

**EXPLANATORY MEMORANDUM TO
THE ASYLUM (PROCEDURES) REGULATIONS 2007**

2007 No. 3187

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 amendments to the Immigration Rules¹ (HC 82), in part implement Council Directive 2005/85/EC² of 1 December 2005 laying down minimum standards on procedures in member States for granting and withdrawing refugee status (OJ No. L 326, 13.12.05, page 13) (“the Directive”).

2.2 The Directive was adopted in 2005 as part of the first stage of the Common European Asylum System (CEAS) and applies to the UK and all other member States, with the exception of Denmark which did not participate in the adoption of this 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 Union by 1 May 2004 as a first step towards CEAS. The Directive is the final element in the first phase of CEAS.

4.2 Many of the Directive’s provisions are already applied in UK practice and they must now be given statutory effect - the UK must therefore legislate in order to comply with the Directive. 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.

4.3 The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to immigration, asylum, refugees and displaced persons. These Regulations are made under section 2(2) of that Act.

¹ <http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/>

² http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_326/l_32620051213en00130034.pdf

4.4 The Directive has a long domestic scrutiny history. It was debated on the floor of the House of Commons and Ministers appeared twice before the Lords' Committee to give evidence. It finally cleared scrutiny in April 2004.

4.5 A transposition note has been prepared and is attached at Annex A.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Home Department, Meg Hillier, made the following statement regarding Human Rights:

In my view the provisions of the Asylum (Procedures) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The Directive is the final one to be implemented as part of the first phase of CEAS. At its special meeting in Tampere on 15 and 16 October 1999 the European Council agreed to work towards establishing CEAS based on the full and inclusive application of the Geneva Convention. The Tampere Conclusions provide that CEAS should include, in the short term, common standards for fair and efficient asylum procedures in all member States and, in the longer term, Community rules leading to a common asylum procedure in the European Community. In June 2007 the European Commission published a Green Paper on the future of CEAS³ which invited responses on how the second phase of CEAS should proceed.

7.2 The UK has opted in to all asylum Directives and Regulations to date, the other first phase instruments being:

- The EURODAC Regulation⁴ became operational on 15 January 2003. EURODAC is a fingerprint database that underpins the effective operation of the Dublin II Regulation⁵. This determines which member State is responsible for dealing with an asylum claim.
- The Dublin II Regulation came into force on 1 September 2003.
- The Temporary Protection Directive⁶ implemented on 1 January 2005 sets EU-wide arrangements for one-off influxes of asylum-seekers (for example, Kosovo).
- The Asylum Reception Conditions Directive⁷ implemented on 6 February 2005 outlines the minimum standard of provision of benefits for applicants.
- The Qualification Directive⁸ implemented on 9 October 2006 sets out minimum standards for the qualification and status of third country nationals

³ http://ec.europa.eu/justice_home/news/intro/doc/com_2007_301_en.pdf

⁴ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_062/l_06220020305en00010005.pdf

⁵ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_050/l_05020030225en00010010.pdf

⁶ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_212/l_21220010807en00120023.pdf

⁷ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_031/l_03120030206en00180025.pdf

⁸ http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_304/l_30420040930en00120023.pdf

or Stateless persons as refugees or as persons who otherwise need international protection. The content of the protection granted is also outlined.

- 7.3 The Directive sets out the basic procedural obligations on member States when assessing asylum applications; for example, interviews, legal assistance, application withdrawals, inadmissible and unfounded applications, the safe third country concept and appeals. Its deadline for implementation is 1 December 2007. In policy and operational terms, it is not anticipated that implementation will have a significant impact.
- 7.4 The Directive links directly to the asylum section of the Border and Immigration Agency's International Strategy: "Managing Global Migration"⁹. CEAS, particularly through the Dublin II Regulation and the EURODAC Regulation, has helped reduce 'asylum shopping' and the removal of those with no right to remain in the UK.
- 7.5 These Regulations:
- deal with the designation of States or parts of States for the purposes of section 94 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act");
 - make provision for a European Common List of Safe Countries of Origin;
 - make provision relating to interpreters in asylum and human rights appeals and judicial reviews brought in connection with asylum or human rights claims; and
 - amend the Immigration (Notices) Regulations 2003.
- 7.6 Section 94 of the 2002 Act (as amended) provides for the designation of States (or parts of States) which are considered to be generally safe in the context of asylum and human rights claims. A State or part which is considered generally safe in the context of asylum and human rights claims in relation to a description of person can be designated in relation to that description of person. An unsuccessful asylum or human rights claim made by a person entitled to reside in a designated State or part must be certified as clearly unfounded – such that the person will have no in-country right of appeal against the refusal of his claim – unless the Secretary of State is satisfied that his claim is not clearly unfounded.
- 7.7 Article 30 of the Directive allows the UK to retain its existing legislation for the designation of States/parts (or countries/parts in respect of specified descriptions of person). However, Article 30 sets out that in deciding whether a State or part is generally safe in the context of asylum and human rights claims member States shall have regard the legal situation, the application of the law and the general political circumstances in that State or part. Article 30 also sets out that the assessment of whether a State or part is generally safe in the context of asylum and human rights claims must be based on a range of sources of information including, in particular, information from other member States, the United Nations' High Commissioner for Refugees (UNHCR), the Council of Europe and other relevant international organisations.

⁹ <http://www.bia.homeoffice.gov.uk/6353/aboutus/internationalstrategy>

- 7.8 Regulation 3 amends section 94 of the 2002 Act to provide that, in deciding whether a State or part meets the test for designation, the Secretary of State shall have regard to all the circumstances of the State or part and shall have regard to information from any appropriate source.
- 7.9 Article 29 of the Directive provides for the Council to adopt a minimum common list of third countries which shall be regarded by member States as safe third countries of origin (“the European Common List of Safe Countries of Origin”). Annex 2 to the Directive sets out the criteria for adding a country to the list. Article 29 also makes provision for countries to be removed from or suspended from the list. Article 31 says that member States shall consider an application for asylum from a person who is a national of a country which appears on the European Common List of Safe Countries of Origin or is a Stateless person who was formerly habitually resident in such a country as unfounded, unless the person has submitted serious grounds for considering that the country is not safe in his particular circumstances.
- 7.10 The Council has not to date adopted a European Common List of Safe Countries of Origin. However, regulation 4 amends the 2002 Act to include relevant provision for the list. It sets out that the Secretary of State shall prescribe such a list by way of order. An order may only be made if the Secretary of State thinks it necessary for the purpose of complying with the UK’s obligations under Community Law, and shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House. Regulation 4 goes on to say that if a person who is a national of a State which appears on that list or is a Stateless person who was formerly habitually resident in such a State makes an asylum claim or a human rights claim (or both), the Secretary of State shall consider that claim/those claims to be unfounded, unless satisfied that the State is not safe in the particular circumstances of the claimant. The regulation also says that the Secretary of State shall certify the claim or claims under section 94 of the 2002 Act as clearly unfounded unless satisfied that it/they are not clearly unfounded.
- 7.11 Article 10 of the Directive states that applicants for asylum shall receive the services of an interpreter for submitting their case whenever necessary. The Article also states that where the member State calls upon the applicant, the interpreter shall be paid for from public funds. This applies to the appeals and judicial review processes as well as to the initial application process. Amendments are being made to the Asylum and Immigration Tribunal (Procedure) Rules 2005 (“the AIT Rules”) and the Special Immigration Appeals Commission (Procedure) Rules 2003 (“the SIAC Rules”) to provide for a right to an interpreter in proceedings before those bodies. Regulation 5 of these Regulations provides that where a person who has made an asylum or human rights claim is entitled to an interpreter under the amended AIT Rules or SIAC Rules for the purposes of bringing his appeal, the Secretary of State shall pay for the provision of the interpreter. That must be dealt with in these Regulations as this is not something which can be provided for in the AIT Rules and SIAC Rules. Regulation 5 also provides a right to an interpreter in onward appeals (that is, appeals against decisions of the AIT or SIAC) and in judicial reviews, where the person has made an asylum or human rights claim. The regulation specifies that where this right is engaged, the Secretary of State shall pay for the provision of the interpreter.

- 7.12 When a decision is made that someone is no longer a refugee but they have limited leave to enter or remain on another basis, section 83A of the 2002 Act provides a right of appeal against this loss of recognition that protection is required under the 1951 Refugee Convention. Regulation 6 is a technical amendment to the Immigration (Notices) Regulations 2003 designed to ensure that when someone is notified of decision attracting a right of appeal under section 83A, the notice will be accompanied by a statement of reasons for the decision.
- 7.13 The UK's proposals for implementation of the Directive were subject to a six week targeted consultation exercise which closed on 19 October 2007. Draft changes to the Immigration Rules were also provided as part of the consultation to give greater clarity of what the proposed changes would mean. Due to the technical nature of implementation and the small/limited cadre of interest it would generate, a shorter consultation period with the key stakeholders was agreed to be sufficient. A range of stakeholders (41 in total) received the UK's implementation paper; they included the Association of Directors of Children's Services, Bail for Immigration Detainees, the European Council on Refugees and Exiles, the Immigration Law Practitioners' Association, the Joint Council for the Welfare of Immigrants, Migrant Helpline, 11 Million (the Office of the Children's Commissioner), the Refugee Council and the United Nations' High Commissioner for Refugees.
- 7.14 In addition, a number of stakeholders attended a stakeholder event on 1 October 2007 where they had an opportunity to openly discuss implementation of the Directive and raise issues with officials from the Border and Immigration Agency of the Home Office. The officials present were those who had worked on identifying the changes needed to UK legislation and reflected the specific business areas affected.
- 7.15 Following the consultation period, seven written responses were received. Most responses were generally positive of the proposed implementation measures and welcomed the proposed approach. Some responses focused on the detail of the proposed changes and suggested text amendments to the Immigration Rules, a few of which have been accepted, whilst others put forward views on more long term policy issues which were unsuitable for consideration during the limited time available to implement the Directive. Such views will be passed on to the appropriate policy units in the Border and Immigration Agency for proper consideration. A summary of responses to consultation is currently being drafted and will be made available in December 2007.
- 7.16 These mainly minor changes, which affect how asylum applications will be processed by Case Owners from 1 December 2007, are being highlighted through a training package. Case Owners will have received appropriate training from their Senior Case Workers.
- 7.17 These Regulations shall apply to all applications for asylum recorded by the Secretary of State for the Home Department on or after 1 December 2007.

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

9.1 Queries should be addressed to the Enquiries Bureau in the Border and Immigration Agency of the Home Office Tel: 0870 606 7766 or e-mail: indpublicenquiries@ind.homeoffice.gsi.gov.uk.

TRANSPOSITION NOTE PREPARED BY THE HOME OFFICE

Directive

Council Directive 2005/85/EC of 1 December 2005 laying down minimum standards on procedures in Member States for granting and withdrawing refugee status (“**the Directive**”).

Current UK practice is in line with many of the provisions of the Directive, therefore the majority of these changes are codifying existing practice into legislation. Where implementation is required this has been done principally by way of two instruments:

- (i) a statement of changes to the Immigration Rules¹⁰ (HC 395, “**the Rules**”), and
- (ii) the Asylum (Procedures) Regulations 2007¹¹ (“**the Regulations**”).

These instruments do not go beyond what is necessary to implement the Directive.

Article	Objectives	Implementation	Responsibility
1	Explains the purpose of the Directive which is to establish minimum standards on procedures in member States for granting and withdrawing refugee status.	No action required.	Throughout the Directive, the Secretary of State for the Home Department is responsible unless stated otherwise.
2	Defines key terms used throughout the Directive.	Amend paragraph 327 of the Rules to read: <i>Under the Rules an asylum applicant is a person who either; (a) makes a request to be recognised as a refugee under the Geneva Convention on the basis that it would be contrary to the United Kingdom’s obligations under the Geneva Convention for him to be removed or required to leave the United Kingdom, or (b) otherwise makes a request for international protection. “Application for asylum” shall be construed accordingly.</i>	
3	Sets out the scope of the Directive.	As regards article 3(3) (which says that where member States employ a procedure in which	

¹⁰ <http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/>

¹¹ <http://www.opsi.gov.uk/si/si-2007-index.htm>

Article	Objectives	Implementation	Responsibility
		<p>asylum applications are examined both as asylum applications and as applications for other kinds of international protection, they shall apply the Directive throughout the procedure) insert new paragraph 326A into the Rules:</p> <p><i>The procedures set out in these Rules shall apply to the consideration of asylum and humanitarian protection.</i></p>	
4	Sets out what member States must do as regards the designation of responsible authorities for the purposes of dealing with asylum claims.	No action required. Paragraph 328 of the Rules already states that the Secretary of State will determine all asylum applications, and that is sufficient given that case owners working for the Secretary of State are for this purpose the Secretary of State. This position will not change once the Border and Immigration Agency moves to full agency status in 2008.	
5	Makes clear that member States are free to apply more favourable standards than those set out in the Directive in so far as those standards are compatible with the Directive.	No action required.	
6	Sets out who must be given access to the asylum procedure.	<p>No action required as regards article 6(1) and (4).</p> <p>As regards article 6(2) (which says that member States shall ensure that each adult has the right to make an application on his own behalf), insert new paragraph 327A into the Rules:</p> <p><i>Every person has the right to make an application for asylum on his own behalf</i></p> <p>As regards article 6(3) (which deals with dependants), amend paragraph 349 of the Rules to read:</p> <p><i>A spouse, civil partner, unmarried or same-sex partner, or minor child accompanying a principal applicant may be included in his application for asylum as his dependant, provided, in the case of an adult dependant with legal capacity, the dependant consents to</i></p>	

Article	Objectives	Implementation	Responsibility
		<p><i>being treated as such at the time the application is lodged. A spouse, civil partner, unmarried or same-sex partner or minor child may also claim asylum in his own right. If the principal applicant is granted asylum and leave to enter or remain any spouse, civil partner, unmarried or same-sex partner or minor child will be granted leave to enter or remain for the same duration. The case of any dependant who claims asylum in his own right will be also considered individually in accordance with paragraph 334 above. An applicant under this paragraph, including an accompanied child, may be interviewed where he makes a claim as a dependant or in his own right.</i></p> <p>As regards article 6(5) (which obliges member States to ensure that the authorities which are likely to be addressed by applicants are able to advise applicants how and where to make an application etc.), insert new paragraph 328A into the Rules:</p> <p><i>The Secretary of State shall ensure that authorities which are likely to be addressed by someone who wishes to make an application for asylum are able to advise that person how and where such an application may be made. Any application for international protection shall be presumed to be an application for asylum.</i></p>	
7	Sets out that applicants have the right to remain in the member State pending the examination of the application (subject to certain exceptions).	No action required. Section 77 of the Nationality, Immigration and Asylum Act 2002 ¹² and paragraph 329 of the Rules cover this obligation not to remove an asylum applicant until the Border and Immigration Agency has made a decision on his claim.	
8	Sets out the requirements for the examination of applications.	<p>As regards article 8(1) (which says the member States shall neither reject nor exclude from examination applications on the ground that they have not been made as soon as possible), insert new paragraph 339MA into the Rules:</p> <p><i>Applications for asylum shall be neither rejected nor excluded from examination on the sole ground that they have not been made</i></p>	

¹² <http://www.opsi.gov.uk/ACTS/acts2002/20020041.htm>

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		<p><i>as soon as possible.</i></p> <p>As regards article 8(2) (which obliges member States to take certain measures to ensure decisions are only taken on applications after an appropriate examination has taken place):</p> <p>- Insert new paragraph 339HA into the Rules:</p> <p><i>The Secretary of State shall ensure that the personnel examining applications for asylum and taking decisions on his behalf have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.</i></p> <p>- Amend paragraph 339J of the Rules to read:</p> <p><i>The assessment by the Secretary of State of an asylum claim, eligibility for a grant of humanitarian protection or a human rights claim will be carried out on an individual, objective and impartial basis.</i></p> <p>- Insert new paragraph 339JA into the Rules:</p> <p><i>Reliable and up-to-date information shall be obtained from various sources as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited. Such information shall be made available to the personnel responsible for examining applications and taking decisions and may be provided to them in the form of a consolidated country information report.</i></p> <p><i>This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.</i></p> <p>No action required as regards article 8(3) and (4).</p>	
9	States the requirements for a decision by the determining authority.	As regards article 9(1) (which says that decisions on applications must be given in	

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		<p>writing) and (2) (which says that where an application is rejected the reasons must be stated in the decision and information given on how to challenge it):</p> <p>- Insert new paragraph 333 into the Rules:</p> <p><i>Written notice of decisions on applications for asylum shall be given in reasonable time. Where the applicant is legally represented, notice may instead be given to the representative. Where the applicant has no legal representative and free legal assistance is not available, he shall be informed of the decision on the application for asylum and, if the application is rejected, how to challenge the decision, in a language that he may reasonably be supposed to understand.</i></p> <p>- At the end of paragraph 336 of the Rules, add:</p> <p><i>Where an application for asylum is refused, the reasons in fact and law shall be stated in the decision and information provided in writing on how to challenge the decision.</i></p> <p>No action required as regards article 9(3).</p>	
10	Sets out guarantees which member States must ensure applicants enjoy.	<p>As regards article 10(1)(a) (which sets out what the applicant must be informed of), insert new paragraph 357A into the Rules:</p> <p><i>The Secretary of State shall inform asylum applicants in a language they may reasonably be supposed to understand and within a reasonable time after their claim for asylum has been recorded of the procedure to be followed, their rights and obligations during the procedure, and the possible consequences of non-compliance and non-co-operation. They shall be informed of the likely timeframe for consideration of the application and the means at their disposal for submitting all relevant information.</i></p> <p>As regards article 10(1)(b) (which deals with interpreters), insert new paragraph 339ND into the Rules:</p>	

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		<p><i>The Secretary of State shall provide at public expense an interpreter for the purpose of allowing the applicant to submit his case, wherever necessary. The Secretary of State shall select an interpreter who can ensure appropriate communication between the applicant and the representative of the Secretary of State who conducts the interview.</i></p> <p>As regards article 10(1)(c) (which says that applicants shall not be denied the opportunity to communicate with the UNHCR), no action required. The UK has nothing in legislation which prevents a person from contacting UNHCR. See also Rule 358C (Article 21 below).</p> <p>As regards article 10(1)(d) (which says that applicants must be given notice in reasonable time of the decision) and (1)(e) (which deals with giving notice of decisions to certain applicants), see paragraph 333 of the Rules quoted in relation to article 9 above.</p> <p>As regards article 10(2) (which says that the guarantees set out at article 10(1)(b), (c) and (d) also apply as regards the effective remedy):</p> <ul style="list-style-type: none"> - Amend the Special Immigration Appeals Commission (Procedure) Rules 2003 as follows: <p>Amend rule 47(3) to read:</p> <p><i>The Commission must, within a reasonable time, serve on the parties a written determination containing its decision.</i></p> <p>Insert new rule 43A:</p> <p><i>An appellant is entitled to the services of an interpreter for bringing his appeal—</i></p> <ul style="list-style-type: none"> (a) <i>when giving evidence; and</i> (b) <i>in such other circumstances as the Commission considers it necessary.</i> <ul style="list-style-type: none"> - Amend the Asylum and Immigration Tribunal (Procedure) Rules 2005 as follows: 	<p>Lord Chancellor and Secretary of State for Justice</p>

Article	Objectives	Implementation	Responsibility
		<p>Insert new rule 49(A):</p> <p><i>49A. An appellant is entitled to the services of an interpreter—</i></p> <p>(a) <i>when giving evidence; and</i></p> <p>(b) <i>in such other circumstances as the Tribunal considers necessary.</i></p> <p>Insert new rule 27(3A):</p> <p><i>27(3A) In reviews of appeals under sections 83 and 83A of the 2002 Act, the Tribunal must—</i></p> <p>(a) <i>within a reasonable time, serve a copy of the notice of decision and any directions on every party to the appeal; and</i></p> <p>(b) <i>where the immigration judge makes an order for reconsideration, serve on the party to the appeal other than the party who made the section 103A application a copy of the application notice and any documents which were attached to it.;</i></p> <p>(c) <i>in paragraph (5)(a) after “must” insert “, within a reasonable time,”.</i></p> <p>Rules 22, 23 and 29 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 already make provision in a number of situations for service of the determination in a reasonable time.</p> <p>- Provide in the Regulations as follows:</p> <p><i>5.—(1) Paragraph (2) applies where a person who has made an asylum or a human rights claim (or both) –</i></p> <p>(a) <i>appeals under section 82, 83 or 83A of the 2002 Act or section 2 of the 1997 Act, and</i></p> <p>(b) <i>by virtue of Rules made under section 106 of the 2002 Act or sections 5 and 8 of the 1997 Act is entitled to the services of an interpreter for the purposes of bringing his appeal.</i></p> <p><i>(2) The Secretary of State shall defray the costs of providing the interpreter.</i></p>	

Article	Objectives	Implementation	Responsibility
		<p><i>(3) Paragraph (5) applies where a person who has made an asylum claim or a human rights claim (or both) is party to –</i></p> <p><i>(a) an appeal under section 103B, 103C or 103E of the 2002 Act, or</i></p> <p><i>(b) an appeal under section 7 of the 1997 Act.</i></p> <p><i>(4) Paragraph (5) also applies where a person who has made an asylum or a human rights claim (or both) makes –</i></p> <p><i>(a) an application to the supervisory jurisdiction of the Court of Session made by petition for judicial review,</i></p> <p><i>(b) an application under section 31 of the Supreme Court Act 1981, or</i></p> <p><i>(c) an application under section 18 of the Judicature (Northern Ireland) Act 1978.</i></p> <p><i>(5) The person mentioned in paragraphs (3) and (4) shall be entitled to the services of an interpreter for the purposes of the appeal or application –</i></p> <p><i>(a) when giving evidence, and</i></p> <p><i>(b) in such other circumstances as the court hearing the appeal or application considers it necessary.</i></p> <p><i>(6) Where a person is entitled to the services of an interpreter under paragraph (5), the Secretary of State shall defray the costs of providing such interpreter.</i></p>	
11	States that member States may impose certain obligations on applicants.	No action required.	
12	States that before a decision is taken the applicant must be given the opportunity of an interview. Sets out where an interview may be omitted.	<p>As regards article 12(1) to (4), insert new paragraph 339NA into the Rules:</p> <p><i>Before a decision is taken on the application for asylum, the applicant shall be given the opportunity of a personal interview on his application for asylum with a representative of the Secretary of State who is legally competent to conduct such an interview.</i></p>	

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		<p><i>The personal interview may be omitted where:</i></p> <p><i>(i) the Secretary of State is able to take a positive decision on the basis of evidence available;</i></p> <p><i>(ii) the Secretary of State has already had a meeting with the applicant for the purpose of assisting him with completing his application and submitting the essential information regarding the application;</i></p> <p><i>(iii) the applicant, in submitting his application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he is a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006;</i></p> <p><i>(iv) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his claim clearly unconvincing in relation to his having been the object of persecution;</i></p> <p><i>(v) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to his particular circumstances or to the situation in his country of origin;</i></p> <p><i>(vi) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal; and</i></p> <p><i>(vii) it is not reasonably practicable, in</i></p>	

Article	Objectives	Implementation	Responsibility
		<p><i>particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control.</i></p> <p><i>The omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application.</i></p> <p><i>Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information.”</i></p> <p>As regards article 12(5) and (6), no action required.</p>	
13	Sets out the requirements for the interview.	<p>As regards article 13(1) (which deals with when family members ought to be present) and (2) (which says that the interview must take place under conditions which ensure appropriate confidentiality), insert new paragraph 339NB into the Rules:</p> <p><i>(i). The personal interview mentioned in paragraph 339NA above shall normally take place without the presence of the applicant’s family members unless the Secretary of State considers it necessary for an appropriate examination to have other family members present.</i></p> <p><i>(ii). The personal interview shall take place under conditions which ensure appropriate confidentiality.</i></p> <p>As regards article 13(3) (which requires member States to ensure that the person conducting the interview is properly trained and that an appropriate interpreter is selected), see paragraphs 339HA and 339ND of the Rules (referred to above in relation to articles 8 and 10(1)(b) respectively).</p> <p>As regards article 13(4) and (5), no action required as paragraphs 339NA, 339ND and</p>	

Article	Objectives	Implementation	Responsibility
		352ZA of the Rules cover this.	
14	Makes provision as regards the report of the interview.	<p>As regards article 14(1) to (3), insert new paragraph 339NC into the Rules:</p> <p><i>(i) A written report shall be made of every personal interview containing at least the essential information regarding the asylum application as presented by the applicant in accordance with paragraph 339I of these Rules.</i></p> <p><i>(ii) The Secretary of State shall 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.</i></p> <p><i>(iii) The Secretary of State shall request the applicant's approval of the contents of the report of the personal interview. Where an applicant refuses to approve the contents of the report, the reasons for this refusal shall be entered into the applicant's file.</i></p> <p><i>(iv) The refusal of an applicant to approve the contents of the report shall not prevent the Secretary of State from taking a decision on his application.</i></p> <p>As regards article 14(4), no action required as paragraph 339NC of the Rules cover this.</p>	
15	States the right to legal assistance and representation.	<p>As regards article 15(1) (which obliges member States to allow applicants to consult certain advisers), insert new paragraph 333B into the Rules:</p> <p><i>Applicants for asylum shall 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. This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status</i></p>	

¹³ http://www.opsi.gov.uk/SI/si2007/uksi_20070906_en.pdf

Article	Objectives	Implementation	Responsibility
		<p><i>in accordance with these Rules.</i></p> <p>As regards article 15(2) (which states that member States shall ensure that, in the event of a negative decision, free legal assistance/ representation is granted on request, subject only to article 15(3)), no action required as regulations 5(2) and 5(3) of the Community Legal Service (Financial) Regulations 2007¹³ deals with this.</p> <p>As regards article 15(4) to (6), no action required.</p>	
16	States the scope of legal assistance and representation.	<p>As regards article 16(1) (which deals with access to an applicant's file for his adviser), no action is needed as the Freedom of Information Act 2000 and the Data Protection Act 1998, along with the Asylum and Immigration Tribunal (Procedure) Rules 2005 and the Civil Procedure Rules, provide the necessary rights of access.</p> <p>As regards article 16(2), no action required as Rules 28 and 30 of the Detention Centre Rules 2001¹⁴ cover this.</p> <p>As regards article 16(3) and (4), no action required.</p>	
17	States guarantees for unaccompanied minors.	<p>As regards article 17(1) (which deals with representatives for unaccompanied minors), delete existing paragraph 352 of the Rules and replace with new paragraphs 352 and 352ZA:</p> <p><i>Any child over the age of 12 who has claimed asylum in his own right shall be interviewed about the substance of his claim unless the child is unfit or unable to be interviewed. When an interview takes place it shall be conducted in the presence of a parent, guardian, representative or another adult independent of the Secretary of State who has responsibility for the child. The interviewer shall have specialist training in the interviewing of children and have particular regard to the possibility that a child will feel inhibited or alarmed. The child shall be allowed to express</i></p>	

¹⁴ <http://www.opsi.gov.uk/si/si2001/20010238.htm>

Article	Objectives	Implementation	Responsibility
		<p><i>himself in his own way and at his own speed. If he appears tired or distressed, the interview shall be stopped.</i></p> <p><i>The Secretary of State shall as soon as possible after an unaccompanied child makes an application for asylum 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 himself for the interview. The representative shall 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.</i></p> <p>As regards article 17(2) and (3), no action required.</p> <p>As regards article 17(4) (which deals with who may interview the minor and take the decision on the minor's application), insert new paragraph 352ZB into the Rules:</p> <p><i>The decision on the application for asylum shall be taken by a person who is trained to deal with asylum claims from children.</i></p> <p>See also new paragraph 352 of the Rules, quoted above in relation to article 17(1).</p> <p>As regards article 17(5) (which allows member States to use medical examinations to determine age), no action required.</p> <p>As regards article 17(6), no action required.</p>	
18	Makes provision regarding the detention of applicants.	<p>As regards article 18(1) (which states that a person shall not be detained for the sole reason that he has made an application for asylum), no actions required. The UK does not detain people solely on the basis that they have made an application for asylum.</p> <p>As regards article 18(2) (which provides that where an applicant is detained there shall be the</p>	

¹⁵ <http://horizon/IND/Directorates/IND/Resources/PDF/ImmigrationAct1971.pdf>

Article	Objectives	Implementation	Responsibility
		<p>possibility of speedy judicial review), no action required. A person who is detained under paragraph 16 of Schedule 2 or under Schedule 3 to the Immigration Act 1971¹⁵ may apply for bail under paragraph 22 of Schedule 2. In addition, a person who is detained may apply for judicial review or habeas corpus.</p>	
19	<p>States procedure in the case of explicit withdrawal of the application.</p>	<p>After paragraph 333B of the Rules insert new paragraph 333C:</p> <p><i>When an applicant explicitly withdraws his application for asylum by signing the relevant form provided by the Secretary of State or an Immigration Officer, the Secretary of State shall take a decision to reject the application.</i></p>	
20	<p>States procedure in the case of implicit withdrawal or abandonment of the application.</p>	<p>As regards article 20(1) (which says that where there is reasonable cause to believe that the applicant has implicitly withdrawn or abandoned his claim, the member State shall take a decision to reject or discontinue examination of the application), amend paragraph 339M of the Rules to read:</p> <p><i>The Secretary of State may consider that a person has not substantiated his application for asylum or established that he is a person eligible for humanitarian protection or substantiated his human rights claim, and thereby reject his application for asylum, determine that he is not eligible for humanitarian protection or reject his human rights claim, if he fails, without reasonable explanation, 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, a failure to attend an interview, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination.</i></p> <p>As regards article 20(2) (which deals with cases where the applicant reports again), insert new paragraph 353A into the Rules:</p>	

Article	Objectives	Implementation	Responsibility
		<p><i>Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.</i></p> <p><i>This paragraph does not apply to submissions made overseas.</i></p>	
21	<p>Makes provision regarding the UNHCR's role in the asylum process.</p>	<p>Insert new paragraph 358C into the Rules:</p> <p><i>A representative of the United Nations High Commissioner for Refugees (UNHCR) or an organisation working in the United Kingdom on behalf of the UNHCR pursuant to an agreement with the government shall:</i></p> <p><i>(a) have access to applicants for asylum, including those in detention;</i></p> <p><i>(b) have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken on applications for asylum, provided that the applicant for asylum agrees thereto;</i></p> <p><i>(c) be entitled to present his views, in the exercise of his supervisory responsibilities under Article 35 of the Geneva Convention, to the Secretary of State regarding individual applications for asylum at any stage of the procedure.</i></p> <p><i>This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.</i></p>	
22	<p>Sets out restrictions on what information member States can obtain and disclose on individual cases.</p>	<p>Insert new paragraph 339IA into the Rules:</p> <p><i>For the purposes of examining individual applications for asylum</i></p> <p><i>(i) information provided in support of an application and the fact that an application has been made shall not be disclosed to the alleged actor(s) of persecution of the applicant, and</i></p>	

Article	Objectives	Implementation	Responsibility
		<p><i>(ii) information shall not be obtained from the alleged actor(s) of persecution that would result in their being directly informed that an application for asylum has been made by the applicant in question and would jeopardise the physical integrity of the applicant and his dependants, or the liberty and security of his family members still living in the country of origin.</i></p> <p><i>This paragraph shall also apply where the Secretary of State is considering revoking a person's refugee status in accordance with these Rules.</i></p>	
23	Sets out the examination procedure.	<p>As regards article 23(1) (which sets out that applications must be examined in accordance with Chapter II), see above on Chapter II. No further action required.</p> <p>As regards article 23(2) (which deals with the time in which the examination ought to take place), insert new paragraph 333A into the Rules:</p> <p><i>The Secretary of State shall ensure that a decision is taken by him on each application for asylum as soon as possible, without prejudice to an adequate and complete examination.</i></p> <p><i>Where a decision on an application for asylum cannot be taken within six months of the date it was recorded, the Secretary of State shall either:</i></p> <p><i>a) inform the applicant of the delay; or</i></p> <p><i>b) if the applicant has made a specific written request for it, provide information on the time-frame within which the decision on his application is to be expected. The provision of such information shall not oblige the Secretary of State to take a decision within the stipulated time-frame.</i></p> <p>As regards article 23(3) and (4), no action required.</p>	

Article	Objectives	Implementation	Responsibility
24	Allows member States to put in place special processes (which do not comply fully with Chapter II) for dealing with certain cases.	No action required.	
25	Sets out inadmissible cases where member States are not required to examine whether the applicant is a refugee.	No action required.	
26	Defines when a country can be considered to be a first country of asylum for an applicant.	No action required.	
27	Deals with the safe third country concept.	<p>As regards article 27(1) (which allows member States to apply the safe third country concept only where the competent authorities are satisfied that a person seeking asylum will be treated in accordance with the four principles set out) no action required as Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004¹⁶ and paragraph 342 of the Rules deal with this.</p> <p>As regards article 27(2) (which obliges member States to lay down rules regarding the safe third country concept) no action required as paragraph 345(2) of the Rules and Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 deal with this.</p> <p>As regards article 27(3) (which obliges member States, when implementing a decision solely based on this article, to inform the applicant accordingly and provide him with a document informing the authorities of the third country, in the language of that country, that the application has not been examined in substance) insert new paragraph 345(2A) into the Rules:</p> <p><i>Where a certificate is issued under Part 2, 3, 4 or 5 of Schedule 3 to the Asylum and</i></p>	

¹⁶ <http://www.opsi.gov.uk/acts/acts2004/20040019.htm>

Article	Objectives	Implementation	Responsibility
		<p><i>Immigration (Treatment of Claimants, etc.) Act 2004 the asylum applicant shall:</i></p> <p><i>(i) be informed in a language that he may reasonably be expected to understand regarding his removal to a safe third country;</i></p> <p><i>(ii) be provided with a document informing the authorities of the safe third country, in the language of that country, that the asylum application has not been examined in substance by the authorities in the United Kingdom;</i></p> <p><i>(iii) sub-paragraph 345(2A)(ii) shall not apply if removal takes place with reference to the arrangements set out in Regulation (EC) No. 343/2003 (the Dublin Regulation); and</i></p> <p><i>(iv) if an asylum applicant removed under this paragraph is not admitted to the safe third country (not being a country to which the Dublin Regulation applies as specified in paragraph 345(2A)(iii)), subject to determining and resolving the reasons for his non-admission, the asylum applicant shall be admitted to the asylum procedure in the UK.</i></p> <p>As regards to article 27(4) (which obliges member States to ensure access to a procedure is given where the third country does not permit the applicant for asylum to enter its territory) see paragraph 345(2A)(iv) above.</p> <p>As regards to article 27(5) (which obliges member States to inform the Commission periodically of the countries to which this concept is applied in accordance with the basic principles and guarantees described in Chapter II) no specific legislative action is required as the UK will inform the Commission when requested.</p>	
28	Sets out the circumstances in which member States can consider an application as unfounded and manifestly unfounded.	<p>As regards article 28(1) (which sets out the circumstances in which member States can consider an application unfounded), no action required as paragraphs 334 and 336 of the Rules, deal with this.</p> <p>As regards article 28(2) (which allows member States to consider an application as manifestly</p>	

Article	Objectives	Implementation	Responsibility
		unfounded in certain circumstances), no action required.	
29	Deals with the minimum common list of third countries regarded as safe countries of origin.	See below on article 31.	
30	Deals with national designation of third countries as safe countries of origin.	<p>As regards article 30(1) (which allows member States to retain or introduce legislation which provides for the designation of third countries as safe countries of origin in accordance with the criteria set out in Annex II), no action required.</p> <p>As regards article 30(2) to (5) (which allow member States to retain legislation in force on 1 December 2005 which provides for the designation of third countries as safe countries of origin), section 94 of the Nationality, Immigration and Asylum Act 2002 provides for the designation of States or parts (either in full or in relation to a specific description of person) which are in general safe. Amend section 94 (by way of the Regulations) by inserting new subsection (5D):</p> <p><i>In deciding whether the statements in subsection (5) (a) and (b) are true of a State or part of a State, the Secretary of State –</i></p> <p style="padding-left: 40px;"><i>(a) shall have regard to all the circumstances of the State or part (including its laws and how they are applied), and</i></p> <p style="padding-left: 40px;"><i>(b) shall have regard to information from any appropriate source (including other member States and international organisations).</i></p> <p>As regards article 30(6), no action required.</p>	
31	Makes further provision regarding the safe third country of origin concept.	Amend the Nationality, Immigration and Asylum Act 2002 (by way of the Regulations) by inserting new section 94A (European Common List of Safe Countries of Origin):	

Article	Objectives	Implementation	Responsibility
		<p><i>(1) The Secretary of State shall by order prescribe a list of States to be known as the “European Common List of Safe Countries of Origin”.</i></p> <p><i>(2) Subsections (3) and (4) apply where a person makes an asylum or human rights claim (or both) and that person is –</i></p> <p><i>(a) a national of a State which is listed in the European Common List of Safe Countries of Origin, or</i></p> <p><i>(b) a Stateless person who was formerly habitually resident in such a State.</i></p> <p><i>(3) The Secretary of State shall consider the claim or claims mentioned in subsection (2) to be unfounded unless satisfied that there are serious grounds for considering that the State in question is not safe in the particular circumstances of the person mentioned in that subsection.</i></p> <p><i>(4) The Secretary of State shall also certify the claim or claims mentioned in subsection (2) under section 94(2) unless satisfied that the claim or claims is or are not clearly unfounded.</i></p> <p><i>(5) An order under subsection (1) –</i></p> <p><i>(a) may be made only if the Secretary of State thinks it necessary for the purpose of complying with the United Kingdom’s obligations under Community law,</i></p> <p><i>(b) may include transitional, consequential or incidental provision,</i></p> <p><i>(c) shall be made by statutory instrument, and</i></p> <p><i>(d) shall be subject to annulment in pursuance of a resolution of either House of Parliament.</i></p>	
32	Deals with subsequent applications.	As regards article 32(1) (which says that when a person makes further submissions member States may examine those submissions in the framework of the examination of the initial application or in the framework of the examination of the decision under review/appeal), see comments	

Article	Objectives	Implementation	Responsibility
		<p>on article 20 above, and new paragraph 353A of the Rules.</p> <p>As regards article 32(2) to (4) and (7) (which allow member States to apply a specific procedure to further submissions and applications in certain circumstances), no action required. The UK is not establishing this kind of special procedure.</p> <p>As regards article 32(5) and (6), no action required.</p>	
33	Allows member States to apply the special procedure referred to in article 32 in certain cases where the applicant fails to appear.	No action required. The UK is not establishing a special procedure as referred to in article 32.	
34	Makes further provision regarding the special procedure referred to in article 32.	No action required. The UK is not establishing a special procedure as referred to in article 32.	
35	Sets out that member States may put in place special procedures in order to decide at the border or in transit zones applications made at such locations.	No action required.	
36	Allows member States to provide that no or no full examination of the application shall take place in cases where it has been established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally from a safe third country.	No action required.	
37	States that member States must ensure that an examination to withdraw refugee status may commence when new elements or findings arise	As regards article 37 (which obliges member States to ensure that an examination to withdraw the refugee status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of his refugee status)	

Article	Objectives	Implementation	Responsibility
	indicating that there are reasons to reconsider the validity of the status.	no action required as paragraph 339A of the Rules deals with this.	
38	Makes provision regarding the procedure for withdrawing refugee status.	<p>As regards article 38(1) (which sets out the guarantees which a person in respect of whom a member State is considering withdrawing his refugee status must enjoy) , insert new paragraph 339BA into the Rules:</p> <p><i>Where the Secretary of State is considering revoking refugee status in accordance with these Rules, the person concerned shall be informed in writing that the Secretary of State is reconsidering his qualification for refugee status and the reasons for the reconsideration. That person shall be given the opportunity to submit, in a personal interview or in a written statement, reasons as to why his refugee status should not be revoked. If there is a personal interview, it shall be subject to the safeguards set out in these Rules.</i></p> <p>See also comments on articles 8 and 22 above, and new paragraphs 339JA and 339IA in the Rules.</p> <p>As regards article 38(2) (which lays down requirements for the decision to withdraw refugee status), amend the Immigration (Notices) Regulations 2003 (by way of the Regulations) by inserting new regulation 5(2A):</p> <p><i>A notice given under regulation 4(2A) is to include or be accompanied by a statement of reasons for the decision that the person is no longer a refugee.</i></p> <p>This new regulation 5(2A) together with regulations 4(1), 4(3), 5(1) and 5(3) of the Immigration (Notices) Regulations 2003 meet our obligations here.</p> <p>On article 38(3) (which lays down further provisions regarding the process for withdrawing refugee status), see comments above on articles 15, 16 and 21 and new paragraphs 333B and 358C of the Rules.</p>	

Article	Objectives	Implementation	Responsibility
		As regards article 38(4) , no action required.	
39	Sets out that member States must provide for an effective remedy against various decisions. Makes provision regarding that effective remedy.	<p>As regards article 39(1) (which sets out the decisions against which applicants must be afforded an effective remedy), no action required. When a decision is taken to refuse asylum, a right of appeal normally arises under section 82 or 83 of the Nationality, Immigration and Asylum Act 2002. Where there is not a statutory right of appeal, the applicant may still seek judicial review of the decision. Regarding a refusal to re-open examination of an application after discontinuance pursuant to articles 19 and 20 no action required as the UK will now reject claims which are expressly or impliedly abandoned. Regarding a decision not to further examine subsequent applications pursuant to Articles 32 and 34 no action required as the UK is not introducing a special procedure as referred to article 32. Regarding a decision refusing entry within the framework of the procedures provided for under article 35(2), no action required as the UK is not establishing this framework. Regarding a decision to withdraw refugee status pursuant to article 38, no action required as the new regulation 5(2A) together with regulations 4(1), 4(3), 5(1) and 5(3) of the Immigration (Notices) Regulations 2003 meet our obligations here.</p> <p>As regards article 39(2) (which obliges member States to lay down time limits and other necessary rules for the applicant to exercise his right to an effective remedy), no action required. Time limits and procedure for statutory appeals are specified in the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration Tribunal (Procedure) Rules 2005 and the Civil Procedure Rules. The Civil Procedure Rules also specify the rules for judicial review applications that fall outside the statutory scheme.</p> <p>As regards article 39(3) (which requires member States to lay down rules, where appropriate, dealing with certain issues concerning the effective remedy), no action required. The Nationality, Immigration and</p>	

Article	Objectives	Implementation	Responsibility
		<p>Asylum Act 2002 sets out when an appeal can be exercised in-country. Where an appeal may only be exercised outside the UK, that decision may be challenged by judicial review.</p> <p>Regarding asylum applicants who it is intended to remove to a safe (non Dublin) third country may challenge by way of judicial review the Secretary of State's decision to remove them to that safe third country (including an application for interim relief pending that application). This includes a challenge on grounds that the applicant is at risk of Article 3 ECHR ill treatment in the safe third country itself or by way of onward <i>refoulement</i> in breach of Article 3.</p> <p>As regards article 39(4) (which allows member States to lay down time limits for the court or tribunal to examine the decisions of the determining authority), no action required. There are already time limits in place (for example. in the Asylum and Immigration Tribunal (Procedure) Rules 2005).</p> <p>As regards article 39(5), no action required.</p> <p>As regards article 39(6) (which allows member States to set out conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his remedy), no action required. The UK already has statutory rules on abandonment of immigration appeals in the Nationality, Immigration and Asylum Act 2002.</p>	
40	Sets out that the Directive does not affect the possibility for public authorities challenging decisions as set out in domestic legislation.	No action required.	
41	Obliges member States to ensure that authorities implementing the Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course	No action required.	

Article	Objectives	Implementation	Responsibility
	of their work.		
42	Deals with reporting on the application of the Directive.	No action required.	
43	Obliges member States to implement the bulk of the Directive by 1 December 2007 and thereafter communicate to the Commission that they have done so.	The Asylum (Procedures) Regulations 2007 (SI 3187) and the Statement of Changes in Immigration Rules (HC 82) implement the Directive into UK legislation. A copy of this transposition note will be sent electronically to the Commission.	
44	States that member States must apply the implementing measures to applications lodged after 1 December 2007 and to withdrawal proceedings started after that date.	The provisions in the Regulations and Rules will apply to applications lodged after 1 December 2007 and to withdrawal proceedings started after that date.	
45	Provides for the Directive to come into force.	No action required.	
46	Says that the Directive is addressed to the member States.	No action required.	