Subsidiary Legislation made under s.55.

Asylum Regulations 2008

LN.2008/077

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Transposing:
Directive 2003/9/EC
Directive 2004/83/EC

[1] *Notice of Commencement – LN.2025/146*

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In exercise of the powers conferred on it by section 55 of the Immigration, Asylum and Refugees Act and all other enabling powers and for the purpose of transposing into the law of Gibraltar Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum applicants and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, the Government has made the following Regulations–

Part I
General

Title and commencement.

1. These Regulations may be cited as the Asylum Regulations 2008 and comes into operation on the day of publication.

Interpretation.

2.(1) In these Regulations–

"absconding" means the action by which an applicant does not remain available to the Authority or the court, such as by leaving Gibraltar without permission from the Authority or the court, for reasons which are not beyond the applicant's control;

"accommodation centre" means any place used for the collective housing of asylum applicants;

"application for international protection" or "application" means a request by a person which can be understood as a request to be seeking refugee status or subsidiary protection status under these Regulations;

"applicant" means a person who has made an application for international protection and whose application is outstanding; an application remains outstanding where there is an appeal in relation to the decision on the application and any decision consequential on the appeal has not yet been made;

"applicant with special reception needs" means an applicant who is in need of special conditions or guarantees in order to benefit from the rights and comply with the obligations provided for in these Regulations;

"the Authority" means the Director of the Department of Immigration and Home Affairs and includes such persons to whom he delegates his authority under these Regulations;

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"beneficiary of international protection" means a person who has been granted refugee status or subsidiary protection status;

"country of origin" means an applicant's country or countries of nationality or, in relation to stateless applicants, country of former habitual residence;

"daily expenses allowance" means an allowance provided to applicants periodically to enable them to enjoy a minimum degree of autonomy in their daily life, provided as a monetary amount, in vouchers, in kind, or as a combination thereof provided that such an allowance includes a monetary amount;

"dependant family member" means–

(a) in respect of dependant family members of an applicant, a family member–

(i) who has not made an independent application for international protection;

(ii) who, if he is an adult family member, has expressly consented to be included within the application made by the principal applicant; and

(iii) whose claim for international protection is dependent on that of the applicant;

(b) in respect of dependant family members of a person with refugee or subsidiary protection status–

(i) a family member within the meaning of paragraph (a);

(ii) whose claim for international protection is dependent on the person who has been granted refugee or subsidiary protection status.

"detention" means confinement of an applicant within a particular place where the applicant is deprived of freedom of movement;

"ECHR" means the European Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950;

"family members" means, in so far as the family already existed in the country of origin or former habitual residence, the following who are present in Gibraltar in connection with an application for international protection–

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(a) the spouse of an applicant;

(b) the minor or adult dependant children of the applicant or married couple, provided that they are unmarried and regardless of whether they were born in or out of wedlock or adopted;

(c) where the applicant is minor and unmarried, the father, mother or another adult responsible for that applicant, including an adult sibling,

and in paragraphs (b) and (c) the minor is considered unmarried provided that, on the basis of an individual assessment, the minor's marriage would not be in accordance with Gibraltar law had it been contracted in Gibraltar;

"final decision" means a final decision to grant or refuse refugee or subsidiary protection status; where an applicant appeals against a decision to refuse refugee or subsidiary protection status then a final decision means a decision taken following and on the basis of the final judgment of the court or the applicant's explicit withdrawal of the court appeal;

"Geneva Convention" means the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967;

"Gibraltarian" means–

(a) a British Overseas Territory Citizen by virtue of a connection with Gibraltar in accordance with section 2(1) of the Immigration, Asylum and Refugee Act; or

(b) a person who is a Gibraltarian within the meaning of the Gibraltarian Status Act;

"guardian" means a natural person or an organisation, including a public body, designated by the Authority to assist, represent and act on behalf of an unaccompanied minor, as applicable, in order to ensure that the unaccompanied minor can benefit from the rights and comply with the obligations under these Regulations, while safeguarding his best interests and general well-being;

"international protection" means refugee or subsidiary protection status;

"material reception conditions" means reception conditions which include housing, food, clothing and personal hygiene products, whether provided in kind or as financial allowances or in vouchers, and a daily expenses allowance;

"minor" means a person under the age of 18;

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"reception conditions" means all reception conditions for applicants and dependant family members under Part III including material reception conditions;

"refugee" has the meaning provided in regulation 27;

"refugee status" means the status granted in Gibraltar under regulation 42;

"reporting requirement" means a requirement that a person report to a specific place at a specific time imposed in accordance with regulation 10;

"representative" means a natural person or an organisation, including a public authority, appointed by the Authority, with the necessary skills and expertise, including with regard to the treatment and specific needs of minors, to represent, assist and act on behalf of an unaccompanied minor, as applicable, in order to safeguard the best interests and general well-being of that unaccompanied minor and so that the unaccompanied minor can benefit from the rights and comply with the obligations provided for in these Regulations;

"residence permit" means a residence permit issued under the Residency Regulations 2026;

"risk of absconding" means the existence of specific reasons and circumstances in an individual case, which are based on objective criteria, to believe that an applicant might abscond;

"social assistance" means benefits granted with the objective of ensuring that the basic needs of those who lack sufficient resources are met;

"social security" means the branches of social security benefits, if provided in Gibraltar and in accordance with applicable Gibraltar law, set out in Article 3(1) and (2) of Regulation (EC) No 883/2004 of the European Parliament and of the Council;

"stateless person" means a person who is not considered as a national by any State under the operation of its law;

"subsidiary protection status" means the status granted in Gibraltar under regulation 43;

"third country national" has the same meaning as in Article 26 of the Treaty on Gibraltar and the European Union;

"Treaty on Gibraltar and the European Union" has the same meaning as in section 5 of the Treaty on Gibraltar and the European Union Act 2026;

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"UNHCR" means the United Nations High Commissioner for Refugees;

"unaccompanied minor" means a person under the age of 18 who arrived in Gibraltar unaccompanied by an adult responsible for him whether by law or custom, and for as long as he is not effectively taken into the care of such a person; it includes a minor who is left without an adult responsible for him after he has entered Gibraltar.

"withdrawal of international protection" means a decision by the Authority or a competent court or tribunal to revoke or end, including by refusing to renew, international protection;

(2) *Deleted*

Treaty on Gibraltar and the European Union.

2A. These Regulations are subject to section 50 (Applications for International Protection) of the Treaty on Gibraltar and the European Union Act 2026.

Scope of application.

3. These Regulations only apply to–

(a) third country nationals; and

(b) stateless persons.

Non-application of Part III to persons enjoying temporary protection.

4. Part III (reception standards for applicants) of these Regulations does not apply to any person who has temporary protection in Gibraltar under the Temporary Protection Act 2005 while he has such protection.

Part II
Non Refoulement of Applicants

Non-refoulement of applicants and dependant family members.

5.(1) Subject to sub-regulation (2), no action or decision shall be taken to remove or deport the following persons from Gibraltar or otherwise require them to leave Gibraltar–

(a) an applicant;

(b) a dependant family member of an applicant.

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(2) The persons listed in sub-regulation (1) may be removed from, deported or required to leave, Gibraltar only if–

(a) the applicant explicitly and in writing withdraws his application for international protection, having received advice from the Authority that this may result in his removal, deportation from Gibraltar or a requirement to leave Gibraltar; or

(b) the person is transferred to a Member State;

(c) the person is subject to a return decision under Part VA of the Asylum (Procedures) Regulations 2012.

Part III
Reception Standards for Applicants

Application of Part III.

6.(1) This Part sets out applicable standards for the reception of applicants in Gibraltar and applies to–

(a) all persons who make or have made an application for international protection in Gibraltar; and

(b) dependant family members of the persons in paragraph (a).

(2) This Part shall apply to the persons in sub-regulation (1) from the making of an application until–

(a) the grant of refugee or subsidiary protection status;

(b) a final decision is taken to refuse refugee or subsidiary protection status; or

(c) in the event that the applicant withdraws his application for international protection, an explicit withdrawal of the application by the applicant in writing.

(3) The Government may apply the provisions of this Part following the refusal of refugee or subsidiary protection status or the withdrawal of an application for international protection where the person has not been physically removed from Gibraltar.

(4) The Government may refuse to apply this Part to an applicant–

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(a) who has previously applied for, and been refused, international protection in Gibraltar; and

(b) whose new application does not raise new evidence, facts or elements or any other reason for reconsidering the previous decision.

Applications, photographs and fingerprints.

7.(1) If an application for international protection is made to the Royal Gibraltar Police, a Government Department, or an agent acting on behalf of the Royal Gibraltar Police or the Government that body shall ensure that the applicant and any dependant family members are immediately brought to the attention of the Authority.

(2) On the instructions of the Authority, the Royal Gibraltar Police shall take, record and deliver to the Authority fingerprints and photographs of the applicant and any dependant family member.

International protection applicant's permit.

8.(1) The Authority shall, within 3 days of the making of an application for international protection, provide a document (called an international protection applicant's permit) containing the information set out in sub-regulation (2) to the following persons–

(a) the applicant; and

(b) any dependant family members of the applicant.

(2) The applicant's permit referred to in sub-regulation (1) shall be issued in the name of the applicant or dependant family member and shall -

(a) certify the person's status as an applicant or dependant family member;

(b) state that the person is allowed to stay in the territory of Gibraltar while the application is pending or being examined; and

(c) state any residence condition which has been placed on the person.

(3) The Authority may renew, replace or amend an international protection applicant's permit as necessary.

Information document.

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9.(1) The Authority shall, within 3 days of the making of the application for international protection, provide the information set out in sub-regulation (2) to–

(a) the applicant; and

(b) any dependant family members of the applicant.

(2) The information referred to in sub-regulation (1) shall be given in writing, in a concise, transparent, intelligible and easily accessible form using clear and plain language, in a language which the applicant and any dependant family members are likely to be able to understand, and shall include at least the following information–

(a) the benefits and services which they may be eligible to receive and the rules and procedures with which they must comply relating to them;

(b) the obligations with which they must comply in relation to reception conditions; and

(c) about organisations or groups of organisations or persons who–

(i) provide specific legal assistance and advice to applicants for international protection and refugees; or

(ii) may be able to help or inform them concerning available reception conditions including health care.

(3) The information referred to in this regulation may be supplied orally in a language which the applicant can be reasonably expected to understand, or where appropriate, in a visual form such as by using videos or pictograms, and shall be adapted to the applicant's needs.

(4) In the case of an unaccompanied minor, the Authority shall provide the information referred to in subregulation (2) in an age-appropriate manner that ensures that the unaccompanied minor understands it, by using information materials specifically adapted to minors where appropriate and such information shall be provided in the presence of the representative of the unaccompanied minor or of the person suitable to provisionally act as a representative until the representative is appointed.

(5) In exceptional cases, the Authority may provide the information referred to in subregulation (2) to the applicant by means of an oral translation, or where appropriate in a visual form such as videos or pictograms, where–

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(a) it is not able to provide that information in writing within the time limit set out in subregulation (1) because the language that an applicant understands or is reasonably supposed to understand is a rare language; and

(b) that applicant subsequently confirms that he understands that information provided.

(6) In cases referred to in subregulation (5), the Authority shall as soon as possible obtain a translation of the information referred to in subregulation (2) in writing and provide it to the applicant, except where it is clear that such provision is no longer needed.

Residence, reporting conditions and freedom of movement.

10.(1) Applicants shall inform the Authority of their current address, telephone number and electronic mail address and notify any change of such information as soon as possible.

(2) Subject to sub-regulations (3) and (4) no restrictions may be placed on the freedom of movement or place of residence within Gibraltar of–

(a) an applicant; or

(b) the dependant family member of an applicant.

(3) A residence or reporting condition may be imposed on an applicant or dependant family member where necessary–

(a) for reasons of public interest;

(b) for reasons of public order; or

(c) for the swift processing and effective monitoring of the applicant's application for international protection, including to prevent absconding.

(4) *Deleted*

(5) A residence condition or reporting requirement–

(a) may be varied or lifted by the body which imposed it either permanently or for a specified period of time;

(b) shall not prevent the person on whom it is imposed from attending any court hearing in relation to their application or any appointment related to their application.

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(6) An application for variation or lifting of a residence condition or reporting requirement may be made by the person on whom it has been imposed to the body which imposed it and where such an application is made that body shall–

(a) make a decision on the application–

(i) promptly;

(ii) objectively and impartially;

(iii) on the facts of the individual case;

(b) give the decision in writing to the person on whom the reporting or residence condition was imposed; and

(c) where it decides to refuse the application, either in whole or in part, give written reasons for the refusal.

(7) Applicants and dependant family members may appeal to the Magistrates' Court against decisions by the Authority to–

(a) impose or refuse to vary or lift a reporting requirement; or

(b) impose or refuse to vary or lift a residence condition.

(8) For the purpose of this regulation–

"residence condition" means a condition that a person live and sleep at a particular address;

"reporting requirement" means a requirement that a person report to a specific place at a specific time.

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

Detention.

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

(a) the detention is necessary in order to determine or verify the applicant's or dependant family member's identity or nationality;

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(b) the detention is necessary in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant or dependant family member;

(c) the detention is necessary in order to decide, in the context of a procedure, on the applicant's dependant family member's right to enter Gibraltar;

(d) the applicant or dependant family member is subject to an order for removal under section 59 of the Act, or to proceedings in which such an order is sought, and there are reasonable grounds to believe that the applicant or dependant family member is making the application for international protection merely in order to delay or frustrate the enforcement of the removal decision or the proceedings seeking such order;

(e) the detention is necessary for the protection of the security of Gibraltar or public order;

(f) where the detention is in accordance with the criminal law of Gibraltar; or

(g) the detention is in accordance with the Mental Health Act 2016;

(h) when the applicant is detained subject to a return procedure under Part VA of the Asylum (Procedures) Regulations 2012 in order to prepare the return, or carry out the removal process, and the Authority can substantiate on the basis of objective criteria, including that the applicant already had the opportunity to access the procedure for international protection, that there are reasonable grounds to believe that the applicant is making the application for international protection merely in order to delay or frustrate the enforcement of the return decision.

(2) A detention order on the grounds set out in paragraphs (a) to (f) or (h) may be made by the Magistrates' Court.

Guarantees for detained applicants.

10B.(1) An applicant or dependant family member detained under regulation 10A(a) to (e) or (h) may be detained only for as short a period as possible and only for as long as the grounds in regulation 10A remain applicable.

(2) Where the Magistrates' Court makes an order under regulation 10A(2) for the detention of the applicant or dependant family member the order-

(a) must be made in writing;

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(b) must state the reasons in fact and in law on which it is based as well as why less coercive alternative measures cannot be applied effectively;

(c) contain information on the procedure which is available in order to challenge the decision as well as the possibility to request free legal assistance and representation;

(d) be written in a language that the applicant or family member is likely to understand.

(3) An applicant or dependant family member may appeal to the Supreme Court against an order under regulation 10A(2).

(4) An applicant or dependant family member may apply to the Magistrates' Court to review an order under regulation 10A(2) where-

(a) the detention is of a prolonged duration;

(b) relevant circumstances arise; or

(c) new information becomes available

which may affect the lawfulness of detention.

(5) Without prejudice to subregulation (4), the Magistrates' Court shall review the detention at reasonable intervals determined by the court, in particular where the circumstances set out in paragraphs (a) to (c) of subregulation (4) occur or when the detention involves an unaccompanied minor.

Conditions of detention.

10C.(1) Where an applicant or dependant family member is to be detained under these Regulations in prison accommodation due to specialised detention facilities not being available, the applicant or dependant family member shall be kept separately from ordinary prisoners and as far as possible, from other third-country nationals who have not lodged an application for international protection.

(2) Detained applicants or dependant family members shall–

(a) have access to open-air spaces;

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(b) have the possibility of communicating with relatives, legal advisers and representatives of the UNHCR and non-governmental organisations in conditions that respect privacy;

(c) be provided with information that explains the rules applying in the facility and sets out the rights and obligations of those applicants in a language which they understand or are reasonably supposed to understand .

Detention of applicants with special reception needs.

10D.(1) Where the detention of applicants or dependant family members with special reception needs would put their physical and mental health at serious risk, those applicants or dependant family members shall not be detained.

(2) Where an applicant or a dependant family member with special reception needs is detained, the Authority shall ensure regular monitoring of, and the provision of timely and adequate support to, the applicant or the dependant family member, taking into account their particular situation, including their physical and mental health.

Detention – minors and families.

10E.(1) Subject to this regulation, minors shall not be detained and shall be placed in suitable accommodation in accordance with regulations 19 and 20.

(2) Subject to this regulation, adequate alternatives to detention shall be used for families with minors in accordance with the principle of family unity and such families shall be placed in accommodation suitable for them.

(3) In exceptional circumstances, as a measure of last resort and after it has been established that other less coercive alternative measures cannot be applied effectively, and after detention is assessed to be in their best interests in accordance with regulation 19, minors may be detained–

(a) in the case of unaccompanied minors, where the minor's parent or primary care-giver is detained; or

(b) in the case of unaccompanied minors, where detention safeguards the minor.

(4) The detention of minors under this regulation shall–

(a) be for the shortest possible period of time;

(b) not be carried out in a prison or another facility used for law enforcement purposes;

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(c) be subject to efforts to release minors from detention and place them in accommodation suitable for minors.

(5) Where minors are detained–

(a) they shall have the right to education in accordance with regulation 17, unless the provision of education is of limited value to them due to the very short period of their detention;

(b) they shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age.

(6) Where unaccompanied minors are detained, they shall be accommodated in facilities adapted to the housing of unaccompanied minors and such facilities shall be provided with staff qualified to safeguard the rights of unaccompanied minors and attend their needs.

(7) Where unaccompanied minors are detained, the Authority shall ensure that they are accommodated separately from adults.

(8) Detained families shall be provided with separate accommodation that guarantees adequate privacy and detained families shall be accommodated in facilities adapted to the needs of minors.

(9) The Authority shall ensure that male and female applicants are accommodated separately, unless those detained applicants are family members and all individuals concerned consent to be accommodated together.

(10) Where the applicant is detained at a border post or in a transit zone, the Authority may derogate from subregulation (6), (8) and (9) in duly justified cases for a reasonable period of time that shall be as short as possible and only in exceptional situations.

Medical screening.

11.(1) The Authority may, on public health grounds, require an applicant or dependant family member to be examined by a medical practitioner.

(2) A person required to be medically examined under sub-regulation (1) shall not be charged a fee for the examination.

(3) The Director of Public Health shall make appropriate provision for medical examinations required under sub-regulation (1).

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General rules on material reception conditions including health care.

12.(1) The Government shall make material reception conditions available to applicants and their dependant family members, if any, from the time they make an application for international protection.

(2) The Government may provide material reception conditions –

(a) in kind;

(b) in the form of financial allowances; or

(c) in a combination of (a) and (b).

(3) Material reception conditions provided shall–

(a) as a minimum, ensure a standard of living adequate for the health and subsistence of the applicant and any dependant family members; and

(b) take into account the requirements of particularly vulnerable persons, in accordance with sub-regulation (4), as well as the requirements of applicants in detention.

(4) In the provision of reception conditions particular account shall be taken of the specific needs of vulnerable persons such as minors, unaccompanied minors, disabled persons, elderly persons, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

(5) In considering the amount of any material reception conditions provided account may be taken of the financial means of the applicant and any dependant family members and the applicant may be required to cover or contribute to the cost of the material reception conditions where the applicant has sufficient means to do so.

(6) If it transpires that an applicant had sufficient means to cover the costs of the material reception conditions received in accordance with this regulation at the time the applicant was provided with an adequate standard of living, the applicant may be required to refund the costs of those material reception conditions.

(7) When assessing the resources of an applicant, when requiring an applicant to cover or contribute to the cost of the material reception conditions or when requiring an applicant to refund costs in accordance with this regulation, the principle of proportionality shall be respected and the individual circumstances of the applicant and the need to respect the

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applicant's dignity or personal integrity, including any special reception needs, shall be respected.

(8) Where material reception conditions in the form of financial allowances or vouchers are provided, the amount thereof shall ensure an adequate standard of living and applicants may receive less favourable treatment to Gibraltarians, in particular where material support is fully or partially provided in kind or where those levels applied for Gibraltarians aim to ensure a standard of living higher than that required by these Regulations.

(9) Persons providing material reception conditions shall be adequately trained and shall be subject to a legal requirement of confidentiality in relation to any information they obtain in the course of their work.

Housing.

13.(1) The Government shall ensure that applicants and their dependant family members have adequate accommodation, or provide them with the means (including financial means) to obtain such adequate accommodation. Such accommodation may take the form of–

(a) private houses, flats, hotels or other premises; or

(b) accommodation centres.

(2) Accommodation listed–

(a) in sub-regulation (1) will only be adequate if it complies with the standards required by regulation 12 (general rules on material reception conditions) and, among other things, it -

(i) complies with regulation 14 (housing of families);

(ii) allows for the possibility of communicating with relatives, legal advisers and representatives of the UNHCR and non-governmental organisations;

(iii) guarantees protection of the applicant's family life;

(iv) is appropriate considering gender and age-specific concerns of the applicant and the situation of applicants with special reception needs;

(b) in sub-regulation (1)(b) will only be adequate if, among other things, the staff of the centre–

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(i) have been adequately trained with respect to the needs of applicants and dependant family members; and

(ii) are subject to a legal requirement of confidentiality in respect to any information they obtain in the course of their work including information which they obtain from applicants and dependant family members.

(2A) When providing housing under this regulation, appropriate measures shall be taken to ensure, as far as possible, the prevention of assault and violence, including violence committed with a sexual, gender, racist or religious motive.

(2B) Where female applicants are placed in accommodation centres, separate sanitary facilities and a safe place in those centres for them and their minor children shall be provided.

(2C) Transfers of applicants from one housing facility to another shall only take place when necessary and applicants shall have the possibility to inform their legal advisors or counsellors of the transfer and of their new address.

(3) Where accommodation is provided by or on behalf of the Government it may be a condition of residence in that accommodation that the applicant or dependant family member makes payments, in respect of that accommodation, to–

(a) the Government; or

(b) the manager of the accommodation in question.

(4) The Government shall take account of the ability of the applicant or dependant family member to meet their own financial needs when assessing–

(a) whether any payment is required;

(b) the amount of any payments to be made by an applicant or dependant family member under sub-regulation (3); or

(c) the amount of any financial assistance to be provided to an applicant or dependant family member under sub-regulation (1).

(5) Where accommodation is provided in accommodation centres–

(a) measures shall be taken to prevent assaults within such centres;

(b) applicants and dependant family members may be involved in managing the material resources and non-material aspects of life in the centre through an

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advisory office or council representing residents and may be allowed to perform voluntary work outside the accommodation centre subject to any conditions that may be prescribed.

(6) Applicants housed in accommodation provided by, or on behalf of, the Government–

(a) may be transferred from one housing facility to another only when necessary; and

(b) if transferred, shall be provided the opportunity to inform their legal advisers and UNHCR of their transfer and of their new address.

(7) In duly justified cases and for a reasonable period of time which shall be as short as possible, material reception conditions relating to housing may be exceptionally provided that are different to those provided in this regulation where –

(a) an assessment of special reception needs of the applicant is required, in accordance with regulation 20B;

(b) housing capacities normally available are temporarily exhausted or, due to a disproportionate number of persons to be accommodated or a man-made or natural disaster, housing capacities normally available are temporarily unavailable.

(8) Different material reception conditions referred to in subregulation (7) shall in any event ensure access to healthcare and a standard of living for all applicants in accordance with domestic and international obligations.

Housing - family unity.

14.(1) Subject to sub-regulation (2), where housing is provided by the Government to an applicant, such housing shall, as far as possible, provide for applicants and their family members to be housed together.

(2) Applicants and their family members shall be housed together under sub-regulation (1) only with their agreement.

(3) Save where it is not in the best interest of the child and subject to regulation 20 (unaccompanied minors), minors shall be housed with–

(a) their parents, if their parents are in Gibraltar; or

(b) with an adult family member present in Gibraltar who is responsible for the minor whether by law or by custom.

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Housing - legal advisers and UNHCR Access.

15.(1) Subject to sub-regulation (2) the following persons shall be allowed to enter accommodation centres and other housing facilities for applicants and their dependant family members–

(a) legal advisors or counsellors of applicants and their dependant family members;

(b) UNHCR and non-governmental organisations designated by UNHCR and recognized by the Government.

(2) Access under sub-regulation (1) may be limited to the persons in sub-regulation (1) only where necessary for the security of the applicants or dependant family members, the accommodation centre or housing facility.

Health care.

16.(1) Without prejudice to sub-regulation (2) and to any other rights to health care which they may have under the law of Gibraltar, applicants and their dependant family members shall be entitled to receive emergency medical, essential treatment of illness and treatment for mental disorders and sexual and reproductive health in Gibraltar from the Gibraltar Health Authority, including from specialist practitioners where necessary.

(2) Applicants or dependant family members who have special needs (such as minors or persons who have undergone torture, rape, or other serious forms of psychological, physical or sexual violence) shall have access to medical or other assistance appropriate for dealing with such needs.

(2A) Minor children of applicants and applicants who are minors shall receive the same type of health care as provided to minor Gibraltarians in Gibraltar and specific treatment provided in accordance with this regulation which started before the minor reached the age of majority and is considered to be necessary shall be received without interruption or delay after the minor reaches the age of majority.

(2B) Where needed for medical reasons, necessary medical or other assistance, such as necessary rehabilitation and assistive medical devices, shall be provided to applicants who have special reception needs, including appropriate mental health care.

(3) Applicants or their dependant family members who have sufficient resources may be required to make payments for any medical or other assistance provided by virtue of this regulation to–

(a) the Gibraltar Health Authority; or

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(b) the medical or other establishment in question.

(4) When assessing whether an applicant or dependant family member has "sufficient resources" under sub-regulation (3) or the level of payments, if any, to be made under sub-regulation (3), the Gibraltar Health Authority shall take account of–

(a) the obligation of the Government under regulation 12(3) to ensure that applicants and their dependants have a standard of living adequate for their health and subsistence; and

(b) their ability to meet their own financial needs.

(5) The Government shall ensure that persons who have been subjected to trafficking in human beings, torture, rape or other acts of psychological, physical or sexual violence, including violence committed with a sexual, gender, racist or religious motive, are provided with necessary medical and psychological treatment and care, including rehabilitation services and counselling where necessary, for the damage caused by such acts and those persons shall be provided, where needed, with an oral translation.

(6) Access to the treatment and care described in subregulation (5) shall be provided as early as possible after those needs have been identified.

(7) Those working with the persons referred to in subregulation (5), including health professionals, shall be appropriately trained and continue to receive appropriate training concerning those persons' needs and appropriate treatments, including necessary rehabilitation services and shall be bound by a legal requirement of confidentiality and applicable professional ethics codes in relation to any information they obtain in the course of their work.

Schooling and education of minors.

17.(1) The following shall be entitled to access to the education system under the Education and Training Act–

(a) applicants who are minors;

(b) dependant family members who are minors.

(2) Access to the education system under sub-regulation (1) shall not be withdrawn–

(a) unless the minor or, in respect of a minor who is a dependant family member, the applicant parent of the minor, is removed from Gibraltar in accordance with these Regulations; or

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(b) solely on the basis that the minor has reached the age of 18.

(3) Access to education shall be granted as soon as possible and shall not be postponed for more than two months from the date on which the application for international protection was lodged, taking into account school holidays.

(4) As a temporary measure and for a maximum period of one month, education may be provided outside the general education system.

(5) Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the general education system.

(6) Where access to the general education system is not possible due to the specific situation of the minor, other education arrangements may be offered.

Employment, self employment and vocational training.

18.(1) Applicants and their dependant family members shall be entitled to engage in employed or self-employed activities in accordance with the relevant laws and shall be entitled workers for the purpose of the Employment Regulations 1994 if–

(a) no decision has been taken by the Authority to grant or refuse the application for international protection within 6 months of the making of the application;

(b) in Gibraltar as an applicant for international protection, or dependant family member of an applicant for international protection, for over 6 months since the date of the making of the application; or

(c) neither paragraph (a) or (b) applies, but the Minister with responsibility for personal status has granted permission to take employment in accordance with sub-regulation (2).

(2) The Minister with responsibility for personal status may at any time grant permission to take employment or engage in self-employed activities to an applicant or his dependant family member, if any.

(3) Where permission to take employment or engage in self-employed activities is granted under sub-regulation (2) the following persons shall be informed in writing –

(a) the person granted permission to take employment or engage in self-employed activities; and

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(b) the Director of Employment.

(4) Applications for the grant of permission under sub-regulation (2) to take employment or engage in self-employed activities shall be made to the Authority.

(5) Applicants and their dependant family members shall be entitled to access–

(a) any vocational training linked to their employment;

(b) vocational training in Gibraltar;

(c) language courses and civic education courses considered appropriate in order to help enhance an applicant's ability to act autonomously, to interact with competent authorities or to find employment (the cost of which shall be covered, fully or partly, by the applicant if the applicant has sufficient means).

(6) Where the Authority has prioritised or accelerated the examination on the merits of an application for international protection in accordance with regulation 20(5) or (6) of the Asylum (Procedures) Regulations 2012, access to the labour market shall not be granted or, if already granted, shall be withdrawn.

(7) Applicants who have access to the labour market in accordance with this regulation shall enjoy equal treatment as regards–

(a) terms of employment, the minimum working age and working conditions, including pay and dismissal, working hours, leave and holidays, as well as health and safety requirements at the workplace;

(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to domestic laws on public policy and public security;

(c) education and vocational training, including training courses for improving skills, practical workplace experience and employment guidance services;

(d) recognition of diplomas, certificates and other evidence of formal qualifications in the context of existing procedures for recognition of foreign qualifications; and

(e) access to appropriate schemes for the assessment, validation and recognition of applicants' prior learning outcomes and experience.

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(8) Equal treatment may be restricted for applicants who have access to the labour market under this regulation–

(a) as regards subregulation (7)(b), by excluding them from taking part in the management of bodies governed by public law and from holding an office governed by public law;

(b) as regards subregulation (7)(c), by excluding–

(i) grants and loans related to education and vocational training and the payment of fees with regard to access to university or post-secondary education; and

(ii) education and vocational training which is not provided within the framework of an existing employment contract, including where provided for employment promotion purposes;

(c) as regards subregulation (7)(d) or (e), by not granting equal treatment for at least 3 months from the date on which the application for international protection was registered.

(9) The right to equal treatment pursuant to this regulation shall not give rise to a right to reside in cases where a decision taken in accordance with these Regulations has terminated the applicant's right to remain.

(10) For the purposes of subregulation (7)(d) full access to existing procedures for the recognition of foreign qualifications shall be facilitated for applicants who cannot provide documentary evidence of their qualifications.

(11) Access to the labour market shall not be withdrawn during an appeal procedure where the applicant has a right to remain in Gibraltar during that procedure and until a negative decision on the appeal is notified.

Minors

Minors.

19.(1) The best interests of the child shall be a primary consideration where any decision is taken under this Part which involves a minor and the Authority shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

(2) Minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflict, shall have

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access to rehabilitation services including, when needed, mental health care appropriate to their needs and qualified counseling. The Government shall ensure that appropriate mental health care is available.

(3) In assessing the best interests of the child, the Authority shall in particular take due account of the following factors–

(a) family reunification possibilities;

(b) the minor's well-being and social development, taking into particular consideration the minor's background and the need for stability and continuity in care;

(c) safety and security considerations, in particular where there is a risk of the minor being a victim of any form of violence or exploitation, including trafficking in human beings;

(d) the views of the minor in accordance with his age and maturity.

(4) The Government shall ensure–

(a) that minors have access to leisure activities, including play and recreational activities appropriate to their age and to open-air activities within the premises and accommodation centres referred to in regulation 13, as well as to school materials where needed;

(b) that minor children of applicants or applicants who are minors are accommodated with their parents or with the adult responsible for them and their unmarried minor siblings, provided it is in the best interests of the minors concerned.

(5) Persons working with minors, including representatives and persons suitable to provisionally act as representatives, shall not have a record of child-related crimes or offences, or of crimes or offences that lead to serious doubts about their ability to assume a role of responsibility with regard to minors, shall receive initial and continuous appropriate training concerning the rights and needs of minors, including those relating to any applicable child safeguarding standards, and shall be bound a legal requirement of confidentiality in relation to any information they obtain in the course of their work.

Unaccompanied minors

20.(1) The Authority shall, as soon as possible and no later than 15 working days from the date on which an application is made, ensure (including where necessary by bringing legal proceedings) that unaccompanied minors are represented by–

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(a) a legal guardian;

(b) where necessary, the Care Agency or such other organisation, body or agency responsible for the care and well-being of minors in Gibraltar; or

(c) any other appropriate representative or person suitable to provisionally act as a representative.

(1A) The representative referred to in subregulation (1) shall meet with the unaccompanied minor and take into account the minor's own views about his needs.

(1B) Where the Authority has assessed that an applicant who claims to be a minor is without any doubt above the age of 18 years, the Authority need not appoint a representative in accordance with subregulation (1).

(1C) The Government shall include in any contingency plans the appointment of representatives in accordance with this regulation in cases where they are confronted with a disproportionate number of applications made by unaccompanied minors.

(1D) Where the implementation of measures referred to in subregulation (1C) is insufficient in order to respond to a disproportionate number of applications made by unaccompanied minors, or in other exceptional situations, the appointment of representatives may be delayed for ten working days and the number of unaccompanied minors per representative may be increased, up to a maximum of 50 unaccompanied minors.

(1E) The duties of the representative referred to in subregulation (1) shall cease where the Authority, following the age assessment referred to in regulation 15B of the Asylum (Procedures) Regulations 2012, do not assume that the applicant is a minor or consider that the applicant is not a minor, or where the applicant is no longer an unaccompanied minor.

(1F) The Authority shall ensure that the representative referred to in subregulation (1) is immediately informed when an application for international protection is made by an unaccompanied minor of any relevant facts pertaining to the minor and persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be so designated.

(1G) An unaccompanied minor shall be immediately informed that a person suitable to provisionally act as a representative has been designated.

(1H) Where an organisation is appointed as a representative under subregulation (1), it shall appoint a natural person to carry out the tasks of the representative in respect of the unaccompanied minor in accordance with these Regulations.

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(1I) The Authority shall immediately inform–

(a) the unaccompanied minor that a representative has been appointed for him and how to lodge a complaint against that representative in confidence and safety in an age-appropriate manner and in a manner that ensures that the minor understands that information;

(b) any authority responsible for providing reception conditions that a representative has been appointed for the unaccompanied minor; and

(c) the representative of relevant facts pertaining to the unaccompanied minor.

(1J) The representative referred to in subregulation (1) shall be changed only where necessary, in particular when the Authority considers that that representative or person has not performed his tasks adequately and organisations or natural persons whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be appointed as a representative.

(1K) A natural person shall be appointed as a representative in charge of a proportionate and limited number of unaccompanied minors and, under normal circumstances, of no more than 30 unaccompanied minors at the same time, in order to ensure that that person is able to perform tasks effectively.

(1L) The Government shall ensure that an entity is designated to supervise the proper performance of tasks by the representatives, including by reviewing the criminal records of those appointed representatives and designated persons at regular intervals in order to identify potential incompatibilities with their role and such entity shall review complaints lodged by unaccompanied minors against their appointed representatives or designated persons.

(2) Regular assessments of the care and representation provided and the minor's welfare shall be made by the Social Services Agency.

(3) Unaccompanied minors who apply for international protection shall, from the making of the international protection application until such time as an expulsion measure against them is enforced, be placed–

(a) with adult relatives;

(b) with a foster carer in accordance with the law on foster care in force in Gibraltar for the time being;

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(c) in accommodation centres with special provisions for minors, save that unaccompanied minors aged 16 or over may be housed in accommodation centres for adult international protection applicants; or

(d) in other accommodation suitable for minors.

(4) In determining where a minor shall be placed under sub-regulation (3) siblings shall, as far as possible, be kept together, taking into account the best interests of the minors concerned and, in particular, their age and degree of maturity.

(5) Changes of residence of unaccompanied minors shall be limited to a minimum.

(6) The Authority shall endeavor to trace the members of the minor's family as soon as possible, including through use of organisations such as the Red Cross. Where there may be a threat to the life or integrity of the minor or the minor's close relatives, particularly if they have remained in the country of origin, the collection, processing and circulation of information concerning those persons shall be undertaken on a confidential basis, so as to avoid jeopardising their safety.

(7) All persons working with unaccompanied minors shall–

(a) have had or receive appropriate training concerning the needs of unaccompanied minors; and

(b) be subject to a legal requirement of confidentiality in respect to any information which they obtain in the course of their work including any information which they obtain from unaccompanied minors.

Applicants with special reception needs.

20A.(1) The Authority shall take into account the specific situation of applicants with special reception needs.

(2) The Authority shall take into consideration the fact that certain applicants such as those falling within any of the following categories, are more likely to have special reception needs–

(a) minors;

(b) unaccompanied minors;

(c) persons with disabilities;

(d) elderly persons;

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(e) pregnant women;

(f) lesbian, gay, bisexual, trans and intersex persons;

(g) single parents with minor children;

(h) victims of trafficking in human beings;

(i) persons with serious illnesses;

(j) persons with mental disorders including post-traumatic stress disorder;

(k) persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive.

Assessment of special reception needs.

20B.(1) In order to effectively implement regulation 20A, the Authority shall, as early as possible after an application for international protection is made, individually assess whether the applicant has special reception needs, using oral translation where necessary.

(2) The assessment referred to in subregulation (1) shall be initiated by identifying special reception needs based on visible signs or on the applicant's statements or behaviour or, where applicable, statements of the parents or the representative of the applicant.

(3) The assessment referred to in subregulation (1) shall be completed within 30 days from the making of the application for international protection or, where it is integrated into the assessment referred to in regulation 14B of the Asylum (Procedures) Regulations 2012, within the timeframe set out in that regulation, and the special reception needs identified on the basis of such assessment shall be addressed.

(4) Where special reception needs become apparent at a later stage in the procedure for international protection, the Authority shall assess and address those needs.

(5) The Authority shall ensure that the support provided to applicants with special reception needs in accordance with these Regulations takes into account their special reception needs throughout the duration of the procedure for international protection and shall provide for appropriate monitoring of their situation.

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(6) For the purposes of this regulation, the Authority shall ensure that the staff assessing special reception needs–

(a) are trained and continue to be trained to detect signs that an applicant has special reception needs and to address those needs when identified;

(b) include information concerning the nature of the applicant's special reception needs in the applicant's file held by the Authority, together with a description of the visible signs or the applicant's statements or behaviour relevant for the assessment of the applicant's special reception needs as well as the measures that have been identified to address those needs and those responsible for addressing those needs; and

(c) subject to prior consent, refer applicants to the appropriate medical practitioner or psychologist for further assessment of their psychological and physical state where there are indications that their mental or physical health could affect their reception needs; where necessary, oral translation shall be provided by professionals trained in translation to ensure that the applicant is able to communicate with medical staff; where the lack of such trained professionals would risk delaying the treatment, oral translation may be provided by other adult individuals, subject to the applicant's consent.

(7) The Authority shall take into account the result of the assessment referred to in subregulation (6)(c) when deciding on the type of special reception support which may be provided to the applicant.

(8) Only applicants with special reception needs may benefit from the specific support provided under these Regulations.

(9) The assessment provided for in subregulation (1) shall be without prejudice to the assessment of international protection needs pursuant to these Regulations.

Reduction Or Withdrawal Of Reception Conditions

Reduction or withdrawal of reception conditions.

21.(1) Subject to sub-regulation (5) and (6), reception conditions may be reduced or withdrawn from an applicant or dependant family member in Gibraltar only where reasonable and proportionate to do so and if–

(a) that person–

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(i) is subject to a residence condition imposed under regulation 10 and abandons that place of residence without the permission of the body which imposed it;

(ii) commits a serious breach of reporting duties, requests to appear for personal interviews concerning the international protection application or fails to provide information requested by the Authority within a reasonable period (a reasonable period shall not be less than ten working days beginning on the date that the request was received by the person);

(iii) does not cooperate with the Authority, or does not comply with the procedural requirements established by them;

(iv) has lodged a subsequent application;

(v) has seriously or repeatedly breached the rules of the accommodation centre or other accommodation the applicant is housed in under these Regulations or has behaved in a violent or threatening manner in the accommodation centre or other accommodation;

(vi) fails to participate in compulsory integration measures, where provided or facilitated, unless there are circumstances beyond the applicant's control;

(b) that person had sufficient means to cover material reception conditions and concealed such financial resources; in such circumstances the person may also be required to refund such contribution as they would have been required to make to their material reception conditions had they disclosed their financial resources.

(1A) Where a decision is taken in a situation referred to in subregulation (1)(a)(i), (ii), (iii) or (vi), and the circumstances on which that decision was based cease to exist, the Authority shall consider whether some or all of the material reception conditions withdrawn or reduced may be reinstated and where not all material reception conditions are reinstated, the Authority shall take a duly justified decision and notify it to the applicant.

(2) A person shall be considered to have abandoned their place of residence for the purpose of sub-regulation (1)(a)(i) if they have not been present at that place for a period of over 7 nights and have not, or will not, be returning to that place.

(3) Reception conditions may be reinstated in respect of a person to whom sub-regulation (1)(a) applies where that person is traced or voluntarily reports to the Authority. A decision as to whether to reinstate material reception conditions shall be made taking into account the reasons for the disappearance.

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(4) Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in sub-regulation (1) or, in relation to reinstatement of reception conditions, sub-regulation (3)–

(a) shall be reasonable and proportionate;

(b) shall be taken–

(i) objectively and impartially;

(ii) on the facts of each individual case, based on the particular situation of the person concerned including the needs of persons under regulation 12(4); and

(c) shall be given in writing, together with written reasons for the decision, to the person or persons concerned.

(5) Access by applicants and dependant family members to emergency health care may not be reduced or withdrawn.

(6) The Authority shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in a situation referred to in subregulation (1).

Legal Aid

Legal Aid.

22. International protection applicants and their dependant family members shall be considered to be ordinarily resident in Gibraltar for the purpose of rule 6(2) of the Legal Aid and Assistance Rules.

Material reception conditions in exceptional circumstances

Material reception conditions in exceptional circumstances.

23.(1) In exceptional circumstances different provisions concerning entitlements of applicants and dependant family members to material reception conditions may apply.

(2) Such different provisions must be published by legal notice in the Gazette specifying what constitutes exceptional circumstances and what provisions will be applied.

(3) Such different provisions–

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(a) may only apply when–

(i) an initial assessment of the specific needs of the applicant or dependant family member is required prior to granting material reception conditions;

(ii) housing capacities normally available are temporarily exhausted; or

(iii) the international protection applicant or dependant family member is in detention;

(b) may only apply for a reasonable period, which shall be as short as possible; and

(c) shall, as a minimum, cover the basic needs of applicants and dependant family members.

Actions To Improve The Efficiency Of The Reception System

Guidance, monitoring and control systems.

24. The Government shall ensure appropriate guidance is published in relation to this Part and shall monitor and control the level of reception conditions.

Part IV
Criteria for Determining International Protection

Assessment

Duty of the applicant.

25. An applicant shall, as soon as possible on request by the Authority in connection with his application for international protection, provide all information and documentation at his disposal regarding–

(a) his reasons for applying for international protection;

(b) his age, identity, background, including that of relevant relatives;

(c) his nationality or nationalities, country or countries and place or places of previous residence;

(d) any previous application for international protection which he has made;

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(e) travel routes;

(f) his identity and travel documents; and

(g) the results of any relevant resettlement or humanitarian admission procedure.

Assessment of facts and circumstances.

26.(1) The Authority shall assess all relevant elements of an application for international protection.

(2) Each application for international protection shall be assessed on an individual basis and the following must be taken into account–

(a) all relevant facts as they relate to the applicant's country of origin at the time of taking a decision on the application including the laws and regulations of the country of origin and the manner in which they are applied;

(b) all relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) the individual position and personal circumstances of the applicant including, in particular, whether the applicant is a minor or suffering from mental health problems;

(e) where issues arise under regulation 28 or regulation 36 (sur place claims), whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

(f) whether the applicant could reasonably be expected to avail himself of the protection of another country where he could assert citizenship;

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(g) any guidance issued by the European Commission or UNHCR including guidance issued on procedures and criteria for determining status.

(3) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall be considered to be a serious indication that the applicant has a well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

(4) Where the elements of an applicant's statements are not supported by documentary or other evidence those elements shall not require confirmation, if–

(a) the applicant has made a genuine effort to substantiate his application;

(b) all relevant elements, at the applicant's disposal, have been submitted, and a satisfactory explanation regarding any lack of other relevant elements has been given;

(c) the applicant's statements are coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;

(d) the applicant has applied for international protection at the earliest possible time or can demonstrate good reason for not having done so; and

(e) the general credibility of the applicant has been established, taking into account, inter alia, the time at which the applicant applied for international protection.

Internal protection alternative.

26A.(1) Where the State or agents of the State are not the actors of persecution or serious harm, the Authority shall examine, as part of the assessment of the application for international protection, whether an applicant is not in need of international protection because the applicant can safely and legally travel to and gain admittance to a part of the country of origin and can reasonably be expected to settle there and whether, in that part of the country, the applicant–

(a) has no well-founded fear of being persecuted or does not face a real risk of suffering serious harm; or

(b) has access to effective and non-temporary protection against persecution or serious harm.

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(2) Where the State or agents of the State are the actors of persecution or serious harm, the Authority shall presume that effective protection is not available to the applicant and no examination as referred to in subregulation (1) need be carried out.

(3) The Authority may only carry out an examination as referred to in subregulation (1) where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country.

(4) The Authority shall carry out an examination as referred to in subregulation (1) once it has established that the qualification criteria set out in these Regulations would otherwise apply to an applicant and the burden of demonstrating that an internal protection alternative is available to the applicant shall fall on the Authority.

(5) The applicant shall be entitled to present evidence and submit any element which indicates that such an alternative is not available to him and the Authority shall take into account the evidence presented and elements submitted by the applicant.

(6) In examining whether an applicant has a well-founded fear of being persecuted or faces a real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin concerned in accordance with subregulation (1), the Authority shall, at the time of taking the decision on the application for international protection, have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant set out in regulation 26 and to that end, the Authority shall take into account precise and up-to-date information obtained from relevant and available national and international sources.

(7) For the purposes of subregulation (1), the Authority shall take into account–

(a) the general circumstances prevailing in the relevant part of the country of origin, including the accessibility, effectiveness and durability of the protection;

(b) the personal circumstances of the applicant in relation to factors such as health, age, gender, including gender identity, sexual orientation, ethnic origin and membership of a national minority; and

(c) whether the applicant would be able to cater for his own basic needs.

(8) Where the applicant is an unaccompanied minor, the Authority shall take into account the best interests of the minor and, in particular, the availability of sustainable and appropriate care and custodial arrangements.

Refugees

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Definition of a refugee.

27. A "refugee" means–

(a) a person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his country of nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or

(b) a stateless person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his former habitual residence and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

Refugees sur place.

28.(1) A well-founded fear of being persecuted within the meaning of the definition of a refugee in regulation 27 may–

(a) be based on events which have taken place since the applicant left the country of origin or previous habitual residence;

(b) may be based on activities which have been engaged in by the applicant since he left the country of origin, in particular where those activities constitute the expression and continuation of convictions, beliefs or orientations held in the country of origin or previous habitual residence.

(2) Where the risk of persecution or serious harm is based on circumstances which the applicant has created since leaving the country of origin for the sole or main purpose of creating the necessary conditions for applying for international protection, the Authority may refuse to grant international protection.

Definition of persecution.

29.(1) For the purpose of the definition of a refugee in regulation 27, persecution means an act or acts which–

(a) are sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular (but not limited to)–

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(i) Article 2 ECHR (right to life);

(ii) Article 3 ECHR (prohibition of torture, inhuman or degrading treatment or punishment);

(iii) Article 4.1 ECHR (prohibition of slavery and servitude);

(iv) Article 7 ECHR (no punishment without law); or

(b) are an accumulation of various measures, including violations of human rights which are sufficiently severe as to affect an individual in a similar manner as mentioned in paragraph (a).

(2) Acts of persecution set out in sub-regulation (1), include omissions and may take the form of, but are not limited to–

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative, police 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 punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion provisions set out in regulation 33(2);

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

Actors of persecution.

30.(1) "Actors of persecution" means the perpetrators of persecution.

(2) Persecution, as defined in regulation 29, may be perpetrated by–

(a) a State;

(b) parties or organisations controlling a State or a substantial part of the territory of a State;

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(c) non-State actors, if the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against the persecution (as defined in regulation 29) or serious harm (as defined in regulation 37); or

(d) persons acting on behalf of an actor of persecution listed in paragraphs (a) to (c).

(3) For the purpose of sub-regulation (2), there is a rebuttable presumption that protection is generally provided when–

(a) the actors mentioned in sub-regulation (2)(a) or (2)(b) take reasonable steps to prevent the persecution or suffering of serious harm including by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm; and

(b) the applicant has access to such protection.

(4) For the purpose of assessing whether an international organisation controls a State or a substantial part the territory of a State and provides protection in accordance with sub-regulation (3), account shall be taken of precise and up-to-date information on countries of origin obtained from relevant and available national and international sources.

Reasons for persecution.

31.(1) For the purpose of the definition of a refugee in regulation 27–

(a) "for reasons of" means that there must be a connection between the feared acts of persecution and one or more of the reasons for persecution listed in the definition of a refugee;

(b) a person may fear persecution for more than one reason; and

(c) a reason for persecution listed in the definition of a refugee need not be the sole reason.

(2) The reasons of persecution listed in the definition of a refugee in regulation 27 are–

(a) race, which includes considerations of colour, descent, or membership of a particular ethnic group;

(b) religion, which includes–

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(i) the holding of theistic, non-theistic and atheistic beliefs;

(ii) the participation in, or abstention from, formal worship in private or in public, either alone or in community with others;

(iii) other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;

(c) nationality, which is not confined to citizenship or lack of citizenship, but includes membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) political opinion, which includes the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in regulation 30 or to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant;

(e) membership of a particular social group, and "particular social group" includes groups where–

(i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and

(ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

(3) For the purpose of sub-regulation (2)(e)–

(a) a particular social group might, depending on the circumstances in the applicant's country of origin, include a group based on a common characteristic of sexual orientation;

(b) sexual orientation cannot be understood to include acts considered to be criminal in accordance with the laws of Gibraltar;

(c) gender and gender related aspects may be taken into consideration in determining whether a group is a particular social group.

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(4) For the purposes of determining whether an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

(5) When assessing if an applicant has a well-founded fear of being persecuted, the Authority cannot reasonably expect that applicant to adapt or change his behaviour, convictions or identity, or to abstain from certain practices, where such behaviour, conviction or practices are inherent to his identity, to avoid the risk of persecution in his country of origin.

Internal protection – refugees.

32.(1) An applicant may be considered not to be in need of protection as a refugee if, on return to his country of origin or habitual residence–

(a) in a part of that country he would have no well-founded fear of being persecuted or suffering serious harm;

(b) he can be reasonably be expected to stay in that part of the country; and

(c) has access to effective and non-temporary protection against persecution or serious harm.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of sub-regulation (1), regard shall be had to–

(a) the circumstances prevailing in that part of the country; and

(b) the personal circumstances of the applicant.

Exclusion from refugee status.

33.(1) The following are excluded from being granted refugee status–

(a) an applicant who falls within the scope of Article 1D of the Geneva Convention relating to protection or assistance from organs or agencies of the United Nations other than the UNHCR. A person shall not be excluded from being granted refugee status 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;

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(b) an applicant who has been granted British Overseas Territory Citizenship by virtue of a connection with Gibraltar or Gibraltarian status under the Gibraltarian Status Act.

(2) An applicant is excluded from being granted refugee status where there are serious reasons for considering that he–

(a) 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) has committed a serious non-political crime outside Gibraltar prior to being granted refugee status in Gibraltar; for the purpose of this paragraph particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes; or

(c) 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) Sub-regulation (2) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(4) Once the Authority has established, based on an assessment of the seriousness of the crimes or acts committed by the person concerned and of that person's individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds laid down in subregulation (2) or (3) apply, the Authority shall exclude the applicant from refugee status without performing a proportionality assessment linked to the fear of being persecuted.

(5) As part of the assessment referred to in subregulation (4), when carrying out an examination under subregulation (2) and (3) in relation to a minor, the Authority shall take into account, inter alia, the minor's capacity to be considered responsible under criminal law had the minor committed the crime in Gibraltar in accordance with the age of criminal responsibility.

Cessation of refugee status.

34.(1) A person shall cease to be a refugee as defined in regulation 27, if that person–

(a) has voluntarily re-availed himself of the protection of his country of nationality;

(b) having lost his nationality, has voluntarily reacquired it;

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(c) has acquired a new nationality, and enjoys the protection of the new country of nationality;

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

(e) 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 his country of nationality; or

(f) being a stateless person with no nationality, he is able, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(2) Sub-regulations (1)(e) and (1)(f), apply where there has been a change of circumstances in the country of nationality or former habitual residence which is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.

(3) Subregulations (1)(e) and (1)(f) 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.

(4) In order to assess whether subregulations (1)(e) and (1)(f) apply, the Authority shall–

(a) take into account precise and up-to-date information obtained from relevant and available national and international sources;

(b) have regard to whether the change of circumstances is of such a significant and non-temporary nature that the refugee's fear of being persecuted can no longer be regarded as well-founded.

Subsidiary Protection

Definition of person eligible for subsidiary protection.

35. For the purposes of these Regulations, a person is a person eligible for subsidiary protection if–

(a) he does not qualify as a refugee;

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(b) substantial grounds have been shown for believing that, if returned to his country of origin or, in the case of a stateless person, to his country of former habitual residence, he would face a real risk of suffering serious harm as defined in regulation 37;

(c) he is unable or, owing to such risk as is mentioned in paragraph (b), unwilling to avail himself of the protection of that country; and

(d) regulation 40 does not apply to that person.

Subsidiary protection needs arising sur place.

36.(1) A real risk of suffering serious harm may–

(a) be based on events which have taken place since the applicant left the country of origin or previous habitual residence;

(b) be based on activities which the applicant has been engaged in since leaving the country of origin, in particular where the activities constitute the expression and continuation of convictions or orientations held in the country of origin or previous habitual residence.

Definition of serious harm.

37. Serious harm within the definition of person eligible for subsidiary protection consists of–

(a) death penalty or execution;

(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.

Actors of serious harm.

38.(1) Actors of serious harm means the perpetrators of serious harm as defined in regulation 37.

(2) Serious harm may be perpetrated by the actors listed in regulation 30(2) and the provisions of regulation 30(3) and (4) apply equally in relation to actors of serious harm and the provision of protection as in relation to actors of persecution.

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Internal protection - subsidiary protection.

39.(1) An applicant may be considered not to be in need of subsidiary protection if, on return to his country of origin or habitual residence–

(a) in a part of that country there would be no real risk of his suffering serious harm; and

(b) he can be reasonably be expected to stay in that part of the country.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of sub-regulation (1), regard shall be had to–

(a) the circumstances prevailing in that part of the country; and

(b) the personal circumstances of the applicant

Exclusion from subsidiary protection status.

40.(1) An applicant is excluded from being granted subsidiary protection status where there are serious reasons for considering that he–

(a) 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) has committed a serious crime;

(c) 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) constitutes a danger to the community or to the security of Gibraltar.

(2) Sub-regulation (1) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) An applicant may be excluded from being granted subsidiary protection status, if–

(a) prior to entry into Gibraltar that applicant has committed one or more crimes, outside the scope of sub-regulation (1), which would be punishable by imprisonment if committed in Gibraltar; and

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(b) that applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

(4) Once the Authority has established, based on an assessment of the seriousness of the crimes or acts committed by the person concerned and of that person's individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds laid down in subregulation (1) or (2) apply, the Authority shall exclude the applicant from subsidiary protection status without performing the proportionality assessment linked to the fear of serious harm.

(5) As part of the assessment referred to in subregulation (4), when carrying out an examination under subregulation (1) or (2) in relation to a minor, the Authority shall take into account, inter alia, the minor's capacity to be considered responsible under criminal law had the minor committed the crime in Gibraltar in accordance with the age of criminal responsibility or, where applicable, a conviction for a serious crime after the minor's arrival.

Cessation.

41.(1) A person shall cease to be eligible for subsidiary protection status if 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 and sub-regulation (2) applies.

(2) Sub-regulation (1) applies if 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.

(3) In order to assess whether 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, the Authority shall–

(a) take into account precise and up-to-date information obtained from relevant and available national and international sources;

(b) have regard to whether the change in circumstances is of such a significant and non-temporary nature that the beneficiary of subsidiary protection status no longer faces a real risk of serious harm.

(4) Subregulation (1) shall not apply to a beneficiary of subsidiary protection status who is able to invoke compelling reasons arising out of previous serious harm 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.

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Part V
Grant, Refusal and Revocation of Refugee and Subsidiary Protection Status

Grant or refusal of refugee status.

42.(1) The Authority shall grant refugee status to an applicant who is a refugee in accordance with these Regulations provided regulation 33 (exclusion) does not apply.

(2) The Authority shall, on granting refugee status–

(a) determine in accordance with regulation 49, in respect of the refugee and any dependant family member of the refugee, whether–

(i) a residence permit will be granted; and

(ii) the duration of the residence permit to be granted; and

(b) inform the person granted refugee status and any adult dependant family member, in writing–

(i) that refugee status has been granted; and

(ii) whether a residence permit will be issued and the duration of the residence permit to be issued.

(3) If the Authority decides to refuse to grant refugee status or has granted refugee status, but has decided not to issue a residence permit or to issue a residence permit of less than three years duration, it shall inform the applicant and any adult dependant family member in writing–

(a) of the decision;

(b) of the reasons in fact and in law for the decision; and

(c) how to challenge the Authority's decision.

Grant or refusal of subsidiary protection status.

43.(1) The Authority shall grant subsidiary protection status to an applicant who is a person eligible for subsidiary protection in accordance with these Regulations provided regulation 40 (exclusion) does not apply.

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(2) The Authority shall, on granting subsidiary protection status–

(a) determine in accordance with regulation 49, in respect of the person with subsidiary protection status and any dependant family member, whether–

(i) a residence permit will be granted; and

(ii) the duration of the residence permit to be granted; and

(b) inform the applicant and any adult dependant family member, in writing–

(i) that subsidiary protection status has been granted; and

(ii) whether a residence permit will be issued and the duration of the residence permit to be issued.

(3) If the Authority refuses to grant subsidiary protection status or has granted subsidiary protection status, but has decided not to issue a residence permit or to issue a residence permit of less than one year duration, it shall inform the applicant and any adult dependant family member in writing–

(a) of the decision;

(b) of the reasons in fact and in law for the decision; and

(c) how to challenge the decision.

Revocation or refusal to renew refugee status.

44.(1) Where sub-regulation (2), (3) or (4) apply to a person who has been granted refugee status the Authority may–

(a) revoke the refugee status; or

(b) refuse to renew the refugee status.

(2) This sub-regulation applies where the person–

(a) has ceased to be a refugee in accordance with the criteria in regulation 34;

(b) was not a refugee at the time refugee status was granted.

(3) This sub-regulation applies where the person–

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(a) should have been, or is excluded from being, granted refugee status in accordance with regulation 33;

(b) misrepresented or omitted to disclose facts, including through the use of false documents, and this was decisive for the granting of refugee status.

(4) This sub-regulation applies where–

(a) there are reasonable grounds for regarding the person as a danger to the security of Gibraltar;

(b) the person has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

(5) In situations described in sub-regulation (4), where no decision has been taken as to whether to grant refugee status, refugee status may be refused.

(6) Persons to whom sub-regulations (4) or (5) apply and are present in Gibraltar are entitled to rights set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention.

(7) The Authority shall, on an individual basis, demonstrate that the beneficiary of the refugee status has ceased to be a refugee, or should have never been granted refugee status or should no longer be a beneficiary of refugee status for reasons set out in this regulation and during the withdrawal procedure, regulation 30 of the Asylum (Procedures) Regulations 2012 shall apply.

Revocation or refusal to renew subsidiary protection status.

45.(1) Where sub-regulation (2), (3) or (4) apply to a person who has been granted subsidiary protection status, the Authority may–

(a) revoke the subsidiary protection status; or

(b) refuse to renew the subsidiary protection status.

(2) This sub-regulation applies if the person has ceased to be eligible for subsidiary protection status in accordance with regulation 41.

(3) This sub-regulation applies if the person should have been excluded from being eligible for subsidiary protection status in accordance with regulation 40.

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(4) This sub-regulation applies if the person misrepresented or omitted to disclose facts, including the use of false documents, and that this was decisive for the granting of subsidiary protection status.

(5) The Authority shall, on an individual basis, demonstrate that the beneficiary of the subsidiary protection status has ceased to be eligible for subsidiary protection, or should have never been granted subsidiary protection status or should no longer be a beneficiary of subsidiary protection status for reasons set out in this regulation and during the withdrawal procedure, regulation 30 of the Asylum (Procedures) Regulations 2012 shall apply.

Part VI
Content of International Protection

General rules.

46.(1) This Part shall apply–

(a) without prejudice to the rights laid down in the Geneva Convention;

(b) unless otherwise indicated, to persons with refugee status and persons with subsidiary protection status; and

(c) unless otherwise indicated, to the dependant family members of a person with refugee status or subsidiary protection status save that it shall not apply to any dependant family member who–

(i) is or would be excluded from being granted refugee status by regulation 33; or

(ii) is or would be excluded from being granted subsidiary protection status by regulation 40.

(1A) Beneficiaries of international protection shall have access to rights provided in accordance with this Part once international protection is granted and for as long as refugee status or subsidiary protection status is held.

(2) In applying this Part particular account shall be taken of the specific needs of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor or adult dependant children, a victim of trafficking in human beings, a person with a serious illness, a person with a mental disorder and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

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(3) The best interest of the child shall be a primary consideration when any decision is taken under this Part which involves a minor.

Protection from refoulement.

47.(1) No person shall be deported from, removed from, or required to leave Gibraltar if–

(a) there is a reasonable likelihood that that person will be persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion in the State to which they are returned;

(b) such action would be in breach of the ECHR; or

(c) to do so would otherwise be contrary to Gibraltar's international obligations.

(2) Where not prohibited by sub-regulation (1) a person, whether formally recognised as a refugee (whether by the court or the Government) or not, may be deported, removed or required to leave Gibraltar if–

(a) there are reasonable grounds for considering that person to be a danger to the security of Gibraltar;

(b) that person, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of Gibraltar; or

(c) that person is subject to a return decision in accordance with Part VA of the Asylum (Procedures) Regulations 2012.

Information.

48.(1) As soon as possible after the grant of refugee or subsidiary protection status the Authority shall provide access to information, in a language which they are likely to understand, regarding the rights and obligations relating to their status to–

(a) persons with refugee or subsidiary protection status;

(b) dependant family members.

(2) The information referred to in sub-regulation (1) may take the form of an information document issued by the Authority in a language which the persons referred to in sub-regulation (1) are likely to understand and shall contain the information set out in the Schedule.

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Residence permits.

49.(1) The Authority shall, as soon as possible after status has been granted, issue a residence permit valid for at least three years and renewable to–

(a) persons granted refugee status in Gibraltar; and

(b) dependant family members of the persons in paragraph (a).

(2) Sub-regulation (1) does not apply if–

(a) compelling reasons of the security of Gibraltar or public order require –

(i) that a residence permit is not granted; or

(ii) that a residence permit is not granted for a period of at least three years;

(b) there are reasonable grounds for considering that the person granted refugee status is a danger to the security of Gibraltar; or

(c) the person granted refugee status has been convicted by final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

(3) The Authority–

(a) shall, where sub-regulation (2)(a)(ii) applies, issue to the refugee and any dependant family member a residence permit valid for such shorter period of time, as is necessary for those reasons of the security of Gibraltar or public order;

(b) may, where sub-regulation (2)(b) or (c) applies, issue a residence permit valid for such period of time, less than three years, as it considers appropriate to the refugee and any dependant family member of the refugee.

(4) The Authority shall, as soon as possible after status has been granted, issue a residence permit valid for at least one year and renewable to–

(a) persons granted subsidiary protection status in Gibraltar; and

(b) dependant family members of the persons in paragraph (a).

(5) If compelling reasons of the security of Gibraltar or public order require–

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(a) that a residence permit is not granted, sub-regulation (4) does not apply; or

(b) that a residence permit is not granted for a period of at least one year, then a residence permit shall be issued by the Authority to the person with subsidiary protection status and any dependant family member for such shorter period of time as is necessary for those reasons of the security of Gibraltar or public order.

(6) There is no obligation to grant a residence permit to a dependant family member who–

(a) is or would be excluded from being granted refugee status by section 33; or

(b) is or would be excluded from being granted subsidiary protection status by section 40.

(7) The Authority may–

(a) renew a residence permit;

(b) replace a residence permit or issue a duplicate residence permit;

(c) cancel a residence permit issued to a person with refugee status or dependant family member of such a person if–

(i) the person's refugee status has been revoked in compliance with regulation 44;

(ii) in the case of a dependant family member, the refugee status of the person on whom they are dependant has been revoked in compliance with regulation 44; or

(iii) in the case of a dependant family member, he is, or should have been, excluded for being granted refugee status in accordance with regulation 33;

(d) cancel a residence permit issued to a person with subsidiary protection status or dependant family member of such a person if–

(i) the person's subsidiary protection status has been revoked in compliance with regulation 45;

(ii) in the case of a dependant family member, the subsidiary protection status of the person on whom they are dependant has been revoked in compliance with regulation 45; or

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(iii) in the case of a dependant family member, he is, or should have been, excluded for being granted subsidiary protection status in accordance with regulation 40.

(8) Where a residence permit is not issued to a beneficiary of international protection within 15 days of the granting of international protection, the Authority shall take provisional measures, such as the registration or the issuance of a document, to ensure that the beneficiary has effective access to the rights laid down in this Part, until such time as a residence permit is issued.

Travel documents.

50.(1) Unless compelling reasons of public order or the security of Gibraltar otherwise require, the Authority shall issue, or arrange for the issuing, to persons granted refugee status and dependant family members with travel documents, in the form set out in the Schedule to the Geneva Convention, and which comply with minimum standards for security features and biometrics, for the purpose of travel outside Gibraltar and such travel documents shall be valid for more than one year.

(2) Unless compelling reasons of public order or the security of Gibraltar otherwise require, the Authority shall issue, or arrange for the issuing, to persons granted subsidiary protection status and dependant family members who are unable to obtain a national passport, with documents with the minimum standards for security features and biometrics which allow them to travel outside Gibraltar. Such documents shall be provided at least when serious humanitarian reasons arise that require their presence in a State or territory outside of Gibraltar and such travel documents shall be valid for more than a year.

Access to employment, vocational training and work experience.

51.(1) Unless otherwise specified this regulation applies to–

(a) persons with refugee or subsidiary protection status; and

(b) their dependant family members.

(2) Persons listed in sub-regulation (1) shall be entitled to engage in employed or self-employed activities and shall be entitled workers for the purpose of the Employment Regulations 1994, subject to–

(a) the law in force in Gibraltar in relation to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment; and

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(b) the rules in force in Gibraltar which are applicable to the profession in question.

(3) Persons listed in sub-regulation (1) shall be entitled to have access to vocational training and practical work experience on the same terms as Gibraltarians.

(4) The persons listed in subregulation (1) shall enjoy equal treatment with Gibraltarians as regards–

(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements at the workplace;

(b) freedom of expression and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations;

(c) employment-related educational opportunities for adults, vocational training, including training courses for upgrading skills and practical workplace experience;

(d) information and counselling services offered by employment offices.

(5) Where necessary, the Government shall facilitate full access to the activities referred to in subregulation (4)(c) and (d).

Access to education.

52.(1) The following minors shall be entitled to education in the education system established under the Education and Training Act under the same conditions as Gibraltarians–

(a) minors granted refugee or subsidiary protection status;

(b) minors who are dependant family members of persons granted refugee or subsidiary protection status.

(1A) The persons listed in subregulation (1) shall continue to enjoy equal treatment with Gibraltarians for the completion of secondary education irrespective of whether they reach the age of majority.

(2) The following adults shall be entitled to have access to the general education system, further training or retraining under the same conditions as non-EU nationals legally resident in Gibraltar–

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(a) persons with refugee or subsidiary protection status;

(b) dependant family members of persons listed in paragraph (a).

(3) Foreign diplomas, certificates and other evidence of formal qualifications held by persons with refugee status, subsidiary protection status or dependant family members shall be recognized in Gibraltar in the same manner as foreign diplomas, certificates and other evidence of formal qualifications held by Gibraltarians and the Government shall facilitate access to procedures recognising such qualifications for persons listed in subregulation (1) who cannot provide documentary evidence of their qualifications.

(4) Notwithstanding subregulation (1), the Government may refuse grants and loans to adults granted refugee or subsidiary protection status in accordance with Gibraltar law.

(5) The persons listed in subregulation (1) shall enjoy equal treatment with Gibraltarians as regards access to appropriate schemes for the assessment, validation and recognition of their prior learning outcomes and experience.

Social Security and Social Assistance.

53.(1) This regulation applies to–

(a) persons granted refugee or subsidiary protection status in Gibraltar; and

(b) dependant family members of the persons in paragraph (a).

(2) The persons in sub-regulation (1) shall be eligible for social security and social assistance, including the Social Assistance Fund and shall enjoy equal treatment.

(3) Access to certain forms of social assistance for persons listed in subregulation (1) may be made conditional on the effective participation of such persons in integration measures, where participation in such measures is compulsory, provided that they are accessible free of charge.

(4) Notwithstanding subregulation (1), the provision of equal treatment as regards social assistance may be limited to core benefits where that possibility is provided for under Gibraltar law and core benefits shall include at least the following–

(a) minimum income support;

(b) assistance in the case of illness or pregnancy;

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(c) parental assistance, including child-care assistance; and

(d) housing benefits, in so far as those benefits are granted to Gibraltarians under Gibraltar law.

Health care.

54.(1)This regulation applies to–

(a) persons granted refugee or subsidiary protection status; and

(b) dependant family members of the persons in paragraph (a).

(2) Persons in sub-regulation (1) shall be entitled to health care on the same eligibility conditions as apply under the Group Medical Practice Scheme established by the Medical (Group Practice Scheme) Act.

(3) Persons in sub-regulation (1) who have special health needs (such as pregnant women, disabled people, unaccompanied minors or persons who have undergone torture, rape, or other serious forms of psychological, physical or sexual violence or minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict) shall have access to medical or other assistance appropriate for dealing with such needs from the Gibraltar Health Authority.

Unaccompanied minors.

55.(1) The Authority shall, as soon as possible after the granting of status, ensure (including, where necessary, by taking legal proceedings) that unaccompanied minors are represented by–

(a) a legal guardian;

(b) where necessary by the Social Services Agency or such other organisation, body or agency as is responsible for the care and well-being of minors in Gibraltar; or

(c) any other appropriate representative.

(2) Regular assessments of the care and representation provided and the minor's needs and welfare shall be made by the Social Services Agency.

(2A) With a view to safeguarding the best interests of the child and the unaccompanied minor's general well-being, the guardian shall–

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(a) ensure that the unaccompanied minor has access to all rights stemming from these Regulations;

(b) assist and, where applicable, represent the unaccompanied minor in the event that the unaccompanied minor's refugee or subsidiary protection status is withdrawn; and

(c) where applicable, assist in the tracing of family as provided for in subregulation (6).

(3) While taking into account the best interests of the child, unaccompanied minors shall be placed–

(a) with adult relatives;

(b) with a foster carer in accordance with the law on foster care in force in Gibraltar for the time being;

(c) in accommodation centres with special provisions for minors; or

(d) in other accommodation suitable for minors.

(4) In determining where a minor shall be placed under sub-regulation (3)–

(a) the views of the minor shall be taken into account in accordance with his age and degree of maturity; and

(b) as far as possible, siblings shall be kept together, taking into account the best interests of the minors concerned and, in particular, their age and degree of maturity.

(5) Changes of residence of unaccompanied minors shall be limited to a minimum.

(6) The Authority shall endeavor to trace the members of the minor's family as soon as possible, Where there may be a threat to the life or integrity of the minor or the minor's close relatives, particularly if they have remained in the country of origin, the collection, processing and circulation of information concerning those persons shall be undertaken on a confidential basis, so as to avoid jeopardising their safety.

(6A) Where the tracing of family members of an unaccompanied minor started before that minor was granted refugee or subsidiary protection status, it shall continue after the granting of such status.

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(7) All persons working with unaccompanied minors–

(a) shall have had or shall receive continuous appropriate training concerning the needs of unaccompanied minors, including those relating to any applicable child safeguarding standards;

(b) shall be subject to a legal requirement of confidentiality in respect to any information which they obtain in the course of their work including any information which they obtain from unaccompanied minors; and

(c) shall not have a verified record of child-related crimes and offences or of crimes and offences that lead to serious doubts about their ability to assume a role of responsibility with regard to children.

(8) Organisations or natural persons whose interests conflict or could potentially conflict with those of an unaccompanied minor shall not be eligible for appointment as the guardian of that minor.

(9) Where an organisation is appointed as guardian, it shall as soon as possible designate a natural person responsible for carrying out the duties of guardian in respect of the unaccompanied minor in accordance with these Regulations.

(10) The Authority shall appoint each guardian to represent a proportionate and sufficiently limited number of unaccompanied minors in order to ensure that guardians are able to perform their tasks effectively and that unaccompanied minors have effective access to their rights and benefits.

(11) The Government shall ensure that there are entities or persons responsible for supervising and monitoring guardians on an ongoing basis in order to ensure that they perform their tasks in a satisfactory manner and such entities or persons shall review the performance of guardians, in particular where there are indications that guardians are not performing their tasks in a satisfactory manner and shall examine, without delay, any complaints lodged by unaccompanied minors against their guardians.

(12) Where necessary, the Authority shall replace a person acting as a guardian, in particular where they consider that that person has not adequately performed his tasks and shall explain to the unaccompanied minors, in an age-appropriate manner and in such a way as to ensure that the minors understand, how to lodge a complaint against their guardians in confidence and safety.

Access to accommodation.

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55A.(1) Persons granted refugee or subsidiary protection status and their dependant family members shall have access to accommodation under conditions at least equivalent to those applicable to other third-country nationals legally resident in Gibraltar who are generally in the same circumstances.

(2) The persons referred to in subregulation (1) shall be treated equally unless different treatment is objectively justified and any national practices for the dispersal of such persons shall ensure equal opportunities regarding access to accommodation.

Integration facilities.

56.(1) The Government shall make provision for integration programmes to facilitate the integration of persons with refugee status or subsidiary protection status and their dependant family members, if any, into Gibraltar society.

(2) The programmes referred to in subregulation (1) shall take into account the specific needs of those persons as considered appropriate, in particular in relation to language courses, civic orientation, integration and vocational training.

(3) The persons referred to in subregulation (1) shall participate in integration measures where participation is made compulsory and such measures shall be accessible and free of charge, subject to subregulation (4).

(4) The Government may apply a fee for certain compulsory integration measures where the person referred to in subregulation (1) has sufficient means and where such fees do not place an unreasonable burden on the person.

(5) The Government shall not apply sanctions against the persons referred to in subregulation (1) where they are unable to participate in integration measures due to circumstances beyond their control.

Repatriation.

57.(1) The Government may provide assistance to persons with refugee or subsidiary protection status and their dependant family members who wish to repatriate.

(2) The Authority may determine that this regulation does not apply to a dependant family member of a person with refugee or subsidiary protection status where necessary for reasons of the security of Gibraltar or public order. Where the Authority so determines it shall, in writing, inform–

(a) the dependant family member concerned; and

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(b) the body responsible for such repatriation programs.

PART VI
Staff Training, Confidentiality and Administrative Cooperation

Staff and resources.

58.(1) The Government shall ensure that staff within government bodies and other organisations implementing these Regulations–

(a) have received the necessary training in respect of the needs of applicants for and holders of refugee and subsidiary protection status, the relevant law and other matters covered by these Regulations; and

(b) are subject to a requirement of confidentiality in respect to any information which they obtain in the course of their work including any information which they receive from applicants for and holders of refugee and subsidiary protection status or their dependant family members.

(2) The Government shall allocate the necessary resources, including the necessary staff, translators and interpreters, for the implementation of these Regulations, taking into account seasonal fluctuations in the number of applicants.

59. *Deleted*

Keeping of data and cooperation with the European Commission.

60 (1) The Authority shall record and keep records of the number of international protection applicants and dependant family members including–

(a) such information broken down by sex of the individuals;

(b) such information broken down by the age of the individuals;

(c) numbers of unaccompanied minor applicants; and

(d) such other information as may be required by the European Commission.

(2) *Deleted*

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SCHEDULE

Regulation 48

As soon as possible after refugee or subsidiary protection is granted, the following information shall be provided, as a minimum, to beneficiaries of international protection regarding their rights and obligations relating to their refugee or subsidiary protection status. Where necessary, the information may be provided by different authorities, service providers or relevant contact points.

1. Information on rights and obligations related to residence and stay –

(a) right to a residence permit and how and where to apply for a residence permit and information on the Authority or relevant contact point;

(b) right to a residence permit for family members –

(i) how and where to apply for a residence permit and information on the Authority or relevant contact point;

(ii) information on the rights to which family members who are issued a residence permit are entitled;

(c) right to claim a travel document and how and where to apply for one and information on the Authority or relevant contact point;

(d) right to freedom of movement within Gibraltar and possible restrictions on that movement and information on the Authority or relevant contact point;

(e) movement in the territory of the Member States.

2. Information on rights related to integration –

(a) right to access employment –

(i) administrative requirements for accessing employment or self-employed activities;

(ii) where applicable, the restrictions related to employment in the public service;

(iii) the relevant employment office or contact point for additional information;

(b) right to access education for minors –

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(i) minimum age for compulsory schooling;

(ii) where applicable, administrative requirements for accessing the education system;

(c) right to access the general education system for adults and the requirements, including administrative requirements, for accessing the general education system;

(d) right to access procedures for the recognition of qualifications and the validation of skills, including relevant authorities and contact points for the provision of information on regulated professions exercisable only after formal recognition of qualification and the administrative procedures to be carried out for such recognition;

(e) information on appropriate schemes for assessing, validating and recognising prior learning outcomes and experience and where applicable, information on such schemes and a relevant contact point for further information;

(f) right to social security and a relevant contact point for further information;

(g) right to social assistance –

(i) where applicable, a list of benefits which are not provided to beneficiaries of refugee or subsidiary protection status;

(ii) a relevant contact point for further information;

(h) right to healthcare –

(i) general information on the conditions for access to healthcare;

(ii) where applicable, a contact point for services available to victims of abuse, exploitation, torture or cruel, inhuman and degrading treatment;

(i) right to access accommodation –

(i) where applicable, basic information on available social housing schemes;

(ii) where applicable, residency requirements in the framework of dispersal practices;

(iii) the relevant authority or contact point for further information;

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(j) right to access integration measures considered appropriate, subject to compulsory participation where applicable –

(i) where applicable, information on compulsory integration schemes;

(ii) a relevant contact point for further information.

3. Information on specific rights for unaccompanied minors –

(a) information on the right to a guardian and the guardian's duties;

(b) the details for lodging a complaint against a guardian.

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