

SUBSIDIARY LEGISLATION 420.07

**PROCEDURAL STANDARDS IN EXAMINING
APPLICATIONS FOR INTERNATIONAL
PROTECTION REGULATIONS**

*Amended by:
L.N. 161 of 2014.*

3rd October, 2008

LEGAL NOTICE 243 of 2008, as amended by Legal Notice 161 of 2014.

1. The title of these regulations is the Procedural Standards in Examining Applications for International Protection Regulations.

*Citation.
Amended by:
L.N. 161 of 2014.*

2. These regulations transpose the provisions of the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Purpose.

3. In these regulations, unless the context otherwise requires:

*Interpretation.
Amended by:
L.N. 161 of 2014.
Cap. 420.*

"Act" means the Refugees Act;

"applicant" means applicant for international protection;

"competent authorities" means the Refugee Commissioner or his representatives;

"Convention" means the 1951 Convention relating to the Status of Refugees done at Geneva on 28th July, 1951, to which Malta acceded on 17th June, 1971, and the 1967 Protocol relating to the Status of Refugees of 31st January, 1967 to which Malta acceded on 15th September, 1971, subject to the declarations and reservations made by Malta;

"international protection" means refugee status or subsidiary protection;

"vulnerable persons" include pregnant women, persons with disabilities, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence, or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman or degrading treatment or who have suffered from armed conflict.

4. (1) A person who wishes to apply for international protection shall make an application to the Commissioner on the prescribed form which, as far as possible, shall be in a language that the applicant understands.

*Application for
refugee status.
Amended by:
L.N. 161 of 2014.*

(2) The applicant shall be:

(a) informed:

(i) in a language which he may reasonably be supposed to understand of the procedure to be

followed and of his rights and obligations during the procedure;

- (ii) about the possible consequences of not complying with his obligations and not cooperating with the authorities;
- (iii) of the timeframe as well as the means at his disposal for fulfilling the obligation to submit the elements required;
- (iv) of his right to consult the High Commissioner and to have legal assistance during all the phases of the asylum procedure:

Provided that this information shall be given in time to enable the applicant to exercise the rights guaranteed and to comply with the obligations prescribed by law;

- (b) advised on how and where he may make such application as well as assistance, where necessary, in the forwarding of the application to the Commissioner;
- (c) granted the services of an interpreter for submitting his case to the competent authorities whenever necessary;
- (d) given notice, in a reasonable time, of the decision on his application for international protection and such notice shall be served on the applicant or his legal advisor;
- (e) informed of the result of the decision, in a language that he may reasonably be supposed to understand, when he is not assisted or represented by a legal adviser and when free legal assistance is not available.

(3) An applicant for international protection shall file his application in his own name, and where applicable, that of his dependants.

(4) An application shall not be valid unless made within sixty days of the arrival of the applicant in Malta:

Provided that an application may be allowed by the Commissioner, for special and exceptional reasons, after the lapse of sixty days.

Examination of applications.
Added by:
L.N. 161 of 2014.

4A. (1) The Refugee Commissioner shall ensure that applications for international protection are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.

(2) When examining applications for international protection, the Commissioner shall first determine whether the applicants qualify as refugees and, if such applicants do not qualify, determine whether the applicants are eligible for subsidiary protection.

(3) The Commissioner shall ensure that decisions on applications for subsidiary protection are taken after an appropriate examination and that:

- (a) applications are examined and decisions are taken on an individual basis;

- (b) precise and up-to-date information is obtained from EASO and UNHCR as well as other relevant international human rights organisations:

Provided that the information referred to in this paragraph shall be accessible to the Refugees Appeals Board for the purpose of taking a decision on an application for international protection;

- (c) the personnel examining applications and taking decisions have acquired the appropriate knowledge in the field of asylum and refugee law;
- (d) the Commissioner has the possibility to seek advice, whenever necessary, from experts on medical, cultural, religious, child-related or gender issues.

(4) The Commissioner shall provide for rules concerning the translation of documents relevant for the examination of applications.

(5) The Commissioner shall ensure that the applicants are provided with information relating to legislation and procedure, free of charge:

Provided that when examining an application for international protection, due consideration shall be had as to whether:

- (a) the application is likely to be unfounded; or
- (b) the applicant is vulnerable, is an unaccompanied minor or is in need of special procedural guarantees.

4B. (1) The Commissioner may, from time to time, lay down the rules and guidelines applicable to the procedure for the determination of an application.

(2) The Commissioner shall examine the application as soon as possible and shall, in the assessment of the credibility of an applicant's claim, endeavour to gather all relevant information that will enable him to make a recommendation taking due account of the applicant's cooperation in the proceedings.

(3) (a) The applicant shall submit as soon as possible all elements needed to substantiate the application for international protection. Such elements shall consist of the applicant's statements and all the documentation at the applicant's disposal regarding the applicant's age, background, including that of relevant relatives, identity, nationality, country and place of previous residence, previous applications for international protection, travel routes, travel documents and the reasons for applying for international protection.

(b) For the purpose of this regulation, when conducting a personal interview on the substance of the application, the Commissioner shall ensure that the applicant is given an adequate opportunity to present the elements needed to substantiate the application, including the opportunity to give an explanation regarding elements

Examination of facts and circumstances.
Added by:
L.N. 161 of 2014.

which may be missing and/or inconsistencies or contradictions in the application.

(4) The Commissioner shall assess the relevance of the elements referred to in sub-regulation (3). When aspects of the applicant's statements are not supported by documentary or other evidence, such aspects shall not need confirmation if:

- (a) the applicant has made a genuine effort to substantiate his application;
- (b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation has been given regarding any lack of other relevant elements;
- (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
- (e) the general credibility of the applicant has been established.

(5) The assessment of the application for international protection shall be carried out on an individual basis taking into account:

- (a) all relevant facts as they relate to the country of origin at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied;
- (b) the relevant statements and documentaries presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (d) whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;
- (e) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

(6) For the purpose of this regulation, where the Commissioner deems it relevant for the assessment of an application, the Commissioner shall, subject to the applicant's consent, arrange for

a medical examination of the applicant concerning signs that might indicate past persecution or serious harm:

Provided that the applicant's refusal to undergo such a medical examination shall not prevent the Commissioner from taking a decision on the application.

5. (1) The applicant shall be interviewed, where necessary, with the assistance of an interpreter and all evidence shall be retained by the Commissioner or his representative for as long as is necessary.

Examination of application and the interview.
Amended by:
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(2) A legal adviser shall be allowed to assist the applicant in accordance with procedures laid down by the Commissioner and, where entitled to, free legal aid shall be provided to the applicant.

(3) The personal interview referred to in subregulation (1) may be omitted where:

- (a) the Commissioner is able to make a positive recommendation on the basis of evidence available; or
- (b) the Commissioner 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; or
- (c) the Commissioner, on the basis of an examination of the information provided, considers the application to be unfounded where:
 - (i) 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 qualifies as a refugee; or
 - (ii) the application for international protection is considered to be unfounded due to the notion of safe country of origin or safe third country; or
 - (iii) where applicant has made inconsistent, contradictory, improbable or insufficient representations which made his claim clearly unconvincing in relation to his having been the object of persecution; or
 - (iv) the person 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; or
 - (v) where 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; or
- (d) where it is not reasonably practicable, in particular, where the Commissioner is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control; provided

that when in doubt, the Commissioner may require a medical or psychological certificate.

(4) Without prejudice to the provisions of regulation 14, the Commissioner, when deciding on the application for international protection, may take into account the fact that the applicant failed to appear for the personal interview unless he had a valid reason for such failure.

(5) A personal interview shall take place without the presence of family members unless the Commissioner considers it necessary for an appropriate examination to have other family members present:

Provided that a personal interview shall take place under conditions which ensure appropriate confidentiality.

(6) A personal interview shall be conducted under conditions which allow the applicant to present the grounds for his application in a comprehensive manner and must:

- (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application including the applicant's cultural origin or vulnerability, in so far as it is possible to do so; and
- (b) ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview, but communication need not necessarily take place in the language preferred by the applicant if there is another language which he may reasonably be supposed to understand and communicate in.

Written report.

6. (1) The Commissioner shall ensure that a written report is made of every personal interview containing at least the essential information regarding the application as presented by the applicant.

(2) An applicant shall have, upon request, timely access to the report of the personal interview allowing an appeal to be prepared and lodged in due time.

Legal assistance.
Amended by:
L.N. 161 of 2014.

7. (1) An applicant shall be allowed to consult, at his own expense, in an effective manner, a legal adviser in relation to his application for international protection:

Provided that in the event of a negative decision, free legal aid shall be granted under the same conditions applicable to Maltese nationals.

(2) A legal adviser who assists an applicant following a decision shall enjoy access to such information in the applicant's file as is liable to be examined by the Refugee Appeals Board in so far as the information is relevant to the examination of the application:

Provided that where disclosure of such information would jeopardize national security, the security of the organisations or

persons providing information or the security of the persons to whom the information relates, or where the investigative interests relating to the examination of applications for international protection by the Commissioner or the international relations of Malta would be compromised, such access shall be precluded.

(3) The legal adviser who assists an applicant for international protection shall have access to closed areas such as detention facilities and transit zones for the purpose of consulting the applicant, subject to such limitations necessary for the security, public order or administrative management of the area.

(4) The Commissioner may provide that the applicant is allowed to bring with him to the personal interview a legal adviser:

Provided that the absence of a legal adviser shall not prevent the Commissioner from conducting or continuing the personal interview with the applicant.

8. The Commissioner shall ensure that, where a recommendation cannot be made within six months, the applicant concerned shall either:

Time limit for the decision.

- (a) be informed of the delay; or
- (b) receive, upon his request, information on the time frame within which the decision on his application is to be expected:

Provided that such information shall not constitute an obligation for the Commissioner towards the applicant concerned to take a decision within that timeframe.

9. (1) The decision on the eligibility for refugee status or subsidiary protection status shall be made in writing.

Decision to be made in writing.

(2) The decision referred to in subregulation (1) shall indicate in writing reasons in fact and in law for a rejection of the application and shall include information for the applicant on his right to challenge the decision in terms of regulation 7.

10. (1) All information concerning applications for refugee status shall remain confidential saving that the report of the personal interview, following the recommendation by the Commissioner, shall be accessible to the applicant for international protection and to the Minister.

Confidentiality.
Amended by:
L.N. 161 of 2014.

(2) Any information concerning an application shall, under no circumstances, be disclosed to the authorities of the country of origin of the applicant nor shall any information be requested from such authorities regarding the applicant.

11. A person recognised as being in need of international protection shall, as soon as possible after the respective refugee status or subsidiary protection status has been granted to him, have access to information on the rights and obligations relating to that status in a language likely to be understood by them.

Information relating to status.

Treatment of applicants for international protection.
Amended by:
L.N. 161 of 2014.

12. (1) Notwithstanding the provisions of any other law to the contrary, and except where a subsequent application will not be further examined, or where an applicant is to be surrendered or extradited as appropriate to another Member State pursuant to obligations in accordance with a European Arrest Warrant or otherwise, or to a third country or to international criminal courts or tribunals, an applicant shall not be removed from Malta before his application is finally determined and such applicant shall be allowed to enter or remain in Malta pending a final decision of his application.

- (2) An applicant for international protection shall -
- (a) not seek to enter employment or carry on business unless with the consent of the Minister;
 - (b) unless he is in custody, reside and remain in the places which may be indicated by the Minister;
 - (c) report at specified intervals to the immigration authorities as indicated by the Minister;
 - (d) hand over all documents in his possession;
 - (e) be subject to search and his oral statements may be recorded subject to the applicant being previously informed thereof;
 - (f) be photographed and have his fingerprints taken:

Provided that if any such applicant is in breach of any of the provisions of paragraphs (a), (b) or (c), he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term of not more than six months.

Withdrawal of the application.
Amended by:
L.N. 161 of 2014.

13. (1) When an applicant explicitly withdraws his application, the Commissioner shall decide either to discontinue the examination or reject the application.

(2) When an applicant has implicitly withdrawn his application, the Commissioner shall ensure that a decision is taken to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status:

Provided that the Commissioner may assume that applicant has implicitly withdrawn his application for international protection when it is ascertained that:

- (a) he has refused notification of any document relating to the asylum procedure; or
- (b) he has failed to provide information essential to his application or has not appeared for a personal interview unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control; or
- (c) he has absconded or left without authorisation the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting

duties or other obligations to communicate.

(3) An applicant who reports again to the Commissioner after a decision to discontinue the examination is entitled to request his case to be re-opened within three months of such decision, unless the request is considered as a subsequent application. Such application shall be made in writing stating the reasons supporting such a request.

(4) Service of any document relating to the asylum procedure shall be made by delivery to the applicant for international protection in person, saving that, where this is not possible, such delivery shall be made to his last known address or with his legal advisor or representative.

14. (1) Notwithstanding the provisions of any other law to the contrary, and notwithstanding any deportation or removal order, a person declared to be a beneficiary of international protection shall be entitled:

Rights of refugees and persons granted subsidiary protection status.
*Substituted by:
L.N. 161 of 2014.*

(a) without prejudice to the provisions of articles 9 and 10 of the Act, to remain in Malta with freedom of movement, and to be granted, as soon as possible, personal documents, including a residence permit for a period of three years, which shall be renewable:

Provided that a residence permit to be granted to a family member may be valid for less than three years and shall be renewable;

(b) unless he is in custody awaiting judicial proceedings for the commission of a criminal offence, or is serving a term of imprisonment, to be given a convention travel document in the case of a refugee and a travel document in accordance with relevant provisions of national law in the case of a beneficiary of subsidiary protection, entitling him to leave and return to Malta without the need of a visa;

(c) to have access to employment or self-employed activities, social welfare, appropriate accommodation, integration programmes, State education and training, and to receive State medical care:

Provided that the social welfare benefits granted to beneficiaries of subsidiary protection may be limited to core social welfare benefits.

(2) (a) Persons granted the status of refugee or subsidiary protection shall also be granted access to existing recognition procedures for foreign diplomas, certificates and other evidence of formal qualifications.

(b) For the purpose of paragraph (a), beneficiaries of international protection who cannot provide documentary evidence of their qualifications shall have access to appropriate schemes for the assessment, validation and accreditation of their prior learning.

- (3) (a) Family members of a person granted refugee status, if they are in Malta at the time of the decision or if they join him in Malta, enjoy the same rights and benefits as the refugee so that family unity may be maintained.
- (b) Family members of a person granted subsidiary protection, if they are in Malta at the time of decision, enjoy the same rights and benefits as the person enjoying subsidiary protection status so that family unity may be maintained.
- (4) Persons granted the status of refugee or subsidiary protection and who are considered as vulnerable persons shall, as far as possible, be provided with adequate health care.

Medical
examination.
Substituted by:
L.N. 161 of 2014.

15. (1) A medical examination to determine the age of unaccompanied minors within the framework of any possible application for international protection may be carried out. Such medical examination shall be:

- (a) performed with full respect for the individual's dignity;
- (b) the least invasive; and
- (c) carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

(2) For the purpose of this regulation, if, after the medical examination has been conducted by the authority responsible for medical age assessment, there is still doubt with regard to the age of the applicant, it shall be assumed that the applicant is a minor for a period of up to one year.

Provided that:

- (a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination which may include the rejection of his claim that he is a minor;
- (b) the Children and Young Persons Advisory Board consents to carry out the determination of the age of the minors concerned;
- (c) the decision to reject an application from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal:

Provided further that an unaccompanied minor who has

refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for international protection and that the best interests of the minor shall be a primary consideration in any such decision.

15A. (1) With regard to an unaccompanied minor falling within the provisions of article 13(3) of the Act, action shall be taken as soon as possible, and not later than thirty days from the issue of the care order under that article, as follows:

Action to be taken with regard to an unaccompanied minor falling within the provisions of article 13(3) of the Act.
*Added by:
L.N. 161 of 2014.*

- (a) it shall be ensured that the appointed representative of the unaccompanied minor is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself for the personal interview. The representative shall be present at the interview and may ask questions or make comments within the framework set by the person who conducts the interview;
- (b) where an unaccompanied minor has a personal interview on his application for international protection, that interview is to be conducted and the decision prepared by a person who has the necessary knowledge of the special needs of minors.

(2) Without prejudice to the provisions of sub-regulation (1), unaccompanied minors shall be accommodated in centres specialised in accommodation for minors or in any other accommodation suitable for the minor or entrusted either to his adult relatives or to a foster family:

Provided that, in determining who will be entitled to assume the custody of the minor, regard shall be had to the views of the minor, taking into account the age and degree of maturity of such minor:

Provided further that, as far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and the age and degree of maturity of the minor concerned.

(3) If an unaccompanied minor is granted international protection, the authority responsible for the provision of services to unaccompanied minors, with the assistance of international organisations as necessary, shall proceed with the tracing of the family members of the minor, provided that this is in the best interests of the minor:

Provided that in cases where there may be a threat to the life or integrity of the minor himself or his close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning these persons is undertaken on a confidential basis.

The High
Commissioner.
Amended by:
L.N. 161 of 2014.

16. The High Commissioner -

- (a) shall have access to applicants for international protection, including those in detention and in airport or port transit zones;
- (b) shall have access to information on individual applications for international protection, on the course of the procedure and on the decisions taken, when the applicant for international protection agrees thereto;
- (c) may be present during any interview and, to present his views in writing, in the exercise of his responsibilities under Article 35 of the Convention, to any competent authorities regarding individual applications for international protection at any stage of the procedure as determined by the Commissioner:

Provided that such rights shall apply to an organisation which is working in Malta on behalf of the UNHCR pursuant to an agreement with Malta.

Assessing a third
country as safe.

17. (1) In determining an application as inadmissible on the basis that a country is considered as a safe third country for the applicant, in accordance with article 24 of the Act, the Commissioner shall:

- (a) ensure that there is a connection between the applicant and the third country so that the applicant can reasonably be considered as able to go to that country;
- (b) ensure that the safety of the third country is assessed on an individual basis, taking into account any analysis made by reputable international organizations that may be available from time to time, including the office of the United Nations High Commissioner for Refugees:

Provided that the applicant shall be able to appeal against the inadmissibility of the application on the basis of the safe third country if he can show that, should he be returned to such country, he will be subjected to torture, cruel, inhuman or degrading treatment or punishment.

(2) In taking the decision referred to in subregulation (1), the Commissioner shall:

- (a) inform the applicant of his decision;
- (b) 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.

(3) Where the third country does not permit the applicant to enter its territory, the Commissioner shall ensure that the applicant has access to the procedure for the examination of his application in accordance with the Act or these regulations.

18. (1) When considering an application for refugee status, in assessing the fear of persecution, the Commissioner shall take account of the following elements:

Assessing the reasons for persecution for the granting of refugee status.
*Amended by:
L.N. 161 of 2014.*

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) a group shall be considered to form a particular social group where in particular:
 - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
 - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society; and
 - (iii) depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic or sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in Malta. Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;
- (e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution which include the State, parties or organizations controlling the State or a substantial part of the territory of the State and non-State actors if it can be demonstrated that the other actors are unable or unwilling to provide protection against persecution or serious harm, and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant.

(2) When assessing if an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.
