

《入境(難民身分覆檢委員會)(程序)規例》
(第 115 章，附屬法例 L)

Immigration (Refugee Status Review Boards) (Procedure) Regulations
(Cap. 115 sub. leg. L)

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E-1

第 115L 章

E-2

Cap. 115L

制定史

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《入境(難民身分覆檢委員會)(程序)規例》

(第 115 章, 附屬法例 L)

目錄

條次		頁次
1.	引稱	1
2.	釋義	1
3.	委員會的組成	1
4.	主持人及作出決定的方式	3
5.	申請覆核的方式	3
6.	申請人的代表	3
7.	須供代表查閱的文件	5
8.	聆訊不公開	5
9.	委員會不受申請通知書所列理由等限制	5
10.	出席委員會的聆訊	7
11.	證據	7
12.	處長	9
13.	轉由另一委員會覆核	9

Immigration (Refugee Status Review Boards)
(Procedure) Regulations

(Cap. 115 sub. leg. L)

Contents

Regulation	Page
1. Citation	2
2. Interpretation	2
3. Constitution of Boards	2
4. Person presiding and manner of making decisions	4
5. Manner of making application for a review	4
6. The representative of the applicant	4
7. Papers to be made available to the representative	6
8. Sittings to be in private	6
9. A Board not confined to grounds etc. set out in the notice of application	6
10. Appearance before a Board	8
11. Evidence	8
12. The Director	10
13. Transfer of review to another Board	10

T-3

第 115L 章

T-4

Cap. 115L

條次		頁次
14.	法律程序的紀錄	11
15.	本規例等未作處理的事項的程序	11
16.	決定通知書	11
17.	訂明人員	11
18.	通知書的送達	11

Regulation		Page
14.	Record of proceedings	12
15.	Procedure in matters not dealt with by these regulations etc.	12
16.	Notice of decisions	12
17.	Prescribed person	12
18.	Service of notices	12

《入境(難民身分覆檢委員會)(程序)規例》

Immigration (Refugee Status Review Boards) (Procedure) Regulations

(第 115 章第 59 條與第 13F 條對照解釋)

(Cap. 115, section 59 as read with section 13F)

[1989 年 6 月 16 日]

[16 June 1989]

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(Format changes—E.R. 7 of 2020)

1. 引稱

本規例可引稱為《入境(難民身分覆檢委員會)(程序)規例》。
(1997 年第 80 號第 103 條)

1. Citation

These regulations may be cited as the Immigration (Refugee Status Review Boards) (Procedure) Regulations.

2. 釋義

在本規例中，除文意另有所指外——

主席 (Chairman) 指委員會主席；

申請人 (applicant) 指根據本條例第 13F 條為其本人或為某名子女或孩子申請覆核的人；

委員會 (Board) 指接受本條例第 13F 條所訂的覆核申請的委員會；

訂明人員 (prescribed person) 指志願人員服務機構所延聘的上訴法律顧問；

副主席 (Deputy Chairman) 指委員會副主席；

專員 (Commissioner) 指透過其在香港的代表處理工作的聯合國難民事宜高級專員。

2. Interpretation

In these regulations, unless the context otherwise requires—

applicant (申請人) means the person making application for a review under section 13F whether on his own behalf or on behalf of a child;

Board (委員會) means a Board to which an application for review under section 13F is made;

Chairman (主席) means the Chairman of the Boards;

Commissioner (專員) means the United Nations High Commissioner for Refugees acting through his representative in Hong Kong;

Deputy Chairman (副主席) means a Deputy Chairman of the Boards;

prescribed person (訂明人員) means an appeals counsellor engaged by the Agency for Volunteer Service.

3. 委員會的組成

3. Constitution of Boards

- (1) 除本條另有規定外，委員會須由一起聆訊的一名副主席及另一名委員組成；該副主席及委員均須為主席所指定。
- (2) 主席可以委員會委員的身分，代替副主席或作為副主席以外的另一委員出席聆訊。

4. 主持人及作出決定的方式

- (1) 除主席在場即由主席主持外，獲委任的委員會副主席須主持委員會的聆訊。
- (2) 委員會的委員中如有一人(委員超過 2 名時亦如是)認為須判覆核得直，則委員會須判該覆核申請得直。
- (3) 除第(2)款另有規定外，如在 2 人委員會中委員的意見分歧，則以主持人的決定為依歸，如屬 3 人委員會，則以過半數委員的決定為依歸。

5. 申請覆核的方式

- (1) 任何人意欲根據本條例第 13F 條向委員會申請覆核，可在本條例第 13F(1) 條所訂明的期限內，以通知書向主席提出申請。
- (2) 申請通知書須附隨申請人希望委員會考慮的任何申述及文件證據。

6. 申請人的代表

- (1) 凡申請人根據本規例所可做的事情，其代表均可代為進行。

- (1) Subject to this regulation, a Board shall be constituted by a Deputy Chairman and one other member sitting together, being a Deputy Chairman and member designated by the Chairman.
- (2) The Chairman may sit as a member of a Board either instead of a Deputy Chairman or in addition to him.

4. Person presiding and manner of making decisions

- (1) Except where the Chairman is present, when he shall preside, the Deputy Chairman appointed to a Board shall preside at the sittings of a Board.
- (2) A Board shall allow an application for a review if either or, if there are more than 2, one of its members considers the review should be allowed.
- (3) Subject to subregulation (2), in the event of a difference of opinion between members of a 2-member board, the decision of the person presiding shall prevail and, in the case of a 3-member board, the decision of the majority shall prevail.

5. Manner of making application for a review

- (1) Any person desiring to apply to a Board for a review under section 13F may do so by giving written notice of such application, within the time prescribed in section 13F(1), to the Chairman.
- (2) The notice of application shall be accompanied by any representations and documentary evidence which the applicant wants the Board to consider.

6. The representative of the applicant

- (1) Anything which the applicant may do under these regulations, his representative may do on his behalf.

- (2) 申請人的法律代表，須為申請人向主席指定的有權在香港執業的法律執業者。倘無如此指定法律執業者，則就本規例而言，須將訂明人員當作為該申請人的代表。(2005 年第 10 號第 196 條)

7. 須供代表查閱的文件

為使申請人能決定是否向委員會申請覆核及使其能考慮如何就覆核作出申述，存有下列文件的檔案——

- (a) 載有入境事務主任就根據本條例第 13D(1) 條被羈留的人而作出不給予難民身分的決定及該決定所據理由的文件；及
- (b) 載有作出此項決定所根據的一切資料，包括向該人提出的問題及該人就此所作回答的文件，

在根據本條例第 13D(3) 條向該人送達通知書時，須由處長備妥以供申請人的代表及供專員查閱。

8. 聆訊不公開

委員會的聆訊不得公開。

9. 委員會不受申請通知書所列理由等限制

委員會可考慮其覺得與申請有關的任何事項，即使申請通知書或根據第 5(2) 條作出的申述並無提及該事項亦然。

- (2) The legal representative of the applicant shall be such legal practitioner (being a legal practitioner entitled to practise in Hong Kong) as the applicant may designate to the Chairman and, if no such person is so designated, then the prescribed person shall be deemed to be the representative of the applicant for the purposes of these regulations.

7. Papers to be made available to the representative

For the purpose of enabling the applicant to determine whether or not to apply to a Board for a review and to enable him to consider what representations to make in respect thereof, files containing copies of—

- (a) the determination of the immigration officer not to allow the person detained under section 13D(1) refugee status and the reasons for that determination; and
- (b) all material upon which this determination was based, including any questions put to that person and his answers in respect thereof,

shall, at the time of serving notice under section 13D(3) on that person, be made available by the Director for inspection by the representative of the applicant and by the Commissioner.

8. Sitzings to be in private

A Board shall sit in private.

9. A Board not confined to grounds etc. set out in the notice of application

A Board may consider any matter which appears to it to be relevant to the application notwithstanding the omission of any reference to such matter in the notice of application or representations made under regulation 5(2).

10. 出席委員會的聆訊

- (1) 委員會如認為適合，可規定——
 - (a) 申請人本人；或
 - (b) 入境事務主任，出席聆訊，以回答委員會認為適合，並且是委員會所接獲的文件所引起的問題。
- (2) 如入境事務主任根據第 (1) 款須出席聆訊，則申請人須獲告知是次聆訊的時間和地點，以及第 (3) 款所賦予申請人的權利。
- (3) 入境事務主任根據第 (1) 款回答問題時，申請人有權在場，而申請人回答問題時，入境事務主任亦有權在場；而如此有權在場的人，均有權就回答作出評論。
- (4) 申請人如意欲在第 (3) 款所指明的情況下出席，須通知主席。

11. 證據

- (1) 委員會須考慮——
 - (a) 申請通知書及根據第 5(2) 條附隨於該通知書的申述或證據(如有)；
 - (b) 第 7 條所提述的文件；
 - (c) 根據第 10 條所提問題作出的回答，以及根據該條就該等回答作出的申述，並可進一步接受及考慮其覺得與所處理的爭端有關的任何證據，即使該證據不會獲法院接納亦然。

10. Appearance before a Board

- (1) A Board may if it thinks fit require—
 - (a) the applicant in person; or
 - (b) an immigration officer,to appear before it for the purpose of answering such questions as the Board may think fit, being questions arising on the papers before it.
- (2) If an immigration officer is required to attend under subregulation (1) the applicant shall be notified of the time and place thereof and of his entitlement under subregulation (3).
- (3) The applicant shall be entitled to be present when an immigration officer answers questions under subregulation (1) and an immigration officer when the applicant so answers questions and the person so entitled to be present shall also be entitled to comment on the answers.
- (4) An applicant desiring to be present in the circumstances specified in subregulation (3) shall notify the Chairman.

11. Evidence

- (1) A Board shall consider—
 - (a) the notice of application and the representations or evidence accompanying it (if any) under regulation 5(2);
 - (b) copies of the documents referred to in regulation 7;
 - (c) answers to questions put under regulation 10 and any representations made in respect thereof under that regulation,and may further receive and consider any evidence which appears to it to be relevant to the issues before it

- (2) 凡呈交委員會的任何文件並非以英文寫成，則委員會如考慮看來是該文件的英譯文本，即屬充分遵守本條的規定。

12. 處長

- (1) 處長須——
- (a) 安排根據第 18(1)(a) 條送達的每份通知書得以在切實可行的範圍內盡快送交主席；
 - (b) 確保委員會通知處長根據第 10(1) 條規定他出席的人，或確保任何為第 10(4) 條所指明的目的而意欲出席的人，出席聆訊。
- (2) 除第 10(3) 條另有規定外，處長無權出席或指派代表出席任何覆核聆訊。

13. 轉由另一委員會覆核

- (1) 凡負責考慮某宗申請的委員會未有作出最後裁決，而主席認為由該委員會就覆核作出裁決，或由該委員會在沒有不當延誤的情況下就覆核作出裁決並不切實可行，則他須安排另一委員會處理該宗覆核；而該宗覆核即可據此而予以處理。
- (2) 第 (1) 款首述的委員會的委員，可成為為施行該款而組成的另一委員會的委員。
- (3) 如考慮覆核的委員會認為不論因何理由，該宗覆核均應由另一委員會處理，則其主持人須通知主席，而主席即可將該覆核轉介給另一委員會，或就覆核的進行方式作出他認為適合的指示。

notwithstanding that the evidence would not be admissible in a court of law.

- (2) Where any document before a Board is in a language other than English it shall be sufficient compliance with this regulation if the Board considers any document which purports to be an English translation thereof.

12. The Director

- (1) The Director shall—
- (a) cause every notice served under regulation 18(1)(a) to be delivered to the Chairman as soon as practicable;
 - (b) secure the attendance of any person whom a Board notifies Director is required to attend under regulation 10(1) or who desires to be present for the purposes specified in regulation 10(4).
- (2) Subject to regulation 10(3), the Director shall not be entitled to be present or represented at any review.

13. Transfer of review to another Board

- (1) Where an application has not been disposed of by the Board considering it, the Chairman shall make arrangements, if he is of the opinion that it is not practicable for the review to be determined by that Board, or determined without undue delay by that Board, for the review to be dealt with by another Board; and the review may be dealt with accordingly.
- (2) A member who was a member of the first Board referred to in subregulation (1) may be a member of the other Board constituted for the purposes of that subregulation.
- (3) Where the Boards consider that the review should, for any reason, be dealt with by another Board its presiding officer inform the Chairman who may refer the review to another

Board or otherwise give such directions as he may think fit for the manner in which the review is to be conducted.

14. 法律程序的紀錄

委員會須按主席所定的格式，備存法律程序及委員會裁定的撮要或紀錄。

15. 本規例等未作處理的事項的程序

- (1) 主席可就任何申請程序向委員會發出其認為適合的指示，惟該指示不得與本條例或本規例不一致。
- (2) 在不抵觸本條例、本規例及任何上述指示的情況下，委員會可自行決定其程序。

16. 決定通知書

委員會根據本條例第 13F(5) 條作出決定後，須在切實可行範圍內盡快通知處長按主席所定的格式將該決定通知申請人。

17. 訂明人員

訂明人員須為本條例第 13F(3)(b) 條所訂的訂明人員。

18. 通知書的送達

- (1) 申請人根據本規例交給主席的通知書，可以主席為收件人並以下述方式交給主席——
 - (a) 將通知書交予羈留該申請人或羈留有關子女或兒童(如是代子女或兒童提出申請)的地方的監督；或

14. Record of proceedings

A Board shall keep a summary or record of proceedings and of its determinations in such form as the Chairman may determine.

15. Procedure in matters not dealt with by these regulations etc.

- (1) The Chairman may give such directions to the Boards as he thinks fit as to the procedure on any application, being a direction not inconsistent with the Ordinance or these regulations.
- (2) Subject to the Ordinance, these regulations and any such directions, a Board may determine its own procedure.

16. Notice of decisions

As soon as practicable after a Board has made its decision under section 13F(5) it shall notify the Director to give notice thereof to the applicant in such form as the Chairman may determine.

17. Prescribed person

The prescribed person shall be the prescribed person for the purposes of section 13F(3)(b).

18. Service of notices

- (1) Any notice to be given by the applicant to the Chairman under these regulations may be given by addressing it to the Chairman and—
 - (a) by leaving it with the Superintendent of the place where the applicant, or the child on whose behalf the application is made, is detained; or

- (b) 以郵遞送達。
- (2) 根據本規例交給申請人的通知書，可以該申請人為收件人，並可用根據本條例第 13D(4) 條送達本條例第 13D(3) 條所訂通知書的方式送達。

- (b) by serving it by post.
- (2) Any notice to be given to the applicant under these regulations may be given by addressing it to him and serving it in the manner in which a notice under section 13D(3) may be served under section 13D(4).