

# **Refugee Act 1996**

*No. 17 of 1996*

**As amended by**  
**section 11(1) of the Immigration Act 1999,**  
**section 9 of the Illegal Immigrants (Trafficking) Act 2000,**  
**section 7 of the Immigration Act 2003,**  
**section 16 of the Immigration Act 2004**  
**and**  
**section 75 and Schedule 6 Part 15 of the Health Act 2004**  
*(unofficial restatement)*

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## REFUGEE ACT, 1996.

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AN ACT TO GIVE EFFECT TO THE CONVENTION RELATING TO THE STATUS OF REFUGEES DONE AT GENEVA ON THE 28TH DAY OF JULY, 1951, THE PROTOCOL RELATING TO THE STATUS OF REFUGEES DONE AT NEW YORK ON THE 31ST DAY OF JANUARY, 1967, AND THE CONVENTION DETERMINING THE STATE RESPONSIBLE FOR EXAMINING APPLICATIONS FOR ASYLUM LODGED IN ONE OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES DONE AT DUBLIN ON THE 15TH DAY OF JUNE, 1990, TO PROVIDE FOR THE APPOINTMENT OF A PERSON TO BE KNOWN AS THE REFUGEE APPLICATIONS COMMISSIONER AND THE ESTABLISHMENT OF A BOARD TO BE KNOWN AS THE REFUGEE APPEAL BOARD AND TO PROVIDE FOR MATTERS RELATED TO THE MATTERS AFORESAID.

[26th June, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

### *Interpretation.*

1.—(1) In this Act, unless the context otherwise requires—

“applicant” means a person who has made an application for a declaration under section 8;

“authorised officer” means a person authorised in writing by the Commissioner to exercise the powers conferred on an authorised officer by or under this Act;

“the Commissioner” shall be construed in accordance with section 6;

“convention country” means a country other than the State for the time being standing designated in an order under section 22(6);

“declaration” shall be construed in accordance with section 17;

“the Dublin Convention” means the Convention determining the state responsible for examining applications for asylum lodged in one of the Member States of the European Communities done at Dublin on the 15th day of June, 1990 (the text of which, in the English language, is, for convenience of reference, set out in the Fourth Schedule to this Act);

“the establishment day” means the day appointed by the Minister under section 14;

“the High Commissioner” means the United Nations High Commissioner for Refugees and includes the Representative for Ireland of the High Commissioner;

“the Geneva Convention” means the Convention relating to the Status of Refugees done at Geneva on the 28th day of July, 1951, and includes the Protocol relating to the Status of Refugees done at New York on the 31st day of January, 1967 (the text of which, in the English language, is, for convenience of reference, set out in the Third Schedule to this Act);

“immigration officer”<sup>1</sup> means an immigration officer appointed under the Aliens Order, 1946 (S. R. & O. No. 395 of 1946);

“information” means information in the form of a document (including a thing) or in any other form;

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<sup>1</sup> By s. 3(5) of the Immigration Act 2004, this reference is to be construed as a reference to an immigration officer appointed under that section.

“membership of a particular social group” includes membership of a trade union and also includes membership of a group of persons whose defining characteristic is their belonging to the female or the male sex or having a particular sexual orientation;

“the Minister” means the Minister for Justice;

“prescribed” means prescribed by regulations made by the Minister;

“the Tribunal”<sup>2</sup> means the Refugee Appeals Tribunal established by section 15;

“working day”<sup>3</sup> means any day not being a Saturday, Sunday or public holiday.

**“Refugee”.**

2.—In this Act “a refugee” means a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it, but does not include a person who—

- (a) is receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance,
- (b) is recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country,
- (c)<sup>4</sup> there are serious grounds for considering that he or she—
  - (i) 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,
  - (ii) has committed a serious non-political crime outside the State prior to his or her arrival in the State, or
  - (iii) has been guilty of acts contrary to the purposes and principles of the United Nations.

***Extension to refugees of certain rights.***

3.—(1) Subject to section 17(2), a refugee in relation to whom a declaration is in force shall be entitled to the same rights and privileges as those conferred by law on persons generally who are not Irish citizens (as distinct from such rights or privileges conferred on any particular person or group of such persons).

(2)(a) Without prejudice to the generality of subsection (1), a refugee in relation to whom a declaration is in force—

- (i) shall be entitled to seek and enter employment, to carry on any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen,

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<sup>2</sup>Definition substituted for “Appeal Board”: 22/1999, s. 11(1)(a)(i).

<sup>3</sup>Definition ins. 22/1999, s. 11(1)(a)(ii).

<sup>4</sup>Paragraphs (c), (d) and (e) repl. 26/2003 s. 7(a).

- (ii) shall be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled,
  - (iii) shall be entitled, subject to section 4(2)—
    - (I) to reside in the State, and
    - (II) to the same rights of travel in or to or from the State as those to which Irish citizens are entitled,
  - (iv) shall have the same freedom to practise his or her religion and the same freedom as regards the religious education of his or her child as an Irish citizen,
  - (v) shall have access to the courts in the like manner and to the like extent in all respects as an Irish citizen, and
  - (vi) shall have the right to form and be a member of associations and trade unions in the like manner and to the like extent in all respects as an Irish citizen.
- (b) In paragraph (a) “social welfare benefits” includes any payment or services provided for in or under the Social Welfare Acts, the Health Acts, 1947 to 1994, and the Housing Acts, 1966 to 1992.
- (c) Without prejudice to the generality of subsection (1) or section 3 of the Aliens Act, 1935, and notwithstanding anything contained in section 45 of the Land Act, 1965, section 16 of the Mercantile Marine Act, 1955, or an order under the Air Navigation and Transport Act, 1946, a refugee in relation to whom a declaration is in force shall be entitled to acquire, hold, dispose or otherwise deal with real or personal property or an interest in such property in the like manner, to the like extent and subject to the like obligations and limitations as an Irish citizen.

***Travel document.***

4.—(1) Subject to subsection (2), the Minister shall, on application in writing in that behalf and on payment to the Minister of such fee (if any) as may be prescribed with the consent of the Minister for Finance, issue to a refugee in relation to whom a declaration is in force a travel document identifying the holder thereof as a person to whom a declaration has been given.

(2) The Minister may, in the interest of national security or public policy (“*ordre public*”), refuse to issue a travel document.

(3) A travel document shall be in such form as may be prescribed or in a form to the like effect.

(4) A person who applies to the Minister for a travel document under this section shall furnish to the Minister such information (if any) as the Minister may reasonably require for the purpose of his or her functions under this section.

***Prohibition of refoulement.***

5.—(1) A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion.

(2) Without prejudice to the generality of subsection (1), a person’s freedom shall be regarded as being threatened if, *inter alia*, in the opinion of the Minister, the person is likely to be subject to a serious assault (including a serious assault of a sexual nature).

***Refugee Applications Commissioner.***

6.—(1)(a) For the purposes of this Act, there shall be a person (referred to in this Act as “the Commissioner”) who shall be known as the Refugee Applications Commissioner.

(b) The Commissioner shall perform the functions conferred on him or her by this Act.

(2) The Commissioner shall be independent in the exercise of his or her functions under this Act.

(3) The provisions of the First Schedule shall have effect in relation to the Commissioner.

***Annual report and information to Minister.***

7.—(1) The Commissioner shall, not later than 3 months after the end of each year, submit a report in writing to the Minister of his or her activities during that year and, not later than 1 month after such submission, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(2) The Commissioner shall furnish to the Minister such information relating to his or her activities as the Minister may from time to time require.

***Establishment of Refugee Advisory Board.***

7A.<sup>5</sup>—(1) There shall be a board to be known as the Refugee Advisory Board (in this Act referred to as “the Board”) to perform the functions conferred on it by this Act.

(2) The Board shall be independent in the performance of its functions.

(3) The provisions of the Schedule to this section shall have effect in relation to the Board.

(4)(a)<sup>6</sup> The Board shall, in every second year beginning with the year 2005, prepare and submit to the Minister a report in writing on the operation in the preceding 2 years of this Act and may include in the report information and comment in respect of asylum policy and refugees including any proposals to amend legislation and recommendations regarding the practice or procedures of public or private bodies in relation to applicants and any other matters relating to such operation coming to its attention to which it considers that his or her attention should be drawn and, not later than 1 month after such submission, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(b) The Board shall, at the request of the Minister, prepare and furnish to him or her a report in writing on such matters relating to the performance of its functions as the Minister may specify and as soon as may be after the receipt by the Minister of the report, he or she shall cause a copy of it to be laid before each House of the Oireachtas.

(5) The Commissioner shall, whenever so requested by the Board, furnish to the Board information in relation to such matters as the Board may specify relating to the performance of its functions.

SCHEDULE

REFUGEE ADVISORY BOARD

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<sup>5</sup>Section and Schedule ins. 22/1999 s. 11(1)(b).

<sup>6</sup>Paragraph am. 26/2003 s. 7(b)(i).

1.<sup>7</sup> The Board shall consist of a chairperson and 15 ordinary members who shall be appointed to be members of the Board by the Minister.

2. The Commissioner shall be a member of the Board and shall act as secretary to the Board.

3. Of the members of the Board—

(a) one shall be a representative of the Minister nominated by the Minister,

(b) one shall be a representative of the Minister for Foreign Affairs nominated by the Minister for Foreign Affairs,

(c) one shall be a representative of the Minister for Social, Community and Family Affairs nominated by the Minister for Social, Community and Family Affairs,

(d) one shall be a representative of the Minister for Education and Science nominated by the Minister for Education and Science,

(e) one shall be a representative of the Minister for Health and Children nominated by the Minister for Health and Children,

(f) one shall be a representative of the Minister for the Environment and Local Government nominated by the Minister for the Environment and Local Government,

(g) one shall be a representative of the Minister for Enterprise, Trade and Employment nominated by the Minister for Enterprise, Trade and Employment,

(gg)<sup>8</sup> one shall be the chairperson of the Refugee Appeals Tribunal,

(h) six shall be women and six shall be men.

4. The High Commissioner shall be given not less than 7 days' notice in writing of the date and time of each meeting of the Board and shall be entitled to be present at and be heard at each meeting, either in person or through a representative.

5. In the selection of persons for appointment to membership of the Board regard shall be had to—

(a) the desirability of ensuring that a person or persons representative of refugees and applicants is or are appointed to membership of the Board, and

(b) the person's interest in or knowledge of asylum and the provision of protection and assistance to refugees or his or her competence otherwise to assist the Board in the performance of its functions.

6. Subject to the provisions of this Schedule, the members of the Board shall hold office upon such terms and conditions as the Minister may determine.

7. The term of office of a member of the Board shall be 5 years and, subject to the provisions of this Schedule, a member shall be eligible for re-appointment.

8. Where a casual vacancy occurs among the members of the Board, the Minister may appoint a person to be a member of the Board to fill the vacancy and a member so appointed shall hold office for the remainder of the term of office for which his or her predecessor had been appointed, and the person shall be so appointed in the manner specified in paragraph 3 or 5, as the case may be, in which such predecessor was so appointed.

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<sup>7</sup>Paragraph am. 26/2003 s. 7(b)(ii).

<sup>8</sup>Paragraph ins. 26/2003 s. 7(b)(iii).

9. Members of the Board shall be paid such remuneration and such allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

10. The Minister may remove from office any member of the Board who, in the opinion of the Minister, has become incapable through illness of effectively performing his or her functions or has committed stated misbehaviour.

11. The Board shall meet at least four times a year.

***Application for declaration.***

8.—(1) (a) A person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution—

(i) shall be interviewed by an immigration officer as soon as practicable after such arrival, and

(ii) may apply to the Minister for a declaration.

(b) The immigration officer concerned shall inform a person referred to in paragraph (a), where possible in a language that the person understands, that he or she may apply under that paragraph for a declaration and that he or she is entitled to consult a solicitor and the High Commissioner.

(c)<sup>9</sup> A person who at any time is in the State (whether lawfully or unlawfully) and is seeking the status of a refugee in the State may apply to the Minister for a declaration and, if he or she does so, shall be interviewed by an authorised officer or an immigration officer at such times as may be specified by the authorised officer or the immigration officer, as the case may be, who shall also inform the person that he or she is entitled to consult a solicitor and the High Commissioner and the person shall make himself or herself available for such interview at the times so specified.

(2)<sup>10</sup> An interview under subsection (1) shall, in relation to the person the subject of the interview, seek to establish *inter alia*—

(a) whether the person wishes to make an application for a declaration and, if he or she does so wish, the general grounds upon which the application is based,

(b) the identity of the person,

(c) the nationality and country of origin of the person,

(d) the mode of transport used and the route travelled by the person to the State,

(e) the reason why the person came to the State, and

(f) the legal basis for the entry into or presence in the State of the person,

and shall, where necessary and possible, be conducted with the assistance of an interpreter and a record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and, if the interview was conducted by an immigration officer, to the Commissioner.

(3)<sup>11</sup>(a) The Commissioner shall notify the High Commissioner in writing of the making of an application and the notice shall include the name of the applicant and the name of his

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<sup>9</sup>Paragraph subst. 22/1999 s. 11(1)(c)(i).

<sup>10</sup>Subsection subst. 22/1999 s. 11(1)(c)(ii).

or her country of origin and such other information as the Minister may specify by notice in writing addressed to the Commissioner.

(b) The Commissioner shall furnish a copy of the record of any interview under subsection (1)—

(i) to the Minister, and

(ii) to the High Commissioner whenever so requested by him or her in writing.

(4)<sup>12</sup> An application under subsection (1) shall be made in writing in the prescribed form or in a form to the like effect and shall be addressed to the Commissioner.

(5)(a)<sup>13</sup> Where it appears to an immigration officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer shall, as soon as practicable, so inform the Health Service Executive and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child.

(b)<sup>14</sup> Where it appears to the Health Service Executive, on the basis of information available to it, that an application for a declaration should be made by or on behalf of a child referred to in paragraph (a), the Health Service Executive shall arrange for the appointment of an employee of the Health Service Executive or such other person as it may determine to make an application on behalf of the child.

(c)<sup>15</sup> Any costs incurred by a person under paragraph (b) other than any legal costs arising from such application shall be paid by the Health Service Executive.

(d)<sup>16</sup> *repealed*

(6) For the purposes of this Act, a person who travels by sea or air from outside the State and lands in the State shall be deemed to arrive at the frontiers of the State.

***Leave to enter or remain in State.***

**9.**—(1) Subject to the subsequent provisions of this section, an applicant, being a person referred to in section 8(1)(a), shall be given leave to enter the State by the immigration officer concerned.

(2) Subject to the subsequent provisions of this section, a person to whom leave to enter the State is given under subsection (1) or an applicant, being a person referred to in section 8(1)(c), shall be entitled to remain in the State until—

(a)<sup>17</sup> the date on which his or her application is transferred to a convention country pursuant to section 22 or to a safe third country (within the meaning of that section), or

(b)<sup>18</sup> the date on which his or her application is withdrawn or deemed to be withdrawn under this section or section 11, or

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<sup>11</sup> Subsection subst. 22/1999 s. 11(1)(c)(iii).

<sup>12</sup> Subsection subst. 22/1999 s. 11(1)(c)(iv).

<sup>13</sup> Paragraph subst. 22/1999 s. 11(1)(c)(v); am. 42/2004 s. 75, Sch. 6 Pt. 15

<sup>14</sup> Subsection subst. 42/2004 s. 75, Sch. 6 Pt. 15

<sup>15</sup> Subsection am. 42/2004 s. 75, Sch. 6 Pt. 15

<sup>16</sup> Subsection repealed 42/2004 s. 75, Sch. 6 Pt. 15

<sup>17</sup> Paragraphs (a) and (b) repl. 26/2003 s. 7(c)(i).

<sup>18</sup> Paragraphs (a) and (b) repl. 26/2003 s. 7(c)(i).

- (c) the date on which notice is sent that the Minister has refused to give him or her a declaration.
- (3)<sup>19</sup>(a) The Commissioner shall give or cause to be given to a person referred to in subsection (2) a temporary residence certificate (in this section referred to as “a certificate”) stating the name and containing a photograph of the person and such other information relating to the person as may be prescribed and specifying the date on which the person’s application for a declaration was received by the Commissioner and stating that, subject to the provisions of this Act, and, without prejudice to any other permission or leave granted to the person to remain in the State, the person shall not be removed from the State before the final determination of his or her application.
- (b) A certificate shall remain the property of the Minister.
- (c)<sup>20</sup> A certificate shall be deemed to be a registration certificate for the purposes of section 12 of the Immigration Act 2004 and a person who is issued with a certificate shall be deemed to have complied with section 9 of that Act.
- (d) If a person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures the forging or fraudulent alteration of a certificate, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both.
- (4) An applicant shall not—
- (a) leave or attempt to leave the State without the consent of the Minister, or
- (b) seek or enter employment or carry on any business, trade or profession during the period before the final determination of his or her application for a declaration.
- (4A)<sup>21</sup>(a) An applicant shall inform the Commissioner of his or her address and of any change of address as soon as possible.
- (b) Where 5 working days have elapsed since the making of an application for a declaration and the applicant has not informed the Commissioner of his or her address, the application shall be deemed to be withdrawn.
- (5)<sup>22</sup>(a) An immigration officer or an authorised person may, by notice in writing, require an applicant—
- (i) to reside or remain in particular districts or places in the State, or
- (ii) to report at specified intervals to an immigration officer or person or persons authorised by the Minister or member of the Garda Síochána specified in the notice,
- and the applicant shall comply with the requirement.
- (b) In this subsection “an authorised person” means a person appointed by the Minister to be an authorised person for the purposes of this subsection.

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<sup>19</sup>Subsection subst. 22/1999 s. 11(1)(d)(i).

<sup>20</sup>Subsection subst. 1/2004 s. 16(4).

<sup>21</sup>Subsection ins. 29/2000 s. 9(a), repl. 26/2003 s. 7(c)(ii).

<sup>22</sup>Subsections (5) and (6) repl. 26/2003 s. 7(c)(iii).

(6)<sup>23</sup> Upon application to the Minister in that behalf by the applicant concerned, the Minister may, as he or she thinks fit, direct the immigration officer or the authorised person concerned to withdraw the requirement concerned or to amend it in a specified manner.

(7)<sup>24</sup> A person who contravenes subsection (4), (4A) or (5) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 1 month or to both.

(8) Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that an applicant—

- (a) poses a threat to national security or public order in the State,
- (b) has committed a serious non-political crime outside the State,
- (c) has not made reasonable efforts to establish his or her true identity,
- (d)<sup>25</sup> intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22 or a safe third country (within the meaning of that section),
- (e) intends to leave the State and enter another state without lawful authority, or
- (f) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents,

he or she may detain the person in a prescribed place (referred to subsequently in this Act as “a place of detention”).

(9) The Minister shall make regulations providing for the treatment of persons detained pursuant to this section.

(10)(a) A person detained pursuant to subsection (8) shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.

(b) Where a person is brought before a judge of the District Court pursuant to paragraph (a), the judge may—

- (i)<sup>26</sup> subject to paragraph (c), and if satisfied that one or more of the paragraphs of subsection (8) applies in relation to the person, commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention, or
- (ii) without prejudice to paragraph (c), release the person and the judge may make such release subject to such conditions as he or she considers appropriate, including, but without prejudice to the generality of the foregoing, any one or more of the following conditions:
  - (I) that the person resides or remains in a particular district or place in the State,
  - (II) that he or she reports to a specified Garda Síochána station or immigration officer at specified intervals,

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<sup>23</sup>Subsections (5) and (6) repl. 26/2003 s. 7(c)(iii).

<sup>24</sup>Subsection am. 26/2003 s. 7(c)(iv).

<sup>25</sup>Paragraph am. 26/2003 s. 7(c)(v).

<sup>26</sup>Subparagraph am. 26/2003 s. 7(c)(vi).

(III) that he or she surrenders any passport or travel document in his or her possession.

(c) If, at any time during the detention of a person pursuant to this section, an immigration officer or a member of the Garda Síochána is of opinion that none of the paragraphs of subsection (8) applies in relation to the person, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district where the person is being detained and if the judge is satisfied that none of the paragraphs of subsection (8) applies in relation to the person, the judge shall release the person.

(d) Where a person is released from a place of detention subject to one or more of the conditions referred to in subsection (10)(b)(ii), a judge of the District Court assigned to the District Court district in which the person resides may, on the application of the person, an immigration officer or a member of the Garda Síochána, if he or she considers it appropriate to do so, vary (whether by the alteration, addition or revocation of a condition) a condition.

(11) Subsections (4), (5), (8) and (10) shall apply only to an applicant who, but for the provisions of this Act, would not be entitled to enter or remain in the State.

(12)(a) Subsection (8) shall not apply to a person who is under the age of 18 years.

(b) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of subsection (8) shall apply as if he or she had attained the age of 18 years.

(c)<sup>27</sup> Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in *loco parentis* or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Health Service Executive of the detention and of the circumstances thereof.

(13)(a) A member of the Garda Síochána may detain a person who, in the member's opinion, has failed to comply with a condition imposed by the District Court under subsection (10) in a place of detention.

(b) A person detained under paragraph (a) shall be brought as soon as practicable before a judge of the District Court assigned to the District Court district in which the person is being detained; and subsection (10) shall apply to such person detained under paragraph (a) as it applies to a person detained pursuant to subsection (8) with any necessary modifications.

(c) If a judge of the District Court is satisfied in relation to a person brought before him or her pursuant to paragraph (b) that the person has complied with the condition concerned, the judge shall order the release of the person.

(14)(a)<sup>28</sup> Where a judge of the District Court commits a person to a place of detention under subsection (10)(b) or (13)(b), a judge of the District Court assigned to the District Court district in which the person is being detained may, if satisfied that one or more of the paragraphs of subsection (8) applies in relation to the person, commit him or

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<sup>27</sup> Subsection subst. 42/2004 Sch. 6 Pt. 15

<sup>28</sup> Paragraph am. 26/2003 s. 7(c)(vii).

her for further periods (each period being a period not exceeding 21 days) pending the determination of the person's application under section 8.

(b) If at any time during the detention of a person pursuant to this section the person indicates a desire to leave the State, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained and the judge shall, if he or she is satisfied that the person does not wish to proceed with his or her application for a declaration and wishes to leave the State, order the Minister to arrange for the removal of the person from the State and may include in the order such ancillary or consequential provisions as he or she may determine and the person concerned shall be deemed to have withdrawn his or her application for a declaration.

(15)<sup>29</sup> A person referred to in subsection (1) shall not be given leave to enter the State under that subsection if he or she is the subject of an order under section 4 of the Immigration Act, 1999.

(16) Where, pursuant to subsection (15), a person is not given leave to enter the State he or she shall not be entitled to make an application for a declaration without the consent of the Minister.

***Powers of authorised officers and immigration officers.***

**9A.**<sup>30</sup>—(1) An authorised officer, a member of the Garda Síochána, or an immigration officer may, for the purposes of this Act, take or cause to be taken the fingerprints of an applicant.

(2) Fingerprints shall not be taken under this section from a person under the age of 14 years except in the presence of a person who is—

(a) a parent or a person who is acting *in loco parentis*; or

(b)<sup>31</sup> an employee of the Health Service Executive or other person appointed by the Health Service Executive under section 8(5)(b).

(3) The fingerprints of a person under the age of 14 years shall not be taken under this section without the prior approval—

(a) in the case of an authorised officer or an immigration officer who is not a member of the Garda Síochána, of the Minister or a person designated for that purpose by the Minister; or

(b) in the case of a member of the Garda Síochána, of his or her chief superintendent or a person designated for that purpose by his or her chief superintendent.

(4) If and for so long as the authorised officer, the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 14 years, the provisions of subsection (2) shall apply as if he or she had attained the age of 14 years.

(5) An applicant who refuses to permit his or her fingerprints to be taken pursuant to subsection (1) shall be deemed not to have made reasonable efforts to establish his or her true identity within the meaning of section 9(8)(c), and to have failed to comply with the requirements of section 11C.

(6) The Commissioner of the Garda Síochána shall arrange for the maintenance of a record of fingerprints taken pursuant to subsection (1).

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<sup>29</sup>Subsection subst. 22/1999 s. 11(1)(d)(ii).

<sup>30</sup>Section ins. 22/1999 s. 11(1)(e), repl. 26/2003 s. 7(d).

<sup>31</sup>Subsection subst. 42/2004 Sch. 6 Pt. 15

(7) Every fingerprint of an applicant taken pursuant to subsection (1) and every copy thereof shall, if not previously destroyed, be destroyed—

(a) in case the applicant becomes a citizen of the State, before the expiration of one month after the granting of the certificate of naturalisation or of Irish citizenship to him or her or the acknowledgement by the Minister of the validity of his or her declaration accepting Irish citizenship, as the case may be;

(b) in any other case, before the expiration of 10 years after the taking of such fingerprints.

(8) Information obtained pursuant to subsection (1) may be communicated to convention countries or a safe third country (within the meaning of section 22) as if it was information to which subsection (9) or, as may be appropriate, subsection (10) of that section relates.

***Provisions relating to detained persons.***

**10.**—(1) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to subsection (8) or (13)(a) of section 9 or cause him or her to be informed, where possible in a language that the person understands—

(a) that he or she is being detained pursuant to section 9,

(b) that he or she shall, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending consideration of that person's application for a declaration under section 8,

(c) that he or she is entitled to consult a solicitor,

(d) that he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the High Commissioner and to another person reasonably named by him or her,

(e) that he or she is entitled to leave the State in accordance with the provisions of this paragraph at any time during the period of his or her detention and if he or she indicates a desire to do so, he or she shall, as soon as practicable, be brought before a court and the court may make such orders as may be necessary for his or her removal from the State, and

(f) that he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor pursuant to paragraph (c) and for the purpose of any appearance before a court pursuant to section 9.

(2) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall also explain to a person detained pursuant to subsection (8) or (13)(a) of section 9, where possible in a language that the person understands, that, if he or she does not wish to exercise a right specified in subsection (1) immediately, he or she will not be precluded thereby from doing so later.

(3) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall notify the Commissioner and the Tribunal<sup>32</sup> of the detention or release of a person pursuant to the provisions of section 9.

(4) The Commissioner or, as the case may be, the Tribunal<sup>33</sup> shall ensure that the application for a declaration of a person detained pursuant to subsection (8) or (13)(a) of section 9 shall be dealt

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<sup>32</sup>“Tribunal” substituted for “Appeal Board”: 22/1999 s 11(1)(f).

with as soon as may be and, if necessary, before any other application for a declaration of a person not so detained.

***Investigation of application by Commissioner.***

11.—(1)<sup>34</sup> Where an application is received by the Commissioner under section 8 and the application is not withdrawn or deemed to be withdrawn pursuant to this section or section 9 or 22, it shall be the function of the Commissioner to investigate the application for the purpose of ascertaining whether the applicant is a person in respect of whom a declaration should be given.

(2)<sup>35</sup> In a case to which subsection (1) applies, the Commissioner shall, for the purposes of that provision, direct an authorised officer or officers to interview the applicant concerned and the officer or officers shall comply with any such direction and furnish a report in writing in relation to the interview concerned to the Commissioner and an interview under this subsection shall, where necessary and possible, be conducted with the assistance of an interpreter.

(3)<sup>36</sup> (a) The applicant concerned, the High Commissioner or any other person concerned may make representations in writing to the Commissioner in relation to any matter relevant to an investigation by him or her under this section and the Commissioner shall take account of any such representations made before or during an interview under subsection (2).

(b) The High Commissioner may, whenever he or she so requests, be present at an interview under subsection (2).

(4)(a) The Commissioner may, for the purposes of his or her functions under this Act, by notice in writing, request the Minister, the Minister for Foreign Affairs or such other persons as may be specified in the notice to make such inquiries and to furnish to him or her such information in his or her possession or control as he or she may reasonably require within such period as shall be specified in the notice.

(b) Following the receipt of a request under subsection (1), the Minister or the Minister for Foreign Affairs, as the case may be, may withhold any information in his or her possession or control in the interest of national security or public policy (“*ordre public*”).

(5) Nothing in the Data Protection Act, 1988, shall be construed as prohibiting a person from giving to the Commissioner, on request by him or her, such information as is in the person’s possession or control relating to the application.

(6)<sup>37</sup> and (7) [*repealed*]

(8)<sup>38</sup> On receipt by the Commissioner of an application under the provisions of this Act, the Commissioner shall, without delay, give or cause to be given to the applicant a statement in writing specifying, where possible in a language that he or she understands—

(a) the procedures to be observed in the investigation of applications under this section,

(b) the entitlement of the applicant to consult a solicitor,

(c) the entitlement of the applicant to contact the High Commissioner,

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<sup>33</sup>“Tribunal” substituted for “Appeal Board”: 22/1999 s 11(1)(f).

<sup>34</sup>Subsection substituted: 22/1999 s. 11(1)(g)(i); substituted 26/2003 s. 7(e)(i).

<sup>35</sup>Subsection am. 22/1999 s. 11(1)(g)(ii); substituted 26/2003 s. 7(e)(ii).

<sup>36</sup>Subsection am. 22/1999 s. 11(1)(g)(iii); substituted 26/2003 s. 7(e)(iii).

<sup>37</sup>Subsection (6) am. 22/1999 s. 11(1)(g)(iv); subss. (6) and (7) repealed 26/2003 s. 7(e)(iv).

<sup>38</sup>Subsection am. 22/1999 s. 11(1)(g)(v).

- (d) the entitlement of the applicant to make written submissions to the Commissioner,
- (e) the duty of the applicant to co-operate with the Commissioner and to furnish information relevant to his or her application,
- (f)<sup>39</sup> the obligation of the applicant to comply with subsections (4), (4A) and (5) of section 9 and the possible consequences of non-compliance with that obligation including the possibility that his or her application for a declaration may be deemed to be withdrawn and that the Minister may refuse to give the applicant a declaration,
- (g) the possible consequences of the failure of the applicant to attend an interview under this section.

(9)<sup>40</sup> An applicant may withdraw his or her application for a declaration by sending notice of withdrawal to the Commissioner.

(10) Where an applicant does not attend for interview with an authorised officer under this section on the date and at the time fixed for the interview then, unless the applicant, not later than 3 working days from that date, furnishes the Commissioner with an explanation for the non-attendance which in the opinion of the Commissioner is reasonable in the circumstances, his or her application shall be deemed to be withdrawn.

(11) Where—

- (a) it appears to the Commissioner that an applicant is failing in his or her duty to co-operate with the Commissioner or to furnish information relevant to his or her application for a declaration, or
- (b) the Minister notifies the Commissioner that he or she is of opinion that the applicant is in breach of subsection (4)(a), (4A) or (5) of section 9,

the Commissioner shall send to the applicant a notice in writing inviting the applicant to indicate in writing (within 15 working days of the sending of the notice) whether he or she wishes to continue with his or her application and, if an applicant does not furnish an indication within the time specified in the notice, his or her application for a declaration shall be deemed to be withdrawn.

(12) The procedures to be followed in investigations under this section may be prescribed and different procedures may be prescribed for different classes of applications.

***Burden of proof***

**11A.**<sup>41</sup>—(1) Where, at any time during the investigation of an application by the Commissioner under section 11, it appears to him or her that an applicant—

- (a) is a national of, or has a right of residence in, a country standing designated by order under section 12(4) as a safe country of origin, or
- (b) had lodged a prior application for asylum in another state party to the Geneva Convention,

then the applicant shall be presumed not to be a refugee unless he or she shows reasonable grounds for the contention that he or she is a refugee.

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<sup>39</sup>Paragraphs (e), (f) and (g) replaced 26/2003 s. 7(e)(v).

<sup>40</sup>Subsection ins. 22/1999 s. 11(1)(g)(vi); replaced with new subss. (9) to (12) 26/2003 s. 7(e)(vi).

<sup>41</sup>Section inserted 26/2003 s. 7(f).

(2) Where an application is one to which section 22 applies, it shall be for the applicant to show that his or her application should be examined in the State.

(3) Where an applicant appeals against a recommendation of the Commissioner under section 13, it shall be for him or her to show that he or she is a refugee.

***Credibility***

**11B.**<sup>42</sup>—The Commissioner or the Tribunal, as the case may be, in assessing the credibility of an applicant for the purposes of the investigation of his or her application or the determination of an appeal in respect of his or her application, shall have regard to the following:

- (a) whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents;
- (b) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence;
- (c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;
- (d) where the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State;
- (e) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing;
- (f) whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing;
- (g) whether the applicant, without reasonable cause, having withdrawn his or her application and not having been refused a declaration under section 17, has made a subsequent application under section 8;
- (h) whether the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(a) of the Immigration Act 1999;
- (i) whether the applicant has complied with the requirements of section 11C;
- (j) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4)(a);
- (k) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(4A);
- (l) whether the applicant has, without reasonable cause, failed to comply with the requirements of section 9(5);
- (m) whether, in the case of an application to which section 16 applies, the applicant has furnished information in relation to the application which he or she could reasonably have furnished during the investigation of the application by the Commissioner but did not so furnish.

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<sup>42</sup>Section inserted 26/2003 s. 7(f).

***Duty to co-operate***

**11C.**<sup>43</sup>—(1) It shall be the duty of an applicant to co-operate in the investigation of his or her application and in the determination of his or her appeal, if any.

(2) In compliance with subsection (1), an applicant shall furnish to the Commissioner or the Tribunal, as may be appropriate, as soon as reasonably practicable, all information in his or her possession, control or procurement relevant to his or her application.

***Prioritisation of applications.***

**12.**<sup>44</sup>—(1) Subject to the need for fairness and efficiency in dealing with applications for a declaration under this Act, the Minister may, where he or she considers it necessary or expedient to do so, give a direction in writing to the Commissioner or the Tribunal or to both requiring either or both of them, as the case may be, to accord priority to certain classes of applications determined by reference to one or more of the following matters:

- (a) the grounds of applications under section 8,
- (b) the country of origin or habitual residence of applicants,
- (c) any family relationship between applicants,
- (d) the ages of applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made,
- (e) the dates on which applications were made,
- (f) considerations of national security or public policy,
- (g) the likelihood that the applications are well-founded,
- (h) if there are special circumstances regarding the welfare of applicants or the welfare of family members of applicants,
- (i) whether applications do not show on their face grounds for the contention that the applicant is a refugee,
- (j) whether applicants have made false or misleading representations in relation to their applications,
- (k) whether applicants had lodged prior applications for asylum in another country,
- (l) whether applications under section 8 were made at the earliest opportunity after arrival in the State,
- (m) whether applicants are nationals of or have a right of residence in a country of origin designated as safe under this section,
- (n) if an applicant is a person to whom paragraph (a), (b) or (c) of section 2 applies.

(2) The Commissioner or the Tribunal shall comply with a direction given to him, her or it under this section.

(3) The Minister may by a direction revoke or alter a direction given by him or her under subsection (1).

(4)(a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country as a safe country of origin.

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<sup>43</sup>Section inserted 26/2003 s. 7(f).

<sup>44</sup>Section replaced 26/2003 s. 7(g).

- (b) In deciding whether to make an order under paragraph (a), the Minister shall have regard to the following matters:
- (i) whether the country is a party to and generally complies with obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights,
  - (ii) whether the country has a democratic political system and an independent judiciary,
  - (iii) whether the country is governed by the rule of law.
- (c) The Minister may by order amend or revoke an order under this subsection including an order under this paragraph.

(5) In this section—

“the Convention against Torture” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution 39/46 of the General Assembly of the United Nations on 10 December 1984;

“the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950;

“the International Covenant on Civil and Political Rights” means the International Covenant on Civil and Political Rights adopted by Resolution 2200A (XXI) of the General Assembly of the United Nations on 16 December 1966.

***Recommendations and reports of Commissioner.***

13.<sup>45</sup>—(1) Where the Commissioner carries out an investigation under section 11 he or she shall, as soon as may be, prepare a report in writing of the results of the investigation and such report shall refer to the matters raised by the applicant in the interview under section 11 and to such other matters as the Commissioner considers appropriate and shall set out the findings of the Commissioner together with his or her recommendation whether the applicant concerned should or, as the case may be, should not be declared to be a refugee.

(2) Where an application for a declaration is withdrawn or deemed to be withdrawn pursuant to section 9 or 11, then—

- (a) any investigation under section 11 shall be terminated,
- (b) the report referred to in subsection (1) shall state that the application has been withdrawn or deemed to be withdrawn, as the case may be, and shall include a recommendation that the applicant concerned should not be declared to be a refugee, and
- (c) no appeal under section 16 shall lie against a recommendation under paragraph (b).

(3) The Commissioner shall, if so requested by the High Commissioner, notify him or her of the making of the recommendation under subsection (1).

(4)(a) The Commissioner shall send a copy of a report under subsection (1) to the applicant concerned, to his or her solicitor (if known) and, if so requested by the High Commissioner, to him or her.

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<sup>45</sup>Section replaced 26/2003 s. 7(h).

- (b) Where a report under subsection (1) (other than a report to which subsection (2) applies) includes a recommendation that the applicant should not be declared to be a refugee, the Commissioner shall, subject to subsections (5) and (8), send a notice in writing to the applicant stating that the applicant may appeal to the Tribunal under section 16 against the recommendation and may request an oral hearing within 15 working days from the sending of the notice.
- (c) Where the applicant has not appealed against the recommendation referred to in paragraph (b) within 15 working days after the sending of a notice under that paragraph, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.
- (d) Where a report under subsection (1) includes a recommendation that the applicant should be declared to be a refugee, the Commissioner shall, as soon as may be, furnish the report to the Minister.
- (e) Where a report under subsection (1) includes a recommendation pursuant to subsection (2) that the applicant should not be declared to be a refugee, the Commissioner shall, as soon as may be, furnish the report to the Minister.
- (5) Where a report under subsection (1) includes a recommendation that the applicant should not be declared to be a refugee and includes among the findings of the Commissioner any of the findings specified in subsection (6), then the following shall, subject to subsection (8), apply:

  - (a) the notice under paragraph (b) of subsection (4) shall, notwithstanding that subsection, state that the applicant may appeal to the Tribunal under section 16 against the recommendation within 10 working days from the sending of the notice, and that any such appeal will be determined without an oral hearing;
  - (b) notwithstanding paragraph (c) of subsection (4), where the applicant has not appealed against the recommendation within 10 working days after the sending of a notice under paragraph (b) of that subsection, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.
- (6) The findings referred to in subsection (5) are—

  - (a) that the application showed either no basis or a minimal basis for the contention that the applicant is a refugee;
  - (b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
  - (c) that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State;
  - (d) the applicant had lodged a prior application for asylum in another state party to the Geneva Convention (whether or not that application had been determined, granted or rejected); or
  - (e) the applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by order under section 12(4).

(7)(a) The Minister may give a direction in writing to the Commissioner requiring him or her to investigate under section 11 such class of applications as may be specified in the direction in accordance with the procedures referred to in subsection (8) and the Commissioner shall comply with a direction given to him or her under this subsection.

(b) The Minister may by a direction revoke or alter a direction given by him or her under paragraph (a).

(8) Where an application referred to in subsection (7) has been investigated under section 11 and the relevant report under subsection (1) includes a recommendation that the applicant should not be declared to be a refugee and contains among the findings of the Commissioner any of the findings specified in subsection (6), then the following shall, subject to subsection (9), apply:

(a) the notice under paragraph (b) of subsection (4) shall, notwithstanding that subsection, state that the applicant may appeal to the Tribunal under section 16 against the recommendation within 4 working days from the sending of the notice, and that any such appeal will be determined without an oral hearing,

(b) notwithstanding paragraph (c) of subsection (4), where the applicant has not appealed against the recommendation within 4 working days after the sending of a notice under paragraph (b) of that subsection, the Commissioner shall, as soon as may be, furnish the report under subsection (1) to the Minister.

(9)(a) Where an application is to be investigated in accordance with the procedures referred to in subsection (8), the Commissioner shall notify the applicant accordingly in writing and shall send a copy of the notice to his or her solicitor (if known) and, if so requested by the High Commissioner, to him or her.

(b) Paragraphs (a) and (b) of subsection (8) shall not apply to such an application unless the applicant concerned and his or her solicitor (if known) has been notified in accordance with paragraph (a).

(10) Where a report under subsection (1) (other than a report to which subsection (2) applies) includes a recommendation that the applicant should not be declared to be a refugee, then, subject to subsection (11), the Commissioner shall furnish the applicant concerned and his or her solicitor (if known) and the High Commissioner, whenever so requested by him or her, with copies of any reports, documents or representations in writing submitted to the Commissioner under section 11 and an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her under that section.

(11) Where information has been supplied to the Commissioner, a Department of State or another branch or office of the public service by or on behalf of the government of another state in accordance with an undertaking (express or implied) that the information would be kept confidential, the information shall not, without the consent of the other state, be produced or further disclosed otherwise than in accordance with the undertaking.

***Establishment day.***

**14.**—The Minister may by order appoint a day to be the establishment day for the purposes of this Act.

***Refugee Appeals Tribunal.***

**15.**<sup>46</sup>—(1) On the establishment day there shall stand established a Tribunal to be known as the Refugee Appeals Tribunal (in this Act referred to as “the Tribunal”) to consider and decide appeals under section 16 of this Act.

(2) The Tribunal shall be independent in the performance of its functions.

(3) The provisions of the Second Schedule shall have effect in relation to the Tribunal.

***Appeals to Tribunal.***

**16.**—(1)<sup>47</sup> The applicant may appeal in the prescribed manner against a recommendation of the Commissioner under section 13 (other than a recommendation pursuant to section 13(2)).

(2)<sup>48</sup> The Tribunal may—

(a) affirm a recommendation of the Commissioner, or

(b) set aside a recommendation of the Commissioner and recommend that the applicant should be declared to be a refugee.

(2A)<sup>49</sup> Where an applicant fails, without reasonable cause, to attend an oral hearing under subsection (10), then unless the applicant, not later than 3 working days from the date fixed for the oral hearing, furnishes the Tribunal with an explanation for not attending the hearing which the Tribunal considers reasonable in the circumstances his or her appeal shall be deemed to be withdrawn.

(2B) Where—

(a) it appears to the Tribunal that an applicant is failing in his or her duty to co-operate with the Commissioner or to furnish information relevant to his or her appeal, or

(b) the Minister notifies the Tribunal that he or she is of opinion that the applicant is in breach of subsection (4)(a), (4A) or (5) of section 9,

the Tribunal shall send to the applicant a notice in writing inviting the applicant to indicate in writing (within 15 working days of the sending of the notice) whether he or she wishes to continue with his or her appeal and, if an applicant does not furnish an indication within the time specified in the notice, his or her appeal shall be deemed to be withdrawn.

(3)<sup>50</sup> An appeal under this section shall be brought by notice in writing within the period specified in section 13(4)(b) or 13(5)(a) or 13(8)(a), as appropriate, and the notice shall specify the grounds of appeal and, except in a case to which section 13(5) or 13(8) applies, shall indicate whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal.

(4)<sup>51</sup> The Tribunal shall transmit a copy of the notice received by it under subsection (3) to the Commissioner and notification of the making of the appeal to the High Commissioner.

(5)<sup>52</sup> The Commissioner shall furnish the Tribunal with copies of any reports, documents or representations in writing submitted to the Commissioner under section 11 and an indication in

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<sup>46</sup>Section subst. 22/1999 s. 11(1)(j).

<sup>47</sup>Subsection am. 22/1999 s. 11(1)(k)(i); replaced 26/2003 s. 7(i)(i).

<sup>48</sup>Subsection am. 22/1999 s. 11(1)(k)(i); replaced 26/2003 s. 7(i)(ii).

<sup>49</sup>Subsection ins. 22/1999 s. 11(1)(k)(ii); replaced with new subs. (2A) and (2B) 26/2003 s. 7(i)(iii).

<sup>50</sup>Subsection am. 22/1999 s. 11(1)(k)(i), (iii), 29/2000 s. 9(c); replaced 26/2003 s. 7(i)(iv).

<sup>51</sup>Subsection am. 22/1999 s. 11(1)(k)(i), (iv).

<sup>52</sup>Subsection am. 22/1999 s. 11(1)(k)(i), 26/2003 s. 7(i)(v).

writing of the nature and source of any other information relating to the application which has come to the notice of the Commissioner in the course of an investigation by him or her.

(6)<sup>53</sup> The Tribunal may, for the purposes of its functions under this Act, request the Commissioner to make such further inquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may be specified by the Tribunal.

(7)<sup>54</sup> The Commissioner shall furnish the Tribunal with observations in writing concerning any matter arising on the grounds of appeal whenever so requested by the Tribunal and a copy of such observations shall be furnished to the applicant concerned and his or her solicitor (if known).

(8)<sup>55</sup> The Tribunal shall furnish the applicant concerned and his or her solicitor (if known) and the High Commissioner whenever so requested by him or her with copies of any reports, observations, or representations in writing or any other document, furnished to the Tribunal by the Commissioner copies of which have not been previously furnished to the applicant or, as the case may be, the High Commissioner pursuant to section 11(6) and an indication in writing of the nature and source of any other information relating to the appeal which has come to the notice of the Tribunal in the course of an appeal under this section.

(9)<sup>56</sup> (a) An applicant may withdraw his or her appeal to the Tribunal by sending notice of withdrawal to the Tribunal and the Tribunal shall, as soon as may be, notify the Minister and the Commissioner of the withdrawal.

(b) Where an appeal is deemed to be withdrawn pursuant to subsection (2A) or (2B), the Tribunal shall, as soon as may be, notify the applicant, his or her solicitor (if known), the Minister and the Commissioner of the withdrawal.

(10)<sup>57</sup> The Tribunal shall, where appropriate, following a notice under subsection (3), hold an oral hearing for the purpose of an appeal under this section.

(11)<sup>58</sup> (a) For the purposes of an oral hearing (if any) under this section, the Tribunal may—

(i) direct in writing any person whose evidence is required by the Tribunal to attend before the Tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or control specified in the direction,

(ii) direct any such person to produce any specified document or thing in his or her possession or control, or

(iii) give any other directions for the purpose of an appeal that appear to the Tribunal reasonable and just.

(b) Subparagraphs (i) and (ii) of paragraph (a) shall not apply to a document or thing relating to information as respects which the Minister or the Minister for Foreign Affairs, as the case may be, directs (which he or she is hereby empowered to do) that the information be withheld in the interest of national security or public policy (“*ordre public*”).

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<sup>53</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

<sup>54</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

<sup>55</sup>Subsection am. 22/1999 s. 11(1)(k)(i), (v).

<sup>56</sup>Subsection am. 22/1999 s. 11(1)(k)(i); replaced 26/2003 s. 7(i)(vi).

<sup>57</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

<sup>58</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

- (c) The Tribunal shall enable the applicant and the Commissioner or an authorised officer to be present at the hearing and present their case to the Tribunal in person or through a legal representative or other person.
- (d) The Tribunal shall, where necessary, use its utmost endeavours to procure the attendance of an interpreter to assist at the hearing.
- (12)<sup>59</sup> Subject to subsection (13), a witness whose evidence has been or is to be given before the Tribunal shall be entitled to the same privileges and immunities as a witness in a court.
- (13) Where information has been supplied to the Commissioner, a Department of State or another branch or office of the public service by or on behalf of the government of another state in accordance with an undertaking (express or implied) that the information would be kept confidential, the information shall not, without the consent of the other state, be produced or further disclosed otherwise than in accordance with the undertaking.
- (14) An oral hearing under this section shall be held in private.
- (15) Notwithstanding subsection (14), the High Commissioner may be present at an oral hearing under this section for the purpose of observing the proceedings.
- (16)<sup>60</sup> Before deciding an appeal under this section, the Tribunal shall consider the following:
- (a) the relevant notice under subsection (3),
  - (b)<sup>61</sup> the report of the Commissioner under section 13,
  - (c) any observations made to the Tribunal by the Commissioner or the High Commissioner,
  - (d) the evidence adduced and any representations made at an oral hearing, if any, and
  - (e) any documents, representations in writing or other information furnished to the Commissioner pursuant to section 11.
- (16A)<sup>62</sup> The Tribunal shall affirm a recommendation of the Commissioner unless it is satisfied, having considered the matters referred to in subsection (16), that the applicant is a refugee.
- (17)<sup>63</sup>(a) A decision of the Tribunal under subsection (2) and the reasons therefor shall be communicated by the Tribunal to the applicant concerned and his or her solicitor (if known).
- (b) A decision of the Tribunal under subsection (2) and the reasons therefor shall be communicated by the Tribunal to the Minister together with a copy of the report of the Commissioner under section 13.
  - (c) A decision of the Tribunal under subsection (2) shall be communicated to the High Commissioner.
- (18)<sup>64</sup> The Tribunal shall ensure that an appeal against a recommendation of the Commissioner to which section 13(5) or 13(8) applies shall be dealt with as soon as may be and, if necessary, before any other application for a declaration.

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<sup>59</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

<sup>60</sup>Subsection am. 22/1999 s. 11(1)(k)(i).

<sup>61</sup>Paragraph am. 26/2003 s. 7(i)(vii).

<sup>62</sup>Subsection inserted 26/2003 s. 7(i)(viii).

<sup>63</sup>Subsection subst. 22/1999 s. 11(1)(k)(vi), am. 26/2003 s. 7(i)(ix).

<sup>64</sup>Subsection inserted 26/2003 s. 7(i)(x).

***Declaration that person is refugee.***

17.—(1)<sup>65</sup> Subject to the subsequent provisions of this section, where a report under section 13 is furnished to the Minister or where the Tribunal sets aside a recommendation of the Commissioner under section 16, the Minister—

(a) shall, in case the report or, as the case may be, the decision of the Tribunal includes a recommendation that the applicant concerned should be declared to be a refugee, give to the applicant a statement in writing (in this Act referred to as “a declaration”) declaring that the applicant is a refugee, and

(b) may, in any other case, refuse to give the applicant a declaration,

and he or she shall notify the High Commissioner of the giving of or, as the case may be, the refusal to give the applicant a declaration.

(1A)<sup>66</sup> Where an application is withdrawn or (other than pursuant to section 22) deemed to be withdrawn, or an appeal under section 16 is withdrawn or deemed to be withdrawn, the Minister shall refuse to give the applicant a declaration.

(2)(a) If the Minister considers that in the interest of national security or public policy (“*ordre public*”) it is necessary to do so, he or she may by order—

(i) provide that sections 3, 9 and 18 shall not apply to a person specified in the order, being a person to whom a declaration has been given, and

(ii) require the person to leave the State and the order shall specify the measures to be taken for the purpose of the removal of the person from the State including where necessary the temporary detention or restraint of the person.

(b) A person with respect to whom an order under paragraph (a)(ii) is made shall not be required to leave the State before the expiry of 30 days from the date of the making of the order.

(c) Where the Minister has made an order under the said paragraph (a)(ii) in respect of a person, he or she shall send a copy of the order to the person, the High Commissioner and the applicant's solicitor (if known).

(3) For the purposes of this Act, a person who, before the commencement of this Act, was recognised by the Minister as a refugee within the meaning of the Geneva Convention shall be deemed to be a person in respect of whom a declaration has been given under this section.

(4) The Minister shall not give a declaration to a refugee who has been recognised as a refugee under the Geneva Convention by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking a declaration in the State does not relate to a fear of persecution in that state.

(5) Where the Minister has decided to refuse to give a declaration, he or she shall send to the applicant a notice in writing stating that—

(a) his or her application for a declaration has been refused,

(b) the period of entitlement of the applicant to remain in the State under section 9 has expired, and

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<sup>65</sup>Subsection am. 22/1999 s. 11(1)(l)(i).

<sup>66</sup>Subsection inserted 26/2003 s. 7(j).

(c)<sup>67</sup> the Minister may make an order under section 3 of the Immigration Act, 1999, requiring the applicant to leave the State and if the notice contains the statement specified in subsection (4) of that section, it shall not be necessary for the Minister to give the notification specified in subsection (3) of that section.

(6) The Minister may, at his or her discretion, grant permission in writing to a person who has withdrawn his or her application or to whom the Minister has refused to give a declaration to remain in the State for such period and subject to such conditions as the Minister may specify in writing.

(7) A person to whom the Minister has refused to give a declaration may not make a further application for a declaration under this Act without the consent of the Minister.

(8)<sup>68</sup> [*repealed*]

(9) The Minister may by order amend or revoke an order under this section including an order under this subsection.

***Member of family of refugee.***

**18.**—(1) Subject to section 17(2), a refugee in relation to whom a declaration is in force may apply to the Minister for permission to be granted to a member of his or her family to enter and to reside in the State and the Minister shall cause such an application to be referred to the Commissioner and a notification thereof to be given to the High Commissioner.

(2) Where an application is referred to the Commissioner under subsection (1), it shall be the function of the Commissioner to investigate the application and to submit a report in writing to the Minister and such report shall set out the relationship between the refugee concerned and the person the subject of the application and the domestic circumstances of the person.

(3)(a) Subject to subsection (5), if, after consideration of a report of the Commissioner submitted to the Minister under subsection (2), the Minister is satisfied that the person the subject of the application is a member of the family of the refugee, the Minister shall grant permission in writing to the person to enter and reside in the State and the person shall be entitled to the rights and privileges specified in section 3 for such period as the refugee is entitled to remain in the State.

(b) In paragraph (a), "member of the family", in relation to a refugee, means—

(i) in case the refugee is married, his or her spouse (provided that the marriage is subsisting on the date of the refugee's application pursuant to subsection (1)),

(ii) in case the refugee is, on the date of his or her application pursuant to subsection (1), under the age of 18 years and is not married, his or her parents, or

(iii) a child of the refugee who, on the date of the refugee's application pursuant to subsection (1), is under the age of 18 years and is not married.

(4)(a) The Minister may, at his or her discretion, grant permission to a dependent member of the family of a refugee to enter and reside in the State and such member shall be entitled to the rights and privileges specified in *section 3* for such period as the refugee is entitled to remain in the State.

(b) In paragraph (a), "dependent member of the family", in relation to a refugee, means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the

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<sup>67</sup> Paragraph subst. 22/1999 s. 11(1)(l)(ii).

<sup>68</sup> Subsection r. 22/1999 s. 11(1)(l)(iii).

refugee who is dependent on the refugee or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.

(5) The Minister may refuse to grant permission to enter and reside in the State to a person referred to in subsection (3) or (4) or revoke any permission granted to such a person in the interest of national security or public policy (“*ordre public*”).

(6) The Minister may, on application in writing in that behalf and on payment to the Minister of such fee (if any) as may be prescribed with the consent of the Minister for Finance, issue to a person in respect of whom a permission granted under subsection (3) or (4) is in force a travel document identifying the holder thereof as such a person.

***Protection of identity of applicants.***

**19.**—(1)<sup>69</sup> The Commissioner, the Board, the Tribunal, the Minister, the Minister for Foreign Affairs and their respective officers shall take all practicable steps to ensure that the identity of applicants is kept confidential.

(2)<sup>70</sup> Subject to sections 9(15) and 26, no matter likely to lead members of the public to identify a person as an applicant under this Act shall be published in a written publication available to the public or be broadcast without the consent of that person.

(3) If any matter is published or broadcast in contravention of subsection (2), the following persons, namely—

- (a) in the case of a publication in a newspaper or periodical, any proprietor, an editor and any publisher of the newspaper or periodical,
- (b) in the case of any other publication, the person who publishes it, and
- (c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

(4) Where a person is charged with an offence under subsection (3) it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in subsection (2).

(4A)<sup>71</sup>(a) The chairperson of the Tribunal may, at his or her discretion, decide not to publish (other than to the persons referred to in section 16(17)) a decision of the Tribunal which in his or her opinion is not of legal importance.

(b) Any decision published shall exclude any matters which would tend to identify a person as an applicant under the Act or otherwise breach the requirement that the identity of applicants be kept confidential.

(5) In this section—

“a broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals intended for direct reception by the

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<sup>69</sup>Subsection am. 22/1999 s. 11(1)(m).

<sup>70</sup>Subsection replaced 26/2003 s. 7(k)(i).

<sup>71</sup>Subsection inserted 26/2003 s. 7(k)(ii).

general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

***Prohibition of false information and alteration of identity documents.***

**20.**—(1) In this section “identity documents” includes a passport, visa, national identity card, driving licence, birth certificate, marriage certificate or any other document establishing a person's nationality or identity purporting to be issued by or on behalf of a local or national authority of any country or by an organ or agency of the United Nations.

(2)<sup>72</sup> If a person, for the purposes of or in relation to an application under section 8, gives or makes to the Commissioner, the Tribunal, an authorised officer or an immigration officer any statement or information which is to his or her knowledge false or misleading in any material particular, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

(3)<sup>73</sup> If a person, for the purposes of or in relation to an application for a declaration, destroys or conceals the identity documents of an applicant or of a person who subsequently makes an application for a declaration with intent to deceive, he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

(4)<sup>74</sup> If a person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered any identity documents for reward and such documents are used or intended to be used in connection with an application for a declaration, that person shall be guilty of an offence and shall be liable—

(a) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine not exceeding £60,000 or to imprisonment for a term not exceeding 3 years or to both.

(5)<sup>75</sup> If a person sells or supplies, or has in his or her possession for the purpose of sale or supply, forged identity documents and such documents are used or intended to be used in connection with an application for a declaration, that person shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine not exceeding £100,000 or to imprisonment for a term not exceeding 5 years or to both.

(6) A member of the Garda Síochána may arrest without warrant a person whom the member reasonably suspects of committing or of having committed an offence under this section.

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<sup>72</sup>Subsection am. 22/1999 s. 11(1)(n)(i), (ii).

<sup>73</sup>Subsection am. 22/1999 s. 11(1)(n)(i).

<sup>74</sup>Subsection am. 22/1999 s. 11(1)(n)(i).

<sup>75</sup>Subsection am. 22/1999 s. 11(1)(n)(i).

***Revocation of declaration.***

**21.**—(1) Subject to subsection (2), if the Minister is satisfied that a person to whom a declaration has been given—

- (a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality,
- (b) having lost his or her nationality, has voluntarily re-acquired it,
- (c) has acquired a new nationality (other than the nationality of the State) and enjoys the protection of the country of his or her new nationality,
- (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,
- (e) can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality,
- (f) being a person who has no nationality is, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, able to return to the country of his or her former habitual residence,
- (g) is a person whose presence in the State poses a threat to national security or public policy (“*ordre public*”), or
- (h)<sup>76</sup> is a person to whom a declaration has been given on the basis of information furnished to the Commissioner or, as the case may be, the Tribunal which was false or misleading in a material particular,

the Minister may, if he or she considers it appropriate to do so, revoke the declaration.

(2) The Minister shall not revoke a declaration on the grounds specified in paragraph (e) or (f) where the Minister is satisfied that the person concerned is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of his or her nationality or for refusing to return to the country of his or her former habitual residence, as the case may be.

- (3)<sup>77</sup>(a) Where the Minister proposes to revoke a declaration under subsection (1), he or she shall send a notice in writing to the person concerned of his or her proposal and of the reasons for it and shall at the same time send a copy thereof to the person's solicitor (if known) and to the High Commissioner.
- (b) A person who has been notified of a proposal under paragraph (a) may, within 15 working days of the issue of the notification, make representations in writing to the Minister and the Minister shall—
- (i) before deciding the matter, take into consideration any representations duly made to him or her under this paragraph in relation to the proposal, and
  - (ii) send a notice in writing to the person of his or her decision and of the reasons for it.

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<sup>76</sup>Paragraph am. 22/1999 s. 11(1)(o)(i).

<sup>77</sup>Subsection am. 22/1999 s. 11(1)(o)(ii).

(4)<sup>78</sup>(a) A notice under subsection (3)(a) shall include a statement that the person concerned may make representations in writing to the Minister within 15 working days of the issue by the Minister of the notice.

(b) A notice under subsection (3) (b) (ii) shall include a statement that the person concerned may appeal to the High Court under subsection (5) against the decision of the Minister to revoke a declaration under subsection (1) within 15 working days from the date of the notice.

(5) A person concerned may appeal to the High Court against a decision of the Minister under this section and that Court may, as it thinks proper, on the hearing of the appeal, confirm the decision of the Minister or direct the Minister to withdraw the revocation of the declaration.

(6)<sup>79</sup> A person concerned shall not be required to leave the State before the expiry of 15 working days from the date of notice of a proposal under subsection (3) and, if an appeal is brought against the decision of the Minister, before the final determination or, as the case may be, the withdrawal of the appeal.

(7) The Minister may, at his or her discretion, grant permission in writing to a person in respect of whom a declaration has been revoked under subsection (1) to remain in the State for such period and subject to such conditions as the Minister may specify in writing.

***Dublin Convention.***

22.<sup>80</sup>—(1) The Minister may make such orders as appear to him or her to be necessary or expedient for the purpose of giving effect to—

(a) the Dublin Convention,

(b) Council Regulation (EC) No. 343/2003<sup>81</sup>,

(c) the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway done at Brussels on the 19th day of January 2001,

(d) any agreement of the kind referred to in subsection (5).

(2) Without prejudice to the generality of subsection (1), an order under this section may—

(a) specify the circumstances and procedure by reference to which an application for asylum—

(i) shall be examined in the State,

(ii) shall be transferred to a convention country for examination or to a safe third country, or

(iii) shall be accepted for examination in the State pursuant to a request made by a convention country in which the application for asylum was lodged or pursuant to an agreement to which subsection (1)(d) refers,

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<sup>78</sup>Subsection am. 22/1999 s. 11(1)(o)(ii).

<sup>79</sup>Subsection am. 22/1999 s. 11(1)(o)(ii).

<sup>80</sup>Section replaced 26/2003 s. 7(l).

<sup>81</sup>O.J. No. L50/1 of 25 February 2003.

and the powers referred to in this subsection shall be exercised by whichever of the persons mentioned in subsection (4)(a) is specified in the order,

- (b) provide for an appeal against a determination to transfer an application for asylum to a convention country or a safe third country and for the procedure in relation to such an appeal,
- (c) provide, where the order specifies that the making of an appeal shall not suspend the transfer of the application or of the applicant to the convention country or the safe third country, that such transfer is without prejudice to the appeal decision,
- (d) require that an application for asylum shall not be investigated by the Commissioner until it has been decided whether a convention country is responsible for examining the application or whether the application should be transferred to a safe third country,
- (e) require that an application for asylum which is being investigated by the Commissioner shall be transferred to a convention country for examination,
- (f) provide that where an application has been transferred to a convention country for examination or to a safe third country the person concerned shall go to that convention country or to that safe third country,
- (g) provide for the transit through the State of a person whose application for asylum has been transferred from a convention country to another convention country for examination,
- (h) provide for the investigation of an application for asylum by the Commissioner notwithstanding that a convention country has responsibility for examining the application,
- (i) specify the measures to be taken for the purpose of the removal of a person whose application has been transferred to a convention country or a safe third country from the State to that convention country or safe third country including, where necessary, the temporary detention or restraint of the person, and
- (j) provide for the temporary detention (for a period not exceeding 48 hours) of a person who, having arrived in the State directly from a convention country or a safe third country, makes an application for asylum until a decision on the matters at paragraph (a) has been made.

(3) An order under this section may make provision for such consequential, incidental, ancillary and supplementary matters as the Minister considers necessary or expedient.

(4)(a) The persons referred to in subsection (2)(a) are the Minister, the Commissioner, and an immigration officer.

(b) The Tribunal shall consider and decide appeals under subsection (2)(b).

(5)(a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country as a safe third country (referred to in this section as “a safe third country”).

(b) In deciding whether to make an order under paragraph (a), the Minister shall have regard to the following matters:

(i) whether the country is party to and complies generally with its obligations under the Geneva Convention, the Convention against Torture (within the meaning of section 12) and the International Covenant on Civil and Political Rights (within the meaning aforesaid);

(ii) whether the country has a democratic political system and an independent judiciary;

(iii) whether the country is governed by the rule of law;

and that country and the State are parties to an agreement which contains provisions providing for—

(I) the prompt transfer to that country of an application for asylum made in the State by a person who has arrived from that country, and

(II) the prompt transfer to the State of an application for asylum made in that country by a person who has arrived in that country from the State.

(c) The Minister, may, after consultation with the Minister for Foreign Affairs, by order amend or revoke an order under this subsection including an order under this paragraph.

(6)(a) The Minister for Foreign Affairs may by order designate the countries which are parties to the Dublin Convention or to the Agreement referred to in subsection (1)(c) or the countries to which the Council Regulation referred to in subsection (1)(b) applies.

(b) The Minister for Foreign Affairs may by order amend or revoke an order under this subsection including an order under this paragraph.

(7) The Minister may by order amend or revoke an order under this section (other than an order under subsection (6)) including an order under this subsection.

(8) Where an application has been transferred to a convention country for examination or to a safe third country, the application shall be deemed to be withdrawn.

(9)(a) The Minister shall, pursuant to Article 14 of the Dublin Convention or the corresponding provision of the agreement referred to in subsection (1)(c), communicate information to convention countries or to any relevant country pursuant to that agreement in relation to matters referred to in that Article.

(b) The Commissioner shall, pursuant to Article 15 of the Dublin Convention or the corresponding provision of the agreement referred to in subsection (1)(c), communicate information to convention countries or to any relevant country pursuant to that agreement in relation to matters referred to in that Article:

provided that information concerning the grounds on which a particular application for asylum is based or the grounds on which a decision concerning such an application is based shall not be communicated under this section without the prior consent of the person the subject of the application.

(10) The Minister and the Commissioner may communicate to a safe third country such information relating to an application for asylum or to the person making such application (including personal information) as may be necessary for giving effect to an agreement to which subsection (1)(d) refers:

provided that information concerning the grounds on which a particular application for asylum is based or the grounds on which a decision concerning such an application is based shall not be communicated under this section without the prior consent of the person the subject of the application.

(11) In this section, “an application for asylum” means a request whereby a person seeks the protection of the State or a convention country or a safe third country by claiming refugee status under the Geneva Convention and includes an application for a declaration under this Act.

### ***Regulations.***

**23.**—The Minister may make regulations for the purpose of enabling this Act to have full effect and, in particular, but without prejudice to the generality of the foregoing, regulations under this section may make provision in relation to—

- (a) applications for a declaration and the procedure for and in relation to such applications, and
- (b)<sup>82</sup> appeals under this Act to the Tribunal and the procedure for and in relation to such appeals.

### ***“Programme refugees”.***

**24.**—(1) In this section “a programme refugee” means a person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government and whose name is entered in a register established and maintained by the Minister for Foreign Affairs, whether or not such person is a refugee within the meaning of the definition of “refugee” in section 2.

(2) A programme refugee shall, during such period as he or she is entitled to remain in the State pursuant to leave given by the Government, be entitled to the rights and privileges specified in section 3.

(3) Subject to subsection (4), the Minister may, on application in writing in that behalf and on payment to the Minister of such fee (if any) as may be prescribed with the consent of the Minister for Finance, issue to a programme refugee a travel document identifying the holder thereof as a programme refugee.

(4) The Minister may, in the interest of national security or public policy (“*ordre public*”), refuse to issue a travel document.

(5) A travel document shall be in such form as may be prescribed or in a form to the like effect.

(6) A person who applies to the Minister for a travel document under this section shall furnish to the Minister such information (if any) as the Minister may reasonably require for the purpose of his or her functions under this section.

(7)<sup>83</sup>(a) The Minister may, after consultation with the Minister for Foreign Affairs, enter into agreements with the High Commissioner for the reception and resettlement in the State of refugees.

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<sup>82</sup>Paragraph am. 22/1999 s. 11(1)(q).

***Saving.***

**25.**—Nothing in this Act shall be construed as preventing the extradition of a person in accordance with the provisions of the Extradition Acts, 1965 to 1994.

***Annual report to Houses of Oireachtas.***

**26.**—The Minister shall, not later than 2 months after the end of each year beginning with the year 1996, make a report to each House of the Oireachtas stating the number of cases (if any) in which sections 9(15), 17(2) and 18(5) were applied in the preceding year and the circumstances of any such case.

***Laying of orders and regulations before Houses of Oireachtas.***

**27.**—Every order (other than an order under subsection (2) or (8) of section 17) or regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to anything previously done thereunder.

***Transitional provision.***

**28.**<sup>84</sup>—Where, before the commencement of this section, a person had made an application to the Minister for asylum but a decision in relation thereto had not been made by the Minister then, the application shall be deemed to be an application under section 8 and shall be dealt with accordingly; any step taken by the Minister before such commencement in relation to the application (being a step required to be taken under this Act in relation to an application under this Act) shall be deemed to have been taken under this Act.

***Transitional.***

**28A.**<sup>85</sup>—(1) Where an application has been made under section 8 before the commencement of section 7 of the Immigration Act 2003—

- (a) in case, before such commencement, the applicant has been interviewed under section 11, then, upon such commencement, this Act shall apply to the application as if the said section 7 had not been commenced,
- (b) in any other case, then, upon such commencement, this Act, as amended by the said section 7, shall apply to the application.

(2) The Commissioner shall give or cause to be given to each applicant to whose application subsection (1)(b) applies, before he or she is interviewed under section 11, a statement in writing giving a short explanation of the amendments made by the said section 7.

***Expenses of Minister.***

**29.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

***Short title and commencement.***

**30.**—(1) This Act may be cited as the Refugee Act, 1996.

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<sup>83</sup>Subsection inserted 26/2003 s. 7(m).

<sup>84</sup>Section am. 22/1999 s. 11(1)(r).

<sup>85</sup>Section inserted 26/2003 s. 7(n).

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

## **FIRST SCHEDULE**<sup>86</sup>

### REFUGEE APPLICATIONS COMMISSIONER

1. The position of Commissioner shall be a position in the Civil Service (within the meaning of the Civil Service Commissioners Act, 1956) and a person shall not be appointed to be the Commissioner unless the Civil Service Commissioners, within the meaning aforesaid, after holding a competition under section 15 of that Act, have, under section 17 of that Act, selected him or her for appointment to the position.

2. The term of office of the Commissioner shall be 5 years and a person may be reappointed to the office for a second or subsequent term.

3. The Commissioner shall be paid such remuneration and such allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

4. The Commissioner—

(a) may at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect on and from the date of receipt of the letter,

(b) may at any time be removed from office by the Minister if, in the opinion of the Minister, he or she has become incapable through ill-health of effectively performing his or her functions or has committed stated misbehaviour, and

(c) shall in any case vacate his or her office on attaining the age of 65 years.

5. The Minister may appoint such and so many persons to be members of the staff of the Commissioner as he or she considers necessary to assist the Commissioner in the performance of his or her functions and such members shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.

6. Members of the staff of the Commissioner shall be Civil Servants within the meaning of the Civil Service Regulation Act, 1956.

7. The Minister may delegate to the Commissioner the powers exercisable by him or her under the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the Commissioner and, if the Minister does so, then, so long as the delegation remains in force—

(a) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Commissioner, and

(b) the Commissioner shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the Commissioner.

8. (1) The Commissioner shall keep, in such form as may be approved of by the Minister, all proper and usual accounts of all moneys received or expended by him or her and all such special accounts (if any) as the Minister may direct.

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<sup>86</sup>Schedule subst. 22/1999 s. 11(1)(s).

(2) Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Commissioner for audit to the Comptroller and Auditor General in the following year on a date not later than a date specified by the Minister and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be furnished by the Commissioner to the Minister who shall cause copies of the documents so furnished to be laid before each House of the Oireachtas.

9. The Commissioner may delegate to any members of the staff of the Commissioner any of his or her functions under this Act save those conferred by section 7.

10<sup>87</sup>. (1) Where the Commissioner is for any reason temporarily unable to act as the Commissioner or the office of the Commissioner is vacant, the Minister shall appoint a person to be the Commissioner for the duration of the inability or until an appointment is made in accordance with paragraph 1, as the case may be, and the person so appointed may perform all the functions conferred on the Commissioner by this Act.

(2) A person appointed under this paragraph shall hold office upon such terms and conditions as may be determined by the Minister after consultation with the Minister for Finance.

11<sup>88</sup>. The Commissioner may, if he or she considers it appropriate to do so in the interest of the fair and efficient discharge of the business of his or her office, determine the order in which different classes of such business shall be discharged having regard to the following matters:

- (a) the grounds of the applications under section 8,
- (b) the country of origin of the applicants,
- (c) any family relationship between applicants,
- (d) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made,
- (e) the dates on which applications were made.

## **SECOND SCHEDULE** <sup>89</sup>

### REFUGEE APPEALS TRIBUNAL

1. The Tribunal shall consist of the following members—

- (a) a chairperson, and
- (b) such and such number of ordinary members as the Minister, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal,

each of whom shall have had not less than 5<sup>90</sup> years' experience as a practising barrister or practising solicitor before his or her appointment.

2.<sup>91</sup> (a) The members of the Tribunal shall be appointed by the Minister.

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<sup>87</sup>Paragraph inserted 26/2003 s. 7(o).

<sup>88</sup>Paragraph inserted 26/2003 s. 7(o).

<sup>89</sup>Schedule subst. 22/1999 s. 11(1)(t).

<sup>90</sup>Reduced from 10 years: 29/2000 s. 9(d)(i).

<sup>91</sup>Paragraph subst. 29/2000 s. 9(d)(ii).

(b) A person shall not be appointed to be the chairperson unless the Civil Service Commissioners, within the meaning of the Civil Service Commissioners Act, 1956, after holding a competition under section 29 of that Act, have selected him or her for appointment to the position.

3. The term of office of the chairperson shall be 5 years and a person may be reappointed to the office for a second or subsequent term.

4. Each ordinary member of the Tribunal shall be a part-time member and, subject to this Schedule, shall hold office for a term of 3 years on such terms and conditions as the Minister may, subject to the provisions of this Schedule, determine when appointing him or her.

5.<sup>92</sup> (a) The chairperson shall hold office under a contract of service in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances and expenses and superannuation), as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(b) Each ordinary member shall be paid such remuneration and allowances and expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

6. A member of the Tribunal may resign his or her membership by letter addressed to the Minister and the resignation shall take effect from the date of receipt of the letter by the Minister.

7. An ordinary member of the Tribunal may be removed from office by the Minister for stated reasons.

8<sup>93</sup>. (1) If a member of the Tribunal dies, resigns, becomes disqualified or is removed from office, the Minister may appoint another person to be a member of the Tribunal to fill the casual vacancy so occasioned and the person appointed shall be appointed in the same manner of the Tribunal member who occasioned the vacancy.

(2) Where the chairperson is for any reason temporarily unable to act as the chairperson, or the office of the chairperson is vacant, the Minister shall appoint a person to be the chairperson for the duration of the inability or until an appointment is made under paragraph 2, as appropriate, and the person so appointed may perform all the functions conferred on the chairperson by this Act.

(3) A person appointed under this paragraph shall hold office upon such terms and conditions as may be determined by the Minister after consultation with the Minister for Finance.

9. The Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.

10. Members of the staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Act, 1956.

11. Whenever the Tribunal consists of more than one member, it shall be grouped into divisions each of which shall consist of one member.

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<sup>92</sup> Paragraph subst. 29/2000 s. 9(d)(iii).

<sup>93</sup> Paragraph replaced 26/2003 s. 7(p)(i).

12. The chairperson shall convene a meeting of the members of the Tribunal at least twice a year to review the work of the Tribunal and, where necessary, to make provision for training programmes for members of the Tribunal.

13<sup>94</sup>. The chairperson shall assign to each division the business to be transacted by it.

14. The chairperson shall endeavour to ensure that the business of the Tribunal is managed efficiently and that the business assigned to each division is disposed of as expeditiously as may be consistent with fairness and natural justice.

15. The chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient discharge of the business of the Tribunal, assign classes of business to each division having regard to the following matters:

- (a) the grounds of the appeals set out in the notices of appeal,
- (b) the country of origin of applicants,
- (c) any family relationship between applicants,
- (d) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made,
- (e) the provision of this Act pursuant to which the appeals are made.

16. The chairperson may delegate to a member of his or her staff his or her function of assigning to each division the business to be transacted by it.

17. The chairperson may from time to time issue guidelines or guidance notes generally on the practical application and operation of the provisions, or any particular provisions, of this Act and on developments in the law relating to refugees.

18. The chairperson may from time to time convene a meeting with a member or members of the Tribunal for the purpose of discussing matters relating to the discharge of the business of the Tribunal, including, in particular, such matters as the avoidance of undue divergences in the exercise by the members of their functions under section 16.

19. The chairperson shall, not later than 3 months after the end of each year, submit a report in writing to the Minister of his or her activities during that year and, not later than 1 month after such submission, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

20. The chairperson may, if he or she considers it appropriate to do so, make a report in writing to the Minister in relation to any function performed by him or her under this Act or any matter relating to the operation of this Act.

### ***THIRD SCHEDULE***

#### **GENEVA CONVENTION**

#### **CONVENTION**

#### **1951 RELATING TO THE STATUS OF REFUGEES**

#### **PREAMBLE**

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<sup>94</sup>Paragraph replaced by paragraphs 13 to 20 26/2003 s. 7(p)(ii).

## *THE HIGH CONTRACTING PARTIES*

*Considering* that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

*Considering* that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms,

*Considering* that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement,

*Considering* that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,

*Expressing* the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,

*Noting* that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of Refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner,

*Have agreed as follows.*

## CHAPTER I GENERAL PROVISIONS

### *Article 1* Definition of the term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in Article 1, Section A, shall be understood to mean either:

(a) “events occurring in Europe before 1 January 1951” or

(b) “events occurring in Europe or elsewhere before 1 January 1951”

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.

(2) Any Contracting State which has adopted alternative (a) may at any time extend its obligations by adopting alternative (b) by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of Section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he 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) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

*Article 2*

General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

*Article 3*

Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

*Article 4*

Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

*Article 5*

Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

*Article 6*

The term “in the same circumstances”

For the purpose of this Convention, the term “in the same circumstances” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

*Article 7*

Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

#### *Article 8*

##### Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article, shall, in appropriate cases, grant exemptions in favour of such refugees.

#### *Article 9*

##### Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

#### *Article 10*

##### Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

#### *Article 11*

##### Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them on their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

## CHAPTER II JURIDICAL STATUS

#### *Article 12*

##### Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.
2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognised by the law of that State had he not become a refugee.

#### *Article 13*

##### Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

#### *Article 14*

##### Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has habitual residence.

#### *Article 15*

##### Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

#### *Article 16*

##### Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.
3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

### CHAPTER III GAINFUL EMPLOYMENT

#### *Article 17*

##### Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting States concerned, or who fulfils one of the following conditions:
  - (a) He has completed three years' residence in the country;
  - (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
  - (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

*Article 18*  
Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

*Article 19*  
Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognised by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.
2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV  
WELFARE

*Article 20*  
Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

*Article 21*  
Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully

staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

*Article 22*  
Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

*Article 23*  
Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

*Article 24*  
Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
  - (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefit of collective bargaining;
  - (b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
    - (i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
    - (ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.
2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.
3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of

acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## CHAPTER V ADMINISTRATIVE MEASURES

### *Article 25* Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities or by an international authority.
2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.
3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.
4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.
5. The provisions of this article shall be without prejudice to articles 27 and 28.

### *Article 26* Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

### *Article 27* Identity papers

The Contracting States shall issue identity Papers to any refugee in their territory who does not possess a valid travel document.

### *Article 28* Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognised and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

*Article 29*  
Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

*Article 30*  
Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

*Article 31*  
Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularised or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

*Article 32*  
Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

*Article 33*

Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

*Article 34*

Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI  
EXECUTORY AND TRANSITORY PROVISIONS

*Article 35*

Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
  - (a) the condition of refugees,
  - (b) the implementation of this Convention, and
  - (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

*Article 36*

Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

*Article 37*

Relation to previous Conventions

Without prejudice to article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII

## FINAL CLAUSES

### *Article 38* Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

### *Article 39* Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be reopened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### *Article 40* Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the States concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject where necessary for constitutional reasons, to the consent of the governments of such territories.

### *Article 41* Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States.

- (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation, to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment.
- (c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

*Article 42*  
Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1), 33, 36 to 46 inclusive.
2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

*Article 43*  
Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.
2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the day of deposit by such State of its instrument of ratification or accession.

*Article 44*  
Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

*Article 45*  
Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

*Article 46*

Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 39:

- (a) of declarations and notifications in accordance with Section B of article 1;
- (b) of signatures, ratifications and accessions in accordance with article 39;
- (c) of declarations and notifications in accordance with article 40;
- (d) of reservations and withdrawals in accordance with article 42;
- (e) of the date on which this Convention will come into force in accordance with article 43;
- (f) of denunciations and notifications in accordance with article 44;
- (g) of requests for revision in accordance with article 45.

In faith whereof the undersigned, duly authorised, have signed this Convention on behalf of their respective Governments,

Done at Geneva, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 39.

SCHEDULE

Paragraph 1

1. The travel document referred to in article 28 of this Convention shall be similar to the specimen annexed hereto.
2. The document shall be made out in at least two languages, one of which shall be in English or French.

Paragraph 2

Subject to the regulations obtaining in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult refugee.

Paragraph 3

The fees charged for issue of the document shall not exceed the lowest scale of charges for national passports.

Paragraph 4

Save in special or exceptional cases, the document shall be made valid for the largest possible number of countries.

Paragraph 5

The document shall have a validity of either one or two years, at the discretion of the issuing authority.

Paragraph 6

1. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document.
2. Diplomatic or consular authorities, specially authorized for the purpose, shall be empowered to extend, for a period not exceeding six months, the validity of travel documents issued by their Governments.

3. The Contracting States shall give sympathetic consideration to renewing or extending the validity of travel documents or issuing new documents to refugees no longer lawfully resident in their territory who are unable to obtain a travel document from the country of their lawful residence.

Paragraph 7

The Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.

Paragraph 8

The competent authorities of the country to which the refugee desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder.

Paragraph 9

1. The Contracting States undertake to issue transit visas to refugees who have obtained visas for a territory of final destination.
2. The issue of such visas may be refused on grounds which would justify refusal of a visa to any alien.

Paragraph 10

The fees for the issue of exit, entry or transit visas shall not exceed the lowest scale of charges for visas on foreign passports.

Paragraph 11

When a refugee has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of article 28, shall be that of the competent authority of that territory, to which the refugee shall be entitled to apply.

Paragraph 12

The authority issuing a new document shall withdraw the old document and shall return it to the country of issue, if it is stated in the document that it should be so returned; otherwise it shall withdraw and cancel the document.

Paragraph 13

1. Each Contracting State undertakes that the holder of a travel document issued by it in accordance with article 28 of this Convention shall be readmitted to its territory at any time during the period of its validity.
2. Subject to the provisions of the preceding sub-paragraph, a Contracting State may require the holder of the document to comply with such formalities as may be prescribed in regard to exit from or return to its territory.
3. The Contracting States reserve the right, in exceptional cases, or in cases where the refugee's stay is authorised for a specific period, when issuing the document, to limit the period during which the refugee may return to a period of not less than three months.

Paragraph 14

Subject only to the terms of paragraph 13, the provisions of this Schedule in no way affect the laws and regulations governing the conditions of admission to, transit through, residence and establishment in, and departure from, the territories of the Contracting States.

Paragraph 15

Neither the issue of the document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Paragraph 16

The issue of the document does not in any way entitle the holder to the protection of the diplomatic or consular authorities of the country of issue, and does not confer on these authorities a right of protection.

ANNEX  
Specimen Travel Document

The document will be in booklet form (approximately 15 x 10 centimetres).

It is recommended that it be so printed that any erasure or alteration by chemical or other means can be readily detected, and that the words 'Convention of 28 July 1951' be printed in continuous repetition on each page, in the language of the issuing country.

---

(Cover of booklet)  
TRAVEL DOCUMENT  
(Convention of 28 July 1951)

---

No.

(1)  
TRAVEL DOCUMENT  
(Convention of 28 July 1951)

This document expires on  
unless its validity is extended or renewed.

Name

Forename(s)

Accompanied by

child (children)

1. This document is issued solely with a view to providing the holder with a travel document which can serve in lieu of a national passport. It is without prejudice to and in no way affects the holder's nationality.

2. The holder is authorised to return to

[state here the country whose authorities are issuing the document]

on or before

unless some later

date is hereafter specified.

[The period during which the holder is allowed to return must not be less than three months]

3. Should the holder take up residence in a country other than that which issued the present document, he must, if he wishes to travel again, apply to the competent authorities of his country of residence for a new document. [The old travel document shall be withdrawn by the authority issuing the new document and returned to the authority which issued it.]<sup>1</sup>

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

---

(2)

Place and date of birth

Occupation

Present residence

\*Maiden name and forename(s) of wife

\*Name and forename(s) of husband

Description

Height

Hair

Colour of eyes

Nose

Shape of face

Complexion

Special peculiarities

Children accompanying holder

Name

Forename(s)

Place and  
date of birth

Sex

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

---

(3)

Photograph of holder and stamp of issuing authority

Finger-prints of holder (if required)

Signature of holder

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

---

(4)

1. This document is valid for the following countries:

2. Document or documents on the basis of which the present document is issued:

Issued at

Date

Signature and stamp of authority

issuing the document:

Fee paid

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

---

(5)

Extension or renewal of validity

Fee paid:

From

To

Done at

Date

Signature and stamp of authority  
extending or renewing the validity  
of the document:

Fee paid: Extension or renewal of validity  
From  
To  
Done at Date

Signature and stamp of authority  
extending or renewing the validity  
of the document:

( This document contains \_\_\_\_\_ pages, exclusive of cover.)

(6)

Extension or renewal of validity

Fee paid: From  
To  
Done at Date

Signature and stamp of authority  
extending or renewing the validity  
of the document:

Fee paid: Extension or renewal of validity  
From  
To  
Done at Date

Signature and stamp of authority  
extending or renewing the validity  
of the document:

Fee paid: Extension or renewal of validity  
From  
To  
Done at Date

Signature and stamp of authority  
extending or renewing the validity  
of the document:

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

(7-32)

Visas

The name of the holder of the document must be repeated in each visa.

(This document contains \_\_\_\_\_ pages, exclusive of cover.)

## 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES

*The States Parties* to the present Protocol,

*Considering* that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January 1951,

*Considering* that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

*Considering* that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

*Have agreed* as follows:

### *Article I* General provision

1. The States Parties to the present Protocol undertake to apply articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.
2. For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and . . .” and the words “. . . as a result of such events”, in article 1 A (2) were omitted.
3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with article 1 B (1) (a) of the Convention, shall, unless extended under article 1 B (2) thereof, apply also under the present Protocol.

#### *Article II*

##### Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
  - (a) The condition of refugees;
  - (b) The implementation of the present Protocol;
  - (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

#### *Article III*

##### Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

#### *Article IV*

##### Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### *Article V*

##### Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialised agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

#### *Article VI*

#### Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

- (a) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of States Parties which are not Federal States;
- (b) With respect to those articles of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;
- (c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

#### *Article VII*

##### Reservations and Declarations

1. At the time of accession, any State may make reservations in respect of article IV of the present Protocol and in respect of the application in accordance with article I of the present Protocol of any provisions of the Convention other than those contained in articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this article shall not extend to refugees in respect of whom the Convention applies.
2. Reservations made by States Parties to the Convention in accordance with article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.
3. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.
4. Declarations made under article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of article 40, paragraphs 2 and 3, and of article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

#### *Article VIII*

##### Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.
2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

*Article IX*  
Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

*Article X*  
Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

*Article XI*  
Deposit in the Archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in article V above,

***FOURTH SCHEDULE***

DUBLIN CONVENTION

Convention

determining the state responsible for examining applications for asylum lodged in one of the  
Member States of the European Communities

*Preamble*

His Majesty the King of the Belgians,  
Her Majesty the Queen of Denmark,  
The President of the Federal Republic of Germany,  
The President of the Hellenic Republic,  
His Majesty the King of Spain,  
The President of the French Republic,  
The President of Ireland,  
The President of the Italian Republic,  
His Royal Highness the Grand Duke of Luxembourg,  
Her Majesty the Queen of the Netherlands,  
The President of the Portuguese Republic,

Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg on 8 and 9 December 1989, of the harmonisation of their asylum policies;

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva-Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees, hereinafter referred to as the "Geneva-Convention" and the "New York Protocol" respectively;

CONSIDERING the joint objective of an area without internal frontiers in which the free movement of persons shall, in particular, be ensured, in accordance with the provisions of the Treaty establishing the European Economic Community, as amended by the Single European Act;

AWARE of the need, in pursuit of this objective, to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum;

DESIRING to continue the dialogue with the United Nations High Commissioner for Refugees in order to achieve the above objectives;

DETERMINED to co-operate closely in the application of this Convention through various means, including exchanges of information,

HAVE DECIDED TO CONCLUDE THIS CONVENTION AND TO THIS END HAVE DESIGNATED AS THEIR PLENIPOTENTIARIES:

(Designation of Plenipotentiaries)

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS;

#### ARTICLE 1

1. For the purposes of this Convention:

- (a) Alien means: any person other than a national of a Member State;
- (b) Application for asylum means: a request whereby an alien seeks from a Member State protection under the Geneva Convention by claiming refugee status within the meaning of Article 1 of the Geneva Convention, as amended by the New York Protocol;
- (c) Applicant for asylum means: an alien who has made an application for asylum in respect of which a final decision has not yet been taken;
- (d) Examination of an application for asylum means: all the measures for examination, decisions or rulings given by the competent authorities on an application for asylum, except for procedures to determine the State responsible for examining the application for asylum pursuant to this Convention;
- (e) Residence permit means: any authorization issued by the authorities of a Member State authorising an alien to stay in its territory, with the exception of visas and "stay

permits” issued during examination of an application for a residence permit or for asylum;

(f) Entry visa means: authorization or decision by a Member State to enable an alien to enter its territory, subject to the other entry conditions being fulfilled;

(g) Transit visa means: authorization or decision by a Member State to enable an alien to transit through its territory or pass through the transit zone of a port or airport, subject to the other transit conditions being fulfilled.

2. The nature of the visa shall be assessed in the light of the definitions set out in paragraph 1, points (f) and (g).

## ARTICLE 2

The Member States reaffirm their obligations under the Geneva Convention, as amended by the New York Protocol, with no geographic restriction of the scope of these instruments, and their commitment to co-operating with the services of the United Nations High Commissioner for Refugees in applying these instruments.

## ARTICLE 3

1. Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.

2. That application shall be examined by a Single Member State, which shall be determined in accordance with the criteria defined in this Convention. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear.

3. That application shall be examined by that State in accordance with its national laws and its international obligations.

4. Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto.

The Member State responsible under the above criteria is then relieved of its obligations, which are transferred to the Member State which expressed the wish to examine the application. The latter State shall inform the Member State responsible under the said criteria if the application has been referred to it.

5. Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.

6. The process of determining the Member State responsible for examining the application for asylum under this Convention shall start as soon as an application for asylum is first lodged with a Member State.

7. An applicant for asylum who is present in another Member State and there lodges an application for asylum after withdrawing his or her application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 13, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.

This obligation shall cease to apply if the applicant for asylum has since left the territory of the Member States for a period of at least three months or has obtained from a Member State a residence permit valid for more than three months.

#### ARTICLE 4

Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire.

The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years.

#### ARTICLE 5

1. Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.

2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, except in the following situations:

(a) if the visa was issued on the written authorisation of another Member State, that State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, *inter alia* for security reasons, the agreement of the latter shall not constitute written authorisation within the meaning of this provision,

(b) where the applicant for asylum is in possession of a transit visa and lodges his application in another Member State in which he is not subject to a visa requirement, that State shall be responsible for examining the application for asylum,

(c) where the applicant for asylum is in possession of a transit visa and lodges his application in the State which issued him or her with the visa and which has received written confirmation from the diplomatic or consular authorities of the Member State of destination that the alien for whom the visa requirement was waived fulfilled the conditions for entry into that State, the latter shall be responsible for examining the application for asylum.

3. Where the applicant for asylum is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

(a) the State which issued the residence permit conferring the right to the longest period of residency or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;

(b) the State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or where the periods of validity are identical, the State which issued the visa having the latest expiry date. This provision shall not apply where the applicant is in possession of one or more transit visas, issued on presentation of an entry visa for another Member State. In that case, that Member State shall be responsible.

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.

#### ARTICLE 6

When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State thus entered shall be responsible for examining the application for asylum.

That State shall cease to be responsible, however, if it is proved that the applicant has been living in the Member State where the application for asylum was made at least six months before making his application for asylum. In that case it is the latter Member State which is responsible for examining the application for asylum.

#### ARTICLE 7

1. The responsibility for examining an application for asylum shall be incumbent upon the Member State responsible for controlling the entry of the alien into the territory of the Member States, except where, after legally entering a Member State in which the need for him or her to have a visa is waived, the alien lodges his or her application for asylum in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter State shall be responsible for examining the application for asylum.

2. Pending the entry into force of an agreement between Member States on arrangements for crossing external borders, the Member State which authorises transit without a visa through the transit zone of its airports shall not be regarded as responsible for control on entry, in respect of travellers who do not leave the transit zone.

3. Where the application for asylum is made in transit in an airport of a Member State, that State shall be responsible for examination.

#### ARTICLE 8

Where no Member State responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the first Member State with which the application for asylum is lodged shall be responsible for examining it.

#### ARTICLE 9

Any Member State, even when it is not responsible under the criteria laid out in this Convention may, for humanitarian reasons based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires.

If a Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.

## ARTICLE 10

- 1 The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to:
  - (a) Take charge under the conditions laid down in Article 11 of an applicant who has lodged an application for asylum in a different Member State.
  - (b) Complete the examination of the application for asylum.
  - (c) Re-admit or take back under the conditions laid down in Article 13 an applicant whose application is under examination and who is irregularly in another Member State.
  - (d) Take back, under the conditions laid down in Article 13, an applicant who has withdrawn the application under examination and lodged an application in another Member State.
  - (e) Take back, under the conditions laid down in Article 13, an alien whose application it has rejected and who is illegally in another Member State.
2. If a Member State issues to the applicant a residence permit valid for more than three months, the obligations specified in paragraph 1, points (a) to (e) shall be transferred to that Member State.
3. The obligations specified in paragraph 1, points (a) to (d) shall cease to apply if the alien concerned has left the territory of the Member State for a period of at least three months.
4. The obligations specified in paragraph 1, points (d) and (e) shall cease to apply if the State responsible for examining the application for asylum, following the withdrawal or rejection of the application, takes and enforces the necessary measures for the alien to return to his country of origin or to another country which he may lawfully enter.

## ARTICLE 11

1. If a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within the six months following the date on which the application was lodged, call upon the other Member State to take charge of the applicant.

If the request that charge be taken is not made within the six month time limit, responsibility for examining the application for asylum shall rest with the State in which the application was lodged.
2. The request that charge be taken shall contain indications enabling the authorities of that other State to ascertain whether it is responsible on the basis of the criteria laid down in this Convention.
3. The State responsible in accordance with those criteria shall be determined on the basis of the situation obtaining when the applicant for asylum first lodged his application with a Member State.
4. The Member State shall pronounce judgment on the request within three months of receipt of the claim. Failure to act within that period shall be tantamount to accepting the claim.
5. Transfer of the applicant for asylum from the Member State where the application was lodged to the Member State responsible must take place not later than one month after acceptance of the request to take charge or one month after the conclusion of any proceedings initiated by the alien challenging the transfer decision if the proceedings are suspensory.

6. Measures taken under Article 18 may subsequently determine the details of the process by which applicants shall be taken in charge.

#### ARTICLE 12

Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible for examining the application for asylum shall be made by the Member State on whose territory the applicant is. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purpose of applying this Convention, be regarded as the Member State with which the application for asylum was lodged.

#### ARTICLE 13

1 An applicant for asylum shall be taken back in the cases provided for in Article 3 (7) and in Article 10 as follows:

- (a) the request for the applicant to be taken back must provide indications enabling the State with which the request is lodged to ascertain that it is responsible in accordance with Article 3 (7) and with Article 10;
- (b) the State called upon to take back the applicant shall give an answer to the request within eight days of the matter being referred to it. Should it acknowledge responsibility, it shall then take back the applicant for asylum as quickly as possible and at the latest one month after it agrees to do so.

2. Measures taken under Article 18 may at a later date set out the details of the procedure for taking the applicant back.

#### ARTICLE 14

1. Member States shall conduct mutual exchanges with regard to:

- national legislative or regulatory measures or practices applicable in the field of asylum;
- statistical data on monthly arrivals of applicants for asylum, and their breakdown by nationality. Such information shall be forwarded quarterly through the General Secretariat of the Council of the European Communities, which shall see that it is circulated to the Member States and the Commission of the European Communities and to the United Nations High Commissioner for Refugees.

2. The Member States may conduct mutual exchanges with regard to:

- general information on new trends in applications for asylum;
- general information on the situation in the countries of origin or of provenance of applicants for asylum.

3. If the Member State providing the information referred to in paragraph 2 wants it to be kept confidential, the other Member States shall comply with this wish.

#### ARTICLE 15

1. Each Member State shall communicate to any Member State that so requests such information on individual cases as is necessary for:

- determining the Member State which is responsible for examining the application for asylum;

- examining the application for asylum;
  - implementing any obligation arising under this Convention.
2. This information may only cover:
- personal details of the applicant, and, where appropriate, the members of his family (full name — where appropriate, former name — , nicknames or pseudonyms, nationality — present and former —, date and place of birth);
  - identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
  - other information necessary for establishing the identity of the applicant;
  - places of residence and routes travelled;
  - residence permits or visas issued by a Member State;
  - the place where the application was lodged;
  - the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.
3. Furthermore, one Member State may request another Member State to let it know on what grounds the applicant for asylum bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. It is for the Member State from which the information is requested to decide whether or not to impart it. In any event, communication of the information requested shall be subject to the approval of the applicant for asylum.
4. This exchange of information shall be effected at the request of a Member State and may only take place between authorities the designation of which by each Member State has been communicated to the Committee provided for under Article 18.
5. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may only be communicated to the authorities and courts and tribunals entrusted with:
- determining the Member State which is responsible for examining the application for asylum;
  - examining the application for asylum;
  - implementing any obligation arising under this Convention.
6. The Member State that forwards the information shall ensure that it is accurate and up-to-date.
- If it appears that this Member State has supplied information which is inaccurate or which should not have been forwarded, the recipient Member State, shall be immediately informed thereof. They shall be obliged to correct such information or to have it erased.
7. An applicant for asylum shall have the right to receive, on request, the information exchanged concerning him or her, for such time as it remains available.
- If he or she establishes that such information is inaccurate or should not have been forwarded, he or she shall have the right to have it corrected or erased. This right shall be exercised in accordance with the condition laid down in paragraph 6.
8. In each Member State concerned, the forwarding and receipt of exchanged information shall be recorded.

9. Such information shall be kept for a period not exceeding that necessary for the ends for which it was exchanged. The need to keep it shall be examined at the appropriate moment by the Member State concerned.

10. In any event, the information thus communicated shall enjoy at least the same protection as is given to similar information in the Member State which receives it.

11. If data are not processed automatically but are handled in some other form, every Member State shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Member State has a monitoring body of the type mentioned in paragraph 12, it may assign the control task to it.

12. If one or more Member States wishes to computerise all or part of the information mentioned in paragraphs 2 and 3, such computerisation is only possible if the countries concerned have adopted laws applicable to such processing which implement the principles of the Strasbourg Convention of 28 February 1981 for the Protection of Individuals, with regard to Automatic Processing of Personal Data and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

#### ARTICLE 16

1. Any Member State may submit to the Committee referred to in Article 18 proposals for revision of this Convention in order to eliminate difficulties in the application thereof.

2. If it proves necessary to revise or amend this Convention pursuant to the achievement of the objectives set out in Article 8a of the Treaty establishing the European Economic Community, such achievement being linked in particular to the establishment of a harmonised asylum and a common visa policy, the Member State holding the Presidency of the Council of the European Communities shall organize a meeting of the Committee referred to in Article 18.

3. Any revision of this Convention or amendment hereto shall be adopted by the Committee referred to in Article 18. They shall enter into force in accordance with the provisions of Article 22.

#### ARTICLE 17

1. If a Member State experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this Convention, the State in question may bring the matter before the Committee referred to in Article 18 so that the latter may put to the Member States measures to deal with the situation or adopt such revisions or amendments to this Convention as appear necessary, which shall enter into force as provided for in Article 16 (3).

2. If, after six months, the situation mentioned in paragraph 1 still obtains, the Committee, acting in accordance with Article 18 (2), may authorise the Member State affected by that change to suspend temporarily the application of the provisions of this Convention, without such suspension being allowed to impede the achievement of the objectives mentioned in Article 8a of the Treaty establishing the European Economic Treaty or contravene other international obligations of the Member States.

3. During the period of suspension, the Committee shall continue its discussions with a view to revising the provisions of this Convention, unless it has already reached an agreement.

#### ARTICLE 18

1. A Committee shall be set up comprising one representative of the Government of each Member State.

The Committee shall be chaired by the Member State holding the Presidency of the Council of the European Communities.

The Commission of the European Communities may participate in the discussions of the Committee and the working parties referred to in paragraph 4.

2. The Committee shall examine, at the request of one or more Member States, any question of a general nature concerning the application or interpretation of this Convention.

The Committee shall determine the measures referred to in Article 11 (6) and Article 13 (2) and shall give the authorisation referred to in Article 17 (2).

The Committee shall adopt decisions revising or amending the Convention pursuant to Articles 16 and 17.

3. The Committee shall take its decisions unanimously, except where it is acting pursuant to Article 17 (2), in which case it shall take its decisions by a majority of two-thirds of the votes of its members.

4. The Committee shall determine its rules of procedure and may set up working parties.

The Secretariat of the Committee and of the working parties shall be provided by the General Secretariat of the Council of the European Communities.

#### ARTICLE 19

As regards the Kingdom of Denmark, the provisions of this Convention shall not apply to the Faroe Islands nor to Greenland unless a declaration to the contrary is made by the Kingdom of Denmark. Such a declaration may be made at any time by a communication to the Government of Ireland, which shall inform the Governments of the other Member States thereof.

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom of the Netherlands in Europe.

As regards the United Kingdom the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland. They shall not apply to the European territories for whose external relations the United Kingdom is responsible unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the Government of Ireland, which shall inform the Governments of the other Member States thereof.

#### ARTICLE 20

This Convention shall not be the subject of any reservations.

#### ARTICLE 21

1. This Convention shall be open for the accession of any State which becomes a member of the European Communities. The instruments of accession will be deposited with the Government of Ireland.

2. It shall enter into force in respect of any State which accedes thereto on the first day of the third month following the deposit of its instrument of accession.

#### ARTICLE 22

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Ireland.
2. The Government of Ireland shall notify the Governments of the other Member States of the deposit of the instruments of ratification, acceptance or approval.
3. This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification, acceptance or approval by the last signatory State to take this step.

The State with which the instruments of ratification, acceptance or approval are deposited shall notify the Member States of the date of entry into force of this Convention.

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