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**REFUGEES (AMENDMENT) ORDINANCE 2017**

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An Ordinance to amend the Refugees Ordinance 2003

J. Illingworth  
**ADMINISTRATOR**

*04 September 2017*

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**Short title and commencement**

- 1.—(1) This Ordinance may be cited as the Refugees (Amendment) Ordinance 2017.  
(2) It comes into force on 1 October 2017.

**Amendment of the Refugees Ordinance 2003**

2. The Refugees Ordinance 2003(a) is amended as follows.

**Amendment of section 2 (interpretation)**

3. In section 2 insert the following definition at the appropriate place—  
““residence permit” means a permit issued by a control officer under section 20 (restriction on residence in the Areas) of the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960(b); and any reference to a permit for

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(a) Ordinance 10/2003, as amended by Ordinances 22/2008, 25/2014, 18/2015 and 18/2016.

(b) Ordinance 5/1960. Section 20 was substituted by Ordinance 13/2009. Other amendments have been made to the Ordinance, but are not relevant.

temporary residence is to be construed as a residence permit valid for a limited period;”.

**Amendment of section 3 (application of Republican definitions)**

4. In subsection (1)(a) of section 3 omit “person entitled to”.

**Amendment of section 10 (permit for temporary residence)**

5. In section 10—

- (a) at the beginning of subsection (1) insert “Subject to subsection (3),”;
- (b) in subsection (2) delete the second sentence;
- (c) at the end insert—
  - “(3) Where an asylum-seeker is offered accommodation in the territory of the Republic, by or on behalf of the government of the Republic, a control officer—
  - (a) is not obliged under this section to grant a temporary residence permit for so long as such accommodation is made available to the asylum-seeker; and
  - (b) may revoke a temporary residence permit granted to the asylum-seeker in accordance with this section.”.

**Amendment of section 14 (examination and determination of application for asylum)**

6. In section 14—

- (a) at the beginning of subsection (2) insert “Subject to subsection (2A) and section 14ZA,”;
- (b) after subsection (2) insert—
  - “(2A) In determining an application for asylum where section 7(2) has not been complied with, the Chief Control Officer may draw such inferences from the failure as appears proper.”;
- (c) after subsection (3) insert—
  - “(3A) In particular, the Chief Control Officer may—
  - (a) recognise the asylum-seeker as a refugee;
  - (b) grant the asylum-seeker subsidiary protection; or
  - (c) refuse the application.”.

**New section 14ZA (lapsed applications)**

7. After section 14 insert—

**“Lapsed applications**

**14ZA.**—(1) If an asylum-seeker subsequently makes an application for any form of international protection in any other country or territory before the application under this Ordinance is determined—

- (a) the application for asylum under this Ordinance shall lapse; and
- (b) the applicant shall cease to be treated as an asylum-seeker.

(2) The Chief Control Officer may deem an application for asylum to have lapsed (in which case the applicant shall cease to be treated as an asylum-seeker), where—

- (a) the asylum-seeker fails to comply with a condition imposed on a permit granted pursuant to section 10 (permit for temporary residence);
- (b) the asylum-seeker fails to reside at the address stated on a permit in contravention of section 10(2);

- (c) the asylum-seeker either—
  - (i) fails to respond to requests to provide information essential to the application, or
  - (ii) has not appeared for a personal interview, unless the asylum-seeker demonstrates within a reasonable time that the failure or non-appearance was due to circumstances beyond his or her control; or
- (d) there is reasonable cause to consider that the asylum-seeker has implicitly withdrawn or abandoned the application.

(3) The functions of the Chief Control Officer under this section are general delegated functions for the purposes of the Delegation on Functions to the Republic Ordinance 2007(a).”.

#### **Amendment of section 14A**

8.—(1) Section 14A is amended as follows.

(2) After subsection (1) insert—

“(1A) A person who has been granted subsidiary protection may, in accordance with this section, make an application to the Administrator for a review of the decision not to recognise the person as a refugee.”.

(3) In subsection (2)—

- (a) for “subsection (1)” substitute “this section”;
- (b) in paragraph (a) for “the decision to refuse the applicant’s application for asylum” substitute “the Chief Control Officer’s decision under section 14”.

(4) In subsection (3) for “subsection (1)” substitute “this section”.

(5) For subsections (4) and (5) substitute—

“(4) In determining an application made under this section—

- (a) where the original decision was to refuse the application, the Administrator may—
  - (i) uphold the original decision to refuse the application;
  - (ii) grant subsidiary protection; or
  - (iii) recognise the applicant as a refugee;
- (b) where the original decision was to grant subsidiary protection, the Administrator may—
  - (i) uphold the original decision to grant subsidiary protection; or
  - (ii) recognise the applicant as a refugee.

(5) The decision of the Administrator under this section is not subject to any further appeal.

(6) The decision of the Administrator under this section is not liable to be questioned in any court in circumstances where the asylum-seeker—

- (a) has, without the written consent of the Chief Control Officer, left both the Areas and the parts of the Republic which are under the effective control of the government of the Republic; and
- (b) has not left by reason of deportation or removal.”.

(6) Accordingly, the title of the section is amended to “review by Administrator of decision under section 14”.

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(a) Ordinance 17/2007, as amended by Ordinance 8/2012.

### **Amendment of section 19 (grant of temporary residence permit to recognised refugee)**

9. In subsection (2) of section 19 after “section 6” insert “or 6A”.

### **Section 21 (unsuccessful applicant may be permitted to continue to reside in the Areas for a limited period) omitted**

10. Omit section 21.

### **New sections 21A, 21B and 21C (subsidiary protection)**

11. Before section 22 (temporary protection) insert the following sections—

#### **“Subsidiary protection**

**21A.**—(1) Subject to subsection (3), a control officer must grant a temporary residence permit valid for one year to a person granted subsidiary protection.

(2) If, on the expiry of a temporary residence permit, the person still holds subsidiary protection (see section 21B), a control officer must grant to the person a further such permit valid for a period of up to two years.

(3) A control officer may refuse to grant a temporary residence permit if the control officer considers that there are compelling reasons of security or of public order to do so.

#### **Revocation of subsidiary protection**

**21B.**—(1) The Chief Control Officer may revoke subsidiary protection where—

- (a) the circumstances which led to subsidiary protection being granted have ceased to exist;
- (b) the circumstances which led to subsidiary protection being granted have changed to such a degree that such protection is no longer required; or
- (c) after the grant of subsidiary protection, it is established that the person has misrepresented or omitted facts (which may include the use of forged documents), and the misrepresentation or omission was decisive in granting subsidiary protection to the applicant.

(2) In considering whether to revoke subsidiary protection, the Chief Control Officer must take into account whether the change of circumstances is of such substantial and non-temporary nature that the person granted subsidiary protection no longer faces a risk of serious harm.

(3) The Chief Control Officer must not revoke subsidiary protection where the person can show that, due to previous serious harm, there are compelling reasons for refusing to take advantage of the protection provided by the person’s country of nationality, or in the case of a stateless person, the country of previous habitual residence.

(4) The functions of the Chief Control Officer under this section are general delegated functions for the purposes of the Delegation of Functions to the Republic Ordinance 2007.

#### **Review by Administrator of decision to revoke subsidiary protection**

**21C.**—(1) A person whose subsidiary protection has been revoked under section 21B may, in accordance with this section, apply to the Administrator for a review of the decision to revoke.

(2) An application for a review under this section must—

- (a) be made in writing to the Administrator not later than 28 days after the person whose subsidiary protection has been revoked has been notified in writing of the decision;

- (b) state the reasons for challenging the decision; and
  - (c) be accompanied by all other information or documentation that the person considers relevant to the application for review.
- (3) In determining the application, the Administrator may—
  - (a) uphold the decision to revoke subsidiary protection; or
  - (b) reverse the decision by reinstating subsidiary protection.
- (4) The decision of the Administrator under this section is not subject to any further appeal.
- (5) The decision of the Administrator under this section is not liable to be questioned in any court in circumstances where the person with subsidiary protection—
  - (a) has, without the written consent of the Chief Control Officer, left both the Areas and the parts of the Republic which are under the effective control of the government of the Republic; and
  - (b) has not left by reason of deportation or removal.”.

### **Amendment of section 23**

- 12.**—(1) Section 23 is amended as follows.
- (2) In subsection (1)—
- (a) in the opening words after “recognised as a refugee” insert “or granted subsidiary protection”;
  - (b) in paragraph (c)—
    - (i) after “neither refugees” insert “, persons granted subsidiary protection”;
    - (ii) after “who in all other respects are” omit “is”;
    - (iii) after “the refugee” insert “or person granted subsidiary protection”;
  - (c) in paragraph (d)—
    - (i) after “neither refugees” insert “, persons granted subsidiary protection”;
    - (ii) after “the refugee” insert “or person granted subsidiary protection”.
- (3) In subsection (2) after “refugee” insert “, person granted subsidiary protection”.
- (4) In subsection (3) after “refugee” (each time it occurs) insert “, person granted subsidiary protection”.
- (5) Accordingly, the title of the section is amended to “rights of refugees and persons granted subsidiary protection”.

### **Transitional provisions**

**13.** The amendments made by this Ordinance have effect in relation to any application made under the Refugees Ordinance 2003 which has, on the date that this Ordinance comes into force, not yet been determined.

## EXPLANATORY NOTE

*(This note is not part of the Ordinance)*

1. This explanatory note relates to the Refugees (Amendment) Ordinance 2017 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The note should be read in conjunction with the Ordinance. It is not meant to be a comprehensive description of the Ordinance. Accordingly, not all sections are referred to in the note.
3. The Ordinance amends the Refugees Ordinance 2003 (“the 2003 Ordinance”). Section 10 of the 2003 Ordinance is amended to provide that an asylum-seeker need not be given a temporary residence permit to reside in the Sovereign Base Areas (“the Areas”) where the person is offered accommodation in the Republic by the Republic’s government.
4. An amendment is made to section 14 of the 2003 Ordinance to provide that if a person fails to comply with the requirement to apply for asylum as soon as they arrive in the Areas or without undue delay, inferences may be drawn when determining the asylum application.
5. A further amendment to section 14 of the 2003 Ordinance provides that when a person applies for asylum, they may be granted subsidiary protection as an alternative to refugee status if they do not meet the definition of “refugee”. As a result of the new subsidiary protection status, consequential amendments are also made to section 3 (definitions), 14A (right of review) and 23 (conferring rights) of the 2003 Ordinance. The Ordinance also introduces new sections 21A, 21B and 21C into the 2003 Ordinance which provide respectively for residence permits for persons granted subsidiary protection, the revocation of the status and a right of review. These new provisions replace section 21 of the 2003 Ordinance (which is deleted), which previously made more limited provisions relating to persons who would be eligible for subsidiary protection.
6. New section 14ZA of the 2003 Ordinance provides for new circumstances in which an application for asylum can be treated as having lapsed. It provides that where an asylum-seeker applies for international protection in another country or territory, the application under the 2003 Ordinance is automatically treated as lapsed. The new section also provides for other circumstances in which the Chief Control Officer may decide to treat the application as lapsed. These circumstances reflect similar provisions in the corresponding Republican law.
7. A further amendment to section 14A of the 2003 Ordinance limits the circumstances in which a decision of the Administrator on a review of an asylum application may be challenged in court. It provides that such a decision may not be questioned in court in circumstances in which the asylum-seeker has voluntarily left both the Areas and the Republic without consent. Similar provision is made in relation to a decision of the Administrator, on review, to revoke subsidiary protection status (see new section 21C(4)-(5)).

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