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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations together with amendments to the Immigration Rules (HC 395) in part implement Council Directive [2004/83/EC](#) of 29th 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 (OJ L304 30.9.2004 p 12) (“the Directive”). Many parts of the Directive do not require implementation as consistent provision is already made in existing domestic legislation. A transposition note has been prepared and is published together with the explanatory memorandum for this instrument on HMSO’s website: [www.opsi.gov.uk](http://www.opsi.gov.uk).

These Regulations apply to any person who is not a British citizen who makes an application for asylum on or after 9th October 2006 and to any application for asylum which has not been decided and any immigration appeal brought under the Immigration Acts which has not been finally determined. Application for asylum is defined in regulation 2 and Immigration Acts is defined in regulation 1.

Regulation 3 provides that in deciding whether a person is a refugee or person eligible for humanitarian protection the actors that can commit persecution or serious harm include the State, any party or organisation controlling the State or a substantial part of the territory of the State, or any non-State actor if the State or party controlling the State or a substantial part of it or any international organisation are unable or unwilling to provide protection against persecution or serious harm. Persecution and serious harm are defined in regulation 2.

Regulation 4 provides that in deciding whether a person is a refugee or person eligible for humanitarian protection the actors listed in regulation 4 (as set out above) and any international organisation can provide protection from persecution or serious harm. It also specifies when protection shall be regarded as generally provided.

Regulation 5 provides which acts can constitute persecution and the forms that persecution can take. It also provides that an act of persecution must be committed for at least one of the reasons in Article 1(A) of the Geneva Convention.

Regulation 6 provides that in determining whether a person is a refugee certain factors shall be taken into consideration when looking at the reasons for persecution in Article 1(A) in the Geneva Convention.

Regulation 7 sets out which persons are excluded from the Geneva Convention.