

STATUTORY INSTRUMENT

S.I. No. 423 of 2003.

Refugee Act 1996 (Section 22) Order 2003

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Refugee Act 1996 (Section 22) Order 2003

I, Michael McDowell, T.D., Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 22 (as amended by section 7(*l*) of the Immigration Act 2003 (No. 26 of 2003)) of the Refugee Act 1996 (No. 17 of 1996), as adapted by the Justice (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 298 of 1997), and for the purpose of giving effect to Council Regulation (EC) No. 343/2003¹, hereby order as follows:

Title and commencement

1.—(1) This Order may be cited as the Refugee Act 1996 (Section 22) Order, 2003.

(2) This Order shall come into operation on 15 September 2003.

Application of this Order and of Dublin Convention (Implementation) Order 2000

2.—(1) This Order shall, subject to paragraph (2), apply to an application for asylum made on or after 1 September 2003.

(2) The Dublin Convention (Implementation) Order 2000 (S.I. No. 343 of 2000) shall apply to the following:

- (a) an application made before 1 September 2003 in respect of which the Commissioner has made a request under Article 6(1)(b) of that Order to a convention country to admit the applicant to its territory,
- (b) a request, made before 1 September 2003, from a convention country to admit or as the case may be re-admit the applicant to the State to which Article 5, 9 or 11 of that Order applies,
- (c) an application, irrespective of when made, in respect of which it appears to the Commissioner that it could be transferred under the Dublin Convention to Denmark,
- (d) a request, irrespective of when made, from Denmark to admit or as the case may be re-admit an applicant to the State to which Articles Article 5, 9 or 11 of that Order applies.

Interpretation

3.—(1) In this Order, unless the context otherwise requires—

“the Act” means the Refugee Act, 1996 (No. 17 of 1996) as amended by section 7 of the Immigration Act 2003 (No. 26 of 2003);

“applicant” means a person (other than a national of a Council Regulation country) who has made an application;

“application” means an application for asylum within the meaning of the Council Regulation, and includes an application for a declaration under the Act;

“Council Regulation country” means a country to which the Council Regulation applies;

“the Council Regulation” means Council Regulation (EC) No 343/2003².

(2) In this Order—

- (a) a reference to an Article or a Schedule is a reference to an Article or a Schedule of this Order unless it is indicated that reference to some other order is intended.

¹OJ No. L50 of 25 February 2003

²OJ No. L50 of 25 February 2003

- (b) a reference to a paragraph or subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Determination under Council Regulation

4.—(1) Where an application is made under section 8 of the Act, the Commissioner shall determine whether, in accordance with the Council Regulation, the application should be examined in the State.

(2) The Commissioner shall, before making a determination under this Article, take into consideration all relevant matters known to him or her, including any representations made by or on behalf of the applicant.

(3) Where, before the making of a determination under this Article, an applicant withdraws his or her application for a declaration, the Commissioner may make a determination under this Article as if the application had not been withdrawn.

Taking charge and taking back under the Council Regulation

5.—(1) Where the State is the requested Member State for the purposes of the Council Regulation, the functions of the requested Member State under the Council Regulation shall be carried out by the Commissioner.

(2) The Commissioner shall not accede to a request that the State should take charge of or take back an applicant in accordance with the Council Regulation without the prior consent of the Minister, which shall not be unreasonably withheld.

(3) Where the State is the Member State responsible for examining an application for asylum in any case to which Article 16(1)(a), (b) or (c) of the Council Regulation applies, the application shall be deemed to be an application for a declaration under section 8 of the Act.

Notice of intention to transfer applicant to another Council Regulation country

6.—(1) Where the Commissioner makes a determination under Article 4 that an applicant should be transferred to a Council Regulation country, he or she shall, as soon as may be, cause notice in writing of the determination and of the reasons for it to be given to the applicant and his or her solicitor (if known) and to the Minister.

(2) A notice to the applicant under paragraph (1) shall be in the form set out in Schedule 1 or a form to the like effect and shall include statements—

- (a) that the applicant concerned may appeal to the Tribunal under Article 8 against the determination aforesaid not more than 15 working days from the date of the determination;
- (b) that an appeal shall not, of itself, operate to suspend the transfer of the application and the applicant to the Council Regulation country concerned;
- (c) that if, after the transfer to the Council Regulation country, the decision to transfer is set aside on appeal, arrangements will be made for the reception of the applicant into the State;
- (d) that the matter has been referred to the Minister with a view to making arrangements for the transfer of the applicant to the Council Regulation country.

Transfer of a person from the State to a Council Regulation country

7.—(1) Subject to the subsequent provisions of this Article, the Minister may by order (in this Order referred to as “a transfer order”), in the form set out in Schedule 2 or a form to the like effect, require an applicant, in respect of whom a determination under Article 4 that he or she should be transferred to a Council Regulation country has been made, to leave the State on or before such date or within such period as may be specified in the order and to go to the relevant Council Regulation country.

(2) Where the Minister makes a transfer order, he or she shall notify the person in writing of the making of the order and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands.

(3) A notice under paragraph (2) shall include—

- (a) a statement of the determination under Article 4,
- (b) a statement that the period of entitlement of the person to remain in the State under section 9 of the Act has expired,
- (c) a statement that the person may without further notice be detained for the purpose of ensuring his or her departure from the State in accordance with the transfer order and
- (d) any other information which the Minister considers appropriate in the circumstances.

(4)(a) The notice under paragraph (2) may require the person the subject of the transfer order to do any one or more of the following for the purpose of ensuring his or her transfer to the Council Regulation country:

- (i) present himself or herself to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;
- (ii) produce any travel document, passport, travel ticket or other document in his or her possession required for the purpose of such transfer to such member of the Garda Síochána or immigration officer at such date, time and place as may be specified in the notice;
- (iii) co-operate in any way necessary to enable a member of the Garda Síochána or immigration officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such transfer;
- (iv) reside or remain in a particular district or place in the State pending removal from the State;
- (v) report to a specified Garda Síochána station or immigration officer at specified intervals pending removal from the State;
- (vi) notify such member of the Garda Síochána or immigration officer as may be specified in the notice as soon as possible of any change of address.

(b) Where the notice under paragraph (2) contains a requirement to do an act specified in subparagraph (a), a member of the Garda Síochána or immigration officer may, if he or she considers it necessary for the purpose of ensuring the transfer of the person concerned to the Council Regulation country, require the person in writing to do any one or more of the acts specified in subparagraph (a), and any such further requirement shall have effect as if it were a requirement in a notice under paragraph (2).

(c) A further requirement under subparagraph (b) shall, where necessary and possible, be given to the person concerned in a language that he or she understands.

(5) A person to whom a notice under paragraph (2) has been issued may without further notice be arrested and detained for the purpose of ensuring his or her departure from the State in accordance with the transfer order.

(6) A person arrested and detained under paragraph (5) may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.

(7) The master of any ship and the person in charge of any railway train, road vehicle or aircraft bound for any place outside the State shall, if so required by an immigration officer or a member of the Garda Síochána, receive a person in respect of whom a transfer order has been made and his or her dependants, if any, on board such ship, railway train, road vehicle or aircraft and afford him or her and his or her dependants proper accommodation and maintenance during the journey.

(8)(a) Paragraph (5) shall not apply to a person who is under the age of 18 years.

(b) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of paragraph (5) shall apply as if he or she had attained the age of 18 years.

(c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in loco parentis or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the health board for the area in which the person is being detained of the detention and of the circumstances thereof.

(9) Where a person detained under this Article institutes court proceedings challenging the validity of the transfer order concerned, the court hearing those proceedings or any appeal therefrom may, on application to it, determine whether the person shall continue to be detained or shall be released, and may make any such release subject to such conditions as it considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:

(a) that the person reside or remain in a particular district or place in the State,

(b) that he or she report to a specified Garda Síochána station or immigration officer at specified intervals,

(c) that he or she surrender any passport or travel document in his or her possession.

(10) Where, before the removal of an applicant to a Council Regulation country under this Article, it appears to the Minister that the applicant does not have an appropriate travel document in his or her possession, the Minister shall issue to the applicant a laissez-passer.

Appeals

8.—(1) An applicant may appeal to the Tribunal against a determination of the Commissioner that he or she should be transferred to a Council Regulation country and, if he or she does so, the Tribunal shall, unless the appeal is withdrawn or deemed to be withdrawn, make a decision in writing in relation to the appeal affirming or setting aside the determination and shall send a copy of the decision, including the reasons for the decision, to the applicant and his or her solicitor (if known), the Commissioner and the Minister.

(2) An appeal under this Article shall be initiated by the applicant concerned giving, not more than 15 working days from the date on which the determination concerned was made, a notice of appeal in writing to the Tribunal, in the form set out in Schedule 2, and the notice shall be accompanied by a statement of all the facts and contentions on which the applicant relies in the appeal.

(3) The making of an appeal under paragraph (2) shall not suspend the transfer of the applicant to a Council Regulation country on foot of a transfer order under Article 7.

(4) The Tribunal shall furnish the Commissioner with a copy of the notice received by it under paragraph (2).

(5) The Commissioner shall, following receipt of the copy of the notice under paragraph (2), provide the Tribunal with copies of any documents, reports, or representations in writing submitted to him or her in relation to the application concerned and shall provide an indication of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of the making of a determination by him or her under Article 4.

(6) The Tribunal may direct the Commissioner to make such inquiries from a Council Regulation country and to furnish the Tribunal with such further information as it considers necessary or expedient for the purpose of deciding an appeal under this Article.

(7) (a) An applicant concerned may withdraw an appeal by sending notice of withdrawal to the Tribunal.

(b) Where it appears to the Tribunal that the applicant is failing to co-operate in the process of determining his or her appeal, the Tribunal shall send to the applicant a notice in writing inviting the applicant to indicate in writing (within 15 working days of the sending of the notice) whether he or she wishes to continue with his or her appeal and, if the applicant does not furnish such an indication within the time specified in the notice, his or her appeal shall be deemed to be withdrawn.

(c) The Tribunal shall notify the Commissioner and the Minister of the withdrawal or deemed withdrawal of an appeal.

(8) In considering an appeal under this Article, the Tribunal shall have regard only to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in Chapter III of the Council Regulation.

(9) On receipt of a notice under paragraph (1) that the Tribunal has set aside the determination of the Commissioner, the Minister shall, where necessary, revoke the transfer order and arrangements will be made for the reception of the applicant into the State.

Notices etc.

9.—(1) All notices, representations in writing or documents required or authorised by these Regulations to be sent or given to the Commissioner shall be deemed to have been duly sent or given if directed to the Office of Refugee Applications Commissioner, Dublin and

(a) sent by prepaid registered post, or

(b) sent by facsimile, where confirmed by a successful transmission report, or

(c) delivered to the Office of the Refugee Applications Commissioner, where the applicant has a receipt for the delivery issued by that office.

(2) All notices, representations in writing or documents required or authorised by these Regulations to be sent or given to the Tribunal shall be deemed to have been duly sent or given if directed to the Chairperson, Refugee Appeals Tribunal, Dublin and

(a) sent by prepaid registered post, or

(b) sent by facsimile, where confirmed by a successful transmission report, or

(c) delivered to the Refugee Appeals Tribunal where the applicant has a receipt for the delivery, issued by the Tribunal.

(3) Where a notice is required or authorised by or under this Order to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in some one of the following ways:

(a) by delivering it to him or her, or

(b) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her or in the case of his or her legal representative, if any, at his or her business address, or in a case in which an address for service has been furnished, at that address.

(4) Where a notice under this Order has been sent to a person in accordance with subparagraph (3)(b), the notice shall be deemed to have been duly served on or given to the person on the third day after the day on which it was so sent.

SCHEDULE 1

Refugee Act 1996 (Section 22) Order 2003

Notice of determination to transfer application to another Council Regulation country

To: *(name and last known address of applicant)*

The Refugee Applications Commissioner has determined that *[Council Regulation country]* is responsible, pursuant to the provisions of Article *[appropriate Article(s)]* of Council Regulation (EC) No 343/2003, for dealing with your application for asylum.

Following is/are the reason(s) for this determination: *[insert reasons]*

The appropriate authorities in *[Council Regulation country]* **[are deemed to]* have agreed to readmit you to that country pursuant to the Council Regulation.

You may appeal this decision within 15 working days of the date of this notice. If you wish to appeal, you must do so by completing the attached notice of appeal. The notice of appeal should set out all of the facts and contentions on which you rely for the purposes of your appeal. Your appeal should be sent by registered post to the Refugee Appeals Tribunal, *[insert address]* or delivered to a person who is apparently an employee of the Tribunal Office, at the Offices of the Tribunal during normal office hours and a receipt of delivery obtained.

The Minister for Justice, Equality and Law Reform has been notified of this determination with a view to making arrangements for your transfer to *[Council Regulation country]*. Any appeal submitted by you will not suspend the transfer of your application or your removal to that country. Upon your arrival in that country you should as soon as possible notify the Refugee Appeals Tribunal of your address for the purposes of corresponding with you in relation to your appeal. The fact that you have submitted an appeal will not affect your entitlement to have your application for asylum examined in *[Council Regulation country]*.

You will be notified of the outcome of your appeal at the address forwarded by you. If your appeal is successful, arrangements will be made for your reception into the State.

In accordance with the provisions of the Council Regulation, your transfer to *[Council Regulation country]* will take place as soon as practically possible and at the latest within six months from *[insert date of request to take charge]*. This time limit can be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

Signed:

Rank of Officer:

Date:

** delete as appropriate*

SCHEDULE 2

Refugee Act 1996 (Section 22) Order 2003

TRANSFER ORDER

To: *[name and address of applicant]*

WHEREAS it is provided by Article 7 of the Refugee Act 1996 (Section 22) Order 2003 that the Minister for Justice, Equality and Law Reform may by order require an applicant, in respect of whom a determination under Article 4 of the Order that he or she should be transferred to a Council Regulation country has been made, to leave the State on or before such date or within such period as may be specified in the order and to go to the relevant Council Regulation country;

AND WHEREAS you are a person in respect of whom a determination under Article 4 of the Order has been made and, accordingly, a transfer order may be made under Article 7 of the Order;

AND WHEREAS, arising from the determination under the said Article 4, your period of entitlement to remain in the State under section 9 of the Refugee Act 1996 has expired;

NOW I, *[insert name]* on behalf of the Minister for Justice, Equality and Law Reform, in exercise of the powers conferred by the said Article 7, hereby require you to leave the State in accordance with the arrangements and within the period ending on the date specified in the notice served on or given to you with a copy of this order and to go to *[Council Regulation country]* pursuant to the provisions of Council Regulation (EC) No 343/2003.

[signature of officer of Minister]

[Name and rank of officer of Minister]

On behalf of the Minister for Justice, Equality and Law Reform

[date of signature]

SCHEDULE 3

**Refugee Appeals Tribunal
NOTICE OF APPEAL**

**against a recommendation of the Refugee Applications Commissioner made under Council
Regulation (EC) No. 343/2003**

1. Personal details:

- 1.1 Name:
- 1.2 Address:
- 1.3 Nationality:
- 1.4 Your temporary residence certificate number:

2. Legal Representation:

- 2.1 Do you have legal representation? YES NO *(delete as appropriate)*
- 2.2 Name of your legal representative:
- 2.3 His or her address:
- 2.4 His or her telephone number:

3. Grounds of Appeal:

Please state clearly and concisely all the facts and contentions on which you rely in making your appeal. You may use additional or separate pages.

Ground 1 _____

Ground 2 _____

Ground 3 _____

etc.

4. Communications to the Tribunal:

All communications to the Tribunal should be sent by prepaid registered post and addressed to the Chairperson, Refugee Appeal Tribunal (insert address).

Signed: _____ Signed: _____
Applicant Legal Representative
Date Date

GIVEN under my Official Seal,
this 15th day of September 2003

L.S.

Michael McDowell T.D.,
Minister for Justice, Equality and Law Reform

Explanatory Note

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

This Order puts in place the arrangements necessary in the State to give full effect to Council Regulation (EC) no. 343/2003. That Council Regulation sets out the rules and procedures for determining which member state of the European Union is responsible for dealing with an asylum application made in one of them. The Council Regulation also applies to Iceland and Norway, but does not apply to Denmark. Arrangements in this regard with Denmark continue to be governed by the Dublin Convention, to which effect is given in the State by the Dublin Convention (Implementation) Order 2000 (S.I. No. 343 of 2000).