from another country with which the United Kingdom (including the Isle of Man for these purposes) has a reciprocal agreement in relation to that benefit.
12. *Partners of persons from abroad*
- 12.1 Schedule 5 to the Jobseeker's Allowance Regulations 1996 specifies what the applicable amount for jobseeker's allowance purposes is to be in "special cases". Regulation 4(7) inserts provision into Schedule 5 (by way of new paragraph 13A) specifying what the applicable amount of the partner of a person subject to immigration control is to be.
- 12.2 The "partner of a person subject to immigration control" is defined in regulation 4(3) (see the new definition inserted into regulation 85(4) of the Jobseeker's Allowance Regulations 1996) as being someone–
- who either is not subject to immigration control or who is not treated as being a person subject to immigration control because they fall within a category of person mentioned in Part I of the Schedule to the Regulations; but
 - whose partner is a person subject to immigration control and is excluded from entitlement to jobseeker's allowance for that reason.
- 12.3 The applicable amount of the partner of a person subject to immigration control is the same as it would otherwise be, except that there is no personal allowance included for the partner who is subject to immigration control.
- 12.4 A person whose partner is not subject to immigration control does not have to satisfy the joint-claim rules to qualify for jobseeker's allowance.

13. *Conditions as to residence and presence in the Isle of Man in respect of entitlement to carer's allowance, severe disablement allowance, attendance allowance and disability living allowance*
- 13.1 Regulations 8 to 11 insert provision into the Social Security (Invalid Care Allowance) Regulations 1976, the Social Security (Severe Disablement Allowance) Regulations 1984, the Social Security (Disability Living Allowance) Regulations 1991 and the Social Security (Attendance Allowance) Regulations 1991 making it clear that, for a person to satisfy the conditions of residence and presence in the Isle of Man in relation to entitlement to carer's allowance, severe disablement allowance, attendance allowance and disability living allowance respectively, they must not be a person subject to immigration control or if they are, they must qualify for a public fund social security benefit by way of regulation 2 of these Regulations (see paragraph 11 of this note).