



STATUTORY INSTRUMENTS.

S.I. No. 51 of 2011

EUROPEAN COMMUNITIES (ASYLUM PROCEDURES)
REGULATIONS 2011

(Prn. A11/0240)

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I, BRENDAN SMITH, Minister for Justice and Law Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 2005/85/EC of 1 December 2005¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Communities (Asylum Procedures) Regulations 2011.

(2) These Regulations shall come into operation on 1 March 2011.

Interpretation

2. In these Regulations, “Act of 1996” means the Refugee Act 1996.

Amendment of section 1 of Act of 1996

3. Section 1 of the Act of 1996 is amended by inserting the following definition after the definition of “prescribed”:

“ ‘Regulations of 2006’ means the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006);”.

Amendment of section 11 of Act of 1996

4. Section 11 (as amended by section 7(e) of the Immigration Act 2003) of the Act of 1996 is amended—

(a) in subsection (2) by deleting “and an interview under this subsection shall, where necessary and possible, be conducted with the assistance of an interpreter”, and

(b) by inserting the following after subsection (2):

“(2A) An applicant interviewed under subsection (2) shall, whenever necessary for the purpose of ensuring appropriate communication during the interview, be provided by the Commissioner with the services of an interpreter.

(2B) An interview under subsection (2) shall take place without the presence of family members of the applicant unless the Commissioner considers it necessary for an appropriate investigation to have other family members present.”.

¹O.J. No. L.326, 13.12.2005, p.13.

Amendment of section 12 of Act of 1996

5. Section 12 (as amended by section 7(g) of the Immigration Act 2003) of the Act of 1996 is amended—

(a) by substituting the following for subsection (4):

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

(b) The Minister may make an order under paragraph (a) only if he or she is satisfied that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that, in the country concerned, there is generally and consistently no persecution, construed in accordance with section 2 and Regulation 9 of the Regulations of 2006, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

(c) In making the assessment referred to in paragraph (b), the Minister shall take account of, among other things, the extent to which protection against persecution or mistreatment is provided in the country concerned by—

(i) the relevant laws and regulations of the country and the manner in which they are applied,

(ii) observance of the rights and freedoms laid down in the European Convention on Human Rights, the International Covenant for Civil and Political Rights and the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention on Human Rights,

(iii) respect of the non-refoulement principle according to the Geneva Convention, and

(iv) provision for a system of effective remedies against violations of these rights and freedoms.

(d) The determination as to whether an order under paragraph (a) should be made in relation to a particular country shall be based on, among other things, available information from other Member States, the High Commissioner, the Council of Europe and other relevant international organisations.

(e) Where the Minister considers it appropriate, he or she shall, in consultation with the Minister for Foreign Affairs, review

a designation under paragraph (a) having regard to the matters specified in paragraphs (b) to (d).

- (f) The Minister shall notify the European Commission of the making, amendment or revocation of an order under paragraph (a).”,

and

- (b) in subsection (5), by inserting the following definition after the definition of "the Convention against Torture”:

“ ‘country’ includes part of a country;”.

Amendment of section 13 of Act of 1996

6. Section 13 (as amended by section 7(h) of the Immigration Act 2003) of the Act of 1996 is amended by inserting the following after subsection (11):

“(12) If a recommendation under subsection (1) cannot be made within 6 months of the date of the application for a declaration under section 8, the Commissioner shall, upon request from the applicant, provide the applicant with information on the estimated time within which a recommendation may be made.

(13) The provision under subsection (12) by the Commissioner of an estimated time within which a recommendation may be made shall not of itself oblige the Commissioner to make a recommendation within that time.”.

Amendment of section 16 of Act of 1996

7. Section 16 of the Act of 1996 is amended by substituting the following for subsection (11)(d):

“(d) The Tribunal shall, where necessary for the purpose of ensuring appropriate communication during the hearing, provide the applicant with the services of an interpreter.”.

Amendment of section 17 of Act of 1996

8. Section 17 of the Act of 1996 is amended by—

- (a) substituting the following for subsection (7):

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

and

- (b) inserting the following after subsection (7):

“(7A) The consent of the Minister referred to in subsection (7)—

(a) may only be given following a preliminary examination as to whether new elements or findings relating to the examination of whether the person qualifies as a refugee have arisen or been presented by the person, and

(b) shall be given if, following the preliminary examination referred to in paragraph (a), new elements or findings arise or are presented by the applicant which significantly add to the likelihood of the applicant qualifying as a refugee.

(7B) An application for the consent referred to in subsection (7) shall be accompanied by—

(a) a written statement of the reasons why the person concerned considers that the Minister should consent to a subsequent application for a declaration being made,

(b) where the previous application or appeal was withdrawn or deemed to be withdrawn, a written explanation of the circumstances giving rise to the withdrawal or deemed withdrawal of the application or appeal,

(c) all relevant information being relied upon by the person concerned to demonstrate that he or she is entitled to protection in the State, and

(d) a written statement drawing to the Minister's attention any new elements or findings relating to the investigation of whether he or she is entitled to protection in the State which have arisen since his or her previous application for a declaration was the subject of a notice under subsection (5).

(7C) The Minister shall, as soon as practicable after receipt by him or her of an application under subsection (7B), give or cause to be given to the person concerned a statement in writing specifying, in a language that the person may reasonably be supposed to understand—

(a) the procedures that are to be followed for the purposes of subsections (7) to (7H),

(b) the entitlement of the person to communicate with the High Commissioner,

(c) the entitlement of the person to make submissions in writing to the Minister,

(d) the duty of the person to co-operate with the Minister and to furnish information relevant to his or her application, and

(e) such other information as the Minister considers necessary to inform the person of the effect of subsections (7) to (7H),

and of any other relevant provision of this Act or of the Regulations of 2006.

(7D) Pursuant to an application under subsection (7B), and subject to subsection (7E), the Minister shall consent to a subsequent application for a declaration being made where he or she is satisfied that—

- (a) since his or her previous application for a declaration was the subject of a notice under subsection (5), new elements or findings have arisen or have been presented by the person concerned which makes it significantly more likely that the person will be declared to be a refugee, and
- (b) the person was, through no fault of the person, incapable of presenting those elements or findings for the purposes of his or her previous application for a declaration (including, as the case may be, any appeal under section 16).

(7E) Pursuant to an application under subsection (7B) by or on behalf of a person who the Minister has, under Regulation 4(5) of the Regulations of 2006, determined not to be a person eligible for subsidiary protection, the Minister shall consent to a subsequent application for a declaration being made where he or she is satisfied that—

- (a) since his or her previous application for a declaration was the subject of a notice under subsection (5), new elements or findings have arisen or have been presented by the person concerned which makes it significantly more likely that the person will qualify for protection in the State, and
- (b) the person was, through no fault of the person, incapable of presenting those elements or findings for the purposes of his or her previous application for a declaration (including, as the case may be, any appeal under section 16) or, as the case may be, for the purposes of his or her application for subsidiary protection under Regulation 4 of the Regulations of 2006.

(7F) Where the Minister consents to the making of a subsequent application for a declaration, he or she shall, as soon as practicable, notify the person concerned of that fact.

(7G) Where the Minister refuses to consent to the making of a subsequent application for a declaration, he or she shall, as soon as practicable, notify the person concerned of that fact and of the reasons for it and of how a review of that decision may be sought.

(7H) In this section, ‘protection’ has the same meaning as it has in the Regulations of 2006.”.

Amendment of section 22 of Act of 1996

9. Section 22 (as amended by section 7(l) of the Immigration Act 2003) of the Act of 1996 is amended by substituting the following for subsection (5):

- “(5) (a) The Minister may, by order made after consultation with the Minister for Foreign Affairs, designate a country as a safe third country where the Minister is satisfied that an applicant for asylum will be treated in that country in accordance with the principles specified in paragraph (b).
- (b) The principles referred to in paragraph (a) are the following:
- (i) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
 - (ii) the principle of non-refoulement in accordance with the Geneva Convention is respected;
 - (iii) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and
 - (iv) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.
- (c) The Minister shall not make an order under paragraph (a) in respect of a country unless that country and the State are parties to an agreement which provides 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 from the State.
- (d) An application for asylum shall not be transferred to a safe third country pursuant to an agreement referred to in paragraph (c) unless the removal to that country of the person who made the application for asylum would be reasonable on the basis of a connection he or she has with that country.
- (e) An order under paragraph (a) may make provision for such consequential, incidental, ancillary and supplementary matters as the Minister considers necessary or expedient.
- (f) The Minister shall, from time to time, notify the European Commission of the countries that are designated as safe third countries under paragraph (a).”.

Transfer under section 22 of Act of 1996 to safe third country of application for asylum

10. Where an application for asylum is to be transferred to a safe third country pursuant to an agreement referred to in section 22(5)(c) (as amended by Regulation 9) of the Act of 1996, the Minister shall—

- (a) inform the applicant, and his or her legal representative (if known), of the transfer, and
- (b) provide the applicant, and his or her legal representative (if known), with a document informing the authorities of the safe third country, in the language of that country, that the application for asylum has not been examined in substance.



GIVEN under my Official Seal,
3 February 2011.

BRENDAN SMITH,
Minister for Justice and Law Reform.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give further effect in Irish law to the Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (Council Directive 2005/85/EC: “The Asylum Procedures Directive”).

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