



STATUTORY INSTRUMENTS.

S.I. No. 409 of 2017



EUROPEAN UNION (SUBSIDIARY PROTECTION) REGULATIONS
2017

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I, CHARLES FLANAGAN, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 2004/83/EC of 29 April 2004¹ and, in relation to Regulation 7 of the following regulations, Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013², hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Subsidiary Protection) Regulations 2017.

(2) These Regulations shall come into operation on 2 October 2017.

Interpretation

2. In these Regulations—

“Act of 1996” means the Refugee Act 1996 (No. 17 of 1996);

“Act of 2015” means the International Protection Act 2015 (No. 66 of 2015);

“application for international protection”, “chief international protection officer” and “international protection officer” have the meanings they have in the Act of 2015;

“EU Regulation” means Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013²;

“Minister” means the Minister for Justice and Equality;

“refugee status” and “subsidiary protection status” shall be construed in accordance with Article 2 of Council Directive 2004/83/EC of 29 April 2004¹;

“Regulations of 2006” means the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006);

“Regulations of 2013” means the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013);

¹OJ No. L304, 30.09.2004, p.12

²OJ No. L 180, 29.06.2013, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th September, 2017.*

“relevant date” means the date, referred to in Regulation 1(2), on which these Regulations come into operation;

Person to whom Regulation 3 applies

3. This Regulation applies to a person to whom the following, on the relevant date, apply-

- (a) he or she is a person—
 - (i) to whom a notification referred to in Regulation 4(1) of the Regulations of 2006 was sent and who did not make an application for subsidiary protection under those Regulations within the period referred to in that paragraph, or
 - (ii) to whom a notice under section 17(5) (as amended by Regulation 34 of the Regulations of 2013) of the Act of 1996 was sent and who did not make an application for a subsidiary protection declaration under the Regulations of 2013 within the period specified in the notice,
- (b) he or she, after the expiry of the period referred to in subparagraph (i) or (ii), as the case may be, of paragraph (a)—
 - (i) did not make an application for subsidiary protection under the Regulations of 2006 or, as the case may be, an application for a subsidiary protection declaration under the Regulations of 2013, as he or she believed that he or she, due to the expiry of the period concerned, was no longer entitled to do so, or
 - (ii) made an application referred to in subparagraph (i), which application was, on the basis that the period had expired, not considered or investigated under the Regulations concerned,
- (c) he or she does not enjoy refugee status or subsidiary protection status in the State or in another Member State, and
- (d) he or she is present in the State.

Person to whom Regulation 3 applies may make application for subsidiary protection declaration

4. (1) A person to whom Regulation 3 applies may make an application for a subsidiary protection declaration under this Regulation.

(2) An application under this Regulation for a subsidiary protection declaration shall be—

- (a) subject to Regulation 6, made within 30 working days from the relevant date,
- (b) made in person to the chief international protection officer,

- (c) in the form specified in Schedule 1 or a form to the like effect, and
- (d) accompanied by statutory declaration, in the form specified in Schedule 2 or a form to the like effect, made by the applicant and stating that he or she is a person to whom Regulation 3 applies.

Provisions applicable to application under Regulation 4

5. Where an application for a subsidiary protection declaration is made in accordance with Regulation 4(2), notwithstanding the repeal of the Regulations of 2013 by section 6 of the Act of 2015—

- (a) the application shall be deemed to be an application for a subsidiary protection declaration under the Regulations of 2013, made in accordance with Regulation 3(1) of those Regulations, and
- (b) the Regulations of 2013 shall, for the purpose of the application, apply subject to the following modifications and any other necessary modifications:
 - (i) the functions conferred on the Refugee Applications Commissioner by those Regulations may, for the purposes of the application, be performed by an international protection officer;
 - (ii) the functions conferred on the Refugee Appeals Tribunal, the chairperson of and a member of the Refugee Appeals Tribunal by those Regulations may, for the purposes of the application, be performed, respectively, by the International Protection Appeals Tribunal, the chairperson of and a member of the International Protection Appeals Tribunal;
 - (iii) in the event that the applicant is given, under Regulation 20 of the Regulations of 2013, a subsidiary protection declaration, the declaration shall be deemed to be a subsidiary protection declaration given to the person under the Act of 2015 and the provisions of the Act of 2015 shall apply accordingly.

Permission to make application for subsidiary protection declaration in certain circumstances

6. (1) A person to whom section 70(7)(ii) of the Act of 2015 applies who does not apply for a subsidiary protection declaration within the period specified in the notice referred to in that subparagraph may make such an application where the Minister gives him or her a permission under paragraph (4) to do so.

(2) A person to whom Regulation 3 applies who does not make an application under Regulation 4 within the period specified in Regulation 4(2)(a) may make such an application where the Minister gives him or her a permission under paragraph (4) to do so.

(3) A request for a permission under paragraph (4) to make an application referred to in paragraph (1) or (2) shall state the reasons why the person concerned was not able to make the application within the period referred to in the paragraph concerned.

(4) The Minister, on receipt of a request referred to in paragraph (3), shall give the person a permission to make the application concerned only where the Minister is satisfied that—

- (a) the person has demonstrated that there were special circumstances as to why the application concerned could not have been made within the period referred to in paragraph (1) or, as the case may be, paragraph (2), and
- (b) in the circumstances concerned, it would be unjust not to permit the person to make the application concerned.

Power to take fingerprints

7. (1) An officer of the Minister may, for the purpose of compliance with the EU Regulation, take or cause to be taken the fingerprints of an applicant who—

- (a) is not a citizen of a Member State, and
- (b) has attained the age of 14 years.

(2) If and for so long as the officer of the Minister concerned has reasonable grounds for believing that the person has attained the age of 14 years, the provisions of paragraph (1) shall apply as if he or she has attained the age of 14 years.

(3) An applicant who refuses to permit his or her fingerprints to be taken pursuant to paragraph (1) shall be deemed to be failing in his or her duty under Regulation 12(1) of the Regulation of 2013.

(4) The Commissioner of the Garda Síochána shall arrange for the maintenance of a record of fingerprints taken pursuant to paragraph (1).

(5) Every fingerprint of an applicant taken pursuant to paragraph (1) and kept under paragraph (4) shall (if not earlier destroyed) be destroyed—

- (a) not later than 3 months after the person from whom it was taken—
 - (i) is given, under Regulation 20 of the Regulations of 2013, a subsidiary protection declaration,
 - (ii) becomes an Irish citizen, or
 - (iii) satisfies the Minister that he or she has acquired the citizenship or nationality of a Member State,

or

- (b) in any other case, not later than 10 years after the date on which it is taken.

(6) In this Regulation, “applicant” means an applicant within the meaning of the Regulations of 2013.

Amendment of section 17(5) of Act of 1996

8. Section 17(5) of the Act of 1996 is amended by the substitution of the following for paragraph (b):

“(b) subject to Regulation 6 of the European Union (Subsidiary Protection) Regulations 2017, he or she may make an application for a subsidiary protection declaration under the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) within 30 working days from the sending of the notice by completing the form for such an application and addressing it to the chief international protection officer, within the meaning of the International Protection Act 2015, and”.

Amendment of section 70(7) of Act of 2015

9. Section 70(7) of the Act of 2015 is amended in subparagraph (ii) by the substitution of “section 17(5)” for “section 17(7)”.

Amendment of Regulations of 2013

10. The Regulations of 2013 are amended—

(a) in Regulation 3—

(i) by the substitution, in paragraph (1)(b)(i), of “subject to Regulation 6 of the European Union (Subsidiary Protection) Regulations 2017, made” for “made”, and

(ii) by the substitution of “Child and Family Agency” for “Health Service Executive” in each place that it occurs, and

(b) in Regulation 19, by the substitution of “Child and Family Agency” for “Health Service Executive”.

Schedule 1

Form IPO (SP) 01

Application form for subsidiary protection declaration under the European Union (Subsidiary Protection) Regulations 2017.

1.1 Name:

1.2 Address in the State:

1.3 Person ID Reference No:

1.4 Nationality:

1.5 Date of Arrival in the State:

1.6 PPS Number:

1.7 Application(s) of dependent family member(s) included with your application:

Name of Dependent Family Member	Family Connection (e.g. spouse, child etc)	Date of Birth	Nationality	Person ID Number
1.				
2.				
3.				
4.				
5.				
6.				
7.				

2.1 Please indicate the basis on which “serious harm” as defined in the Regulations of 2013 is being claimed.

Tick one or more of the following, as appropriate:-

death penalty or execution.

torture or inhuman or degrading treatment or punishment of an applicant in the country of origin.

serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

2.2 Set out fully all of the grounds supporting the basis of your application for subsidiary protection and the application(s) of any dependant family member(s) in the State.

3.1 You are required to submit all documentary evidence available to you which supports your application for subsidiary protection in the State and the application (s) of any dependent family member (s). Are you enclosing any documentary evidence with your application for subsidiary protection?

Yes No

If “yes” to the above, please list the documents being submitted in the space provided below.

3.2 If you are relying on any documentary evidence already submitted with your asylum claim, please list those documents in the space below. (*Note: any documentary evidence already submitted by you or on your behalf to the Office of the Refugee Application Commissioner/International Protection Office (IPO) or the Refugee Appeals Tribunal/International Protection Appeals Tribunal (IPAT) as part of your application for asylum does not require to be resubmitted.*)

3.3 If you cannot provide any documentary evidence to support your application for subsidiary protection and the application(s) of any dependent family member(s), you are required to provide an explanation as to why no such evidence can be provided.

I hereby declare that the above information and any material attached is true, accurate and up-to-date and is the full extent of my application for subsidiary protection in the State and, where appropriate, the application(s) of my dependent family member(s), under the European Union (Subsidiary Protection) Regulations 2017.

Signature of applicant: _____

Date: _____

Please return the attached form to:
International Protection Office,
Timberlay House,
79-83 Lower Mount Street,
Dublin 2.

Schedule 2

STATUTORY DECLARATION

1. I, A.B. do solemnly and sincerely declare that the following particulars stated in this statutory declaration are true and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1938.
2. I am a person to whom Regulation 3 of the European Union (Subsidiary Protection) Regulations 2017 applies.
3. I received a notification under regulation 4(1) of the Regulations of 2006 and did not make an application for subsidiary protection under those regulations within the period referred to in that paragraph.
4. Or [I received a notice under section 17(5) (as amended by Regulation 34 of the Regulations of 2013) of the Act of 1996, and did not make an application for a subsidiary protection declaration under the Regulations of 2013 within the period specified in the notice.]
5. After the expiry of the period for making an application for subsidiary protection referred to in paragraph 3 or 4, I did not make an application for subsidiary protection as I believed due to the expiry of the period I was no longer entitled to make an application.
6. Or [I made an application after the expiry of the period for making an application for subsidiary protection and the application was on the basis that the period had expired not considered or investigated under the Regulations concerned.]
7. I have not been granted refugee status or subsidiary protection in this State or any another Member State.
8. I am or I was present in the State on the date the European Union (Subsidiary Protection) Regulations 2017 came into operation - 2nd October 2017.

[Signed] A.B.

Declared before me [name in capitals] a [notary public] [commissioner for oaths] [peace commissioner] [person authorised by [insert authorising statutory provision] to take and receive statutory declarations] by A.B.

[who is personally known to me],

or

[who is identified to me by C.D. who is personally known to me]

or

[whose identity has been established to me before the taking of this Declaration by the production to me of

passport no. [passport number] issued on [date of issue] by the authorities of [issuing state], which is an authority recognised by the Irish Government]

or

national identity card no. [identity card number] issued on [date of issue] by the authorities of [issuing state] [which is an EU Member State, the Swiss Confederation or a Contracting Party to the EEA Agreement]

or

[Aliens Passport no. (document equivalent to a passport) [passport number] issued on [date of issue] by the authorities of [issuing state] which is an authority recognised by the Irish Government]

or

refugee travel document no. [document number] issued on [date of issue] by the Minister for Justice and Equality]

or

travel document (other than refugee travel document) [document no.] issued on [date of issue] by the Minister for Justice and Equality

at.....[place of signature] this.....day of[date]

.....



GIVEN under my Official Seal,
21 September 2017.

CHARLES FLANAGAN,
Minister for Justice and Equality.

EXPLANATORY NOTE:

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations provide for a 30 day timeframe from 2nd October 2017 for a person, who was refused refugee status under the Refugee Act 1996 and who did not make an application for subsidiary protection within the 15 day timeframe provided for in the European Communities (Eligibility for Protection) Regulations 2006 and European Union (Subsidiary Protection) Regulations 2013, to make an application for subsidiary protection. The Regulations also amend the Refugee Act 1996 to increase the timeframe for making an application for subsidiary protection from 15 to 30 days for persons whose applications are being determined under the 1996 Act.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.05

