



THE REFUGEE OR PERSON IN NEED OF INTERNATIONAL PROTECTION (QUALIFICATION) REGULATIONS 2006

This statutory instrument became effective on 9 October 2006, implementing EU Council Directive 2004/83/EC of 29 April 2004, which prescribes (a) 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 (b) the scope of the protection granted. The Regulations are made by the Home Secretary under powers created by the European Communities Act 1972, the Act by which Parliament approved the United Kingdom's accession to the European Communities. 9 October was the last date for enacting legislation by Member States to give effect to the Directive.

The purpose of the Regulations is mainly to define what constitutes persecution for the purposes of the Geneva Convention and the content in the laws of the UK replicates existing statute or case law or the provisions of the UNHCR's guidelines which though not in terms legally binding are in practice regularly followed by decision takers. Regulation 3 for example states that for the purpose of deciding the question of eligibility for refugee status, account may be taken of acts of persecution or serious harm 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 parties covered by (a) or (b) are unable or unwilling to provide protection against persecution or serious harm.[Emphasis supplied]. Non-State persecution has always been covered by paragraph 65 of the Guidelines, and as far as decision takers in the UK are concerned it does not in practice change the law. However, it throws into question the issue as to whether in fact, France and other Member States in their administration of the Convention do not recognise non-State persecution. If that is indeed the practice then it is clearly contrary to the terms of this Directive.

Regulation 5 defines an act of persecution and gives numerous examples of the form which persecution may take. Acts of persecution give rise to an entitlement to protection under the Convention only if they are committed for one or other of the reasons listed in the Convention, viz. Race, religion, nationality, membership of a particular social group or political opinion. Regulation 6 gives non-exhaustive definitions of the kind of conduct which shows that the act of persecution in question has in fact been committed for a Convention reason.

Although the Regulations are largely a restatement in legislative form of well established principles and practice, it is always possible that having principles and practice available in such a form may give rise to new departures in case law in the field of asylum.

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