

Subsidiary Legislation made under s.55.

Asylum (Procedures) Regulations 2012**LN.2012/155**

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Immigration, Asylum and Refugee

2012/155

Asylum (Procedures) Regulations 2012

In exercise of the powers conferred on it by section 55 of the Immigration, Asylum and Refugee Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, the Government has made the following Regulations –

PART I

Preliminary

Title and commencement.

1. These Regulations may be cited as the Asylum (Procedures) Regulations 2012 and come into operation on the day of publication.

Interpretation.

2. In these Regulations, unless the context otherwise requires –

“application for asylum” means an application made by a third country national or stateless person which can be understood as a request for international protection under the Geneva Convention and any application for international protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;

“applicant” shall have the meaning assigned to it by regulation 2(1) of the Asylum Regulations 2008;

“Authority” means the authority designated under regulation 4;

“counsel” has the meaning given to it in section 2 of the Interpretation and General Clauses Act;

“Directive” means the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, as the same may be amended from time to time;

“final decision” means a decision –

- (a) on whether the applicant be granted refugee status by virtue of the Asylum Regulations 2008; and

- (b) which is no longer subject to any remedy by way of appeal under regulation 31 irrespective of whether that remedy has the effect of allowing the applicant to remain in Gibraltar pending its outcome;

“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;

“Minister” means the Minister with responsibility for personal status;

“refugee” shall have the meaning assigned to it by regulation 27 of the Asylum Regulations 2008;

“refugee status” means the status granted in Gibraltar under regulation 42 of the Asylum Regulations 2008;

“Registrar” means the Registrar of the Supreme Court;

“remain in Gibraltar” means to remain in Gibraltar including at the border or in any transit zone of Gibraltar in which the application for asylum has been made or is being examined;

“representative” means—

- (a) a person acting on behalf of an organisation representing an unaccompanied minor as legal guardian;
- (b) a person acting on behalf of the Care Agency if it is responsible for the care and well-being of an unaccompanied minor; or
- (c) any other appropriate representation appointed to ensure the best interests of that minor;

“safe country of origin” shall be construed by reference to Articles 29, 30 and 31 of the Directive and regulation 23;

“unaccompanied minor” means a person below the age of 18 who arrives in Gibraltar unaccompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively taken into the care of such a person and it includes a minor who is left unaccompanied after he has entered Gibraltar;

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

“withdrawal of refugee status” means the decision by the Authority to revoke, end or refuse to renew the refugee status of a person in accordance with regulation 44 of the Asylum Regulations 2008.

PART II

General provisions

Application of these Regulations.

3.(1) These Regulations shall—

- (a) be applied in order to establish minimum standards on procedures in Gibraltar for granting and withdrawing refugee status;
- (b) apply to an application for asylum, including at the border or in any transit zone of Gibraltar, and to the withdrawal of refugee status; and
- (c) not apply in cases of requests for diplomatic or territorial asylum submitted to representations of the United Kingdom in relation to Gibraltar.

(2) Where an application for asylum is examined both as an application on the basis of the Geneva Convention and as an application for other kinds of international protection given under the circumstances defined by regulation 37 of the Asylum Regulations 2008, the Authority must apply these Regulations throughout the procedure.

(3) The Authority may, with the approval of the Minister, apply these Regulations in respect of the procedure on applications for any kind of international protection.

The Authority.

4.(1) The Head of the Civil Status and Registration Office is designated as the Authority for the purposes of these Regulations, and includes such persons to whom he delegates his authority under these Regulations.

(2) The Authority shall be responsible for appropriate examination of an application for asylum in accordance with the provisions of these Regulations.

(3) Notwithstanding subregulation (1), the Minister may appoint such person, Government Department, Agency or body to be responsible for—

- (a) processing cases in which the transfer of an applicant to a State is being considered in accordance with rules establishing criteria and mechanisms for determining which State is responsible for considering an application for asylum, until the

transfer takes place or the requested State has refused to take charge of or take back the applicant;

- (b) taking a decision on the application, in the light of national security provisions, provided the Authority is consulted prior to this decision as to whether the applicant qualifies as a refugee under the Asylum Regulations 2008;
- (c) conducting a preliminary examination pursuant to regulation 26, provided it has access to the applicant's file regarding the previous application;
- (d) processing cases in the framework of the procedures provided for pursuant to Article 35(1) of the Directive;
- (e) refusing permission to enter in the framework of the procedure provided for in regulation 27(1) to (4), subject to the conditions and as set out therein;
- (f) establishing that an applicant is seeking to enter or has entered Gibraltar from a safe third country pursuant to regulation 28, subject to the conditions and as set out in that regulation.

PART III

Basic principles and guarantees

Procedure for submitting an application for asylum.

5.(1) Every applicant for asylum must lodge the application for asylum in person to—

- (a) the Royal Gibraltar Police;
- (b) the Authority;
- (c) a Government Department; or
- (d) an agent acting on behalf of the Government or the Royal Gibraltar Police.

(2) An applicant who is an adult having legal capacity may make the application for asylum on his own behalf and on behalf of his dependants.

(3) Where an application for asylum is made under subregulation (2) on behalf of an adult dependant, that dependant must consent to the lodging of the application for asylum on his behalf, failing which he shall have an opportunity to make an application for asylum on his own behalf.

(4) The consent referred to in subregulation (3) shall be requested at the time the application for asylum is lodged or, at the latest, when the personal interview with the dependant adult is conducted.

(5) A minor, whether accompanied or not, and whether married or unmarried, may also apply for asylum and, in view of the minor's potential vulnerability, particular priority and care must be given to the handling of the case of such a minor.

(6) Where an unaccompanied minor makes an application for asylum the Authority must immediately take measures to ensure that—

- (a) a representative is appointed to represent and assist the unaccompanied minor with respect to the examination of the application for asylum; and
- (b) the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the interview and, where appropriate, how to prepare himself for the interview.

Right to remain in Gibraltar pending the examination of the application for asylum.

6.(1) A person who has lodged an application for asylum must be allowed to remain in Gibraltar, for the sole purpose of the procedure, until the Authority has made a decision in accordance with the procedures at first instance set out in Part IV but this right to remain shall not constitute an entitlement to a residence permit.

(2) Subregulation (1) may not apply where the Authority has decided—

- (a) not to further examine a subsequent application for asylum in accordance with regulation 26; or
- (b) to surrender or extradite the applicant—
 - (i) in accordance with a European arrest warrant,
 - (ii) to a third country, or
 - (iii) to an international criminal court or tribunal.

Examination of applications for asylum.

7.(1) No application for asylum shall be rejected or excluded from examination on the sole ground that it has not been made as soon as possible.

(2) No decision shall be made by the Authority on any application for asylum without an appropriate examination.

(3) The Authority must—

- (a) examine the application for asylum and take the decision on the application for asylum individually, objectively and impartially;
- (b) obtain precise and up-to-date information from various sources, such as the UNHCR, as to the general situation prevailing in the countries of origin of the applicant for asylum and, where necessary, in countries through which the applicant has transited;
- (c) make available the information obtained under paragraph (b) to the person responsible for examining applications for asylum and taking decisions; and
- (d) ensure that the persons examining applications for asylum and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law.

(4) The Authority shall ensure that the Supreme Court is provided with the information referred to in subregulation (3)(b) when hearing an appeal under these Regulations.

Decision of the Authority.

8.(1) The Authority must—

- (a) on any application for asylum, give its decision in writing;
- (b) ensure that—
 - (i) where an application for asylum is rejected, the reasons in fact and in law are stated in the decision, and
 - (ii) information on how to challenge a decision rejecting the application for asylum is given in writing.

(2) Subregulation (1)(b)(i) shall not apply if the applicant is granted a status that offers the same rights and benefits under the law of Gibraltar and European Union law as refugee status offers under the Asylum Regulations 2008.

(3) In a case covered by subregulation (2)—

- (a) the reasons for not granting refugee status must be stated in the applicant's file; and
 - (b) the applicant must have, upon request, access to that file.
- (4) Subregulation (1)(b)(ii) shall not apply if the applicant has been provided with the information at an earlier stage either in writing or by electronic means accessible to the applicant.
- (5) Where an application for asylum is lodged on behalf of any one or more adult dependants and the applicant also lodged his application for asylum on the same grounds under regulation 5(3), the Authority may take one single decision on the applications for asylum covering all dependants.

Guarantees for applicants.

9.(1) The Authority must inform an applicant, in a language that he may reasonably be supposed to understand, of—

- (a) the procedure to be followed;
- (b) his rights and obligations during the procedure;
- (c) the possible consequences of not complying with his obligations and not cooperating with the authorities; and
- (d) the time-frame, as well as the means at his disposal, for fulfilling the obligation to submit the elements as referred to in regulation 26 of the Asylum Regulations 2008,

in time to enable him to exercise the rights guaranteed in these Regulations and to comply with the obligations described in regulation 10.

(2) The Authority must—

- (a) provide the applicant with the services of an interpreter for submitting his case to the Authority whenever necessary;
- (b) not deny the applicant the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR in Gibraltar pursuant to an agreement;

- (c) give the applicant directly or through his counsel, notice in reasonable time of the determination of his application for asylum; and
 - (d) provide the applicant with the information under paragraph (c), including information on how to challenge the rejection of an application for asylum, in a language that he may reasonably be supposed to understand if he is not represented by counsel or where free legal assistance is not available.
- (3) The services referred to in subregulation (2)(a) must be provided to the applicant if the applicant is called upon for interviews under regulations 11 and 12 and appropriate communication cannot be ensured without such services.
- (4) In a case to which subregulation (3) applies, and in any other case where the Authority calls upon the applicant, the services referred to in subregulation (2)(a) shall be paid for out of public funds.

Obligations of an applicant.

10.(1) An applicant for asylum may be required to—

- (a) report to the Authority or appear before it in person without delay or at a time specified by the Authority;
- (b) hand over his passport and other documents in his possession that are relevant to the examination of the application;
- (c) inform the Authority of his current place of residence or address and of any changes thereof as soon as possible; and
- (d) cooperate with and as directed by the Authority,

in so far as this is necessary for processing the application.

(2) After receiving the application for asylum, the Authority may—

- (a) search the applicant and the items he carries with him;
- (b) take a photograph of the applicant; and
- (b) record the applicant's oral statements, if he has previously been informed that they will be recorded.

Personal interview.

11.(1) No decision shall be taken on any application for asylum unless the applicant is given the opportunity of a personal interview on the application for asylum with a person authorised by the Authority to conduct the interview.

(2) The Authority may also give the opportunity of a personal interview to a dependant falling under regulation 5(2), to be conducted by a duly authorised person.

(3) The personal interview of a minor shall be conducted in accordance with regulation 15.

(4) The personal interviews referred to in subregulations (1) to (3) may be omitted if the Authority—

- (a) is able to take a positive decision on the basis of the evidence available; or
- (b) has already had a meeting with the applicant for the purpose of assisting him with completing his application for asylum and submitting the essential information regarding the application for asylum, in terms of regulation 25 of the Asylum Regulations 2008;
- (c) on the basis of a complete examination of information provided by the applicant, considers the application for asylum to be unfounded in cases where the circumstances mentioned in regulation 20(5)(a), (c), (g), (h) and (j) apply.

(5) The personal interviews referred to in this regulation may also be omitted where it is not reasonably practicable, in particular where the Authority is of the view that the applicant or a dependant, as the case may be, is unfit or unable to be interviewed owing to enduring circumstances beyond his control, and in such a case the Authority may require a medical or psychological certificate.

(6) Where subregulation (5) applies the Authority shall take reasonable steps to allow the applicant or the dependant to submit further information.

(7) The absence of a personal interview in accordance with the provisions of this regulation shall not prevent the Authority from taking a decision on the application.

(8) The absence of a personal interview by reason of the matters set out in subregulation (4)(b), (4)(c), (5) and (6) shall not adversely affect the decision of the Authority.

(9) Notwithstanding regulation 17(3), the Authority may, at the time of deciding on the application for asylum, take into account the applicant's failure to appear for the personal interview, unless the applicant had good reasons for the failure to appear.

(10) Where an applicant is represented by counsel, the absence of counsel shall not prevent the Authority from conducting the personal interview.

Requirements for a personal interview.

12.(1) A personal interview must take place—

- (a) under conditions that ensure appropriate confidentiality; and
- (b) without the presence of the members of the applicant's family unless the Authority considers it necessary for an appropriate examination to have other family members present.

(2) To ensure that the personal interview is conducted under conditions that allow the applicant to present the grounds for his application for asylum in a comprehensive manner, the Authority must take steps to—

- (a) ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application for asylum, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so; and
- (b) select an interpreter, where necessary, who is able to ensure appropriate communication between the applicant and the person conducting the interview.

(3) For the purposes of subregulation (2)(b) the communication need not necessarily take place in the language preferred by the applicant if there is another language which the applicant may reasonably be supposed to understand and in which the applicant is able to communicate.

(4) This regulation also applies to the meeting referred to in regulation 11(4)(b).

Status of the report of a personal interview in the procedure.

13.(1) The Authority must ensure that—

- (a) a written report is made of every personal interview, containing at least the essential information regarding the application for asylum, as presented by the applicant, in terms of regulation 25 of the Asylum Regulations 2008; and
- (b) the applicant has timely access to the report of the personal interview.

(2) If the access to the report of the personal interview is only granted after the decision of the Authority, the Authority must ensure that access to the report is possible as soon as necessary for allowing an appeal to be prepared and lodged in due time.

(3) On finishing the personal interview, the authorised person referred to in regulation 11(1) may request the applicant's approval of the contents of the report of the personal interview.

(4) Where the applicant refuses to approve the contents of the report—

(a) the reasons for this refusal must be entered in the applicant's file; and

(b) such refusal shall not prevent the Authority from taking a decision on his application.

(5) This regulation also applies to the meeting referred to in regulation 11(2)(b).

Scope of legal assistance and representation.

14.(1) An applicant for asylum must have the opportunity, at his own cost, to consult counsel in an effective manner on matters relating to his application for asylum.

(2) Where under Part I, paragraph 1C of the Schedule to the Legal Aid and Assistance Act an applicant for asylum seeks free legal assistance or representation or both, he shall be considered to be ordinarily resident in Gibraltar for the purposes of rule 6(2) of the Legal Aid and Assistance Rules.

(3) Subregulation (2) shall not entitle the applicant to legal assistance for any other onward appeal.

(4) Where an application for legal assistance is being considered on the basis of the merits of the case, the Registrar shall ensure that such an application is not arbitrarily restricted.

(5) The Authority shall allow an applicant's counsel access to such information in the applicant's file as is liable to be examined by the Supreme Court pursuant to Part VI, insofar as the information is relevant to the examination of the application for asylum.

(6) Notwithstanding subregulation (5), the Authority may refuse any access to information by counsel if the disclosure of information or sources—

(a) would jeopardise—

(i) the security of Gibraltar,

- (ii) the security of the international organisation or any person providing the information, or
 - (iii) the security of any person to whom the information relates, or
- (b) where—
- (i) the investigative interests relating to the examination of applications for asylum by the Authority, or
 - (ii) the international relations of Gibraltar,
- would be compromised.

(7) Where access has been denied due to any reason under subregulation (6), access to the information or sources in question must be available to the Supreme Court, except where such access is precluded in cases concerning the security of Gibraltar.

(8) Counsel for an applicant shall have access to closed areas, such as detention facilities and transit zones, for the purpose of consulting the applicant.

(9) Access referred to in subregulation (8) shall only be limited where it is objectively necessary for the security, public order or administrative management of an area, or in order to ensure an efficient examination of the application for asylum, provided that access by counsel is not thereby severely limited or rendered impossible.

Guarantees for unaccompanied minors.

15.(1) Without prejudice to regulations 11 and 13, the Authority must—

- (a) appoint a representative to represent, assist or both represent and assist an unaccompanied minor with respect to the examination of an application for asylum and such representative can also be the representative referred to in regulation 20 of the Asylum Regulations 2008;
- (b) allow the representative—
 - (i) to inform the unaccompanied minor about the meaning and possible consequences of the personal interview,
 - (ii) where appropriate, to inform that minor on how to prepare for the personal interview, and

- (iii) to be present at the personal interview and to ask questions or make comments, within the framework set by the person who conducts the interview.
- (2) The Authority may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.
- (3) The Authority may decide not to appoint a representative where the unaccompanied minor—
 - (a) will, in all likelihood, reach the age of maturity before a decision at first instance is taken; or
 - (b) can avail himself, free of charge, of counsel to fulfil the tasks assigned above to the representative;
 - (c) is married or has been married; or
 - (d) is at least 16 years, unless that minor is unable to pursue his application for asylum without a representative.
- (4) The Authority must ensure that—
 - (a) if an unaccompanied minor has a personal interview on his application for asylum as referred to in regulations 11, 12 and 13, that interview is conducted by a person who has the necessary knowledge of the special needs of minors; and
 - (b) an official with the necessary knowledge of the special needs of minors prepares the decision by the Authority on the application for asylum of an unaccompanied minor.
- (5) The Authority may, if necessary, require a medical examination to determine the age of an unaccompanied minor within the framework of the examination of an application for asylum.
- (6) Where medical examination is to be relied upon, the Authority shall ensure that the—
 - (a) unaccompanied minor is informed, prior to the examination of his application for asylum and in a language which he may reasonably be supposed to understand, of the possibility that his age may be determined by medical examination, and such information shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination

of the application for asylum, as well as the consequences of refusal to undergo the medical examination;

- (b) unaccompanied minor, his representative or both consent to carry out an examination to determine his age; and
- (c) decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

(7) The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the Authority from taking a decision on the application for asylum.

(8) In the application of this regulation the Authority must take into account as a primary consideration the best interests of the minor at all times.

Detention.

16.(1) No person shall be held in detention for the sole reason that the person is an applicant for asylum.

(2) Where an applicant for asylum is held in detention, the Registrar shall ensure that any applications to the Supreme Court are dealt with as soon as is reasonably practicable.

Procedure in case of withdrawal or abandonment of the application for asylum.

17.(1) If the applicant explicitly and in writing withdraws the application for asylum, the Authority must either—

- (a) decide to discontinue the examination without taking a decision; or
- (b) reject the application for asylum.

(2) Where it proceeds under subregulation (1)(a), the Authority must enter a notice in the applicant's file.

(3) If there is reasonable cause to consider that the applicant for asylum has implicitly withdrawn or abandoned his application for asylum, the Authority must either—

- (a) decide to discontinue the examination; or

- (b) reject the application for asylum on the ground that the applicant has not established an entitlement to refugee status in accordance with the Asylum Regulations 2008.
- (4) For the purposes of this regulation, the Authority may assume that the applicant has implicitly withdrawn or abandoned his application for asylum in particular when it is ascertained that–
- (a) the applicant–
- (i) has failed to respond to requests to provide information essential to his application for asylum in terms of regulations 25 and 26 of the Asylum Regulations 2008, or
 - (ii) has not appeared for a personal interview as provided for in regulations 11, 12 and 13 unless the applicant demonstrates within a reasonable time that his failure was due to circumstances beyond his control; or
- (b) the applicant–
- (i) has absconded or left without authorisation the place where he lived or was held, without contacting the Authority within a reasonable time, or
 - (ii) has not within a reasonable time complied with reporting duties or other obligations to communicate.
- (5) Where an applicant reports again to the Authority after a decision to discontinue as referred to in subregulation (3) is taken, he may request that his case be reopened, unless the request is examined in accordance with regulation 26.
- (6) The Authority–
- (a) must not remove a person from Gibraltar contrary to the principle of non-refoulement; and
 - (b) may take up the examination at the stage where it was discontinued if the Authority re-opens the case under subregulation (5).
- (7) For the purpose of implementing this regulation, the Authority may prescribe time-limits for different actions by the applicants or issue guidelines to be followed by the applicants.

The role of the UNHCR.

18.(1) The UNHCR shall be permitted to—

- (a) have access to applicants for asylum, including those in detention and in airport or port transit zones;
- (b) have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees thereto;
- (c) present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to the Authority regarding individual applications for asylum at any stage of the procedure.

(2) Subregulation (1) shall also apply to an organisation which is working in Gibraltar on behalf of the UNHCR pursuant to an agreement with the Government.

Collection of information on individual cases.

19. For the purposes of examining individual cases, the Authority must not—

- (a) directly disclose information regarding individual applications for asylum, or the fact that an application for asylum has been made, to the alleged actor of persecution of the applicant for asylum; and
- (b) obtain any information from the alleged actor of persecution in a manner that would result in such actor being directly informed of the fact that an application for asylum has been made by the applicant in question, and would jeopardise the physical integrity of the applicant and his dependants, or the liberty and security of his family members still living in the country of origin.

PART IV

Procedures at first instance

Examination procedure.

20.(1) The Authority must process applications for asylum in an examination procedure in accordance with the basic principles and guarantees set out in Part III.

(2) The Authority must ensure that—

- (a) the procedure referred to in subregulation (1) is concluded as soon as possible, without prejudice to an adequate and complete examination; and

- (b) where a decision cannot be taken within six months, the applicant must either—
- (i) be informed of the delay; or
 - (ii) receive, upon his request, information on the time-frame within which the decision on the application for asylum is to be expected.
- (3) Where the Authority provides a time-frame for the decision on the application for asylum under subregulation (2)(b)(ii), it shall not constitute an obligation for the Authority to take a decision within that time-frame.
- (4) The Authority may, in dealing with the application for asylum, prioritise or accelerate any examination in accordance with the basic principles and guarantees set out in Part III, including where the application for asylum is likely to be well-founded or where the applicant has special needs.
- (5) The Authority may also provide that an examination procedure in accordance with the basic principles and guarantees set out in Part III be prioritised or accelerated if—
- (a) the applicant, in submitting the application for asylum and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether he qualifies as a refugee under the Asylum Regulations 2008;
 - (b) the applicant clearly does not qualify as a refugee or for refugee status under the Asylum Regulations 2008;
 - (c) the application for asylum is considered to be unfounded because—
 - (i) the applicant is from a safe country of origin, or
 - (ii) the country, which is not a Member State, is considered to be a safe third country for the applicant, without prejudice to regulation 24(1),
 - (d) the applicant has misled the Authority by presenting false information or documents or by withholding relevant information or documents with respect to his identity or nationality or both that could have had a negative impact on the decision;
 - (e) the applicant has filed another application for asylum stating other personal data;
 - (f) the applicant has not produced information establishing with a reasonable degree of certainty his identity or nationality, or it is likely that, in bad faith, he has

destroyed or disposed of an identity or travel document that would have helped establish his identity or nationality;

- (g) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make his claim clearly unconvincing in relation to his having been the object of persecution referred to in the Asylum Regulations;
- (h) the applicant has submitted a subsequent application for asylum which does not raise any relevant new elements with respect to his particular circumstances or to the situation in his country of origin;
- (i) the applicant has failed without reasonable cause to make his application for asylum earlier, having had opportunity to do so;
- (j) the applicant is making an application for asylum merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in his removal;
- (k) the applicant has failed without good reason to comply with obligations referred to in regulation 25 of the Asylum Regulations 2008 or in regulations 10(1)(a) and (b) and 17(3) and (4);
- (l) the applicant entered into Gibraltar unlawfully or prolonged his stay unlawfully and, without good reason, has either not presented himself to the Authority or filed an application for asylum as soon as possible, given the circumstances of his entry;
- (m) the applicant is a danger to the security or public order of Gibraltar, or the applicant has been forcibly expelled for serious reasons of public security and public order under the law of Gibraltar;
- (n) the applicant refuses to comply with an obligation to have his fingerprints taken;
or
- (o) the application for asylum was made by an unmarried minor after the application for asylum of the parents or parent responsible for the minor has been rejected and no relevant new elements were raised with respect to his particular circumstances or to the situation in his country of origin.

Inadmissible applications for asylum.

21.(1) In addition to cases in which an application for asylum is not examined in accordance with Regulation (EC) No 343/2003, the Authority shall not be required to examine whether

the applicant qualifies as a refugee under the Asylum Regulations 2008 where an application for asylum is considered inadmissible under this regulation.

(2) The Authority may consider an application for asylum as inadmissible under this regulation if—

- (a) the applicant has been granted refugee status by a Member State;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to regulation 22;
- (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to regulation 23;
- (d) the applicant is allowed to remain in Gibraltar on some other grounds—
 - (i) and as a result of this he has been granted a status equivalent to the rights and benefits of the refugee status by the Asylum Regulations 2008, or
 - (ii) which protect him against refoulement pending the outcome of a procedure for the determination of status pursuant to subparagraph (i),
- (e) the applicant has lodged an identical application for asylum after a final decision; or
- (f) a dependant of the applicant lodges an application for asylum, after he has, in accordance with regulation 5(3), consented to have his case be part of an application for asylum made on his behalf, and there are no facts relating to the dependant's situation which justify a separate application for asylum.

The concept of first country of asylum.

22.(1) A country can be considered to be a first country of asylum for a particular applicant for asylum if that applicant—

- (a) has been recognised in that country as a refugee and he can still avail himself of that protection; or
- (b) otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement,

subject to the condition that the applicant will be re-admitted to that country.

(2) In applying the concept of first country of asylum to the particular circumstances of an applicant for asylum the Authority may take into account regulation 23(1).

The safe third country concept.

23.(1) The Authority may apply the safe third country concept only where it is satisfied that a person seeking asylum will be treated in accordance with the following principles in the third country concerned—

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) the principle of non-refoulement in accordance with the Geneva Convention is respected;
- (c) the prohibition of removal to another State that does not respect the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law; and
- (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

(2) For the purposes of the application of the safe third country concept the Authority shall adopt procedures which shall include—

- (a) the requirement of a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country;
- (b) the methodology by which the Authority will satisfy itself that the safe third country concept may be applied to a particular country or to a particular applicant, and such methodology shall include case-by-case consideration of the safety of the country for a particular applicant, the designation of countries considered to be generally safe or both;
- (c) in accordance with international law, procedures allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he would be subjected to torture, cruel, inhuman or degrading treatment or punishment.

(3) When implementing a decision solely based on this regulation, the Authority must—

- (a) inform the applicant accordingly; and
- (b) provide him with a document informing the authorities of the third country, in the language of that country, that the application for asylum has not been examined in substance.

(4) Where the third country does not permit the applicant for asylum to enter its territory, the Authority must ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Part III.

(5) The Minister must ensure that the European Commission is informed periodically of the countries to which the safe third country concept is applied in accordance with the provisions of this regulation.

Unfounded applications for asylum.

24.(1) Without prejudice to regulation 17, the Authority may only consider an application for asylum as unfounded if the Authority has established that the applicant does not qualify for refugee status under the Asylum Regulations 2008.

(2) In the cases mentioned in regulation 20(5)(b) and in cases of unfounded applications for asylum in which any of the circumstances listed in regulation 20(5)(a) and (c)(i) to (o) apply, the Authority may also consider an application for asylum as manifestly unfounded.

The safe country of origin concept.

25.(1) Where a third country is designated as a safe country of origin pursuant to Article 29 or 30 of the Directive, the Authority may, after an examination of the application for asylum, consider it a safe country of origin only if the applicant—

- (a) has the nationality of that country; or
- (b) is a stateless person and was formerly habitually resident in that country,

and has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances and in terms of his qualification as a refugee under the Asylum Regulations 2008.

(2) The Authority must, in accordance with subregulation (1), consider the application for asylum as unfounded where the third country has been designated as safe pursuant to Article 29 of the Directive.

(3) The Authority shall develop procedures for the application of the safe country of origin concept.

Subsequent application for asylum.

26.(1) Where the applicant has made further representations or lodged a subsequent application for asylum, the Authority may—

- (a) examine the further representations or the elements of the subsequent application for asylum in the framework of the examination of the previous application for asylum or in the framework of the examination of the decision under appeal, insofar as it can take into account and consider all the elements underlying the further representations or subsequent application for asylum within this framework; and
- (b) apply the specific procedure set out subregulation (2)—
 - (i) after that person's previous application for asylum has been withdrawn or abandoned by virtue of regulation 17, or
 - (ii) after a decision has been taken on the previous application for asylum but only after a final decision has been taken.

(2) A subsequent application for asylum shall be subject to a preliminary examination as to whether after the—

- (a) withdrawal of the previous application for asylum; or
- (b) decision referred to in subregulation (1)(b)(ii) on the application for asylum has been taken,

new elements or findings relating to the examination as to whether the applicant qualifies as a refugee under the Asylum Regulations 2008 have arisen or have been presented by the applicant.

(3) If, following the preliminary examination referred to in subregulation (2), new elements or findings arise or are presented by the applicant that significantly add to the likelihood of the applicant qualifying as a refugee under the Asylum Regulations 2008, the application for asylum must be further examined in conformity with Part III.

(4) The Authority may further examine a subsequent application for asylum if, in the previous application for asylum, the applicant was, through no fault of his own, incapable of

asserting the situations set forth in subregulations (2) and (3) in the previous procedure, in particular by exercising his right to an effective remedy pursuant to regulation 31.

(5) An applicant under this regulation is entitled to the guarantees set out in regulation 9(1).

(6) This regulation also applies in the case of a dependant who lodges an application for asylum after he has, in accordance with regulation 5(3), consented to have his case be part of an application for asylum made on his behalf.

(7) In a case referred to in subregulation (6), the preliminary examination referred to in subregulation (2) must consist of examining whether there are facts relating to the dependant's situation which justify a separate application for asylum.

(8) The procedure set out in this regulation may be applied in the case of an application for asylum filed at a later date by an applicant who, either intentionally or owing to gross negligence, fails to—

- (a) go to a reception centre; or
- (b) appear before the Authority at a specified time.

(9) Where a preliminary examination is to be made pursuant to this regulation, the applicant must—

- (a) indicate facts and substantiate evidence which justify a new procedure; and
- (b) submit new information within 7 days after he obtained the information,

and that preliminary examination shall be conducted on the sole basis of written submissions without a personal interview.

(10) Subregulation (9) shall not apply if it would otherwise render impossible the access of applicants for asylum to a new procedure or result in the effective annulment or severe curtailment of such access.

(11) The Authority must—

- (a) inform the applicant in writing of the outcome of the preliminary examination and, in case the application for asylum will not be further examined, of the reasons for this and the possibilities for seeking an appeal or review of the decision; and

- (b) if one of the situations referred to in subregulation (1)(b) applies, further examine the subsequent application for asylum in conformity with the provisions of Part III as soon as possible.

Border procedures.

27.(1) Subject to subregulation (2), where a person has lodged an application for asylum at a border or transit zone of Gibraltar, he must be—

- (a) allowed to remain in Gibraltar pursuant to regulation 6;
- (b) immediately informed of his rights and obligations set out in regulation 9(1);
- (c) given access, if necessary, to the services of an interpreter under regulation 9(2)(a);
- (d) interviewed, before any decision is taken by the Authority, in relation to his application for asylum by persons with appropriate knowledge of the relevant standards applicable in the field of asylum and refugee law under regulations 11, 12 and 13;
- (e) permitted to consult counsel under regulation 14(1); and
- (f) permitted to have a representative appointed in the case of unaccompanied minor pursuant to regulation 15(1), unless subregulation (3) of that regulation applies.

(2) The recipient of an application for asylum may refuse entry into Gibraltar to a person referred to in subregulation (1) if his application for asylum is considered as unfounded or as inadmissible and in such a case the reasons in fact and in law for such refusal must be stated.

(3) A decision on the matters set out in subregulations (1) and (2) must be taken within a reasonable time but where 4 weeks have elapsed and a decision has not been taken the applicant shall be granted entry into Gibraltar in order for the application for asylum to be processed in the normal course under these Regulations.

(4) In the event of particular types of arrivals, or arrivals involving a large number of third country nationals or stateless persons lodging applications for asylum at the border or in a transit zone, which makes it practically impossible to apply there the specific procedure set out in subregulations (1) and (2), those procedures may also be applied where and for as long as these third country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone.

The European safe third countries concept.

28.(1) No examination of an application for asylum and of the safety of the applicant in his particular circumstances as described in Part III shall take place if the Authority has established that the applicant for asylum is seeking to enter or has entered illegally into Gibraltar from a safe third country according to subregulation (2).

(2) A third country can only be considered as a safe third country for the purposes of subregulation (1) where—

- (a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations;
- (b) it has in place an asylum procedure prescribed by law;
- (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies; and
- (d) it has been so designated by the Council in accordance with Article 36(3) of the Directive.

(3) Where a decision is taken solely based on this regulation, the Authority must—

- (a) inform the applicant accordingly; and
- (b) provide him with a document informing the authorities of the third country, in the language of that country, that the application for asylum has not been examined in substance.

(4) Where the safe third country does not re-admit the applicant for asylum, the Authority must ensure that access to a procedure is given in accordance with the basic principles and guarantees under Part III.

(5) In the application of subregulation (1) the Authority shall ensure that the consequences are in accordance with the principle of non-refoulement under the Geneva Convention, including providing for exceptions to the application of this regulation for humanitarian or political reasons or for reasons of public international law.

PART V

Procedures for the withdrawal of refugee status

Withdrawal of refugee status.

29. The Authority must ensure that an examination to withdraw the refugee status of a particular person may commence when new elements or findings arise indicating that there are reasons to reconsider the validity of that person's refugee status.

Procedural rules for withdrawal of refugee status.

30.(1) Where the Authority is considering withdrawing the refugee status of a third country national or stateless person in accordance with regulation 44 of the Asylum Regulations 2008, that person shall be entitled to the following guarantees—

- (a) the person must be informed in writing that the Authority is reconsidering his qualification for refugee status and the reasons for such a reconsideration; and
- (b) the person must be given the opportunity to submit—
 - (i) in a personal interview in accordance with regulations 9(2)(a), (3) and (4), 11, 12 and 13 or
 - (ii) in a written statement,

reasons as to why his refugee status should not be withdrawn.

(2) The Government must ensure that within the framework of the procedure provided for by these Regulations—

- (a) the Authority is able to obtain precise and up-to-date information from various sources, such as, where appropriate, from the UNHCR, as to the general situation prevailing in the countries of origin of the persons concerned; and
- (b) where information on an individual case is collected for the purposes of reconsidering the refugee status, it is not obtained from the actor of persecution in a manner that would result in such actor being directly informed of the fact that the person concerned is a refugee whose status is under reconsideration, nor jeopardise the physical integrity of the person and his dependants, or the liberty and security of his family members still living in the country of origin.

(3) The decision of the Authority to withdraw the refugee status of a person must—

- (a) be given in writing;
- (b) state the reasons in fact and in law on which it is based; and
- (c) explain the procedure which is available in order to challenge the decision.

(4) Once the Authority has taken the decision to withdraw the refugee status of a particular person, the provisions of regulations 14(2) and (5) and 18 must equally apply.

(5) Notwithstanding the provisions of subregulations (1) to (4), the refugee status of a particular person shall lapse by law in case of cessation in accordance with regulation 34(1)(a) to (d) of the Asylum Regulations 2008 or if the refugee has unequivocally renounced his recognition as a refugee.

PART VI

Appeals procedures

Appeal to the Supreme Court.

31.(1) A person may lodge an appeal to the Supreme Court against—

- (a) a decision taken on his application for asylum, including a decision—
 - (i) to consider an application for asylum inadmissible pursuant to regulation 21(2),
 - (ii) taken at the border or in transit zone of Gibraltar under regulation 27,
 - (iii) not to conduct an examination pursuant to regulation 28,
- (b) a refusal to re-open the examination of an application for asylum after its discontinuance pursuant to regulation 17;
- (c) a decision not to further examine the subsequent application for asylum pursuant to regulation 26; and
- (d) a decision to withdraw refugee status pursuant to regulation 30.

(2) An appeal under this regulation must be brought no more than 10 working days from the date on which the applicant has been informed of the decision or the refusal referred to in subregulation (1).

(3) The Authority must file with the Supreme Court the copies of—

- (a) the notice of the decision against which the applicant is appealing, and any other document which was served on the applicant giving reasons for that decision;

- (b) any record of an interview with the applicant or other unpublished document, which is referred to in the document mentioned in paragraph (a).
- (4) The appellant must be entitled to appear and be represented at the hearing of an appeal or application for leave to appeal except that the person who appeals against a refusal to allow him to enter Gibraltar shall not be entitled to enter Gibraltar for the purpose of the appeal.
- (5) The Supreme Court, in determining an appeal referred to in subregulation (1), may–
- (a) dismiss the appeal; or
 - (b) quash the decision referred to in subregulation (1) and remit it to the Authority with a direction to reconsider the decision.
- (6) A decision of the Supreme Court under this regulation shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.
- (7) If by reason of any default on the part of the person who has instituted an appeal in accordance with this regulation, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted–
- (a) the Authority may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this regulation, to show cause why the appeal should not be dismissed for want of prosecution; and
 - (b) upon the making of an application under paragraph (a) the Supreme Court may dismiss the appeal or make such other order as it considers just.
- (8) Where an applicant has been granted a status which offers the same rights and benefits under the Asylum Regulations 2008, the applicant may be considered as having an effective remedy where the Court decides that the remedy pursuant to subregulation (1) is inadmissible or unlikely to succeed on the basis of insufficient interest on the part of the applicant in maintaining the proceedings.
- (9) The guarantees set out in regulation 9(2)(a) to (c), (3) and (4) shall be made available to an applicant under this regulation.

PART VII

Miscellaneous

The security of Gibraltar.

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Immigration, Asylum and Refugee

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Asylum (Procedures) Regulations 2012

32.(1) The Minister may give the Authority and a person appointed for any of the purposes set out in regulation 4(3) such directions of a general character as to the performance of the Authority's or person's functions under these Regulations as the Minister, in consultation with the Chief Minister, thinks it appropriate to give in the interests of the security of Gibraltar and the Minister shall give any such directions as may be specified by the Governor in the interests of the security of Gibraltar.

(2) The Minister may give the Authority and a person appointed for any of the purposes set out in regulation 4(3) directions to do or refrain from doing a particular thing which the Authority or that person has power to do or refrain from doing if the Minister, in consultation with the Chief Minister, considers it appropriate to give such directions and the Minister shall give any such directions as may be specified by the Governor in the interests of the security of Gibraltar.

Confidentiality.

33. The Authority must not disclose any information that it obtains in the course of its work in relation to an application for asylum except as provided for in these Regulations.