

**2006 No. 2525**

**IMMIGRATION**

**The Refugee or Person in Need of International Protection  
(Qualification) Regulations 2006**

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| <i>Made</i> - - - -           | <i>11th September 2006</i> |
| <i>Laid before Parliament</i> | <i>18th September 2006</i> |
| <i>Coming into force</i> - -  | <i>9th October 2006</i>    |

The Secretary of State is 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, and in exercise of the powers conferred on him by that section, makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and shall come into force on 9th October 2006.

(2) These Regulations apply to any application for asylum which has not been decided and any immigration appeal brought under the Immigration Acts (as defined in section 64(2) of the Immigration, Asylum and Nationality Act 2006(c)) which has not been finally determined.

**Interpretation**

2. In these Regulations—

“application for asylum” means the request of a person to be recognised as a refugee under the Geneva Convention;

“Geneva Convention” means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the New York Protocol of 31 January 1967(d);

“immigration rules” means rules made under section 3(2) of the Immigration Act 1971(e);

“persecution” means an act of persecution within the meaning of Article 1(A) of the Geneva Convention;

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(a) S.I. 2004/2642 designates the Secretary of State in matters relating to immigration, asylum, refugees and displaced persons.  
(b) 1972 c. 68.  
(c) 2006 c.13.  
(d) The Convention relating to the Status of Refugees (“the Geneva Convention”) is contained in United Nations Treaty Series No. 2545, volume 189 at page 137 and applied to those who became refugees as a result of events occurring before 1st January 1951. It came into force on 22nd April 1954. The 1967 Protocol relating to the Status of Refugees is contained in United Nations, Treaty Series No. 8791, volume 606 at page 267. It amends the Geneva Convention so that it also applies to those who become refugees as a result of events occurring on or after 1st January 1951 and it came into force on 4th October 1967.  
(e) 1971 c.77

“person eligible for humanitarian protection” means a person who is eligible for a grant of humanitarian protection under the immigration rules;

“refugee” means a person who falls within Article 1(A) of the Geneva Convention and to whom regulation 7 does not apply;

“residence permit” means a document confirming that a person has leave to enter or remain in the United Kingdom whether limited or indefinite;

“serious harm” means serious harm as defined in the immigration rules;

“person” means any person who is not a British citizen.

### **Actors of persecution or serious harm**

3. In deciding whether a person is a refugee or a person eligible for humanitarian protection, persecution or serious harm can be committed by:

- (a) the State;
- (b) any party or organisation controlling the State or a substantial part of the territory of the State;
- (c) any non-State actor if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including any international organisation, are unable or unwilling to provide protection against persecution or serious harm.

### **Actors of protection**

4.—(1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

- (a) the State; or
- (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.

(2) Protection shall be regarded as generally provided when the actors mentioned in paragraph (1)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.

(3) In deciding whether a person is a refugee or a person eligible for humanitarian protection the Secretary of State may assess whether an international organisation controls a State or a substantial part of its territory and provides protection as described in paragraph (2).

### **Act of persecution**

5.—(1) In deciding whether a person is a refugee an act of persecution must be:

- (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>(a)</sup>; or
- (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

(2) An act of persecution may, for example, take the form of:

- (a) an act of physical or mental violence, including an act of sexual violence;
- (b) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;

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(a) Agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom.

- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7.

(3) An act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

### **Reasons for persecution**

6.—(1) In deciding whether a person is a refugee:

- (a) the concept of race shall include consideration of, for example, colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall include, for example, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall include, for example, membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where, for example:
  - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
  - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
- (e) a particular social group might include a group based on a common characteristic of sexual orientation but sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the United Kingdom;
- (f) the concept of political opinion shall include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in regulation 3 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the person.

(2) In deciding whether a person has a well-founded fear of being persecuted, it is immaterial whether he actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to him by the actor of persecution.

### **Exclusion**

7.—(1) A person is not a refugee, if he falls within the scope of Article 1 D, 1E or 1F of the Geneva Convention.

(2) In the construction and application of Article 1F(b) of the Geneva Convention:

- (a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;
- (b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.

(3) Article 1F(a) and (b) of the Geneva Convention shall apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations together with amendments to the Immigration Rules (HC 395) in part implement Council Directive 2004/83/EC of 29th April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L304 30.9.2004 p 12) (“the Directive”). Many parts of the Directive do not require implementation as consistent provision is already made in existing domestic legislation. A transposition note has been prepared and is published together with the explanatory memorandum for this instrument on HMSO’s website: [www.opsi.gov.uk](http://www.opsi.gov.uk).

These Regulations apply to any person who is not a British citizen who makes an application for asylum on or after 9th October 2006 and to any application for asylum which has not been decided and any immigration appeal brought under the Immigration Acts which has not been finally determined. Application for asylum is defined in regulation 2 and Immigration Acts is defined in regulation 1.

Regulation 3 provides that in deciding whether a person is a refugee or person eligible for humanitarian protection the actors that can commit persecution or serious harm include the State, any party or organisation controlling the State or a substantial part of the territory of the State, or any non-State actor if the State or party controlling the State or a substantial part of it or any international organisation are unable or unwilling to provide protection against persecution or serious harm. Persecution and serious harm are defined in regulation 2.

Regulation 4 provides that in deciding whether a person is a refugee or person eligible for humanitarian protection the actors listed in regulation 4 (as set out above) and any international organisation can provide protection from persecution or serious harm. It also specifies when protection shall be regarded as generally provided.

Regulation 5 provides which acts can constitute persecution and the forms that persecution can take. It also provides that an act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

Regulation 6 provides that in determining whether a person is a refugee certain factors shall be taken into consideration when looking at the reasons for persecution in Article 1(A) in the Geneva Convention.

Regulation 7 sets out which persons are excluded from the Geneva Convention.

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