

CHAPTER 420

REFUGEES ACT

AN ACT to make provisions relating to and establishing procedures with regard to refugees and international protection seekers.

1st October, 2001

ACT XX of 2000, as amended by Act VIII of 2004; Legal Notices 40 of 2005 and 426 of 2007; and Acts VII of 2008, VI and VII of 2015 and XX of 2017.

PART I

General Provisions

1. The short title of this Act is the Refugees Act. Short title.
2. In this Act, unless the context otherwise requires - Interpretation.
 - "applicant" means a third country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken by the Commissioner or the Refugees Appeals Board; *Amended by:*
VIII. 2004.2;
VII. 2008.2;
VI. 2015.2, 3.
XX. 2017.2.
 - "application for international protection" means a request made by a third country national or a stateless person which can be understood as a request for international protection unless the third country national explicitly requests another kind of protection outside the scope of this Act that can be applied for separately;
 - "applicant in need of special procedural guarantees" means an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Act or any subsidiary legislation made thereunder, is limited due to individual circumstances;
 - "beneficiary of international protection" means a person who has been granted refugee status or subsidiary protection status in accordance with article 8 and article 17;
 - "the Board" means the Refugee Appeals Board as established by article 5;
 - "the Commissioner" means the Refugee Commissioner; and includes to the extent and authority given, any other person temporarily authorised in that behalf by the Minister;
 - "Convention" or "Geneva Convention" means the 1951 Convention relating to the Status of Refugees done at Geneva on 28th July, 1951, to which Malta acceded on 17th June, 1971, and the 1967 Protocol relating to the Status of Refugees of 31st January, 1967 to which Malta acceded on 15th September, 1971, subject to the declarations and reservations made by Malta;
 - "Convention Travel Document" means the travel document referred to in article 28 of the Convention;
 - "country of origin" means the country or countries of nationality

or, for stateless persons, of former habitual residence;

"declaration" means a declaration that a person is a refugee;

"determining authority" means the Refugee Commissioner;

"Directives" means [Council Directive 2011/95/EU](#) on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted and [Council Directive 2005/85/EC](#) of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

"family members" means, in so far as the family already existed in the country of origin, the following members of the family of the beneficiary of international protection who are present in Malta in relation to the application for international protection:

- (a) the spouse of the beneficiary of international protection, or his or her unmarried partner in a stable relationship where recognised by law;
- (b) the minor children of the spouse or partner or of the beneficiary of international protection referred to in paragraph (a) above, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under national law;
- (c) the father, mother or another adult responsible for the beneficiary of international protection whether by law or by the practice of the Member State concerned, when that beneficiary is a minor and unmarried;

"final decision" means a decision on whether the third country national or stateless person be granted refugee status or subsidiary protection status which is not subject to appeal, irrespective of whether such decision has the effect of allowing the applicants concerned to remain in Malta pending its outcome;

"first country of asylum" means that country where an applicant for international protection:

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

"the High Commissioner" means the United Nations High Commissioner for Refugees or his representative;

"international protection" means refugee status or subsidiary protection;

"legal adviser" means a person who is authorised to practise the legal profession in Malta in terms of the [Code of Organization and Civil Procedure](#);

"manifestly unfounded application" means an application in

relation to which:

- (a) the applicant, in submitting his or her application and presenting the facts, has only raised issues that are not relevant to the examination as to whether such applicant qualifies as a beneficiary of international protection; or
- (b) the applicant has given clearly insufficient details or evidence to substantiate his claim and his story is inconsistent, contradictory or fundamentally improbable; or
- (c) the applicant has based his application on a false identity or on forged or counterfeit documents which he maintained as genuine when questioned about them; or
- (d) the applicant has misled the authorities by withholding relevant information or documents with respect to his or her identity and/or nationality that could have had a negative impact on the decision; or
- (e) the applicant made false representations of a substantial nature; or
- (f) the applicant has, without reasonable cause and in bad faith, destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his application or to make the consideration of his application by the authorities more difficult; or
- (g) the applicant, having had ample earlier opportunity to submit an application for international protection, submitted the application in order to forestall an impending removal order from Malta, and did not provide a valid explanation for not having applied earlier; or
- (h) the applicant is from a safe country; or
- (i) the applicant refuses to comply with an obligation to have his or her fingerprints taken in accordance with the relevant legislation; or
- (j) the applicant may, for serious reasons, be considered a danger to the national security or public order, or the applicant has been forcibly expelled for serious reasons of public security or public order under national law;

"the Minister" means the Minister responsible for immigration, and any public officer to whom the Minister may delegate in writing any of the duties appertaining to him under this Act;

"minor" means a third country national or stateless person below the age of eighteen years;

"person eligible for subsidiary protection" means a third country national who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, would face a real

risk of suffering serious harm, and is unable or, owing to such risk, unwilling to avail himself of the protection of that country, and has not been excluded from being eligible for such protection under article 17(1);

"prescribed" means prescribed by regulation, rule, order or other instrument made under any of the provisions of this Act empowering the making of any such instrument;

"refugee" means a third country national 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 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, but does not include a person excluded in terms of article 12:

Provided that in the case where a person has more than one nationality, the term "country", mentioned above, shall refer to each country of which he is a national, and such a person shall not be considered as not having the protection of his country if, without any founded fear of persecution, he has not sought the protection of one of the countries of which such a person is a national:

Provided further that:

- (a) acts of persecution within the meaning of Article 1A of the Convention must be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the right from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) be an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner as in paragraph (a).

For the purpose of paragraph (a), "acts of persecution" means:

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory manner;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in article 12(2);

(f) acts of a gender-specific or child-specific nature:

Provided that refugee status on the grounds of fear of persecution shall only be granted if there is a connection between the reasons for persecution mentioned in regulation 18 of the [Procedural Standards in Examining Applications for International Protection Regulations](#) and the acts of persecution referred to in this definition;

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"refugee status" means the recognition of a third country national or stateless person as a refugee;

"remain" means to remain in the territory, including at the border or in transit zones, of the Member State in which the application for international protection has been made or is being examined; the right to remain shall not constitute an entitlement to a residence permit;

"representative" means a person or an organisation appointed by the competent bodies in order to assist and represent an unaccompanied minor in asylum procedures with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary. Where an organisation is appointed as a representative, it shall designate a person responsible for carrying out the duties of a representative in respect of the unaccompanied minor;

"Member State" shall have the same meaning assigned to it by article 2 of the [European Parliament Elections Act](#);

Cap. 467.

"safe country of origin" means a country of which the applicant, for the purpose of international protection:

- (a) is a national; or
- (b) being a stateless person, was formerly habitually resident in that country;

and he has not submitted any serious grounds for considering the country not to be a safe country of origin in his particular circumstances;;

"safe third country" means a country of which the applicant is not a national or citizen and where -

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) the principle of *non-refoulement* in accordance with the Convention is respected;
- (c) 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;
- (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Convention;
- (e) the applicant had resided for a meaningful period of time prior to his entry into Malta;

- (f) there is no risk of serious harm as defined in this article;

"serious harm" means:

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

"subsequent application" means a further application for international protection made after a final decision has been taken on a previous application;

"subsidiary protection status" means the recognition of a third country national or a stateless person as a person eligible for subsidiary protection under Part IV;

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

"withdrawal of international protection" means the decision by the Commissioner to revoke, end or refuse to renew the refugee or subsidiary protection status of a person.

3. This Act incorporates the obligations assumed by Malta under the Convention and its obligations under the Directives.

PART II

Refugee Commissioner

4. (1) There shall be a person who shall be known as the Refugee Commissioner.

(2) The Commissioner shall be appointed by the Prime Minister from among public officers or from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.

(3) The Commissioner shall perform such functions as are conferred on him by this Act, and without prejudice to the generality of the above, shall examine applications for refugee status and shall have the power to administer oath to any person.

(4) The Prime Minister may assign public officers to be members of the staff of the Commissioner as he may consider necessary to assist the Commissioner in the performance of his functions.

(5) (a) Without prejudice to the provisions of subarticle (4) there shall be such number of Assistant Refugee Commissioners (hereinafter referred to as Assistant Commissioners) as the Prime Minister may by notice

1951 Convention
on the Status
relating to
Refugees.
*Substituted by:
VII. 2008.3.*

*Substituted by:
VII. 2008.4.*

Establishment of
Refugee
Commissioner.
*Amended by:
VIII. 2004.3.*

in the Gazette from time to time determine.

- (b) The Assistant Commissioners shall be appointed by the Prime Minister from among public officers and from among persons who in each case, in the opinion of the Prime Minister, have knowledge and experience in matters relating to refugees.
- (c) The Assistant Commissioners shall under the general direction of the Commissioner have such functions and powers as are conferred on the Commissioner by this Act, and are assigned to each of them by the Commissioner, including the function and power to examine applications for refugee status and to administer the oath to any person, and any reference in this Act, other than in this article to the Commissioner shall be deemed to include also reference to an Assistant Commissioner in the exercise of any function assigned to him by the Commissioner.

PART III

Refugee Appeals Board

*Substituted by:
VII. 2008.5.*

5. (1) The Refugee Appeals Board shall consist of a chairperson and three other members who shall be appointed by the Prime Minister from amongst persons of known integrity who appear to him to be qualified by reason of having had experience of, and shown capacity in, matters deemed appropriate for the purpose:

Establishment of
Refugee Appeals
Board.

*Amended by:
VIII. 2004.4;
VII. 2015.11;
XX. 2017.3.*

Provided that at least one of the members of the Board shall be a person who has practised as an advocate in Malta for a period or periods amounting, in the aggregate, to not less than seven years:

Provided further that one of the members shall be a person representing the disability sector.

(2) The members of the Board shall hold office for a period of three years, and shall be eligible for reappointment.

Appointment.

(2A) Persons appointed as members of the Board shall hold office until their successors are appointed.

(3) The Minister may also appoint a substitute chairperson and substitute members of the Board to sit on the Board whenever the chairperson or members or any one of them is for some valid reason unable temporarily to attend and participate in the sittings of the Board:

Provided that, as far as practicable, the same chairperson and the same members shall hear and conclude the same case.

(4) (a) There shall be such number of Chambers of the Refugee Appeals Board as the Minister may prescribe.

(b) Where there is more than one chamber of the Board, cases shall be assigned to the various chambers in accordance with such rules as the Minister may prescribe.

(c) Each chamber of the Board shall be composed of a chairperson and three other members as provided in subarticles (1) to (3), which together with all the other provisions of this Act other than this subarticle shall apply with respect to each chamber as if reference therein to the Board were a reference to a chamber of the Board.

(5) One of the members of the Board referred to in sub-article (4)(c) may act as a Secretary.

Removal.

6. A member of the Board may only be removed from office by the Prime Minister on the grounds of gross negligence, incompetence, or acts, omissions or conduct unbecoming a member of the Board.

Appeals to Board.
Amended by:
VII. 2008.6;
VI. 2015.4.
XX. 2017.4.

7. (1) The Board shall have power to hear and determine appeals against a recommendation of the Commissioner including appeals from decisions for the transfer of a third country national from Malta to another Member State in accordance with the provisions of Council Regulation 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person.

(1A) For the purpose of this article, an appeal on both facts and points of law may be permitted against:

(a) a recommendation taken on an application for international protection, including a decision:

(i) considering an application to be unfounded in relation to refugee status and, or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to article 24;

Provided that for the purpose of this provision, the review conducted by the Chairperson of the Refugee Appeals Board shall be deemed to constitute an appeal.

(iii) not to conduct an examination pursuant to article 24(1)(c);

(b) a refusal to reopen the examination of an application after the discontinuation in accordance with regulation 13 of the [Procedural Standards in Examining Applications for International Protection Regulations](#);

(c) a withdrawal of international protection.

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(2) Appeals to the Board shall be made within two weeks from the notification on the applicant of the recommendation of the Commissioner. Where the appeal is entered by the applicant a copy of the appeal shall be served on the Minister and the Commissioner. Where the appeal is entered by the Minister a copy of the appeal shall be served on the applicant and the Commissioner:

Provided that the Appeals Board may assume that the applicant has implicitly withdrawn his application of appeal when

it is ascertained that:

- (a) he has failed to provide information essential to his appeal unless the applicant demonstrates, within a reasonable time, that his failure was due to circumstances beyond his control;
- (b) he has abandoned or left without authorization the place where he lived or was held, without contacting the competent authorities within a reasonable time or he has not, within thirty days, complied with reporting duties or other obligations to communicate.

(3) When an appeal is entered by the Minister, an applicant who is in custody in virtue only of a deportation or removal order shall be released pending the decision of the Board.

(4) The Refugee Appeals Board shall, as the particular case may require, make arrangements to procure the attendance of an interpreter to assist at the hearings.

(5) An appellant shall have the right to free legal aid under the same conditions applicable to Maltese nationals.

(6) Provided all the parties agree thereto, the sittings of the Board shall be held *in camera*.

(7) A representative of the High Commissioner shall be entitled to attend the sittings of the Board.

(8) Subject to regulations made under article 25(1)(b), the Board shall regulate its own procedure. The Board shall also through the Chairperson have the power to administer an oath to any person appearing before it.

(9) Notwithstanding the provisions of any other law, but without prejudice to article 46 of the [Constitution of Malta](#) and without prejudice to the provisions of article 4 of the [European Convention Act](#) the decision of the Board shall be final and conclusive and may not be challenged and no appeal may lie therefrom, before any court of law, saving the provisions of article 7A.

Cap. 319.

(10) Where the Board finds in favour of the applicant the Minister shall issue a declaration accordingly.

7A. (1) A person who has applied for international protection may make a subsequent application after a final decision to the Commissioner for Refugees:

Subsequent application after final decision.
Added by:
VII. 2008.7.
Substituted by:
VI. 2015.5.
Amended by:
XX. 2017.5.

Provided that such application shall only be considered on the presentation of new elements or findings, relating to the examination of whether the person making the subsequent application qualifies as a beneficiary of international protection, and of which the applicant could not have been aware or which he could not have submitted.

- (2) The person submitting a subsequent application shall:
 - (a) indicate facts and provide evidence which justify this procedure; and

(b) submit such new information within fifteen days from the day on which the person making the subsequent application obtained such information.

(3) The examination may be conducted on the sole basis of written submissions and the person making the subsequent application is to be informed of the outcome of the examination and of his right for an appeal.

(4) For the purpose of taking a decision on the admissibility of an application pursuant to article 24, a subsequent application shall be subject to a preliminary examination as to whether new elements or findings have arisen or have been presented since the lodging of the first application.

(5) If the preliminary examination referred to in sub-article (4) concludes that new elements or findings have arisen or have been presented by the applicant which significantly add to the likelihood of the applicant qualifying as a beneficiary of international protection, a further examination of the application shall be carried out:

Provided that an application shall only be further examined if the applicant concerned was, through no fault of his own, incapable of concluding that new elements or findings have arisen.

(6) When a subsequent application is not further examined pursuant to this article, it shall be considered inadmissible, in accordance with article 24(1)(d).

(7) The procedure referred to in this article may also be applicable in the case of:

(a) a dependent who lodges an application after he has, in accordance with article 24(1)(g), consented to have his case be part of an application lodged on his behalf;

(b) an unmarried minor who lodges an application after an application has been lodged on his behalf.

(8) For the purpose of this article, the Refugee Commissioner shall ensure that:

(a) the preliminary examination referred to in this article will consist of examining whether there are facts relating to the dependent's or the unmarried minor's situation which justify a separate application;

(b) that the applicant whose subsequent application is subject to a preliminary examination enjoys the guarantees provided for in regulation 4 of the [Procedural Standards in Examining Applications for International Protection Regulations](#);

(c) that the applicant is informed in an appropriate manner of the outcome of the preliminary examination and, if the application is not to be further examined, of the reasons why and the possibilities for seeking an appeal or review of the decision.

(9) The preliminary examination may be conducted on the sole basis of written submissions and the person making the subsequent

application is to be informed of the outcome of the preliminary examination.

PART IV

Refugee Status and Subsidiary Protection Status

I - Refugee Status

8. (1) A person may apply to the Commissioner, in the prescribed form, and shall be granted refugee protection, where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.

Qualification for refugee status.
Amended by:
VIII. 2004.5.
Substituted by:
VII. 2008.8.
Amended by:
VI. 2015.6.

(2) A well-founded fear of persecution may be based on events which have taken place after applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

(3) For the purpose of this article, a previous persecution or serious harm or a direct threat of such persecution or harm shall be considered as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or previous harm will not be repeated.

(4) If the Commissioner recommends the acceptance of the application, the Minister shall make a declaration that applicant is eligible for refugee status, or appeal against such recommendation.

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

Cessation of qualification for refugee status.
Substituted by:
VII. 2008.8.
Amended by:
VI. 2015.7.

Provided that in paragraphs (d) and (e), regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well-founded:

Provided further that paragraphs (d) and (e) shall not apply to a refugee 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 or, being a stateless person, of the country of former habitual residence.

(2) A person who is notified that he has ceased to possess refugee status shall be entitled to appeal against such decision to the Board within fifteen days of such notification and the provisions of article 7 shall *mutatis mutandis* apply to such appeal. The decision of the Board shall be final.

Revocation or
refusal to renew
refugee status.
Substituted by:
VII. 2008.8.

10. (1) The Minister shall revoke a declaration of refugee status if he is satisfied, after due investigation, that a person to whom a declaration has been given has been erroneously recognized as a refugee on an application which contains any materially incorrect or false information, or was so recognized owing to fraud, forgery, false or misleading representation of a material or substantial nature in relation to the application:

Provided that he shall be informed in writing that his qualification for refugee status is being reconsidered, is given reasons for such reconsideration and is given the opportunity to submit, in a personal interview, reasons as to why his refugee status should not be withdrawn.

(2) The Minister may revoke or refuse to renew the protection granted to a refugee when:

- (a) there are reasonable grounds for regarding him as a danger to the security of Malta;
- (b) having been convicted by a final judgment of a particularly serious crime, he constitutes a danger to the community of Malta.

(3) A person, in whose regard the Minister has revoked or refused to renew a declaration under subarticles (1) or (2), shall be entitled to appeal against the revocation to the Board within seven days of the notification of the revocation to him, and the provisions of article 7 shall, *mutatis mutandis*, apply to such appeal.

Expulsion.
Substituted by:
VII. 2008.8.

11. (1) The Minister may order the expulsion from Malta of any refugee or persons granted subsidiary protection on grounds of national security or public order, and pending such expulsion such person shall be held in custody.

(2) The provisions of article 7 shall, *mutatis mutandis*, apply to expulsion orders issued under this article.

(3) Any refugee to whom this article applies shall be allowed a reasonable period of time within which to seek legal admission into another country.

Exclusion.
Substituted by:
VII. 2008.8.

12. (1) A third country national or a stateless person is excluded from being a refugee if:

- (a) he falls within the scope of Article 1D of the Convention, relating to protection or assistance from organs or agencies of the United Nations other than the

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

- (b) he is recognised 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, or equivalent rights and obligations.

(2) A third country national or a stateless person is also excluded from being a refugee where 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; or
- (b) he has committed a serious non-political crime outside the country of refuge, including particularly cruel actions even if committed with an allegedly political objective, prior to his admission as a refugee; or
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

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

II - Actors of persecution or serious harm, actors of protection, internal protection, *non-refoulement* and resettlement

*Substituted by:
VI. 2015.8.*

13. (1) A person seeking international protection in Malta may apply to the Commissioner in the prescribed form for a declaration and shall be interviewed by the Commissioner as soon as practicable.

*Resettlement.
Substituted by:
VII. 2008.8.
Amended by:
VI. 2015.2.*

(2) An applicant for international protection shall have access to state education and training in Malta and to receive state medical care and services.

(3) Any child or young person below the age of eighteen years falling within the scope of this Act who is found under circumstances which clearly indicate that he is a child or young person in need of care, shall be allowed to apply for international protection, and for the purposes of this Act, shall be assisted in terms of the [Children and Young Persons \(Care Orders\) Act](#), as if he were a child or young person under such Act.

Cap. 285.

Prohibition of
refoulement.
Substituted by:
VII. 2008.8.

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

(2) The provisions of subarticle (1) shall not apply to a refugee or a person enjoying subsidiary protection in respect of whom there are reasonable grounds for regarding him as a danger to the security of Malta, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community.

Resettlement.
Substituted by:
VII. 2008.8.

15. The Minister may, at the written request of an applicant, or of a recognized refugee or of a person enjoying subsidiary protection, and, where necessary, with the assistance of the High Commissioner, facilitate the resettlement of such person to another country and do all that is required for the purpose.

Assistance.
Substituted by:
VII. 2008.8.

16. The Commissioner shall ensure as far as possible that the application of this Act is in conformity with accepted international practice, and for this purpose may seek the assistance of the High Commissioner or of any national or international non-governmental body concerned with refugee matters.

III - Subsidiary Protection Status

Qualification for
subsidiary
protection status.
Substituted by:
VII. 2008.8.
Amended by:
VI. 2015.2, 9.

17. (1) Upon the recommendation of the Commissioner of Refugees, the Minister shall declare that subsidiary protection status be granted to an applicant for international protection whose application has been dismissed but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his country of origin, or in the case of a stateless person, to his country of former habitual residence, would face a real risk of suffering serious harm, and the Commissioner shall continue to be able to make such a recommendation in cases where the real risk of suffering serious harm arises even after a decision not to grant subsidiary protection has been taken:

Provided that a third country national or a stateless person is excluded from being eligible for subsidiary protection where 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 or is a person who instigates or otherwise participates in the commission of such crimes; or
- (b) he has committed a serious crime; or
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or
- (d) he constitutes a danger to the community or to the security of Malta:

Provided further that paragraphs (a), (b), (c) and (d) shall also apply to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein:

Provided also that the decision concerning the granting of subsidiary protection shall be given in conjunction with the formal determination that the applicant does not meet the criteria of a refugee under this Act.

(2) For the purpose of this article, a real risk of suffering serious harm may be based on events which have taken place after the applicant has left his country of origin or activities engaged in by applicant since leaving the country of origin, except when based on circumstances which the applicant has created by his own decision since leaving the country of origin.

(3) The Refugee Commissioner may exclude a third country national or a stateless person from being eligible for subsidiary protection if applicant, prior to his admission to Malta, has committed one or more crimes, outside the scope of subarticle (1), which would be punishable by imprisonment had they been committed in Malta and if applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

18. The following may be considered as actors of persecution or serious harm:

- (a) the State;
- (b) parties or organizations controlling the State or a substantial part of the territory of the State;
- (c) non-State actors, if it can be demonstrated that the actors mentioned in paragraphs (a) and (b), including international organizations, are unable or unwilling to provide protection against such acts of persecution or serious harm.

Actors of real or serious threat.

Amended by:

VIII. 2004.6.

Substituted by:

VII. 2008.8.

VI. 2015.10.

19. (1) Protection may be provided by:

- (a) the State; or
- (b) parties or organizations, including international organizations, controlling the State or a substantial part of the territory of the State:

Actors of protection.

Added by:

VII. 2008.8.

Amended by:

VI. 2015.11.

Provided that, for the purpose of this article, actors of protection referred to in paragraphs (a) and (b) are willing and able to offer protection in accordance with sub-article (2).

(1A) For the purpose of this article, when assessing whether an international organisation controls a State or a substantial part of its territory and provides protection as described in sub-article (2), account shall be taken of any guidance provided for in any other relevant provision of national law, any European Union Act or relevant documentation issued by the High Commissioner.

(2) Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is provided when the entities mentioned in sub-article (1) take reasonable steps to prevent the acts mentioned in article 17(1) by

operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

Internal protection.

Added by:
VII. 2008.8.
Substituted by:
VI. 2015.12.

20. (1) As part of the assessment of the application for international protection, the Refugee Commissioner may determine that the applicant is not in need of international protection if, in the exercise of his functions, he deems that in a part of the country of origin, the applicant:

- (a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or
- (b) has access to protection against persecution or serious harm as mentioned in article 19,

and the applicant can safely and legally travel to and gain admittance to that part of the country of origin and can reasonably be expected to settle there.

(2) In examining whether a part of the country of origin is in accordance with sub-article (1), the Refugee Commissioner shall at the time of taking the decision on the application, have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

(3) For the purposes of this article, the Refugee Commissioner shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.

Cessation of qualification of subsidiary protection status.

Added by:
VII. 2008.8.
Amended by:
VI. 2015.13.

21. Subsidiary protection shall cease if the Minister is satisfied, after consulting the Commissioner, that the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required:

Provided that regard shall be had as to whether the change of circumstances is of such a significant and non-temporary nature that the person eligible for subsidiary protection no longer faces a real risk of serious harm:

Provided further that the provisions of this article shall not apply to a beneficiary of subsidiary protection 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 or, being a stateless person, of the country of former habitual residence.

Revocation or refusal to renew subsidiary protection status.

Added by:
VII. 2008.8.
Amended by:
XX. 2017.6.

22. (1) The Minister shall revoke or refuse to renew the subsidiary protection status of a third country national or a stateless person if:

Provided that he shall be informed in writing that his qualification for subsidiary protection is being reconsidered, is given reasons for such reconsideration and is given the opportunity to submit, in a personal interview, reasons as to why his subsidiary protection should not be withdrawn;

(2) A person, whose subsidiary protection has been revoked, shall be entitled to appeal against the revocation before the Board within seven days of the notification of the revocation to him, and the provisions of article 7 shall, *mutatis mutandis*, apply to such appeal

- (a) after having been granted subsidiary protection status, that person should have been or is excluded from being eligible for subsidiary protection in accordance with article 17(1); or
- (b) that person's misrepresentation or omission of facts, including the use of false documents, were decisive for the granting of subsidiary protection status.

PART V

Accelerated Procedures

23. (1) A person seeking international protection in Malta in terms of article 8 shall be examined under accelerated procedures in accordance with this article when his application appears *prima facie* to be manifestly unfounded.

Manifestly unfounded applications.
Added by:
VII. 2008.8.
Amended by:
VI. 2015.2.

(2) Where the Commissioner is *prima facie* of the opinion, at whichever stage, that the application is manifestly unfounded, the Commissioner shall examine the application within three working days and shall, where applicable, recommend that the application is manifestly unfounded.

(3) The recommendation shall immediately be referred to the Chairman of the Board who shall examine and review the recommendation of the Commissioner within three working days.

(4) The decision of the Chairman of the Board on whether the application is manifestly unfounded shall be final and conclusive and, notwithstanding the provisions of any other law, no appeal or form of judicial review shall lie before the Board or before any other court of law.

(5) Where, following the procedures outlined in the previous provisions of this article, an application is rejected, the Chairman of the Board shall send a copy of the decision with the grounds therefor to the Minister and the Commissioner.

(6) Any interview with the applicant under the foregoing provisions of this article shall, where necessary, be conducted in private and with the assistance of an interpreter. The applicant shall also be informed of his right to obtain the services of a legal adviser to assist him during accelerated proceedings and to consult the High Commissioner.

(7) Where the application is considered not to be manifestly unfounded such application shall be examined under normal procedures as provided under this Act.

(8) Without prejudice to the generality of the foregoing provisions of this article, if in the process of examining any application submitted in terms of article 8, the Commissioner

arrives at the conclusion that the application should be dealt with under accelerated procedures on the basis of its being prima facie manifestly unfounded or because the applicant has found or could have found safe protection elsewhere in terms of the Convention and the Directives, the application shall be dealt with under accelerated procedures and the foregoing provisions of this article shall *mutatis mutandis* apply.

(9) If an applicant holds a travel document issued by a safe third country pursuant to the Convention and the Directives, he may be declared to have been safe from persecution in such State and his application shall be dealt with under accelerated procedures in accordance with the foregoing provisions of this article.

Accelerated
procedures.
Added by:
VI. 2015.14.

23A. An unaccompanied minor may be examined under accelerated procedures, in accordance with this article, when:

- (a) the applicant comes from a country which satisfies the criteria to be considered a safe country of origin, within the meaning of this Act;
- (b) the applicant has introduced a subsequent application for international protection which is not inadmissible in accordance with article 24;
- (c) the applicant may for serious reasons be considered a danger to the national security or public order of Malta or the applicant has been forcibly expelled for serious reasons of public security or public order under national law.

Inadmissible
applications.
Added by:
VII. 2008.8.
Amended by:
VI. 2015.15;
XX. 2017.7.

24. (1) The application of any person in Malta seeking international protection and who falls under any one of the following conditions, shall be inadmissible if:

- (a) another Member State has already granted him international protection;
- (b) a country which is not a Member State is considered as a first country of asylum for the applicant;
- (c) a country which is not a Member State is considered as a safe third country for the applicant;
- (d) the applicant made a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection have arisen or have been presented by the applicant;
- (e) a dependent of the applicant lodges an application after consenting to have his case part of an application made on his behalf, and there are no facts relating to the dependent person's situation which justify a separate application;
- (f) the applicant has been recognized in a country which is not a Member State as a refugee and can still avail himself of that protection or otherwise enjoys sufficient protection in that country including benefiting from the principle of *non-refoulement*, and

such person can be re-admitted to that country; or

- (g) the applicant is a national or citizen of any safe country of origin listed in the Schedule or, if he is not a national or citizen thereof, he has a right of residence therein.

(2) The provisions of article 23(2), (3), (4) and (5) shall apply *mutatis mutandis* to inadmissible applications.

(3) The Commissioner shall allow applicants to present their views, with regard to the application, of the grounds referred to in this article before a decision on the admissibility of an application has been taken. A personal interview on the admissibility of the application shall also be conducted.

(4) The Minister may by regulations amend the list of countries specified in the Schedule, provided that only countries which in his opinion are countries of safe origin may be listed in the said Schedule, so however that the Minister shall remove from the said Schedule any country which in his opinion is no longer a safe country of origin.

PART VI

Miscellaneous

25. (1) 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 article may make provisions-

- (a) regulating applications for a declaration and the procedure for and in relation to such applications;
- (b) regulating with the concurrence of the Refugee Appeals Board, appeals under this Act to the Refugee Appeals Board and the procedure for and in relation to such appeals and for providing that any person who contravenes or fails to comply with the provisions of any one or more of such regulations shall be guilty of an offence against the regulations and for establishing the penalty being not more than that to which such person shall on conviction be liable, a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) or imprisonment not exceeding three months, or to both such fine and imprisonment;
- (c) regulating the provision of legal aid to international protection seekers;
- (d) extending, with the concurrence of the Minister responsible for social security, any of the provisions of the [Social Security Act](#) to persons falling under this Act;
- (e) regulating the assignment and allocation of responsibilities and duties appertaining to the Minister under this Act to a public officer;

Power to make regulations.
Amended by:
L.N. 426 of 2007;
VII. 2008.9, 10.

Cap. 318.

- (f) regulating, with the concurrence of the Minister responsible for labour, the granting of work permits to recognised refugees and their family members, and persons enjoying subsidiary protection;
- (g) for providing the means for facilitating the identification of applicants for refugee status and for communicating such information, when requested, to the competent authorities of the countries with which Malta has related bilateral agreement intended for such purposes or which are parties to international conventions related to refugees and to which Malta is also a party and which provide for such exchanges;
- (h) for implementing the provisions of the European Union Council Directives relating to refugees and ancillary matters;
- (i) for providing that any person who contravenes or fails to comply with the provisions of any one or more regulations, shall be guilty of an offence against the regulations and for establishing the penalty for infringement of such regulations of a fine (*multa*) not exceeding two thousand and five hundred euro (€2,500) or imprisonment not exceeding three months, or of both such fine and imprisonment.

(2) Notwithstanding the provisions of any other law, the Minister may under this subarticle make regulations, making provisions adding to or derogating from the provisions of this Act, to enforce the provisions of any international convention or other treaty relating to refugees, their status and protection, to which Malta may become a party provided the ratification of such treaty has been approved by a Resolution of the House of Representatives.

Transitory
provision.
Amended by:
VII. 2008.9.

26. (a) Where, before the commencement of this Act, a person has made an application for refugee status before the High Commissioner but a decision in relation thereto has not been made, the application shall be deemed to be an application under article 8 of this Act and shall be dealt with in accordance with this Act.
- (b) Without prejudice to the provisions of any other law, a person in Malta who before the commencement of this Act had already been recognised as a refugee by the High Commissioner, shall upon his request continue to be regarded as such, and the provisions of this Act, where relevant, shall apply also to him.
- (c) A person in Malta who before the commencement of this Act, although not recognised by the High Commissioner as a refugee, enjoys humanitarian protection granted to him by the said High Commissioner, or whose case is one classified by the High Commissioner as one of concern, shall upon his request continue to be regarded as such and shall enjoy humanitarian protection in Malta as defined under this Act.

SCHEDULE

(Article 24)

Australia	Ghana
Benin	India
Botswana	Jamaica
Brazil	Japan
Canada	New Zealand
Cape Verde	Senegal
Chile	United States of America
Costa Rica	Uruguay
Gabon	Member States of the European Union and European Economic Area

Added by:
VIII. 2004.8.
Amended by:
L.N. 40 of 2005;
VII. 2008.11;
XX. 2017.7.