

L.N. 417 of 2015

**REFUGEES ACT
(CAP. 420)**

**Reception of Asylum Seekers (Minimum Standards)
(Amendment) Regulations, 2015**

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

1. (1) The title of these regulations is the Reception of Asylum Seekers (Minimum Standards) (Amendment) Regulations, 2015, and these regulations shall be read and construed as one with the Reception of Asylum Seekers (Minimum Standards) Regulations, hereinafter referred to as the "principal regulations".

Citation and scope.

S.L. 420.06.

(2) These regulations transpose the provisions of the Council Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast).

2. In the title and in regulation 1 of the principal regulations, for the words "Reception of Asylum Seekers (Minimum Standards)" there shall be substituted the words "Reception of Asylum Seekers".

Amends title and regulation 1 of the principal regulations.

3. The definition "family members" in regulation 2 of the principal regulations shall be amended as follows:

Amends regulation 2 of the principal regulations.

(a) paragraph (a) thereof shall be substituted by the following new paragraph:

"(a) the spouse of the asylum seeker or his unmarried partner in a stable relationship;" and

(b) immediately after paragraph (b) thereof there shall be added the following new paragraph:

"(c) the father, mother or legal guardian, where the applicant is a minor;"

4. Regulation 6 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 6 of the principal regulations.

"Detention,
residence and
freedom of
movement.

6. (1) The Principal Immigration Officer may, without prejudice to any other law, order the detention of an applicant for one or more of these reasons, pursuant to an assessment of the case:

(a) in order to determine or verify his identity or nationality;

(b) in order to determine those elements on which the application is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding on the part of the applicant;

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(c) in order to decide, in the context of a procedure, in terms of the Immigration Act, on the applicant's right to enter Maltese territory;

S.L. 217.12.

(d) when the applicant is subject to a return procedure under the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations, in order to prepare the return or carry out the removal process, and the Principal Immigration Officer can substantiate, on the basis of objective criteria, including that the applicant already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision;

(e) when protection of national security or public order so require; or

(f) in accordance with Article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

(2) A detention order issued by the Principal Immigration Officer in writing, in a language which the applicant is reasonably supposed to understand, shall state the reason or reasons on which it is based:

Provided that wherever the Principal Immigration Officer issues such a detention order he shall also inform the applicant of procedures to challenge detention and obtain free legal assistance and representation.

Cap. 217. (3) The Immigration Appeals Board shall, with due regard to article 25A(10) of the Immigration Act, review the lawfulness of detention after a period of seven (7) working days, which may be extended by another seven (7) working days by the Board for duly justified reasons.

(4) If the applicant is still detained, a review of the lawfulness of detention shall be held after periods of two months thereafter. Wherever the Immigration Appeals Board rules that detention is unlawful, the applicant shall be released immediately.

(5) An applicant shall be provided with free legal assistance and representation during the review of the lawfulness of his detention in accordance with sub-regulation (3). Free legal assistance and representation entails preparation of procedural documents and participation in any hearing before the Immigration Appeals Board.

(6) The Principal Immigration Officer shall have the possibility to grant applicants temporary permission to leave detention. 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.

(7) Any person detained in accordance with these regulations shall, on the lapse of nine months, be released from detention if he is still an applicant.

(8) Where the Principal Immigration Officer does not order the detention of an applicant in accordance with sub-regulation (1), he may require the applicant:

(a) to report at a police station within specified timeframes;

(b) to reside at an assigned place.

For the purposes of this paragraph, the Principal Immigration Officer shall have the possibility to grant temporary permission to leave. 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 in no case require permission to keep appointments with authorities and courts if his appearance thereat is necessary:

Provided further that wherever the applicant is not required to reside at an assigned place, he shall be required to notify any change of address to the Principal Immigration Officer within not more than twenty-four hours.

(c) to deposit or surrender documents; or

(d) to place a one-time guarantee or surety, with the Principal Immigration Officer.

Such measures shall have a maximum duration of nine months:

Provided that, if the applicant concerned does not comply with conditions referred to in this sub-regulation, the Principal Immigration Officer may order the detention of such applicant in accordance with the terms and conditions prescribed in this sub-regulation."

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

Adds a new regulation to the principal regulations.

"Detention facilities.

6A. (1) Whenever an applicant is detained in accordance with regulation 6, he shall be detained in a specialised facility, which facility shall not be utilised as a place of detention for sentenced persons. In the eventuality that an applicant has to be detained in a facility for the detention of sentenced persons he shall be kept separate from inmates who are not detained pursuant to regulation 6:

Provided that minors shall never be detained in a facility utilised as a place of detention for sentenced persons.

(2) Applicants detained in a specialised detention facility in accordance with sub-regulation (1) shall, insofar as possible, be kept separate from third-country nationals who have not filed an application for international protection.

(3) Applicants in detention shall have access to open-air spaces.

(4) Representatives of the United Nations High Commissioner for Refugees (UNHCR) shall be given the possibility to communicate with and to visit applicants in detention in conditions that respect privacy.

(5) Legal advisers, counsellors, representatives of relevant non-governmental organisations and family members of detainees shall be given the possibility to communicate with and visit applicants in detention in conditions that respect privacy, in accordance with rules and conditions that may be laid down in legislation regulating detention facilities:

Provided that specialised detention facilities or facilities for the detention of sentenced persons may provide for limitations to access where necessary for purposes of administrative management or the upkeep of security and public order, as long as access is not severely restricted or rendered impossible.

(6) The management of specialised detention facilities or facilities for the detention of sentenced persons shall provide to applicants in detention information concerning the rules of the facility, their rights and their obligations in a language that they may be reasonably presumed to understand.

(7) The management of specialised detention facilities or facilities for the detention of sentenced persons shall provide families in detention with separate accommodation guaranteeing adequate privacy.

(8) The management of specialised detention facilities or facilities for the detention of sentenced persons shall ensure that female applicants in detention are accommodated separately from male applicants, unless the male applicants are family members and all applicants concerned give their consent to being accommodated together.

(9) Notwithstanding sub-regulations (7) and (8), the management of specialised detention facilities or facilities for the detention of sentenced persons may designate common spaces for recreational or social activities, including the provision of meals for male and female applicants who are not part of a family unit in detention."

6. Regulation 8 of the principal regulations shall be amended as follows:

Amends
regulation 8 of
the principal
regulations.

(a) the current provision shall be re-numbered as sub-regulation (1) thereof; and

(b) immediately after sub-regulation (1) thereof, as re-numbered, there shall be added the following new sub-regulation:

Cap. 36. "(2) For the purposes of this regulation,
Cap. 465. the Director General Health or any officer duly
 authorised shall apply the relevant provisions of
 the Prevention of Disease Ordinance and the
 Public Health Act whenever they deem
 necessary."

7. Immediately after sub-regulation (2) of regulation 9 of the principal regulations, there shall be added the following new sub-regulation:

Amends
regulation 9 of
the principal
regulations.

"(3) Preparatory classes for the minor children of applicants, including language classes, shall be provided where these are necessary with a view to facilitating their participation in the education system as provided in sub-regulation (1)."

8. Regulation 10 of the principal regulations shall be substituted by the following new regulation:

Amends
regulation 10 of
the principal
regulations.

"10. (1) An applicant shall be granted access to the labour market after the lapse of nine months from the date when the application was lodged, provided that he is still an applicant when such a lapse has occurred.

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

(3) The provisions of sub-regulations (1) and (2) are without prejudice to priorities given, by 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."

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

Amends
regulation 11 of
the principal
regulations.

(a) sub-regulations (2), (3) and (4) thereof shall be

renumbered as sub-regulations (3), (4) and (5) respectively; and

(b) immediately after sub-regulation (1) thereof there shall be added the following new sub-regulation:

"(2) Applicants shall be provided with emergency health care and essential treatment of illness and serious mental disorders. Medical and other assistance shall be provided to applicants who have special reception needs, including mental health care."

Amends
regulation 12 of
the principal
regulations.

10. Regulation 12 of the principal regulations shall be amended as follows:

(a) in paragraph (c) of sub-regulation (1) thereof, for the words "accommodating applicants." there shall be substituted the words "accommodating applicants."; and immediately thereafter, there shall be added the following new provisos to the sub-regulation:

"Provided that, when accommodating applicants, due regard shall be given to gender and age-specific concerns, as well as the situation of vulnerable persons:

Provided further that, wherever possible, dependent adult applicants are to be accommodated with close adult relatives who are in Malta.";

(b) in sub-regulation (3) thereof immediately after the words "or by custom" there shall be added the words "or with their minor unmarried siblings";

(c) in sub-regulation (5) thereof, for the words "Legal advisers" there shall be substituted the words "Family members, legal advisers";

(d) paragraphs (b) and (d) of sub-regulation (6) thereof shall be deleted, and paragraph (c) thereof shall be renumbered as paragraph (b); and

(e) immediately after sub-regulation (6) thereof, there shall be added the following new sub-regulation:

"(7) Transfers of applicants from one facility to another shall take place only when necessary. Applicants shall be granted the possibility to inform their legal advisers of the transfer and of their new address."

11. Regulation 13 of the principali regulations shall be amended as follows:

Amends regulation 13 of the principal regulations.

(a) in sub-regulation (4) thereof, for the words "persons covered by regulation 15" there shall be substituted the words "persons covered by Part IV"; and

(b) immediately after sub-regulation (4) thereof, there shall be added the following new sub-regulation:

"(5) Material reception conditions shall not be withdrawn or reduced before a decision is taken in accordance with sub-regulation (4).".

12. In the title of Part IV of the principali regulations for the words "Persons with Special Needs" there shall be substituted the words "Vulnerable Persons".

Amends the title of Part IV of the principal regulations.

13. Regulation 14 of the principali regulations shall be substituted by the following new regulation:

Substitutes regulation 14 of the principal regulations.

"General principle regarding vulnerable persons.

14. (1) In the implementation of the provisions relating to material reception conditions and health care, including mental health, account shall be taken of the specific situation of vulnerable persons which shall include minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms or psychological, physical or sexual violence, such as victims of female genital mutilation, found to have special needs after an individual evaluation of their situation:

Provided that minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment or who have suffered from armed conflicts shall be given access to pertinent rehabilitation services in terms of the Victims of Crime Act, further to being provided with the required mental health care.

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For the purposes of this provision an evaluation by the entity responsible for the welfare of asylum seekers, carried out in conjunction with other authorities as necessary shall be conducted as soon as practicably possible:

Provided that applicants identified as minors shall not be detained, except as a measure of last resort:

Provided further that applicants who claim to be minors shall not be detained, except as a measure of last resort, unless the claim is evidently and manifestly unfounded.

(2) Whenever the vulnerability of an applicant becomes apparent at a later stage, assistance and support shall be provided from that point onwards, pursuant to a reassessment of the case.

(3) Whenever the vulnerability of an applicant is ascertained, no detention order shall be issued or, if such an order has already been issued, it shall be revoked with immediate effect.

(4) 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. When considering the best interest of the child due regard shall be taken to the possibilities of family reunification, the minor's general well-being and social development, safety and security considerations, and the views of the minor in accordance with his age and maturity.

(5) Minor applicants shall have access to leisure activity, including play and recreational activity appropriate to their age, and to open air activity whenever accommodated in accordance with regulation 12.

(6) The entity responsible for the welfare of asylum seekers shall, with the assistance of international organisations as necessary, initiate procedures to trace the family members of applicants who are unaccompanied minors. Whenever the circulation of data may place family members in jeopardy, the collection, processing and circulation of data shall be kept confidential."

14. Regulation 16 of the principal regulations shall be substituted by the following new regulation:

Substitutes regulation 16 of the principal regulations.

Appeals. 16. (1) Applicants who feel aggrieved by a decision taken in pursuance to the provisions of these regulations and by a decision in relation to age assessment in accordance with regulation 17 of the Procedural Standards in Examining Applications for International Protection Regulations, shall be entitled to an appeal to the Immigration Appeals Board in accordance with the provisions laid down in the Immigration Act:

S.L. 420.07.

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Provided that applicants who lack sufficient resources to appeal from a decision, are entitled to free legal assistance and representation.

(2) Free legal assistance and representation shall entail the preparation of the required procedural documents and participation in the hearing before the Immigration Appeals Board."

