

Draft immigration rules to implement Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as person who otherwise need international protection and the content of the protection granted

Part 9. General Grounds for the Refusal of Entry

Amendment to IR 323. Insert:

(iv) on any of the grounds set out in paragraph 339A (i)-(vi) and paragraph 339G (i)

Part 11 Asylum and Humanitarian Protection

Definition of asylum applicant

327. Under the Rules an asylum applicant is a person who makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the United Kingdom's obligations under the Geneva Convention for him to be removed from or required to leave the United Kingdom.

Applications for asylum

328 – 333 – no changes.

Grant of asylum

Replace the current provisions in rule 334 with the following:

334. An asylum applicant will be granted asylum in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom ; and
- (ii) he is a refugee, as defined in regulation 2 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006; and
- (iii) there are no reasonable grounds for regarding him as a danger to the security of the United Kingdom; and
- (iv) if he has been convicted by a final judgment of a particularly serious crime, he does not constitute danger to the community of the United Kingdom; and
- (v) refusing his application would result in his being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.

335-337- no changes needed

338. Change “notified that asylum has been refused” to “notified that his asylum application has been refused”.

339. no changes needed

Revocation or refusal to renew grant of asylum

339A. A person's grant of asylum under 334 may be revoked or not renewed if the Secretary of State is satisfied that:

- (i) he has voluntarily re-availed himself of the protection of the country of nationality; or
- (ii) having lost his nationality, he has voluntarily re-acquired it; or
- (iii) he has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- (iv) he has voluntarily re-established himself in the country which he left or outside which he remained owing to a fear of persecution; or
- (v) he can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of nationality; or
- (vi) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised a refugee have ceased to exist, to return to the country of former habitual residence; or
- (vii) he should have been or is excluded from being a refugee in accordance with regulation 7 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006; or
- (viii) his misrepresentation or omission or facts, including the use of false documents, were decisive for the grant of asylum;
- (ix) there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or
- (x) having been convicted by a final judgment of a particularly serious crime he constitutes danger to the community of the United Kingdom.

In considering (v) and (vi), the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded.

Where an application for asylum was made on or after the 21st October 2004, the Secretary of State will revoke or refuse to renew a person's grant of asylum where he is satisfied that at least one of the provisions in sub-paragraph (i)-(vi) apply.

339B. When a person's grant of asylum is revoked or not renewed any limited leave which they have may be curtailed

Grant of humanitarian protection

339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom; and

- (ii) he does not qualify as a refugee as defined in regulation 2 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006; and
- (iii) substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, or in the case of a stateless person, to his country of formal habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) there are no serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes; and
- (v) there are no serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations or has committed, prepared or instigated such acts or induced others to commit, prepare or instigate instigated such acts; and
- (vi) there are no serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; and
- (vii) prior to his admission to the United Kingdom the person did not commit a crime outside the scope of (iv),(v) that would be punishable by imprisonment were it committed in the United Kingdom.

If the crime mention in (vii) has been committed, the Secretary of State will only refuse to grant humanitarian protection where he satisfied that the person left his country of origin solely in order to avoid sanctions resulting from the crime.

Serious harm consists of:

- (i) the death penalty or execution; or
- (ii) unlawful killing; or
- (iii) torture or inhuman or degrading treatment or punishment of an person in the country of origin; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

339D. If the Secretary of State decides to grant humanitarian protection to a person who has been given limited leave to enter (whether or not that leave has expired) or a person who has entered without leave, the Secretary of State will vary the existing leave or grant limited leave to remain.

Refusal of humanitarian protection

339E. Where the criteria set out in paragraph 339C is not met humanitarian protection will be refused.

339F. When a person in the United Kingdom is notified that he is not a person eligible for humanitarian protection he may, if he is liable to removal as an illegal entrant [, removal under section 10 of the Immigration and Asylum Act 1999] or to deportation, at the same time be notified of removal directions, served with a notice of intention to make a deportation order, or served with a deportation order, as

appropriate.

Revocation of humanitarian protection

339G. A person's humanitarian protection granted under paragraph 339C may be revoked or not renewed if the Secretary of State is satisfied that at least one of the following applies:

- (i) the circumstances which led to the grant of humanitarian protection have ceased to exist or have changed to such a degree that such protection is no longer required; or
- (ii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he has committed a crime against peace, a war crime, a crime against humanity, or any other serious crime or instigated or otherwise participated in such crimes; or
- (iii) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he is guilty of acts contrary to the purposes and principles of the United Nations Nations or has committed, prepared or instigated such acts or induced others to commit, prepare or instigate instigated such acts; or
- (iv) the person granted humanitarian protection should have been or is excluded from humanitarian protection because there are serious reasons for considering that he constitutes a danger to the community or to the security of the United Kingdom; or
- (v) the person granted humanitarian protection misrepresented or omitted facts, including the use of false documents, which were decisive to the grant of humanitarian protection.

In applying (i) the Secretary of State shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm;

Humanitarian protection granted on or after 21st October 2004 will be revoked or not renewed by the Secretary of State if a person with humanitarian protection ceases to be eligible for humanitarian protection because (i) applies.

339H. When a person's humanitarian protection is revoked or not renewed any limited leave which they have may be curtailed.

Consideration of applications

339I. When the Secretary of State considers a person's asylum or human rights claim or eligibility for a grant of humanitarian protection it is the duty of the person to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum or human rights claim or establish that he is a person eligible for humanitarian protection, which the Secretary of State shall assess in co-operation with the person.

The material factors include:

- (i) the person's statement on the reasons for making an asylum or human rights claim or eligibility for a grant of humanitarian protection; and
- (ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes; and
- (iii) identity and travel documents.

339J. The assessment by the Secretary of State of an asylum or human rights claim or eligibility for a grant of humanitarian protection will be carried out on an individual basis. This will include taking into account in particular:

- (i) all relevant facts as they relate to the country of origin at the time of taking a decision on the grant; including laws and regulations of the country of origin and the manner in which they are applied;
- (ii) relevant statements and documentation presented by the person including information on whether the person has been or may be subject to persecution or serious harm;
- (iii) the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm;
- (iv) whether the person's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for making an asylum or human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if returned to that country;
- (v) whether the person could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

339L. It is the duty of the person to substantiate the asylum or human rights claim or establish that he is a person eligible for humanitarian protection. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (a) the person has made a genuine effort to substantiate his asylum or human rights claim or to show that he is a person eligible for humanitarian protection;
- (b) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (c) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;

(d) the person has made the asylum or human rights claim or sought to establish that he is a person eligible for humanitarian protection at the earliest possible time, unless the person can demonstrate good reason for not having done so;

(e) the general credibility of the person has been established.

339M. The Secretary of State may consider that a person has not substantiated his asylum or human rights claim or established that he is a person eligible for humanitarian protection if he fails, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case; this includes a failure to attend an interview, failure to report to a designated place to be fingerprinted or a failure to complete an asylum questionnaire.

339N. In determining whether the general credibility of the person has been established the Secretary of State will apply the provisions in s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

Internal relocation

339O (i) The Secretary of State will not make a grant of asylum or humanitarian protection if in part of the country of origin a person would not have a well founded fear of being persecuted or face a real risk of suffering serious harm and that person can be reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin meets the requirements in (i) the Secretary of State when making his decision on whether to grant asylum or humanitarian protection will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin.

Sur place claims

339P. A person may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on events which have taken place since the person left the country of origin and/or activities which have been engaged in by a person since he left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin.

340 delete

341 – delete

342 – no changes

343 – dealt with by 339O

344 – delete

Travel documents

344A(i). After having received a complete application for a travel document, the Secretary of State will issue to a person granted asylum in the United Kingdom and their family members travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside the United Kingdom, unless compelling reasons of national security or public order otherwise require.

(ii) After having received a complete application for a travel document, the Secretary of State will issue travel documents to a person granted humanitarian protection in the United Kingdom where that person is unable to obtain a national passport or other identity documents which enable him to travel, unless compelling reasons of national security or public order otherwise require.

(iii) Where the person referred to in (ii) can obtain a national passport or identity documents but has not done so, the Secretary of State will issue that person with a travel document where he can show that he has made reasonable attempts to obtain a national passport or identity document and there are serious humanitarian reasons for travel.

Access to Employment

344B. 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.

Information

344C. A person who is granted asylum or humanitarian protection will be provided with access to information in a language that they may reasonably be supposed to understand which sets out the rights and obligations relating to that status. The Secretary of State will provide the information as soon as possible after the grant of asylum or humanitarian protection.

Interpretation

352G. For the purposes of this Part 'Geneva Convention' means the United Nations Convention and Protocol relating to the Status of Refugees.