

European Union (Subsidiary Protection) Regulations, 2013

Procedures for the investigation and determination of applications for Subsidiary Protection

Information Note

1. Introduction

- 1.1 The purpose of this Information Note is to inform you about the Regulations which the Minister for Justice and Equality (“the Minister”) has made in relation to the investigation and determination of applications for subsidiary protection in the State.
- 1.2 The law governing the processing of subsidiary protection applications is set out in the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) - (“the 2013 Regulations”).
- 1.3 These Regulations came into effect on **14 November 2013**.
- 1.4 **This note is for information and guidance only. It does not purport to give a legal interpretation of these Regulations.** If you require further information about the Regulations, as they apply in an individual case, legal advice should be obtained.
- 1.5 **It is in your interest to read this Information Note carefully to ensure you understand, amongst other things:**
- (i) Your rights, obligations and duties while you are in Ireland awaiting a final determination of your application for subsidiary protection.
 - (ii) The procedures in the 2013 Regulations in accordance with which your application for subsidiary protection will be processed.
 - (iii) The importance of complying with time limits and other requirements set out in the 2013 Regulations and responding promptly at each stage of the process.

2. Purpose of the 2013 Regulations

- 2.1 These Regulations provide for a system for the investigation and determination of applications for subsidiary protection in the State. This includes the processing of:

- (i) existing applications for subsidiary protection made to the Minister for Justice and Equality (Irish Naturalisation and Immigration Service), which have not been determined, and
- (ii) applications for subsidiary protection made **from 14 November 2013**.

3. What do the 2013 Regulations cover?

New applications for subsidiary protection

- 3.1 The 2013 Regulations provide that as and from the 14 November 2013, applications for subsidiary protection will be investigated and determined by the Refugee Applications Commissioner (“the Commissioner”).
- 3.2 From this date, new applications for subsidiary protection may be made to the Minister for Justice and Equality but should be addressed on the appropriate application form to the Commissioner. The Commissioner will then, in accordance with the 2013 Regulations and following interview of a subsidiary protection applicant, prepare a written report in relation to the investigation of the application. The Commissioner will make a recommendation to the Minister for Justice and Equality as to whether the applicant is a person who is eligible for subsidiary protection.

Existing applications for subsidiary protection which have not been determined by the Minister

- 3.3 Applications for subsidiary protection which were not determined by the Minister for Justice and Equality before the commencement date of the 2013 Regulations have been transferred to the Commissioner for investigation and determination. The Minister will notify all of these applicants of the new procedures applying to the consideration of their application. Such persons do not need to make a new application for subsidiary protection to the Commissioner but may make supplementary submissions (see paragraph 7.5 below).

4. What is subsidiary protection?

- 4.1 Subsidiary protection is protection to be granted to a person in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country, and who is not excluded from being eligible for subsidiary protection.

4.2 Serious harm means –

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

4.3 If you qualify for subsidiary protection you will be allowed to stay in the State and you will qualify for certain rights and entitlements. These rights and entitlements are set out in the 2013 Regulations.

5. **Who is eligible for subsidiary protection?**

5.1 Provided you are in the State when you make your application, you are eligible for subsidiary protection in accordance with the 2013 Regulations if:

- (a) you are not a national of a Member State of the European Union,
- (b) you have been refused a declaration as a refugee in Ireland,
- (c) substantial grounds have been shown for believing that, if returned to your country of origin, you would face a real risk of suffering serious harm and you are unable or, owing to such risk, unwilling to avail yourself of the protection of that country, and
- (d) you are not excluded from being eligible.

5.2 You will be excluded from eligibility for subsidiary protection in accordance with the 2013 Regulations if there are serious reasons for considering that you –

- (a) have 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) have committed a serious crime;
- (c) have 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) constitute a danger to the community or to the security of the State.

- 5.3 You will also be excluded from eligibility for subsidiary protection if:
- (i) there are serious reasons for considering that you have instigated or otherwise participated in the commission of a crime or an act referred to at paragraph 5.2 (a) to (d),
 - (ii) you have left your country of origin solely in order to avoid sanctions resulting from a crime or crimes (but not consisting of a crime or conduct listed at paragraph 5.2 (a) to (d)) committed prior to your admission to the State where such crimes would be punishable by imprisonment had they been committed in the State.

6. Who can apply for subsidiary protection?

6.1 Subject to the 2013 Regulations, an application for subsidiary protection can be made by a person

- (i) who is in the State, and
- (ii) who has been refused a declaration as a refugee in Ireland.

6.2 If the Minister decides not to give you a declaration as a refugee, you will be sent a notice in writing stating that your application for a declaration as a refugee has been refused.

6.3 The notice will include an Information Note on subsidiary protection and an application form. If you consider that you may be eligible for subsidiary protection, you should complete and return the form to the Commissioner within 15 working days from the sending of the notice.

7. How will my application for subsidiary protection be investigated by the Refugee Applications Commissioner?

7.1 Your application for subsidiary protection will be investigated and determined by the Commissioner in accordance with the 2013 Regulations.

7.2 Under the new procedures for the processing of applications for subsidiary protection, you will be required to attend for an interview in relation to your application. The purpose of the interview is to establish the full details of your claim for subsidiary protection.

7.3 An applicant must attend for an interview at the Office of the Refugee Applications Commissioner on the date and time fixed for the interview. Where an applicant does not

attend for their scheduled interview his or her application may be deemed to be withdrawn (see paragraph 8.2).

- 7.4 An applicant may make representations in writing to the Commissioner in relation to any matter relevant to the investigation and the Commissioner shall take account of any representations that are made before or during an interview under the 2013 Regulations. Representations may also be made by the United Nations High Commissioner for Refugees and by any other person concerned.
- 7.5 If you are an existing applicant for subsidiary protection whose application has not been determined at the time of the commencement of the 2013 Regulations, you are requested to consult the Guidelines document included with the letter sent to you by the Irish Naturalisation and Immigration Service in relation to the submission of supplementary representations including documentation to the Commissioner.
- 7.6 Whenever necessary for the purpose of ensuring appropriate communication during an interview, an interpreter will be provided by the Commissioner.
- 7.7 The following is an outline of the processing arrangements for subsidiary protection applications.
- (i) The Commissioner will arrange for you to be interviewed in connection with your application.
 - (ii) Following the interview, a written report will be prepared on the results of the investigation of your application and a recommendation made by the Commissioner to the Minister for Justice and Equality as to whether you are a person who is eligible for subsidiary protection.
 - (iii) In the event of a negative recommendation, you will be entitled to appeal the recommendation to the Refugee Appeals Tribunal (“the Tribunal”) within 15 working days from the sending of the notice of the Commissioner’s negative recommendation. The Tribunal will hold an oral hearing where the applicant requests this in his/her notice of appeal; otherwise, the appeal may be determined without an oral hearing.
 - (iv) Based on the recommendation of the Commissioner or the decision of the Tribunal, the Minister in accordance with the 2013 Regulations shall give or not give a subsidiary protection declaration to you as appropriate.
- 7.8 In the event of your application for subsidiary protection being refused by the Minister, you will be sent a notice in writing stating that:

- (a) your application for subsidiary protection has been refused;
- (b) the period of your entitlement to remain in the State has expired;
- (c) the Minister proposes to make a deportation order under section 3 of the Immigration Act 1999 requiring that you leave the State; and
- (d) you have the option of making representations to the Minister within 15 working days setting out why you should be allowed remain in the State.

8. IMPORTANT: Can I withdraw my application for subsidiary protection or can an application be deemed withdrawn?

8.1 An applicant may withdraw his or her application for subsidiary protection by sending a notice of withdrawal to the Commissioner.

8.2 Where an applicant does not attend for their scheduled interview with the Commissioner then, unless the applicant, not later than 3 working days from that date, furnishes the Commissioner with an explanation for the non-attendance which in the opinion of the Commissioner is reasonable in the circumstances, his or her application shall be deemed to be withdrawn in accordance with the 2013 Regulations.

8.3 Where it appears to the Commissioner that an applicant

- (i) is failing in his or her duty to co-operate with the Commissioner in the course of the investigation of his or her application, or
- (ii) is failing in his or her duty to furnish information relevant to his or her application for a subsidiary protection declaration, or

where the Minister notifies the Commissioner that he or she is of the opinion that an applicant is in breach of his or her duty

- (iii) not to leave or attempt to leave the State without the consent of the Minister, or
- (iv) to inform the Commissioner of his or her address and of any change of address as soon as possible,

the Commissioner shall send the applicant a notice in writing inviting the applicant to indicate in writing within 15 working days of the sending of the notice whether he or she wishes to continue with his or her application and, if an applicant does not furnish such an indication within the specified time limit, his or her application for a subsidiary protection declaration shall be deemed to be withdrawn in accordance with the 2013 Regulations.

8.4 Where an application for subsidiary protection is withdrawn or deemed to be withdrawn, there is no appeal to the Refugee Appeals Tribunal.

9. Access to information relating to the subsidiary protection process

9.1 The 2013 Regulations can be accessed in full on the website of the Refugee Applications Commissioner at <http://www.ORAC.ie>.

9.2 An ORAC Information Note on the European Union (Subsidiary Protection) Regulations 2013 will be available in a number of languages shortly on the website of the Refugee Applications Commissioner.

10. Other information

10.1 You have the right to consult a solicitor and can avail of the services of the Refugee Legal Service (RLS) in connection with your application for subsidiary protection. The RLS is an independent body established to provide a confidential legal service to persons applying for protection in Ireland. The RLS will provide legal advice and assistance in support of your application. Alternatively, you may seek the services of a private solicitor at your own expense. You are also entitled to consult the United Nations High Commissioner for Refugees.

10.2 You have permission to remain in the State until a final decision in relation to your application for subsidiary protection has been made. The Minister will provide existing applicants with a letter to this effect. New applicants will receive this letter from the Commissioner.

10.3 If at the time of commencement of the 2013 Regulations, you have made an application for subsidiary protection and you have not yet had a decision made on your application you should note the following:

- The Commissioner will contact you in due course regarding arrangements for your interview, so there is no need for you to contact ORAC, directly or indirectly, and
- you are at no risk of deportation while your application for subsidiary protection is being investigated.

10.4 The 2013 Regulations should be consulted for other procedural matters not dealt with in this Information Note and for details of the rights and entitlements of a person eligible for subsidiary protection and in relation to whom a subsidiary protection declaration is in force.

14 November 2013

SOME CONTACT DETAILS

Office of the Refugee Applications Commissioner

Timberlay House,
79-83 Lower Mount Street,
Dublin 2.

Phone: 01 6028000
Locall No: 1890 202 418
Website: www.orac.ie
E- mail: oracmail@orac.ie

Refugee Appeals Tribunal

6/7 Hanover Street East,
Dublin 2.

Phone: 01 4748400
Locall No: 1890 201 458
Website: www.refappeal.ie
E-mail: info@refappeal.ie

Refugee Legal Service

Refugee Legal Service Law Centre - Smithfield,
48/49 North Brunswick Street,
Georges Lane,
Dublin 7.

Phone: 01 646 9600.
Website: www.legalaidboard.ie
Email: lawcentresmithfield@legalaidboard.ie

International Organisation for Migration

116 Lower Baggot Street,
Dublin 2.

Freephone: 1800 406 406
Phone: 01 6760655
Email: iomdublin@iom.int
Web: www.ireland.iom.int

United Nations High Commissioner for Refugees

Suite 4,
Merrion House,
1-3 Lower Fitzwilliam Street, Dublin 2.

Phone: 01 6314510.
Website: www.unhcr.ie.
E-mail: iredu@unhcr.org.