



STATUTORY INSTRUMENTS.

S.I. No. 82 of 2015



EUROPEAN COMMUNITIES (FREE MOVEMENT OF PERSONS)
(AMENDMENT) REGULATIONS 2015

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I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2004/38/EC¹ of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, hereby make the following Regulations:

1. (1) These Regulations may be cited as the European Communities (Free Movement of Persons) (Amendment) Regulations 2015.

(2) These Regulations shall come into operation on 6 March 2015.

(3) In these Regulations “Regulations of 2006” mean the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006).

2. The Regulations of 2006 are amended—

(a) in Regulation 20 by the substitution of the following for paragraphs (4) and (5):

“(4) (a) Subject to subparagraph (b), a person (other than a person who is under the age of 18 years) in respect of whom a removal order has been made may, for the purpose of ensuring his or her departure from the State in accordance with the removal order and without further notice be arrested and detained under warrant of an immigration officer or member of the Garda Síochána in any of the places listed in Schedule 10 in the custody of the officer or member of the Garda Síochána for the time being in charge of that place.

(b) An immigration officer or member of the Garda Síochána shall exercise his or her power under subparagraph (a) only where the person who is the subject of a removal order—

¹Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

- (i) has failed to leave the State within the time specified in the order,
 - (ii) has failed to comply with a requirement in a notice under paragraph (3)(b)(ii) or a requirement under paragraph (3)(d), or
 - (iii) he or she suspects that the person may seek to avoid removal from the State in accordance with the order.
- (c) When an arrest is made under subparagraph (a) and the person arrested is brought to a prison or to a Garda Síochána station, the Governor of the prison or the Member in Charge of the Garda Síochána station, as the case may be, shall be informed.
- (5) (a) Subject to subparagraph (f), a person arrested under paragraph (4)(a) may be detained only until such time (being as soon as is practicable) as arrangements are made for his or her removal from the State and he or she is removed from the State in compliance with the removal order concerned.
- (b) A person arrested and detained under paragraph (4)(a) may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Garda Síochána, and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.
- (c) The master of any ship and the person in charge of any railway train, road vehicle or aircraft bound for any place outside the State shall, if so required by an immigration officer or a member of the Garda Síochána, receive a person in respect of whom a removal order has been made and his or her family members, if any, on board such ship, railway train, road vehicle or aircraft and afford him or her and his or her family members proper accommodation and maintenance during the journey.
- (d) Where an immigration officer or a member of the Garda Síochána has reasonable grounds for believing that a person is not under the age of 18 years, paragraph (4) and subparagraphs (a) to (c) and (f) of this paragraph shall apply to them as if he or she had attained the age of 18 years.
- (e) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in loco parentis or any other person) and such person is detained under paragraph 4(a), the immigration officer or the member of the Garda Síochána concerned shall, without

delay, notify the Health Service Executive of the detention and of the circumstances thereof.

(f) A person shall not be detained under this Regulation for a period or periods exceeding 28 days in aggregate and the following periods shall be excluded in reckoning such a period or periods:

(i) any period during which the person is remanded in custody pending a criminal trial or serving a sentence of imprisonment,

(ii) any period spent by the person on board a ship, railway train, road vehicle or aircraft pursuant to this section, and

(iii) if the person has—

(I) requested a review under these Regulations of the removal order in relation to which he or she is the subject, or

(II) made an application for judicial review,

any period spent by the person in a place of detention between the date of the request or the application, as the case may be, and the date of its determination, including where notice of appeal is given, the period between the giving thereof and the final determination of the appeal or any further appeal therefrom or the withdrawal of the appeal or, as appropriate, the expiry of the ordinary time for instituting any such appeal.”,

and

(b) by the substitution of the following for Schedule 10:

“Schedule 10

Regulation 20(4)(a) Places of Detention

A Garda Síochána station

Castlerea Prison

Cloverhill Prison

Cork Prison

Limerick Prison

The Midlands Prison

Mountjoy Prison

Wheatfield Place of Detention.”.



GIVEN under my Official Seal,
5 March 2015.

FRANCES FITZGERALD,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations were made for the purpose of amending Regulation 20 of the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006).

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