

Temporary Protection Act 2005

This version is out of date

Principal Act

Act. No. 2005-18

Commencement (LN.2005/094)

16.6.2005

Assent

10.3.2005

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AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR COUNCIL DIRECTIVE 2001/55/EC OF 20 JULY 2001 ON MINIMUM STANDARDS FOR GIVING TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS AND ON MEASURES PROMOTING A BALANCE OF EFFORTS BETWEEN MEMBER STATES IN RECEIVING SUCH PERSONS AND BEARING THE CONSEQUENCES THEREOF; AND FOR CONNECTED PURPOSES.

Title and commencement.

1.(1) This Act may be cited as the Temporary Protection Act 2005.

(2) This Act comes into operation on the day appointed by the Government by notice in the Gazette and different days may be appointed for different purposes.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Community” means the European Community;

“Court” means the Supreme Court;

“displaced persons” means third-country nationals or a stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, in particular—

- (a) persons who have fled areas of armed conflict or endemic violence;
- (b) persons at serious risk of, or who have been the victims of, systematic or generalised violations of their human rights;

“extended family members” means close relatives of the sponsor, other than immediate family members, who—

- (a) lived together as part of the family unit at the time of events leading to the mass influx;
- (b) were separated due to circumstances surrounding the mass influx; and

- (c) were wholly or mainly dependent on the sponsor at the time of events leading to the mass influx;

“family members” means extended family members and immediate family members;

“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;

“Gibraltar Health Authority” means the Gibraltar Health Authority established under section 3 of the Medical (Gibraltar Health Authority) Act 1987;

“immediate family members”, in cases where such persons were separated due to circumstances surrounding the mass influx, means-

- (a) the spouse of the sponsor; and
- (b) any minor unmarried children of the sponsor or of his spouse (including illegitimate and adoptive children);

“mass influx” means the arrival into the territory of the Member States of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Member States was spontaneous or aided, for example through an evacuation programme;

“mass influx decision” means a decision of the Council of the European Union adopted by a qualified majority on a proposal from the Commission, that a situation of mass influx exists;

“Member State” means a Member State of the Community and includes a reference to Gibraltar;

“permit of residence” means a permit of residence issued under section 18 of the Immigration Control Act;

“refugees” means third-country nationals or stateless persons within the meaning of Article 1A of the Geneva Convention;

“sponsor” means a third country national enjoying temporary protection in Gibraltar who wishes to be joined by his family members;

“temporary protection” means the procedure under this Act to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to

such persons, in the interests of the persons concerned and other persons requesting protection;

“third-country national” means a person who is not a national of a Member State;

“unaccompanied minor” means a third-country national or a stateless person who—

- (a) is a minor; and
- (b) arrives in the territory of the Member States unaccompanied by an adult responsible for him whether by law or custom, and for as long as they are not effectively taken into the care of such a person; or
- (c) is left unaccompanied after he has entered the territory of the Member States.

Effect and implementation of mass influx decision.

3.(1) The Government shall, from time to time, make an assessment of Gibraltar’s capacity, in figures or in general terms, to receive displaced persons.

(2) A mass influx decision shall have the effect of introducing temporary protection in Gibraltar, for the displaced persons that Gibraltar has assessed that it has the capacity to receive and to which the mass influx decision refers, in accordance with the provisions of this Act.

Duration of temporary protection.

4.(1) Subject to the following provisions, the duration of temporary protection shall be one year.

(2) Unless terminated under subsection (3)(b), the duration of temporary protection may be extended—

- (a) automatically by six monthly periods, for a period of one year; and
 - (b) where reasons for temporary protection persist, by Council Decision adopted by a qualified majority on a proposal from the Commission, for a period of one year.
- (3) Temporary protection shall come to an end—
- (a) when the maximum duration of temporary protection has been reached; or
 - (b) at any time, by Council Decision adopted by a qualified majority on a proposal from the Commission.

Excluded persons.

5.(1) Subject to the following provisions, the Government may exclude a person from temporary protection where–

- (a) there are serious reasons for considering that–
 - (i) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (ii) he has committed a serious non-political crime outside Gibraltar prior to his admission to Gibraltar as a person enjoying temporary protection;
 - (iii) he has been guilty of acts contrary to the purposes and principles of the United Nations;
- (b) the Governor considers that there are reasonable grounds for regarding him as a danger to the security of Gibraltar; or
- (c) having been convicted by a final judgment of a particularly serious crime, he is a danger to the community of Gibraltar.

(2) In deciding whether to exclude a person from temporary protection under subsection (1)(a)(ii), the severity of the expected persecution is to be weighed against the nature of the criminal offence concerned.

(3) For the purposes of subsection (1)(a)(ii) particularly cruel actions, even if committed with an allegedly political objective, may be classified as “serious non-political crimes”. This applies both to the participants in the actions and to its instigators.

(4) The Government may only exclude a person from temporary protection under subsection (1)–

- (a) on the basis of his personal conduct; and
- (b) where it would be reasonable to do so.

Visas.

6.(1) The Government shall, if necessary, provide persons to be admitted to Gibraltar for the purposes of temporary protection with every facility for obtaining the necessary visas, including transit visas.

(2) Visas issued under subsection (1) shall be issued–

- (a) free of charge or at a charge to the person enjoying temporary protection which amounts to no more than the cost of issue; and
- (b) as a matter of urgency.

Permits of residence.

7. A person enjoying temporary protection in Gibraltar shall be entitled to a permit of residence for the entire duration of temporary protection. The Head of the Civil Status and Registration Office shall issue a permit of residence to any person enjoying temporary protection in Gibraltar as a matter of urgency.

Access to housing.

8.(1) Persons enjoying temporary protection in Gibraltar shall be entitled to suitable accommodation, or the means to obtain housing, for the duration of temporary protection.

(2) A condition of residence in accommodation provided by the Government to a person enjoying temporary protection may require that person to make payments to–

- (a) the Government; or
- (b) the manager of the accommodation in question.

(3) When assessing the amount of any payments to be made under sub-section (2), or the amount of any other assistance provided under this section, the Government shall take account of–

- (a) whether or not that person is engaged in employed or self employed activities; and, if he is,
- (b) the ability of that person to meet his own needs financially.

Access to medical care.

9.(1) Without prejudice to subsection (2), persons enjoying temporary protection in Gibraltar shall be entitled to receive emergency medical care and essential treatment of illness from the Gibraltar Health Authority.

(2) Persons enjoying temporary protection in Gibraltar who have special needs (such as unaccompanied 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 special needs from the Gibraltar Health Authority.

(3) A person enjoying temporary protection may be required to make payments for any medical or other assistance provided by virtue of this section to—

- (a) the Gibraltar Health Authority; or
- (b) the medical or other establishment in question.

(4) When assessing the level of payments to be made under subsection (3), the Gibraltar Health Authority or medical or other establishment shall take account of—

- (a) whether or not that person is engaged in employed or self employed activities; and, if he is,
- (b) the ability of that person to meet his own needs financially.

Access to social assistance.

10.(1) Where a person enjoying temporary protection in Gibraltar does not have sufficient resources, the Government shall ensure that such a person has access to the Social Assistance Fund and in particular to—

- (a) the child welfare grant;
- (b) the minimum income guarantee; and
- (c) the elderly persons allowance,

as relevant.

(2) When assessing whether or not a person has sufficient resources for the purposes of subsection (1), account shall be taken of—

- (a) whether or not that person is engaged in employed or self employed activities; and, if he is,
- (b) the ability of that person to meet his own needs financially.

Education.

11. Minors who are enjoying temporary protection in Gibraltar shall be entitled to have access to the education system in Gibraltar on the same basis as minors entitled to access to the statutory education system under the Education and Training Act.

Employment.

12.(1) Persons enjoying temporary protection in Gibraltar shall, for a period not exceeding the duration of temporary protection—

- (a) be entitled to engage in employed or self-employed activities, subject to—
 - (i) 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
 - (ii) the rules in force in Gibraltar which are applicable to the profession in question; and
- (b) be entitled to access to educational opportunities for adults, practical workplace experience opportunities and vocational training.

(2) However, priority in the labour market may be given to Member State nationals and to legally resident third-country nationals who receive unemployment benefits.

Access to the asylum procedure.

13.(1) Persons enjoying temporary protection in Gibraltar may, at any time, apply to the Head of the Civil Status and Registration Office for asylum under section 55 of the Immigration Control Act.

(2) If a person who makes an asylum application is also eligible for temporary protection the Head of the Civil Status and Registration Office may decide not to process the asylum application until the applicant ceases to be entitled to temporary protection.

(3) If, during the period of temporary protection, a person enjoying temporary protection in Gibraltar has applied for asylum in Gibraltar and the examination of such an application has not been processed before the end of the period of temporary protection, the processing of that application shall be completed after the end of that period.

(4) If, during the period of temporary protection, a person enjoying temporary protection in Gibraltar has applied for asylum in Gibraltar such a person shall not be required to leave Gibraltar following the end of the period of temporary protection until that person has been informed of the outcome of his application.

Family reunification.

14.(1) This section applies where the Government and any relevant Member States have agreed that family reunification shall take place in Gibraltar.

(2) The Head of the Civil Status and Registration Office shall grant entry into Gibraltar and issue a permit of residence, on the same terms as the sponsor, to any person who—

- (a) the Head of the Civil Status and Registration Office is satisfied is an immediate family member of the sponsor; and
- (b) enjoys temporary protection in the United Kingdom or another Member State,

taking into account the wishes of the said family members.

(3) The Head of the Civil Status and Registration Office shall grant entry into Gibraltar and issue a permit of residence, on the same terms as the sponsor, to any person who—

- (a) the Head of the Civil Status and Registration Office is satisfied is an immediate family member of the sponsor; and
- (b) is not yet in the United Kingdom or another Member State,

taking into account the wishes of the said family members and if the Head of the Civil Status and Registration Office is satisfied that such persons are in need of protection.

(4) The Head of the Civil Status and Registration Office may grant entry into Gibraltar and issue a permit of residence, on the same terms as the sponsor, to any person who—

- (a) the Head of the Civil Status and Registration Office is satisfied is an extended family member of the sponsor; and
- (b) enjoys temporary protection in the United Kingdom or another Member State,

taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

(5) The Head of the Civil Status and Registration Office may grant entry into Gibraltar and issue a permit of residence, on the same terms as the sponsor, to any person who—

- (a) the Head of the Civil Status and Registration Office is satisfied is an extended family member of the sponsor; and
- (b) is not yet in the United Kingdom or another Member State,

if the Head of the Civil Status and Registration Office is satisfied that such persons are in need of protection and taking into account on a case by case basis the extreme hardship they would face if the reunification did not take place.

(6) When making a decision under subsections (2) to (5), the Head of the Civil Status and Registration Office shall take into consideration the best interests of any child concerned.

(7) The Head of the Civil Status and Registration Office shall issue a permit of residence under subsections (2) to (5) as a matter of urgency.

(8) A decision rejecting an application for family reunification under this section shall include a statement of reasons.

(9) Where a person enjoying temporary protection is transferred from Gibraltar to the United Kingdom or another Member State for the purposes of family reunification, the Head of the Civil Status and Registration Office shall withdraw that person's permit of residence and the provisions of this Act shall no longer apply to that person.

(10) The Government shall, at the request of any Member State, provide the information as set out in Schedule 1 on a person receiving temporary protection which is needed to process a matter relating to family reunification.

Unaccompanied minors.

15.(1) The Government shall ensure the necessary representation of unaccompanied minors enjoying temporary protection in Gibraltar by legal guardianship or, where necessary, by an organisation which is responsible for the care and well-being of minors or by any other appropriate representation.

(2) During the period of temporary protection the Government shall ensure that unaccompanied minors are placed, on the basis of the best interest of the unaccompanied minor—

- (a) with adult relatives;
- (b) with a foster-family;
- (c) in accommodation suitable for minors; or
- (d) with the person who looked after the minor en-route to Gibraltar.

(3) The views of the unaccompanied minor regarding his placement shall be taken into account in accordance with the age and maturity of the minor.

(4) The Government shall obtain the agreement of any person who is to be responsible for an unaccompanied minor under sub-section (2) prior to the placement.

Humanitarian extensions.

16.(1) When the period of temporary protection ends, the Government shall ensure that persons who enjoyed temporary protection under this Act and who are not eligible for admission to Gibraltar are returned to their country of origin with due respect for human dignity.

(2) Following the end of the period of temporary protection the Head of the Civil Status and Registration Office shall consider the status of every person who enjoyed temporary protection and no such person shall be required to leave Gibraltar if, in the view of the Head of the Civil Status and Registration Office—

- (a) there are any compelling humanitarian reasons which make return to that person's country of origin impossible or unreasonable; or
- (b) it would be unreasonable to expect that person to travel in view of their state of health (including their mental health), for example where their health would suffer serious negative effects if treatment were interrupted.

(3) The Head of the Civil Status and Registration Office shall review the decision taken in subsection (2) at regular intervals. The persons referred to in subsection (2) shall not be required to return to their country of origin while the situations referred to in subsections (2)(a) and (b) continue to exist.

Transfer of persons enjoying temporary protection.

17.(1) The Government shall cooperate with Member States with regard to the transferral of the residence of persons enjoying temporary protection—

- (a) from Gibraltar to such Member State; or
- (b) from such Member State to Gibraltar,

subject to the consent of the persons concerned to such transferral.

(2) Requests that persons be transferred to Gibraltar shall be made to the Head of the Civil Status and Registration Office. In response to such requests, the Head of the Civil Status and Registration Office shall indicate whether or not Gibraltar has the capacity to receive transferees.

(3) The Head of the Civil Status and Registration Office shall ensure that requests for transfers of persons enjoying temporary protection from Gibraltar to the United Kingdom or another Member State are communicated to the competent authority in that other territory. The Head of the Civil Status and Registration Office shall ensure that the Commission and the United Nations High Commission for Refugees are informed of any such requests.

(4) Subject to an agreement with the Member State concerned that the provisions of this subsection shall not apply, the Government shall take back a person entitled to enjoy temporary protection in Gibraltar if that person remains on, or seeks to enter without authorisation onto, the territory of another Member State during the period of temporary protection.

(5) Where a person is transferred to Gibraltar in any of the circumstances detailed in this section, the provisions of this Act shall apply to that person.

(6) Where a person enjoying temporary protection is transferred from Gibraltar to a Member State the Head of the Civil Status and Registration Office shall withdraw that person's permit of residence and the provisions of this Act shall no longer apply to that person.

(7) The Government shall, at the request of a Member State provide the information as set out in Schedule 1 on a person enjoying temporary protection in Gibraltar which is needed to process a matter under this section.

(8) Where responsibility for a person enjoying temporary protection is transferred from Gibraltar to a Member State then a pass in the form set out in Schedule 2 shall be used.

Voluntary return to country of origin.

18.(1) Where a person enjoying temporary protection in Gibraltar decides to return voluntarily to his country of origin he shall inform the Head of the Civil Status and Registration Office of his decision as soon as possible.

(2) Where a person enjoying temporary protection in Gibraltar has informed the Head of the Civil Status and Registration Office that he wishes to return voluntarily to his country of origin, the Head of the Civil Status and Registration Office shall facilitate that voluntary return with due respect for human dignity and shall provide that person with sufficient information, in a language which he is likely to understand, to enable him to exercise that right to return voluntarily in full knowledge of the facts in relation to the situation in that country.

(3) Where—

(a) the temporary protection has not ended; and

(b) a person who enjoyed temporary protection in Gibraltar has returned voluntarily to his country of origin,

favourable consideration shall be given by the Head of the Civil Status and Registration Office to any request for that person to return to Gibraltar and to enjoy temporary protection under the provisions of this Act.

Information for Temporarily Protected Persons.

19.(1) The Head of the Civil Status and Registration Office shall provide persons enjoying temporary protection in Gibraltar with a document, in a language which they are likely to understand, setting out clearly the provisions relating to temporary protection which are relevant to them.

(2) The document referred to in subsection (1) shall include at least the following information—

- (a) the maximum duration of temporary protection;
- (b) the way in which persons will be notified of—
 - (i) the end of the period of temporary protection; and
 - (ii) the arrangements for their return to their country of origin;
- (d) the right of such persons to return to their country of origin during the period of temporary protection and the circumstances in which they may return to Gibraltar;
- (e) the right of such persons to—
 - (i) reside in Gibraltar;
 - (ii) engage in employed or self-employed activities;
 - (iii) have access to the education system, including educational opportunities for adults such as vocational training and practical workplace experience;
 - (iv) have access to suitable accommodation or receive the means to obtain housing;
 - (v) receive necessary assistance in terms of social welfare;
 - (vi) receive medical care and assistance;
 - (vii) have access to the asylum procedure;

- (viii) family reunification;
- (f) the use which may be made of personal data and in particular—
 - (i) the right of a person enjoying temporary protection to ensure that such data remains confidential within the meaning of this Act; and
 - (ii) the conditions for processing personal data and for the free movement of such data under the Data Protection Act;
- (g) the grounds on which persons may be excluded from the right to temporary protection; and
- (h) a point of contact for any queries, concerns or further information.

Recording & Sharing of Information.

20.(1) The Head of the Civil Status and Registration Office shall accurately record and maintain the information set out in Schedule 1, paragraph (a).

(2) The information referred to in subsection (1) shall not during the lifetime of that person be disclosed without the consent of that person.

(3) Subsection (2) does not apply to any disclosure of information which is made for any one or more of the following—

- (a) facilitating the performance of any functions assigned to or conferred on the Government by or under this Act or regulation made under it or both;
- (b) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (c) for the purpose of any civil proceedings brought under or by virtue of this Act or regulations made under it or both;
- (d) in pursuance of a Community obligation; and
- (e) the provision of information at the request of a Member State if disclosure is necessary—
 - (i) in order to process any application for family reunification; or
 - (ii) in order to facilitate the transfer of residence of a person enjoying temporary protection from one Member State to another.

Co-operation.

21.(1) The Government shall take all reasonable steps to cooperate and consult with Member States and international organisations where necessary to ensure the practical implementation of this Act.

(2) The Civil Status and Registration Office shall be the contact point for the purposes of administrative cooperation required to implement temporary protection.

Right of appeal.

22.(1) Any person who is excluded from the benefit of temporary protection or family reunification or who is otherwise affected by a decision to which this Act applies may appeal against that decision to the Court.

(2) On appeal under subsection (1)–

- (a) the appellant shall be entitled to appear or be represented;
- (b) the decision-maker whose decision is being appealed shall be entitled to appear or be represented;
- (c) the Court shall consider any written representations received from the appellant or the decision-maker; and
- (d) the Court may take into account any other matter which it thinks is relevant to the substance of the decision that could have been taken into account when the decision was made or that concerns a matter arising after the decision-maker's decision.

(3) The Court's decision must include a decision as to what (if any) is the appropriate action for the decision-maker to take in relation to the subject matter of the decision under appeal.

(4) The Court shall then remit the decision under appeal to the decision-maker with such directions (if any) as the Court considers appropriate for giving effect to its decision.

(5) It shall be the duty of the decision-maker to comply with every direction made under subsection (4).

(6) But a direction under this section shall not have effect while a further appeal could be brought or has been brought and has not been finally determined.

(7) A decision of the Court on appeal under subsection (1) may itself be appealed.

(8) An appeal under subsection (7) lies to the Court of Appeal and lies only to a point of law arising from the decision of the Court.

(9) An appeal under subsection (7) may be brought by a party to the proceedings before the Court or any other person who has sufficient interest in the matter.

(10) In this section, the reference to a decision of the Court includes a reference to any directions given by it under subsection (4).

Power to make regulations.

23. The Government may make regulations in respect of any matter and for any purpose relating to the subject matter of this Act.

SCHEDULE 1

Sections 14, 17 and 20

The information referred to in sections 14, 17 and 20 of the Act includes to the extent necessary one or more of the following documents or data–

- (a) any personal data on that person, including their name, nationality, date and place of birth, marital status and family relationship;
- (b) identity and travel documents of the person enjoying temporary protection;
- (c) documents concerning evidence of family ties (including marriage certificates, birth certificates, certificates of adoption);
- (d) any other information essential to the establishment of the person's identity or family relationship;
- (e) permits of residence, visas or permits of residence refusal decisions issued to the person concerned by Gibraltar and documents forming the basis of those decisions; and
- (f) permits of residence and visa applications lodged by the person concerned and pending in Gibraltar and the stage reached in the processing of these applications.

SCHEDULE 2

Section 17

Model pass for the transfer of persons enjoying temporary protection

PASS

Name of the Member State delivering the pass:

Reference number (*):

Issued under Article 26 of Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of effort between Member States in receiving such persons and bearing the consequences thereof.

Valid only for the transfer from (1) to (2).

The person in question must present himself/herself at (3) by (4).

Issued at:

SURNAME:

FORENAMES:

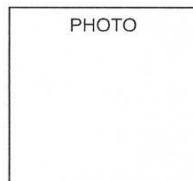
PLACE AND DATE OF BIRTH:

In case of a minor, name(s) of responsible adult:

SEX:

NATIONALITY:

Date issued:



SEAL

Signature of the beneficiary: For the competent authorities:

The pass-holder has been identified by the authorities (5) (6)

The identity of the pass-holder has not been established

This document is issued pursuant to Article 26 of Directive 2001/55/EC only and in no way constitutes a document which can be equated to a travel document authorising the crossing of the external border or a document proving the individual's identity.

(*) The reference number is allocated by the country from which the transfer to another Member State is made.

(1) Member State from which the transfer is being made.

(2) Member State to which the transfer is being made.

(3) Place where the person must present himself/herself on arrival in the second Member State.

(4) Deadline by which the person must present himself/herself on arrival in the second Member State.

(5) On the basis of the following travel or identity documents, presented to the authorities.

(6) On the basis of documents other than a travel or identity document.