

L.N. 15 of 2014

**IMMIGRATION ACT
(CAP. 217)**

**Common Standards and Procedures for returning Illegally Staying
Third-Country Nationals (Amendment) Regulations, 2014**

IN exercise of the powers conferred by article 36 of the Immigration Act, the Minister responsible for immigration has made the following regulations:-

1. The title of these regulations is Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals (Amendment) Regulations, 2014 and these regulations shall be read and construed as one with the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, hereinafter referred to as the "principal regulations".

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2. Regulation 1 of the principal regulations shall be amended as follows:

Amends regulation 1 of the principal regulations.

(a) immediately after the words "and human rights obligations" in sub-regulation (2) thereof there shall be inserted the words "and the principle of non-refoulement"; and

(b) immediately after sub-regulation (3) thereof there shall be added the following new sub-regulation:

"(4) These regulations shall not apply to persons who are subject to return as a criminal law sanction or as a consequence of a criminal law sanction or who are the subject of extradition procedures."

3. Regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) the words "unless the context otherwise requires" shall be deleted;

(b) in the definition "return decision" the word "decision" shall be deleted, and immediately after the definition "decision" as amended there shall be added the following new definition:

" "return decision" means a decision issued by the Principal Immigration Officer, stating or declaring the stay

of a third country national to be illegal and imposing or stating an obligation to return;"

(c) the definition "risk absconding" shall be substituted by the following:

" "risk of absconding" means the existence of reasons to believe, on the basis of the following criteria, that a third country national who is the subject of return procedures may abscond, when he -

- (i) has no permanent address;
- (ii) has no, or not enough, resources which are sufficient to maintain himself;
- (iii) is considered to be a threat to public policy, public health or national security;
- (iv) has not complied with any of the provisions of the Immigration Act and subsidiary legislation made thereunder;
- (v) has applied for a residence permit more than once and such application has been refused;
- (vi) has failed to cooperate with the Principal Immigration Officer in establishing his identity and nationality;
- (vii) has fraudulently provided false identification details or false details regarding his arrival in Malta;
- (viii) has destroyed or otherwise disposed of his identification documents;
- (ix) is found to be in possession of fraudulent identification documents."

(d) the definition "vulnerable persons" shall be substituted by the following:

" "vulnerable persons" means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual

violence."

4. Regulation 3 of the principal regulations shall be amended as follows:

Amends
regulation 3 of
the principal
regulations.

(a) sub-regulations (1), (2), (3), (4), (5) and (6) thereof shall be renumbered as sub-regulations (2), (3), (4), (5), (6) and (7) respectively and immediately before sub-regulation (2) as renumbered there shall be inserted the following new sub-regulation:

"(1) Without prejudice to the provisions of sub-regulations (2), (3) and (4), the Principal Immigration Officer shall issue a return decision to any third country national staying illegally in Malta."; and

(b) immediately after sub-regulation (7) thereof as renumbered there shall be added the following:

"(8) The Principal Immigration Officer shall provide, upon request, a written or oral translation of the main elements of a return decision and information on the legal remedies in a language the third-country national may reasonably be supposed to understand."

5. In the proviso to sub-regulation (2) of regulation 4 of the principal regulations immediately after the words "of the individual case" there shall be inserted the words "such as health reasons, the length of stay, the existence of children attending school and the existence of other family and social links".

Amends
regulation 4 of
the principal
regulations.

6. In paragraph (b) of sub-regulation (3) of regulation 5 of the principal regulations the words "where applicable," shall be deleted.

Amends
regulation 5 of
the principal
regulations.

7. In sub-regulation (1) of regulation 6 of the principal regulations the word "postpone," shall be substituted by the words "not effect.

Amends
regulation 6 of
the principal
regulations.

8. In sub-regulation (8) of regulation 7 of the principal regulations the words "sub-regulations (1) to (6)" shall be substituted by the words "sub-regulations (1) to (2) and (4) to (7)".

Amends
regulation 7 of
the principal
regulations.

9. Sub-regulation (1) of regulation 8 of the principal regulations shall be substituted by the following:

Amends
regulation 8 of
the principal
regulations.

"(1) An unaccompanied minor, prior to a decision on the issue of a return decision, shall be allowed to apply for asylum and shall be assisted in terms of the Children and Young

Persons (Care Order) Act."

Amends
regulation 9 of
the principal
regulations.

10. Regulation 9 of the principal regulations shall be amended as follows:

(a) the proviso to sub-regulation (1) thereof shall be substituted as follows:

"Provided that a third country national shall, as a general rule, not be detained in prison, and where, due to an exceptional necessity he is detained in prison, such third country national shall be detained separately from ordinary prisoners."; and

(b) in sub-regulation (2) thereof immediately after the words "legal representatives," there shall be inserted the words "without prejudice to the provisions of regulation 11(4),".

Amends
regulation 11 of
the principal
regulations.

11. Regulation 11 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof immediately after the words "of Part IV," there shall be inserted the words "except for the provisions of regulation 5(b) and (d) and of subregulation (8)";

(b) sub-regulation (3) thereof shall be deleted and sub-regulations (4) and (5) shall be renumbered as sub-regulations (3) and (4) respectively;

(c) sub-regulation (4) thereof as renumbered shall be substituted by the following:

"(4) For the purposes of sub-regulation (3) a legal adviser shall be allowed to assist the third-country national and free legal aid shall be provided to the third-country national, upon request, in accordance with national legislation. Where necessary, free linguistic assistance shall be provided:

Provided that free legal assistance shall only be provided where the review is likely to succeed."; and

(d) sub-regulation (6) thereof shall be deleted and sub-regulations (7) to (18) shall be renumbered as sub-regulations (5) to (16) respectively;

(e) sub-regulation (5) thereof as renumbered shall be

substituted by the following:

"(5) The Principal Immigration Officer shall, except in the case of detention as provided in regulations 9 and 10, ensure that the following principles are taken into account as far as possible in relation to third country nationals during the period granted for voluntary departure in accordance with regulation 4 or the period during which removal is postponed in accordance with regulation 6:";

(f) in paragraph (d) of sub-regulation (5) thereof as renumbered shall be substituted by the following:

"(d) take account as far as possible of the special need of vulnerable persons,

and, where applicable, shall provide these third country nationals with a written confirmation that the period for voluntary departure has been extended in accordance with the proviso to regulation 4(2) or that the return decision will temporarily not be enforced.";

(g) sub-regulations (7) and (8) thereof as renumbered shall be substituted by the following:

"(7) Without prejudice to the provisions of sub-regulation (8), detention shall be a consequence of the removal order issued by the Principal Immigration Officer and the removal order shall contain reasons in fact and in law.

(8) Without prejudice to the provisions of article 25A of the Act, the third-country national subject to the provisions of sub-regulation (6) shall have his detention reviewed either on application or *ex officio* by the Principal Immigration Officer at reasonable intervals of time which, in any case, shall not exceed three months. In the case of detention periods of six months or more, the Principal Immigration Officer shall carry out such review and notify the Board which shall supervise and, where necessary, revise such review.";

(h) in sub-regulation (9) thereof as renumbered the words "sub-regulation (10)" shall be substituted by the words "sub-regulation (8);

(i) in paragraph (b) of sub-regulation (11) thereof as

renumbered the words "sub-regulation (8)" shall be substituted by the words "sub-regulation (6);

(j) in sub-regulation (12) thereof as renumbered the words "sub-regulation (8)" shall be substituted by the words "sub-regulation (6)";

(k) in paragraph (b) of sub-regulation (13) thereof as renumbered the words "in question; or" shall be substituted by the words "in question." and paragraph (c) shall be deleted;

(l) in sub-regulation (14) thereof as renumbered the words "sub-regulation (8)" shall be substituted by the words "sub-regulation (6)";

(m) in sub-regulation (16) thereof as renumbered the words "sub-regulation (8)" shall be substituted by the words "sub-regulation (6)" and the words "sub-regulation (10)" shall be substituted by the words "sub-regulation (8)".

