

L.N. 320 of 2005

**REFUGEES ACT
(CAP. 420)**

**Reception of Asylum Seekers (Minimum Standards)
Regulations, 2005**

IN exercise of the powers conferred by article 19 of the Refugees Act, the Deputy Prime Minister and Minister for Justice and Home Affairs has made the following regulations:-

PART I

PURPOSE, DEFINITIONS AND SCOPE

1. (1) The title of these regulations is the Reception of Asylum Seekers (Minimum Standards) Regulations, 2005. Citation, scope and commencement.

(2) The purpose of these regulations is to implement the provisions of the European Union Directive 2003/9/EC which establishes minimum standards for the reception of asylum seekers in Member States.

(3) These regulations shall come into force on such date as the Minister responsible for asylum may, by notice in the Gazette, appoint.

2. For the purposes of these regulations:-

Interpretation.

“accommodation centre” means any place used for collective housing of asylum seekers;

“the Act” means the Refugees Act;

“applicant” means a person who has made an application for a declaration under article 8 of the Act;

“application” means an application for refugee status made under article 8 of the Act;

“asylum seeker” means a person who has made an application for a declaration under article 8 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;

“detention” means confinement of an asylum seeker within a particular place, where the applicant is deprived of his or her freedom of movement;

“family members” means, only in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present in Malta, in relation to the application for asylum made in Malta:

(a) the spouse of the asylum seeker;

(b) the minor children of the applicant and his spouse referred to in paragraph (a) or of the applicant, on condition that the children are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted in a manner recognized under Maltese law;

“the Geneva Convention” means the Convention of the 28th July, 1951 relating to the status of refugees, as amended by the New York Protocol of the 31st January, 1967;

“material reception conditions” means the reception conditions that include housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

“Member State” means a country which is a member of the European Union;

“Principal Immigration Officer” means the person appointed to such office by the Prime Minister under article 3 of the Immigration Act and includes, within the limits of any authority granted by the Principal Immigration Officer under article 3(3) of the said Act, any public officer acting under such authority; Cap. 217.

“reception conditions” means the full set of measures that are granted in Malta to asylum seekers in accordance with Maltese law;

“refugee” means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

“unaccompanied minors” means persons below the age of eighteen who arrive in Malta unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it includes minors who are left unaccompanied after they have entered Malta.

3. (1) These regulations shall apply to all third country nationals and stateless persons who make an application for asylum in Malta as long as they are allowed to remain in Malta as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the Maltese law. ^{Scope.}

(2) These regulations do not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Malta abroad.

(3) These regulations do not apply when the Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005, are applied. L.N. 131 of 2005.

PART II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

4. (1) The Principal Immigration Officer shall take the necessary steps in order that, within a reasonable time and not exceeding fifteen days from the day an asylum seeker has lodged his application, the asylum seeker shall be informed of any established benefits and of the obligations with which he must comply relating to reception conditions; in this respect the Principal Immigration Officer shall ensure that an applicant is provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform him concerning the available reception conditions, including health care. ^{Information to asylum seekers.}

(2) The Principal Immigration Officer shall ensure that the information referred to in sub-regulation (1) is in writing and, as far as possible, in a language that the applicant may reasonably be supposed to understand; where appropriate, this information may also be supplied orally.

Documentation.

5. (1) The Commissioner shall ensure that, within three days after an application is lodged, an applicant is provided with a document issued in his own name certifying his status as an asylum seeker or testifying that he is allowed to stay in Malta while his application is pending or being examined.

(2) Sub-regulation (1) of this regulation shall not apply when the asylum seeker is in detention and during the examination of an application for asylum made at the point of entry into Malta or within the context of a procedure to decide on the right of the applicant legally to enter the territory of Malta. In specific cases, during the examination of an application for asylum, applicants may be provided with other evidence equivalent to the document referred to in sub-regulation (1).

(3) The document referred to in sub-regulation (1) shall be valid for as long as the asylum seeker is authorised to remain in Malta.

(4) Asylum seekers may be provided with a travel document when serious humanitarian reasons arise that require their presence in another State.

Residence and
freedom of
movement.

6. (1) The Principal Immigration Officer may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

(2) The Principal Immigration Officer may, for legal reasons or reasons of public order, order that an applicant be confined to a particular place in accordance with Maltese law.

(3) The provision of the material reception conditions shall be subject to actual residence by the particular applicant in a specific place, to be determined by the Principal Immigration Officer.

(4) The Principal Immigration Officer shall have the possibility to grant applicants temporary permission to leave the place of residence mentioned in sub-regulations (1) and (3) or the assigned area mentioned in sub-regulation (2). The Principal Immigration Officer shall take the decisions individually, objectively and impartially and shall give reasons if the decisions are negative:

Provided that the applicant shall be given the facility to keep appointments with authorities and courts if his appearance thereat is necessary.

(5) Where applicable, applicants are required to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible. Families.

7. Where applicants are provided with accommodation, appropriate measures shall, as far as possible, and with the asylum seeker's agreement, be taken to maintain family unity.

8. The Director General Health may require medical screening for applicants on public health grounds. Medical screening.

9. (1) Minor children of asylum seekers and asylum seekers who are minors shall have access to the education system under similar conditions as Maltese nationals for so long as an expulsion measure against them or their parents is not actually enforced; such education may be provided as may be determined by the Director of Education. Schooling and education of minors.

(2) Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents:

Provided that this period may be extended to one year where specific education is provided in order to facilitate access to the education system.

10. (1) In accordance with labour market conditions prevailing at the time, the Ministry responsible for issuing employment licences shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market. Employment.

(2) If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant or his legal representative, the Ministry responsible for issuing employment licences shall decide the conditions for granting access to the labour market for the applicant.

(3) Where an appeal is lodged against a negative decision, access to the labour market shall not be withdrawn during the appeal stage.

(4) The provisions of sub-regulations (1), (2) and (3) are without prejudice to priorities given, for reasons of labour market policies, to citizens of Member States and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third country nationals.

General rules on material reception conditions and health care.

11. (1) The authorities responsible for the management of reception centres shall ensure that material reception conditions are available to applicants when they make their application for asylum.

(2) The material reception conditions shall be such as to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence; the authorities referred to in sub-regulation (1) shall moreover ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with regulation 14, as well as in relation to the situation of persons who are in detention.

(3) The provision of material reception conditions and health care shall be subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.

(4) Where applicants have sufficient resources, or if they have been working for a reasonable period of time, applicants may be required to cover or contribute to the cost of the material reception conditions and of the health care provided for in these regulations; if it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, the asylum seeker may be asked for a refund.

Modalities for material reception conditions.

12. (1) Where accommodation is provided in kind, it should take one or a combination of the following forms:

(a) premises used for the purpose of accommodating applicants during the examination of an application for asylum lodged at the moment of entry into Malta;

(b) accommodation centres which guarantee an adequate standard of living;

(c) other premises adapted for accommodating applicants.

(2) The authorities responsible for such accommodation shall ensure that applicants provided with the accommodation referred to in sub-regulation (1) (a), (b) and (c) are assured:

(a) protection of their family life;

(b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees and recognised non-governmental organisations.

Particular attention shall be paid to the prevention of assault within the premises and accommodation centres referred to in sub-regulation (1) (a) and (b).

(3) If appropriate, minor children of applicants or applicants who are minors shall be lodged with their parents or with the adult family member responsible for them whether by law or by custom.

(4) Transfers of applicants from one accommodation facility to another shall take place only when necessary, and applicants shall be provided with the possibility of informing their legal advisers of the transfer and of their new address.

(5) Legal advisers or counsellors of asylum seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the authorities responsible for the management of reception centres shall be granted access to accommodation centres and other accommodation facilities in order to assist the said asylum seekers; in granting such access the authorities responsible for the management of reception centres may impose such limits as they may deem appropriate on grounds relating to the security of the centres and facilities and of the asylum seekers.

(6) In exceptional circumstances modalities may be set for material reception conditions which are different from those provided for in this regulation, for a reasonable period which shall be as short as possible, when:

(a) an initial assessment of the specific needs of the applicant is required,

(b) material reception conditions, as provided for in this regulation, are not available,

(c) accommodation capacities normally available are temporarily exhausted,

(d) the asylum seeker is in detention or confined to a border post:

Provided that these different conditions shall, in any case, cover basic needs.

PART III

REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Reduction or
withdrawal of
reception
conditions.

13. (1) The authorities responsible for the management of reception centres may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker:

(i) abandons the place of residence determined by the competent authority without informing him or, if requested, without permission, or

(ii) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down by law:

Provided that when the applicant is traced or voluntarily reports to the competent authority, the authorities responsible for the management of reception centres shall reach a decision, based on the reasons for the disappearance, as to the reinstallation or otherwise of the grant of some or all of the reception conditions;

(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.

(2) The authorities responsible for the management of reception centres may refuse reception conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made in accordance with the provisions of the Act after his arrival in Malta.

(3) The authorities responsible for the management of reception centres may, in accordance with rules for accommodation centres drawn up for the purpose, determine sanctions applicable to serious breaching of the rules of such accommodation centres as well as to seriously violent behaviour.

(4) Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in sub-regulations (1), (2) and (3) shall be taken individually, objectively and impartially and reasons shall be given; the decisions shall be based on the particular

situation of the person concerned, especially with regard to persons covered by regulation 15, taking into account the principle of proportionality.

PART IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

14. (1) In the implementation of the provisions relating to material reception conditions and health care, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors and pregnant women, found to have special needs after an individual evaluation of their situation.

General principle regarding special needs.

(2) In the implementation of the provisions of these regulations, where these refer to minors, the best interests of the child shall constitute a primary consideration.

15. An unaccompanied minor aged sixteen years or over may be placed in accommodation centres for adult asylum seekers.

Unaccompanied minors.

PART V

APPEALS

16. Without prejudice to the principles of public policy and public interest, asylum seekers who feel aggrieved by a decision taken in pursuance of the provisions of these regulations shall be entitled to appeal to the Immigration Appeals Board in accordance with the procedures laid down in the Immigration Act.

Appeals.