

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5090 GIBRALTAR Thursday 21st September 2023

LEGAL NOTICE NO. 272 OF 2023

IMMIGRATION, ASYLUM AND REFUGEE ACT

ASYLUM (AMENDMENT) REGULATIONS 2023

In exercise of the powers conferred upon it by section 55 of the Immigration, Asylum and Refugee Act and all other enabling powers, the Government has made the following Regulations-

Title.

1. These Regulations may be cited as the Asylum (Amendment) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment to the Asylum Regulations 2008.

- 3.(1) The Asylum Regulations 2008 are amended in accordance with these Regulations-

(2) In regulation 10-

- (a) delete sub-regulation (4); and
- (b) after sub-regulation (8) insert-

“(9) This regulation is subject to regulation 10A.”.

(3) After regulation 10 insert-

“Detention.

10A.(1) An applicant or dependant family member may be detained only where any of the following apply-

- (a) the detention is necessary in order to determine or verify the applicant’s or dependant family member’s identity or nationality;
- (b) the detention is necessary in order to determine those elements on which the application for international protection is based which could not be

- obtained in the absence of detention, in particular when there is a risk of absconding of the applicant or dependant family member;
- (c) the detention is necessary in order to decide, in the context of a procedure, on the applicant's dependant family member's right to enter Gibraltar;
 - (d) the applicant or dependant family member is subject to an order for removal under section 59 of the Act, or to proceedings in which such an order is sought, and there are reasonable grounds to believe that the applicant or dependant family member is making the application for international protection merely in order to delay or frustrate the enforcement of the removal decision or the proceedings seeking such order;
 - (e) the detention is necessary for the protection of the security of Gibraltar or public order;
 - (f) where the detention is in accordance with the criminal law of Gibraltar; or
 - (g) the detention is in accordance with the Mental Health Act 2016.
- (2) A detention order on the grounds set out in paragraphs (a) to (f) may be made by the Magistrates' Court.

Guarantees for detained applicants.

- 10B.(1) An applicant or dependant family member detained under regulation 10A(a) to (e) may be detained only for as short a period as possible and only for as long as the grounds in regulation 10A remain applicable.
- (2) Where the Magistrates' Court makes an order under regulation 10A(2) for the detention of the applicant or dependant family member the order-
- (a) must be made in writing;
 - (b) must state the reasons in fact and in law on which it is based;
 - (c) contain information on the procedure which is available in order to challenge the decision;
 - (d) be written in a language that the applicant or family member is likely to understand.
- (3) An applicant or dependant family member may appeal to the Supreme Court against an order under regulation 10A(2).

- (4) An applicant or dependant family member may apply to the Magistrates' Court to review an order under regulation 10A(2) where-
- (a) the detention is of a prolonged duration;
 - (b) relevant circumstances arise; or
 - (c) new information becomes available
- which may affect the lawfulness of detention.”.

Dated: 21st September 2023.

F R PICARDO,
Chief Minister,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Asylum Regulations 2008 to insert a new provision providing for the detention of asylum applicants or dependant family members in limited circumstances.