SUBSIDIARY LEGISLATION 420.05

TEMPORARY PROTECTION FOR DISPLACED PERSONS (MINIMUM STANDARDS) REGULATIONS

6th May, 2005

LEGAL NOTICE 131 of 2005, as amended by Legal Notice 188 of 2022.

PART I

General provisions

Citation and purpose.

1. (1) The title of these regulations is the Temporary Protection for Displaced Persons (Minimum Standards) Regulations.

(2) The purpose of these regulations is to implement the provisions of the European Union Directive 2001/55/EC which establishes minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.

Citation and purpose.

2. For the purposes of these regulations: "the Act", means the International Protection Act;

"the Chief Executive Officer" means the Chief Executive Officer and includes, to the extent and authority given, any other persontemporarily authorised in that behalf by the Minister;

"displaced persons" means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and who are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of refugees under Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular:

(*a*) persons who have fled areas of armed conflict or endemic violence; or

(*b*) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

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

"mass influx" means the arrival of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival was spontaneous or aided, for ex amplethrough an evacuation programme;

"the Minister" means the Minister responsible for immigration, and any public officer to whom the Minister may delegate in writing any of the duties appertaining to him under this Act;

Cap. 217.

"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 the said article 3, any public officer acting under such authority;

"residence permit" means any permit or authorisation issued under any law at the time in force in Malta and taking the form provided for in that legislation, allowing a third country national or a stateless person to reside in Malta;

"sponsor" means a third-country national enjoying temporary protection in Malta in accordance with a decision taken under regulation 6 and who wishes to be joined by members of his or her family;

"temporary protection" means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection;

"unaccompanied minors" means third-country nationals or stateless persons below the age of eighteen, who arrive in Malta unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered into Malta;

"UNHCR" means the United Nations High Commissioner for Refugees.

Establishment of mass influx.

3. Third country nationals who are eligible for temporary protection in the event of a mass influx, in accordance with these regulations, shall be granted temporary protection by the Chief Executive Officer for the duration and under the conditions stipulated under these regulations.

Temporary protection.

4. (1) Temporary protection shall not prejudge the recognition of refugee status under the Act and the Geneva Convention.

(2) Temporary protection shall be applied with due respect for human rights and fundamental freedoms and other obligations regarding non-refoulement.

(3) The establishment, implementation and termination of temporary protection shall be the subject of regular consultations with the Office of the United Nations High Commissioner for Refugees and other relevant international organisations.

(4) These regulations shall not apply to persons who have been accepted under temporary protection schemes prior to the entry into force of these regulations.

PART II

Duration and implementation of temporary protection

Duration of temporary protection.

5. (1) Without prejudice to the provisions of regulation 7, the duration of temporary protection shall be one year. Unless terminated under the terms of regulation 7(1)(*b*), such duration may be extended automatically by six monthly periods for a maximum period of one year.

(2) Where reasons for temporary protection persist, the Chief Executive Officer may decide to extend that temporary protection by a period of up to one year.

Existence of a mass influx of displaced persons.

6. (1) The existence of a mass influx of displaced persons shall be declared by the Chief Executive Officer. Such declaration shall be based on a Council Decision establishing the existence of a mass influx adopted by the Council of the European Union, on a proposal from the European Commission, and adopted by qualified majority, in accordance with the provisions of Directive 2001/55/EC.

(2) The Chief Executive Officer's declaration in accordance with sub-regulation (1) shall have the effect of introducing in Maltatemporary protection for the displaced persons to which it refers, in accordance with the provisions of these regulations.

Termination of temporary protection.

7. (1) Temporary protection shall come to an end:

(*a*) when the maximum duration has been reached; or

(*b*) at any time, by a decision to this effect by the Chief Executive Officer, following a Council Decision adopted by a qualified majority on a proposal from the Commission of the European Union.

(2) The Chief Executive Officer's decision shall be based on the establishment of the fact that the situation in the country of origin is such as to permit the safe and durable return of those granted temporary protection with due respect for human rights and fundamental freedoms and other obligations regarding non-refoulement.

Extension of temporary protection.

8. The Chief Executive Officer may extend temporary protection as provided for in these regulations to additional categories ofdisplaced persons over and above those to whom the provisions of regulation 6 apply, where they are displaced for the same reasons and from the same country or region of origin.

PART III

Rights of persons enjoying temporary protection

Residence permits and visas.

9. (1) Persons enjoying temporary protection shall be provided with residence permits for the entire duration of the protection. Documents or other equivalent evidence shall be issued by the competent authorities for that purpose.

(2) Whatever the period of validity of the residence permits referred to in sub-regulation (1), the treatment granted to persons enjoying temporary protection may not be less favourable than that set out in regulations 10 to 17.

(3) Persons admitted for the purposes of temporary protection shall be provided with every facility for obtaining the necessary visas, including transit visas; formalities shall be reduced to a minimum because of the urgency of the situation, and visas shall be free of charge or their cost reduced to a minimum.

Document of temporary protection.

10. Persons enjoying temporary protection shall be provided with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out.

Registration of personal data.

11. In order to enable the effective application of these regulations, the Chief Executive Officer shall cause to be registered thepersonal data referred to in paragraph (*a*) of the Second Schedule, with respect to the persons enjoying temporary protection in Malta.

Re-admission of person enjoying temporary protection.

12. Subject to any bilateral agreement which may be entered into with any other Member State of the European Union, a person enjoying temporary protection in Malta shall be re-admitted to Malta if the said person remains on, or seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Chief Executive Officer's decision referred to inregulation 6.

Employment.

13. (1) Subject to any special arrangements to which Malta may be a party, persons enjoying temporary protection shall, for a period not exceeding that of temporary protection, be permitted to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training andpractical workplace experience:

Provided that for reasons of labour market policies, priority may be given to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemploymentbenefit.

(2) In the cases contemplated in subregulation (1), the general provisions applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

Accommodation and other assistance.

14. (1) Persons enjoying temporary protection shall have access to suitable accommodation or, if necessary, they shall receive the means to obtain housing accommodation.

(2) (*a*) Persons enjoying temporary protection shall receive the necessary assistance in terms of social welfare and means of subsistence, if they do not have sufficient resources, as well as for medical care.

(*b*) Without prejudice to the provisions of sub-regulation (4), the assistance necessary for medical care shallinclude at least emergency care and essential treatment of illness.

(3) Where persons enjoying temporary protection are

engaged in employed or self-employed activities, account shall be taken, when fixing the proposed level of aid, of their ability to meet their own needs.

(4) Medical or other necessary assistance shall be provided to persons enjoying temporary protection who have special needs, such as unaccompanied minors or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.

Access to education system.

15. (1) Persons under eighteen years of age enjoying temporary protection shall be granted access to the state education system under the same conditions as Maltese nationals.

(2) Subject to such conditions as may be imposed by the Commissioner, adults enjoying temporary protection may beallowed access to the general education system.

Families.

16. (1) For the purposes of this regulation, in cases where families already existed in the country of origin and were separated due to circumstances surrounding the mass influx, the following persons shall be considered to be part of a family:

(*a*) the spouse of the sponsor or his or her unmarried partner in a stable relationship, in so far as Maltese legislation or practice in force treats unmarried couples in a way comparable to married couples under Maltese law relating to aliens; the minor unmarried children of the sponsor or of his or her spouse, without distinction as to whether they were born in or out of wedlock or adopted;

(*b*) other close relatives who lived together as part of the family unit at the time of the events leading to the mass influx, and who were wholly or mainly dependent on the sponsor at the time.

(2) (*a*) In cases where the separate family members enjoy temporary protection in other Member States of the European Union, family members shall be reunited in Malta where the Chief Executive Officer is satisfied that thefamily members fall under the description ofsub-regulation (1)(*a*), taking into account the wish of the said family members.

(*b*) Family members may be reunited in Malta where the Chief Executive Officer is satisfied that the family members fall under the description of sub-regulation (1)(*b*), taking into account, on a case by case basis, the extreme hardship the family members would face if the reunification did not take place.

(3) (*a*) Where the sponsor enjoys temporary protection in Malta and one or some family members are not yet in a Member State, the Commissioner shall allow the reunification of the family members, who are in need of protection, with the sponsor in the case where the Chief Executive Officer is satisfied that the family members fall under the description of sub-regulation (1)(*a*).

(*b*) Family members, who are not yet in a Member State and who are in need of protection, may be reunited with the

sponsor in Malta in the case where the Chief Executive Officer is satisfied that the family members fall under the description of sub-regulation (1)(*b*), taking into account, on a case by case basis, the extreme hardship which the family members would face if the reunification did not take place.

(4) When applying this regulation the best interests of the children, if any, shall be taken into consideration.

(5) Without prejudice to the provisions of sub-regulations (1) to (4), and taking due account of the provisions of regulations 25 and 26, the Member State in which the reunification shall take place shall be agreed upon between Malta and the other Member States concerned.

(6) (*a*) Reunited family members shall be granted residence permits under temporary protection, and documents or other equivalent evidence shall be issued for that purpose.

(*b*) Transfers of family members onto the territory of another Member State, other than Malta, for the purposes of the re-unification under sub-regulation (2), shall result in the withdrawal of the residence permits issued, and the termination of the obligations towards the persons concerned relating to temporary protection, in Malta.

(7) At the request of another Member State, the Government of Malta shall provide information, as set out in the Second Schedule to these regulations, on a person receiving temporary protection which is needed to process a matter under this regulation.

Representation of minors.

17. (1) The Chief Executive Officer shall, on the recommendation of the Principle Immigration Officer, as soon as possible take measures to ensure the necessary representation of unaccompanied minors enjoying temporary protection by legal guardianship, or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.

(2) During the period of temporary protection unaccompanied minors shall be placed:

(*a*) with adult relatives;

(*b*) with a foster family;

(*c*) in reception centres with special provisions for minors, or in other accommodation suitable for minors;

(*d*) with the person who looked after the child when fleeing.

(3) The Chief Executive Officer shall ensure that all the necessary steps are taken to enable the placement, in consultation with the adult person or persons concerned, and taking account of the views of the child in accordance with the age and maturity of the child.

PART IV

Access to the asylum procedure in the context of temporary protection

Application for asylum.

18. (1) Persons enjoying temporary protection shall be able to lodge an application for asylum at any time.

(2) The examination of any asylum application not processed before the end of the period of temporary protection shall becompleted after the end of that period.

Consideration of application.

19. The criteria and mechanisms to be applied for deciding whether Malta or any other Member State shall be responsible for considering an asylum application shall be in accordance with European Union legislation as in force from time to time. In particular, the Member State responsible for examining an asylum application, submitted by a person enjoying temporary protection, shall be the Member State which has accepted that person's transfer onto its territory.

Temporary protection and status of asylum seeker.

20. (1) The Chief Executive Officer may provide that temporary protection may not be enjoyed concurrently with th e status ofasylum seeker while applications are under consideration.

(2) Where, after an asylum application has been examined, refugee status or, where applicable, any other kind of protection is not granted to a person eligible for or enjoying temporary protection, then, without prejudice to the provisions of regulation 28, that person shall enjoy or shall continue to enjoy temporary protection for the remainder of the period of protection.

PART V

Return and measures after temporary protection has ended

End of temporary protection.

21. Without prejudice to the provisions of regulations 22, 23 and 24, legislation in force at the time on the protection of third country nationals and on third country nationals in general shall apply, when the temporary protection ends.

Voluntary return.

22. (1) Persons enjoying temporary protection or whose temporary protection has ended shall have the right to voluntarily return to their country of origin, in a manner that fully respects human dignity. The Chief Executive Officer shall ensure that the decision of those persons to return is taken in full knowledge of the facts.

(2) For such time as the temporary protection has not ended, and on the basis of the circumstances prevailing in the country of origin, favourable consideration shall be given to requests for return to a host Member State, whether Malta or another Member State, from persons who have enjoyed temporary protection and exercised their right to a voluntary return.

(3) At the end of the temporary protection, the rights laid down in regulations 9 to 17 may be extended individually to persons who have been covered by temporary protection and are benefiting from a voluntary return programme; such extension shall have effect until the date of return.

Forced return.

23. (1) The forced return of persons whose temporary

protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.

(2) In cases of forced return, the Chief Executive Officer shall consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

Residence conditions.

24. (1) The Principal Immigration Officer shall take the necessary measures concerning the conditions of residence of persons who have enjoyed temporary protection and who cannot, in view of their state of health, reasonably be expected to travel and where they would suffer serious negative effects if their treatment was interrupted; these persons shall not be expelled so long as that situation continues.

(2) The Principal Immigration Officer may allow families, whose children are minors and attend school to benefit from residence conditions allowing the children concerned to complete the current school period.

PART VI

Solidarity

Community solidarity.

25. (1) The Government of Malta shall, acting in co-operation with the competent international organisations, ensure that the eligible persons referred to in regulation 6, who have not yet arrived in Malta, have expressed their will to be received onto Malta's territory.

(2) When the number of persons who are eligible for temporary protection following a sudden and massive influx exceeds Malta's reception capacity, which would have been indicated in figures or in general terms to the Council and the Commission of the European Union, the Government of Malta shall have the right to demand that the Council of the European Union examine, as a matter of urgency, the situation and take appropriate action, including the recommendation of additional support.

Co-operation between Member States.
Added by: L.N. 188 of 2022.

25A. (1) The Chief Executive Officer shall, for the purposes of administrative co-operation, act as, or appoint a representative to act as, national contact point for communication with other Member States and the European Commission. The contact details of such national contact point shall be communicated to other Member States and the European Commission. The Chief Executive Officer shall, in liaison with the European Commission, take appropriate measures to establish direct co-operation and an exchange information with other Member States.

(2) The Chief Executive Officer or his appointed representative shall regularly, and as quickly as possible, communicate data concerning the number of persons enjoying temporary protection and full information on national laws, regulations and administrative provisions relating to the implementation of temporary protection.

Transferral of residence of persons enjoying temporary protection.

26. (1) For the duration of the temporary protection, the Government of Malta shall co-operate with other Member States with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the consent of the persons concerned to such transferral.

(2) The Government of Malta shall communicate requests for transfers to the other Member States and shall notify th e Commission of the European Union and UNHCR; the Government of Malta shall also inform any requesting Member State of itscapacity for receiving transferees.

(3) Where a transfer is made from Malta to another Member State, the Maltese residence permit shall expire and the obligations towards the persons concerned relating to temporary protection in Malta shall come to an end.

(4) The model pass set out in the First Schedule to these regulations shall be used for transfers, between Member States, of persons enjoying temporary protection.

PART VII

Special provisions

Exclusion from temporary protection.

27. (1) The Chief Executive Officer may exclude a person from temporary protection if:

(*a*) there are serious reasons for considering that -

(i) that person has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(ii) that person has committed a serious non- political crime outside Malta prior to his or her admission into Malta as a person enjoying temporary protection. The severity of the expected persecution is to be weighed against the nature of the criminal offence of which the person concerned is suspected. Particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes. This applies both to the participants in the crime and to its instigators;

(iii) that person has been guilty of acts contrary to the purposes and principles of the United Nations;

(*b*) there are reasonable grounds for regarding that person as a danger to the security of Malta as a host country or, having been convicted by a final judgment of a particularly serious crime, that person is a danger to the community of Malta as a host country.

(2) The grounds for exclusion referred to in sub-regulation (1) shall be based solely on the personal conduct of the person concerned. Exclusion decisions or measures shall be based on the principle of proportionality.

PART VIII

Final provisions

Appeal.

28. Persons who have been excluded from the benefit of temporary protection or family reunification shall be entitled to appeal to the International Protection Appeals Tribunal established under article 5 of the Act.

FIRST SCHEDULE

Regulation 26(4)

Model pass for the transfer of persons enjoying temporary protection

PASS

Name of the Member State delivering the pass: Reference number (*):

Issued under Article 26 of Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons an d on measures promoting a balance of effort between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer from ..... ([1]) to ..... ([2]).

The person in question must present himself/herself at ..... ([3]) by ..... ([4]).

Issued at: .....

SURNAME: .....

FORENAMES: .....

PLACE AND DATE OF BIRTH: .....

In case of a minor, name(s) of responsible adult: .....

SEX: .....

NATIONALITY: .....

Date issued: .....

PHOTO

SEAL

Signature of the beneficiary: ..... For the competent authorities: .....

The pass-holder has been identified by the authorities ..... ([5])([6])

The identity of the pass-holder has not been established .....

This document is issued pursuant to Article 26 of Directive 2001/55/EC only and in no way constitutes a document which can be equated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

(*)The reference number is allocated by the country from which the transfer to another Member State is made.
(1)Member State from which the transfer is being made.
(2)Member State to which the transfer is being made.
(3)Place where the person must present himself/herself on arrival in the second Member State.
(4)Deadline by which the person must present himself/herself on arrival in the second Member State.
(5)On the basis of the following travel or identity documents, presented to the authorities.
(6)On the basis of documents other than a travel or identity document.

SECOND SCHEDULE

Regulations 11 and 16

The information referred to in Articles 10, 15 and 26 of the Directive includes to the extent necessary one or more of the following documents or data:

(*a*) personal data on the person concerned (name, nationality, date and place of birth, marital status, family relationship);

(*b*) identity documents and travel documents of the person concerned;

(*c*) documents concerning evidence of family ties (marriage certificate, birth certificate, certificate of adoption);

(*d*) other information essential to establish the person's identity or family relationship;

(*e*) residence permits, visas or residence permit refusal decisions issued to the person concerned by the Member State, and documents forming the basis of decisions;

(*f*) residence permit and visa applications lodged by the person concerned and pending in the Member State, and the stage reached in the processing thereof.

The providing Member State shall notify any corrected information to the requesting Member State.