

**EXPLANATORY MEMORANDUM TO
THE DISPLACED PERSONS (TEMPORARY PROTECTION)
REGULATIONS 2005**

2005 No.1379

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations together with the inclusion of a new Part 11A in the Immigration Rules (HC 395)¹, the Education (Student Fees and Support) Temporary Protection (Scotland) Amendment Regulations 2005² and the Further Education Bursaries (Scotland) Direction 2005 and the Education Maintenance Allowances (Scotland) Direction 2005³ make the provision which is necessary for the implementation of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (“the Temporary Protection Directive”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The Treaty of Amsterdam (1997) committed Member States to a range of measures designed to establish minimum standards for asylum procedures and policies across the European Union by May 2004 as a first step towards a common European asylum system. Article 63(2) required the Council, within a period of five years after the entry into force of the Treaty, to adopt measures on refugees and displaced persons within the following areas:

- a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection;
- b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

4.2 The Temporary Protection Directive set a deadline of 31 December 2002 for Member States to take all necessary steps to comply with its provisions. The delay in implementation has been due to the need to ensure cross-Whitehall agreement on the details of transposition.

¹ Part 11A of the Immigration Rules came into force on 1st January 2005.

² SSI 2005/217

³ These Regulations came into force on 7th May 2005. They amend the Scottish Statutory Instruments listed under Article 14 in the attached transposition note.

- 4.3 The Directive is being implemented through the introduction of new legislation as well as reliance on existing legislation. Where possible, the changes that are necessary to implement the Directive have been made through the Immigration Rules. The provisions contained in these Regulations, however, are not suitable for inclusion in the Immigration Rules. Amendments to education legislation in Scotland have been given effect separately by Scottish Ministers.
- 4.4 The Secretary of State has been designated for the purposes of section 2(2) of the European and Communities Act 1972 in relation to measures relating to immigration, asylum, refugees and displaced persons⁴. These Regulations are made under section 2(2) of that Act.
- 4.5 The Directive cleared Parliamentary scrutiny in the House of Commons in March 2001 and in the House of Lords in June 2001.
- 4.6 A transposition note has been prepared and is annexed hereto.

5. Extent

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister of State for the Home Department, Tony McNulty, made the following statement regarding Human Rights:

In my view the provisions of the Displaced Persons (Temporary Protection) Regulations 2005 are compatible with the Convention rights.

7. Policy Background

- 7.1 The Temporary Protection Directive establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons into the EU and aims to promote a balance of efforts among Member States in receiving and bearing the consequences of receiving such persons. The Directive was conceived in the wake of the humanitarian crisis resulting from the civil war in Yugoslavia during the 1990s and aims to ensure that any future such crisis be met with a more effective, co-ordinated response.
- 7.2 The Directive will be invoked by a Council Decision that is adopted by Qualified Majority on a recommendation from the European Commission declaring that a situation of 'mass influx' exists. In the event that the Directive is invoked, the UK retains the right to specify the number of displaced persons that we are prepared to receive under the Directive.
- 7.3 The purpose of the Directive is to establish minimum standards on accommodation, employment, education, healthcare, social welfare, family

⁴ The Secretary of State was designated for these purposes by the European Communities (Designation) (No.5) Order 2004 (S.I. 2004/2642).

reunion and documentation, as well as additional provisions for unaccompanied minors and vulnerable individuals.

- 7.4 The new Part 11A of the Immigration Rules establishes “temporary protection” as a category of limited leave to enter or remain and sets out the basic conditions attaching to such leave. This legislative amendment came into force on 1st January 2005.
- 7.5 The purpose of the Displaced Persons (Temporary Protection) Regulations 2005 is to implement the provisions of the Directive that are neither covered under existing legislation nor suitable for inclusion in the Immigration Rules. These relate to means of subsistence; housing; the treatment of claims for asylum by persons granted temporary protection in relation to section 55 of the Nationality, Immigration and Asylum Act 2002; and the waiving of consular fees for those seeking to enter the UK on the basis of temporary protection.
- 7.6 In order to ensure the managed departure of those who come to the UK under the Temporary Protection Directive, those whose leave has expired will continue to benefit from means of subsistence and housing for up to 28 days after the period of temporary protection specified in the Council Decision expires as long as they are taking steps or co-operating with efforts to facilitate their voluntary return. This is in line with the Directive’s emphasis on voluntary return, as well as the domestic requirement to maintain an effective immigration control.
- 7.7 The Temporary Protection Directive and the consequent changes to the Immigration Rules were discussed with relevant NGOs at a stakeholder meeting on 18th January 2005. NGOs were also advised of the legislative changes in a letter sent out on 21st December 2004.
- 7.8 Local authorities and landlords’ associations have been consulted. A letter was sent out to all relevant accommodation providers on 10th February 2005 advising them of the proposed Regulations and their specific implications for housing. To date there has been no response to this letter.
- 7.9 Given that there is currently no indication that the Directive is likely to be invoked, implementation will have no immediate impact.
- 7.10 These Regulations apply to all those granted temporary protection in the United Kingdom as a result of a decision of the Council of the European Union made pursuant to Article 5 of the Temporary Protection Directive. They do not apply to those seeking other forms of protection nor to those with any other form of immigration status in the UK.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Rod McLean at the Home Office can answer any queries regarding the instrument.
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TRANSPOSITION NOTE PREPARED BY THE HOME OFFICE

Directive			
<p>Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (“the Directive”).</p> <p>Many elements of the Directive do not require implementation as equivalent provision is already made. However, where implementation is required this has been done by way of:</p> <ul style="list-style-type: none"> (i) a new part 11A in the Immigration Rules (HC 395) (“part 11A” and a reference to a paragraph in this note is a reference to a paragraph in part 11A); (ii) the Education (Student Fees and Support) Temporary Protection (Scotland) Amendment Regulations 2005, SSI 2005/217 (which amend the Scottish Statutory Instruments listed under Article 14); (iii) the Further Education Bursaries (Scotland) Direction 2005 and the Education Maintenance Allowances (Scotland) Direction 2005; and (iv) the Displaced Persons (Temporary Protection) Regulations 2005 (“the Temporary Protection Regulations”). <p>Part 11A of the Immigration Rules came into force on 1st January 2005. The Education (Student Fees and Support) Temporary Protection (Scotland) Amendment Regulations 2005 came into force on 7th May 2005. The Education Bursaries (Scotland) Direction 2005 and the Education Maintenance Allowances (Scotland) Direction also came into force on 7th May 2005. The Displaced Persons (Temporary Protection) Regulations 2005 come into force on 15th June 2005.</p>			
Article	Objectives	Implementation	Responsibility
1	Sets out the purpose of the Directive (to lay down minimum standards for giving temporary protection in the event of a mass influx of displaced persons from	No action required.	Throughout the Directive, the Secretary of State for the Home

	<p>third countries and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons). The individual articles (detailed below) set out the specific obligations with which Member States must comply.</p>		<p>Department is responsible unless stated otherwise.</p>
2	<p>Defines terms used throughout the Directive.</p>	<p>No action required.</p>	
3	<p>Temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.</p> <p>Member States shall apply temporary protection with due respect for human rights and fundamental freedoms and non-refoulement obligations.</p> <p>The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with UNHCR and other relevant international organisations.</p> <p>The Directive shall not apply to persons who have been accepted under temporary protection schemes prior to its entry into force.</p>	<p>No action is required. Under our international and national obligations the UK will substantively consider any asylum claim lodged within its territory.</p> <p>No action is required. The UK has regard to its obligations in the Geneva Convention (1951), European Convention on Human Rights (1950) and the Human Rights Act (1998).</p> <p>No action required.</p> <p>No action required.</p>	

4	Describes the duration of temporary protection. The initial duration shall not exceed one year. It may be extended automatically by six monthly periods for a further period of one year. Where reasons of temporary protection persist, the Council may decide to extend the period of temporary protection for up to one year.	Part 11A (paragraph 355C) entitles a person to whom temporary protection is granted to be granted limited leave to enter or remain for a period not exceeding 12 months. On the expiry of this period, he will be entitled to apply for an extension of this limited leave for successive periods of 6 months thereafter.	
5	Describes the circumstances in which the Directive will be invoked.	No action required.	
6	Describes the circumstances in which temporary protection will come to an end.	No action required.	
7	Member States may extend temporary protection to additional categories of displaced person where they are displaced for the same reasons and from the same country or region of origin.	No action is required. This provision is discretionary.	
8	Member States shall provide persons enjoying temporary protection with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued for that purpose.	The insertion of paragraph 355E to the Immigration Rules (HC 164) on 1st January 2005 ensures that a person to whom temporary protection is granted will be provided with a document setting out his temporary protection status. That status will entitle the holder to reside in the UK for the duration of the	

	<p>Whatever the validity of the residence permits referred to in paragraph 1, the treatment granted by the Member States to persons enjoying temporary protection may not be less favourable than that set out in Articles 9 to 16.</p> <p>The Member States shall provide persons admitted to their territory for the purposes of temporary protection with every facility for obtaining the necessary visas, free of charge or their costs reduced to a minimum.</p>	<p>temporary protection leave.</p> <p>Persons granted with residence permits under temporary protection will be treated in accordance with Articles 9 to 16 of the Directive. The details of implementation are set out below under Articles 9 to 16.</p> <p>Regulation 16 of the Displaced Persons (Temporary Protection) Regulations 2005 requires a consular officer to waive any entry clearance (including visa) fee when that officer is satisfied the applicant will benefit from a grant of temporary protection on arrival in the UK.</p>	<p>Secretary of State for Foreign and Commonwealth Affairs</p>
9	<p>Member States shall provide beneficiaries of temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.</p>	<p>Part 11A (paragraph 355E) of the Immigration Rules requires that a person to whom temporary protection is granted will be provided with a document, in a language likely to be understood by him, in which the provisions relating to temporary protection and which are relevant to him are clearly set out.</p>	
10	<p>Member States shall register the personal data of persons enjoying temporary protection on their territory.</p>	<p>Paragraph 355F of the Immigration Rules requires that the Secretary of State establishes and maintains a register of those granted temporary protection. The register</p>	

		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. Such a register will only be set up and maintained in the event of a mass influx of displaced persons taking place as defined by this Directive.	
11	A Member State shall take back a person enjoying temporary protection on its territory, if that person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply.	Paragraph 355D of the Immigration Rules obliges the UK to permit a person with temporary protection to return to the United Kingdom from another Member State of the European Union for the duration of the mass influx as established by the Directive.	
12	Member States shall authorise, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession. Persons enjoying temporary protection should also be authorised to engage in activities such as educational opportunities for adults, vocational training and practical workplace experience.	Paragraph 355C of the Immigration Rules enables a person to whom temporary protection is granted to be given limited leave to enter or remain, which is not to be subject to a condition prohibiting his employment or self-employment. Any person granted temporary protection who has access to the labour market in line with paragraph 355C would also be able to participate in vocational training and practical workplace	Secretary of State for Work and Pensions Department for Social

		<p>experience.</p> <p>Adults with temporary protection would also have the same access as nationals to education and training. The legislation by which this is implemented is detailed under Article 14.</p>	<p>Development, Northern Ireland</p> <p>Secretary of State for Education & Skills</p> <p>Minister for Education & Lifelong Learning, Wales</p> <p>Deputy First Minister and Minister for Enterprise and Lifelong Learning, Scotland</p> <p>Department of Employment and Learning, Northern Ireland.</p>
	<p>The general law in force in Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.</p>	<p>Persons under temporary protection in the UK would be employed under the same conditions as nationals. They would also have access to the social security systems relating to employed or self-employed activities. Please see Article 13 for legislative details relating to social welfare and means of subsistence.</p>	<p>Secretary of State for Work and Pensions</p> <p>Department for Social Development, Northern Ireland</p> <p>Secretary of State for Trade and Industry</p>
13	<p>Member States shall ensure that persons enjoying temporary protection have access to suitable accommodation or, if necessary,</p>	<p>The Secretary of State will provide, or arrange for the provision of, accommodation for those</p>	<p>Secretary of State for the Home Department</p>

	<p>receive the means to obtain housing.</p> <p>Member States shall make provision for persons enjoying temporary protection to receive necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources.</p>	<p>who have been granted temporary protection and their dependants under regulations 5 to 7 of the Displaced Persons (Temporary Protection) Regulations 2005.</p> <p>The UK meets its obligations under this Article via the provisions contained within:</p> <ul style="list-style-type: none"> (a) Sections 21 and 29 of the National Assistance Act 1948; (b) Sections 46(3) and 47 of the NHS and Community Care Act 1990; (c) Section 45 of the Health Services and Public Health Act 1968; (d) Section 21 and Schedule 8 of the National Health Service Act 1977; (e) Section 2 of the Local Government Act 2000; (f) Sections 12 and 12A of the Social Work (Scotland) Act 1968; (g) Health and Personal Social Services (Northern Ireland) Order 1972; (h) Children Act 1989 which entitles those under the age of 18 in England and Wales to social care; (i) Children (Northern Ireland) Order 1995 which entitles those under the age of 18 in Northern Ireland to social care; and 	<p>Secretary of State for Health</p> <p>Assembly Minister for Health and Social Care, Wales</p> <p>Minister for Health and Community Care in Scotland</p> <p>Department of Health, Social Services and Public Safety, Northern Ireland</p> <p>Secretary of State for Education & Skills</p> <p>Department of Education, Northern Ireland</p> <p>Minister for Education and Young People, Scotland</p>
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	<p>Member States shall also make provision for medical care including at least emergency</p>	<p>(j) Children (Scotland) Act 1995 which entitles those under the age of 18 in Scotland to social care.</p> <p>Existing legislation renders beneficiaries of temporary protection eligible to receive:</p> <p>(a) the Child and Working Tax Credits under the Tax Credits Act 2002 and its related regulations; and</p> <p>(b) Child Benefit and Guardian’s Allowance under sections 77 and 141 of the Social Security Contributions and Benefits Act 1992, sections 77 and 137 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and the Child Benefit (General) Regulations 2003.</p> <p>Furthermore, by virtue of regulations 3 and 4 of the Displaced Persons (Temporary Protection) Regulations 2005, people with temporary protection will have access to means of subsistence under:</p> <p>(a) Part VII of the Social Security Contributions and Benefits Act 1992 (c.4);</p> <p>(b) Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7);</p> <p>(c) Sections 1 and 3 of the Jobseekers Act 1995</p>	<p>Paymaster General</p> <p>Inland Revenue</p> <p>Secretary of State for Work and Pensions</p> <p>Department for Social Development, Northern Ireland</p>
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	<p>medical care and essential treatment of illness.</p>	<p>(c. 18); (d) Article 5 of Part II of the Jobseekers (Northern Ireland) Order 1995 (S.I. No. 2705 (NI 15)); (e) The State Pension Credit Act 2002 (c. 16); and (f) The State Pension Credit Act (Northern Ireland) 2002 (c. 14 NI)).</p> <p>A person granted temporary protection will fall within the definition of ‘refugee’ in the National Health Service (Charges to Overseas Visitors) Regulations 1989 and will therefore be exempt from charges for NHS secondary medical care. This includes emergency medical care and essential treatment of illness.</p> <p>A person granted temporary protection would be eligible for free NHS primary medical care services by virtue of the fact that NHS primary medical services are free to all persons in the UK regardless of their immigration status. (An individual practice has discretion on whether to accept an application to be a registered patient but a decision to refuse registration must be based on reasonable and non-discriminatory grounds.)</p> <p>People under temporary</p>	<p>Secretary of State for Health</p> <p>Minister for Health and Social Care, Wales</p> <p>Minister for Health and Community Care in Scotland</p> <p>Department of Health, Social Services and Public Safety, Northern Ireland</p>
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		<p>protection would therefore be able to access primary and secondary medical treatment under the National Health Service without charge. They would also be eligible for NHS dental, ophthalmic and pharmaceutical services. Individual dentists have discretion on whether to accept an application to be a registered patient but a decision to refuse registration must be based on reasonable and non-discriminatory grounds.</p> <p>Persons granted temporary protection would be eligible for exemption from or for remission of NHS charges (charges for drugs, medicines, appliances, pharmaceutical services, dental appliances and dental treatment) if they are under 16 or under 19 and in qualifying full-time education, over 60 or on low incomes, or are receiving jobseekers allowance as persons available for and seeking work or income support as disabled persons. These persons might also fall into other categories exempt from charges, e.g. pregnant, given birth within the last 12 months, having a particular illness / condition.</p> <p>Those on jobseekers allowance or income support, those under 16, or under 19 and in qualifying</p>	
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		<p>full-time education, those over 60 and those whose resources are less than their requirements would also get free sight tests. Those under 16, or under 19 and in qualifying full-time education, on jobseekers allowance or income support, those whose resources are less than their requirements could also get vouchers to enable them to purchase optical appliances up to the value of the voucher.</p> <p>This is by virtue of:</p> <ul style="list-style-type: none"> (a) Regulation 4(1)(c) and the definition of “refugee” in regulation 1(2) of the National Health Service (Charges to Overseas Visitors) Regulations 1989 made under s.121 of the National Health Service Act 1977; (b) Section 16 CC (1) of the National Health Service Act 1977; (c) Section 35 (1) of the NHS Act 1977; (d) Section 38 (1) of the NHS Act 1977; (e) Section 41 (1) of the NHS Act 1977; (f) Regulations 5 and 6 of the NHS (Travel Expenses and Remission of Charges) Regulations 2003; (g) Paragraph 1 (1) (c) of Schedule 12 of the NHS Act 1977; (h) Regulation 7 (1) of the NHS (Charges for Drugs and Appliances) Regulation 2000; 	
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		<ul style="list-style-type: none"> (i) Regulations 3, 8 and 15 of the NHS (Optical Charges and Payments) Regulations 1997; (j) Regulation 13 of the NHS (General Ophthalmic Services) Regulations 1986; ; (k) Paragraph 2 (4) and 3 (4) of Schedule 12 to the NHS Act 1977; (l) Section 78A (6) of the NHS Act 1977; (m)Section 20 (6) of the NHS (Primary Care) Act 1977; (n) National Health Service (Charges to Overseas Visitors) Regulations 1989 made under s.121 of the National Health Service Act 1977, as amended by The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2004; (o) Regulation 4(1)(c) and the definition of "refugee" in regulation 1(2) of the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 made under ss. 98, 105 and 108 (1) of the National Health Service (Scotland) Act 1978; (p) Health Services (Persons not Ordinarily Resident in Northern Ireland) Regulations (Northern Ireland) 1970, made under s.75, 80, 81 of 	
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		<p>the Health Services Act (Northern Ireland) 1948.</p> <p>No action is required.</p> <p>Individuals who have been granted temporary protection will be entitled to receive the same NHS services free of charge for such clinical needs as are identified as a permanent UK resident would receive under the NHS Act 1977. They will also be provided with appropriate assistance under the provisions contained within the following UK legislation:</p> <ul style="list-style-type: none"> (a) National Health Service (Scotland) Act 1978; (b) Health Services and Public Health Act 1968; (c) Chronically Sick and Disabled Persons Act 1970; (d) Chronically Sick and Disabled Persons (Northern Ireland) Act 1978; (e) Disabled Persons (Northern Ireland) Act 1989; (f) Disabled Persons (Northern Ireland) Order 1995; (g) Health and Personal 	
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	<p>Where persons enjoying temporary protection are engaged in employed or self-employed activities, account shall be taken, when fixing their proposed level of aid, of their ability to meet their own needs.</p> <p>The Member States shall provide necessary medical or other assistance to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.</p>	<p>Social Services (Northern Ireland) Order 1972; (h) Mental Health Act 1983; (i) Mental Health (Northern Ireland) Order 1986; (j) Mental Health (Scotland) Act 1984; (k) Mental Health Care and Treatment (Scotland) Act 2003; (l) Disabled Persons (Services, Consultation and Representation) Act 1986; (m) Children Act 1989; and (n) Children (Northern Ireland) Order 1995.</p>	
14	<p>Persons under 18 years of age enjoying temporary protection shall have access to the general education system under the same conditions as the nationals of the host country.</p>	<p>Sections 13 and 14 of the Education Act 1996 bestow a duty upon all Local Education Authorities in England and Wales to provide education to all those of</p>	<p>Secretary of State for Education & Skills</p>

		<p>compulsory school ages (under 16) in their area, irrespective of their immigration status.</p> <p>Persons of 16, 17 & 18 years of age enjoying temporary protection in England would have the same access to the general education system under the same conditions as nationals, in that all such provision is fully funded. The legislative basis for this is section 2 of the Learning and Skills Act 2000.</p> <p>The equivalent provision for Wales is Section 31 of the Learning and Skills Act 2000. Similar provisions exist for Scotland under the:</p> <ul style="list-style-type: none"> ▪ Education (Scotland) Act 1980; ▪ Standards in Scotland's Schools etc Act 2000 (section 1); ▪ Children (Scotland) Act 1995. <p>Persons under 18 who are granted temporary protection will have access to the further and higher education systems in Scotland on the same conditions as host nationals. The Education (Student Fees and Support) Temporary Protection (Scotland) Amendments Regulations 2005, SSI 2005/217 came into force on 7th May. The Further Education Bursaries (Scotland) Direction 2005 and the</p>	<p>Minister for Education & Lifelong Learning, Wales</p> <p>Minister for Education and Young People, Scotland</p> <p>Deputy First Minister and Minister for Enterprise and Lifelong Learning, Scotland</p>
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		<p>Education Maintenance Allowances (Scotland) Direction 2005 also came into force on 7th May. These Regulations amend the following Scottish legislation to ensure that those with temporary protection are eligible for the relevant benefits and conditions:</p> <ul style="list-style-type: none"> (a) Nursing and Midwifery Student Allowances (Scotland) Regulations 1992 - S.I. 1992/580 (S.66); (b) Education Authority Bursaries (Scotland) Regulations 1995 - S.I. 1995/1739 (S.119); (c) The Education (Fees and Awards) (Scotland) Regulations 1997 - S.I. 1997/93 (S.5); (d) The Students' Allowances (Scotland) Regulations 1999 - S.I. 1999/1131 (S.91); (e) The Education (Student Loans) (Scotland) Regulations 2000 - S.S.I. 2000/200; (f) Education Maintenance Allowances (Scotland) Regulations 2004- S.S.I. 2004 / 273. <p>Those under the age of 19 and granted temporary protection in Northern Ireland would have access to the general education system by virtue of Articles 5 and 6 of the Education and Libraries (Northern Ireland) Order 1986 (as read with the definitions set out in Article 2).</p>	
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	<p>Adults enjoying temporary protection may be allowed access to the general education system.</p>	<p>Under a Scheme under section 14 of the Education Act 2002, those aged 16 - 19 with temporary protection in England and Wales would be eligible to receive EMAs (education maintenance allowances) on the same basis as nationals.</p> <p>Temporarily protected persons aged 18 years and above in England would have the same access as nationals to education and training. The legislative basis for this is section 2 of the Learning and Skills Act 2000 for 18 year olds and section 3 of the same Act for those aged 19 and above.</p> <p>The equivalent Welsh provision is in section 32 of the Learning and Skills Act 2000.</p> <p>Adults granted temporary protection in Scotland will have access to educational learning as there is no prohibition on access to educational opportunities for adults by virtue of a person's status.</p> <p>Adults granted temporary protection in Northern Ireland would have access to educational learning by virtue of:</p> <p>(a) Training and Employment (Northern Ireland) Act 1950;</p>	<p>Department of Education, Northern Ireland</p> <p>Secretary of State for Education & Skills</p> <p>Secretary of State for Education & Skills</p> <p>Minister for Education & Lifelong Learning, Wales</p>
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		<p>(b) Further Education (Northern Ireland) Order 1997;</p> <p>(c) Education and Libraries (Northern Ireland Order 1986.</p>	<p>Deputy First Minister and Minister for Enterprise and Lifelong Learning, Scotland</p> <p>Department of Employment and Learning, Northern Ireland.</p>
15	<p>In cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered part of a family:</p> <p>(a) the spouse of the sponsor or his/her unmarried partner in a stable relationship; the minor unmarried children of the sponsor or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted;</p> <p>(b) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.</p>	<p>Under paragraph 356 of the Immigration Rules, “dependant” means a family member or a close relative. Paragraph 356 defines “family member” as:</p> <p>(i) the spouse of an applicant for, or a person who has been granted, temporary protection; or</p> <p>(ii) the unmarried partner of an applicant for, or a person who has been granted, temporary protection where the parties have been living together in a relationship akin to marriage which has subsisted for 2 years or more; or</p> <p>(iii) the minor unmarried child of an applicant for, or a person who has been granted, temporary protection or his</p>	

		<p>spouse who lived with the principal applicant as part of the family unit in the country of origin immediately prior to the mass influx.</p> <p>“Close relative” is defined as:</p> <ul style="list-style-type: none"> (i) the parent, grandparent or unmarried adult child of an applicant for or person who has been granted temporary protection; or (ii) any other relative of an applicant for or person who has been granted temporary protection whom the Secretary of State considers to have a particularly close relationship with the applicant or person <p>who lived with the principal applicant as part of the family unit in the country of origin immediately prior to the mass influx, and who was wholly or mainly dependent upon the principal applicant at that time.</p> <p>Paragraph 356A of the Immigration Rules provides for a dependant to apply for limited leave. A dependant family member who applies for limited leave will be granted temporary</p>	
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	<p>Where separate family members are enjoying temporary protection in different Member States the Member States shall reunite family members where they fall under the description of paragraph 1(a). The Member States may reunite family members where they fall under the description of paragraph 1(b), taking into account on a case-by-case basis the extreme hardship which they would face if the reunification did not take place.</p> <p>When applying this Article the Member States shall take into consideration the best interests of the child.</p>	<p>protection for the same duration and under the same conditions as the principal applicant. A dependant close relative who applies for limited leave may be granted temporary protection for the same duration and under the same conditions as the principal applicant in exceptional circumstances, taking into account on a case by case basis the extreme hardship the dependant close relative would face if the reunification did not take place.</p> <p>Under paragraph 356B of the Immigration Rules, when considering any application by a dependant child, the Secretary of State shall take into consideration the best interests of that child. In addition, the Children Act 1989, Children (Northern Ireland) Order 1995 and the Children (Scotland) Act 1995 have the best interest of the child as their underpinning principle.</p> <p>Paragraph 355E of the Immigration Rules ensures that a person to whom temporary protection is granted will be provided with a document setting out his temporary protection status. That status will entitle the holder to reside in the UK for the duration of the temporary</p>	<p>Secretary of State for the Home Department</p> <p>Secretary of</p>
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	Reunited family members shall be granted residence permits under temporary protection.	protection leave. This includes dependants granted temporary protection.	State for Education & Skills
16	<p>The Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, by any other appropriate representation.</p> <p>During the period of temporary protection, Member States shall provide for unaccompanied minors to be placed:</p> <p>(a) with adult relatives;</p> <p>(b) with a foster family;</p> <p>(c) in reception centres with</p>	<p>Section 17 of the Children Act 1989 requires local authorities in England and Wales to safeguard and promote the welfare of children within their area who are in need. Under this section, local authorities have an obligation to provide a range and level of services appropriate to each child's needs. This would include representation of unaccompanied minors. The equivalent provision for Northern Ireland is Article 18 of the Children (Northern Ireland) Order 1995. The equivalent provision for Scotland is Article 22 of the Children (Scotland) Act 1995. In addition, paragraph 352 of the Immigration Rules allows for the representation of unaccompanied minors by a responsible adult.</p> <p>Under the provisions of Section 20 of the Children Act 1989, local authorities in England and Wales are required to provide suitable accommodation for any child in need within their area. The equivalent provision for Northern Ireland is Article 21 of the Children (Northern Ireland) Order</p>	<p>Secretary of State for Education</p> <p>Assembly Minister for Health and Social Care, Wales</p> <p>Department of Education, Northern Ireland</p> <p>Minister for Education and Young People, Scotland</p>

	<p>special provision for minors, or in other accommodation suitable for minors;</p> <p>(d) with the person who looked after the child when fleeing.</p>	<p>1995. The equivalent provisions for Scotland are Articles 25 and 26 of the Children (Scotland) Act 1995. The Children Act 1989, Children (Northern Ireland) Order 1995 and the Children (Scotland) Act 1995 all have the best interest of the child as their underpinning principle.</p>	
17	<p>Persons enjoying temporary protection must be able to lodge an application for asylum at any time.</p> <p>Any asylum application not processed before the end of the period of temporary protection shall be completed after the end of that period.</p>	<p>Under the UK's international and national obligations anyone in the UK may lodge a claim for asylum which will be considered substantively in accordance with the immigration procedures laid down in domestic law.</p> <p>Under paragraph 329 of the Immigration Rules, an asylum claimant cannot be removed from the United Kingdom until the asylum claim has been determined.</p>	
18	<p>The Member State responsible for examining an application for asylum from a person under temporary protection shall be the Member State which has accepted his transfer onto its territory.</p>	<p>Under paragraph 328 of the Immigration Rules, all asylum claims made in the UK must be determined by the Secretary of State in accordance with the United Nations Convention and Protocol relating to the Status of Refugees.</p>	
19	<p>Member States may provide that temporary protection may not be enjoyed concurrently with the status of asylum seeker while</p>	<p>Under paragraph 355G of the Immigration Rules, a person who makes an asylum claim is also</p>	

	<p>applications are under consideration.</p> <p>Where an asylum application has been rejected, the Member State shall provide for that person to enjoy or continue to enjoy temporary protection for the remainder of the period of temporary protection.</p>	<p>eligible for temporary protection the Secretary of State may decide not to consider the asylum claim until the applicant ceases to be entitled to temporary protection.</p> <p>Under paragraph 355G, the Secretary of State reserves the right to delay consideration of an asylum claim made by someone with temporary protection status until that temporary protection status has expired. Persons granted temporary protection in the UK shall continue to enjoy that status until their leave expires under paragraph 355C of the Immigration Rules.</p>	
20	<p>When the period of temporary protection ends, the general laws on protection and on aliens in the Member States shall apply.</p>	<p>No action required.</p>	
21	<p>Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of such persons facilitate their return with respect for human dignity.</p>	<p>People under temporary protection will be offered assistance to return to their country of origin voluntarily, either through the Immigration Service or through an organisation such as the International Organization for Migration (IOM). IOM operates a Voluntary Assisted Return and Regeneration Programme (VARRP). Under this scheme IOM will assist individuals to obtain the relevant travel documents,</p>	

		<p>make arrangements for flights and onward travel in the return country and also provide reintegration assistance.</p> <p>Access to VARRP is already in place.</p>	
22	<p>Member States shall take the measures necessary to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission is conducted with due respect for human dignity.</p> <p>In cases of enforced return, Member States shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.</p>	<p>The United Kingdom endeavors to conduct all enforced returns with regard to the dignity of the person and in accordance with the principles embedded in ECHR. Furthermore all immigration decisions are subject to the considerations contained within the Human Rights Act 1998, which implements the ECHR into UK law.</p> <p>As above, any decision to forcibly return a person whose temporary protection has expired will be subject to the requirements of the Human Rights Act 1988.</p>	
23	<p>Member States shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel. They shall not be expelled so long as that situation continues.</p>	<p>All immigration decisions are subject to consideration under Article 3 of the ECHR and the Human Rights Act 1998. Under this Article the Secretary of State and his officials are required to take into account all known factors which may impact on the safe return of the individual concerned. Those who apply for further leave before their period of Temporary Protection</p>	

		<p>expires will be able to continue to access free NHS primary medical services and to be entitled to exemption from or for remission of NHS charges (charges for drugs, medicines, appliances, pharmaceutical services, dental appliances and dental treatment) on the same basis as under the Directive. They will also be entitled to free NHS secondary medical services as persons who continue to fall within the definition of ‘refugee’ under the National Health Service (Charges to Overseas Visitors) Regulations 1989.</p>	
	<p>Families whose children are minors and attend school in a Member State may be allowed to benefit from residence conditions allowing the children concerned to complete the current school period.</p>	<p>This provision is discretionary. The Secretary of State may hold removal in abeyance where the circumstances merit such action.</p>	
24	<p>The measures provided for in this Directive shall benefit from the European Refugee Fund set up by Decision 2000/596/EC, under the terms laid down in that Decision.</p>	<p>No action required.</p>	
25	<p>The Member States shall indicate their capacity to receive persons who are eligible for temporary protection as defined in the Council Decision referred to in Article 5. After the Council Decision has been adopted, Member States may indicate additional reception capacity by notifying the Council and the</p>	<p>No action required.</p>	

	<p>Commission.</p> <p>Member States shall ensure that people who are eligible for temporary protection as defined in the Council Decision referred to in Article 5 who have not yet arrived in the Community have expressed their will to be received onto their territory.</p>	No action required.	
26	<p>Member states shall co-operate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.</p> <p>Member States shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR. Member States shall inform the requesting Member State of their capacity for receiving transferees.</p> <p>Member States shall, at the request of another Member State, provide information on a person enjoying temporary protection which is needed to process a matter under this Article.</p> <p>Where a transfer is made from one Member State to another, the residence permit in the Member State of departure shall expire and the obligations towards the person concerned relating to temporary protection in the Member State of departure shall come to an end. The new host Member State shall grant temporary protection to the persons concerned.</p>	<p>No action required.</p> <p>No action required.</p> <p>No action required.</p> <p>Under paragraph 355 (iii) of the Immigration Rules (HC 164) a person is excluded from temporary protection in the UK if he holds an extant grant of temporary protection entitling him to reside in another Member State of the European Union.</p>	

27	<p>Member States shall appoint a national contact point for the purposes of administrative co-operation between Member States.</p> <p>Member States shall communicate data concerning the number of persons enjoying temporary protection and full information on the national laws, regulations and administrative provisions relating to the implementation of temporary protection.</p>	<p>No action required.</p> <p>No action required.</p>	
28	<p>A person may be excluded from temporary protection if:</p> <p>(a) there are serious reasons for considering that:</p> <p>(i) he/she 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;</p> <p>(ii) he/she has committed a serious non-political crime;</p> <p>(iii) he/she has been guilty of acts contrary to the purposes and principles of the United Nations;</p> <p>(b) there are reasonable grounds for regarding him/her as a danger to the security or community of the host Member State.</p>	<p>Under paragraph 355A of the Immigration Rules, a person will be excluded from temporary protection if:</p> <p>(i) there are serious reasons for considering that :</p> <p>(a) he 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; or</p> <p>(b) he has committed a serious non-political crime outside the UK prior to his application for temporary protection; or</p> <p>(c) he has committed acts contrary to the purposes and principles of the</p>	

		<p>United Nations; or</p> <p>(ii) there are reasonable grounds for regarding him as a danger to the security of the United Kingdom or, having been convicted by a final judgement of a particularly serious crime, to be a danger to the community of the United Kingdom.</p> <p>Consideration under this paragraph shall be based solely on the personal conduct of the applicant concerned. Exclusion decisions or measures shall be based on the principle of proportionality.</p>	
29	Persons who have been excluded from the benefit of temporary protection or family reunification shall be entitled to mount a legal challenge in the Member State concerned.	Any decision by a public authority in the UK may be challenged in the courts through judicial review.	
30	Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.	No action required.	
31	A report on the Directive to be prepared by the Commission	The UK will co-operate in sending the Commission all the information that is required to draw up this report.	
32	Transposition by 31 December 2002	The Temporary Protection Regulations, together with	

		<p>a new Part 11A in the Immigration Rules (HC 395), the Education (Student Fees and Support) Temporary Protection (Scotland) Amendments Regulations 2005 and amendments to the Further Education Bursaries (Scotland) Direction 2003 and the Education Maintenance Allowances (Scotland) Direction 2004, implement Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member States in receiving such persons and bearing the consequences thereof. Some parts of the Directive do not require implementation as consistent provisions already exist in domestic legislation.</p>	
33	Entry into force	No action required.	
34	Addressees	No action required.	