ILPA IMMIGRATION LAW PRACTITIONERS' ASSOCIATION
PRESIDENT: IAN MACDONALD QC

**SOCIAL SECURITY (PERSONS FROM ABROAD)
MISCELLANEOUS AMENDMENT REGULATIONS 1996**

The Social Security Advisory Committee unanimously recommended that the Secretary of State not proceed with these regulations saying:

> "We do not believe that is acceptable that a solution [to deterring unfounded asylum applications] should be sought by putting at risk of destitution many people who are genuinely seeking refuge in this country, amongst whom are numbered some of the most vulnerable and defenceless in our society.": para 88.

The Government's response to the SSAC report was to:

- tighten the rules so that in-country asylum claimants will only be entitled to benefit where their country is so dangerous that no-one can be sent there;
- make the rules for deciding whether a claim is made in-country or at port even more complex;
- restore benefits to sponsored immigrants where the undertaking was made more than 5 years ago;
- increase transitional protection so that those presently entitled keep their benefits until their claim or appeal is decided.

The draft Regulations:

- will cause destitution for moths or years of thousands of people who the Home Office will later accept as refugees or allow to remain for humanitarian reasons;
- breach the spirit or letter of the 1951 UN Convention on Refugees, the 1961 European Social Charter;
- greatly increase administrative costs for the Home Office, Benefits Agency and local authorities.
- will require information putting the lives of claimants at risk to be handled by the Benefits Agency.

We agree with the Social Security Advisory Committee and urge members to reject these proposals.

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Further notes

1. The Immigration Law Practitioners Association has a membership of some 600 lawyers and academics both in the United Kingdom and abroad. We have been involved in lobbying and preparing submissions both in the UK and at the European Parliament on a wide range of issues relating to immigration.

2. These representations have been written from the perspective of lawyers working in immigration and social security law.

3. **ILPA's detailed comments on the first draft of the regulations** are set out in our submission to SSAC.

4. The Government's response to the SSAC report was to further tighten **the definition of an 'upheaval country'** so that a declaration will only be made when Government would not normally send anyone to that country (reg 8(3)(c)). That provision now offers no protection to a person seeking asylum:

- because s/he **cannot return home because of a change in the political situation**. For example, where a political party is made illegal while one of its members is here as a student, no declaration would be made because of that, since most nationals of that country could safely return home. Despite claiming asylum as soon as she became aware of the change, the student would be unable to claim income support, even though her funds from abroad may be cut of because of her politics;

- from the person's home country where they are **not a national of that country**. For example, a stateless Palestinian resident in Jordan could not claim benefits even if his asylum claim was made because a warrant for his arrest on political grounds was issued while he was at a conference in the UK. A person whose claim for asylum was based on the decision of their own government to strip them of nationality would not be able to claim benefit;

5. The Government accepts that those who make an in-country asylum claim may do so because they have become at risk since arriving in the UK (Memorandum to SSAC para 14, Response to SSAC para 22). Despite this and the SSAC recommendation that these provisions not be proceeded with (paras 44-49) the regulations still deny benefit to anyone who makes an in-country claim regardless of the changes in their personal situation.

6. The Government repeatedly uses **the misleading figure of 90%**

of rejections. The true figure for Home Office decisions must take into account grants of exceptional leave to remain (ELR), which brings the true figure to around 20-25%. That is because ELR is often granted to those with a strong claim to refugee status under the 1951 Convention and cases where removal would be in breach of the UK's obligations under international law, eg the European Convention on Human Rights. This was repeatedly acknowledged by the Government during the debate on the Asylum & Immigration Appeals Act 1993. Where ELR is granted, the person cannot normally appeal that decision, so their claim to asylum is not tested in front of an adjudicator.

7. The Government compares claims made with decisions reached for 1990-1994. This comparison is meaningless because the decisions made in that period relate to a much smaller number of claims, mostly made many years before.

8. **The Government wrongly equates those who are refused asylum with those who have made bogus or fraudulent claims.** This is particularly misleading because in some 15%-20% of cases the Government has granted ELR, almost always on the basis that the person's account is truthful.

9. Where refugee asylum and ELR are refused that is often because of **the Government's opinion of the law, not of the facts.** For example, Sri Lankan Tamils fleeing the Tamil Tigers are told that, because the Tigers are not the government, their claim to asylum must be refused. That approach has been rejected by adjudicators and by the High Court. A right to an independent appeal is particularly important where there is an argument about the law. **The regulations deny benefit to those who the Home Office accept left their country because of a genuine fear of persecution, but who do not fall within the Geneva Convention, as interpreted by the Home Office.**

10. **The Government wrongly claims that transitional arrangements continue entitlement until an appeal is rejected.** The regulations will in fact end benefit when a decision on the appeal is made, even if the appeal is allowed. In most cases where the adjudicator allows the appeal the Home Office bring a further appeal. No benefit will be payable for the months or years of that appeal.

FOR THE REASONS GIVEN ABOVE, IT IS VITAL FOR YOU TO ATTEND THE DEBATE ON 23 JANUARY 1996 AND TO REJECT THESE REGULATIONS.