

A Summary of Responses on the Home Office Consultation Paper On:

**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 THAT PROTECTION GRANTED.**

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INTRODUCTION

1. On 26 June 2006 the Immigration and Nationality Directorate (IND) launched the consultation paper on the *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* (“the Directive”). This paper set out the Government’s approach on ensuring the UK meets its obligations under the Directive and invited comments from interested parties. A draft statement of changes to the Immigration Rules and draft Regulations were annexed to the consultation paper to provide further detail on the Government’s plans.
2. The Directive represents a step towards establishing a Common European Asylum System and harmonising practices between Member States. The aim of the consultation paper, as stated in that document, was to set out our intended implementation of the Directive and to seek views as to whether the suggested approach complied with the Directive and if not, invited respondents to suggest what action should be taken.
3. The Directive has now been implemented through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006¹ (“the Regulations”) and changes to the Immigration Rules² (the “Rules”).
4. The Regulations implemented the Directive’s provisions on actors of persecution, serious harm, actors of protection, acts of persecution, reasons for persecution and exclusion. The Order and Immigration Rules both took effect on 9 October 2006.

¹ **S.I 2006 No. 2525**: The Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

² Statement of changes in the Immigration Rules: **Cm 6918**

5. The changes to the Rules covered:
- The duty to provide written information to applicants in a language likely to be understood by them;
 - Revocation or refusal to renew a grant of asylum;
 - Grant of Humanitarian Protection;
 - Exclusion from Humanitarian Protection
 - Refusal of Humanitarian Protection
 - Revocation of Humanitarian Protection
 - Consideration of applications
 - Internal relocation
 - *Sur place* claims
 - Residence Permits
 - Travel documents
 - Access to employment
6. Additionally, other government departments (OGDs) such as the Department for Work and Pensions (DWP) and the Department for Communities and Local Government (DCLG), as well as devolved administrations in Scotland, Wales and Northern Ireland, have amended Regulations which allowed those in need of international protection access to social welfare provisions in light of the changes we made to our statutes. OGD Regulations came into effect on 9 October 2006³.

³ **DCLG** – The Allocation and Homelessness (Miscellaneous Provisions) Regulations 2006
The Homelessness (Wales) Regulations 2006
The Allocation of Housing (Amendment)(Wales) Regulations 2006

DWP – The Social Security (Person from Abroad) Amendment (No.2) Regulations 2006
Department for Social Development Northern Ireland: The Social Security (Persons from Abroad) (Amendment No. 2) Regulations (Northern Ireland) 2006

RESPONSES

7. The consultation paper was launched on 26 June 2006 with a nine week consultation period. This allowed time to reflect on the comments received before laying the Immigration Rules changes and Regulations before the transposition deadline of 9 October. Copies of the consultation paper, draft changes to the Immigration Rules and draft Regulations were placed on the current consultation pages on the IND and Home Office websites. Letters were sent to key stakeholders and interest groups notifying them of the launch. We also held a seminar on 31 July 2006 to give stakeholders the opportunity to ask questions on the implementation of the Directive. The consultation period ended on 29 August 2006, by which time we had received 14 responses. Two responses were received after that date. We chose to include them in our consideration of responses.
8. All responses were from organised groups. It was noted and appreciated that many respondents clearly set out their organisation's aims, role and specific interest in the field of asylum.
9. Some respondents commented on wider Government policy not directly related to the implementation of the Directive. We have not covered such comments in this response.
10. This summary is intended to identify common themes and significant issues raised relating to the implementation of the Directive. It is not a comprehensive response to all the issues raised.
11. A full list of respondents can be found at the end of this document.

FAVOURABLE VIEWS

12. This section deals with favourable views raised by respondents on our planned implementation.
13. Most respondents welcomed the Government's intention to incorporate some provisions previously contained in published Asylum Policy Instructions (API's) into the Immigration Rules and new regulations. It was felt that this was a positive move providing "more enforceable rights"
14. Several consultees also welcomed the non-implementation of Article 5(3) relating to International Protection needs arising *sur place*. They agreed with the Home Office view that status should be granted to a person with a well founded fear of persecution arising out of actions that took place after they left their country where there was credible evidence they would face persecution if they returned.
15. Support was also demonstrated by several respondents for the Government's intention not to implement the provision in Article 11 on revoking Indefinite Leave to Remain (ILR) as a result of change in country conditions.
16. The proposed implementation of Article 15 on Serious Harm also met with approval specifically in regard to the inclusion of unlawful killing within the definition of serious harm. Two consultees welcomed that the inclusion of Humanitarian Protection within the rules created a specific status for those not covered by the 1951 Convention.
17. The non-implementation of Articles 20(6) and (7) (which allow the EU Member States to reduce benefits to those who "manufactured" their claims) was welcomed by a range of respondents as it was felt that "the 1951 Refugee Convention does not provide for sanctions in the case of persons who engage in activities for the sole purpose of securing refugee protection."

18. Positive comments were also received on the proposed implementation of Article 22 on information to be accessed by individuals recognised to be in need of international protection.

ISSUES WHERE WE HAVE TAKEN ACTION

19. This chapter deals with issues where we have taken action in light of respondents' comments.

Matching the Wording of the Directive

20. Respondents noted that on occasion the draft regulations and immigration failed to use the exact wording of the directive:

*..implementation contained in the Regulations fails to mirror the wording of Article 7 (2). The opening words of Article 7 (2) state that: "Protection is **generally** provided when the actors mentioned in paragraph 1 take reasonable steps...etc" (emphasis added). The omission of "generally" would risk significant alteration in the Directive definition and existing UK case law.*

AIT

UNHCR is seriously concerned that in implementing this provision through the Draft Regulations, regulation 4(2), the UK would appear to create a presumption of provision of protection through the use of the terminology "Protection shall be regarded as provided...". UNHCR considers that this goes far beyond the wording of the Qualification Directive itself as well as going beyond the test stipulated by the judiciary and reflected in the UK policy guidance. UNHCR would therefore urge the UK to bring the wording of the Draft Regulations into line with the Qualification Directive and with the UK's current policy, case law and practice

UNHCR

We do not consider that Regulation 5(3) accurately reflects Article 9(3) of the Directive

ILPA

Whereas the Directive [in Article 9 Act of Persecution] only requires that a violation of a non-derogable rights be cumulatively comparable in effect to a violation (or violations) of a non-derogable right, the Regulation requires that such violations must amount to a violation of a non-derogable right. Departure from the Directive wording introduces another layer of possible litigation on areas of law which are well-settled.

AIT

This regulation as currently drafted consistently omits the term “in particular”. Whether in any of the Article 10 contexts in which “in particular” occurs, the judicial process would find the definitions given non-exhaustive is open to question...to omit the words in the Regulation invites an additional layer of litigation, focussing not on this point, but on the issue of whether the Regulation wrongly prejudices the issue of whether these provisions are comprehensive and exclusive.

AIT

IND response:

21. ***We welcomed comments on areas where respondents felt our implementation could be amended to reflect more closely the provisions of the Directive. In light of these comments we have made a number of changes to the Regulations implementing the Qualification Directive. These are listed below:***
22. ***Consultees felt that paragraph 2 of Regulation 4, which implements article 7 on Actors of Protection, did not accurately reflect the provisions of the article as it omitted the term “generally”. The term has now been added and mirrors more closely the provisions of Article 7(2).***
23. ***Regulation 5(2) on Act of Persecution now includes the term “for example” to reflect the non-exhaustive nature of the list. Similarly regulation 6(1) on Reasons for Persecution has also been amended to reflect the non-exhaustive nature of the article.***

24. ***Respondents also felt that the omission of the word “in particular” from Regulation 6 on Reasons for Persecution did not reflect the article. The relevant Regulation has been amended and includes the term “for example” to mirror the non exhaustive nature of the provisions.***

Maintaining Family Unity

25. Concern was noted from respondents that the definition of “family” was not included in the consultation document or the draft rules. It was argued that existing UK practice insufficiently deals with the family unity provisions within the Directive:
26. *UK law and practice in relation to maintaining family unity, as provided for at paragraph 352 of the Immigration Rules, is consistent with the Directive as far as the spouse and minor children are concerned. However...the Directive includes unmarried partners, which are not currently provided for in the Rules...there is [also] no provision currently for the family reunion of unaccompanied minors recognised as refugees.*
27. *....this definition should at least cover civil and unmarried partners but also other relatives that may have formed part of the family unit of the principal refugee. It should be recognised that in many cultures the concept of a family unit goes beyond the spouse and child(ren), and may also include elderly parents for instance.*

Joint Council for Welfare of Immigrants

IND response:

28. ***We recognise that Article 2(h) of the Directive provides a definition of family members that is somewhat broader than the existing definition used in the Immigration Rules for asylum purposes.***

29. ***The Directive requires that the definition of family include a stable relationship where a Member State generally includes such a relationship within its definition. In the UK the Immigration Rules in general include such relationships (if shown to exist for over 2 years) within the definition. Therefore we will apply the wider definition of family membership to those granted refugee or humanitarian protection status from 9 October 2006. Policy instructions have been amended to reflect this change. The relevant Immigration Rules have been revised to reflect the changes in family reunion for recipients of refugee status and we plan on revising the rules for those in receipt of humanitarian protection shortly.***

CONCERNS THAT IMPLEMENTATION IS INCONSISTENT WITH THE DIRECTIVE OR REFUGEE CONVENTION

30. This section deals with respondents' concerns where they felt we failed to meet the requirements of the Directive.

Section 72 of the Nationality, Immigration and Asylum Act 2002 and the Qualification Directive

31. A number of respondents questioned the compatibility of Section 72 and the Qualification Directive. In particular, it was felt that the definition of "serious crime" in Section 72 is too broad and therefore not in line with either the Refugee Convention or the Directive:

"serious crime" is not defined in the Directive but in UK law it is defined in Section 72 of the Nationality, Immigration and Asylum Act 2002 for the purposes of the construction and application of Article 33 (2) of the Refugee Convention. According to that section it applies to sentences of two years or more imposed for offences committed both inside and outside the UK...this application is inconsistent with the Refugee Convention and the ECHR.

ILPA

The Refugee Council remains deeply concerned by the UK's statutory interpretation of 'a particularly serious crime' for the purpose of allowing for refoulement. UK legislation sets a threshold way below that set out in the Refugee Convention and applies it to asylum seekers as well as those already granted leave as refugees. Under Section 72 of the Nationality, Immigration and Asylum Act 2002, offences attracting a custodial sentence of as little as two years could lead to refoulement...The Refugee Council believes that the UK has set the threshold for exclusion and exceptions to the principle of non-refoulement at a dangerously low level. We urge the Government to introduce standards in this regard above the

minimal level outlined in the Directive, and in accordance with UNHCR guidance.

Refugee Council

IND response:

32. ***We do not believe that the provisions of Section 72 of the Nationality, Immigration and Asylum Act (NIAA) 2002 are incompatible with the Refugee Convention.***
33. ***Section 72 of the Act provides a statutory interpretation of Article 33(2) of the 1951 Convention relating to exclusion from protection of those who have been convicted of particularly serious crimes and constitute a danger to the community. The Convention does not define “particularly serious crime” within the meaning of Article 33(2) and therefore it was open to Parliament to provide a statutory interpretation for the purpose of UK’s domestic legislation.***
34. ***The Government considers that section 72 is compatible with both the Refugee Convention and the Qualification Directive.***

Section 54 of the Immigration, Asylum and Nationality Act 2006 and the Qualification Directive

35. Concerns were also raised by a number of consultees whether Section 54 was compatible with the provisions of the Qualification Directive particularly those concerning exclusion and revocation.

...section 54 of the Immigration, Asylum and Nationality Act 2006 may result in an overly broad application of Article 1F (c). UNHCR has cautioned against the approach which may result in certain persons, who do not fall within the scope of the exclusion clauses, being denied the benefit of international protection... Crimes commonly considered to be of a “terrorist” nature may fall within any of the clauses of Article 1F (as war crimes, crimes against humanity, serious non-political crimes or acts contrary to the purposes and principles of the UN) if the criteria of the

relevant clause are met. There is no automatic correlation between the term “terrorist act” and Article 1F(c). Rather, the assessment must focus on the actual crime committed, its nature and gravity, and its impact on international peace and security in order to determine whether it falls within the material scope of Article 1F(c).

UNHCR

IND response:

36. ***The Government does not accept that section 54 of the 2006 Act is incompatible with the Directive or with Article 1F (c) of the Refugee Convention. Article 12 (2) (c) of the Directive states that an individual is excluded from being a refugee where there are serious reasons for considering that “he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.” Recital 22 states further that the purposes and principles of the UN “are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism.”***

37. ***Section 54 of the 2006 Act is consistent with Article 1F (c) of the Refugee Convention as interpreted in UN Security Council Resolutions (UNSCRs), In particular with UNSCR 1373 which states that “knowingly financing, planning and inciting terrorist acts” as well as the commission of terrorist acts constitute acts “contrary to the purposes and principles of the United Nations.” These principles were reaffirmed in UNSCR 1624 which repudiated “attempts at the glorification of terrorist acts that may incite further acts” and called on states to “deny safe haven to any person with respect to who there are credible reasons for believing that they have been guilty of incitement to commit a terrorist act or acts.” We are therefore clear that both the Directive and section 54 set out in clear terms that terrorists are excluded from asylum by virtue of Article 1F (c).***

38. ***In regard to the consideration of Article 1F(c), Home Office policy is to ensure that each case is given individual consideration. In making an assessment of whether Article 1F (c) applies caseworkers try to obtain as full a knowledge as possible of the facts, and of the context in which the alleged acts have been committed to ensure that it fits within the definition. The consideration of Article 1F(c) is normally undertaken by senior caseworkers due to the complex nature of such cases. In all cases senior caseworkers will approve the decision made.***

Best interests of the child

39. A number of respondents stated that the care provided by Local Authorities for separated children was inadequate and did not provide the legal guardianship functions required:

the current system does not have in place adequate safeguards to ensure that the best interests of each child are taken as a primary concern in their treatment throughout the asylum process

UNHCR

...the implementation of the best interests requirement as a primary consideration will require redrafting of the family reunion provisions for child refugees and will also require that there is explicit consideration given to the circumstances of children included as dependants in any asylum application. This last will require changes to decision-making practices

ILPA

40. It was argued by the respondents that arrangements under the Children Act 1989 were insufficient as Article 30(2) requires regular assessments to be made:

[It is] wholly inadequate... for the Government to rely on existing legislation in relation to children to satisfy the requirements of this Article which significantly enhances the rights of unaccompanied minors.

Law Centre (Northern Ireland)

41. Further comments expressed concern that there were no family reunion provisions currently provided for *minor* children who are recognised as refugees. This omission was felt to be discriminatory and the deprivation would affect particularly vulnerable refugees.
42. Concern was also raised from consultees that the definition of “unaccompanied minors” was not set out in the consultation paper:

a clear definition in the Rules that was consistent with the Directive would provide the basis for ensuring consistent support once a minor has been granted asylum or humanitarian protection

Office of the Children's Commissioner

IND response:

43. ***We are satisfied that the comprehensive provision in UK law for the care and protection of unaccompanied children satisfies the provisions of the Directive. The Children's Act 1989 requires the local authority to look after any person aged 17 or less who has no parent or carer. These local authorities specialise in child care and are independent from IND. These bodies will carry out the regular reviews as required by the Directive. The Local Authorities duty of care to children in need within their areas is the same for all children, regardless of immigration status.***
44. ***Furthermore, all asylum-seeking children have access to primary health care and education facilities and also receive housing and other support where they need it.***
45. ***All unaccompanied asylum seeking children are also referred to the Refugee Council Panel of Advisors for any support they may need in pursuing their claim. The Panel will act as a "friend" to the child throughout the asylum process.***
46. ***The United Kingdom fully appreciates the potential vulnerability of unaccompanied children and the distress they may experience while awaiting a decision on their asylum claims. Particular care is given to the handling of such applications. The need for sensitivity is stressed in training and guidance to all staff involved in the asylum process. Caseworkers dealing with applications from unaccompanied children are specially trained and are also provided***

with comprehensive instructions setting out areas to consider when dealing with such applications.

47. ***We believe that these existing policies and processes demonstrate that the best interests of the child are a primary consideration.***

48. ***In respect of family reunion, the Directive defines a family member to be a spouse/unmarried partner or dependent minor child. Article 23 (5) does allow Member States to extend the family reunion provisions to other close relatives, but only to those who were wholly or mainly dependent on the beneficiary of refugee or humanitarian protection status at the time of leaving the country of origin.***

49. ***The concept of dependency is central to the UK's policy on family reunion for both refugees/those granted subsidiary protection, and others applying to join family members under the Immigration Rules. In line with the Directive (as set out above) the definition of a family member for the purposes of family reunion is the spouse/unmarried/civil/same-sex partner or minor child of a refugee or a person granted subsidiary protection. We do not believe it is right, in the majority of cases, to treat a parent as dependant upon a child.***

Credibility: Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

50. Many consultees felt that Article 4 on assessing the facts and circumstances of the case was incompatible with Section 8 of the Nationality, Immigration and Asylum Act 2004 and that the UK's implementation of that Article failed to reflect this:

Article 4 (5) is much more generous than current UK approach to credibility in that it provides for the possibility of a presumption in favour of credibility in contrast to Section 8 of the 2004 Act which provides that certain factors must have an adverse effect on credibility. ILPA submits that Section 8 needs revision in the light of the Directive and is unsustainable in light of the Directive

ILPA

It is asserted at para. 6.5 of the Paper that section 8 of the 2004 Act is compatible with the Directive. We are not so sure. The 2004 Act erects in the way of the asylum claimant a series of statutory presumptions adverse to credibility. We think that Article 4(5) of the Directive takes a positive rather than a negative stance on the establishment of the factual matrix”.

Glasgow Immigration Law Practitioners Group

IND response:

51. ***It is the Government's view that Section 8 and Article 4 of the Directive sit side by side when addressing issues of credibility. Before a person is able to benefit from the provisions of Article 4 and paragraph 339L of the Immigration Rules, their general credibility must be established. The type of actions covered by Section 8 are likely to be those which mislead or conceal information. Where those actions are not present, an applicant will benefit from the provisions of Article 4 as defined in Rule 339L.***

Acts of persecution

52. A number of respondents questioned the omission of the wording of Article 9(2)(f) on gender specific or child specific persecution from Regulation 5 on Act of Persecution:

Whilst Article 2 states that “acts of persecution can, inter alia , take the form of;” . Law Centre (NI) feels that failure to specifically refer to all those acts contained in Article 9(2)(f), the UK Government would be providing less favourable standards for applicants vis a vis other Member States, contrary to Article 3 of the Directive.

Law Centre (Northern Ireland)

IND response:

53. ***Paragraph 5(2) of the Regulation provides a non exhaustive list of the forms an act of persecution can take. Although acts of a gender-specific or child-specific nature are not mentioned specifically, caseworkers will still consider whether such acts amount to an act of persecution. Guidance on considering gender-specific or child-specific acts is provided in the Gender Issues and Children’s Asylum Policy Instructions (APIs).***

54. The following chapter deals with comments where consultees felt we needed to amend our approach in order to fully comply with the requirements of the Directive.

Internal Protection

55. Some respondents raised concerns over Article 8 of the Directive on Internal Protection, in particular where they felt that the Directive was lowering standards and our implementation of Article 8 would consequently lead to a lowering of standards in the United Kingdom:

The Directive's approach to internal protection is an example of a protection standard which has dropped to the lowest possible level. UNHCR guidelines clearly state that internal protection should be subject to a two stage test... It is manifestly unreasonable to deny someone protection on the basis that they could be protected in a place that they cannot actually access

Refugee Council

Article 8(c) should not be implemented in national law or practice because the effect of this provision is to deny international protection to persons who have no accessible protection alternative and it is not consistent with Article 1 of the 1951 Convention. It behoves the UK, so that it can respect its international treaty obligations, not to give effect to this provision in national law and, in line with the reference in Article 3 to the Directive's setting "minimum standards" urge the UK not to implement Article 8(c)

ILPA

IND response:

56. ***Our implementation of Article 8(3) is not, in our view, inconsistent with the Refugee Convention. Where a safe area exists in the country of origin but there are practical difficulties in assessing this area at the present time (e.g. temporary suspension of travel routes) it is not appropriate to grant asylum. Such a person is not a refugee because there is a place they will safely be able to go, a fact not altered by a current practical difficulty in getting there.***

Subsidiary Protection

57. A number of respondents commented on our implementation of article 15 on “Serious Harm” and welcomed this new addition to the immigration rules. However some concerns were noted on subsidiary protection:

The Directive clearly identifies that a person’s application for international protection will first be processed as a claim for refugee protection and (if unsuccessful) next as an application for subsidiary protection: Furthermore the Directive requires that sequential decisions on these two applications have to be made separately from (and in advance of) any decision on a human rights claim. The immigration rules do not identify or define an application for subsidiary protection or any right to a decision on (eligibility for) subsidiary protection and, if anything implies that human rights grounds are examined in advance of subsidiary protection.

AIT

We have a Directive which creates a new legal right (to a decision on eligibility for subsidiary protection) along with a corresponding new legal status (subsidiary protection status). The current Home Office proposals fail to recognise the right as such or to indicate clearly what the applicant does derive from this part of the Directive (as distinct from other instruments)

AIT

IND response:

58. ***We believe the inclusion of humanitarian protection within the immigration rules fully transposes the subsidiary protection provisions of the Directive into UK law.***
59. ***We agree with the sequential nature of decision-making described by the AIT. The Asylum Policy Instructions set out the sequential nature of asylum, subsidiary protection, and human rights decision making. From 9 October all asylum decision letters will include a consideration of subsidiary protection where the applicant does not qualify as a refugee.***
60. ***Consideration for humanitarian protection will also be given before any decision on other human rights matters is made. Our existing appeal grounds ensure that a person is able to challenge a refusal to grant HP under Section 82(2) of the Nationality, Immigration and Asylum Act 2002, where they feel the decision is not in accordance with the Immigration Rules.***

Vulnerable People

61. Some respondents were critical of IND's handling of vulnerable individuals. The main concern was that IND staff are not adequately trained to identify vulnerable individuals:

Despite having no training to make such assessments, IND staff (for example at an ASU [Asylum Screening Unit]) are frequently asked to identify whether someone has clear care needs, and if so to refer to a Local Authority. Unfortunately we have advised many individuals at a later stage in their asylum process who were not identified as having clear care needs by IND staff and who had as a result been allocated unsuitable accommodation.

Refugee Action

IND response

62. ***Regular guidance and training is provided to officials on handling claims from vulnerable people and a number of Asylum Policy Instructions such as “assessing the claim” and “interviewing” refer to the need to take special consideration when dealing with claims from vulnerable people. Targeted training is provided for asylum staff dealing with victims of torture or those who have suffered mental or physical torture. Where vulnerable people are identified, such as unaccompanied minors, they are referred to social services. Once recognised as being in need of international protection the needs of vulnerable persons are assessed by social service or their NHS Primary Care Trusts (PCTs) in line with their policy.***

Cessation, Revocation and Exclusion

63. We received a number of comments on our proposed implementation of these provisions. The comments received reflected views on both refugee status and subsidiary protection:

the Draft Immigration Rules paragraph 339A (vii) – (x) go beyond the matters stipulated in Article 11 of the Qualification Directive to include matters that are not relevant to cessation of refugee status. The matters listed in these sub-paragraphs relate to exclusion, cancellation and the exception to non-refoulement in Article 33(2). UNHCR is concerned that the approach as set out in the Draft Immigration Rules runs the risk of introducing substantive modifications to the cessation clauses of the 1951 Convention, by adding the provisions of Articles 33(2) and 1F of the 1951 Convention as bases for considering cessation of refugee status

UNHCR

draft Immigration Rule at para 339A does not properly distinguish and separate cases where a person does not need international protection and cases where a person does not deserve international protection. ILPA is very troubled by the mandatory wording applied to those people who fall within para 339A(v) and (vi) in particular. There should be a discretion to revoke in such circumstances but not an obligation to do so.

ILPA

The grounds for exclusion are exhaustively enumerated in the 1951 Convention. While these grounds are subject to interpretation, they cannot be expanded in the absence of an agreement by all State Parties. Applicants excluded from the 1951 Convention and/or the scope of the Directive may nevertheless be protected against refoulement under international human rights law, such as for example Article 3 ECHR, as laid down in Article 21(1) of the Directive.

The UNHCR also remain concerned about our implementation of Article 12(2)(b): the phrase “which means the time of issuing a residence permit” to the wording of Article 1F(b) of the 1951 Convention appears inconsistent with the wording of that Article. It would not be correct to interpret the phrase “prior to admission ...as a refugee” as reproduced in regulation 7(2)(b) of Draft Regulations as referring to the time preceding the recognition of refugee status or the issuing of a residence permit based on the granting of refugee status.

UNHCR

Article 14(3)(a): should be understood as referring to crimes committed prior to admission outside the country of refuge

UNHCR

The ground of constituting a danger to the community or the security of the Member State covered by Article 17 (1) (d) could amount to the same thing as exclusion on the ground of not being conducive to the public good. However UK practice then goes further than the Directive as exclusion from Humanitarian Protection can be based on engagement “in one or more unacceptable behaviours” which are listed in the API and broadly relate to terrorist activities. There is no mention of such activities in the Directive and the UK practice is out of line with Article 17(2) of the Directive.

ILPA

IND response:

64. ***The Government’s policy is to ensure that the UK does not provide a safe haven for those who commit serious crimes and that action is taken to bring such individuals to justice wherever possible.***

Paragraph 7(2)(b) of the Qualification Directive Regulations sets out that, in the construction and application of Article 1F(b) of the Refugee Convention, the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean up to and including the day on which a

residence permit is issued. The provision therefore replicates Article 12(2)(b) in the Qualification Directive.

65. *Paragraph 339A of the Immigration Rules lists circumstances where a grant of asylum will be revoked or not renewed. It covers both cessation and revocation matters and therefore reflects both Article 11 and 14 of the Qualification Directive. We do not consider it creates a problem to combine both these provisions into a single Immigration Rule because revocation and cessation have the same consequence for a person's leave in the UK. Combining them does not imply that we are regarding two parts of the Refugee Convention as being one and the same.*
66. *The Government does not agree that our policy of excluding individuals from Humanitarian Protection on the basis of commission of one or more of a list of unacceptable behaviours is incompatible with Article 17 (1) (d). The Secretary of State would not automatically regard an individual committing an unacceptable behaviour as excluded under Article 17 but often such behaviour would bring a person within the scope the scope of one of the Article 17 categories making exclusion from humanitarian protection appropriate.*

QUESTIONS

A copy of this document will also be made available in hard copy and can be requested in writing. If you have any queries please email or write to the addresses given below:

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LIST OF RESPONDENTS

- Law Society Scotland
- Refugee Action (RA)
- Office of the Children's Commissioner (OCC)
- Law Centre Northern Ireland
- West Indian Standing Conference (WISC)
- Joint Council for the Welfare of immigrants (JCWI)
- Law Society
- Refugee Council (RC)
- Scottish Refugee Council (SRC)
- United Nations High Commission for Refugees (UNHCR)
- Asylum and Immigration Tribunal (AIT)
- Immigration Law Practitioners' Association (ILPA)
- Immigration Advisory Service (IAS)
- UK Lesbian and Gay Immigration Group