

## **DRAFT ILLUSTRATIVE IMMIGRATION RULES ON PROTECTION**

### **INTERPRETATION**

In these Rules:

**“applicant for protection”** means a person who has made an application for protection which has not yet been determined.

**“application for protection”**:

- a) means an application:
  - i) by a person who is in the UK to be recognised as a refugee under the Refugee Convention on the basis that it would be contrary to the UK’s obligations under the Refugee Convention for that person to be removed from or required to leave the UK, or
  - ii) by a person (“P”) who is in the UK on the basis that, if P returned to the country of return, P would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country, but
- b) does not include submissions which fall to be dealt with under section 176 of the Immigration and Citizenship Act unless, having been considered, they are not certified by the Secretary of State.

For the purposes of paragraphs 5, 6 and 7, a reference to an application for protection will be treated as including a reference to a claim for entitlement to remain in a country other than the UK made by reference to the rights that a person invokes in making an application for protection in the UK.

**“child”** means a person who is less than 18 years old or who, in the absence of documentary evidence establishing age, appears to be under that age.

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

**“country of return”** means:

- (a) a country in which the person (“P”) embarked for the UK,
- (b) a country in which P obtained an identity document in relation to P,
- (c) a country of which P is a national, or
- (d) a country to which there is reason to believe that P will be admitted.

**“dependant”** means:

- a) the spouse or civil partner of a person (“P”) who:
  - i) is an applicant for protection, or
  - ii) has protection,
- b) the unmarried or same sex partner of P where the parties have been living together in a relationship similar to marriage or civil partnership which has subsisted for 2 years or more; or
- c) the child (who is unmarried and not a civil partner) of P.

**“the Immigration and Citizenship Act”** means the [Immigration and Citizenship Act 200[]].

**“refugee”** means a person who falls within paragraph 31(b)(i) and to whom paragraph 39 does not apply.

**“refugee travel document”** means a travel document in the form set out in the Schedule to the Refugee Convention.

**“serious harm”** has the meaning given in paragraph 32(c).

**“the Temporary Protection Directive”** means Council Directive 2001/55/EC of 20 July 2001 regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons.

**“terrorism”** has the meaning given by section 1 of the Terrorism Act 2000 (c. 11).

**“unaccompanied child”:**

- a) means a child (“P”) who arrives in the UK unaccompanied by an adult responsible for P whether by law or custom and makes an application for protection, and
- b) includes a child who is left unaccompanied after arriving in or entering the UK but before making an application for protection.

P will be an unaccompanied child until P is taken into the care of such an adult or reaches the age of 18, whichever is the earlier.

**“UNHCR”** means the United Nations High Commissioner for Refugees.

**“with humanitarian protection”** means granted humanitarian protection that has not been cancelled.

**“with protection”** means with refugee status or humanitarian protection.

**“with refugee status”** means granted refugee status that has not been cancelled.

**“working day”** means any day other than:

- a) a Saturday or Sunday,
- b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in any part of the UK,
- c) Christmas Day, and
- d) Good Friday.

## **PROTECTION**

### **How to apply**

#### **1. Deemed application for refugee status**

A person who makes an application for protection will be deemed to have made an application for refugee status.

#### **2. Right to make an application on own behalf**

Every person has the right to make an application for protection on his or her own behalf.

#### **3. Dependants of applicants**

(a) A dependant who:

(i) lived with an applicant for protection (“P”) as part of the family unit in P’s country of former habitual residence prior to P leaving to seek protection in the UK, and

(ii) is accompanying P,

may be included in P’s application for protection as P’s dependant, provided, in the case of an adult dependant with legal capacity, the dependant consents to being treated as such at the time the application is lodged.

(b) Any person included as a dependant on an application for protection may be interviewed.

#### **4. Recording of applications**

An application for protection will only be recorded if the applicant for protection (“P”):

(a) applies in person,

(b) completes the specified form, and

(c) where possible, submits P’s fingerprints.

## **5. Applications made in another member State to UK authorities**

Applications for protection made in another member State to UK authorities carrying out immigration controls there will be dealt with by the member State in whose territory the application is made.

## **The applicant**

### **6. Submission of material factors as soon as possible**

(a) It is the duty of an applicant for protection ("P") to submit to the Secretary of State as soon as possible all material factors needed to substantiate the application for protection, which the Secretary of State will assess in co-operation with P.

(b) The material factors include:

(i) P's statement on the reasons for making an application for protection,

(ii) all information and documentation at P's disposal regarding P's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous applications for protection and travel routes, and

(iii) travel and identity documents.

### **7. Credibility**

(a) In determining whether to believe a statement made by or on behalf of an applicant for protection ("P"), regard will be had to matters which may damage P's general credibility. Among such matters are:

(i) any behaviour by P thought to be designed or likely to:

(1) conceal information,

(2) mislead, or

(3) obstruct or delay the handling or resolution of the application or the taking of a decision in relation to P.

(ii) P's failure without reasonable excuse to make an application for protection as soon as possible (but an application for protection will be neither refused nor excluded from examination on the sole ground that it has not been made as soon as possible).

(b) The following kinds of behaviour will, in particular, be treated as designed or likely to conceal information or to mislead:

(i) failure without reasonable excuse to produce a passport on request to the Secretary of State,

(ii) the production of a document which is not a valid passport as if it were,

(iii) the destruction, alteration or disposal, in each case without reasonable excuse, of a passport,

(iv) the destruction, alteration or disposal, in each case without reasonable excuse, of a ticket or other document connected with travel, and

(v) failure without reasonable excuse to answer a question asked by the Secretary of State.

(c) The following kinds of behaviour will, in particular, be treated as a failure without reasonable excuse to make an application for protection as soon as possible:

(i) failure to take advantage of a reasonable opportunity to make an application for protection while in a safe country,

(ii) failure to make an application for protection before being notified of an immigration decision, unless the claim relies wholly on matters arising after the decision,

(iii) failure to make an application for protection before being arrested under an immigration provision, unless:

(1) P had no reasonable opportunity to make the application before the arrest, or

(2) the application relies wholly on matters arising after the arrest.

(d) The fact that P 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 P'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.

(e) For the purposes of this paragraph:

(i) "immigration decision" means:

(1) an immigration decision under section 164 of the Immigration and Citizenship Act,

(2) a grant of immigration permission, and

(3) a decision to take action in relation to a person in connection with extradition from the UK.

(ii) “immigration provision” means a provision of the Immigration and Citizenship Act and a provision of the Extradition Act 1989 (c. 33) or 2003 (c. 41).

(iii) “passport” includes a document which relates to a national of a country other than the UK and which is designed to serve the same purpose as a passport.

(iv) “safe country” means a country to which [Part 2 of Schedule 3 to the 2004 Act] applies.

(v) “valid passport” does not include one:

(1) altered otherwise than by or with the permission of the authority who issues it, or

(2) obtained by deception.

(f) This paragraph will not prevent a decision not to believe a statement on the grounds of behaviour to which this paragraph does not apply.

## **8. Information to be provided by applicants**

An applicant for protection (“P”) must notify the Secretary of State of P’s current address and of any change to P’s address or residential status. If not notified beforehand, any change must be notified to the Secretary of State without delay after it occurs.

## **9. Work**

(a) If:

(i) a decision at first instance has not been taken on an application for protection within 1 year of the date on which it was recorded, and

(ii) the applicant for protection (“P”) is subject to a condition prohibiting work,

then P may apply to the Secretary of State for the removal of such a condition. However, this does not include the removal of a condition prohibiting self-employment or engagement in a business or professional activity. The Secretary of State will only consider an application if, in the Secretary of State’s opinion, any delay in reaching a decision at first instance cannot be attributed to P.

(b) If the condition prohibiting work is removed under subparagraph (a) this will only be until such time as the application for protection is determined.

## **The UK Border Agency**

### **10. Decision-makers**

(a) All applications for protection will be decided by the Secretary of State or by officials on the Secretary of State's behalf.

(b) The Secretary of State will ensure that:

(i) those officials have the knowledge with respect to the relevant standards applicable in the field of asylum and refugee law and that those deciding applications for protection from children are trained to deal with such applications, and

(ii) authorities which are likely to be addressed by someone who wishes to make an application for protection are able to advise that person how and where such an application may be made.

### **11. Postponement of protection consideration for those eligible for temporary protection**

If an applicant for protection is eligible for temporary protection (see Annex), the application for protection may not be considered until the applicant ceases to be entitled to temporary protection.

### **12. Individual and objective basis for assessment**

The assessment of an application for protection will be carried out on an individual, objective and impartial basis. This will include taking into account in particular:

(a) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the application for protection; including laws and regulations of the country of origin or country of return and the manner in which they are applied,

(b) relevant statements and documentation presented by the applicant for protection ("P") including information on whether P has been or may be subject to persecution or serious harm,

(c) the individual position and personal circumstances of P including factors such as background, gender and age, so as to assess whether, on the basis of P's personal circumstances, the acts to which P has been or could be exposed would amount to persecution or serious harm,

(d) whether P's activities since leaving the country of origin or country of return were engaged in for the sole or main purpose of creating the necessary conditions for making an application for protection, so as to assess whether these activities will expose P to persecution or serious harm if P returned to that country, and

(e) whether P could reasonably be expected to avail himself or herself of the protection of another country where P could assert citizenship.

### **13. Special considerations for applications by children**

(a) Account should be taken of the maturity of the applicant for protection and, in assessing the application for protection of a child, more weight should be given to objective indications of risk than to the child's state of mind and understanding of the child's situation. An application for protection made on behalf of a child should not be refused solely because the child is too young to understand the situation or to have formed a well-founded fear of persecution. Close attention should be given to the welfare of the child at all times.

(b) In view of the potential vulnerability of unaccompanied children, particular priority and care is to be given to the handling of their cases.

### **14. Circumstances in which a person's statements do not need confirmation**

It is the duty of the applicant for protection ("P") to establish eligibility for protection. Where aspects of P'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) P has made a genuine effort to establish that P is eligible for protection,

(b) all material factors at P's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given,

(c) P's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to P's case,

(d) P has made an application for protection as soon as possible, unless P has a reasonable excuse for not having done so, and

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

## **15. Legal advice**

Applicants for protection will be allowed an effective opportunity to consult, at their own expense or at public expense in accordance with provision made for this by the Legal Services Commission or otherwise, a person who is authorised under [Part V of the Immigration and Asylum Act 1999] to give immigration advice.

## **16. Rights of representatives of unaccompanied children**

The Secretary of State will, as soon as possible after an unaccompanied child makes an application for protection, take measures to ensure that a representative represents and/or assists the unaccompanied child with respect to the examination of the application and ensure that the representative is given the opportunity to inform the unaccompanied child about the meaning and possible consequences of the interview and, where appropriate, how to prepare for the interview. The representative will have the right to be present at the interview and ask questions and make comments in the interview, within the framework set by the interviewer.

## **17. Interpreters**

The Secretary of State will provide at public expense an interpreter for the purpose of allowing the applicant for protection ("P") to submit P's case to the Secretary of State, wherever necessary. The Secretary of State will select an interpreter who can ensure appropriate communication between P and the Secretary of State's official who conducts the interview.

## **18. Duty to provide the opportunity of a personal interview**

(a) Before a decision is taken on the application for protection, the applicant ("P") will be given the opportunity of a personal interview.

(b) The personal interview may be omitted where:

(i) it is possible to take a positive decision on the basis of evidence available,

(ii) the Secretary of State has already had a meeting with P for the purpose of assisting P with completing P's application and submitting the essential information regarding the application,

(iii) P, in submitting the application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether P is a refugee or eligible for humanitarian protection,

(iv) P has made inconsistent, contradictory, improbable or insufficient representations which make the application clearly unconvincing in relation to P having been the object of persecution or serious harm,

(v) P is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in P's removal, or

(vi) it is not reasonably practicable, in particular where the Secretary of State is of the opinion that P is unfit or unable to be interviewed owing to enduring circumstances beyond P's control.

(c) The omission of a personal interview will not prevent the Secretary of State from taking a decision on the application.

(d) Where the personal interview is omitted, P and the dependants included in P's application will be given a reasonable opportunity to submit further information.

### **19. Confidentiality of personal interview**

(a) The personal interview mentioned in paragraph 18 will normally take place without the presence of the dependants of the applicant for protection unless it is considered necessary for an appropriate examination to have them present.

(b) The personal interview will take place under conditions which ensure appropriate confidentiality.

### **20. Written report of personal interview**

(a) A written report will be made of every personal interview containing at least the essential information regarding the application for protection as presented by the applicant in accordance with paragraph 6.

(b) The Secretary of State will ensure that the applicant has timely access to the report of the personal interview and that access is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

### **21. Interview of children who have made an application for protection**

Applicants for protection who are children will be interviewed in accordance with paragraph 18 unless the applicant is unfit or unable to be interviewed. When an interview takes place it will be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the applicant. The interviewer will have specialist training in the interviewing of children and have particular regard to

the possibility that a child will feel inhibited or alarmed. Applicants will be allowed to express themselves in their own way and at their own speed. If the applicant appears tired or distressed, the interview will be stopped.

## **22. Decisions as soon as possible**

(a) A decision will be taken on each application for protection as soon as possible, without prejudice to an adequate and complete examination.

(b) Where a decision on an application for protection cannot be taken within 6 months of the date it was recorded, the Secretary of State will either:

(i) inform the applicant for protection of the delay, or

(ii) if the applicant has made a specific written request for it, provide information on the time frame within which the decision on the application is to be expected. The provision of such information will not oblige the Secretary of State to take a decision within the stipulated time frame.

## **23. Notice of decisions**

Written notice of decisions on applications for protection will be given in reasonable time. Where the applicant for protection is legally represented, notice may instead be given to the representative. Where the applicant has no legal representative, the applicant will be informed of the decision on the application for protection and, if the application is refused, how to challenge the decision, in a language that the applicant may reasonably be supposed to understand.

## **24. Information**

(a) The information listed in subparagraph (c) will be provided to applicants for protection in a language they may reasonably be supposed to understand and within a reasonable time not exceeding 15 days after their application for protection has been recorded.

(b) The information will be available in writing or and it may also be supplied orally.

(c) Information:

(i) their rights and obligations during the procedure,

(ii) the possible consequences of non-compliance and non-co-operation,

- (iii) the likely time frame for consideration of the application,
- (iv) the means at their disposal for submitting all relevant information,
- (v) benefits and services that they may be eligible to receive and of the rules and procedures with which they must comply relating to them, and
- (vi) information on non-governmental organisations and persons that provide legal assistance to applicants for protection and which may be able to help them or provide information on available benefits and services.

(d) As soon as possible after a grant of protection to a person ("P"), P will be provided with access to information in a language that P may reasonably be supposed to understand which sets out the rights and obligations relating to that status.

## **25. Limitations on disclosing and obtaining information**

(a) For the purposes of examining applications for protection:

- (i) information provided in support of an application and the fact that an application has been made will not be disclosed to the alleged actor(s) of persecution or serious harm of the applicant ("P"), and
- (ii) information will not be obtained from the alleged actor(s) of persecution or serious harm that would result in their being directly informed that an application for protection has been made by P or would jeopardise the physical integrity of P and P's dependants, or the liberty and security of P's family members still living in the country of origin or country of return.

## **26. Redocumentation**

If an application for protection is refused or examination discontinued by the Secretary of State, the Secretary of State may submit to a foreign government any relevant identity or biographical information about P for the purposes of seeking to acquire relevant documentation to enable P to return to P's country of origin or country of return.

## **27. Country information**

Reliable and up-to-date information will be obtained from various sources as to the general situation prevailing in the countries of origin and countries of return of applicants for protection and, where necessary, in countries through which they have transited. Such information will be made available to the

officials responsible for examining applications and taking decisions and may be provided to them in the form of a consolidated country information report.

## **28. Tracing family members of unaccompanied children**

(a) So as to protect an unaccompanied child's best interests, the Secretary of State will endeavour to trace the members of the child's family as soon as possible after the child makes an application for protection.

(b) In cases where there may be a threat to the life or integrity of the child or the child's close family, the Secretary of State will take care to ensure that the collection, processing and circulation of information concerning the child or the child's close family is undertaken on a confidential basis so as not to jeopardise the child or the child's close family's safety.

## **29. Status documentation for applicants for protection**

(a) Within 3 working days of recording an application for protection, a document will be made available to that applicant for protection ("P"), issued in P's name, certifying P's status as an applicant for protection or testifying that P is allowed to remain in the UK while P's application for protection is pending. For the avoidance of doubt, in cases where the Secretary of State declines to examine an application it will no longer be pending for the purposes of this paragraph.

(b) The obligation in subparagraph (a) will not apply where P is detained under the Immigration and Citizenship Act.

(c) A document issued to P under subparagraph (a) does not constitute evidence of P's identity.

(d) In specific cases, P may be provided with evidence equivalent to that provided under subparagraph (a). This might be, for example, in circumstances in which it is only possible or desirable to issue a time-limited document.

## **Withdrawal**

### **30. Withdrawal of an application**

(a) When an applicant for protection explicitly withdraws the application for protection by signing the relevant form provided by the Secretary of State, the Secretary of State will take a decision to discontinue examination of the application and will make a note to this effect on the person's file.

(b) Where there is reasonable cause to consider that an applicant for protection ("P") has implicitly withdrawn the application for protection the Secretary of State will take a decision to discontinue examination of the application and will make a note to this effect on P's file.

(c) There may be reasonable cause to consider that P has implicitly withdrawn the application for protection when:

(i) P's travel document is returned in response to a request for its return for the purpose of travel outside the common travel area or P leaves the UK,

(ii) P fails, without reasonable excuse, 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, for example, failure to report to a designated place to be fingerprinted and failure to complete a refugee status or humanitarian protection questionnaire,

(iii) P fails to attend the personal interview as provided in paragraph 18 unless P demonstrates within a reasonable time that that failure was due to circumstances beyond P's control.

(iv) P absconds or breaches a condition as to residence without contacting the Secretary of State within a reasonable time or fails within a reasonable time to comply with a requirement to report to the Secretary of State for examination.

(d) If P reports again after a decision to discontinue examination of the application in accordance with subparagraphs (a) or (b) and requests that the case be reopened it will be dealt with in accordance with section 176 of the Immigration and Citizenship Act.

## **Criteria for grant**

### **31. Qualifying criteria for grant of refugee status**

(a) To qualify for refugee status in the UK, an applicant (“P”) must meet the requirements listed below. If P meets these requirements, refugee status will be granted. If P does not meet these requirements, refugee status will be refused and the reasons in fact and law will be stated in the decision and information provided in writing on how to challenge the decision.

#### **(b) Requirements:**

(i) P must be a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group:

(1) is outside the country of P’s nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or

(2) if a stateless person, is outside of the country of P’s former habitual residence and is unable or, owing to such fear, unwilling to return to it.

(ii) P must not be excluded from a grant of refugee status under paragraph 39.

### **32. Qualifying criteria for grant of humanitarian protection**

(a) To qualify for humanitarian protection in the UK, an applicant (“P”) must meet the requirements listed below. If P meets these requirements, humanitarian protection will be granted. If P does not meet these requirements, humanitarian protection will be refused and the reasons in fact and law will be stated in the decision and information provided in writing on how and by when to challenge the decision.

#### **(b) Requirements:**

(i) P must not qualify as a refugee.

(ii) Substantial grounds must have been shown for believing that if P returned to the country of return P would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

(iii) P must not be excluded from a grant of humanitarian protection under paragraph 40.

(c) Serious harm consists of:

(i) the death penalty or execution,

(ii) unlawful killing,

(iii) torture or inhuman or degrading treatment or punishment of a person in the country of return, 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.

## **Assessment of applications**

### **33. Internal relocation**

(a) The Secretary of State will not:

(i) grant refugee status if in part of the country of origin the applicant would not have a well-founded fear of being persecuted, and the applicant can reasonably be expected to stay in that part of the country, or

(ii) grant humanitarian protection if in part of the country of return the applicant would not face a real risk of suffering serious harm, and the applicant can reasonably be expected to stay in that part of the country.

(b) In examining whether a part of the country of origin or country of return meets the requirements in subparagraph (a), when deciding whether to grant protection, regard will be had to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

(c) Subparagraph (a) applies notwithstanding technical obstacles to return to the country of origin or country of return.

### **34. *Sur place* claims**

An applicant for protection (“P”) may have a well-founded fear of being persecuted or a real risk of suffering serious harm based on:

(a) events which have taken place since P left the country of origin or country of return, or

(b) activities which have been engaged in by P since leaving the country of origin or country of return,

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 or country of return.

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

In deciding whether an applicant for protection is eligible for 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, or

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

### **36. Actors of protection**

(a) In deciding whether an applicant for protection is eligible for protection, protection from persecution or serious harm can be provided by:

(i) the State, or

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

(b) Protection will be regarded as generally provided when the actors mentioned in subparagraph (a) 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 applicant mentioned in subparagraph (a) has access to such protection.

(c) In deciding whether an applicant is eligible for 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 subparagraph (b).

### **37. Acts of persecution**

(a) In deciding whether an applicant for protection is a refugee, an act of persecution must be:

(i) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Human Rights Convention, or

(ii) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in subparagraph (a)(i).

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

(i) an act of physical or mental violence, including an act of sexual violence,

(ii) a legal, administrative, police, or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner,

(iii) prosecution or punishment, which is disproportionate or discriminatory,

(iv) denial of judicial redress resulting in a disproportionate or discriminatory punishment, or

(v) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under paragraph 39(b).

(c) An act of persecution must be committed for at least 1 of the following reasons:

(i) race,

(ii) religion,

(iii) nationality,

(iv) political opinion, and

(v) membership of a particular social group.

### **38. Reasons for persecution**

(a) In deciding whether an applicant for protection is a refugee:

(i) the concept of race will include consideration of, for example, colour, descent, or membership of a particular ethnic group,

(ii) the concept of religion will include, for example, the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief,

(iii) the concept of nationality will not be confined to citizenship or lack thereof but will include, for example, membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State,

(iv) a group will be considered to form a particular social group where, for example:

(1) 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

(2) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society,

(v) a particular social group might include a group based on a common characteristic of sexual orientation but sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the UK, and

(vi) the concept of political opinion will include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in paragraph 35 and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

(b) In deciding whether an applicant 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**

### **39. Criteria for exclusion from grant of refugee status**

(a) A person ("P") is excluded from a grant of refugee status under paragraph 31(b)(ii) where 1 or more of the exclusions listed below apply.

(b) Exclusions:

(i) P at present is receiving from organs or agencies of the United Nations other than the UNHCR protection or assistance.

(ii) P is recognised by the UK as having rights and obligations which are attached to the possession of UK nationality.

(iii) There are serious reasons for considering that:

(1) P has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,

(2) P has committed a serious non-political crime (this includes a particularly cruel action, even if it is committed with an allegedly political objective) outside the UK prior to P's admission as a refugee, or

(3) P has been guilty of acts contrary to the purposes and principles of the United Nations.

(c) Subparagraphs (b)(iii)(1) and (2) will apply to a person who instigates or otherwise participates in the commission of the crimes or acts specified in those provisions.

(d) The reference to the crime being committed outside the UK prior to P's admission as a refugee means the time up to and including the day on which immigration permission is granted.

(e) Acts contrary to the purposes and principles of the United Nations include, in particular:

(i) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and

(ii) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).

#### **40. Criteria for exclusion from grant of humanitarian protection**

(a) A person (“P”) is excluded from a grant of humanitarian protection under paragraph 32(b)(iii) where 1 or more of the exclusions listed below apply.

(b) Exclusions:

(i) There are serious reasons for considering that P has committed a crime against peace, a war crime, a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes, or any other serious crime or instigated or otherwise participated in such crimes.

(ii) There are serious reasons for considering that P is guilty of acts contrary to the purposes and principles of the United Nations.

(iii) There are serious reasons for considering that P constitutes a danger to the community or to the security of the UK.

(iv) Prior to P’s admission to the UK, P committed a crime outside the scope of subparagraphs (b)(i) and (ii) that would be punishable by imprisonment were it committed in the UK and P left P’s country of origin solely in order to avoid sanctions resulting from the crime.

(c) For the purpose of the construction of subparagraph (b)(ii) paragraph 39(e) applies.

#### **Cancellation**

#### **41. Criteria for cancellation of refugee status**

(a) The refugee status of a person (“P”) refugee status will be cancelled if 1 or more of the requirements listed below are met.

(b) Requirements:

(i) P has voluntarily re-availed himself or herself of the protection of the country of nationality.

(ii) Having lost P’s nationality, P has voluntarily re-acquired it.

(iii) P has acquired a new nationality, and enjoys the protection of the country of that new nationality.

(iv) P has been voluntarily re-established in the country which P left or outside which P remained owing to a fear of persecution.

(v) P can no longer, because the circumstances in connection with which P has been recognised as a refugee have ceased to exist, continue to avail himself or herself of the protection of the country of nationality.

(vi) Being a stateless person with no nationality, P is able, because the circumstances in connection with which P has been recognised a refugee have ceased to exist, to return to the country of former habitual residence.

(vii) P should have been or is excluded from being a refugee in accordance with paragraph 39.

(viii) P's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of refugee status.

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

#### **42. Right to be informed of consideration to cancel refugee status**

(a) Where the Secretary of State is considering cancelling a person's refugee status, the person concerned will be informed in writing of this and the reasons for the consideration. That person will be given the opportunity to submit, in a personal interview or in a written statement, reasons as to why the refugee status should not be cancelled. If there is a personal interview, it will be subject to the safeguards set out in these Rules.

(b) The following paragraphs apply where the Secretary of State is considering cancelling a person's refugee status:

- (i) 15 (legal advice),
- (ii) 25 (limitations on disclosing and obtaining information),
- (iii) 27 (country information), and
- (iv) 48 (powers of the UNHCR).

#### **43. Criteria for cancellation of humanitarian protection**

(a) The humanitarian protection of a person ("P") will be cancelled if 1 or more of the requirements listed below are met.

(b) Requirements:

(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.

(ii) P should have been or is excluded from humanitarian protection in accordance with paragraph 40.

(iii) P's misrepresentation or omission of facts, including the use of false documents, were decisive for the grant of humanitarian protection.

(c) In applying subparagraph (b)(i) the Secretary of State will have regard to whether the change of circumstances is of such a significant and non-temporary nature that P no longer faces a real risk of serious harm.

#### **44. Cancellation of permission if protection cancelled**

When a person ("P")'s grant of protection is cancelled, at the same time:

(a) P's immigration permission may be cancelled or not renewed, and

(b) the immigration permission of any dependant of P granted immigration permission under paragraphs 50, 51 or 52 may be cancelled or not renewed.

## **Benefits of being granted protection**

### **45. Grant of permission**

(a) Subject to subparagraph (f), if an applicant for protection without permanent permission ("P") is granted protection immigration permission will be granted as soon as possible, and in any case within 28 days of the decision under paragraph 22.

(b) Immigration permission will be granted for a period of 5 years unless there are exceptional circumstances that warrant the granting of:

- (i) temporary permission for a longer period, or
- (ii) permanent permission.

(c) Immigration permission will not be subject to any conditions.

(d) Immigration permission will be renewable unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that P is a danger to the security of the UK or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the UK, and without prejudice to paragraph 44.

(e) For the purposes of the construction of subparagraph (d) subparagraph (g) applies.

(f) Subparagraphs (b) to (e) do not apply to a person granted protection ("P") where one or more of the following apply:

- (i) There are reasonable grounds for regarding P as a danger to the security of the UK.
- (ii) P, having been convicted by final judgment of a particularly serious crime, constitutes a danger to the community of the UK.
- (iii) Refusing P's application would result in P being required to go (whether immediately or after the time limited by any existing immigration permission) in breach of the Refugee Convention, to a country in which P's life or freedom would be threatened on account of P's race, religion, nationality, political opinion or membership of a particular social group.

(g) P shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the UK if P meets 1 or more of the conditions listed below.

- (i) Condition 1

- (1) P is convicted in the UK of an offence, and
- (2) sentenced to a period of imprisonment of at least 2 years.

(ii) Condition 2

- (1) P is convicted outside the UK of an offence,
- (2) sentenced to a period of imprisonment of at least 2 years, and
- (3) P could have been sentenced to a period of imprisonment of at least 2 years had P's conviction been a conviction in the UK of a similar offence.

(iii) Condition 3

- (1) P is convicted of an offence specified by order, or
- (2) P is convicted outside the UK of an offence and the Secretary of State certifies that in the Secretary of State's opinion the offence is similar to an offence specified by order.

(iv) A presumption under this paragraph that P constitutes a danger to the community is rebuttable by P.

(v) For the purposes of this paragraph a reference to a person who is sentenced to a period of imprisonment of at least 2 years:

- (1) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it (of whatever length) is to take effect),
- (2) does not include a reference to a person who is sentenced to a period of imprisonment of at least 2 years only by virtue of being sentenced to consecutive sentences amounting in aggregate to at least 2 years,
- (3) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders) for at least 2 years, and
- (4) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for 2 years).

(vi) For the purposes of this paragraph “specified by order” means specified by an order made under section 51(3)(a) of the Immigration and Citizenship Act.

#### **46. Travel documents**

(a) After having received a complete application for a refugee travel document, a person with refugee status in the UK and the person’s dependants will be issued with a refugee travel document for the purpose of travel outside the UK, unless compelling reasons of national security or public order otherwise require.

(b) After having received a complete application for a travel document, a person (“P”) with humanitarian protection in the UK and P’s dependants (“X”) will be issued with a certificate of travel where P or X are unable to obtain a travel document which enables P or X to travel, unless compelling reasons of national security or public order otherwise require.

(c) Where P or X can obtain a travel document but has not done so, P or X will be issued with a certificate of travel where P or X can show that P or X has made reasonable attempts to obtain a travel document and there are serious humanitarian reasons for travel.

(d) Neither a refugee travel document nor a certificate of travel issued under this paragraph constitutes evidence of identity.

## **Miscellaneous**

### **47. Gateway protection programme**

A person who has been accepted by the UK under the Gateway Protection Programme will be granted permanent permission.

### **48. The powers of the UNHCR**

A representative of the UNHCR or an organisation working in the UK on behalf of the UNHCR pursuant to an agreement with the Government ("R") will:

- (a) have access to applicants for refugee status, including those in detention,
- (b) have access to information on individual applications for refugee status, on the course of the procedure and on the decisions taken on applications for refugee status, provided that the applicant for refugee status agrees, and
- (c) be entitled to present R's views, in the exercise of R's supervisory responsibilities under Article 35 of the Refugee Convention, to the Secretary of State regarding individual applications for refugee status at any stage of the procedure.

### **49. Actions of representatives**

The actions of the applicant for protection's representative(s) may also be taken into account when considering the actions of the applicant for protection under this Part, in particular, in regard to the matters set out in paragraphs 7 and 30.

## **Family members**

### **50. Qualifying criteria for permission as the spouse or civil partner of a person with protection**

#### **Purpose**

This route is for the spouse or civil partner of a person with protection. Paragraph [278] of these Rules applies.

#### **Entry to the UK**

All persons arriving in the UK and wishing to enter as the spouse or civil partner of a person with protection must have immigration permission for this purpose before their arrival in the UK. If not, entry will be refused.

#### **Requirements for permission**

(a) To qualify for immigration permission as the spouse or civil partner of a person with protection, the applicant (“P”) must meet the requirements listed below. If P meets these requirements, immigration permission will be granted. If P does not meet these requirements, immigration permission will be refused.

#### **(b) Requirements:**

(i) P must be the spouse or civil partner of a person with protection in the UK.

(ii) The marriage or civil partnership must not have taken place after the person with protection left the country of former habitual residence in order to seek protection in the UK, unless the parties were living together in a relationship similar to marriage or civil partnership before that person’s departure and the relationship has subsisted for a total period of at least 2 years.

(iii) Each of the parties must intend to live permanently with the other as their spouse or civil partner and the marriage or civil partnership must be subsisting at the time the application is made.

(iv) P would not be excluded from a grant of protection for any of the reasons in paragraphs 39 and 40 if P were to make an application for protection.

(v) If P has already entered the UK and is applying for permission, P must have been included in the application for protection made by the person with protection in accordance with paragraph 3.

(c) Immigration permission will be granted for a period which expires on the same day as the current permission granted to the person with protection.

(d) Immigration permission will not be subject to any conditions.

(e) Immigration permission will be renewable unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that P is a danger to the security of the UK or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the UK, and without prejudice to paragraph 44.

(g) For the purposes of the construction of subparagraph (e) paragraph 45(g) applies.

## **51. Qualifying criteria for permission as the unmarried/same sex partner of a person with protection**

### Purpose

This route is for the unmarried or same sex partner of a person with protection. Paragraph [295AA] of these Rules applies.

### Entry to the UK

All persons arriving in the UK and wishing to enter as the unmarried or same sex partner of a person with protection must have immigration permission for this purpose before their arrival in the UK. If not, entry will be refused.

### Requirements for permission

(a) To qualify for immigration permission as the unmarried or same sex partner of a person with protection, the applicant ("P") must meet the requirements listed below. If P meets these requirements, immigration permission will be granted. If P does not meet these requirements, immigration permission will be refused.

#### **(b) Requirements:**

(i) P must be the unmarried or same sex partner of a person with protection in the UK which was granted on or after 9th October 2006.

(ii) Any previous marriage or similar relationship by P or the person with protection must have permanently broken down.

(iii) The parties must have been living together in a relationship similar to marriage or civil partnership for a period of at least 2 years.

(iv) The relationship must have existed before the person with protection left the country of former habitual residence in order to seek protection in the UK.

(v) Each of the parties must intend to live permanently with the other as their unmarried or same sex partner and the relationship must be subsisting at the time the application is made.

(vi) The parties must not be so closely related that they would be prohibited from marrying each other in the UK.

(vi) P would not be excluded from a grant of protection for any of the reasons in paragraphs 39 and 40 if P were to make an application for protection.

(vii) If P has already entered the UK and applying for permission, P must have been included in the application for protection made by the person with protection in accordance with paragraph 3.

(c) Immigration permission will be granted for a period which expires on the same day as the current permission granted to the person with protection.

(d) Immigration permission will not be subject to any conditions.

(e) Immigration permission will be renewable unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that P is a danger to the security of the UK or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the UK and without prejudice to paragraph 44.

(g) For the purposes of the construction of subparagraph (e) paragraph 45(g) applies.

## **52. Qualifying criteria for permission as child of person granted protection**

### Purpose

This route is for the child of a person with protection. Paragraph [296] of these Rules applies.

### Entry to the UK

All persons arriving in the UK and wishing to enter as the child of a person with protection must have immigration permission for this purpose before their arrival in the UK. If not, entry will be refused.

### Requirements for permission

(a) To qualify for immigration permission as the child of a person with protection, the applicant ("P") must meet the requirements listed below. If P

meets these requirements, immigration permission will be granted. If P does not meet these requirements, immigration permission will be refused.

**(b) Requirements:**

(i) P must be the child of a parent with protection in the UK.

(ii) P must be under the age of 18 on the date the application is made.

(iii) P must not be married or in a civil partnership, must not have formed an independent family unit, and must not be leading an independent life.

(iv) P must have been part of the family unit of the person with protection at the time that the person with protection left the country of former habitual residence in order to seek protection in the UK.

(v) P would not be excluded from a grant of protection for any of the reasons in paragraphs 39 and 40 if P were to make an application for protection.

(vi) If P has already entered the UK and is applying for permission, P must have been included in the application for protection made by the person with protection in accordance with paragraph 3.

(c) Immigration permission will be granted for a period which expires on the same day as the current permission granted to the person with protection.

(d) Immigration permission will not be subject to any conditions.

(e) Immigration permission will be renewable unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that P is a danger to the security of the UK or having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the UK and without prejudice to paragraph 44.

(f) For the purposes of the construction of subparagraph (e) paragraph 45(g) applies.

## **Enforcement**

### **53. No removal action while application for protection is outstanding**

(a) Until:

(i) an application for protection is refused or its examination discontinued by the Secretary of State,

(ii) submissions made by the applicant have been considered by the Secretary of State under section 176 of the Immigration and Citizenship Act, or

(iii) [the Secretary of State has issued a certificate under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004],

no action will be taken to require the departure of the applicant or the dependants of the applicant from the UK.

(b) Nothing in subparagraph (a) will prevent the taking of interim or preparatory action.

## **ANNEX – TEMPORARY PROTECTION**

### **1. Definitions**

"close relative" means:

(a) the adult child (who is unmarried and not a civil partner), parent or grandparent of an applicant for, or person who has, temporary protection, or

(b) the sibling (who is unmarried and not a civil partner) or the uncle or aunt of an applicant for, or person who has, temporary protection, who lived with the principal applicant as part of the family unit in the country of origin immediately prior to the mass influx and was wholly or mainly dependent upon the principal applicant at that time, and would face extreme hardship if reunification with the principal applicant did not take place.

### **2. Qualifying criteria for grant of temporary protection**

(a) To qualify for temporary protection an applicant must meet the requirements listed below. If the applicant does not meet these requirements, temporary protection will be refused.

**(b) Requirements:**

(i) The applicant must be in the UK or have arrived at a port of entry in the UK.

(ii) The applicant must be a person entitled to temporary protection as defined by, and in accordance with, the Temporary Protection Directive.

(iii) The applicant must not hold an extant grant of temporary protection entitling residence in another member State. This requirement is subject to the provisions relating to dependants and close relatives set out in paragraph 5 and to any agreement to the contrary with the member State in question.

(iv) The applicant must not be not excluded from a grant of temporary protection under paragraph 3.

### **3. Criteria for exclusion of grant of temporary protection**

(a) A person ("P") is excluded from temporary protection where 1 or more of the requirements listed below are met.

**(b) Requirements:**

(i) There are serious reasons for considering that:

(1) P has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(2) P has committed a serious non-political crime outside the UK prior to P's application for temporary protection; or

(3) P has committed acts contrary to the purposes and principles of the United Nations, or

(ii) there are reasonable grounds for regarding P as a danger to the security of the UK or, having been convicted by a final judgment of a particularly serious crime, to be a danger to the community of the UK.

(c) Consideration under this paragraph will be based solely on the personal conduct of the person concerned. Exclusion decisions or measures under this paragraph will be based on the principle of proportionality.

(d) For the purpose of the construction of subparagraph (b)(i)(3) paragraph 39(e) applies.

(e) For the purpose of the construction of subparagraph (b)(ii) paragraph 45(g) applies.

#### **4. Grant of permission**

(a) If an applicant is granted temporary protection immigration permission will be granted.

(b) Immigration permission will be for a period not exceeding 12 months. On the expiry of this period, the person will be entitled to apply for a further grant of immigration permission for successive periods of six months thereafter.

(c) Immigration permission will not be subject to any conditions.

#### **5. Right of dependant to apply for temporary protection**

##### Purpose

This route is for the dependant or close relative of a person granted temporary protection.

##### Requirements for permission

(a) To qualify for temporary protection as the dependant or close relative of a person with temporary protection (“P”) the applicant must meet the requirements listed below. If the applicant meets these requirements, immigration permission will be granted. If the applicant does not meet these requirements, immigration permission will be refused.

**(b) Requirements:**

(i) The applicant must be the dependant or close relative of P.

(ii) The applicant must not be excluded from a grant of temporary protection under paragraph 3.

(c) Temporary protection will be granted for a period which expires on the same day as the temporary protection of P.

(d) Temporary protection will not be subject to any conditions.

(e) When considering any application by a child who is a dependant or close relative, the Secretary of State will take into consideration the best interests of that child.

**6. Movement between member States for those with temporary protection**

A person with temporary protection will be permitted to return to the UK from another member State during the period of a mass influx of displaced persons as established by the Council of the European Union pursuant to Article 5 of the Temporary Protection Directive.

**7. Information**

A person granted temporary protection (“P”) will be provided with a document in a language likely to be understood by P in which the provisions relating to temporary protection and which are relevant to P are set out. P will also be provided with a document setting out P’s temporary protection status.

**8. Temporary protection register**

The Secretary of State will establish and maintain a register of those granted temporary protection. The register will record the name, nationality, date and place of birth and marital status of those granted temporary protection and their family relationship to any other person who has been granted temporary protection.