

**SUBSIDIARY LEGISLATION 420.07**

**PROCEDURAL STANDARDS FOR GRANTING  
AND WITHDRAWING INTERNATIONAL  
PROTECTION REGULATIONS**

11th December, 2015

*LEGAL NOTICE 416 of 2015.*

**1.** The title of these regulations is the Procedural Standards for Granting and Withdrawing International Protection Regulations, 2015. Citation.

**2.** These regulations transpose the provisions of the Council Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted and Council Directive 2013/32/EU on common procedures for granting and withdrawing international protection. Purpose.

**3.** (1) In these regulations, unless the context otherwise requires - Interpretation.

"Act" means the Refugees Act; Cap. 420.

"applicant" means third country nationals or stateless persons who have made an application for international protection in respect of which a final decision has not yet been taken by the Commissioner or the by Refugees Appeals Board;

"applicant in need of special procedural guarantees" means an applicant whose ability to benefit from the rights and comply with the obligations provided for in these regulations as well as in the Act, is limited due to individual circumstances;

"the Board" means the Refugees Appeals Board as established by article 5 of the Act;

"the Commissioner" means the Refugee Commissioner, and includes, to the extent and authority given, any other person temporarily authorised in that behalf by the Minister;

"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;

"determining authority" means the Refugee Commissioner;

"the High Commissioner" means the United Nations High Commissioner for Refugees or his representative;

"international protection" means refugee status or subsidiary protection;

Cap. 12. "legal adviser" means a person who is authorised to practice the legal profession in Malta in terms of the Code of Organization and Civil Procedure;

"minor" means a third-country national or a stateless person below the age of eighteen years;

"remain" means to remain in the territory including at the border or in transit zones of the Member State in which the application for international protection has been made or is being examined; the right to remain shall not constitute an entitlement to a residence permit;

"representative" means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in asylum procedures with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of a representative in respect of the unaccompanied minor;

"unaccompanied minor" means a minor who arrives on the territory of Malta unaccompanied by an adult responsible for him or her in accordance with national law and for as long as such minor is not effectively taken into the care of such an adult; it includes a minor who is left unaccompanied after he or she has entered the territory of Malta;

"vulnerable persons" means persons in need of special care, support, or protection because of age, disability, or risk of abuse or neglect, including minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

Guarantees and obligations of applicants.

4. (1) The applicant shall be:

(a) informed:

- (i) in a language which he understands or is reasonably 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 the consequences of an explicit or implicit withdrawal of the application;
- (v) of his right to consult the High Commissioner or any other national organisation providing legal advice 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) granted the services of an interpreter for submitting his case to the competent authorities whenever necessary;
- (c) 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 adviser;
- (d) informed of the result of the decision, in a language that he understands or is reasonably supposed to understand, when he is not assisted or represented by a legal adviser;
- (e) provided with information on how to challenge a negative decision;
- (f) provided with the information referred to in this regulation and information provided by the experts in accordance with regulation 8(3)(d), where the Refugee Commissioner has taken that information into consideration for the purpose of taking a decision on their application.

(2) The guarantees referred to in this regulation shall also be provided at appeal stage.

(3) An applicant shall also –

- (a) be obliged to cooperate with the Commissioner with a view to establishing his identity and other elements referred to in the Act and in these regulations;
- (b) report or appear before the Commissioner without delay or at a specified time;
- (c) inform the competent authorities of his current place of residence or address and of any changes thereof as soon as possible;
- (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:

Provided that, without prejudice to any search carried out for security reasons, a search of the applicant's person shall be carried out by a person of the same sex with full respect for the principles of human dignity and of physical and psychological integrity;

- (f) be photographed and have his fingerprints taken; and
- (g) be provided with information relating to legislation and procedure, free of charge.

5. (1) A person who wishes to apply for international protection shall make an application to the Commissioner, or to any

Access to the procedure.

authority likely to receive such applications.

For the purpose of this regulation, when a person indicates that he wishes to make an application for international protection to an authority likely to receive such applications, then that authority shall inform the Commissioner of the applicant's intention to apply for international protection and refer such applicant to the Commissioner.

(2) The Commissioner shall register the making of an application for international protection within three working days:

Provided that, when an application for international protection is made to other authorities likely to receive such applications, the Commissioner shall register such applications within six working days:

Provided further that, when simultaneous applications for international protection by a large number of persons make it very difficult in practice to respect the three day limit, the Commissioner may provide for that time limit to be extended to ten working days.

(3) An application for international protection shall be deemed to have been lodged once the prescribed form has reached the Office of the Refugee Commissioner. Such application shall be lodged in person and, or at a designated place.

For the purpose of this regulation, the Commissioner shall ensure that the applicant has an effective opportunity to lodge the application as soon as possible.

(4) When an application for international protection is made to an authority other than the Commissioner, then the applicant is to be advised and assisted on how and where he may lodge such application:

Provided that with regard to an unaccompanied minor, the appointed representative referred to in regulation 18 has the right to lodge an application for international protection on behalf of the unaccompanied minor, if on the basis of an individual assessment of the minor's personal situation, the appointed representative is of the opinion that the minor may be in need of protection.

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

Provided that where a person lodged an application for international protection on behalf of his dependants, the Commissioner shall ensure that each dependant adult consents to the lodging of the application on his behalf, failing which he shall be given the opportunity to make an application on his own behalf.

(6) For the purpose of this regulation, consent shall be requested at the time the application is lodged or, at the latest, when the personal interview with the dependant adult is conducted. Each dependant adult shall be informed in private of the relevant procedural consequences of the lodging of the application on his behalf and of his right to make a separate application for

international protection.

(7) A minor has the right to make an application for international protection either on his own behalf if he has legal capacity, or through his parents or other adult family members, or an adult responsible for him in accordance with national law, or through a representative.

6. (1) The Commissioner shall ensure that the examination procedure is concluded as soon as possible, without prejudice to an adequate and complete examination.

Time limits for the examination procedure.

(2) The Commissioner shall also ensure that the examination procedure is concluded within six months of the lodging of the application.

(3) Where an application is subject to the procedure laid down in EU Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, the time limit of six months shall start to run from the day the Maltese authorities are determined as the Member State responsible in accordance with that Regulation, the applicant is on Maltese territory and has been taken in charge by the Commissioner.

(4) The Commissioner may extend the time limit of six months for a period not exceeding a further nine months, where:

- (a) complex issues of fact and, or law are involved;
- (b) a large number of third-country nationals or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit;
- (c) where the delay can clearly be attributed to the failure of the applicant to comply with his obligations under regulation 4:

Provided that the Commissioner may extend the time limit referred to in this regulation by a maximum period of three months, to ensure an adequate and complete examination of the application for international protection.

(5) When the examination procedure cannot be concluded due to an uncertain situation in the country of origin, the Commissioner may postpone concluding the examination procedure. In such a case, the Commissioner shall:

- (a) conduct reviews of the situation in that country of origin at least every six months;
- (b) inform the applicants concerned within a reasonable time of the reasons for the postponement;
- (c) inform the Commission within a reasonable time of the postponement of procedures for that country of origin.

(6) The Commissioner shall ensure that the examination

procedure shall not exceed the maximum time limit of twenty-one months from the lodging of the application.

(7) The Commissioner shall ensure that, where a recommendation cannot be made within six months, the applicant concerned shall:

- (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.

(8) The Commissioner may decide to prioritize an examination of an application for international protection, where:

- (a) the application is likely to be well-founded;
- (b) the applicant is vulnerable or is in need of special procedural guarantees, in particular unaccompanied minors.

Applicants in need of special procedural guarantees.

7. (1) The Commissioner shall assess within a reasonable period of time after an application for international protection is made whether the applicant is in need of special procedural guarantees:

Provided that the Commissioner may, for the purpose of this regulation, lay down a procedure with a view to determining whether a person is in need of special procedural guarantees. The outcome of such an assessment shall be inserted in the applicant's file.

(2) The Commissioner shall ensure that where an applicant has been identified as an applicant in need of special procedural guarantees, such applicant will be provided with adequate support throughout the whole procedure.

(3) Whenever it is considered that an applicant requires special procedural guarantees as a consequence of having suffered torture, rape or other serious form of psychological, physical or sexual violence, the accelerated procedure referred to in article 23 of the Act shall not be applied.

(4) The need for special procedural guarantees shall also be addressed even if such need becomes apparent at a later stage and even without the necessity of initiating new procedures.

Requirements for the examination of applications.

8. (1) The 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 international protection are taken after an appropriate examination and that -

- (a) applications are examined and decisions are taken individually, objectively and impartially;
- (b) precise and up-to-date information is obtained from EASO and UNHCR as well as other relevant international human rights organisations as to the general situation prevailing in the countries of origin of the applicants and, where necessary, in countries through which they have transited and that such information is made available to the personnel responsible for examining applications and taking decisions:

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 particular issues, such as 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.

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

Examination of facts and circumstances.

(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) 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.

(4) For the purpose of this regulation, the Commissioner or his representative shall retain all such elements for as long as necessary.

(5) The Commissioner shall assess the relevance of the

elements referred to in sub-regulation (4). 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 specific and general information available and 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.

(6) 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 documents 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.

(7) 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 for the applicant concerning signs that might indicate past persecution or serious harm.

Medical examinations carried out in accordance with this

sub-regulation shall be paid for out of public funds.

(8) The medical examination referred to in sub-regulation (7) shall be carried out by qualified medical professionals and the result thereof shall be submitted to the Commissioner as soon as possible:

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

(9) When no medical examination is carried out in accordance with sub-regulation (7), the determining authority shall inform applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.

(10) The Commissioner shall assess the results of the medical examination along with the other elements of the application.

**10.** (1) Before a decision is taken by the Commissioner, the applicant shall be given the opportunity of a personal interview with a person competent to conduct an interview.

Personal interview.

(2) The Commissioner may initially provide that a personal interview on the admissibility of the application for international protection be conducted in accordance with article 24 of the Act.

(3) For the purpose of this regulation, the personal interviews on the substance of the claim shall be conducted by personnel from the Office of the Refugee Commissioner:

Provided that when simultaneous applications for international protection by a large number of third-country nationals or stateless persons make it impossible for the Commissioner to conduct timely interviews on the substance of each application, the Commissioner may provide that trained personnel of another authority be temporarily involved in conducting such interviews.

(4) 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.

(5) The personal interview referred to in sub-regulation (1) may be omitted where:

- (a) the Commissioner is able to make a positive recommendation on the basis of evidence available; or
- (b) 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 to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature:

Provided that where a personal interview is not

conducted pursuant to paragraph (b) or, where applicable, with the dependant, reasonable efforts shall be made to allow the applicant or the dependant to submit further information.

(6) The absence of a personal interview in accordance with this regulation shall not prevent the Commissioner from taking a decision on an application for international protection.

(7) Without prejudice to the provisions of regulation 20 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.

(8) 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.

(9) The personal interview shall take place under conditions which ensure appropriate confidentiality.

(10) 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, gender, sexual orientation, gender identity or vulnerability;

(b) ensure that the person who conducts the personal interview is properly trained and has the acquired knowledge of problems which might affect the applicant's ability to be interviewed.

For the purposes of this paragraph, the determining authority has to ensure that all the persons conducting the interviews have been provided with relevant training in accordance with Article 6(4)(a) to (e) of Regulation (EU) No 439/2010 as well as with relevant training established and developed by the European Asylum Support Office;

(c) ensure the presence of an interpreter who is able to give appropriate communication between the applicant and the person who conducts the interview. The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he is able to communicate clearly;

(d) ensure whenever possible that the person conducting the interview and interpreter, be a person of the same sex if the applicant so requests, unless the Commissioner has reason to believe that such a request is based on grounds which are not related to difficulties on the part of the applicant to present the

grounds of his application in a comprehensive manner;

- (e) ensure that the person who conducts the interview on the substance of an application for international protection does not wear a military or law enforcement uniform; and
- (f) ensure that interviews with minors are conducted in a child-appropriate manner.

Provided that, for the purpose of this regulation, the Commissioner may establish rules concerning the presence of third parties at a personal interview.

(11) When conducting a personal interview on the substance of an application for international protection, the determining authority shall ensure that the applicant is given an adequate opportunity to present elements needed to substantiate the application as completely as possible, including the opportunity to give an explanation regarding elements which may be missing and, or any inconsistencies or contradictions in the applicant's statements.

**11.** (1) The Commissioner shall ensure that either a thorough and factual report containing all substantive elements or a transcript is made of every personal interview.

Reporting and recording of personal interviews.

(2) The Commissioner may provide for audio or audiovisual recording of the personal interview:

Provided that where such recording has been made, the Commissioner shall ensure that the recording or a transcript thereof is available in connection with the applicant's file.

(3) The Commissioner shall ensure that the applicant has the opportunity to make comments and, or provide clarification, orally and, or in writing, with regard to any mistranslations or misconceptions appearing in the report or in the transcript, at the end of the personal interview or within a specified time limit before the Commissioner takes a decision, containing all substantive elements of the personal interview.

(4) For the purpose of this regulation, the Commissioner shall ensure that the applicant is fully informed of the content of the report or the transcript containing all substantive elements and where necessary with the assistance of an interpreter.

(5) The Commissioner shall request the applicant to confirm that the content of the report or the transcript correctly reflects the interview:

Provided that when the personal interview is recorded in accordance with sub-regulation (2) and the recording is admissible as evidence in the appeals procedure, the Commissioner need not request the applicant to confirm that the content of the report or the transcript correctly reflects the interview or to make comments on and, or provide clarification of the transcript.

(6) Where the applicant refuses to confirm that the content of the report or the transcript correctly reflects the personal interview, the reasons for his refusal shall be entered in the applicant's file.

(7) A refusal to confirm the content of the report or the transcript shall not prevent the Commissioner from taking a decision on the application.

(8) The applicant and his legal adviser shall have timely access to the report or the transcript and where applicable, the recording of the personal interview, before a decision on the application is taken by the Commissioner.

(9) When both a transcript and a recording of the personal interview has been provided, the Commissioner need not provide access to the recording in the procedures at first instance, but shall nevertheless provide access to the recording in the appeals procedures.

(10) Where the application is examined under accelerated procedures in accordance with article 23 of the Act, access to the report or the transcript, and where applicable, the recording may be granted at the same time as the decision is made.

Legal assistance.

**12.** (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 at all stages of the procedure:

Provided that in case of an appeal, free legal assistance shall be granted under the same conditions applicable to Maltese nationals. Free legal assistance shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant:

Provided also that legal assistance and representation shall not be arbitrarily restricted thus hindering the applicant's effective access to justice.

(2) A legal adviser assisting and representing an applicant shall enjoy access to the information in the applicant's file, upon the basis of which a decision is or will be made and 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 for the purpose of consulting the applicant, subject to applicable rules concerning security, public order or administrative management of the area.

(4) The Commissioner shall allow an applicant to bring with him to the personal interview a legal adviser. The legal adviser may only intervene at the end of the personal interview:

Provided that the Commissioner may, for the purpose of this regulation, provide rules covering the presence of legal advisers at all interviews in the first instance procedure:

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

13. (1) When an applicant explicitly withdraws his application, the Commissioner shall decide either to discontinue the examination or reject the application. A notice to such effect shall be entered in the applicant's file.

Withdrawal of the application.

(2) When an applicant has implicitly withdrawn or abandoned his application, the Commissioner shall ensure that a decision is taken to either discontinue the examination or, provided that such application is deemed to be unfounded on the basis of an adequate examination of its substance, to reject the application.

(3) If the Commissioner decides to discontinue the examination without taking a decision, a notice to such effect shall be entered in the applicant's file:

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

- (a) 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
- (b) 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, unless the applicant demonstrates that this was due to circumstances beyond his control.

(4) 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 or to make a new application which shall not be a subsequent application. Such application shall be made in writing stating the reasons supporting such a request:

Provided that when an applicant reports again to the Commissioner after nine months of the decision to discontinue the examination, then the applicant's case can no longer be reopened and the new application may be treated as a subsequent application.

(5) In case the examination of the application has been discontinued, the applicant's case may be reopened only once and the Commissioner may decide to resume the examination at the stage where the examination had been discontinued.

(6) 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.

Decision by the  
Commissioner.

**14.** (1) The decision on the eligibility for refugee status or subsidiary protection status shall be made in writing following the determination of the application.

(2) The decision referred to in sub-regulation (1) shall indicate the reasons in fact and in law and in case of a negative decision, it shall also include information clarifying the reasons for such decision as well as an explanation on how such a negative decision can be challenged:

Provided that an applicant who has been 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 which he understands or may reasonable be supposed to understand:

Provided further that if an applicant has been provided with such information at an earlier stage, the Commissioner need not include such information with the decision.

(3) When an application has been lodged on behalf of dependants and whenever such an application is based on the same grounds, the Commissioner may take a single decision, covering all dependants, unless to do so would lead to the disclosure of particular circumstances of an applicant which could jeopardise his interests, in particular in cases involving gender, sexual orientation, gender identity and, or age based persecution. In such cases, a separate decision shall be issued to the person concerned.

Confidentiality.

**15.** (1) All information concerning applications for international protection shall remain confidential, without prejudice to access of the applicant's file by the Minister.

(2) No information concerning an application shall, under any circumstances, be disclosed to the alleged actor of persecution or serious harm. Nor shall the Maltese authorities obtain any information from the alleged actor of persecution or serious harm in a manner that would result in such actor being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his dependants, or the liberty and security of his family members still living in the country of origin.

Right to remain.

**16.** (1) Applicants shall be allowed to remain on the Maltese territory, for the sole purpose of the procedure, until the Commissioner has made a decision. This right to remain shall not constitute an entitlement to a residence permit.

(2) Notwithstanding the provisions of any other law to the contrary, and except where a subsequent application will not be further examined pursuant to article 7A of the Act, 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.

(3) An exception from the right to remain in the territory may be made where a person:

- (a) has lodged a subsequent application, which is not further examined pursuant to article 7A of the Act, merely in order to delay or frustrate the enforcement of a decision which would result in his imminent removal;
- (b) makes another subsequent application in the same Member State, following a final decision considering a first subsequent application inadmissible pursuant to article 24 of the Act or after a final decision to reject that application as unfounded:

Provided that the exception referred to in this regulation may only be made where the Commissioner, and confirmed by the Refugees Appeals Board, considers that a return decision will not lead to a direct or indirect *refoulement*.

17. (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:

Unaccompanied  
minors.

- (a) conducted in a language which he understands or is reasonably supposed to understand;
- (b) performed with full respect for the individual's dignity;
- (c) the least invasive possible; and
- (d) 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 they understand or is reasonably 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) unaccompanied minors and, or their representatives consent to a medical examination being carried out to determine the age of the minors concerned;
- (d) 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.

Unaccompanied minor falling within the provisions of article 13(3) of the Act

**18.** (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:

- (a) the unaccompanied minor shall be represented and assisted by a representative during all the phases of the asylum procedure;
- (b) the unaccompanied minor shall be informed immediately of the appointment of a representative, who shall perform his duties in the best interests of the minor and shall also have the necessary knowledge of the special needs of minors;
- (c) the person acting as a representative shall be changed only when necessary;
- (d) 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;
- (e) it shall be ensured that unaccompanied minors shall be provided with legal and procedural information, free of charge, in accordance with regulation 12;
- (f) 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) For the purpose of sub-regulation (1), organisations or

individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

(3) Without prejudice to 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 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.

(4) 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.

**19.** (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.

- (a) the concept of race which shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion which 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 which 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 which 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.

Rights of refugees and persons granted subsidiary protection status.

**20.** (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:

- (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 at least 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, 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) 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.

(3) 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.

**21. The High Commissioner -**

The High  
Commissioner.

- (a) shall have access to applicants for international protection, including those in detention, at the border, 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.

**22. (1)** The Commissioner may apply the safe third country concept only where it is satisfied that the applicant will be treated in accordance to the principles listed in article 2 of the Act.

Assessing a third  
country as safe.

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 safe third country concept can be applied to a particular country or applicant and that a case-by-case consideration of the safety of the country has been carried out;
- (c) 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:

Provided further that the applicant shall also be allowed to challenge the existence of a connection between such applicant and the third country as well as to challenge the application of the safe third country concept on the grounds that the third country is not safe.

(2) In taking the decision referred to in sub-regulation (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.

The concept of safe country of origin.

**23.** A third country may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

- (a) he or she has the nationality of that country; or
  - (b) he or she is a stateless person and was formerly habitually resident in that country, and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with articles 8 and 17 of the Act.
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