

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE :**

TEMPORARY PROTECTION OF 20 JULY 2001

IN
(Member State):
United Kingdom

By
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The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

Q.1.A. Identify the central norm(s) of transposition and indicate its legal nature

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
- About legal nature in the table below: *legislative* refers to a norm adopted in principle by the Parliament; *regulation* refers to a norm complementing the law and adopted in principle by the executive power; *circular or instructions* refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Immigration rules: amendments
DATE: 20 December 2004
NUMBER: HC 164

DATE OF ENTRY INTO FORCE: 1 January 2005
PROVISIONS CONCERNED : Other parts of the immigration rules were also amended by the same measure. (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 2

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: The Displaced Persons (Temporary Protection) Regulations 2005
DATE: 18 May 2005
NUMBER: No. 1379
DATE OF ENTRY INTO FORCE: 15 June 2005
PROVISIONS CONCERNED : (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Education (Student Fees and Support) Temporary Protection (Scotland) Regulations 2005
DATE: 8 April 2005
NUMBER: 217
DATE OF ENTRY INTO FORCE: 7 May 2005
PROVISIONS CONCERNED : (for example if the norm also pursues other objectives than the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (please tick the correct box): <input type="checkbox"/> LEGISLATIVE <input checked="" type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

TITLE:
DATE:
NUMBER:
DATE OF ENTRY INTO FORCE:
PROVISIONS CONCERNED : (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL:
LEGAL NATURE (indicate by ticking the correct box): <input type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.2.

This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A.

Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

When answering this question, please use one or more of the tables below (one table per competence concerned). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

COMPETENCE CONCERNED:	immigration control aspects
CENTRAL MINISTRY OF:	Home Office
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Border and Immigration Agency
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

YES NO

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

YES NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS
<i>INDICATE HERE THE MISSING TEXTS</i>

SECOND PART

Duration and implementation of temporary protection

Q.5. According to article 5(1) in the Directive the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. According to article 5(3) the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions in the Directive.

Do the national norms of transposition in your Member State mandate the Council to decide about the existence of a mass influx of displaced person, with the effect of introducing temporary protection for the displaced persons to which it refers in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation (if the answer is “no”, how is a Council decision transposed ad hoc into national law?)

The basic definition of the person entitled to the benefit of the rules refers to the application of the Directive (paragraph 355(ii) of the immigration rules), but the rules on time periods refer to an initial stay of 12 months and then possible 6-month extensions, without directly referring to the Directive or the Council's powers (paragraph 355C of the immigration rules).

Q.6. According to article 6 in the Directive, temporary protection shall come to an end when the maximum duration has been reached or at any time by Council Decision on a proposal from the Commission. *See article 6 (1-2).*

Do the national norms of transposition mandate the Council to decide when temporary protection in your Member State shall come to an end?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is ‘no’, how is a Council decision transposed ad hoc into national law?)

See the answer to the previous question.

Q.7. According to article 7, a Member States may extend temporary protection, as provided for in the Directive, to additional categories of displaced persons over and above those to whom a Council decision applies, where they are displaced for the same reasons and from the same country or region of origin. *See optional provision in article 7 (1-2).*

Do the national norms of transposition allow your Member State to extend temporary protection to additional categories of displaced persons?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is "yes", if any, what are the criteria for extending protection to additional categories of displaced persons)?

The government's note on the transposition of the Directive makes clear that the government does not wish to exercise this option.

Obligations of the Member States towards persons enjoying temporary protection

Q.8. Questions regarding obligations of the Member States towards persons enjoying temporary protection. *See article 8(1-3):*

Q.8.A. Does your Member State provide persons enjoying temporary protection with a residence permit? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Paragraph 355E of the immigration rules instead states that the person concerned will be given 'a document setting out his temporary protection status'. This contrasts with the provisions of the rules which specify that persons granted asylum or humanitarian (subsidiary) protection will receive a UKRP (UK residence permit). However, there is no particular practical consequence of not holding a residence permit as such.

Q.8.B. Answer this question if the answer on Q.8.A is 'yes': **Is the residence permit valid for the entire period of temporary protection?** *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Q.8.C. Will documents or other equivalent evidence for the residence permit be issued? *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

See the answer to question 8.A. As for question 8.B, the time period of the document is implicitly the same as the period of temporary protection, but the immigration rules do not state this explicitly.

Q.8.D. Will your Member State provide persons enjoying 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, is clearly set out? *See mandatory provision in article 9.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Paragraph 355E of the immigration rules essentially transposes Article 9 of the Directive word-for-word.

Q.8.E. Will the personal data of the persons enjoying temporary protection (name, nationality, date and place of birth, marital status, and family relationship) be registered? *See mandatory provision in article 10.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Yes, but paragraph 355F of the immigration rules only provides for some of the data referred to in Annex II of the Directive to be registered (the data listed under (a)), and moreover it does not limit holding the data 'to the extent' necessary, in the words of Annex II.

Q.8.F. Will your Member State provide facilities for obtaining the necessary visas, including transit visas, to persons which will be admitted to the territory for the purposes of temporary protection? *See mandatory provision in article 8(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

This would likely be the case in practice, but the provision has not been explicitly transposed.

Q.8.G. According to the national law of your Member State: Will the visas referred to in Q.8.F, be free of charge? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is “no”, please indicate the amount charged and indicate amounts charged for other types of visas)

This is provided for in reg 17 of SI 2005/1379.

Q.9. According to national law of transposition, is your Member State responsible to take back a person enjoying temporary protection on its territory if that person seeks to enter onto or remains on the territory of another Member State without authorisation during the period of temporary protection? See mandatory provision in article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Yes, but paragraph 355D of the immigration rules only refers to permission of the person to return from another Member State to the UK, rather than an obligation to take back a person who has remained on or sought to enter the territory of another Member State without authorisation.

Q.10. Has your Member State concluded bilateral agreements with other Member States regulating the responsibility for persons enjoying temporary protection under the Directive? See optional provision in article 11, final sentence.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please specify with which country)

Q.11. Questions regarding work and other activities during temporary protection: *See mandatory provision in article 12.*

Q.11.A. Are the persons enjoying temporary protection allowed to engage in:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- | | | |
|--|--|------------------------------------|
| Employed activities? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Self-employed activities? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Educational opportunities for adults? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Vocational training? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Practical workplace experience? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Explanation:

More precisely, access to work is expressly provided for (paragraph 355C of the immigration rules), but access to the other rights is not expressly provided for. However, the government asserts that such rights are guaranteed in practice.

Q.11.B. According to optional provision in article 12, Member States may, for reasons of labour market policies, give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

Do the national norms of transposition in your Member State give priority, or allow giving priority, to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- | | | |
|---|-------------------------------------|---|
| EU citizens? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Citizens of the European Economic Area? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Legally resident third-country nationals who receives unemployment benefits? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

Explanation:

Paragraph 355C of the immigration rules does not contain any limit on access to employed activities.

Question to be answered only if persons enjoying temporary protection are allowed to work:

Q.11.C. According to article 12, final sentence, the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply if persons enjoying temporary protection are allowed to work.

If persons enjoying temporary protection are allowed to work: Will your country's general laws be applicable regarding:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Remuneration? **Yes** **No**

Access to social security systems relating to employed or self-employed activities and other conditions of employment? **Yes** **No**

Explanation:

Again, the government asserts that this will be the case in practice, although there is no specific transposition of this provision.

Q.12. Questions regarding the Member States obligation towards the temporary protected regarding accommodation, subsidies, medical care etc. *See article 13(1-4).*

Q.12.A. **Is your Member State obliged under national law to provide the persons enjoying temporary protection with suitable accommodation or means in order to obtain housing?** *See mandatory provision in article 13(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation :

Regs. 5 to 15 of the temporary protection regulations set out detailed rules concerning access to housing.

Q.12.B. **Will your Member State, according to national law, be obliged to provide the persons enjoying temporary protection with economic assistance such as social welfare and means of subsistence?** *See mandatory provision in article 13(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Regs 3 and 4 of the temporary protection regulations provide specifically for benefits relating to pensions, social security and unemployment. Other benefits are provided for in any event pursuant to national legislation.

Q.12.C. Do the persons enjoying temporary protection have access to emergency medical care and essential treatment of illness? See mandatory provision in article 13 (2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details whether persons enjoying temporary protection have access to *general medical care* or if it is restricted to *emergency care and essential treatment of illness*?)

The general legislation on medical care will be applicable to persons with temporary protection.

Q.12.D. Will your Member State, according to national law, be obligated to provide for necessary medical or other assistance to persons enjoying temporary protection who have special needs such as unaccompanied minors, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence? See mandatory provision in article 13(4).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details about the assistance given to different groups of persons with special needs, for example psychological help for persons who have undergone torture).

There is no specific transposition of this provision.

Q.13. Questions regarding access to education. *See article 14 (1-2):*

Q.13.A. Do persons who are under 18 years of age and enjoying temporary protection have access to the education system under the same conditions as nationals of your Member State? See mandatory provision in article 14(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The general education legislation is applicable to such persons in most of the country. A specific delegated legislative measure was adopted to apply this provision within Scotland.

Q.13.B. If the answer on Q.13.A is ‘yes’: **Is access to education confined to the state education system or does it cover all kinds of educational institutions?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The national legislation does not regulate the question of access to non-state education. It should be pointed out that access to such education is not generally financially supported by the state.

Q.13.C. **Do adults enjoying temporary protection have access to the general education system? See optional provision in article 14(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

There is no legislative provision for adult access to education in England and Wales. There is such provision in Scotland and Northern Ireland.

Q.14. Questions regarding right to family reunification. *See article 15:*

Q.14.A. **Do the national norms of transposition in your Member State allow separated family members, which enjoy temporary protection in different Member States, to reunite? See mandatory provision in article 15(2).**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

The general rules concerning admission of dependants do not distinguish between family members who already have temporary protection in another Member State, and family members who do not (paragraphs 356 and 356A of the immigration rules). Both categories of persons are entitled to temporary protection. However, paragraph 355(iii) of the immigration rules specifies that the grant of temporary protection is subject to the condition that the person concerned does not already have temporary protection in another Member State -- although this is in turn subject to the application of the rules on dependants.

Q.14.B. Do the national norms of transposition in your Member State allow family members who are not yet in a Member State to reunite with a person enjoying temporary protection in your Member State? See mandatory provision in article 15(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

See the answer to the previous question. In this case the application of paragraph 355(iii) of the immigration rules would not be possible.

Q.14.C. For the application of the rules regarding family reunification: Whom does your Member State consider a “family member”? See article 15(1)(a)(b).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- The spouse of the person enjoying temporary protection.**
- The unmarried partner in a stable relationship to the person enjoying temporary protection.**
- The minor unmarried children of the person enjoying temporary protection or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted.**
- Other close relatives who lived as part of the family unit with the person enjoying temporary protection at the time of the events leading to the mass influx, and who were wholly or mainly dependent on him/her at the time.**

Explanation:

The definition is set out in paragraph 356 of the immigration rules. Reference is also made to the 'civil partner' of the person enjoying temporary protection. The admission of unmarried partners is subject to the condition that 'the parties have been living together in a relationship akin to marriage which has subsisted for 2 years or more'. There is no reference to the issue of whether a child was born in or out of wedlock or adopted; children who are civil partners cannot qualify. As regards close relatives, they are defined as 'the adult child (who is unmarried and not a civil partner), parent or grandparent of an applicant for, or person who has been granted, temporary protection' or a 'sibling (who is unmarried and not a civil partner or the uncle or aunt of an applicant for, or person who has been granted, temporary protection, who lived with the principal applicant as part of the

family unit in the country of origin immediately prior to the mass influx and was wholly or mainly dependent upon the principal applicant at that time, and would face extreme hardship if reunification with the principal applicant did not take place'. There is no requirement that the family was separated due to circumstances connected with the mass influx.

Q.14.D. What means of proof is needed in your Member State to verify family membership, is for example documentary evidence needed?

The rules do not specifically address this issue.

Q.14.E. Explain which measures have been taken in your Member State to ensure that 'the best interest of the child' is accounted for when applying the provisions on family reunification in the national norms of transposition? See mandatory provision in article 15(4).

The rules transpose this requirement literally, but do not add any further detail (paragraph 356B of the immigration rules).

Q.14.F. According to article 15(5), Member States shall decide in which Member State the reunification shall take place. Please indicate which authority possesses the competency to take such decisions?

Name and function of the Authority: Home Office: Borders and Immigration Agency.

Q.14.G. If there is a formal procedure foreseen for such decisions, please describe it briefly:

No specific procedure is set out.

Q.14.H. Are reunited family members in your Member State granted residence permits under temporary protection?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

Paragraph 356A of the immigration rules provides that dependants get temporary protection status as such. This will entail getting documents as provided for in paragraph 355E of the rules; but as noted above such documents appear to be distinct from obtaining a residence permit as defined elsewhere in the rules.

Q.14.I. Are documents or other equivalent evidence issued for persons who comes to your Member State and receives temporary protection under the provisions regarding family reunification?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

See the answer to the previous question.

Q.14.J. Does the national norms of transposition in your Member State comply with the provision in article 15(8) stating that a Member State shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification? See mandatory provision in article 15(8).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There is no specific transposition of this rule.

Q.15. Questions regarding unaccompanied minors: *See article 16:*

Q.15.A. Explain how the representation of unaccompanied minors enjoying temporary protection in your Member State is arranged according to national law. See mandatory provision in article 16(1).

Representation for the purposes of asylum procedures is set out in Article 352ZA of the immigration rules, as recently amended to give effect to the asylum procedures Directive. Otherwise the status of unaccompanied minors is not specifically addressed in UK measures, but rather the issue is addressed as part of the practical implementation of the general legislative framework concerning children.

Q.15.B. Does your Member State provide for unaccompanied minors to be placed with: See mandatory provision in article 16(2).

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- Adult relatives ?**
- A foster-family ?**
- In reception centres with special provisions for minors, or in other accomodation suitable for minors ?**
- With the person who looked after the child when fleeing ?**

Explanation:

There is no specific transposition of this point. See further the second sentence in the previous answer.

Q.15.C. Do the national norms of transposition in your Member State meet the requirement that the views of the child shall be taken into account when arranging placement for the minor? See mandatory provision in article 16(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

See further the second sentence in the answer to question 15A.

Access to the asylum procedure in the context of temporary protection

Q.16. Questions regarding access to the asylum procedure. *See article 3 and 17-19:*

According to mandatory provision in article 3(1) temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

Q.16.A. Does temporary protection in any way prejudice recognition of refugee status under the Geneva Convention in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Not in practice, although the national rules do not directly address the issue.

Q.16.B. Does your Member State allow persons enjoying temporary protection to apply for asylum at any time during the period of temporary protection? See mandatory provision in article 17(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Paragraph 355G of the immigration rules implicitly allows an application for asylum by a person who may benefit from temporary protection, because it states that if a person who may benefit from temporary protection makes an asylum claim, the administration may decide not to examine the asylum claim until the applicant ceases to be eligible for temporary protection.

Q.16.C. Does your Member State allow persons enjoying temporary protection to stay in the Member State during the examination of their

asylum claim, even though the period of temporary protection has ended?
See mandatory provision in article 17(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Such a situation would fall within the general rules on the examination of asylum claims. Paragraph 329 of the immigration rules provides that an asylum applicant shall not be required to leave the country while the claim is being determined, subject to the rules on possible removal before a decision is made on the claim in specific circumstances.

Q.16.D. What criteria are provided by the norms of transposition in your Member State to determine the responsibility amongst Member States for examining an asylum application submitted by a person enjoying temporary protection in another Member State? *See mandatory provision in article 18.*

There are no specific rules on this issue.

Q.16.E. Has your Member State decided that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration? *See optional provision in article 19.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: If the answer is “yes”, please provide details concerning differences between the reception conditions for asylum seekers and persons enjoying temporary protection in your Member State which might lead to withdrawal or reduction of rights for a temporary protected who lodges an application for asylum.

See the answer to question 16.B. The wording of that rule suggests that the asylum application will be placed on hold, rather than withdrawing the temporary protection status, so the question of losing the rights conferred upon beneficiaries of temporary protection would not arise.

Q.16.F. If refugee status or, where applicable, other kind of protection is not granted to a person who is eligible for or already enjoys temporary protection is that person allowed to enjoy or continue to enjoy temporary protection in your Member State? *See mandatory provision in article 19(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The immigration rules do not directly address this issue. It would therefore appear that the temporary protection status will continue, in the absence of any rule providing for it to end.

Return and measures after temporary protection has ended

Q.17. Questions regarding the voluntary return of persons enjoying temporary protection:

Q.17.A. According to mandatory provision in article 21(1) the Member States *shall* ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity. How is that reflected in the national norms of transposition in your Member State?

There is no specific rule on this issue. General human rights obligations pursuant to the Human Rights Act 1998 apply.

Q.17.B. Please explain how your Member State ensures that a decision of persons enjoying temporary protection, or whose temporary protection has ended, to return voluntarily is taken in full knowledge of the facts. *See mandatory provision in article 21(1).*

See answer to question 17.A.

Q.17.C. Is it possible for the temporary protected in your Member State to make exploratory visits to the home country? *See optional provision in article 21(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The rules do not specifically address this issue. Although a person might be readmitted following an exploratory visit pursuant to an exercise of administrative discretion, there is no legally binding rule requiring it.

Q.17.D. Please explain if and how your Member State has transposed article 21(2) stating that Member States shall, for such time as the temporary protection has not ended and on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return?

There is no transposition.

Q.17.E. Is it possible, under the national norms of transposition in your Member State, for persons enjoying temporary protection to continue receive their benefits as temporary protected after the period of temporary

protection has ended, if they benefit from a voluntary return programme?
See optional provision in article 21.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation: (If the answer is “yes”, for how long is that possible).

Regs 3(3) and 3(4) of the temporary protection regulations specify that a person may still obtain benefits following expiry of the temporary protection on condition that 'the person is taking all reasonable steps to leave the United Kingdom or place himself in a position in which he is able to leave the United Kingdom, which may include co-operating with a voluntary return programme.' The benefits subject to this rule are defined in reg. 4 of these regulations. This applies 'for a period not exceeding 28 days' after temporary protection expires in accordance with the Directive. The same rule applies to housing according to regs 5(3) and 5(4) of the same regulations.

Q.18. Questions concerning enforced return of persons who have enjoyed temporary protection. *See articles 22:*

Q.18.A. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(1), obliging Member States to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.

See the answer to question 17.A.

Q.18.B. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(2) obliging Member States to consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

See the answer to question 17.A

Q.18.C. In the national law of your Member State, are there any other grounds (except for the one referred to in Q.18.B) for allowing persons who have enjoyed temporary protection to stay in your Member State?

There are no specific grounds for such persons to stay. It is possible that they might make a successful application to stay on another ground, for a work permit for example.

Q.19. Questions concerning forcible return of persons who have enjoyed temporary protection. *See article 23:*

Q.19.A. Does the national law and practice of your Member State comply with the mandatory provision in article 23, providing that persons who have enjoyed temporary protection and who cannot, in view of their state of health reasonably be expected to travel, are not expelled as long as that situation continues? The provision exemplifies with persons who would suffer serious negative effects if their treatment was interrupted.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

See the answer to question 17.A. Since there is no specific transposition of this provision, it may be questioned whether a reference to the general obligations under the Human Rights Act is sufficient.

Q.19.B. Does your Member State allow families whose children attend school in a Member State, to benefit from residence conditions allowing the children concerned to complete the current school period before return? See optional provision in article 23.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

The government's transposition note indicates that this will be a matter for administrative discretion in individual cases.

Solidarity

Q.20. Please describe how your Member State ensures that persons eligible for temporary protection defined in a Council Decision under article 5 and who have not arrived in the Community have expressed their will to be received on their territory? See mandatory provision in article 25(2).

There is no transposition of this specific point. Paragraph 355(ii) of the immigration rules defines the beneficiaries of the temporary protection regime by reference to the Directive, so the text of the Directive must be understood to have been transposed literally into national law.

Q.21. Questions concerning the transferral between Member States of persons enjoying temporary protection. See article 26:

Q.21.A. According to mandatory provision in article 26(1) the Member States shall cooperate 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.

Does the national law of your Member State comply with article 26(1) regarding the *consent* of the person who are about to be transferred?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

The national rules do not address the issue of transfer explicitly.

Q.21.B. Do the national norms of transposition in your Member State comply with article 26(2) stating that a Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

See the answer to question 21.A.

Q.21.C. According to the national norms of transposition, is your Member State obliged to, at the request of another Member State, provide information as set out in Annex II of the Directive, on a person enjoying temporary protection, which is needed to process a matter of transferral? (See mandatory provision in article 26(3)).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

See the answer to question 21.A.

Q.21.D. According to the national law in your Member State, will the residence permit of a person who is transferred, from your Member State to another Member State, expire? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

It is likely to expire in practice, but the national rules do not explicitly regulate this issue.

Q.21.E. When a person, who has been enjoying temporary protection in your Member State is transferred to another Member State, will the obligations relating to temporary protection in your Member State come to an end upon the transferral? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

See the answer to question 21.D.

Q.21.F. If a person, who previously has enjoyed temporary protection in another Member State, is transferred to your Member State, will your Member State grant temporary protection to that person? See mandatory provision in article 26(4), last sentence.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

See the answer to question 21.D.

Q.21.G. Will the ‘model pass’ set out in annex I of the Directive be used in a foreseen transferral procedure?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

There is no legislative transposition of Annex I.

Q.22. What authority in your Member State is appointed as national contact point according to the mandatory provision in article 27?

The name and function of the authority is: There is no specific transposition of this point.

Q.23. Questions regarding exclusion from temporary protection:

Q.23.A. Are there any criteria for exclusion from temporary protection in your Member State? See optional provision in article 28.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If yes, specify the criteria).

Paragraph 355A of the immigration rules specifies that persons may be excluded from temporary protection in accordance with the exact wording of Article 28 of the Directive, except for the second to fourth sentences of Article 28(1)(a)(iii), which are not transposed at all.

Q.23.B. If the answer to A. is “yes”, please indicate whether they in any way exceed the exhaustive list of criteria in article 28(1)(a) and (b).

Yes No

Explanation:

It might possibly be argued that omitting part of Article 28(1)(a)(iii) either increases or decreases the possibility of exclusion.

Q.23.C. Do the national norms of transposition in your Member State meet the terms in article 28(2) stating that the grounds for exclusion shall be based solely on the personal conduct of the person concerned?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

See the answer to question 23.A.

Q.23.D. Do the national norms of transposition in your Member State meet the terms of article 28(2) stating that exclusion decisions or measures shall be based on the principle of proportionality?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

See the answer to question 23.A.

Q.24. Questions concerning the right to legal challenge:

Q.24.A. Do the laws of your Member State allow a person to mount a legal challenge if he/she has been: *See mandatory provision in article 29.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

excluded from the benefit of temporary protection Yes No

denied family reunification Yes No

Explanation:

There is no specific transposition of this provision, but in practice a judicial review of such a decision could be brought.

Q.24.B. If the answer on any of the questions in Q.24.A is “yes”, please describe the applicable legal procedures for challenging the decision, in your Member State.

The general administrative law rules concerning judicial review would apply.

Q.25. Questions regarding penalties applicable to infringements of the national provisions.

Q.25.A. Are there penalties applicable to infringements of the national provisions in your Member State? *See mandatory provision in article 30.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If yes, specify the penalties).

There is no specific transposition of this provision.

Q.25.B. Explain if the penalties, according to your opinion, comply with the Directive concerning them being effective, proportionate and dissuasive? *See mandatory provision in article 30.*

See the answer to question 25.A.

Final questions

Q.26. Can you refer us to any study, report or research by any source on the practice of granting temporary protection in the event of a mass influx in your Member State?

No.

Q.27. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate

No.

Q.28. Are there any problems of legislation or practice in your Member State which relate to temporary protection and have not been covered in preceding questions?

No.

THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29

Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of third country nationals in cases of a mass influx become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below**

OBJECTIVE <i>To enhance the protection of displaced persons in cases of a mass influx</i>		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
<p>Explain the situation <u>before</u> transposition</p> <p>No specific legal rules.</p>	<p>Explain the situation <u>after</u> transposition</p> <p>A detailed legal framework now exists.</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input checked="" type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input checked="" type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q. 30.

From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE (to be indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation before transposition	Explain the situation after transposition	<input type="checkbox"/> <i>Less favourable than previous national rules</i> <input type="checkbox"/> <i>Status quo</i> <input type="checkbox"/> <i>More favourable than previous national rules</i>	<input type="checkbox"/> <i>Less favourable than the Directive</i> <input type="checkbox"/> <i>In line with the directive</i> <input type="checkbox"/> <i>More favourable than the directive</i>

Q.31. A. Question regarding the method of transposition: **Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.**

YES NO

Q.31.B. **If yes**, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).

YES NO

Q.31.C. **If yes**, give some of examples:

Q.31.D. If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.

Q.32. Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation (this question concerns in principle decisions after the national norms of transposition entered into force, but

decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

DECISION OF SUPREME COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION OF APPEAL COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION(S) IN FIRST RESORT	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any **problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.**

There are no problems with the translation of the directive.

There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. **Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State**

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE OF THE PRACTICE	EXPLANATION

Q.35. Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.