

Subsidiary Legislation made under s.55.

**ASYLUM REGULATIONS 2008**

**(LN. 2008/077)**

*Commencement*      **2.10.2008**

**EU Legislation/International Agreements involved:**

Directive 2003/9/EC

Directive 2004/83/EC

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*In exercise of the powers conferred on it by section 55 of the Immigration, Asylum and Refugees Act and all other enabling powers and for the purpose of transposing into the law of Gibraltar Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum applicants and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the Government has made the following Regulations—*

## **Part I General**

### **Title and commencement.**

1. These Regulations may be cited as the Asylum Regulations 2008 and comes into operation on the day of publication.

### **Interpretation.**

2.(1) In these Regulations—

“accommodation centre” means any place used for the collective-housing of asylum applicants;

“application for asylum” or “asylum application” means a request by a person which can be understood as a request for international protection under these Regulations;

“applicant” means a person who has made an application for asylum and whose application is outstanding; an application remains outstanding where there is an appeal in relation to the decision on the application and any decision consequential on the appeal has not yet been made;

“the Authority” means the Head of the Civil Status and Registration Office and includes such persons to whom he delegates his authority under these Regulations;

“Council Directive 2001/55/EC” means Council 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 and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof;

“Council Directive 2003/9/EC” means Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

“Council Directive 2004/83/EC” means Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;

“country of origin” means an applicant’s country or countries of nationality or, in relation to stateless applicants, country of former habitual residence;

“dependant family member” means–

- (a) in respect of dependant family members of an applicant, a family member–
  - (i) who has not made an independent application for asylum;
  - (ii) who, if he is an adult family member, has expressly consented to be included within the application made by the principal applicant; and
  - (iii) whose claim for international protection is dependent on that of the applicant;
- (b) in respect of dependant family members of a person with refugee or subsidiary protection status–
  - (i) a family member within the meaning of paragraph (a);
  - (ii) whose claim for international protection is dependent on the person who has been granted refugee or subsidiary protection status.

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

“ECHR” means the European Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4<sup>th</sup> November 1950;

“family members” means, in so far as the family already existed in the country of origin or former habitual residence, the following who are present in Gibraltar in connection with an application for asylum–

- (a) the spouse of an applicant;
- (b) any unmarried and dependent children under the age of 18 of an applicant, including adopted children;

“final decision” means a final decision to grant or refuse refugee or subsidiary protection status; where an applicant appeals against a decision to refuse refugee or subsidiary protection status then a final decision means a decision taken following and on the basis of the final judgment of the court or the applicant’s explicit withdrawal of the court appeal;

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

“Gibraltarian” means–

- (a) a British Overseas Territory Citizen by virtue of a connection with Gibraltar in accordance with section 2(1) of the Immigration, Asylum and Refugee Act; or
- (b) a person who is a Gibraltarian within the meaning of the Gibraltarian Status Act;

“international protection” means refugee or subsidiary protection status;

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

“minor” means a person under the age of 18;

“reception conditions” means all reception conditions for applicants and dependant family members under Part III including material reception conditions;

“refugee” has the meaning provided in regulation 27;

“refugee status” means the status granted in Gibraltar under regulation 42;

“Regulation 343/2003” means European Council Regulation 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national;

“reporting requirement” means a requirement that a person report to a specific place at a specific time imposed in accordance with regulation 10;

“stateless person” means a person who is not considered as a national by any State under the operation of its law;

“subsidiary protection status” means the status granted in Gibraltar under regulation 43;

“UNHCR” means the United Nations High Commissioner for Refugees;

“unaccompanied minor” means a person under the age of 18 who arrived in Gibraltar unaccompanied by an adult responsible for him whether by law or custom, and for as long as he is not effectively taken into the care of such a person; it includes a minor who is left without an adult responsible for him after he has entered Gibraltar.

(2) These Regulations shall be construed in accordance with –

- (a) Council Directive 2003/9/EC;
- (b) Council Directive 2004/83/EC; and
- (c) such other laws of the European Union in relation to asylum and refugees as are in force.

**Scope of application.**

3. These Regulations only apply to–

- (a) persons who are not nationals of a member state of the European Union; and
- (b) stateless persons.



## **Non-application of Part III to persons enjoying temporary protection.**

4. Part III (reception standards for applicants) of these Regulations does not apply to any person who has temporary protection in Gibraltar under the Temporary Protection Act 2005 while he has such protection.

## **Part II Non Refoulement of Applicants**

### **Non-refoulement of applicants and dependant family members.**

5.(1) Subject to sub-regulation (2), no action or decision shall be taken to remove or deport the following persons from Gibraltar or otherwise require them to leave Gibraltar–

- (a) an applicant;
- (b) a dependant family member of an applicant.

(2) The persons listed in sub-regulation (1) may be removed from, deported or required to leave, Gibraltar only if–

- (a) the applicant explicitly and in writing withdraws his application for asylum, having received advice from the Authority that this may result in his removal, deportation from Gibraltar or a requirement to leave Gibraltar; or
- (b) the person is transferred to a Member State under Regulation 343/2003.

## **Part III Reception Standards for Applicants**

### **Application of Part III.**

6.(1) This Part sets out applicable standards for the reception of applicants in Gibraltar and applies to–

- (a) all persons who make or have made an application for asylum in Gibraltar; and
- (b) dependant family members of the persons in paragraph (a).

(2) This Part shall apply to the persons in sub-regulation (1) from the making of an application until–

- (a) the grant of refugee or subsidiary protection status;
- (b) a final decision is taken to refuse refugee or subsidiary protection status; or
- (c) in the event that the applicant withdraws his application for asylum, an explicit withdrawal of the application by the applicant in writing.

(3) The Government may apply the provisions of this Part following the refusal of refugee or subsidiary protection status or the withdrawal of an asylum application where the person has not been physically removed from Gibraltar.

(4) The Government may refuse to apply this Part to an applicant–

- (a) who has previously applied for, and been refused, asylum in Gibraltar; and
- (b) whose new application does not raise new evidence, facts or elements or any other reason for reconsidering the previous decision.

#### **Applications, photographs and fingerprints.**

7.(1) If an asylum application is made to the Royal Gibraltar Police, a Government Department, or an agent acting on behalf of the Royal Gibraltar Police or the Government that body shall ensure that the applicant and any dependant family members are immediately brought to the attention of the Authority.

(2) On the instructions of the Authority, the Royal Gibraltar Police shall take, record and deliver to the Authority fingerprints and photographs of the applicant and any dependant family member.

#### **Asylum applicant's permit.**

8.(1) The Authority shall, within 3 days of the making of an asylum application, provide a document (called an asylum applicant's permit) containing the information set out in sub-regulation (2) to the following persons–

- (a) the applicant; and
- (b) any dependant family members of the applicant.

(2) The asylum applicant's permit referred to in sub-regulation (1) shall be issued in the name of the applicant or dependant family member and shall -

- (a) certify the person's status as an applicant or dependant family member;
- (b) state that the person is allowed to stay in the territory of Gibraltar while the application is pending or being examined; and
- (c) state any residence condition which has been placed on the person.

(3) The Authority may renew, replace or amend an asylum applicant's permit as necessary.

## **Information document.**

9.(1) The Authority shall, within 15 days of the making of an application for asylum, provide the information set out in sub-regulation (2) to-

- (a) the applicant; and
- (b) any dependant family members of the applicant.

(2) The information referred to in sub-regulation (1) shall be given in writing, in a language which the applicant and any dependant family members are likely to be able to understand, and shall include at least the following information-

- (a) the benefits and services which they may be eligible to receive and the rules and procedures with which they must comply relating to them;
- (b) the obligations with which they must comply in relation to reception conditions; and
- (c) about organisations or groups of organisations or persons who-
  - (i) provide specific legal assistance and advice to asylum applicants and refugees; or

- (ii) may be able to help or inform them concerning available reception conditions including health care.

(3) The information referred to in this section may be supplied orally in a language which the applicant can be reasonably expected to understand.

**Residence, reporting conditions and freedom of movement.**

10.(1) Applicants shall inform the Authority of their current address and notify any change of address as soon as possible.

(2) Subject to sub-regulations (3) and (4) no restrictions may be placed on the freedom of movement or place of residence within Gibraltar of—

- (a) an applicant; or
- (b) the dependant family member of an applicant.

(3) A residence or reporting condition may be imposed on an applicant or dependant family member where necessary—

- (a) for reasons of public interest;
- (b) for reasons of public order; or
- (c) for the swift processing and effective monitoring of the applicant's application for asylum, including to prevent absconding.

(4) An applicant or dependant family member may be detained only where necessary and—

- (a) in accordance with the criminal law of Gibraltar;
- (b) in accordance with the Mental Health Act; or
- (c) otherwise in accordance with the law of Gibraltar.

(5) A residence condition or reporting requirement—

- (a) may be varied or lifted by the body which imposed it either permanently or for a specified period of time;

- (b) shall not prevent the person on whom it is imposed from attending any court hearing in relation to their application or any appointment related to their application.

(6) An application for variation or lifting of a residence condition or reporting requirement may be made by the person on whom it has been imposed to the body which imposed it and where such an application is made that body shall—

- (a) make a decision on the application—
  - (i) promptly;
  - (ii) objectively and impartially;
  - (iii) on the facts of the individual case;
- (b) give the decision in writing to the person on whom the reporting or residence condition was imposed; and
- (c) where it decides to refuse the application, either in whole or in part, give written reasons for the refusal.

(7) Applicants and dependant family members may appeal to the Magistrates' Court against decisions by the Authority to—

- (a) impose or refuse to vary or lift a reporting requirement;  
or
- (b) impose or refuse to vary or lift a residence condition.

(8) For the purpose of this regulation—

“residence condition” means a condition that a person live and sleep at a particular address;

“reporting requirement” means a requirement that a person report to a specific place at a specific time.

## **Medical screening.**

11.(1) The Authority may, on public health grounds, require an applicant or dependant family member to be examined by a medical practitioner.

(2) A person required to be medically examined under sub-regulation (1) shall not be charged a fee for the examination.

(3) The Director of Public Health shall make appropriate provision for medical examinations required under sub-regulation (1).

**General rules on material reception conditions including health care.**

12.(1) The Government shall make material reception conditions available to applicants and their dependant family members, if any, from the time they make an application for asylum.

(2) The Government may provide material reception conditions –

- (a) in kind;
- (b) in the form of financial allowances; or
- (c) in a combination of (a) and (b).

(3) Material reception conditions provided shall–

- (a) as a minimum, ensure a standard of living adequate for the health and subsistence of the applicant and any dependant family members; and
- (b) take into account the requirements of particularly vulnerable persons, in accordance with sub-regulation (4), as well as the requirements of applicants in detention.

(4) In the provision of reception conditions particular account shall be taken of the specific needs of vulnerable persons such as minors, unaccompanied minors, disabled persons, elderly persons, 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.

(5) In considering the amount of any material reception conditions provided account may be taken of the financial means of the applicant and any dependant family members.

**Housing.**

13.(1) The Government shall ensure that applicants and their dependant family members have adequate accommodation, or provide them with the

means (including financial means) to obtain such adequate accommodation. Such accommodation may take the form of–

- (a) private houses, flats, hotels or other premises; or
- (b) accommodation centres.

(2) Accommodation listed–

- (a) in sub-regulation (1) will only be adequate if it complies with the standards required by regulation 12 (general rules on material reception conditions) and, among other things, it -
  - (i) complies with regulation 14 (housing of families);
  - (ii) allows for the possibility of communicating with relatives, legal advisers and representatives of the UNHCR and non-governmental organisations.
- (b) in sub-regulation (1)(b) will only be adequate if, among other things, the staff of the centre–
  - (i) have been adequately trained with respect to the needs of applicants and dependant family members; and
  - (ii) are subject to a legal requirement of confidentiality in respect to any information they obtain in the course of their work including information which they obtain from applicants and dependant family members.

(3) Where accommodation is provided by or on behalf of the Government it may be a condition of residence in that accommodation that the applicant or dependant family member makes payments, in respect of that accommodation, to–

- (a) the Government; or
- (b) the manager of the accommodation in question.

(4) The Government shall take account of the ability of the applicant or dependant family member to meet their own financial needs when assessing–

- (a) whether any payment is required;

- (b) the amount of any payments to be made by an applicant or dependant family member under sub-regulation (3); or
  - (c) the amount of any financial assistance to be provided to an applicant or dependant family member under sub-regulation (1).
- (5) Where accommodation is provided in accommodation centres–
- (a) measures shall be taken to prevent assaults within such centres;
  - (b) applicants and dependant family members may be involved in managing the material resources and non-material aspects of life in the centre through an advisory office or council representing residents.
- (6) Applicants housed in accommodation provided by, or on behalf of, the Government–
- (a) may be transferred from one housing facility to another only when necessary; and
  - (b) if transferred, shall be provided the opportunity to inform their legal advisers and UNHCR of their transfer and of their new address.

**Housing - family unity.**

14.(1) Subject to sub-regulation (2), where housing is provided by the Government to an applicant, such housing shall, as far as possible, provide for applicants and their family members to be housed together.

(2) Applicants and their family members shall be housed together under sub-regulation (1) only with their agreement.

(3) Save where it is not in the best interest of the child and subject to regulation 20 (unaccompanied minors), minors shall be housed with–

- (a) their parents, if their parents are in Gibraltar; or
- (b) with an adult family member present in Gibraltar who is responsible for the minor whether by law or by custom.

**Housing - legal advisers and UNHCR Access.**



15.(1) Subject to sub-regulation (2) the following persons shall be allowed to enter accommodation centres and other housing facilities for applicants and their dependant family members–

- (a) legal advisors or counsellors of applicants and their dependant family members;
- (b) UNHCR and non-governmental organisations designated by UNHCR and recognized by the Government.

(2) Access under sub-regulation (1) may be limited to the persons in sub-regulation (1) only where necessary for the security of the applicants or dependant family members, the accommodation centre or housing facility.

## Health care.

16.(1) Without prejudice to sub-regulation (2) and to any other rights to health care which they may have under the law of Gibraltar, applicants and their dependant family members shall be entitled to receive emergency medical care and essential treatment of illness in Gibraltar from the Gibraltar Health Authority.

(2) Applicants or dependant family members who have special needs (such as minors or persons who have undergone torture, rape, or other serious forms of psychological, physical or sexual violence) shall have access to medical or other assistance appropriate for dealing with such needs.

(3) Applicants or their dependant family members who have sufficient resources may be required to make payments for any medical or other assistance provided by virtue of this regulation to–

- (a) the Gibraltar Health Authority; or
- (b) the medical or other establishment in question.

(4) When assessing whether an applicant or dependant family member has “sufficient resources” under sub-regulation (3) or the level of payments, if any, to be made under sub-regulation (3), the Gibraltar Health Authority shall take account of–

- (a) the obligation of the Government under regulation 12(3) to ensure that applicants and their dependants have a standard of living adequate for their health and subsistence; and

- (b) their ability to meet their own financial needs.

**Schooling and education of minors.**

17.(1) The following shall be entitled to access to the education system under the Education and Training Act–

- (a) applicants who are minors;
- (b) dependant family members who are minors.

(2) Access to the education system under sub-regulation (1) shall not be withdrawn–

- (a) unless the minor or, in respect of a minor who is a dependant family member, the applicant parent of the minor, is removed from Gibraltar in accordance with these Regulations; or
- (b) solely on the basis that the minor has reached the age of 18.

**Employment, self employment and vocational training.**

18.(1) Applicants and their dependant family members shall be entitled to engage in employed or self-employed activities in accordance with the relevant laws and shall be entitled workers for the purpose of the Employment Regulations 1994 if–

- (a) no decision has been taken by the Authority to grant or refuse the application for asylum within 12 months of the making of the application;
- (b) in Gibraltar as an applicant for asylum, or dependant family member of an applicant for asylum, for over 12 months since the date of the making of the application; or
- (c) neither paragraph (a) or (b) applies, but the Minister with responsibility for personal status has granted permission to take employment in accordance with sub-regulation (2).

(2) The Minister with responsibility for personal status may at any time grant permission to take employment or engage in self-employed activities to an applicant or his dependant family member, if any.

(3) Where permission to take employment or engage in self-employed activities is granted under sub-regulation (2) the following persons shall be informed in writing –

- (a) the person granted permission to take employment or engage in self-employed activities; and
- (b) the Director of Employment.

(4) Applications for the grant of permission under sub-regulation (2) to take employment or engage in self-employed activities shall be made to the Authority.

(5) Applicants and their dependant family members shall be entitled to access–

- (a) any vocational training linked to their employment;
- (b) vocational training in Gibraltar.

## *Minors*

### **Minors.**

19.(1) The best interests of the child shall be a primary consideration where any decision is taken under this Part which involves a minor.

(2) 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 conflict, shall have access to rehabilitation services including, when needed, mental health care appropriate to their needs and qualified counseling. The Government shall ensure that appropriate mental health care is available.

### **Unaccompanied minors**

20.(1) The Authority shall, as soon as possible, ensure (including where necessary by bringing legal proceedings) that unaccompanied minors are represented by–

- (a) a legal guardian;
- (b) where necessary, the Social Services Agency or such other organisation, body or agency responsible for the care and well-being of minors in Gibraltar; or

(c) any other appropriate representative.

(2) Regular assessments of the care and representation provided and the minor's welfare shall be made by the Social Services Agency.

(3) Unaccompanied minors who apply for asylum shall, from the making of the asylum application until such time as an expulsion measure against them is enforced, be placed—

(a) with adult relatives;

(b) with a foster carer in accordance with the law on foster care in force in Gibraltar for the time being;

(c) in accommodation centres with special provisions for minors, save that unaccompanied minors aged 16 or over may be housed in accommodation centres for adult asylum applicants; or

(d) in other accommodation suitable for minors.

(4) In determining where a minor shall be placed under sub-regulation (3) siblings shall, as far as possible, be kept together, taking into account the best interests of the minors concerned and, in particular, their age and degree of maturity.

(5) Changes of residence of unaccompanied minors shall be limited to a minimum.

(6) The Authority shall endeavor to trace the members of the minor's family as soon as possible, including through use of organisations such as the Red Cross. Where there may be a threat to the life or integrity of the minor or the minor's close relatives, particularly if they have remained in the country of origin, the collection, processing and circulation of information concerning those persons shall be undertaken on a confidential basis, so as to avoid jeopardising their safety.

(7) All persons working with unaccompanied minors shall—

(a) have had or receive appropriate training concerning the needs of unaccompanied minors; and

(b) be subject to a legal requirement of confidentiality in respect to any information which they obtain in the course of their work

including any information which they obtain from unaccompanied minors.

### *Reduction Or Withdrawal Of Reception Conditions*

#### **Reduction or withdrawal of reception conditions.**

21.(1) Subject to sub-regulation (5), reception conditions may be reduced or withdrawn from an applicant or dependant family member in Gibraltar only where reasonable and proportionate to do so and if–

- (a) that person–
  - (i) is subject to a residence condition imposed under regulation 10 and abandons that place of residence without the permission of the body which imposed it;
  - (ii) commits a serious breach of reporting duties, requests to appear for personal interviews concerning the asylum application or fails to provide information requested by the Authority within a reasonable period (a reasonable period shall not be less than ten working days beginning on the date that the request was received by the person);
- (b) that person had sufficient means to cover material reception conditions and concealed such financial resources; in such circumstances the person may also be required to refund such contribution as they would have been required to make to their material reception conditions had they disclosed their financial resources.

(2) A person shall be considered to have abandoned their place of residence for the purpose of sub-regulation (1)(a)(i) if they have not been present at that place for a period of over 7 nights and have not, or will not, be returning to that place.

(3) Reception conditions may be reinstated in respect of a person to whom sub-regulation (1)(a) applies where that person is traced or voluntarily reports to the competent authority. A decision as to whether to reinstate material reception conditions shall be made taking into account the reasons for the disappearance.

(4) Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in sub-regulation (1) or, in relation to reinstatement of reception conditions, sub-regulation (3)–

- (a) shall be reasonable and proportionate;
- (b) shall be taken—
  - (i) objectively and impartially;
  - (ii) on the facts of each individual case, based on the particular situation of the person concerned including the needs of persons under regulation 12(4); and
- (c) shall be given in writing, together with written reasons for the decision, to the person or persons concerned.

(5) Access by applicants and dependant family members to emergency health care may not be reduced or withdrawn.

*Legal Aid*

**Legal Aid.**

22. Asylum applicants and their dependant family members shall be considered to be ordinarily resident in Gibraltar for the purpose of rule 6(2) of the Legal Aid and Assistance Rules.

*Material reception conditions in exceptional circumstances*

**Material reception conditions in exceptional circumstances.**

23.(1) In exceptional circumstances different provisions concerning entitlements of applicants and dependant family members to material reception conditions may apply.

(2) Such different provisions must be published by legal notice in the Gazette specifying what constitutes exceptional circumstances and what provisions will be applied.

- (3) Such different provisions—
  - (a) may only apply when—
    - (i) an initial assessment of the specific needs of the applicant or dependant family member is required prior to granting material reception conditions;

- (ii) housing capacities normally available are temporarily exhausted; or
  - (iii) the asylum applicant or dependant family member is in detention;
- (b) may only apply for a reasonable period, which shall be as short as possible; and
- (c) shall, as a minimum, cover the basic needs of applicants and dependant family members.

*Actions To Improve The Efficiency Of The Reception System*

**Guidance, monitoring and control systems.**

24. The Government shall ensure appropriate guidance is published in relation to this Part and shall monitor and control the level of reception conditions.

**Part IV**

**Criteria for Determining Refugee and Subsidiary Protection Status**

*Assessment*

**Duty of the applicant.**

25. An applicant shall, as soon as possible on request by the Authority in connection with his application for asylum, provide all information and documentation at his disposal regarding—

- (a) his reasons for applying for asylum;
- (b) his age, identity, background, including that of relevant relatives;
- (c) his nationality or nationalities, country or countries and place or places of previous residence;
- (d) any previous asylum application which he has made;
- (e) travel routes; and
- (f) his identity and travel documents.

**Assessment of facts and circumstances.**

26.(1) The Authority shall assess all relevant elements of an application for asylum.

(2) Each application for asylum shall be assessed on an individual basis and the following must be taken into account—

- (a) all relevant facts as they relate to the applicant's country of origin at the time of taking a decision on the application including the laws and regulations of the country of origin and the manner in which they are applied;
- (b) all relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
- (c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
- (d) the individual position and personal circumstances of the applicant including, in particular, whether the applicant is a minor or suffering from mental health problems;
- (e) where issues arise under regulation 28 or regulation 36 (sur place claims), whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for asylum, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;
- (f) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship;
- (g) any guidance issued by the European Commission or UNHCR including guidance issued on procedures and criteria for determining status.



(3) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be considered to be a serious indication that the applicant has a well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

(4) Where the elements of an applicant's statements are not supported by documentary or other evidence those elements shall not require confirmation, if—

- (a) the applicant has made a genuine effort to substantiate his application;
- (b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;
- (c) the applicant's statements are coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
- (d) the applicant has applied for asylum at the earliest possible time or can demonstrate good reason for not having done so; and
- (e) the general credibility of the applicant has been established.

## *Refugees*

### **Definition of a refugee.**

27. A “refugee” means—

- (a) a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his country of nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or
- (b) a stateless person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his former habitual residence and is unable or,

owing to such fear, unwilling to avail himself of the protection of that country.

**Refugees sur place.**

28. A well-founded fear of being persecuted within the meaning of the definition of a refugee in regulation 27 may—

- (a) be based on events which have taken place since the applicant left the country of origin or previous habitual residence;
- (b) may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where those activities constitute the expression and continuation of convictions or orientations held in the country of origin or previous habitual residence.

**Definition of persecution.**

29.(1) For the purpose of the definition of a refugee in regulation 27, persecution means an act or acts which—

- (a) are sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular (but not limited to)—
  - (i) Article 2 ECHR (right to life);
  - (ii) Article 3 ECHR (prohibition of torture, inhuman or degrading treatment or punishment);
  - (iii) Article 4.1 ECHR (prohibition of slavery and servitude);
  - (iv) Article 7 ECHR (no punishment without law); or
- (b) are an accumulation of various measures, including violations of human rights which are sufficiently severe as to affect an individual in a similar manner as mentioned in paragraph (a).

(2) Acts of persecution set out in sub-regulation (1), include omissions and may take the form of, but are not limited to—

- (a) acts of physical or mental violence, including acts of sexual violence;

- (b) legal, administrative, police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment, which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion provisions set out in regulation 33(2);
- (f) acts of a gender-specific or child-specific nature.

## Actors of persecution.

30.(1) “Actors of persecution” means the perpetrators of persecution.

(2) Persecution, as defined in regulation 29, may be perpetrated by–

- (a) a State;
- (b) parties or organisations controlling a State or a substantial part of the territory of a State;
- (c) non-State actors, if the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against the persecution (as defined in regulation 29) or serious harm (as defined in regulation 37); or
- (d) persons acting on behalf of an actor of persecution listed in paragraphs (a) to (c).

(3) For the purpose of sub-regulation (2), there is a rebuttable presumption that protection is generally provided when–

- (a) the actors mentioned in sub-regulation (2)(a) or (2)(b) take reasonable steps to prevent the persecution or suffering of serious harm including by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm; and

- (b) the applicant has access to such protection.

(4) For the purpose of assessing whether an international organisation controls a State or a substantial part the territory of a State and provides protection in accordance with sub-regulation (3), account shall be taken of any guidance which may be provided in relevant European Union Council acts.

**Reasons for persecution.**

31.(1) For the purpose of the definition of a refugee in regulation 27–

- (a) “for reasons of” means that there must be a connection between the feared acts of persecution and one or more of the reasons for persecution listed in the definition of a refugee;
- (b) a person may fear persecution for more than one reason; and
- (c) a reason for persecution listed in the definition of a refugee need not be the sole reason.

(2) The reasons of persecution listed in the definition of a refugee in regulation 27 are–

- (a) race, which includes considerations of colour, descent, or membership of a particular ethnic group;
- (b) religion, which includes–
  - (i) the holding of theistic, non-theistic and atheistic beliefs;
  - (ii) the participation in, or abstention from, formal worship in private or in public, either alone or in community with others;
  - (iii) other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) nationality, which is not confined to citizenship or lack of citizenship, but includes membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

- (d) political opinion, which includes the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in regulation 30 or to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant;
- (e) membership of a particular social group, and “particular social group” includes groups where–
  - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
  - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

(3) For the purpose of sub-regulation (2)(e)–

- (a) a particular social group might, depending on the circumstances in the applicant’s country of origin, include a group based on a common characteristic of sexual orientation;
- (b) sexual orientation cannot be understood to include acts considered to be criminal in accordance with the laws of Gibraltar;
- (c) gender and gender related aspects may be taken into consideration in determining whether a group is a particular social group.

(4) For the purposes of determining whether an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

## **Internal protection – refugees.**

32.(1) An applicant may be considered not to be in need of protection as a refugee if, on return to his country of origin or habitual residence–

- (a) in a part of that country he would have no well-founded fear of being persecuted or suffering serious harm; and
- (b) he can be reasonably be expected to stay in that part of the country.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of sub-regulation (1), regard shall be had to—

- (a) the circumstances prevailing in that part of the country; and
- (b) the personal circumstances of the applicant.

**Exclusion from refugee status.**

33.(1) The following are excluded from being granted refugee status—

- (a) an applicant who falls within the scope of Article 1D of the Geneva Convention relating to protection or assistance from organs or agencies of the United Nations other than the UNHCR. A person shall not be excluded from being granted refugee status when such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations;
- (b) an applicant who has been granted British Overseas Territory Citizenship by virtue of a connection with Gibraltar or Gibraltarian status under the Gibraltarian Status Act.

(2) An applicant is excluded from being granted refugee status where there are serious reasons for considering that he—

- (a) 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;
- (b) has committed a serious non-political crime outside Gibraltar prior to being granted refugee status in Gibraltar; for the purpose of this paragraph particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes; or

- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

(3) Sub-regulation (2) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

## **Cessation of refugee status.**

34.(1) A person shall cease to be a refugee as defined in regulation 27, if that person—

- (a) has voluntarily re-availed himself of the protection of his country of nationality;
- (b) having lost his nationality, has voluntarily reacquired it;
- (c) has acquired a new nationality, and enjoys the protection of the new country of nationality;
- (d) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
- (e) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality; or
- (f) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(2) Sub-regulations (1)(e) and (1)(f), apply where there has been a change of circumstances in the country of nationality or former habitual residence which is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.

## *Subsidiary Protection*

### **Definition of person eligible for subsidiary protection.**

35. For the purposes of these Regulations, a person is a person eligible for subsidiary protection if—

- (a) he does not qualify as a refugee;
- (b) substantial grounds have been shown for believing that, if returned to his country of origin or, in the case of a stateless person, to his country of former habitual residence, he would face a real risk of suffering serious harm as defined in regulation 37;
- (c) he is unable or, owing to such risk as is mentioned in paragraph (b), unwilling to avail himself of the protection of that country; and
- (d) regulation 40 does not apply to that person.

**Subsidiary protection needs arising sur place.**

36.(1) A real risk of suffering serious harm may–

- (a) be based on events which have taken place since the applicant left the country of origin or previous habitual residence;
- (b) be based on activities which the applicant has been engaged in since leaving the country of origin, in particular where the activities constitute the expression and continuation of convictions or orientations held in the country of origin or previous habitual residence.

**Definition of serious harm.**

37. Serious harm within the definition of person eligible for subsidiary protection consists of–

- (a) death penalty or execution;
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

**Actors of serious harm.**

38.(1) Actors of serious harm means the perpetrators of serious harm as defined in regulation 37.



(2) Serious harm may be perpetrated by the actors listed in regulation 30(2) and the provisions of regulation 30(3) and (4) apply equally in relation to actors of serious harm and the provision of protection as in relation to actors of persecution.

## **Internal protection - subsidiary protection.**

39.(1) An applicant may be considered not to be in need of subsidiary protection if, on return to his country of origin or habitual residence—

- (a) in a part of that country there would be no real risk of his suffering serious harm; and
- (b) he can be reasonably be expected to stay in that part of the country.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of sub-regulation (1), regard shall be had to—

- (a) the circumstances prevailing in that part of the country; and
- (b) the personal circumstances of the applicant

## **Exclusion from subsidiary protection status.**

40.(1) An applicant is excluded from being granted subsidiary protection status where there are serious reasons for considering that he—

- (a) 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;
- (b) has committed a serious crime;
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or
- (d) constitutes a danger to the community or to the security of Gibraltar.

(2) Sub-regulation (1) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) An applicant may be excluded from being granted subsidiary protection status, if–

- (a) prior to entry into Gibraltar that applicant has committed one or more crimes, outside the scope of sub-regulation (1), which would be punishable by imprisonment if committed in Gibraltar; and
- (b) that applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

#### **Cessation.**

41.(1) A person shall cease to be eligible for subsidiary protection status if the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required and sub-regulation (2) applies.

(2) Sub-regulation (1) applies if the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm.

#### **Part V**

#### **Grant, Refusal and Revocation of Refugee and Subsidiary Protection Status**

#### **Grant or refusal of refugee status.**

42.(1) The Authority shall grant refugee status to an applicant who is a refugee in accordance with these Regulations provided regulation 33 (exclusion) does not apply.

(2) The Authority shall, on granting refugee status–

- (a) determine in accordance with regulation 49, in respect of the refugee and any dependant family member of the refugee, whether–
  - (i) a residence permit will be granted; and
  - (ii) the duration of the residence permit to be granted; and
- (b) inform the person granted refugee status and any adult dependant family member, in writing–

- (i) that refugee status has been granted; and
- (ii) whether a residence permit will be issued and the duration of the residence permit to be issued.

(3) If the Authority decides to refuse to grant refugee status or has granted refugee status, but has decided not to issue a residence permit or to issue a residence permit of less than three years duration, it shall inform the applicant and any adult dependant family member in writing–

- (a) of the decision;
- (b) of the reasons in fact and in law for the decision; and
- (c) how to challenge the Authority’s decision.

## **Grant or refusal of subsidiary protection status.**

43.(1) The Authority shall grant subsidiary protection status to an applicant who is a person eligible for subsidiary protection in accordance with these Regulations provided regulation 40 (exclusion) does not apply.

(2) The Authority shall, on granting subsidiary protection status–

- (a) determine in accordance with regulation 49, in respect of the person with subsidiary protection status and any dependant family member, whether–
  - (i) a residence permit will be granted; and
  - (ii) the duration of the residence permit to be granted; and
- (b) inform the applicant and any adult dependant family member, in writing–
  - (i) that subsidiary protection status has been granted; and
  - (ii) whether a residence permit will be issued and the duration of the residence permit to be issued.

(3) If the Authority refuses to grant subsidiary protection status or has granted subsidiary protection status, but has decided not to issue a residence permit or to issue a residence permit of less than one year duration, it shall inform the applicant and any adult dependant family member in writing–

- (a) of the decision;
- (b) of the reasons in fact and in law for the decision; and
- (c) how to challenge the decision.

**Revocation or refusal to renew refugee status.**

44.(1) Where sub-regulation (2), (3) or (4) apply to a person who has been granted refugee status the Authority may—

- (a) revoke the refugee status; or
- (b) refuse to renew the refugee status.

(2) This sub-regulation applies where the person—

- (a) has ceased to be a refugee in accordance with the criteria in regulation 34;
- (b) was not a refugee at the time refugee status was granted.

(3) This sub-regulation applies where the person—

- (a) should have been, or is excluded from being, granted refugee status in accordance with regulation 33;
- (b) misrepresented or omitted to disclose facts, including through the use of false documents, and this was decisive for the granting of refugee status.

(4) This sub-regulation applies where—

- (a) there are reasonable grounds for regarding the person as a danger to the security of Gibraltar;
- (b) the person has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

(5) In situations described in sub-regulation (4), where no decision has been taken as to whether to grant refugee status, refugee status may be refused.

(6) Persons to whom sub-regulations (4) or (5) apply and are present in Gibraltar are entitled to rights set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention.

## **Revocation or refusal to renew subsidiary protection status.**

45.(1) Where sub-regulation (2), (3) or (4) apply to a person who has been granted subsidiary protection status, the Authority may—

- (a) revoke the subsidiary protection status; or
- (b) refuse to renew the subsidiary protection status.

(2) This sub-regulation applies if the person has ceased to be eligible for subsidiary protection status in accordance with regulation 41.

(3) This sub-regulation applies if the person should have been excluded from being eligible for subsidiary protection status in accordance with regulation 40.

(4) This sub-regulation applies if the person misrepresented or omitted to disclose facts, including the use of false documents, and that this was decisive for the granting of subsidiary protection status.

## **Part VI Content of International Protection**

### **General rules.**

46.(1) This Part shall apply—

- (a) without prejudice to the rights laid down in the Geneva Convention;
- (b) unless otherwise indicated, to persons with refugee status and persons with subsidiary protection status; and
- (c) unless otherwise indicated, to the dependant family members of a person with refugee status or subsidiary protection status save that it shall not apply to any dependant family member who—
  - (i) is or would be excluded from being granted refugee status by regulation 33; or

- (ii) is or would be excluded from being granted subsidiary protection status by regulation 40.

(2) In applying this Part particular account shall be taken of the specific needs of vulnerable persons such as 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.

(3) The best interest of the child shall be a primary consideration when any decision is taken under this Part which involves a minor.

#### **Protection from refoulement.**

47.(1) No person shall be deported from, removed from, or required to leave Gibraltar if—

- (a) there is a reasonable likelihood that that person will be persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion in the State to which they are returned;
- (b) such action would be in breach of the ECHR; or
- (c) to do so would otherwise be contrary to Gibraltar's international obligations.

(2) Where not prohibited by sub-regulation (1) a person, whether formally recognised as a refugee (whether by the court or the Government) or not, may be deported, removed or required to leave Gibraltar if—

- (a) there are reasonable grounds for considering that person to be a danger to the security of Gibraltar; or
- (b) that person, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of Gibraltar.

#### **Information.**

48.(1) As soon as possible after the grant of refugee or subsidiary protection status the Authority shall provide access to information, in a language which they are likely to understand, regarding the rights and obligations relating to their status to—

- (a) persons with refugee or subsidiary protection status;
- (b) dependant family members.

(2) The information referred to in sub-regulation (1) may take the form of an information document issued by the Authority in a language which the persons referred to in sub-regulation (1) are likely to understand.

## **Residence permits.**

49.(1) The Authority shall, as soon as possible after status has been granted, issue a residence permit valid for at least three years and renewable to—

- (a) persons granted refugee status in Gibraltar; and
- (b) dependant family members of the persons in paragraph (a).

(2) Sub-regulation (1) does not apply if—

- (a) compelling reasons of the security of Gibraltar or public order require –
  - (i) that a residence permit is not granted; or
  - (ii) that a residence permit is not granted for a period of at least three years;
- (b) there are reasonable grounds for considering that the person granted refugee status is a danger to the security of Gibraltar; or
- (c) the person granted refugee status has been convicted by final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

(3) The Authority—

- (a) shall, where sub-regulation (2)(a)(ii) applies, issue to the refugee and any dependant family member a residence permit valid for such shorter period of time, as is necessary for those reasons of the security of Gibraltar or public order;
- (b) may, where sub-regulation (2)(b) or (c) applies, issue a residence permit valid for such period of time, less than three years, as it considers appropriate to the refugee and any dependant family member of the refugee.

(4) The Authority shall, as soon as possible after status has been granted, issue a residence permit valid for at least one year and renewable to—

- (a) persons granted subsidiary protection status in Gibraltar; and
- (b) dependant family members of the persons in paragraph (a).

(5) If compelling reasons of the security of Gibraltar or public order require—

- (a) that a residence permit is not granted, sub-regulation (4) does not apply; or
- (b) that a residence permit is not granted for a period of at least one year, then a residence permit shall be issued by the Authority to the person with subsidiary protection status and any dependant family member for such shorter period of time as is necessary for those reasons of the security of Gibraltar or public order.

(6) There is no obligation to grant a residence permit to a dependant family member who—

- (a) is or would be excluded from being granted refugee status by section 33; or
- (b) is or would be excluded from being granted subsidiary protection status by section 40.

(7) The Authority may—

- (a) renew a residence permit;
- (b) replace a residence permit or issue a duplicate residence permit;
- (c) cancel a residence permit issued to a person with refugee status or dependant family member of such a person if—
  - (i) the person's refugee status has been revoked in compliance with regulation 44;
  - (ii) in the case of a dependant family member, the refugee status of the person on whom they are dependant has been revoked in compliance with regulation 44; or



- (iii) in the case of a dependant family member, he is, or should have been, excluded for being granted refugee status in accordance with regulation 33;
- (d) cancel a residence permit issued to a person with subsidiary protection status or dependant family member of such a person if—
  - (i) the person's subsidiary protection status has been revoked in compliance with regulation 45;
  - (ii) in the case of a dependant family member, the subsidiary protection status of the person on whom they are dependant has been revoked in compliance with regulation 45; or
  - (iii) in the case of a dependant family member, he is, or should have been, excluded for being granted subsidiary protection status in accordance with regulation 40.

## **Travel documents.**

50.(1) Unless compelling reasons of public order or the security of Gibraltar otherwise require, the Authority shall issue, or arrange for the issuing, to persons granted refugee status and dependant family members with travel documents, in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside Gibraltar.

(2) Unless compelling reasons of public order or the security of Gibraltar otherwise require, the Authority shall issue, or arrange for the issuing, to persons granted subsidiary protection status and dependant family members who are unable to obtain a national passport, with documents which allow them to travel outside Gibraltar. Such documents shall be provided at least when serious humanitarian reasons arise that require their presence in a State or territory outside of Gibraltar.

## **Access to employment, vocational training and work experience.**

51.(1) Unless otherwise specified this regulation applies to—

- (a) persons with refugee or subsidiary protection status; and
- (b) their dependant family members.

(2) Persons listed in sub-regulation (1) shall be entitled to engage in employed or self-employed activities and shall be entitled workers for the purpose of the Employment Regulations 1994, subject to—

- (a) the law in force in Gibraltar in relation to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment; and
- (b) the rules in force in Gibraltar which are applicable to the profession in question.

(3) Persons listed in sub-regulation (1) shall be entitled to have access to vocational training and practical work experience on the same terms as Gibraltarians.

#### **Access to education.**

52.(1) The following minors shall be entitled to education in the education system established under the Education and Training Act under the same conditions as Gibraltarians—

- (a) minors granted refugee or subsidiary protection status;
- (b) minors who are dependant family members of persons granted refugee or subsidiary protection status.

(2) The following adults shall be entitled to have access to the general education system, further training or retraining under the same conditions as non-EU nationals legally resident in Gibraltar—

- (a) persons with refugee or subsidiary protection status;
- (b) dependant family members of persons listed in paragraph (a).

(3) Foreign diplomas, certificates and other evidence of formal qualifications held by persons with refugee status, subsidiary protection status or dependant family members shall be recognized in Gibraltar in the same manner as foreign diplomas, certificates and other evidence of formal qualifications held by Gibraltarians.

#### **Social Assistance.**

53.(1) This regulation applies to—

(a) persons granted refugee or subsidiary protection status in Gibraltar; and

(b) dependant family members of the persons in paragraph (a).

(2) The persons in sub-regulation (1) shall be eligible for social assistance, including the Social Assistance Fund.

## Health care.

54.(1) This regulation applies to—

(a) persons granted refugee or subsidiary protection status; and

(b) dependant family members of the persons in paragraph (a).

(2) Persons in sub-regulation (1) shall be entitled to health care on the same eligibility conditions as apply under the Group Medical Practice Scheme established by the Medical (Group Practice Scheme) Act.

(3) Persons in sub-regulation (1) who have special health needs (such as pregnant women, disabled people, unaccompanied minors or 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 have access to medical or other assistance appropriate for dealing with such needs from the Gibraltar Health Authority.

## Unaccompanied minors.

55.(1) The Authority shall, as soon as possible after the granting of status, ensure (including, where necessary, by taking legal proceedings) that unaccompanied minors are represented by—

(a) a legal guardian;

(b) where necessary by the Social Services Agency or such other organisation, body or agency as is responsible for the care and well-being of minors in Gibraltar; or

(c) any other appropriate representative.

(2) Regular assessments of the care and representation provided and the minor's needs and welfare shall be made by the Social Services Agency.

- (3) Unaccompanied minors shall be placed–
- (a) with adult relatives;
  - (b) with a foster carer in accordance with the law on foster care in force in Gibraltar for the time being;
  - (c) in accommodation centres with special provisions for minors;  
or
  - (d) in other accommodation suitable for minors.
- (4) In determining where a minor shall be placed under sub-regulation (3)–
- (a) the views of the minor shall be taken into account in accordance with his age and degree of maturity; and
  - (b) as far as possible, siblings shall be kept together, taking into account the best interests of the minors concerned and, in particular, their age and degree of maturity.
- (5) Changes of residence of unaccompanied minors shall be limited to a minimum.
- (6) The Authority shall endeavor to trace the members of the minor's family as soon as possible, Where there may be a threat to the life or integrity of the minor or the minor's close relatives, particularly if they have remained in the country of origin, the collection, processing and circulation of information concerning those persons shall be undertaken on a confidential basis, so as to avoid jeopardising their safety.
- (7) All persons working with unaccompanied minors–
- (a) shall have had or shall receive appropriate training concerning the needs of unaccompanied minors; and
  - (b) shall be subject to a legal requirement of confidentiality in respect to any information which they obtain in the course of their work including any information which they obtain from unaccompanied minors.

**Integration facilities.**

56. The Government shall make provision for integration programmes to facilitate the integration of persons with refugee status or subsidiary protection status and their dependant family members, if any, into Gibraltar society.

## **Repatriation.**

57.(1) The Government may provide assistance to persons with refugee or subsidiary protection status and their dependant family members who wish to repatriate.

(2) The Authority may determine that this regulation does not apply to a dependant family member of a person with refugee or subsidiary protection status where necessary for reasons of the security of Gibraltar or public order. Where the Authority so determines it shall, in writing, inform–

- (a) the dependant family member concerned; and
- (b) the body responsible for such repatriation programs.

## **PART VI**

### **Staff Training, Confidentiality and Administrative Cooperation**

#### **Staff.**

58. The Government shall ensure that staff within government bodies and other organisations implementing these Regulations–

- (a) have received the necessary training in respect of the needs of applicants for and holders of refugee and subsidiary protection status, the relevant law and other matters covered by these Regulations; and
- (b) are subject to a requirement of confidentiality in respect to any information which they obtain in the course of their work including any information which they receive from refugees, persons with subsidiary protection status or their dependant family members.

#### **Contact point and cooperation.**

59.(1) The Authority shall be the contact point for the purpose of these Regulations as required by Article 35 of Council Directive 2004/83/EC.

(2) The Authority shall liaise and exchange information with Member States and the European Commission as necessary and appropriate in connection with these Regulations.

**Keeping of data and cooperation with the European Commission.**

60 (1) The Authority shall record and keep records of the number of asylum applicants and dependant family members including—

- (a) such information broken down by sex of the individuals;
- (b) such information broken down by the age of the individuals;
- (c) numbers of unaccompanied minor applicants; and
- (d) such other information as may be required by the European Commission.

(2) The Authority shall provide to the European Commission at regular intervals and as requested—

- (a) the data listed in sub-regulation (1);
- (c) full information on the type, name and format of the documents provided for by regulation 8.