

## Information Note for applicants

*This note is for information and guidance only. It does not purport to give a legal interpretation of the Regulations*

### **European Communities (Eligibility for Protection) Regulations 2006.**

#### **1. Introduction.**

The purpose of this note is to inform you about the regulations which the Minister for Justice, Equality and Law Reform has made. This note should be read in addition to the Information Leaflet for Applicants for Refugee Status in Ireland and updates Chapter 9 of that leaflet as to what happens if the Minister refuses to give you a declaration as a refugee.

#### **2. Purpose of Regulations**

The Regulations give effect in Irish law to Council Directive 2004/83/EC of 29 April 2004 and set out the 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. The Regulations are operative from 10 October 2006. The Regulations do not operate retrospectively.

#### **3. What do the regulations cover?**

3.1 The Regulations set out elements to be considered when determining applications for protection (including refugee status and subsidiary protection). These include:

- (a) assessment of facts and circumstances of the application
- (b) protection needs arising sur place
- (c) internal protection
- (d) acts of persecution
- (e) reasons for persecution.

3.2 The Regulations also provide for a system of subsidiary protection in the State and set out the entitlements of persons granted such protection.

3.3 *Nothing in these Regulations adds to or takes from the functions of the Refugee Applications Commissioner or the Refugee Appeals Tribunal in determining whether a person is a refugee or affects the substance of the consideration by these bodies of applications for refugee status.*

#### **4. Do the Regulations affect the way applications for refugee status are investigated and determined?**

The Regulations do not affect the way applications for refugee status are investigated and determined. The formal refugee determination processes currently operated by the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal meet the requirements of the Council Directive and the Regulations.

#### **5. What is subsidiary protection?**

5.1 Subsidiary protection is protection **other than refugee status** against a real risk of suffering "serious harm" which consists of:

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

5.2 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 Regulations.

## 6. How do I know whether I am eligible for subsidiary protection?

- 6.1 You are eligible for subsidiary protection if you satisfy the following three conditions:
- (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, and
  - (c) substantial grounds have been shown for believing that, if returned to your country of origin, or country of former habitual residence, 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.
- 6.2 You are not eligible for subsidiary protection 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;
  - (d) constitute a danger to the community or to the security of the State; or
  - (e) have left your country of origin solely in order to avoid sanctions resulting from crimes committed prior to your entry into the State where such crimes would be punishable by imprisonment had they been committed in the State.

If you have instigated or otherwise participated in the commission of the acts mentioned in 6.2 above, you are not eligible for subsidiary protection.

## 7. At what stage in the process can I make an application for subsidiary protection?

- 7.1 **You can only make an application for subsidiary protection to the Minister for Justice, Equality and Law Reform when your application for refugee status has been investigated and refused; the application must be in writing.** If the Minister decides not to give you a declaration as a refugee, you will be sent a notice in writing stating that:
- (a) your application for a declaration as a refugee 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.
- 7.2 The notice will also contain an application form for subsidiary protection. If you consider that you may be eligible for subsidiary protection, you should complete and return the form to the Minister for Justice, Equality and Law Reform.
- 7.3 Your application for subsidiary protection will be considered by the Irish Naturalisation and Immigration Service of the Department of Justice, Equality and Law Reform.
- 7.4 The regulations can be accessed in full on the Department of Justice, Equality and Law Reform website at <http://www.justice.ie>.