Changes to legislation: *The Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017 is up to date with all changes known to be in force on or before 23 February 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2017 No. 405

IMMIGRATION AND ASYLUM

The Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017

Made - - - -	*11.18 a.m. on 15th March 2017*
Coming into force - -	*12.00 noon on 15th March 2017*
Laid before Parliament-	*4.00 p.m. on 15th March 2017*

The Secretary of State, a Minister designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to immigration, asylum, refugees and displaced persons, makes the following Regulations in exercise of the powers conferred by that section.

F1 S.I. 2004/2642.

F2 1972 c. 68. Section 2(2) has been amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

Citation and commencement

1. These Regulations may be cited as the Transfer for Determination of an Application for International Protection (Detention) (Significant Risk of Absconding Criteria) Regulations 2017 and come into force at 12.00 noon on 15th March 2017.

Interpretation

2. In these Regulations—

"application for international protection" means an application made by a third-country national or stateless person for protection in a participating State, on the basis that to remove them or require them to leave that State would be contrary to that State's obligations under the Convention Relating to the Status of Refugees done at Geneva on 28th July 1951 [F3] and its Protocol done at New York on 31st January 1967 [F4] ("the Refugee Convention") or that they qualify for subsidiary protection status under Council Directive 2004/83/EC[F5] or Directive 2011/95/EU of the European Parliament and of the Council [F6],

"asylum seeker" means a person who has made a claim for asylum which has been recorded by the Secretary of State but not yet determined, or who has made an application for international protection in another participating State but which has not yet been determined by that State,

"claim for asylum" means a claim by a third-country national or a stateless person that it would be contrary to the United Kingdom's obligations under the Refugee Convention, or under Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (agreed by the Council of Europe at Rome on 4 November 1950) [F7] to remove them or require them to leave the United Kingdom,

"the Dublin III Regulation" means Regulation (EU) No. 604/2013 of the European Parliament and of the Council [F8],

"immigration application" means an application for—

(i) entry clearance,

(ii) leave to enter or remain in the United Kingdom, or

(iii) variation of leave to enter or remain in the United Kingdom,

"immigration bail" means—

(i) release under a provision of the Immigration Acts [F9] on entry into a recognizance or bail bond,

(ii) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the sheriff, the First-tier Tribunal, the Secretary of State or an immigration officer (but not by a police officer), and

(iii) bail granted by the Special Immigration Appeals Commission,

"participating State" means a member State, Iceland, Norway, Liechtenstein or Switzerland,

"stateless person" has the meaning given by Article 1(1) of the Convention Relating to the Status of Stateless Persons done at New York on 28th September 1954 [F10],

"temporary admission or release" means release of a person who is otherwise liable to detention under the powers conferred by—

(i) paragraph 21 of Schedule 2 to the Immigration Act 1971 [F11] (temporary admission or release of persons liable to detention), or

(ii) section 71(2) of the Nationality, Immigration and Asylum Act 2002 [F12] (asylum-seeker: residence, &c. restriction),

"third-country national" has the meaning given by Article 2(a) of the Dublin III Regulation.

F3 UK Treaty Series No. 39 (1954); Cmd. 9171.
F4 UK Treaty Series No. 15 (1969); Cmd. 3906.
F5 OJ No. L 304, 30.9.2004, p.12.
F6 OJ No. L 337, 20.12.2011, p.9.
F7 UK Treaty Series No. 71 (1953); Cmd. 8969.
F8 OJ No. L 180, 29.6.2013, p31.
F9 Section 61(2) of the UK Borders Act 2007 (c. 30) defines the term "the Immigration Acts" for the purpose of any enactment.
F10 UK Treaty Series No. 41 (1960); Cmd. 1098.
F11 1971 c. 77. Paragraph 21 has been amended by section 10 and paragraph 10(1)(4) of Schedule 10 to the Immigration Act 1988 (c. 14), **section 12(1)** and paragraph 10 of Schedule 2 to the Asylum and Immigration Act 1996 (c. 49), **section 169(1)** and paragraphs 62(2) and 62(3) of Schedule 14, and section 169(3) and paragraph 1 of Schedule 16, to the Immigration and Asylum Act 1999 (c. 33) and section 42(4) of the Immigration, Asylum and Nationality Act 2006 (c. 13). Paragraph 21 will be

repealed by section 61 and paragraph 20 of Part 2 of Schedule 10 to the Immigration Act 2016 (c. 19) on a date to be appointed.

F12 2002 c. 41. Section 71(2) will be amended by section 61 and paragraph 37(2) of Part 2 of Schedule 10 to the Immigration Act 2016 (c. 19) on a date to be appointed.

Persons to whom these Regulations apply

3. These Regulations apply where an asylum seeker, P, is liable to detention under Schedule 2 to the Immigration Act 1971 and—

(a) P's fingerprint data has been processed in accordance with Regulation (EU) No. 603/2013 of the European Parliament and of the Council [F13] and a comparison with data held by another participating State is to be undertaken;

(b) evidence or information listed in Annex II to Commission Regulation (EC) No. 1560/2003[F14] has been identified which suggests that, in accordance with the Dublin III Regulation, another participating State may be responsible for examining P's application for international protection;

(c) P is the subject of an information sharing request made by the United Kingdom to another participating State under Article 34 of the Dublin III Regulation; or

(d) P is the subject of a take charge or take back request made by the United Kingdom to another participating State under Sections II and III of Chapter VI of the Dublin III Regulation—

(i) which has yet to be determined, or

(ii) which has been accepted and arrangements are being made for P's transfer from the United Kingdom to another participating State.

F13 OJ No. L 180, 29.6.2013, p. 1.

F14 OJ No. L 222, 5.9.2003, p.3. Annex II was amended by the Annex to Commission Implementing Regulation (EU) No. 118/2014, OJ No. L 39, 8.2.2014, p.1.

Criteria to be considered when determining risk of absconding

4. When determining whether P poses a significant risk of absconding for the purposes of Article 28(2) of the Dublin III Regulation, the Secretary of State must consider the following criteria—

(a) whether P has previously absconded from another participating State prior to a decision being made by that participating State on an application for international protection made by P, or following a refusal of such an application;

(b) whether P has previously withdrawn an application for international protection in another participating State and subsequently made a claim for asylum in the United Kingdom;

(c) whether there are reasonable grounds to believe that P is likely to fail to comply with any conditions attached to a grant of temporary admission or release or immigration bail;

(d) whether P has previously failed to comply with any conditions attached to a grant of temporary admission or release, immigration bail, or leave to enter or leave to remain in the United Kingdom granted under the Immigration Act 1971, including remaining beyond any time limited by that leave;

(e) whether there are reasonable grounds to believe that P is unlikely to return voluntarily to any other participating State determined to be responsible for consideration of their application for international protection under the Dublin III Regulation;