
REFUGEES (AMENDMENT) ORDINANCE 2008

An Ordinance to amend the Refugees Ordinance 2003

J. H. GORDON
ADMINISTRATOR

28th November 2008.

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

1. Short Title

This Ordinance may be cited as the Refugees (Amendment) Ordinance 2008.

2. Section 2 amended

In section 2 (interpretation) of the Refugees Ordinance 2003**(a)** (“the principal Ordinance”):

- (a) the definitions of “alien”, “appropriate authorities”, “appropriate”, “asylum-seeker”, “asylum”, “Convention”, “country of origin”, “manifestly ill-founded application”, “person under protection”, “refugee” and “Refugee Authority” are repealed; and
- (b) before the definition of “control officer” there is inserted:

“ “Chief Control Officer” has the same meaning as in the Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960**(b)**;
- (c) before the definition of “U.N.H.C.R” there is inserted:

“ “Republican authorities” means any official or body empowered under the corresponding Republican law to receive, process, examine, determine or review applications for asylum, other than -

 - (a) a court; or
 - (b) any member of any police force of the Republic, by whatever name such a force may be known; ”.

3. Section 3 repealed and replaced

Section 3 (meaning of refugee) of the principal Ordinance is repealed and replaced by the following section:

“3. Application of Republican definitions

- (1) In this Ordinance the terms “alien”, “asylum-seeker”, “asylum”, “person entitled to subsidiary protection”, and “refugee” have the same meaning as do the equivalent Greek terms in the corresponding Republican law.
- (2) A person is to be treated as losing the status of refugee or of a person entitled to subsidiary protection in the same circumstances as he would lose such status under the corresponding Republican law.”

4. Sections 5 and 6 repealed

Sections 5 (scope of application) and 6 (loss of refugee status) of the principal Ordinance are repealed.

5. New section 5 inserted

After section 4 of the principal Ordinance, the following section is inserted:

“5. Legal proceedings

A court of the Areas may take judicial notice of a law of the Republic and of any other Republican document of any description granted or otherwise made under a law of the Republic, in which case section 23(2) to (4) of the Delegation of Functions to the Republic Ordinance 2007(c) applies to such a law or document.”

6. Section 8 amended

In section 8(1) (investigation of asylum-seeker’s route of entry into the Areas) of the principal Ordinance, “The authorities of the Republic shall be invited to assist in such investigation” is repealed and replaced by “Either or both of the Republican authorities and the police force of the Republic may be invited to assist in such investigation”.

7. Section 9 amended

- (1) In section 9(1) (transfer of asylum-seekers to the Republic) of the principal Ordinance, “appropriate authorities” is repealed and replaced by “Republican authorities”.
- (2) Section 9(2) of the principal Ordinance is repealed and replaced by:
 - “(2) Where it is determined that an asylum-seeker has entered the Areas otherwise than through the territory of the Republic, he may be transferred to the Republic and, whether or not he is transferred, his application is to be examined and determined in accordance with section 14.”

8. Section 13 amended

In section 13(4) (application for asylum) of the principal Ordinance, “appropriate officer” is repealed and replaced by “Republican authorities”.

9. Sections 14 to 18 repealed and replaced

Sections 14 (manifestly ill-founded applications), 15 (applications not manifestly ill-founded), 16 (examination of asylum-seeker by Refugee Authority), 17 (examination of asylum-seeker by doctor) and 18 (obligations of asylum-seeker) of the principal Ordinance are repealed and replaced by the following section:

“14. Application of Republican law and delegation to the Republican authorities

- (1) An asylum application to which section 9(2) applies is to be examined and determined by the Chief Control Officer.

- (2) The procedure and criteria to be used for the examination and determination of the application are those set down in the corresponding Republican law, subject to subsection (5) and to any modification necessary to apply the procedure or criteria to a case originating in the Areas.
- (3) The Chief Control Officer has the same powers and duties to examine and determine an application as those conferred or imposed on the Republican authorities under the corresponding Republican law, save that any power conferred or duty imposed to review an application is deemed to be conferred or, as the case may be, imposed on the Administrator.
- (4) Any power conferred or duty imposed on the Chief Control Officer or Administrator by subsection (3) is a general delegated function for the purposes of the Delegation of Functions to the Republic Ordinance 2007.
- (5) Any reference in the corresponding Republican law to a Court is to be construed as a reference to the Resident Judge's Court or the Senior Judges' Court as appropriate."

10. Section 19 amended

Section 19 (Refugee Authority's decision) of the principal Ordinance is amended:

- (a) by repealing the title "Refugee Authority's decision" and replacing it by "Grant of temporary residence permit to recognised refugee";
- (b) by repealing subsection (1); and
- (c) by inserting in subsection (2):
 - (i) "of the corresponding Republican law" after "section 6"; and
 - (ii) "of this Ordinance" after "section 28".

11. Section 20 repealed

Section 20 (application to the Administrator for a review) of the principal Ordinance is repealed.

12. Section 21 repealed and replaced

Section 21 (unsuccessful applicant may be permitted to continue to reside in the Areas for a limited period) of the principal Ordinance is repealed and replaced by the following section:

"21. Unsuccessful applicant may be permitted to continue to reside in the Areas for a limited period

- (1) Where an asylum-seeker is not recognised as a refugee, the Republican authorities may nevertheless recommend the granting to the asylum-seeker of a residence permit for a limited period, if they consider that under the corresponding Republican law –
 - (a) the asylum-seeker would be a person entitled to subsidiary protection; or
 - (b) it would be appropriate to grant residence on humanitarian grounds.
- (2) A permit to reside for a limited period shall not be granted in any case where the Republican authorities determine that section 5 or 6 of the corresponding Republican law applies to the particular case.
- (3) Where a permit to reside for a limited period is granted, section 11 applies with appropriate modifications."

13. Section 23 amended

Section 23 (rights of refugees) of the principal Ordinance is amended:

- (a) by repealing "relevant authorities of the Republic" and replacing it by "Republican authorities" wherever that expression occurs; and
- (b) by repealing subsections (4) and (5).

14. Section 27 amended

Section 27 (members of a refugee's family) of the principal Ordinance is amended:

- (a) by repealing subsection (3) and replacing it by:
 - “(3) A member of a refugee's family who joins him shall be regarded as a refugee and is not to be treated as losing that status merely by virtue of ceasing to be a member of that family by reason of marriage, divorce, death or any other cause.”;
- (b) by repealing subsection (4)(b) and replacing it by:
 - “(b) unmarried child who is under the age of 18 and dependent on him (regardless of whether the child was born out of wedlock or adopted)”;
- (c) by inserting after subsection (4):
 - “(5) A person may also be treated as a member of the refugee's family under subsection (4) if in the period before the refugee entered the Areas they -
 - (a) lived as a member of the refugee's household; and
 - (b) were wholly or mainly dependent on the refugee.”.

15. Section 28 amended

Section 28 (recommendation that a refugee be deported) of the principal Ordinance is amended by repealing “Refugee Authority” and replacing it by “Republican authorities” wherever that expression occurs.

16. Section 30 amended

Section 30 (special measures in relation to asylum-seekers in emergency situation) of the principal Ordinance is amended by repealing “before the Refugee Authority”.

17. Section 31 amended

Section 31 (regulations) of the principal Ordinance is amended:

- (a) by repealing paragraphs (a) and (b) of subsection (2); and
- (b) by repealing subsection (3).

18. Commencement and application

- (1) This Ordinance comes into force on the day it is published in the Gazette (“the relevant date”).
- (2) For the avoidance of doubt, the principal Ordinance as amended by this Ordinance applies to an application for asylum which was made before the relevant date but which has not been either determined or withdrawn at that date.
- (3) If this Ordinance applies to an application for asylum which was made before the relevant date -
 - (a) for the purpose of calculating any time limits under the principal Ordinance, that application is to be treated as if it had been made on the relevant date; and
 - (b) in examining and determining that application, the Republican authorities or the Chief Control Officer (as the case may be) may do either or both of the following:
 - (i) consider any information obtained before the relevant date; and
 - (ii) waive any requirement to interview the applicant if he has already been interviewed before the relevant date.

Notes

- (a) Ordinance 10/03.
- (b) Ordinance 5/60.
- (c) Ordinance 17/07.

EXPLANATORY NOTE

(This note does not form part of the Ordinance)

Introduction

1. This note relates to the Refugees (Amendment) Ordinance 2008 (“the Ordinance”). The note 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, and is not meant to be, a comprehensive description of the Ordinance. So, when a section or part of a section does not seem to require any explanation or comment, none is given.

General effect

3. The Ordinance amends the Refugees Ordinance 2003 (“the 2003 Ordinance”). The purpose of the amendments is to ensure that all applications for asylum, including existing cases, can be dealt with by the appropriate Republican authorities using up to date versions of their refugee status determination procedures and criteria.

4. The amendments have four main effects:

- (a) they adopt Republican procedure and criteria for the examination and determination of asylum applications;
- (b) they delegate that function to the Republican authorities using the Delegation of Functions to the Republic Ordinance 2007;
- (c) they update the existing provisions in relation to limited residence for unsuccessful asylum seekers in line with Republican law; and
- (d) they update the definition of a refugee’s “family member” in line with Republican law.

Particular points

5. Section 7 amends subsection 9(2) of the 2003 Ordinance to provide that where an asylum-seeker has entered the Areas directly (as opposed to via the territory of the Republic), his application will be examined and determined in accordance with section 14 of that Ordinance. It is made clear that this is the case whether or not he is physically transferred to the Republic.

6. Section 9 repeals the existing SBA procedure and criteria for examining and determining asylum applications and adopts the corresponding Republican procedure and criteria by inserting a new section 14 into the 2003 Ordinance. This means that the corresponding Republican law has effect in the Areas as if it had been made by the Administrator. Any amendments to the Republican legislation will be incorporated into SBA law without further amendment as a consequence of the definition of “corresponding Republican law” in the 2003 Ordinance. This ensures that SBA legislation on refugee status determination is up to date with the Republican legislation and will remain so.

7. The new section 14 of the 2003 Ordinance as amended provides for delegation of the powers and duties arising under the Republican legislation. In the first place, all such powers and duties are conferred and imposed on the Chief Control Officer of the Areas (except powers and duties of the Republican review body which are conferred and imposed on the Administrator) (s14(3)). It is then provided that these powers and duties constitute a “general delegated function” under the Delegation of Functions to the Republic Ordinance 2007 (“the 2007 Ordinance”) (s14(4)). The effect of this is that the Republican authorities will be authorised to examine and determine asylum applications under section 9(2) on behalf of the Administration. The 2007 Ordinance provides for the effects and limitations of such delegation.

8. The adopted Republican procedure and criteria will apply to all asylum applications which are examined and determined under the 2003 Ordinance as amended, whether that is done by the Republic or by the Administration (subject to any necessary modifications).

9. The new definition of “Republican authorities” (section 2(c)) allows for asylum applications to be dealt with by whichever Republican body has responsibility under Republican law. The definition also includes a review authority in the Republic. The effect of this is that any review of an initial asylum decision made by the Republican authorities will now be carried out by the Republican review body, rather than by the Administrator.

10. Section 5 provides for translations of relevant Republican laws or documents to be used in the SBA courts by reference to the 2007 Ordinance. The Republican courts are specifically excluded from the definition of “Republican authorities”. The definition also ensures that it is clear that Republican police do not acquire powers in SBA territory by virtue of the Republic’s handling of cases on behalf of the Administration.

11. Consequential amendments are made to definitions, to references to the Republican authorities and to other provisions (by sections 2, 3, 4, 8, and 10 to 16).

12. Section 17 makes consequential amendments to the regulation-making power. Once the Republican criteria for determining refugee status are adopted, there will be no need for the Administrator to make regulations in that area, and similarly no need to apply UNHCR and EU criteria in the absence of such regulations.

13. Although the main purpose of the Ordinance is the adoption of Republican procedure and criteria for the examination and determination of asylum applications, the opportunity has also been taken to update two other aspects of the 2003 Ordinance to replicate the effect of amendments made to the corresponding Republican law.

14. First, section 21 of the 2003 Ordinance is amended. That section provides that, where an application for asylum is refused, the Republican authorities may nevertheless recommend a limited grant of residence on other grounds. Section 12 updates the grounds for such a recommendation to reflect the two categories of other residence currently recognised in Republican law (ie. subsidiary protection and residence on humanitarian grounds).

15. Second, section 14 amends the definition of members of a refugee’s family in section 27 of the 2003 Ordinance to replicate amendments to the corresponding Republican law. In particular, there is now a discretion to recognise as a “family member” an individual who does not meet the criteria in subsection 27(4) but did previously live as a dependent member of the refugee’s household.

16. Finally, section 18 puts beyond doubt that the amended 2003 Ordinance applies to all applications which are outstanding at the date the Ordinance comes into force. As regards such applications, any time limits for examining and determining them will only start to run from that date, but they may be dealt with on the basis of information previously obtained without re-interviewing the applicant.