EXPLANATORY MEMORANDUM TO

THE ASYLUM SUPPORT (AMENDMENT) (No. 2) REGULATIONS 2009

2009 No. 1388

1. 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Asylum Support (Amendment) (No. 2) Regulations 2009 set the annual rates of asylum support that will be paid to different categories of asylum seekers, dependent on age or status. They amend Regulation 10(2) of the Asylum Support Regulations 2000, which sets out the amount of cash support provided weekly to these categories.

3. Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 The Home Office laid regulations in March 2009 as follows:

- *The Asylum Support (Amendment) Regulations 2009*
- *The Asylum Support (Amendment) (Revocation) Regulations 2009*

3.2 The first set of regulations were revoked before they came into force following concerns on proposals affecting the rate of support for lone parents. These concerns have been addressed within the amended regulations.

4. Legislative Context

4.1 The regulations are being made to set the annual rates of asylum support in line with inflation. Regulation 10 of the Asylum Support Regulations 2000 (SI 704/2000) stipulates the support which may be provided by the Home Office to supported asylum seekers and their dependants in respect of essential living needs (ie their subsistence support). This Statutory Instrument amends the table at regulation 10(2) by applying a 5.2% increase to the level of support for children under 16 and aged 16-18, adults aged 18 to 24 and adult couples from 6 July 2009. In line with the practice established in 2008, the increase is based on the Consumer Price Index for September.

4.2 This year there will be no increase in support payments for those adult asylum seekers already in receipt of the existing lone parent and over 25 rate on 5 October 2009. The over 25 rate will be closed to all new applicants with

effect from midnight on 4 October 2009. With the exception of adult couples and lone parents, the regulations introduce a new rate of support for all new adult applicants from 5 October 2009 where the decision to grant support is made from 5 October 2009 onwards.

4.3 The new unified rate of support for adults will not affect those over 25 where a decision to grant support has been made prior to 5 October 2009, and the person reaches age 25 prior to 5 October 2009.

4.4 A decision to grant support is made on the date recorded on the letter granting asylum support to the applicant.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The policy objective behind Part VI of the Immigration and Asylum Act 1999 is to provide support for destitute asylum seekers and their dependants. Paragraph 3 of Schedule 8 of the 1999 Act gives the Secretary of State for the Home Department the power to make regulations setting out the prescribed levels of support. This statutory instrument fulfils the policy objectives of the 1999 Act by outlining the prescribed levels of support payable as a general rule to different categories of asylum seekers.

7.2 The Asylum Support Regulations 2000 which came into force on 3 April 2000 make provision (in regulation 10) for the amounts to be paid as a general rule, in respect of their essential living needs to destitute asylum seekers and their dependants. The practice is to use annual regulations to set the asylum support rates for the coming year.

7.3 Previous practice has been to increase all asylum support rates in line with inflation. This year consideration has been given to the structure of asylum support payments to ensure that the essential living needs of asylum seekers are met within current budgetary constraints. We have also considered whether existing support categories may be simplified.

7.4 The existing support structure was modelled in 1999 on that used by Department of Work and Pensions (DWP) for income support. The DWP system distinguishes between persons aged under and over 25. After careful consideration, the Home Office is satisfied that this structure is not applicable to asylum seekers. All asylum applicants have access to rent free

accommodation with utilities included. Therefore essential living needs of supported asylum seekers do not change on the 25th birthday.

7.5 There will therefore be a new unified rate of support for single adults, regardless of age, to be introduced on 5 October 2009 based on the rate of support provided to adults aged 18 to 24. This change will not affect those over 25 where a decision to grant support has been made prior to 5 October 2009 and the person reaches age 25 prior to 5 October 2009. The regulations define when the decision to grant support is made, which is being inserted into the Asylum Support Regulations 2000.

7.6 In line with the practice established in 2008, rates for children, adult couples and 18–24 year olds will increase on 6 July 2009 in line with the Consumer Price Index for September 2008, the same month used as a basis for DWP increases in income support for 2009-10. The Consumer Price Index is based on a sample of goods that a typical household may buy including food and household goods but excluding most housing related costs. It is therefore a suitable index for subsistence support for asylum seekers whose housing costs are fully met through the provision of accommodation.

7.7 The effects of this statutory instrument are confined to those eligible for asylum support. This is a politically important change in terms of support provision provided to asylum seekers, but there will be little public interest in the policy, interest coming primarily from those organisations concerned with the welfare of asylum seekers.

7.8 Last year's regulations, The Asylum Support (Amendment) Regulations 2008, Statutory Instrument 2008 No. 760, are being revoked.

- ***Consolidation***

7.9 We are substituting a table at regulation 10(2) of the Asylum Support Regulations 2000, rather than amending these Regulations in a significant way, therefore we consider that there is no need for consolidation.

8. Consultation outcome

8.1 There has been no consultation, as this forms part of an annual review mechanism but we will write to main stakeholders to explain the changes. We intend to consult on a full review of asylum support legislation with a view to bringing forward proposals in the Bill aimed at simplifying immigration legislation, which we plan to publish in draft before the end of this parliamentary session.

9. Guidance

9.1 No separate guidance is considered necessary at this time, as the Regulations, Explanatory Note and Memorandum provide full information. In terms of practical application, the new asylum support rates and categories will be achieved through an information technology change request.

Caseworkers assessing applications for support will be notified of the new single adult category for support before this is introduced on 5 October 2009 and any necessary amendments to the guidance for caseworkers will be made.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, because no impact on the public, private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring and review

12.1 Asylum support rates are reviewed annually by Department officials. The review takes into account essential living needs of asylum seekers, inflation and Department budget allocation for the forthcoming year. We intend to consult on a full review of asylum support legislation with a view to bringing forward proposals in the Bill aimed at simplifying immigration legislation, which we plan to publish in draft before the end of this parliamentary session. A response will be published to this consultation.

13. Contact

Ann Robertson at the Immigration Policy Directorate, Tel. 020 8760 8612 or e-mail: Ann.Robertson@homeoffice.gsi.gov.uk can answer any queries regarding this instrument.