

**2006 No.**

**IMMIGRATION**

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State is a Minister designated (a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to immigration, asylum, refugees and displaced persons, and in exercise of the powers conferred on him by that section, makes the following Regulations:

**Citation and commencement**

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

(2) These Regulations do not apply to a third country national or stateless person whose application for asylum is recorded by the Secretary of State before the coming into force of the Regulations.

**Interpretation**

2.—(1) In these Regulations—

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

“Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the United Kingdom;

“country of origin” means the country or countries of nationality or, for a stateless person, of former habitual residence;

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

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

“grant of humanitarian protection” means the recognition of a third country national or a stateless person as a person eligible for humanitarian protection;

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

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

“person eligible for humanitarian protection” means a third country national or a stateless person who is eligible for a grant of humanitarian protection under the immigration rules;

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

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

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

“stateless person” means any person who falls within Article 1(1) of the Convention Relating to the Status of Stateless Persons 1954;(b)

“third country national” means any person who is not a national of the United Kingdom;

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

**3.—**(1) In determining whether a third country national or stateless person is a refugee or a person eligible for humanitarian protection, persecution or serious harm can be committed by:

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

### **Actors of protection**

**4.—**(1) In determining whether a third country national or stateless person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

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

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

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

### **Act of persecution**

**5.—**(1) In determining whether a third country national or stateless person qualifies as a refugee an act of persecution must be sufficiently serious by its nature or repetition, or an accumulation of

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(a) 1971 c.77  
(b) 1954

various measures, as to constitute a violation of a right in the Convention from which derogation cannot be made under Article 15(2) of that Convention.

(2) An act of persecution can take the form of:

- (a) an act of physical or mental violence, including an act of sexual violence;
- (b) a legal, administrative, police, and/or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under regulation 7;

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

### **Reasons for persecution**

6.—(1) In determining whether a third country national or stateless person qualifies as a refugee:

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

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

### **Exclusion**

7.—(1) A third country national or stateless person is not a refugee, if:

- (a) he or she falls within the scope of Article 1 D of the Geneva Convention;
- (b) he or she falls within the scope of Article 1 E of the Geneva Convention;

(c) he or she falls within the scope of Article 1 F of the Geneva Convention.

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

(a) the reference to serious non-political crime includes a particularly cruel action, even if it is committed with an allegedly political objective;

(b) the reference to prior to his admission as a refugee shall be taken to mean the time up to and including the day on which a residence permit is issued.

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

(4) Article 1F(c) of the Geneva Convention shall apply to a third country national or stateless person who engages in any act specified in section 54(1)(a) and (b) of the Immigration, Asylum and Nationality Act 2006<sup>(a)</sup>.

Home Office

Date

Parliamentary Under Secretary of State

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<sup>(a)</sup> 2006 c.13.