

**IMPLEMENTATION OF COUNCIL DIRECTIVE 2004/83/EC OF 29 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.**

A Public Consultation

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1. Scope of Document

- 1.1. This consultation paper invites comments from interested parties on the implementation of Council Directive 2004/83/EC of 29 April 2004 laying down 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 (“the Directive”).
- 1.2. A copy of the Directive is attached at Annex A¹:

¹ A copy of the Directive can also be accessed via the Europa website (www.europa.eu.int) or via http://europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_304/l_30420040930en00120023.pdf

2. Summary

- 2.1. The United Kingdom is committed to fulfilling its obligations under the 1951 United Nations Convention relating to the Status of Refugees (Geneva Convention), and to ensuring that those genuinely fleeing persecution are given the protection they need. Equally, the Government is determined to deal with any abuse of the asylum system by those who do not have a well founded fear of persecution, but seek to use asylum to by-pass legitimate immigration controls.
- 2.2. The Treaty of Amsterdam (1997) committed Member States to a range of measures designed to establish minimum standards for asylum procedures and policies across the Union by 1 May 2004 as a first step towards a Common European Asylum System.
- 2.3. The Directive is a key element of this package, laying down rules on the recognition of refugees and others in need of international protection and the content of status given to such persons. This is intended to ensure that common criteria for the identification of persons genuinely in need of international protection are applied across member states and that a minimum level of benefits is available for those granted status. Provisions include minimum standards on protection from refoulement, information, maintaining family unity, residence permits, travel documents, access to employment, access to education, social welfare, healthcare, access to accommodation, freedom of movement, access to integration facilities, and repatriation as well as extra provisions for children and vulnerable individuals.
- 2.4. The Government welcomes the Directive. In line with our policy of participating in all asylum measures where it is in the UK's interests, we decided to participate in the Directive in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland.
- 2.5. The Directive applies to non EU nationals but we are proposing to apply its terms to all asylum applicants.

- 2.6. The Directive sets the deadline of 10 October 2006 for implementation by Member States.
- 2.7. UK practice is currently in line with many of the provisions of the Directive. Where implementation is required it will be done through a combination of changes to the immigration rules and by way of Regulations under Section 2(2) the 1972 European Communities Act (the Regulations). Provisions in the Directive which are in the main providing guidance on the interpretation of provisions in the Geneva Convention and which are intended to apply to decisions made by both the Secretary of State and the courts/tribunals will be implemented by way of Regulations. Provisions relating to the grant of refugee status and subsidiary protection and the rights attached to such status are suitable for implementation in the immigration rules on the basis that they inform practices to be followed by the Secretary of State.
- 2.8. The general approach to implementation is to replicate the wording in the Directive with amendments where it is felt that further clarification is required. Policy documents will be updated in line with implementation and used to provide guidance on terms not defined in the Directive
- 2.9. The Regulations and proposed changes to the immigration rules are attached to this consultation document.

Consultation Questions

2.10. Whilst views are welcome on all aspects of the proposals, we would appreciate specific comments on the issues set out below:

- **Does current UK practice broadly reflect the Directive?**
- **Whether the proposed changes to the immigration rules and contents of the draft Regulations satisfactorily implement the Directive?**
- **Whether the UK should apply the provisions of the Directive to all asylum claims in the system (including at appeal) on 10th October 2006 or limit its application only to new asylum claims lodged on or after 10th October 2006.**
- **Should the Directive apply to claims from EU nationals?**
- **Whether there are any areas not covered in the consultation document.**

3. The Consultation Criteria

- 3.1 Wherever possible we have followed the Cabinet Office Code of Practice on Consultation. However, it should be noted that we are undertaking a **nine week consultation period** instead of the twelve weeks recommended by the Code of Practice on Consultation. We have opted for a nine week consultation period to allow adequate time to reflect upon the comments received before laying the revised immigration rules and regulations ahead of the transposition deadline of 10 October 2006.
- 3.2 In recognition of this shorter consultation period we have included proposed changes to the immigration rules and draft regulations alongside the consultation document to ensure the consultation exercise is as effective as possible. We will also supplement the written consultation exercise by hosting a stakeholder holding meeting to discuss the Directive's provisions and impact:
- 3.3 We still continue to reflect the other criteria as laid out in the consultation criteria, which are
- Consult widely throughout the process at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Assessment if appropriate.

The full code of practice is available at:

www.cabinetoffice.gov.uk/regulation/consultation/code

The Consultation Co-ordinator

- 3.4 If you have any comments or complaints about the consultation process you should contact the Home Office consultation co-ordinator Christopher Brain by email at:

Christopher.Brain2@homeoffice.gsi.gov.uk

Alternatively, you may wish to write to:

Christopher Brain
Consultation Coordinator
Performance and Delivery Unit
Seacole South East
Home Office
2 Marsham Street
London SW1P 4DF

How to respond

- 3.5 The consultation period begins on 26th June 2006 and ends on 29th August 2006. Please ensure your response reaches us by 29th August 2006. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents, and where applicable, how the views of the members were assembled.

Please send consultation responses (preferably by email) to

euasylumconsultation@homeoffice.gsi.gov.uk, or by post to:

Qualification Directive Consultation
European Asylum Policy Unit
Asylum and Appeals Policy Directorate
Immigration and Nationality Directorate
3rd Floor Apollo House
36 Wellesley Road
Croydon, CR9 3RR

- 3.6 The information you send to us may need to be passed to colleagues within the Home Office and/or published in a summary of responses received in response to this consultation. We will assume you are content for us to do this and that if you are replying by e-mail your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us. Please ensure that if you want your name or response to be kept confidential, you state this clearly in your response. (Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.)

4. Descriptions and Definitions

Article 1: Subject Matter and Scope

- 4.1. Article 1 explains the aims of the Directive which is to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of that protection granted. The Directive applies to the UK and all Member States, with the exception of Denmark which did not participate in the adoption this Directive.
- 4.2. Even though the Directive specifically applies to Third Country Nationals and stateless persons; it is our intention to apply the provisions of this Directive to all applications for asylum received in the United Kingdom.

Article 3: More Favourable Standards

- 4.3. As this is a minimum standards Directive, Member States are free to apply more favourable standards than those set out in the Directive in so far as those standards are compatible with the Directive. This article does not expressly require any implementation, but its existence has been taking into account during our consideration of the Directives provisions.
- 4.4. The Directive contains two types of provisions. These are divided into “may” and “shall”. The “shall” provisions impose obligations on Member States and we are required to give effect to them whether or not those provisions are seen to benefit an individual applicant. “May” provisions are permissive in nature, but we propose to implement them where they closely reflect existing UK policy and practice.

Article 2: Definitions

- 4.5. There are a number of definitions and obligations that Member States must have regard to when implementing the provisions of this Directive. The Regulations and immigration rules have been drafted in conformity with these definitions (definitions which require amendments to existing immigration

rules have not been included in the attached draft of the immigration rule changes) but depart from them in the following ways:

- "International protection" and "application for international" protection have not been defined as the terms are not used;
- "Grant of asylum" is used in place of "refugee status". This is reflected in the proposed changes to the immigration rules. Grant of asylum has the same meaning as refugee status in the Directive;
- The definition of "third country national" includes any person who is not a national of the United Kingdom thus making it clear that the Regulations apply to EU nationals;
- To minimise the changes required to existing practice, subsidiary protection will be renamed humanitarian protection for the purposes of implementation. Consequently a "person eligible for subsidiary protection" is replaced by a "person eligible for humanitarian protection". The definition of the term in the Regulations is linked to eligibility as set out in the immigration rules. The relevant provision in the immigration rules reflect the definition in the Directive;
- "refugee" is defined by reference to Article 1A of the Geneva Convention
- "subsidiary protection status" is replaced by "grant of humanitarian protection" but the definition remains the same. This is to reflect the continued use the term humanitarian protection in place of subsidiary protection;

Article 37: Reports

- 4.6. Article 37 lays down the need for Member States to report to the European Commission and the Council on the application of this Directive, giving particular priority to articles 15, 26 and 33. The European Asylum Policy Unit within IND, will act as a contact point collecting and coordinating responses from across business areas, and relate their impact to the Commission.

- 4.7. However this article does not require direct transposition, therefore no further action is required to provide a legislative basis for this.

Article 38: Transposition

- 4.8. This Article places an obligation on Member States to bring this Directive into force by 10th October 2006 and inform the Commission of the text of the provisions in national law that are covered by this Directive. We intend to complete transposition of this Directive for it to take effect on 10th October 2006 and report this to the Commission by way of a “Transposition Note”.

Articles 39 and 40: Entry into Force and Addresses

- 4.9. Articles 39 and 40 deal with Entry into Force of the Directive and Addresses. These articles do not need to be implemented into national legislation therefore no further action is being taken.

5. Persecution and Protection

Article 5: International protection needs arising sur place

- 5.1. The Directive treats sur place asylum applications as those in which a well founded fear of persecution or a real risk of suffering harm may be based on events which have taken place, or activities which the applicant has engaged in, since leaving the country of origin particularly, in the latter case, where it is established that the activities are a continuation of convictions or orientations which were held in the country of origin.
- 5.2. There is a discretionary provision at Article 5(3) which provides that “without prejudice to the Geneva Convention, Member States may determine that an applicant who files a subsequent application shall normally not be granted refugee status, if the risk of persecution is based on circumstances which the applicant has created by his own decision since leaving his country of origin”.
- 5.3. The Government considers that firm action needs to be taken against those who seek to manufacture a risk by acting in ways that are not a genuine reflection of their beliefs. Nevertheless we do not intend to implement Article 5(3). Its wording is unclear since it refers to “without prejudice to the Geneva Convention”, and case law in the UK has established that where a person does have a well founded fear of persecution they can be a refugee, irrespective of how that fear arose.
- 5.4. We therefore think the better approach is to test rigorously any asylum claim where we feel a person is acting inconsistently with their previous beliefs for the purpose of trying to create the conditions for an asylum application. Existing UK case law and article 4 of the Qualification Directive support assessing the claim in this way.
- 5.5. The other aspects of the article are similar to our existing policy and we will give effect to them through the immigration rules.

Article 6: Actors of Persecution or Serious Harm

- 5.6. The Directive refers to the following actors of persecution or serious harm:
- **The State**
 - **Parties or organisations controlling the state or a substantial part of the territory of the state;**
 - **Non state actors, if it can be demonstrated that the actors mentioned in (a) and (b) including international organisations, are unable or unwilling to provide protection against persecution or serious harm.**
- 5.7. IND already recognises that actors of persecution can include state and non-state actors, as well as rogue official abusing their position of authority
- 5.8. Our policy and practice is guided by case law² and broadly reflects the requirements of the Directive. In order to fully implement the Directive we will transpose these provisions in the Regulations. We will continue to include a reference to rogue officials within our Asylum Policy Instruction on *Assessing the Claim*, and consider these as actors of persecution in line with our current practice.

² Horvath v SSHD.
Svazas v SSHD
Shah & Islam V SSHD
<http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd000706/horv-1.htm#>

Article 7: Actors of Protection

5.9. The Directive recognises that protection from acts of persecution can be provided by:

- **The State, or**
- **Parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.**

5.10. IND recognises that the State or parties or organisations controlling the state or a substantial part of the territory of a state can provide protection against persecution and serious harm subject to the provisions in article 7(2) of the Directive.

5.11. Our policy concerning actors of protection is guided by case law, most notably the case of “Horvath”, and does not have a legislative framework. In order to meet the requirements of the Directive we will implement this provision by way of the Regulation.

Article 8: Internal Protection

5.12. The Directive allows the United Kingdom when assessing a claim for international protection, to consider whether there is a territory or part of a country in the person’s country of origin (the Directive’s definition of country of origin includes the country of former habitual residence for a stateless person) where there is no well founded fear of persecution or no real risk of the person suffering serious harm, and in which the person can reasonably be expected to stay. When taking the relevant decision the United Kingdom is obliged to have regards to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

- 5.13. Internal relocation is an important aspect of assessing applications for asylum and we will continue to take account of it. We will implement Article 8 by amending the Immigration Rules, which already cover internal relocation, to mirror more closely the wording of the Directive. We will also revise the API on *Internal Relocation*. We do not consider that these changes will impact significantly on existing caselaw and practice.

Article 9: Actors of Persecution

5.14. The Directive places a duty on the UK to define acts of persecution within the meaning of Article 1A of the 1951 Geneva Convention and provides that acts of persecution must reach a specified level of seriousness and can include:

- **Acts of physical or mental violence, including acts of sexual violence**
- **Legal, administrative, police and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner**
- **Prosecution or punishment, which is disproportionate or discriminate**
- **Denial of judicial redress resulting in a disproportionate or discriminatory punishment.**
- **Prosecution or punishment for refusal to perform military service in a conflict, including acts which fall under exclusion from being considered a refugee.**

5.15. We intend to implement this article in the Regulations. We do not believe that this will impact on our policy or current practice. We will not treat the list given above as being exhaustive. Our current practice also recognises, in line with the Geneva Convention, that lesser forms of harm may also constitute persecution in certain specified circumstances.

5.16. Article 9(3) provides that for a person to be a refugee there must be a connection between the acts of persecution and the reasons for persecution for a person to be a refugee. This provision is implemented in the Regulations. We intend to provide further guidance on article 9(3) in the Asylum Policy Instruction on *Assessing the Claim*. The guidance will reflect current United Kingdom caselaw, which requires that at least one of the main reasons motivating the persecutor is a Geneva Convention ground.

Article 10: Reasons for Persecution

5.17. The Directive stipulates that where an asylum claim is being assessed we are required to take into account the following elements:

- **Race, which shall include considerations of colour, descent or membership of a particular group.**
- **Religion, which shall include the holding of theistic and atheistic beliefs, the participation in or abstention from worship in private or public or in a community or not, other religious acts or expressions of view or forms of personal conduct mandated by religion.**
- **Nationality which is not confined to citizenship or lack of, common geographical or political origins or its relationship with the population of another state. It also requires that we assess nationality to include membership of a group determined by its cultural, ethnic or linguistic identity.**
- **A Particular Social Group which is perceived as being different by the surrounding society, and who share an innate or common background that cannot be changed or share a belief that is fundamental to their identity that a person should not be forced to renounce it**
- **Political Opinion, which includes the holding of an opinion, thought or belief on a matter related to the actors of persecution and to their policies or methods.**

5.18 The Directive states that it is immaterial whether the applicant actually possesses the above elements, provided that the actor of persecution perceives this characteristic in the applicant. This position is already reflected in the API on *Assessing the Claim* and we therefore consider that including it in the Regulation will not require a change to our current practice.

- 5.19 The provisions laid down in article 10 draw upon the UNHCR Handbook on procedures for determining refugee status and are similar to our own policy instructions.
- 5.20 The Directive's definition of a Particular Social Group (PSG) is similar, rather than identical, to that which has evolved in the UK. Caselaw, in particular *Shah and Islam*, has established that a PSG should have a common immutable characteristic. However

United Kingdom caselaw does not require that the PSG should be perceived as different by surrounding society. In the case of *Montoya* the court recognised, however, that such a perceived difference could help to identify a PSG. We propose to replicate the wording of Article 10 in the Regulations and then set out how it can best be interpreted in the light of United Kingdom caselaw in the API on *Membership of a Particular Social Group*. Guidance on how other provisions in article 10 are to be interpreted will be provided to caseworkers through revisions to the API on *Assessing the Claim*.

6. Qualification and Disqualification

Article 4: Assessment of Facts and Circumstances

6.1 Article 4 places a duty on the United Kingdom to assess each application for international protection on an individual basis. It makes clear that it is the duty of the applicant to submit all possible elements needed to substantiate the application as soon as possible and that the relevant elements are to be assessed in cooperation with the applicant. The assessment of the application includes taking into account the following:

- **The relevant facts of a country of origin at the time of taking a decision on the application, including its laws and regulations and the manner in which they are applied.**
- **Statements and documentation presented by the applicant concerning persecution or serious harm**
- **The applicants individual circumstances, which include gender, background, age and whether the experiences of the applicant amount to persecution or serious harm.**
- **Whether since leaving the country of origin the applicant has engaged in activities for the sole or main purpose of creating conditions for the application of asylum/international protection.**
- **Whether the applicant is able to benefit from the protection of another country where he would be granted citizenship.**

6.2 Article 4 also provides guidance on the significance to be attached to the fact of past persecution and serious harm suffered by an applicant in the assessment of an application.

6.3 This article also provides that where an applicant satisfies the five listed conditions, which are set out in the immigration rules, aspects of the

applicant's statements not supported by documentary or other evidence shall not need confirmation.

- 6.4 The provisions of article 4 closely reflect the asylum determination process in the United Kingdom. Currently asylum claimants undergo a screening interview which covers personal details, family background and travel routes to the United Kingdom. Following the initial interview the applicants are invited to attend a substantive interview in which the full facts of their case are established, and the applicant given an opportunity to explain why they fear return to their country of origin or habitual residence. During the determination stage their claim is assessed in line with the relevant facts of the country and the general credibility of the applicant.
- 6.5 Section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act³ and the immigration rules provide a basis for assessing credibility in asylum and human rights claims which is compatible with the provisions of article 4. Consequently, claims for international protection will continue to be considered in light Section 8. Immigration rule 341 which currently deals with credibility will be deleted and replaced with further guidance on credibility in the API on *Assessing the Claim*
- 6.6 Given that article 4 closely reflects our current practice on credibility assessment, we do not consider that it will result in changes to the consideration of cases. However because many of the factors listed in article 4 are currently considered in the light of published policies rather than on the basis of legislation, we propose to make amendments to the immigration rules to reflect the requirements of the Directive.

Article 13: Exclusion

- 6.7 The Directive requires the United Kingdom to exclude individuals from being a refugee where there are serious reasons for considering that they have committed acts contrary to article 1F of the Geneva Convention⁴. Also excluded are those who fall within Article 1D of the Geneva Convention which

³ <http://www.opsi.gov.uk/acts/acts2004/20040019.htm>

⁴ <http://www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=3b66c2aa10>

relates to those who are receiving aid or protection from organs or agencies of the United Nations, and those who fall within Article 1E.

- 6.8 The interpretation of Article 1D was considered in the Court of Appeal's judgement in the case of El-Ali and Daraz (2002). It concluded that the term "at present", in Article 1D, related to the date on which the Geneva Convention was signed – 28th July 1951. This means in effect, that only those asylum applicants who were receiving support from UNRWA on that date are affected by Article 1D. We do not consider the provision of article 12 of the Qualification Directive as affects that case law.
- 6.9 Generally our practice on exclusion from asylum is based on published policy and caselaw. Section 54 of the Immigration Asylum and Nationality Act 2006 does provide a statutory interpretation of Article 1F(c) of the Geneva Convention as it relates to terrorism. We consider that our current practice broadly reflects the provisions of Article 12. However the Directives provisions on exclusion which need to be implemented will be done so through the Regulations.

Article 13: Granting of Refugee Status

- 6.10 The Directive places a duty on the United Kingdom to grant refugee status to a person who qualifies to be recognised as a refugee in accordance with Chapters II and III of the Directive which relate to general provisions and the assessment of applications, including exclusion provisions.
- 6.11 In order to implement this provision we will amend the wording in 334 of the immigration rules. Rule 334 makes it clear that asylum will be granted to individuals who meet the listed criteria which reflect the provisions of the Directive.

Article 11: Cessation

- 6.12 Article 11 lays down a number of provisions which deal with the circumstances when a person ceases to be a refugee. The cessation clauses in the Directive replicate those in the Geneva Convention.
- 6.13 Section 76 of the 2002 Nationality, Immigration and Asylum Act 2002 (NIAA) allows ILR granted to a refugee to be revoked where one or more the cessation clauses 1C (1) - (4) in the Geneva Convention apply. Other powers, such as Section 10 of the 1999 Immigration and Nationality Act 1999 and Section 323 of the immigration rules allow us to revoke or curtail leave where applicable. However articles 11(e) and 11(f) are not mirrored in our legislation. We propose to replicate the grounds for cessation of refugee status set out in article 11 in the immigration rules. However we do not propose to take a power to revoke ILR granted to refugees where their refugee status is ceased as a result of an assessment based on a significant and non-temporary change in country conditions rather than their individual actions. Instead, as set out when the government introduced a new policy of limited leave for refugees in August 2005, it will continue to be our intention only to curtail limited leave granted to refugees where cessation action is taken on the basis of changes in country conditions.

Article 14: Revocation of, ending of or refusing to renew refugee status

- 6.14 The Directive lays down a number of provisions for the revocation or non renewal of refugee status if a person no longer qualifies for such status.
- 6.15 This article requires the United Kingdom to revoke, end or refuse to renew refugee status where it has been obtained as a result of deception or where the cessation provisions (article 11) or exclusion provisions (article 12) apply.
- 6.16 This article also provides that status may be denied, revoked, end or not renewed where the conditions in article 33(2) of the Geneva Convention are met with provisions in article 14(6) as to entitlement to certain rights. We intend to implement this article in the immigration rules.
- 6.17. We currently have legislative powers to take away a person's leave in various circumstances. Such powers are contained in Section 10 of the Immigration and Asylum Act of 1999 and Section 76 of the Nationality, Immigration and Asylum Act 2002 as well as paragraph 323 of the immigration rules. The Directive requires to revoke, end or refuse to renew a person's status. We currently do this as part of policy, but in order to satisfy the provisions of the Directive we intend to amend the immigration rules to reflect the provisions of article 14.
- 6.18. Our current published policy, as set out in the APIs on *Cessation, Cancellation and Revocation of Refugee Status* and on *Refugee Leave* is that we would only revoke ILR granted to a refugee who has been in the United Kingdom for more than five years, or the ILR granted to a refugee following five years of limited leave, in exceptional circumstances. We do not consider that the implementation of article 14 will impact on this policy. While it is clear that the article's requirement to revoke refugee status when its provisions apply is mandatory, this does not extend to an obligation to review the leave previously granted to a refugee.

7. Subsidiary Protection and Serious Harm

Article 15: Serious Harm

7.1 The Directive introduces a new category of protection known as subsidiary protection. A person is eligible for a grant of subsidiary protection where they do not qualify as a refugee but where substantial grounds have been shown for believing that they would face a real risk of suffering serious harm if they were returned to their country of origin or former habitual residence. The person must also be unable or owing to such risk unwilling to avail themselves of the protection of that country and not be subject to the exclusion provisions set out in the Directive.

Serious harm consists of:

- (a) **The death penalty or execution, or**
- (b) **Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or**
- (c) **Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.**

7.2 Humanitarian protection is currently granted to those who have been refused asylum but have shown that their removal from the United Kingdom will result in a real risk of suffering the death penalty, unlawful killing and torture or inhuman or degrading treatment or punishment which is deliberately inflicted.

7.3 Our definition of humanitarian protection currently does not include the wording in Article 15(c) of the Directive: "**Serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international and internal armed conflict**". Moreover, unlawful killing is not contained in the Directives definition of serious harm.

- 7.4 We will continue to grant humanitarian protection but our intention is to align as far as possible the current definition of humanitarian protection with the definition of subsidiary protection in the Directive. Consequently, the proposed definition of humanitarian protection will include unlawful killing and the wording from Article 15(c) of the Directive.

Article 17: Exclusion from Subsidiary Protection

- 7.5 The Directive requires the exclusion of individuals from subsidiary protection where there are serious reasons for considering that they have committed a crime against peace, a war crime, or a crime against humanity. It also excludes people who have committed a serious crime, have committed acts contrary to the purposes and purposes and principles of the United Nations or where they pose a danger to the community or the security of the United Kingdom. The exclusion provisions in the Directive also apply to persons who instigate or otherwise participate in the commission of the above mentioned crimes or acts.
- 7.6 Our published policy on *Humanitarian Protection* already sets out an exclusion criteria. However, additions will be needed to the immigration rules to meet the legislative requirements of the Directive.

Article 18: Granting of Subsidiary Protection

- 7.7 Article 18 requires the granting of subsidiary protection status to a third country national or a stateless person who is eligible for such protection in accordance with Chapters II and V of the Directive, which include the exclusion provisions.
- 7.8 There is no legislative basis to provide for the granting of subsidiary protection in the United Kingdom. Currently humanitarian protection is leave granted outside the immigration rules. In order to implement the Directive we will include humanitarian protection in the immigration rules and hence a grant of humanitarian protection will result in a grant of leave under the immigration rules.

Article 16: Cessation of Subsidiary Protection

- 7.9 Article 16, in similar terms of article 11, provides that an individual ceases to be eligible for subsidiary protection when the circumstances under which they were granted subsidiary protection have ceased to exist and protection is no longer required.
- 7.10 However in the application of article 19, there is an obligation on the United Kingdom to consider whether the change in situation is of such a non-temporary nature that the person will no longer face a real risk of serious harm on their return to their country or origin or habitual residence.
- 7.11 We believe that our published policy already broadly reflects the requirements as set out in article 16, however in order to align ourselves more closely to the Directive we will be amending the immigration rules.

Article 19: Revocation of, ending of or refusal to renew Subsidiary Protection.

- 7.12 As with the provisions on revocation of refugee status as set out in article 14, the directive requires the United Kingdom to revoke, end or refuse to renew the subsidiary protection status of a person who no longer qualifies for that status due to that status being obtained by deception or because the cessation provisions (Article 16) or exclusion provisions (Article 17) apply.
- 7.13 Powers already exist both in primary legislation and the immigration rules that allow leave granted to a beneficiary of humanitarian protection to be cancelled or curtailed where the above reasons apply. However the circumstances in which humanitarian protection may be revoked are currently set out in published policy rather than legislation.
- 7.14 In order to implement the requirements of the Directive we will introduce a new provision in the immigration rules which give effect to Article 19.

8. Member States Obligations

Article 20: General Rules

- 8.1 Article 20(2)-(4) provides for the UK to take into account when implementing Chapter VII of the Directive the specific situation of vulnerable persons which can include minors, unaccompanied minors, disabled persons, elderly persons, expectant mothers, or persons who have been subjected to serious forms of torture or abuse which can include psychological, sexual or physical violence. The UK is not obliged by this article to carry out or arrange to be carried out an individual evaluation of a vulnerable person's situation to determine whether he has special needs.
- 8.2 These provisions will be implemented in line with the manner of implementation adopted for similar provisions in the Reception Conditions Directive.
- 8.3 We provide guidance on handling claims from vulnerable people, e.g. in the Asylum Policy Instructions on gender issues and asylum interviews. We also provide targeted training for asylum staff who deal with victims of torture or those who have suffered mental or physical violence. Further policy instructions will be issued on which individual evaluations will be accepted for the purpose of Article 20.
- 8.4 Articles 20(6) and 20(7) allow the UK to reduce benefits to those who have created the necessary conditions for being recognised as refugees. We are not proposing to implement these provisions.
- 8.5 We do not consider that this article will impact on our current practice as it already broadly reflects the requirements of article 20.

Article 21: Protection from Refoulement

8.6 Article 21 provides for adherence to the principle of non-refoulement in accordance with international obligations.

8.7 However where not precluded by international obligations, the Directive allows for the refoulement of individuals in certain situations which replicate the provisions of 33(2) of the Geneva Convention, namely when:

- **The person is considered a danger to the security of the UK; or**
- **The person has been convicted of a particularly serious crime and constitutes a danger to the community.**

8.8 Under Section 77 of the NIAA the removal of a person whose claim for asylum is pending is forbidden and under section 6 of the Human Rights Act 1998, it is unlawful for a public authority, to act in a way which is incompatible with a right under the European Convention on Human Rights.

8.9 In meeting the requirements of the Directive those individuals who are recognised as refugees are granted leave to enter or remain in the United Kingdom, along with their grant of status, so are not refouled.

8.10 Furthermore section 72 of the NIAA provides an interpretation of Article 33(2) of the Geneva Convention, and sets out what constitutes a particularly serious crime and when an individual is presumed to be a danger to the community.

Article 22: Information

8.11 The Directive requires that those recognised as being in need of international protection shall be provided, as soon as possible after the grant of status, with access to information, in a language likely to be understood by them, on their rights and obligations relating to that status.

8.12 IND already provides information to asylum applicants once their claim has been determined listing their entitlements and rights in the form of an immigration status document as well as documents such as those forming part of the Sunrise Integration Programme and those in conjunction with Jobcentreplus listing the right and benefits to work for those granted leave to enter or remain. However this information, other than the Sunrise Programme leaflets, is currently only provided in English. We propose to amend the immigration rules to give legislative effect to this provision.

Article 23: Maintaining Family Unity

- 8.13 Article 23 places a duty on the UK to ensure that family unity can be maintained and to ensure family members of those granted refugee status or subsidiary protection, who do not individually qualify for such status, are entitled to claim benefits in accordance with articles 24 – 34 of the Directive, as far as this is compatible with the legal status of the family member. These provisions can be withdrawn, refused or reduced to persons for reasons of national security or public order. Additionally they do not apply to persons who have been excluded from refugee status or subsidiary protection. The UK may define conditions applicable to the benefits provided to family members of those with subsidiary protection provided any benefit guarantees an adequate standard of living,
- 8.14 We intend to implement article 23(1) and (2) by making changes to the relevant immigration rules.
- 8.15 Rule 349 deals with dependants and, amongst other things, sets out which dependants will be granted leave for the same length of time as the individual who is granted asylum. Where dependants are granted leave on the same basis as the principal applicant, they are also entitled to access social welfare provisions. It is envisaged that amendments will be made to this immigration rule when implementing article 23(1) - (2).
- 8.16 Article 23(4) allows us to reduce, revoke or withdraw the benefits set out in Articles 24-34, to family members. We have no intention to implement this provision. Our intention to not implement this provision is consistent with our approach with the implementation of article 5, on *sur place* claims, and 20 parts 6 and 7, on *general rules*.

Article 30: Unaccompanied Minors

- 8.17 Article 30 imposes a duty on the UK to provide representation for unaccompanied minors by legal guardianship or, where necessary, an organisation responsible for the care and well-being of minors or by other appropriate representation including that based on legislation or court order. It also requires that the UK protects and acts in the best interest of the child,

as far as possible keeping siblings together and tracing close relatives of a child as soon as possible.

- 8.18 Unaccompanied asylum seeking children in the UK are supported by Local Authority Children's Service Departments under the Children Act of 1989. The Act requires the local authority to look after any person aged 17 or less who has no parent or carer to be responsible for them. These organisations are specialist child care agencies and are wholly independent from the UK Immigration Services. Any child granted any form of leave to remain in the UK or refugee status will continue to benefit from these arrangements, so long as they have no parent or guardian able and willing to care for them.
- 8.19 We are satisfied that the comprehensive provision in UK law for the care and protection of children applies in full to children who have been recognised as refugees.

Article 33: Access to Integration Facilities

- 8.20 To facilitate the integration of refugees into society the United Kingdom is required to make provision for integration programmes which are considered to be appropriate, or create the pre-conditions which guarantee access to such programmes. Beneficiaries of subsidiary protection will also be granted access to integration programmes, where it is considered appropriate.
- 8.21 The United Kingdom currently makes provisions for integration programmes and we recognise the importance of integration in enabling individuals to achieve their full potential, gain access to services to which they are entitled and to contribute to the community. Integration strategy is monitored by the National Refugee Integration Forum (NRIF) and is chaired by the Parliamentary Under Secretary of State for Nationality, Citizenship and Immigration who has responsibility for Refugee Integration. The Home Office also administers the European Refugee Fund, the Challenge Fund, Purposeful Activities Asylum Seekers Fund, and the Refugee Community Development Fund to help promote refugee integration in the UK. These programmes are accessible to those with both refugee status and humanitarian protection.

8.22 The Gateway Protection Programme also resettles up to five hundred vulnerable refugees to the UK each year. Integration support is provided for twelve months, ensuring access to all mainstream services and an intensive programme of guidance, orientation and advice.

Currently the programmes launched by the Home Office are:

- The Sunrise programme (Strategic Upgrade of National Refugee Integration Services), which is a personal caseworker approach managing the transition from an asylum seeker to a refugee. The programme provides one to one support to meet initial needs such as housing, health and education.
- Mentoring, where volunteer mentors provide refugees with support, encouragement, motivation and guidance to their refugee mentees as they seek to achieve their goals in integration, education and employment.

Articles 35 and 36: Administrative Cooperation

8.23 Article 35 deals with the need for the UK to appoint a national contact point who will communicate with other European Member States. The address of the contact point will be provided to the Commission. The UK is also required to take all the appropriate measures to establish a direct exchange of information between the competent authorities.

8.24 Article 36 places a duty on the UK to provide appropriate training to the authorities and organisations who implement this directive and authorities responsible are bound by the confidentiality principle relating to any information which they have obtained during the course of their work.

8.25 We do not consider that these articles will need to be implemented expressly. However we are considering how to fulfil the need to train staff on the correct implementation of this Directive before it comes into force.

9. Documentation and Travel

Article 24: Residence Permits

- 9.1 Article 24 requires that beneficiaries of refugee status are provided with renewable residence permits valid for a minimum of three years unless there are compelling reasons of national security or public order. It states that these permits should be issued as soon as possible after their status has been granted. Family members of those given refugee status are entitled to renewable residence permits valid for up to three years. Those given subsidiary protection status are to be issued with a renewable residence permit valid for a minimum of one year unless there are compelling reasons of national security or public order. This is without prejudice to the provisions of Article 21(3)
- 9.2 At present the UK has no existing legislation covering the grant of residence permits to those granted asylum or humanitarian protection. Residence permits are covered by published policy. As a matter of policy refugees and those eligible for humanitarian protection are granted leave for five years, and qualifying dependants also receive five years. Such persons can apply for indefinite leave at the end of that five year period.
- 9.3 To meet the requirements of article 24, residence permits will be issued to those who have been granted asylum or humanitarian protection and will be valid for five years and renewable, upon completion of the application process.
- 9.4 We will also issue these permits to the family members of those granted asylum or humanitarian protection.
- 9.5 Individuals granted residents permits will no longer be entitled them where for whatever reason they cease to be eligible for humanitarian protection or a grant of asylum or are excluded from humanitarian protection or asylum following a grant of status.

Article 25: Travel Documents

- 9.6 Article 25 provides that beneficiaries of refugee status shall be issued with travel documents (in the form set out in the Schedule to the Geneva Convention) for the purpose of overseas travel unless compelling reasons of national security or public order otherwise require. Recipients of subsidiary protection (who cannot obtain their own national passport) should be issued with travel documents which enable them to travel, at least when serious humanitarian reasons arise that require their presence in another state, unless compelling reasons of national security or public order otherwise require.
- 9.7 IND currently issues Convention Travel Documents (CTDs) for longer than is required by the Directive. We issue CTDs for five years or in line with leave for those with limited leave, and ten years for those with indefinite leave. We can also issue Certificates of Identity (CIDs) to those with humanitarian protection who are unable to obtain a national passport.
- 9.8 However, there is no legislative basis for our practice. We therefore intend to amend the immigration rules to create such a basis. The Rules will also include the issue of travel documents to family members, as defined in the Regulations.
- 9.9 We have no plans to reduce the length of time for which documents are issued and we will continue our current practice of issuing documents which cover the period of leave.

Article 32: Freedom of Movement within the Member State

- 9.10 Article 32 provides that beneficiaries of refugee status and subsidiary protection status may have freedom of movement within the Member State under the same conditions and restrictions as other third country nationals lawfully resident in the UK.

- 9.11 There is no legislative basis for freedom of movement for people with refugee status any more than there is a legal basis for freedom of movement for anyone else.
- 9.12 We do not consider that any legislation is needed to give effect to this Article. The absence of legislation which might conflict with this provision is in our view sufficient.

10. Work and Study

Article 26: Access to employment

- 10.1 Article 26 provides for beneficiaries of refugee status to engage in employed or self-employed activities immediately after refugee status has been granted (subject to rules generally applicable to the profession and public service) under the same conditions as nationals. They are also permitted to undertake employment related education opportunities for adults, vocational training and practical work experience. Those granted subsidiary protection status are also permitted to engage in employed or self employed activities (subject to rules generally applicable to the profession and public service).
- 10.2 Article 26 also allows consideration to be given to the situation of the labour market including possible prioritisation of access to employment for a limited period of time. Recipients of subsidiary protection should have access to a post for which they have received an offer in accordance with national rules on prioritisation in the labour market. Those with subsidiary protection status should also have access to employment related education opportunities for adults, vocational training and practical work experience under conditions decided by member states.
- 10.3 Laws in force in member states applicable to remuneration, access to social security systems for employed or self-employed activities and other conditions of employment should apply to those with refugee status and subsidiary protection status.
- 10.4 Those granted refugee status or subsidiary protection have access to educational and vocational training relating to employed or self-employed activities. Such training is funded and administered by the Learning and Skills Council (LSC). The DfES will continue to work with the LSC to ensure that these opportunities are available to refugees and those granted humanitarian protection.
- 10.5 In order to implement this article in respect to those granted limited leave, changes will be made to the immigration rules to make clear that the

Secretary of State will not impose conditions restricting the employment or occupation in the United Kingdom of a person granted asylum or humanitarian protection.

Article 27: Access to Education

- 10.6 Article 27 provides for those minors with refugee and subsidiary protection status to be given full access to the education system under the same conditions as UK nationals.
- 10.7 Adults granted refugee status or subsidiary protection status should be given access to the general education system, further training or retraining under the same conditions as third country nationals legally resident.
- 10.8 Equal treatment between those with refugee status or subsidiary protection status and nationals should be ensured in relation to any existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.
- 10.9 For those under 16 local authorities in England and Wales have a legal responsibility under section 13 and 14 of the Education Act 1996 to secure the provision of sufficient school places so that education is available for all children of compulsory school age. This duty applies irrespective of a child's immigration status or rights of residence in a particular area. Eligibility for regulated tuition fees for access to Higher Education is under the Student Fees (Qualifying Courses and Persons) Regulations 2006 (S.I. 2006/482) and the Education (Fees and Awards) Regulations 1997 (S.I. 1997/1972) and covers the charging of fees for admission, registration or matriculation. The 1997 Regulations state that those not included in the Schedule may be charged higher fees than those listed in the schedule. Those given refugee status and those refused refugee status, but granted permission to remain/enter by the Home Secretary are listed in the Schedule.
- 10.10 Since 2001 citizens of the UK and of the EU, refugees and asylum seekers have been entitled to free Skills for Life courses which include English for Speakers of Other Languages (ESOL) through further education colleges or other Learning and Skills Council funded providers. Skills for Life caters for

the literacy, language and numeracy needs of all post 16 learners including those with learning difficulties or disabilities. Learners of any age have access to literacy, numeracy and English language courses free of charge, as well as free tuition to undertake a first full level 2 qualification.

- 10.11 Regulations and funding rules concerning 16-18 year olds refugees and asylum seekers studying in England at publicly funded institution are as follows: School 6th Forms - School Admissions Code of Practice, and the Learning and Skills Council's (LSC) Funding Guidance. 16-18 year old learners are normally eligible for LSC funding and do not have to pay tuition fees.
- 10.12 Further and higher education institutions use the Education (Fees and Awards) Regulations 1997, as a guide to determine whether to charge students tuition fees at the 'home' rate or 'overseas' rate. Anyone who is recognised as a refugee by the UK Government (granted Refugee Status) who has remained ordinarily resident in the UK and Islands since so recognised, or the spouse, civil partner or child of such a refugee is charged tuition fees at the 'home' rate. This also applies to anyone refused refugee status but who has been granted Humanitarian Protection and who has remained ordinarily resident in the UK and Islands since being granted that status, or the spouse, civil partner or child of such a person.
- 10.13 Tuition fee student support in England, which constitutes access to education, is granted under the Student Support Regulations 2006 (S.I. 2006/119). Refugees are in a better position than nationals in terms of eligibility as they are not required to satisfy a 3 year prior residence test. A person refused refugee status but given leave to enter or remain is eligible on the same basis as nationals.
- 10.14 EMAs are not within the scope of this Directive as they do not relate to "access to education".

Wales

- 10.15 Children in Wales who are of compulsory school age and have refugee or HP status are afforded the same opportunities to benefit from the education

system as children in England. Immigration makes no difference to educational entitlement for children of compulsory school age (5 - 16). Section 13 of the Education Act 1996 sets out the general responsibility of LEAs in England and Wales, to "provide primary and secondary education for children in their area". There is no express or implied provision that exists in Wales that has the effect of precluding a minor who has been granted refugee or HP status from accessing education under section 13, although there may of course be ancillary issues concerning the identity of the school that the child should attend. To assist LEAs in Wales perform their functions towards minors with refugee or HP status, they may apply to WAG for an Ethnic Minority Achievement Grant targeted at pupils learning English as an additional language and ethnic minority pupils at risk of under achievement (section 14-16 Education Act 2002). Section 14 of the 1996 Act extends the section 13 responsibility by placing a duty on LEAs to ensure sufficient schools exist in their area to provide full time education for all children of compulsory school age resident in their area. Again, no provision exists in Wales to preclude minors with refugee or HP status. Whilst section 14 expressly states that schools must exist for children of 'compulsory school age' section 13 makes no such qualification and merely states that LEAs are responsible for 'children in their area'. The effect of section 13 is to include children aged between 16 - 18 who continue to be registered and receive full time education at a LEA maintained secondary school. There is no existence of any provision applicable to Wales that precludes young persons aged between 16 - 18 with refugee or HP status from accessing education at a school maintained by a LEA.

Scotland

- 10.16 The Acts that cover Scotland in respect of the above are: Standards in Scotland's Schools Act 2000, every child has the right to school education by an education authority and Education (Scotland) Act 1980 which places a duty on both local authorities and parents to provide education to children up to school leaving age (16).
- 10.17 Adults granted refugee or subsidiary protection status have the same access to further education in Scotland as nationals. This is not covered by

legislation directly but is covered through the guidance issued to colleges by the Scottish Further and Higher Education Funding Council.

10.18 With regard to the Student Support Entitlement, refugees and those granted some other form of leave are eligible for support if they fulfil certain residence criteria. The Scottish administration is amending the residence criteria so that refugees and those granted leave to remain (or their spouse, civil partner or child) will be eligible to apply for support provided they are ordinarily resident in Scotland at the start of the course, and have been ordinarily resident in the UK and Islands at all times since the status was awarded. Under the current arrangements all students (with the exception of refugees and under 18s granted Temporary Protection) are required to fulfil 3 years ordinary residence criteria in order to be eligible for support. In 2005/2006 the residence requirements were set out in the Further Education Bursaries (Scotland) (No3) Direction 2005 for the FE sector. A number of regulations apply to HE student support –

- the Nursing and Midwifery Student Allowances (Scotland) Regulations 1992
- the Education (Fees and Awards) (Scotland) Regulations 1997
- the Students' Allowances (Scotland) Regulations 1999
- the Education (Student Loans) (Scotland) Regulations 2000
- the Graduate Endowment (Scotland) Regulations 2001

10.19 Students are also eligible for EMAs (16-19) if they fulfil the residence criteria set out in the Education Maintenance Allowances (Scotland) Regulation 2004 for the schools sector, or the Education Maintenance Allowances (Scotland) (No3) Direction 2005 for the FE sector.

Northern Ireland

- 10.20 The admissions criteria for all schools in Northern Ireland (N.I) are the responsibility of the board of Governors of all schools. Criteria must provide for all children resident in NI at the time of their proposed admission to the school, to be selected before any child not resident in NI may be selected for admission. Education and Libraries (Northern Ireland) Order 1986 – Articles 5 and 6 – gives access to those granted TP status as read with definitions of Article 2. Also the Education and Libraries (Northern Ireland) Order 1997 Part 3.
- 10.21 Literacy and Numeracy courses are free in Northern Ireland, but the current availability of free ESOL courses in England does not apply to Northern Ireland. Residency requirements attaching to fee regulations mean that ESOL courses in Northern Ireland cannot be offered free of charge to all applicants. These regulations are presently being reviewed by the Department for Employment and Learning.
- 10.22 The Education Student Support Regulations (Northern Ireland) 2005 provide that persons settled in the UK within the meaning of the Immigration Act 1971 who have been ordinarily resident in the UK for 3 years prior to the start of their course will be entitled to the same student finance arrangements as home students. This is subject of course, to the person being eligible to enter higher education in other respects i.e. appropriate qualifications etc.
- 10.23 The position on recognition procedures is that educational institutions in the UK, like employers and professional bodies, make their own decisions on the acceptability of qualifications for entry of students to courses, employment and professional training. However, UK NARIC is the national agency contracted to the UK Government as the only official source of information and advice on international education and training systems and overseas skills and qualifications. They provide a recognition service and information, in an advisory capacity, on all international qualifications from 183 countries worldwide, in comparison with those in the UK. Individuals can apply to NARIC for an assessment of the comparability of their qualifications which

can help them with entry to further studies or training (or employment). Third country nationals are treated no differently to EU nationals. The criteria used for assessments of awards are applied to the qualification in question rather than the individual.

11. Housing, Health and Welfare

Article 28: Social Welfare

- 11.1 Article 28 provides for beneficiaries of refugee and subsidiary protection status to receive the same necessary social assistance as provided to UK nationals. It permits limits on social assistance granted to beneficiaries of subsidiary protection status to core benefits provided at the same levels and under the same eligibility conditions as UK nationals.
- 11.2 Social security benefits legislation applies throughout Great Britain and has not been devolved. In Northern Ireland, social security is a devolved matter and although Northern Ireland has a separate body of social security legislation, it operates in parity with that of Great Britain. However tax credit legislation applies throughout the United Kingdom
- 11.3 Section 115 of the Immigration and Asylum Act 1999 prevents persons subject to immigration control from accessing a defined list of public funds, subject to prescribed modifications. These public funds are:
- Income-based jobseeker's allowance under the Jobseekers Act 1995 or the Jobseekers (Northern Ireland) Order 1995.
 - Income support
 - Housing benefit, or
 - Council tax benefit, under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in relation to Income Support and Housing Benefit only.
 - State pension credit under the State Pension Credit Act 2002 or the State Pension Credit Act (Northern Ireland) 2002.
 - Child benefit

11.4 However, once granted refugee or humanitarian protection status, a person is not prevented from having access to these public funds as they are not a person subject to immigration control as defined by Section 115 of the 1999 Immigration and Asylum Act.

11.5 Once an individual is given refugee status or humanitarian protection, they are entitled to the same income-related benefits as UK nationals, subject to the normal conditions of entitlement. These benefits include:

- Income Support, income-based Job Seekers Allowance,
- State Pension Credit,
- Housing Benefit,
- Council Tax Benefit.

They are also entitled to claim child benefit, subject to the normal conditions of entitlement.

11.6 These benefits are still accessible with regards to refugees or beneficiaries of humanitarian protection being granted five years leave, however, once humanitarian protection is placed in the Immigration Rules it will be necessary to amend the income-related benefits regulations in order to continue to provide that people with humanitarian protection have access to those benefits.

11.7 Section 42 of the Tax Credits Act 2002 allows for regulations to be made to exclude persons subject to immigration control from entitlement to the child and working tax credits. These regulations are contained in the Tax Credits (Immigration) Regulations 2003. Regulation 3 (1) sets out the basic rule that persons subject to immigration control are not entitled to the child and working tax credits. But there are exceptions to the general rule and these are set out in Cases 1 to 5 of regulation 3 (1) and in regulation 3 (2).

- 11.8 We do not consider this will be a significant change to existing operational practice. Current legislation complies with the Qualification Directive as those who have leave as a refugee and those with Humanitarian Protection are not subject to immigration control.

Article 29: Health Care

- 11.9 Article 26 provides that beneficiaries of refugee or humanitarian protection should have access to health care under the same eligibility conditions as UK nationals.
- 11.10 NHS primary medical services are free to all persons lawfully resident in the UK regardless of their immigration status. Beneficiaries of refugee status are therefore eligible for free NHS primary medical services. Under section 16CC(1) of the NHS Act 1977, each Primary Care Trusts (PCT) has a duty, to the extent that it considers necessary to meet all reasonable requirements, to exercise its powers so as to provide or secure the provision of primary medical services within its area.
- 11.11 NHS secondary care is also provided free of charge to those given refugee status or subsidiary protection status. They are exempt from charges in England under the NHS (Charges to Overseas Visitors) Regulations 1989 as amended which cover those who have been accepted as refugees in the UK and those who have made a formal application for leave to stay as a refugee in the UK which has not yet been determined. Beneficiaries of refugee status are also able to access free NHS secondary care as persons taking up permanent residence in the UK.
- 11.12 Decisions as to what health services should be provided for individuals with special needs are matters of clinical judgement in each individual case, made within the policies of the particular NHS Trust or PCT in the absence of specific directions from the Secretary of State for Health under section 17 of the NHS Act 1977.
- 11.13 In Scotland, general NHS provisions under the NHS (Scotland) Act 1978 which make care available to residents of an NHS board apply. Like their English equivalent the NHS (Charges to Overseas Visitors) (Scotland) Regulations 1989 as amended cover people who have been accepted as refugees in the UK, who would also qualify as persons taking up permanent residence in the UK or as lawful UK residents of not less than one year immediately before the services are provided and people who have made a formal application for refugee status which has not yet been decided.

- 11.14 NHS Boards would be expected to treat persons who are seeking or have obtained refugee status on the same basis as other residents, with access to specialist services based on clinical need. NHS Boards also have a duty to secure the provision of primary medical services to any resident of their areas.
- 11.15 Health care in Wales is a devolved matter although similar provisions apply in Wales as they do in England. There is also a requirement on the Assembly that means that when the Assembly is exercising its functions in relation to healthcare it is under a duty to do so in accordance with principles of equality of opportunity and would therefore have to provide healthcare for those granted refugee status and subsidiary protection.
- 11.16 The current legislation in operation within Northern Ireland regarding healthcare treatment for overseas visitors is the Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005 which came into force on 10 January 2006. With regard to individuals with special needs Northern Ireland is in a similar position to England. In that matters of clinical judgement in each individual case, are made within the policies of the particular HSS Trust or Health and Social Services Board in the absence of specific directions from the Department of Health, Social Services and Public Safety under Article 17 of the Health and Personal Social; Services (Northern Ireland) Order 1972.

Article 31: Access to Accommodation

- 11.17 Article 31 provides that beneficiaries of refugee or subsidiary status have access to accommodation under equivalent conditions as other third country nationals in the UK.
- 11.18 The legislation governing the allocation of local authority housing and homelessness assistance in England and Wales (referred to collectively here as “social housing”) is Parts 6 and 7 of the Housing Act 1996, respectively. Sections 160A(1) and (3) and 185(2) of the 1996 Act provide that persons

who are subject to immigration control will not be eligible for social housing unless they come within a class of persons prescribed in regulations by the Secretary of State

- 11.19 In England, [the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006⁵ (“the English Housing Regulations”)] provide that a person who is a refugee within the definition in Article 1 of the Geneva Convention and who has leave to enter or remain in the United Kingdom is eligible for social housing. In Wales “The Allocation of Housing (Wales) Regulations 2003 (“the Wales Regulations”) apply. Regulation 4 describes the Classes prescribed under section 160A(3) who are eligible for an allocation of accommodation. This includes persons recorded by the Secretary of State as a refugee within Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967.
- 11.20 The English Housing Regulations and the Wales Regulations provide that people with exceptional leave to enter or remain in the United Kingdom granted outside the provisions of the immigration rules and whose leave is not subject to a condition requiring them to maintain and accommodate themselves without recourse to public funds are eligible for social housing. This will include people with humanitarian protection since humanitarian protection is a form of limited leave which is currently granted exceptionally outside the provisions of the Immigration Rules.
- 11.21 Once humanitarian protection is brought within the Immigration Rules, it will be necessary to amend the English Housing Regulations and the Wales Regulations in order to continue to provide that people with humanitarian protection are eligible for social housing.
- 11.22 In addition the Homelessness (Wales) Regulations 2000, (SI 2000/1079), provide for certain provisions of Homelessness (England) Regulations 2000 to have effect in Wales (namely regulations 3, 4, 5 and 6) and revoke Homelessness Regulations 1996 (along with the regulations which amended them). As these statutory instruments mirror English regulations, they also

⁵ The Regulations came into force on 01st June 2006.

refer to exceptional leave to enter or remain outside the provision of the immigration rules.

11.23 Under the Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (S.I. 2000/706) classes of persons subject to immigration control who are eligible for assistance under Scotland and Northern Ireland's homelessness legislation and can be granted tenancies of social housing in Scotland and Northern Ireland are specified. Both refugees and those given Humanitarian Protection are covered, however Humanitarian Protection is covered by exceptional leave to enter or remain outside the provision of the immigration rules.

11.24 Where current housing regulations make provision for beneficiaries of humanitarian protection on the basis that this is granted outside the immigration rules, these will be amended to reflect humanitarian protection being brought within the immigration rules. The Department for Communities and Local Government (formerly Office of the Deputy Prime Minister) will amend the relevant legislation that applies to England, and the National Assembly for Wales will ensure that the legislation that applies to Wales is also amended. The Home Office has responsibility for the relevant legislation that applies to Northern Ireland and to Scotland, and will ensure that it is amended accordingly.

12. What will happen next?

A summary of responses including the next steps will be published in **September 2006** on the Home Office website.

Paper copies will be available on request at the address below:

European Asylum Policy Unit
Asylum and Appeals Policy Directorate
Immigration and Nationality Directorate
3rd Floor
Apollo House
Croydon
CR9 3RR

13. Glossary

API: Asylum Policy Instruction

APU: Asylum Policy Unit

Asylum Application and Asylum Claim: Have the same meaning in the context of this document.

Cessation: The coming to the end of being recognised as a refugee for the purposes of international protection.

DA's: Devolved Administrations.

Devolved Administrations: refers to Wales, Scotland and Northern Ireland.

DfES: Department for Education and Skills

DCLG: Department for Communities and Local Government (formerly Office of the Deputy Prime Minister)

DWP: Department for Work and Pension

EAPU: European Asylum Policy Unit

ECA: 1972 European Communities Act

EMA: Education Maintenance Allowance

FE: Further Education

HE: Higher Education

HMRC: Her Majesty's Revenue and Custom's

HO: Home Office

HP: Humanitarian Protection

Humanitarian Protection: A form of international protection granted to those who do not qualify for asylum.

ILE/ILR: Indefinite Leave to Enter/Remain.

Immigration Rules: United Kingdom immigration rules HC 395

IND: Immigration and Nationality Directorate

International Protection: Humanitarian Protection and Refugee Status.

LSC: Learning and Skills Council

NHS: National Health Service

N.I.: Northern Ireland

ODPM: Office of the Deputy Prime Minister, now known as Department for Communities and Local Government.

OGD's: Other Government Departments

Qualification Directive: Council Directive 2004/83/EC of 29 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 that protection granted.

Refoulement: Removal

Refugee/Geneva Convention: The 1951 Convention and the 1967 New York Protocol relating to the Status of Refugees.

"Rules": United Kingdom immigration rules HC 395.

SPU: Social Policy Unit

Subsidiary Protection: Humanitarian Protection

Third Country National: A non European Union Citizen

14. Consultees

Appeals Directorate

Appeals and Judicial Review Unit

Asylum Policy Unit

Asylum Procedures and Policy Unit

Asylum Casework Directorate

Department for Communities and Local Government

Wales

Department for Education and Skills

Wales

Scotland

Northern Ireland

Department of Health

Wales

Scotland

Northern Ireland

Department for Trade and Industry

Department of Work and Pensions

Northern Ireland

Enforcement and Removals Directorate

Her Majesty's Customs and Revenue

Managed Migration Directorate

National Asylum Support Service

National Recognition Information Centre (NARIC)

New Asylum Model

Social Policy Unit

