



Statutory Document No. 133/07

THE SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

THE INCOME SUPPORT (GENERAL) (ISLE OF MAN)  
(AMENDMENT) (No. 2) REGULATIONS 2007

*Approved by Tynwald*

*20<sup>th</sup> March 2007*

*Coming into operation 1<sup>st</sup> April 2007*

In exercise of the powers conferred on the Department of Health and Social Security by sections 123 and 124 of the Social Security Contributions and Benefits Act 1992(a) (as that Act has effect in the Isle of Man(b)), and of all other enabling powers, the following Regulations are hereby made:-

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Income Support (General) (Isle of Man) (Amendment) (No. 2) Regulations 2007 and shall come into operation on 1<sup>st</sup> April 2007.

2. In these Regulations “the Income Support Regulations” means the Income Support (General) (Isle of Man) Regulations 2000(c).

**Amendment of the Income Support Regulations**

3. Amend the Income Support Regulations in accordance with the following regulations.

4. In paragraph (3) of regulation 6 (prescribed categories of person), before sub-paragraph (a) insert –

“(za) paragraph 1 of Part I of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 applies to him;”.

5. In regulation 18 (special cases) in paragraph (4) after the opening words, 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 150E(4) of the Contributions and Benefits Act; or

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(a) 1992 c.4; (b) S.D. 505/94; (c) S.D. 26/00.

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- (ii) to whom section 150E of that 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 150E(4) of that Act and section 150E of that Act applies to her for the purposes of exclusion from entitlement to income support;”.

6. In Schedule 1 (prescribed categories of person) after paragraph 21 add-

*“Refugees*

22. A person who is a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28<sup>th</sup> July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31<sup>st</sup> January 1967 and who—
- (a) is attending for more than 15 hours a week a course for the purpose of learning English so that he may obtain employment; and
  - (b) on the date on which that course commenced, had been in the Isle of Man for not more than 12 months,
- but only for a period not exceeding nine months.”.

7. In Schedule 5 (prescribed categories of person) after paragraph 13, insert —

*“Partner of a person subject to immigration control*

13A.

- (a) A claimant who is the partner of a person subject to immigration control.

13A.

- (a) The sum of —
  - (i) the amount applicable in respect of the claimant only under regulation 15(a) (personal allowances in respect of person or couple), and
  - (ii) any amounts which may be applicable to him under regulation 15(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 150E(4) of the Contributions and Benefits Act and to whom section 150E of

that Act does not apply for the purposes of exclusion from entitlement to income support, and

- (iii) any amounts which may be applicable to him under regulation 15(d) (premiums other than the lone parent premium), and
- (iv) the amount applicable to him under regulation 15(e) (housing costs) or, as the case may be, any of regulations 17 to 18 (applicable amounts for persons in residential accommodation, boarders, persons in certain accommodation free of charge and special cases).

(b) Where regulation 16 (polygamous marriages) applies and the claimant is a person-

- (i) who is not subject to immigration control within the meaning of section 150E(4) of the Contributions and Benefits Act; or
- (ii) to whom section 150E of that 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 150E(4) of the Contributions and Benefits Act and section 150E of that Act applies to her for the purposes of exclusion from entitlement to income

(b) The amount determined in accordance with that regulation or any of regulations 17 to 18 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 150E(4) of the Contributions and Benefits Act and to whom section 150E of that Act does not apply for the purposes of exclusion from entitlement to income support.”.

support.

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Made 6th February 2007



Minister for Health and Social Security

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### EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations come into operation on 1<sup>st</sup> April 2007 and make a number of amendments to the Income Support (General) (Isle of Man) Regulations 2000 (“the Income Support Regulations”) in relation to the entitlement to income support of persons subject to immigration control and of their partners.
2. *Persons subject to immigration control - exclusion from certain social security benefits: an introduction*
  - 2.1 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 1<sup>st</sup> 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”), including income support.
  - 2.2 Under the legislation a person is one subject to immigration control if they are 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 a written undertaking being given by another person to maintain and accommodate the person subject to immigration control; or
    - is allowed to enter or remain in the Isle of Man while their appeal against an immigration decision is pending.

- 2.3 However, regulations may provide that a person subject to immigration control may still qualify for a public funds benefit if they fall within such special category or description, or satisfy such conditions, as prescribed by regulations. Regulations may also provide for a person not to be treated as a person to whom section 150E of the Social Security Contributions and Benefits Act 1992 or section 20C of the Jobseekers Act 1995 applies – and so they may qualify for a public funds benefit, notwithstanding their being a person subject to immigration control – but only for the purposes set out in those regulations.
3. *Certain persons subject to immigration control who are not excluded from entitlement to income support*
- 3.1 Provision exists whereby persons who fall within any of the following categories or descriptions are not excluded from entitlement to income support –
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 11<sup>th</sup> December 1953) or a state which has ratified *the Council of Europe Social Charter* (signed in Turin on 18<sup>th</sup> October 1961). As well as the EEA states, this includes Croatia, Turkey, the former Yugoslav Republic of Macedonia and Ukraine.
4. *Amendments made by the Regulations*
- 4.1 Regulations 1 and 2 provide for the citation, commencement and interpretation of the Regulations.
- 4.2 Regulation 3 introduces the amendments the Regulations make.
- 4.3 “*Refugees*”
- 4.3.1 Regulation 6 extends the list of categories of persons who may qualify for income support to include “refugees”, notwithstanding the normal preclusion from public funds benefits applying to persons subject to immigration control.
- 4.3.2 Although the Isle of Man is not a State for asylum purposes – so cannot consider applications for refugee status sought by asylum seekers – it nevertheless has obligations to provide public relief and assistance and social security benefits to refugees lawfully staying in the Isle of Man in the same way as is accorded to Manx nationals, in accordance with the 1951 UN Convention relating to the Status of Refugees. Accordingly the list of prescribed categories of person who may qualify for income support is extended by way of regulation 6 to include refugees within the meaning of the Convention (see new paragraph 22 of Schedule 1 to the Income Support Regulations) providing they meet certain conditions relating to their education.

4.3.3 A person may qualify for income support by virtue of being a refugee while they are learning English so that they can obtain work. However, they cannot continue to do so for more than nine months at a time and they must have begun their course within 12 months of arriving in the Isle of Man. The applicable amount for a refugee in determining their income support entitlement is calculated in the same way it would be if they were not a refugee. A refugee who happens to fall into another prescribed category of person (e.g. lone parent) may qualify for income support without these restrictions applying to them.

4.4 *Partners of persons from abroad*

4.4.1 Schedule 5 to the Income Support Regulations specifies what the applicable amount for income support purposes is to be in “special cases”. Regulation 7 inserts provision into Schedule 5 to the Income Support Regulations (by way of new paragraph 13A) specifying what the applicable amount of the partner of a person subject to immigration control is to be.

4.4.2 The “partner of a person subject to immigration control” is defined in regulation 18 of the Income Support Regulations (as inserted by regulation 5 of these Regulations) 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 paragraph 3.1 of this note; but
- whose partner is a person subject to immigration control and is excluded from entitlement to income support for that reason.

4.4.3 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.

4.5. *Full-time students who are persons subject to immigration control*

4.5.1 Regulation 4 extends the categories of full-time students who can qualify for income support to include persons subject to immigration control who are nevertheless entitled to income support because they fall within the first category of person mentioned in paragraph 3.1 of this note.