

L.N. 488 of 2021

**INTERNATIONAL PROTECTION ACT
(CAP. 420)**

**Procedural Standards for Granting and Withdrawing
International Protection (Amendment) Regulations, 2021**

IN EXERCISE of the powers conferred by article 25 of the International Protection Act, the Minister for Home Affairs, National Security and Law Enforcement has made the following regulations:-

1. (1) The title of these regulations is the Procedural Standards for Granting and Withdrawing International Protection (Amendment) Regulations, 2021 and these regulations shall be read and construed as one with the Procedural Standards for Granting and Withdrawing International Protection Regulations, hereinafter referred to as "the principal regulations".

Citation and scope.

S.L. 420.07.

(2) The scope of these regulations is to transpose:

(a) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast);

(b) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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 (recast); and

(c) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

2. Regulation 2 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 2 of the principal regulations.

"Scope.

2. The scope of these regulations is to transpose:

(a) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast);

B 4032

(b) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 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 (recast);

(c) Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)."

Adds new regulation to the principal regulations.

3. Immediately after regulation 5 of the principal regulations, there shall be added the following new regulation:

"Information and counselling in detention facilities and at border crossing points.

5A. (1) Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, the relevant authorities shall provide them with information on the possibility to do so and shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure.

(2) Organisations and persons providing advice and counselling to applicants shall have an effective access to applicants present at border crossing points, including transit zones, at external borders, subject to rules as well an agreement covering the presence and access of such organisations and persons in these crossing points:

Provided that limits on such access may be imposed only where such limits are objectively necessary for the security, public order or administrative management of the crossing points concerned, as long as access is not thereby severely restricted or rendered impossible."

Amends regulation 12 of the principal regulations.

4. Sub-regulation (2) of regulation 12 of the principal

regulations shall be substituted by the following new sub-regulation:

"(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 International Protection Appeals Tribunal insofar as the information is relevant to the examination of the application:

Provided that the legal adviser shall also enjoy access to information regarding the general situation prevailing in the countries of origin of the applicant and, where necessary, in countries through which the applicant may have transited as well as other information in relation to particular issues such as medical, cultural, religious and child-related or gender issues:

Provided further 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 International Protection Agency or the international relations of Malta would be compromised, such access shall be precluded."

5. Regulation 13 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 13 of the principal regulations.

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

(2) When an applicant has implicitly withdrawn or abandoned his application, the International Protection Agency 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.

B 4034

(3) If the International Protection Agency 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 International Protection Agency 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 (30) 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 International Protection Agency 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 International Protection Agency after nine (9) 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 International Protection Agency 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 either in person, or via electronic mail, or by post to his last known address:

Provided that when the applicant is assisted by a legal advisor or representative, service of any document relating to the asylum procedure can be made with his legal advisor or representative."

6. Immediately after regulation 13 of the principal regulations there shall be added the following new regulation:

Adds new regulation to the principal regulations.

"Lapse of International Protection.

"13A. The International Protection Agency may decide that international protection shall lapse where the beneficiary of international protection has unequivocally renounced his protection or has become a Maltese national. Unequivocal renunciation of protection shall include *inter alia*:

(a) a written statement by the beneficiary confirming that he is renouncing his protection status; or

(b) failure to renew international protection within a period of twelve (12) months from the lapse of the validity of said protection or its renewal:

Provided that in case a beneficiary of international protection who has unequivocally renounced his protection subsequently makes a request in person to the International Protection Agency to have his international protection status reinstated, the International Protection Agency shall review his request to determine whether international protection should once again be granted, provided that the person concerned still meets the eligibility criteria and is not excluded from international protection:

Provided further that the same provisions shall also apply to beneficiaries of Temporary Humanitarian Protection."

7. Sub-regulation (2) of regulation 17 of the principal regulations shall be substituted by the following new sub-regulation:

Amends regulation 17 of the principal regulations.

"(2) For the purpose of this regulation, the relevant authorities shall ensure that:

B 4036

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language they understand or are 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 the application;

(b) unaccompanied minors and, or their representatives consent to a medical examination being carried out to determine the age of the minors concerned;

(c) the decision to reject an application by an unaccompanied minor who refused to undergo this medical examination has not be based solely on that refusal:

Provided that an unaccompanied minor's refusal 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."

Amends regulation 18 of the principal regulations.

8. Paragraph (a) of sub-regulation (1) of regulation 18 of the principal regulations shall be substituted by the following new paragraph:

"(a) the unaccompanied minor shall be represented and assisted by a representative, appointed by the Chief Executive Officer of the Agency for the Welfare of Asylum Seekers, during all the phases of the asylum procedure;"

Substitutes regulation 20 of the principal regulations.

9. Regulation 20 of the principal regulations shall be substituted by the following new regulation:

"Rights of beneficiaries of international protection.

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 (3) years, which shall be renewable:

Provided that a residence permit to be granted to a family member may be valid for at least three (3) 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, integration programmes, appropriate accommodation, State education and training and to receive State medical care:

Provided that access to employment, social welfare, integration programmes, State education and training and State medical care including treatment of medical disorders shall be granted under the same conditions as nationals:

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

Provided further that beneficiaries of international protection shall have access to accommodation under equivalent conditions as other third-country nationals legally residing in Malta.

(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.

B 4038

(3) Beneficiaries of international protection who have special needs, such as pregnant women, disabled people, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict, shall be provided with adequate health care including treatment of medical disorders.

(4) Beneficiaries of International Protection shall be allowed freedom of movement within the Maltese territory.

(5) Beneficiaries of temporary humanitarian protection shall be entitled to the same rights and benefits as for beneficiaries of subsidiary protection; provided however that the duration of protection for beneficiaries of temporary humanitarian protection shall be of one (1) year and shall be renewable. Documents issued to such persons shall have the same period of validity as for their protection."

Amends
regulation 23 of
the principal
regulations.

10. Regulation 23 of the principal regulations shall be renumbered as sub-regulation (1) and immediately thereafter there shall be added the following new sub-regulation:

"(2) For the purpose of these regulations, the concept of safe country of origin can only be applied to those countries which have been designated as safe countries by the International Protection Agency and included in the Schedule to the Act."