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Country Report

Ireland

Irish Refugee Council

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European Council on Refugees and Exiles

ACKNOWLEDGMENTS

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This report is up-to-date as of the 1st February 2015.

The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website www.asylumineurope.org. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.

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Statistics

Table 1: Applications and granting of protection status at first instance in 2013*

	Total applicants in 2013 (*for 2014 see below)	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit *and* admissibility)	Refugee rate	Subs. Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E)%	E/(B+C+D+ E)%
Total numbers	910	130	20	0	690	15.4%	2.3%	0%	82.1%
Breakdown by countries of origin of the total numbers									
Nigeria	130	5	0	-	120	4%	0%	-	96%
Pakistan	95	5	5	-	115	4.3%	4 %	-	92%
DR Congo	60	10	0	-	55	15.3%	0%	-	84.6%
Zimbabwe	70	0	0	-	55	0%	0%	-	100%
Albania	45	0	0	-	40	0%	0%	-	100%
South Africa	25	0	0	-	20	0%	0%	-	100%
China	20	0	0	-	10	0%	0%	-	100%
Afghanistan	35	10	0	-	45	18.1%	0%	-	81.8%
Algeria	60	0	0	-	35	0%	0%	-	100%
Iran	10	15	0		0	100%	0%		0%
Others[1]									
Syria	40	30	5	-	5	75%	12.5%	-	12.5%
Russia	5	0	0	-	10	0 %	-	-	-
Kosovo	5	0	10	-	0	0%	50%	-	0%

Source: Eurostat Data in Focus15/2014 Publication

*** 2014**

Total Applicants for International Protection in 2014: 1444 asylum applications received in 2014 as compared to 946 in 2013 equating to a 53% increase (Source Minister for Justice and Equality Press Release: Immigration in Ireland – 2014). 30% Grant Rate for Subsidiary Protection (source: ORAC). The top three countries of application in 2014 are Pakistan, Nigeria and Albania (Source: Minister for Justice and Equality)

[1] Other main countries of origin of asylum seekers in the EU.

Table 2: Gender breakdown of the total numbers of applicants in 2013

	Number
Total number of applicants	**946**
Men	585
Women	361

Source: Office of the Refugee Applications Commissioner (ORAC) Annual Report 2013[2]

Table 3: Comparison between first instance refugee and subsidiary protection appeal decision rates in 2013

	First instance		Appeal decisions	
	Number	**Percentage**	**Number**	**Percentage**
Total number of decisions	**840**		**569**	
Positive decisions				
Total	**150**	**17.8%**	**54**	**9.4%**
Refugee status	**130**	**15.4%**	**54**	**9.4%**
Subsidiary protection[3]	**20**	**2.3%**	**-**[4]	**-**
Hum/comp protection	**-**		**-**	**-**
Negative decisions	**690**	**82.1%**	**515**	**90.5%**

Source: Eurostat

Table 4: Applications processed under an accelerated procedure in 2013

	Number	Percentage
Total number of applicants	920	
Number of applications treated under an accelerated procedure at first instance	28	3.0%

Source: Office of the Refugee Applications Commissioner (ORAC)

[2] At the time of writing no information was available on the breakdown of men/women for the year 2014.

[3] Until November 2013 the Department of Justice made decisions relating to subsidiary protection. The Office of the Refugee Applications Commissioner makes decisions on subsidiary protection applications since S.I. No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013 was passed in to law.

[4] Until November 2013 there was no appeal against a negative subsidiary protection decision. After S.I. No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013 was passed in to law, there is an appeal to the Refugee Appeals Tribunal

660 appeals were received by the Refugee Appeals Tribunal in 2013.[5]

Table 5: Subsequent applications submitted in 2013 under Section 17.7 of the Refugee Act (permission to re-enter the asylum procedure)

Total number	46
Successful	5
Negative	41
Top 5 countries of origin	
Serbia	6
Democratic Republic of Congo	5
Ghana	5
Malawi	4
Pakistan	4

Source: Department of Justice

Table 6: Subsidiary Protection Decisions 2009-2013

Year	Granted	Refused	Total
2013	31	40	71[6]
2012	37	673	710
2011	17	1,154	1,171
2010	4	716	720
2009	27	804	831
Total	116	3387	3503

Source: Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Thomas Pringle TD, 27 February 2014

"To date, 1,605 applicants have indicated that they wish to continue with their applications and a further 220 have applied for subsidiary protection since the introduction of the new European Union (Subsidiary Protection) Regulations in November 2013[7]. ORAC had scheduled a total of 1,246 interviews up to 28 November, 2014 and has issued recommendations in 734 cases, involving 225 grants and 509 refusals of subsidiary protection. The Refugee Appeals Tribunal has to date received a total of 276 appeals in respect of negative recommendations issued by the ORAC and has recently begun the processing of these cases following the completion of a training programme for Tribunal members" *Source: Frances Fitzgerald, Minister, Department of*

5 Refugee Documentation Centre, The Researcher, *Recent changes at the Refugee Appeals Tribunal*, B. Magee, 2 October 2014, page 6.

6 The low number of decisions made in 2013 was due to "the impact of the High Court judgement on the processing of Subsidiary Protection applications." Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Thomas Pringle TD, 27 February 2014

7 Statutory Instrument No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013.

Justice and Equality, written answer to the Parliamentary Question, Asylum Applications, of Thomas Pringle, TD, 2 December 2014.

Further statistical information: Until November 2014 the top 5 nationalities in 2014 applying for a declaration to be a refugee are as follows: Pakistan, Nigeria, Albania, Bangladesh and Zimbabwe.[8] According to the Minister for Justice and Equality overall in 2014 the top three countries of applications in 2014 were Pakistan, Nigeria and Albania.[9]

[8] Office of the Refugee Applications Commissioner (ORAC), Monthly Statistical Report, November 2014.
[9] INIS Press Release, *Immigration in Ireland – 2014*, 26 January 2015.

Overview of the legal framework

The most recent version of relevant national legislation(s) is available at www.irishstatutebook.ie.

Acts

Refugee Act 1996

Immigration Act 1999

Immigration Act 2003

Immigration Act 2004

Illegal Immigrants (Trafficking) Act 2000

European Convention on Human Rights Act 2003

Statutory Instruments:

S.I. No. 525 of 2014 European Union (Dublin system) Regulations 2014

S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013

S.I. No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011

S.I. No. 52/2011 - Refugee Act 1996 (Asylum Procedures) Regulations 2011.

S.I. No. 518 of 2006 - European Communities (Eligibility for Protection) Regulations 2006

S.I. No. 730 of 2005 - Civil Legal Aid (Refugee Appeals Tribunal) Order 2005

Refugee Act 1996 unofficial restatement updated to 2004

S.I. No. 55 of 2005 - Immigration Act 1999 (Deportation) Regulations 2005

S.I. No. 714 of 2004 - Refugee Act 1996 (Safe Country of Origin) Order 2004

S.I. No. 708 of 2003 - Aliens (Visas) Order 2003

S.I. No. 423 of 2003 - Refugee Act 1996 (Section 22) Order 2003

S.I. No. 424 of 2003 - Refugee Act 1996 (Appeals) Regulations 2003

S.I. No. 422 of 2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003

S.I. No. 103 of 2002 - Immigration Act 1999 (Deportation) Regulations 2002

Overview of the main changes since the previous report update

The report was previously updated in May 2014.

- The total number of applications for international protection received in 2014 was 1444 compared to 946 applications in 2013 equating to a 53% increase in applications in Ireland in 2014. This reflects the international increase in refugees seeking protection due to the increase in conflicts worldwide.

- New asylum applicants in Ireland as of the 8th of October 2014 will be able to apply for subsidiary protection at the same time as refugee status as part of new administrative arrangements made by ORAC in light of the CJEU ruling in *H.N. v the Minister for Justice, Equality and Law Reform.*[10] This applies also with respect to applicants who currently have an application for refugee status pending. However, the subsidiary protection aspect of the claim will only be investigated should the applicant's application for refugee status be refused.

- A new statutory instrument was published to give further effect to the Dublin III Regulation in terms of changes to the national regulatory framework to assist its application in Ireland, Statutory Instrument No. 525 of 2014 European Union (Dublin System) Regulations 2014 was issued on 28 November 2014. It allows for the introduction of a personal interview and the possibility for ORAC to consult with Tulsa (the Children's Agency) in assessing the best interests of unaccompanied children subject to the Dublin procedure.

- In November 2014 the High Court ruled in a legal challenge concerning Direct Provision and found that certain aspects of the House rules in reception centres were unlawful or disproportionate to the objective achieved and the complaints mechanism due to its lack of independence was found to be flawed and unlawful. Applicants were entitled to an independent complaints handling procedure and the High Court found that applicant's home, *i.e.* their room in the Direct Provision centre, was protected by Article 40.5 of the Irish Constitution and Article 8 ECHR.[11]

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10 Court of Justice of the European Union, C-604/12, *H.N. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, judgment of 8 May 2014. Regulations will be introduced in the future in response to this judgment and pending that the administrative notice was issued by ORAC on 8 October 2014; ORAC, *Important Notice regarding the making of applications for Subsidiary Protection by Applicants for Refugee Status*, SP/03, 8 October 2014.

11 For further information see Liam Thornton, *Direct Provision in the Irish High Court: The Decision*, Human Rights in Ireland.

- In December 2014 it was announced that a total of 111 vulnerable people from Syria and the surrounding region were granted admission to reside in Ireland following applications to the Department of Justice and Equality from relatives already resident here. Ireland also accepted 90 Syrian refugees in 2014 under the UNHCR resettlement programme.

- There was further momentum calling for the Direct Provision system to be abolished and reformed. The Government Priorities 2014-2016 included an explicit commitment from the government to address the current system of Direct Provision to "make it more respectful to the applicant and less costly to the taxpayer." In October 2014 an independent working group was established to focus on respecting the dignity and improving the quality of life of applicants for international protection within the protection process in Ireland. The group is due to report to the government with its recommendations by Easter 2015.

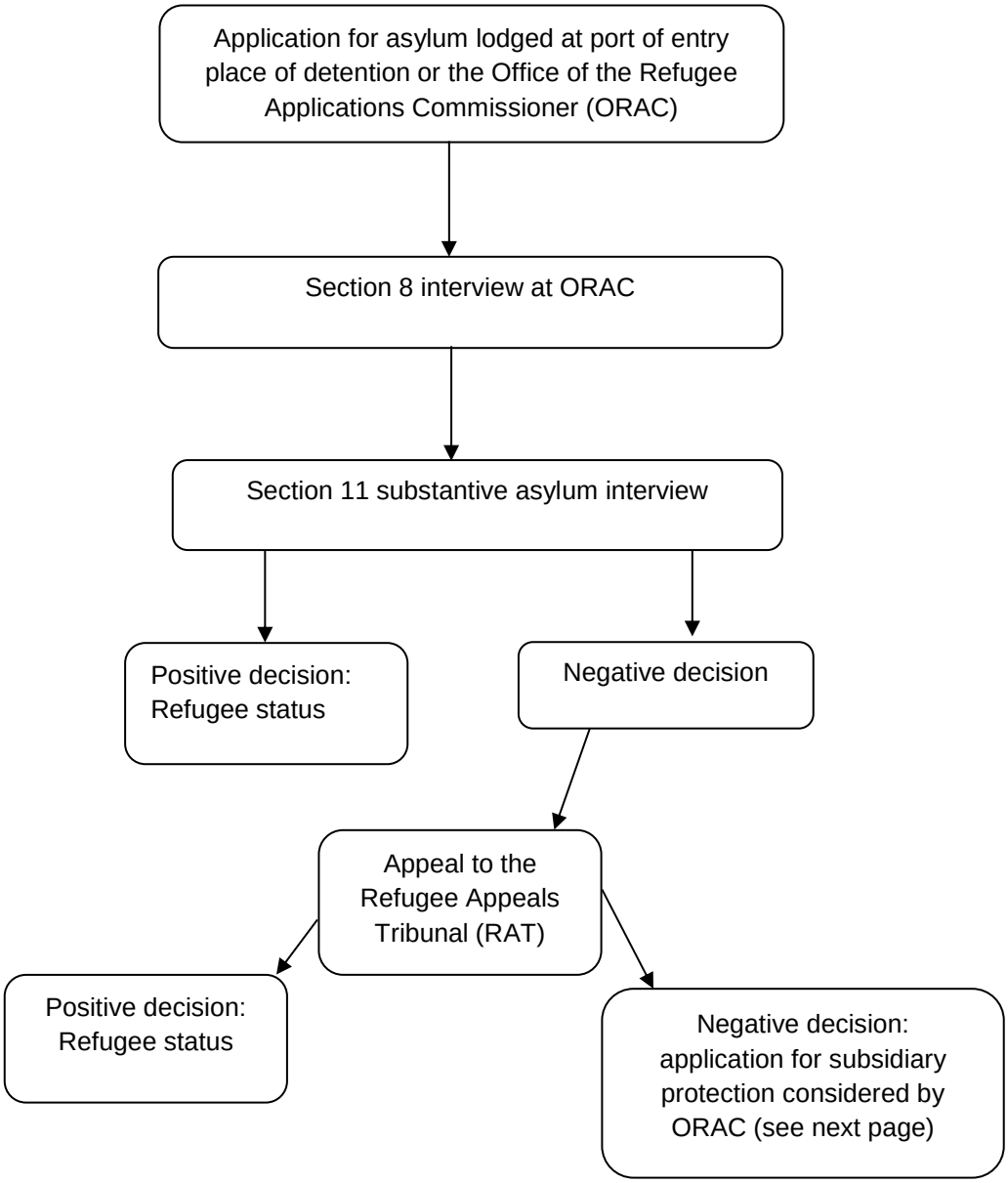
- On 7 January 2015 Ms. Frances Fitzgerald, TD, Minister for Justice and Equality announced that the government was planning to publish an International Protection Bill in the coming weeks which will provide for a single asylum procedure system in Ireland among other amendments. According to the Minister the purpose of the Bill is to speed up and simplify the process of claiming asylum in Ireland. [12] Legislative reform of the asylum system is set out as a key Government priority to remove the structural delays in the existing asylum system.[13]

[12] The Irish Times, *New Government Bill to speed up asylum process*, 7 January 2015.
[13] INIS Press Release, *Immigration in Ireland – 2014*, 26 January 2015.

A. General

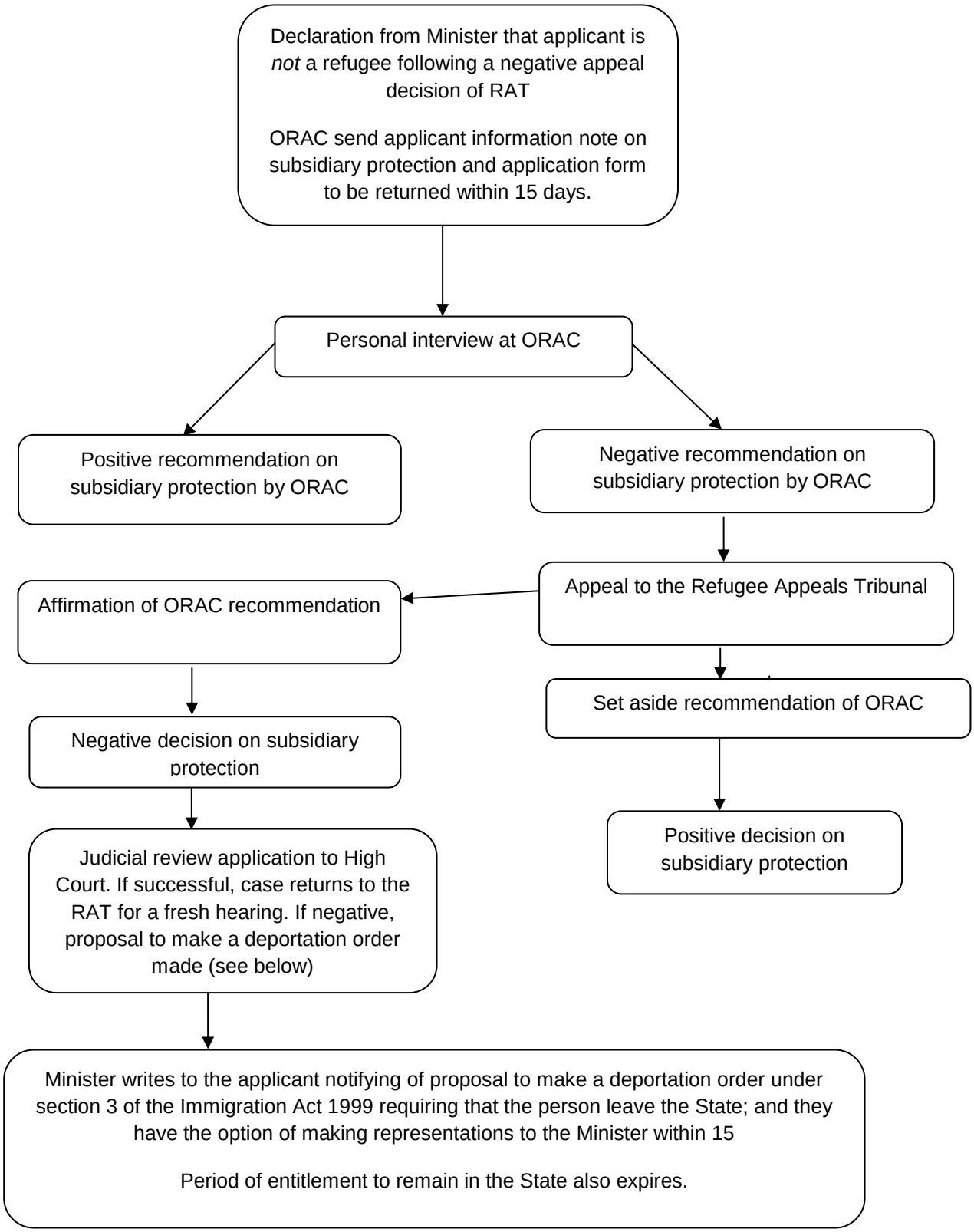
1. Flow Chart

Refugee Status procedure[14]



[14] ***Since 8 October 2014 it is possible to apply for refugee status and subsidiary protection status at the same time. However the subsidiary protection aspect of the claim will only be examined once a refusal decision has been reached for the asylum claim.***

Subsidiary protection procedure:



2. Types of procedures

Indicators:

Which types of procedures exist in your country? Tick the box:

- regular procedure: yes ☒ no ☐
- border procedure: yes ☒ no ☐
- admissibility procedure: yes ☐ no ☒
- accelerated procedure (labelled as such in national law): yes ☒ no ☐
- Accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure): yes ☒ no ☐
- Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): yes ☒ no ☐
- Dublin Procedure yes ☒ no ☐

Are any of the procedures that are foreseen in national legislation, not being applied in practice? If so, which one(s)? None

3. List of authorities intervening in each stage of the procedure

Stage of the procedure	**Competent authority in in original language**
Application at the border:	Garda National Immigration Bureau
Application on the territory	Office of the Refugee Applications Commissioner (ORAC)
Dublin (responsibility assessment)	Office of the Refugee Applications Commissioner
Refugee status determination	Office of the Refugee Applications Commissioner
Appeal procedures: -Refugee and subsidiary protection appeals	Refugee Appeals Tribunal
Subsidiary Protection	Office of the Refugee Applications Commissioner (ORAC)
Initial determination of subsequent application for asylum and applications for leave to remain in the State under section 3 of the Immigration Act 1999	Department of Justice

4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)

Name in English	**Number of staff**	**Ministry responsible**	**Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N**
Office of the Refugee Applications Commissioner	Not available	Independent Office (who submit recommendations to the Minister for Justice)	If the Minister considers that it is necessary in the interests of national security or public order, he by order: a. Provide that s. 3 (certain rights of refugees), s.9 (leave to enter or remain in the State) and s.18 (family reunification) of the Refugee Act shall not apply b. Require the person to leave the State.

5. Short overview of the asylum procedure

An asylum application may be lodged at the Office of the Refugee Applications Commissioner (ORAC). The application should be lodged at the earliest possible opportunity as any undue delay may prejudice the application. If the applicant made a claim for refugee status at the port of entry, they must attend ORAC to complete the initial asylum process. Failure to attend ORAC within 5 working days will lead to the application being deemed withdrawn. Under a new administrative notice issued by ORAC in October 2014 any person who makes an application for refugee status may also make an application for subsidiary protection in ORAC. This applies also with respect to applicants who currently have an application for refugee status pending. However, the subsidiary protection aspect of the claim will only be investigated should the applicant's application for refugee status be refused. This change in practice occurred in response to the Court of Justice of the European Union (CJEU) ruling in C-604/12, *H.N. v the Minister for Justice, Equality and Law Reform*.[15]

During the initial appointment at ORAC the applicant first fills out an application form (known as Section 8 declaration, Section 8 being the relevant Section in the Refugee Act 1996) and is interviewed by an immigration officer or authorised officer of ORAC to establish basic information. The applicant is then given a long Questionnaire which must be completed and returned at a specified time and date. The information supplied in the Questionnaire will be considered in assessing the asylum application. The applicant is also notified of the date and time of their substantive asylum interview. The purpose of the interview is to establish the full details of the claim for asylum.[16] The applicant is also advised that they may obtain legal assistance from the Refugee Legal Service.

The applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA) for accommodation, from where the applicant will be taken to a reception centre in Dublin.

An application for refugee status may be examined under the Dublin Regulation by ORAC.[17] During the initial appointment at ORAC an applicant's fingerprints are taken and are entered in to the Eurodac database.

After the substantive asylum interview, a report is completed based on the information raised at the interview and in the written Questionnaire as well as relevant country of origin information or submissions by UNHCR. The report contains a recommendation as to whether or not status should be granted.

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15 Court of Justice of the European Union, Case C-604/12, *H.N. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, judgment of 8 May 2014. Regulations will be introduced in the future in response to this judgment and pending that the administrative notice was issued by ORAC on 8 October 2014. See ORAC, *Important Notice regarding the making of applications for Subsidiary Protection by Applicants for Refugee Status*, SP/03, 8 October 2014.

16 Ireland operates a split protection system so subsidiary protection is not considered at this stage. It is possible to apply for subsidiary protection at the same time of applying for refugee status but the application for subsidiary protection will only be examined after a decision refusing the application for asylum has been received.

17 Article 3 of S.I. No. 525 of 2014 European Union (Dublin System) Regulations 2014[17] Ireland operates a split protection system so subsidiary protection is not considered at this stage. It is possible to apply for subsidiary protection at the same time of applying for refugee status but the application for subsidiary protection will only be examined after a decision refusing the application for asylum has been received.

17 Article 3 of S.I. No. 525 of 2014 European Union (Dublin System) Regulations 2014

a) If a positive recommendation is made, the applicant is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of refugee status.

b) The implications of a negative recommendation depend on the nature of the recommendation:

    a. If ORAC deems the application withdrawn, the Minister and applicant are advised of this recommendation. There is no appeal.
    b. Following a normal negative recommendation, the applicant usually has 15 working days to appeal to the Refugee Appeals Tribunal (RAT). The applicant is provided with the reasons for the negative recommendation. They may request an oral hearing before the RAT; if an oral hearing is not requested the appeal will be dealt with on the papers. Free legal representation can be obtained through the Refugee Legal Service.
    c. If the negative recommendation includes (1) a finding that the applicant showed little or no basis for the claim; (2) that the application is manifestly unfounded; (3) that the applicant failed to make an application as soon as reasonably practicable; (4) that the applicant has a prior application with another state; or (5) that the applicant is a national of, or has a right of residence in, a safe country, the deadline for filing an appeal is 10 working days. In these cases the applicant is not entitled to an oral hearing.
    d. If the applicant falls within a category of persons designated by the Minister and the recommendation includes one of the findings listed above, the applicant has 4 working days to lodge an appeal. There is no oral hearing.

If the RAT decide to set aside the ORAC decision the file will also be transferred to the Department of Justice so the Minister can declare the applicant a refugee.

If the RAT decides to affirm the ORAC decision the individual will be sent a notice in writing stating that the application for a declaration as a refugee has been refused. The notice will include an information note on subsidiary protection and an application form for subsidiary protection. If the person considers that they may be eligible for subsidiary protection, they complete and return the form to ORAC within 15 working days from the sending of the notice.

Under new procedures introduced in 2013 as a result of the Court of Justice of the EU judgment in *M. M.*[18] all applicants for subsidiary protection are now being offered a personal interview with ORAC regarding their subsidiary protection application.

After the interview a written report will be prepared on the results of the investigation of the application and a recommendation made by ORAC to the Minister for Justice and Equality as to whether the person is eligible for subsidiary protection.

In the event of a negative recommendation, the person will be entitled to appeal the recommendation to the RAT within 15 working days from the sending of the notice of ORAC's negative recommendation. The Tribunal will hold an oral hearing where the applicant requests this in their notice of appeal; otherwise, the appeal may be determined without an oral hearing.

If the subsidiary protection application is unsuccessful the applicant will be sent a notice in writing stating that: (a) the application for subsidiary protection has been refused; (b) the period of 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 the person leave the State; and (d) the person has the option of making representations to the Minister within 15 working days setting out why they should be allowed to remain in the State. This application is commonly referred to as an application for 'leave to

[18] Court of Justice of the European Union, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012.

remain' and is handled by a division of the Department of Justice. It is an administrative procedure and there is no oral hearing.

An applicant may seek to have a refugee or subsidiary protection recommendation of ORAC or a decision of the RAT judicially reviewed by the High Court. It is expected that an applicant will exhaust their remedies before applying for judicial review and therefore most judicial reviews are of recommendations of the RAT rather than ORAC. There are special time limits and procedures for bringing judicial review proceedings in respect of most asylum decisions. For judicial reviews of ORAC and the RAT an applicant must be granted permission (known as leave) to apply for judicial review before proceeding to a full judicial review hearing. Because of the volume of judicial review cases that have been brought to challenge decisions over the last number of years, and the procedure of having both pre-leave and full hearings, there is a large backlog of cases awaiting determination. The High Court can affirm or set aside the decision of the first instance or appellate body. If the applicant is successful, their case is returned to the original decision making body for a further determination. Over the last number of years, it has not been uncommon for there to be a second judicial review application after a further determination.

As part of the Statement of Government Priorities 2014-2016 the government committed to legislating to reduce the length of time applicants spend in the Direct Provision system through the establishment of a single applications procedure introduced by way of a Protection Bill. Furthermore, on 7 January 2015 Ms. Frances Fitzgerald, TD, Minister for Justice and Equality announced that the government was going to publish an International Protection Bill in the coming weeks which will provide for a single asylum procedure system in Ireland among other amendments. According to the Minister the purpose of the Bill is to speed up and simplify the process of claiming asylum in Ireland. [19] According to the Minister for Justice and Equality, legislative reform of the asylum system is a key Government priority to remove the structural delays in the existing asylum system.[20]

In late 2014 the Irish Refugee Council and Doras Luimni published a proposal for a one-off scheme to clear the backlog of people in the protection process before the introduction of a single protection procedure, The document sets out the different categories that people come in to and why each of them should be included in a scheme to grant some form of status in Ireland.[21]

B. Procedures

1. Registration of the Asylum Application

Indicators :

- Are specific time limits laid down in law for asylum seekers to lodge their application?
  ☒ Yes ☐ No
- If so, and if available specify
  - the time limit at the border: 5 working days
  - the time limit on the territory: n/a
  - the time limit in detention: 21 days, renewable
- Are there any reports (NGO reports, media, testimonies, etc) of people refused entry at the border and returned without examination of their protection needs? ☐ Yes ☒ No

19 The Irish Times, *New Government Bill to speed up asylum process*, 7 January 2015.

20 INIS Press Release, *Immigration in Ireland – 2014*, 26 January 2015.

21 Irish Refugee Council and Doras Luimni, Proposal*: Proposal for a one-off scheme to clear the backlog of people in the protection process before the introduction of a single protection procedure*.

The right to apply for asylum is contained in section 8 of the Refugee Act 1996.

The Office of the Refugee Applications Commissioner (ORAC) is the body responsible for registering asylum applications as well as taking the first instance decision.

As a result of S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 ORAC's remit is extended to making recommendations on subsidiary protection applications, both future applications and the existing backlog of applications, which numbered, in November 2013, approximately 3000-3500 persons. An individual must first apply for and be refused asylum before they can apply for subsidiary protection or 'leave to remain'.

The question of whether an applicant can apply for subsidiary protection without having made an application for asylum was referred by the Irish Supreme Court to the Court of Justice of the European Union in *H.N. -v- Minister for Justice*[22]. The Court of Justice stated in May 2014 that a person applying for international protection must be able to submit an application for refugee status and subsidiary protection at the same time and that there should be no unreasonable delay in processing a subsidiary protection application. The Irish Refugee Council, responding to the CJEU decision, stated that it provides a clear mandate for reform of the existing procedure in Ireland.[23] In response to the judgment in October 2014, ORAC issued administrative notice pending the issue of amended Regulations, enabling applicants for refugee status to apply for subsidiary protection at the same time. Although the actual consideration of the subsidiary protection application will only occur once the Minister for Justice and Equality has refused refugee status.[24]

In relation to families, all adult family members must make their own applications. Children have the right to apply independently but if they are accompanied by a parent, they can be considered as a dependent on the parent's claim. Children born in Ireland to parents who have made an application must also apply for asylum or risk losing financial and medical support and accommodation with the reception system.

Immigration officers at the border, attached to the Garda National Immigration Bureau (GNIB)[25], have no power to assess a claim for asylum. Where a person has stated an intention to claim asylum at the border, they must present themselves at ORAC in order to complete the initial asylum process. Failure to do so or, failure to provide an address to ORAC, within five working days will lead to the application being deemed withdrawn. According to the ORAC Annual Report 2013 applicants initially requested asylum in the airport in 183 cases, representing 19.3% of the number of asylum applications submitted in 2013.[26]

A person refused leave to land (entry to the country) may be detained pending removal and, at that point, claim asylum. If their detention is maintained, the notification to ORAC of the intention to claim asylum must, according to the procedures laid out by ORAC, come from the prison authorities, in particular the prison Governor, and not from the detainee or their solicitor. This can lead to delay in the registration of the application. In addition, unless the passenger at the port is explicit about claiming asylum, there is a possibility that the authorities will, if they have issued a refusal of leave to land notice, not release the person to allow them to go to ORAC but may remove the passenger to the country from which they have just travelled. Reports of such occurrences are occasionally received by lawyers and NGOs; however, it is very difficult to follow up on such incidences.

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22 Supreme Court, Order for Reference, *H.N. v. Minister for Justice* [2012] IESC 58, 19 December 2012).

23 Irish Refugee Council, European Court judgment shows need for urgent legislative reform, 12th May 2014.

24 ORAC, *Important Notice regarding the making of applications for Subsidiary Protection by Applicants for Refugee Status*, SP/03, 8 October 2014.

25 The Garda National Immigration Bureau is a department of An Garda Síochána, which is the national police service of Ireland and who performs duties similar to border guards in other countries.

26 ORAC, Annual Report, 2013, page 56.

If the application is not made to ORAC within what is described as a reasonable period and if there is no satisfactory explanation for the delay, the authorities (both ORAC and the Refugee Appeals Tribunal), are required, as a matter of law, to consider that as a factor which undermines the credibility of the claim for asylum. This is set out in section 11B of the Refugee Act 1996 as amended by the Immigration Act 2003. There is no definition of reasonableness in this context – the concept is dependent on the facts of each specific case. The issue of delay will be taken into account in an assessment of credibility, along with the other considerations in section 11B.

There is no assistance given to enable someone to travel to the ORAC office in order to register a claim for asylum. Despite this, delay in making the application as soon as possible after arrival can damage the credibility of the claim. After a claim has been registered, an applicant accommodated in the Direct Provision system of accommodation will be funded by a Department of Social Protection representative (formerly known as Community Welfare Officers) to travel to official appointments which includes further attendance at the ORAC office in connection with their application for asylum. At the screening process with ORAC, the applicant makes a formal declaration that they wish to apply for asylum, this is known as the Section 8 declaration, which refers to the relevant Section in the 1996 Refugee Act. The applicant is interviewed by an authorised officer of ORAC to establish basic information, which is inserted into a form entitled 'ASY1'. The interview takes place in a room (where other people are waiting and being interviewed) and is conducted by an official who sits behind a screen. If necessary, an interpreter may be made available if this is possible.

The applicant is required to be photographed and finger-printed. If the applicant refuses to be fingerprinted, they will be deemed not to have made reasonable effort to establish their true identity and to have failed to cooperate. Occasionally this can lead to detention and will likely affect the credibility of the application.

The short initial interview seeks to establish identity, details of the journey taken to Ireland, including countries passed through in which there was an opportunity to claim asylum; any assistance obtained over the journey; the method of entry into the state (legally or otherwise); brief details of why the applicant wishes to claim asylum and preferred language. This interview usually takes place on the day that the person attends ORAC. If the person is detained, the interview may take place in prison.

The information taken at the screening interview enables ORAC to ascertain if the person applying for asylum has submitted an application for asylum in, or travelled through, another EU country by making enquiries through Eurodac.

At the end of the interview the applicant is given detailed information on the asylum process. This information is available in 24 languages. The applicant is given a long Questionnaire which must be completed and returned at a specified time and date, usually ten working days but possibly fewer. The information supplied in the Questionnaire will be considered in assessing the asylum application.

The Questionnaire is available in 24 languages, so that anyone able to read and write in one of those languages may be able to complete the Questionnaire in a familiar language. Part 1 requests biographical information. Part 2 requests documentation or an explanation if no documents are available. Part 3 is about the basis of the claim: reason for leaving country of origin; grounds for fearing persecution; membership of any political, religious, or military organisation; fear of authorities; steps taken to seek protection of authorities or internally relocate; incidents of arrest or imprisonment of the applicant or friends or relatives; and reasons for fear of return. Part 4 addresses travel details including any previous trips or residence abroad, applications for visas, assistance with journey and any previous applications for asylum. Part 5 asks for information about completion of the Questionnaire and any assistance given.

The applicant is issued a Temporary Residence Certificate which comes in the form of a plastic card and referred to the Reception and Integration Agency (RIA), from where the applicant will be taken to Balseskin Reception Centre in Dublin (near Dublin airport).

The applicant is advised that they can register with the Refugee Legal Service (RLS), a division of the Legal Aid Board.

There is no accelerated procedure for an application in which the individual delayed claiming asylum but applications from certain nationalities (currently Nigerian) can be prioritised which leads to a quicker determination of the application and the curtailment of appeal rights. Other nationalities (currently South African) may also find themselves subjected to a truncated procedure on the grounds that those countries have been designated by the Minister as safe countries for the purposes of considering asylum applications from those states. If an applicant is from a country designated a safe country of origin a burden is placed on the applicant to rebut the presumption that they are not a refugee.

As mentioned above the Questionnaire usually has to be completed and returned to ORAC within 10 working days. At the same time as receiving the Questionnaire the applicant is also notified of the date of their substantive interview, which is usually 10 working days after the date on which the Questionnaire should be returned. If the Questionnaire is not in English it is submitted for translation.

There were no reports of push backs or refoulement. A person who arrives in Ireland seeking entry may be refused leave to land. If that person then seeks to claim asylum they should be permitted to enter the for that purpose.

2. Regular procedure

General (scope, time limits)

Indicators:

- Time limit set in law for the determining authority to make a decision on the asylum application at first instance (in months): ☒ Not applicable
- Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? ☒ Yes ☐ No
- As of 31st December 2012, the number of cases for which no final decision (including at first appeal) was taken one year after the asylum application was registered ☒ Not applicable

The Office of the Refugee Applications Commissioner (ORAC) is a specialised independent office, tasked with determining asylum applications at first instance, assessing whether the Dublin III Regulation applies and since November 2013, assessing subsidiary protection applications.

As a result of Statutory Instrument No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 ORAC now considers and makes recommendations on applications for subsidiary protection. Applications under Section 3 of the Immigration Act 1999, often referred to as 'leave to remain', in which the person gives reasons why they should not be deported, are handled by the Irish Naturalisation and Immigration Service, a division of Department of Justice. ORAC also assesses the applicability of the Dublin III Regulation as a result of Statutory Instrument No. 525 of 2014 European Union (Dublin system) Regulations 2014.

There is no time limit in law for ORAC to make a decision on the asylum application at first instance.[27] ORAC endeavour to deliver a recommendation at first instance on whether the person should be

[27] There is no time limit in law. Alan Shatter, Minister of Justice, stated in July 2013 that a reason Ireland was not opting in to the 'recast' asylum procedures directive was because the recast proposed that Member

granted a declaration of refugee status within six months of the application. If a recommendation cannot be made within 6 months of the date of the application for a declaration, ORAC shall, upon request from the applicant, provide information on the estimated time within which a recommendation may be made. However, there are no express consequences for failing to decide the application within a given time period. ORAC stated in 2013 that the median processing time for general asylum applications was 12 weeks.[28]

Under section 12(1) of the Refugee Act 1996, the Minister may give a direction to ORAC to give priority to certain classes of applications. The Minister has issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in South Africa. This means that if an applicant falls within the above categories their application will be given priority and may be dealt with by the Commissioner before other applications. In 2013, 28 applications were processed under the Ministerial Prioritisation Directive. Such cases were completed within a median processing time of 25 working days from the date of application.[29]

In accordance with requirements under the Refugee Act, 1996, ORAC also prioritised applications from persons in detention. The preliminary interview in these cases is carried out within 3 working days of the date of their application in so far as possible. In 2013 a total of 24 applications for asylum were received by persons in detention which constituted 2.5% of all applications received in 2013.

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure: ☒ Yes ☐ No
  - if yes, is the appeal ☒ judicial ☐ administrative
  - If yes, is it suspensive ☒ Yes ☐ No
- Average processing time for the appeal body to make a decision:
  The median length of "time taken" by the Tribunal to process and complete a substantive 15 day appeal in 2013 was 18 weeks.
  The median length of time taken by the Tribunal to process and complete an accelerated appeal was 12 weeks.
  The median length of time taken by the Tribunal to process and complete a Dublin Regulation appeal was 10 weeks.

The Refugee Appeals Tribunal (RAT) was established on 4 October, 2000 to consider and decide appeals against recommendations of the Office of the Refugee Applications Commissioner (ORAC) that applicants should not be declared to be refugees. This legislation makes provision for both substantive appeals and accelerated appeals. It also provides for appeals of determinations made by ORAC pursuant to the Dublin Regulation.

Statutory Instrument No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 gives the RAT jurisdiction to hear appeals against decisions of ORAC on subsidiary protection. In addition,

States would ensure that the examination procedure was concluded within 6 months after the date the application is lodged, with a possible extension of a further 6 months in certain circumstances. Alan Shatter stated that these time limits could impose additional burdens on the national asylum system if there was a large increase in the number of applications to be examined in the State, especially considering previous increases in the period 2001 to 2003.

28 Office of the Refugee Applications Commissioner, Annual Report 2013, page 15.

29 Office of the Refugee Applications Commissioner, Annual Report, 2013, page 5.

Statutory Instrument No. 525 of 2014 European Union (Dublin system) Regulations gives the RAT jurisdiction to hear appeals against decisions of ORAC on Dublin transfers under the Dublin III Regulation. Dublin appeals are based on facts and law and the Tribunal shall make a decision in writing either affirming or setting aside the transfer decision by ORAC.[30]

The RAT is a judicial body, the Refugee Act 1996 states that it shall be independent in the performance of its functions.

Paragraph 2(a) of the Second Schedule to the Refugee Act, 1996 (as amended) states that members of the RAT shall be appointed by the Minister. They work and are paid on a per case basis. Cases are allocated by the chair of the Tribunal according to publicly available guidance.

In August 2013, following a public competition through the Public Appointments Service, a new Chairperson was appointed.

In 2012 there were 23 Tribunal Members, their term of office expired in 2012 and 2013. On 11 November 2013, six Tribunal Members were appointed, five of whom were new Tribunal members, one was an existing Tribunal member. A further four Tribunal Members were appointed in March 2014.[31] Since then a further four Tribunal members were appointed in June, two in August and one in November 2014.[32] There are currently 18 part time Tribunal members appointed to the Refugee Appeals Tribunal. Applications for expressions of interest for the recent appointment of members of the RAT were examined in the first instance by the Department of Justice in conjunction with the Public Appointments Service. Selection of candidates considered suitable for appointment by the Minister was based on a paper application.[33]

Alan Shatter, Minister for Justice, Equality and Defence, stated in February 2014 that the new Chairperson of the RAT had begun a major review of its practices, procedures and guidelines.[34] In September, 2013 the Assigning Policy of the Tribunal was published, which details how cases are assigned amongst the various members of the Tribunal. The new Chairperson has also established a RAT Users Group which comprises the Chairperson and representatives nominated by the Law Society and the Bar Council. In August 2013, the Chairperson of the RAT issued guidance note 2013/1 which states that Tribunal members should take account of the UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Afghanistan.[35] Since then the Chairperson has issued the following guidance notes: Access to previous decisions archive[3637], child guidance note.[38]

The rules surrounding the right to appeal and time limits to do so depend on the nature of the negative decision of ORAC:

a. If ORAC deems the application withdrawn, the Minister and applicant are advised of this recommendation. There is no appeal.

30 Statutory Instrument No. 525 of 2014 European Union (Dublin System) Regulations 2014.

31 See the list of Members appointed on the Refugee Appeals Tribunal's website.

32 *ibid*.

33 See the call for expression of interests here.

34 Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Catherine Murphy TD, 27 February 2014.

35 Refugee Appeals Tribunal, Office of the Chairperson, Guidance Note No: 2013/1, 29 August 2013.

36 Refugee Appeals Tribunal, Office of the Chairperson. Guidance Note No: 2014/1, Access to Previous Decisions Archive, 11 March 2014.

37 The access to previous decisions archive guideline authorizes access to any person to the decisions archive for any lawful purpose as and from 11 March 2014.

38 Refugee Appeals Tribunal, Office of the Chairperson, Guidance Note No: 2015/1 Appeals from Child Applicants, 14 January 2015.

b. Following a normal negative recommendation, the applicant has 15 working days to appeal to the RAT. The applicant is provided with the reasons for the negative recommendation. They may request an oral hearing before the RAT; if an oral hearing is not requested the appeal will be dealt with on the papers. Free legal representation can be obtained through the Refugee Legal Service.

c. If the negative recommendation includes (1) a finding that the applicant showed little or no basis for the claim; (2) that the application is manifestly unfounded; (3) that the applicant failed to make an application as soon as reasonably practicable; (4) that the applicant has a prior application with another state; or (5) that the applicant is a national of, or has a right of residence in, a safe country, the deadline for filing an appeal is 10 working days. In these cases the applicant is not entitled to an oral hearing.

d. If the applicant falls within a category of persons designated by the Minister and the recommendation includes one of the findings listed above in (c), the applicant has 4 working days to lodge an appeal. There is no oral hearing.

e. For subsidiary protection appeals the applicant has 15 working days from the sending of the notice of the Commissioner's negative recommendation. The Tribunal will hold an oral hearing if requested by the applicant in their notice of appeal; otherwise, the appeal may be determined without an oral hearing.

The RAT received 660 appeals in 2013 and 424 hearings were scheduled in 2013.[39] The length of time for appealing a decision is generally between 10 and 15 working days depending on the recommendation of the Commissioner. There is legal provision for a 4 working day appeal; however this has not been used to date. All appeals of substantive asylum or subsidiary protection decisions and Dublin appeals are suspensive.

Legal aid for appeals is available through the Refugee Legal Service.

Where an oral hearing is held, these are conducted in an informal manner and in private. Private hearings has been criticised by various NGOs. The applicant's legal representative may be present as well as any witnesses directed to attend by the Tribunal. Witnesses may attend to give evidence in support of the appeal, e.g. a country of origin expert or a family member. The Refugee Applications Commissioner or an authorised officer of ORAC can also attend. UNHCR may attend as an observer; in 2012 it did so in 'a number of cases' and also provided observations in a number of cases.[40]

Section 4 of Statutory Instrument No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011 states that an applicant who is having a substantive interview with ORAC shall, whenever necessary for the purpose of ensuring appropriate communication during the interview, be provided by the Commissioner with the services of an interpreter.

If an oral hearing is not granted, the Tribunal makes a decision based on:

- Notice of Appeal submitted by the applicant or their legal representative
- Documents and reports furnished by the Office of the Refugee Applications Commissioner (ORAC)
- Any further supporting documents submitted by the applicant or their legal representative
- Notice of enquiries made or observations furnished by ORAC or the High Commissioner.

39 Refugee Appeals Tribunal, Annual Report 2013, page 23.

40 UNHCR Ireland 2012 snapshot.

The length of time for the Tribunal to issue a decision is not set out in law. The median length of 'time taken' by the Tribunal to process and complete a substantive 15 day appeal in 2013 was 18 weeks. The median length of time taken by the Tribunal to process and complete an accelerated appeal was 12 weeks. The median length of time taken by the Tribunal to process and complete a Dublin Regulation appeal was 10 weeks.[41]

On the 11th March 2014 the Chairperson of the RAT issued Guidance Note (No: 2014/1) which stated that from that date any person may access the archive of Tribunal decisions for any lawful purpose.[42] The Note also stated that all matters which would tend to identify a person as an applicant for refugee status have been removed/omitted so that the identity of applicants is kept confidential; if removal could not sufficiently protect the identity of an applicant the decision would not be published. This is a significant change in practice; a major criticism of the RAT in the past has been that decisions were not publicly available.

A decision of the RAT may be challenged by way of judicial review in the High Court. This is a review on a point of law only and cannot investigate the facts. In addition, the applicant must obtain permission (also called 'leave') to apply for judicial review. This is a lengthy process. The RAT had 812 active judicial reviews by the end of year 2013 and 75 of which were applications filed for judicial review in 2013.[43]

According to the Irish Court Service Annual Report 2013 the waiting time for judicial review applications to be considered is lengthy with pre-leave times for applying for judicial review of 30 months and post-leave times of four months.[44] There was a 13% decrease in asylum-related judicial review applications in 2013 compared to 2012.[45] 385 new asylum-related judicial review applications were made in the High Court in 2013 compared to 440 in 2012. [46]Asylum related judicial reviews represented 40% of all judicial review applications in 2013.[47]
When the application for judicial review is made, a stay on the deportation process is also sought simultaneously. The Department of Justice and Equality legal costs for judicial reviews taken against ORAC and RAT in 2014 amounted to €2.2 million as of August 2014.[48]

As noted above Statutory Instrument No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 gives the RAT jurisdiction to hear appeals against decisions of ORAC on subsidiary protection. In practice, this will mean that the RAT will hear the appeal against a person's negative asylum decision. If the asylum decision of ORAC is affirmed the person will then be notified by ORAC of their right to apply for subsidiary protection. If ORAC recommend that the person not be given subsidiary protection then RAT will hear the appeal against that decision.

41 Refugee Appeals Tribunal, Annual Report 2013, page 31.
42 Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.
43 Refugee Appeals Tribunal, Annual Report 2013, page 12.
44 Court Services, Annual Report 2013, page 56.
45 Irish Courts Service, Annual Report, 2013 page 31.
46 Asylum-related judicial review applications denotes judicial review applications submitted against ORAC, RAT and /or the Minister for Justice and Equality in the field of asylum,.
47 Ibid.
48 Frances Fitzgerald, Minister for Justice and Equality, Written Answers to Parliamentary question from Niall Collins TD; Department of Justice and Equality, Departmental Legal Costs, 24 September 2014.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure? ☒ Yes ☐ No
  - If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- In the regular procedure, is the interview conducted by the authority responsible for taking the decision? ☒ Yes ☐ No
- Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

Refugee applications

The Refugee Act 1996 as amended provides for an initial interview by an authorised officer of the Office of the Refugee Applications Commissioner (ORAC) or an immigration officer on applying for a declaration. This first interview is to establish:

a) Whether the person wishes to make an application for a declaration of refugee status and is so, the general grounds upon which the application is based;
b) The identity of the person;
c) The nationality and country of origin of the person;
d) The mode of transport used and the route travelled by the person to the State;
e) The reason why the person came to the State; and
f) The legal basis for the entry into or presence in the State of the person.

The legislation provides for a further substantive personal interview for all applicants, including those prioritised, after the submission of the written Questionnaire. The interview is conducted by an Authorised Officer who has usually consulted country of origin information in advance. The interview is to establish the full details of the claim for asylum. A legal representative can attend the interview and is asked to sign a code of conduct to be observed when attending the interview.

It is possible to request an interviewer of a particular gender. ORAC stated that in 2012 they endeavoured to ensure that the interpreter (if applicable) and the caseworker were of the same gender as the applicant, subject to availability, if this was requested.

Unaccompanied children are usually accompanied by their social worker or another responsible adult. S. 11 of the Refugee Act 1996 (as amended by Statutory Instrument No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011 states that interviews are conducted without the presence of family members save in certain circumstances where the Commissioner considers it necessary for an appropriate investigation, anecdotal evidence suggests that such circumstances rarely occur. The interview is the primary opportunity to state why they are seeking asylum and cannot return home.

Section 4 of Statutory Instrument No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011 states that an applicant who is having a substantive interview with ORAC shall, whenever necessary for the purpose of ensuring appropriate communication during the interview, be provided by the Commissioner with the services of an interpreter. If an interpreter is deemed necessary for ensuring communication with an applicant, and one cannot be found, the interview is usually postponed until one can be found. There are no known languages, of countries from which asylum seekers in Ireland typically originate, for which interpreters are not available.

The ORAC officer conducting the interview makes a record of the information given and that information is read back to the applicant periodically during the interview or at the end of the interview and are requested to sign each page to confirm that it is accurate or to flag any inaccuracies. The interview is usually recorded on a laptop but may also be recorded by handwritten notes. There is no system for independent recording of the interviews, even where a legal representative is not present. The official record of the interview remains the possession of ORAC and a copy is not given to the applicant or their legal representative until and unless the applicant receives a negative decision.

In some cases, a subsequent interview is required, for example if there are further questions that need to be asked or if the authorised officer has done further research. Interviews may on occasion be adjourned in the event that there is a problem with interpretation or illness.

Subsidiary protection applications

As a result of Statutory Instrument No. 426/2013 European Union (Subsidiary Protection) Regulations 2013,[49] ORAC now considers and makes recommendations on applications for subsidiary protection. The Statutory Instrument is considered a response to the requirements suggested in the ruling of the Court of Justice of the EU in *M. M. v. Minister for Justice.*[50] The Statutory Instrument creates various changes.

ORAC shall now give to an applicant a temporary residence certificate while their subsidiary protection application is being considered.

The applicant is also required to attend for an interview in relation to the application. The purpose of the interview is to establish the full details of the claim for subsidiary protection. Where an applicant does not attend for their scheduled interview their application may be deemed to be withdrawn. 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.

The Statutory Instrument states that persons "with whom the Minister has entered into a contract for services" are empowered to carry out the functions of ORAC, except for their recommendation in relation to the application. In effect this means that ORAC is empowered to contract an external panel of case workers who will interview applicants and draw up reports and decisions for final approval by the Commissioner. These new panel members may also appear in the RAT to represent ORAC in Appeals.

The Statutory Instrument also introduces various changes to the law, including *removing* the provision, contained in Statutory Instrument No. 518 of 2006, that a person could be eligible for protection on account of compelling reasons arising out of previous persecution or serious harm alone, i.e. that a person is given protection even when there is no future risk. Also, the Statutory Instrument states that ORAC or the RAT shall assess the credibility of an applicant for the purposes of the investigation of their application or the determination of an appeal in respect of their application and in doing so shall have regard to all relevant matters. This is a significant amendment compared to the long list of issues specified in Section 11B of the Refugee Act 1996 that ORAC or RAT should take in to account when considering credibility.

Significant progress was made by ORAC to clear the backlog of subsidiary protection applications in 2014. The recruitment of an external panel of caseworkers was a significant contributing factor to the

[49] Statutory Instrument No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013.

[50] CJEU, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012.

clearing of the backlog. The external panel of caseworkers is commonly referred to as the case processing panel and it consists of legal graduates and was first established in 2013. The aim of the case processing panel is to assist ORAC to carry out their functions to optimum effect by assisting the processing of subsidiary protection claims. Therefore they conduct interviews and produce reports to the ORAC authorized officers as well as representing ORAC at appeal hearings. On 28 January 2015 ORAC issued a further recruitment drive for additional case processing panel members to also assist with asylum applications.[51] According to the Minister for Justice and Equality it is anticipated that most of the backlog at the ORAC stage will have been cleared by the end of the first quarter of 2015.[52]

In the subsequent national proceedings to the preliminary reference in the CJEU case of *M.M. V Minister for Justice* a further preliminary reference has been sought by the Irish Supreme Court to clarify aspects of the *M.M.* judgment and the following question has been raised by MacMenamin J. on the 7th November 2014: *"Does the "right to be heard" in European Union law require that an applicant for subsidiary protection, made pursuant to Council Directive 2004/83/EC, be accorded an oral hearing of that application, including the right to call or cross-examine witnesses, when the application is made in circumstances where the Member State concerned operates two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection, respectively?*[53]

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the regular procedure in practice? ☒ Yes ☐ not always/with difficulty ☐ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a negative decision? ☒ Yes ☐ not always/with difficulty ☐ No
- In the first instance procedure, does free legal assistance cover:
  ☐ representation during the personal interview ☒ legal advice ☐ both ☐Not applicable
- In the appeal against a negative decision, does free legal assistance cover :
  ☐ representation in courts ☐ legal advice ☒ both ☐Not applicable

The Refugee Legal Service (RLS) is a division of the state-funded Legal Aid Board, an independent statutory body funded by the State. To qualify for legal services in respect of their asylum application, the applicant's income (less certain allowances) must be less than €18,000 per annum. Applicants in Direct Provision (the state system of reception, accommodation and support) are generally eligible for legal services at the minimum income contribution, but may apply to have some of the contribution waived, at the discretion of the Legal Aid Board. Strictly speaking, there is a small fee to be paid of €10 for legal advice and €40 for representation, but this is invariably waived by the Refugee Legal Service.

Asylum applicants can register with the RLS as soon as they have made their application to ORAC. All applicants are assigned a solicitor and a caseworker. At first instance, however, an applicant does not normally meet the solicitor but is given legal information about the process by a caseworker under the supervision of a solicitor. It does not usually include advice on the facts of the case or assistance in

51 For further information see www.orac.ie

52 INIS Press Release, *Immigration in Ireland – 2014*, 26 January 2015.

53 Supreme Court, *M.M. v. Minister for Justice and Equality, Ireland and the Attorney General*, Appeal No. 204 & 212 of 2013]. At the time of writing the author is unaware whether this preliminary reference request has been published in the Official Journal of the European Union. SCOIRL, *MM v. MJELR: Does the right to be heard in EU law mean the right to an oral hearing?* 11 November 2014.

completing the Questionnaire, unless the applicant is particularly vulnerable (e.g. a minor or a person who cannot read or write).

Under the Civil Legal Aid Act, legal advice is advice which is given by a solicitor/barrister. Unless the applicant is a child or a particularly vulnerable person (e.g. a victim of trafficking), a legal advice appointment with a solicitor, where advice is offered on the particular facts of the case, is not normally offered until the appeal stage, when both advice and representation before the Tribunal will be provided. Legal advice and representation is provided at appeal stage by in-house solicitors and through a panel of private solicitors and barristers maintained by the Refugee Legal Service.

The Irish Refugee Council Independent Law Centre is piloting a free early legal advice service which involves intensive legal assistance provided to the applicant at the very early stages of the asylum process.[54] This involves, an initial advice appointment with a solicitor, preferably prior to the application for asylum is made, accompaniment to ORAC to claim asylum, assistance with the completion of the Questionnaire and drafting of a personal statement based on the applicant's instruction, attendance at the substantive interview and submission of representations.

RLS services are provided in relation to the asylum procedure itself so matters outside the application (e.g. those related to reception conditions) are not covered by their legal advice and assistance. As with any other person, it is open to an applicant to apply to the Legal Aid Board for legal services in other matters; however, applicants may face substantial waiting lists.

In the event that the appeal to the Refugee Appeals Tribunal (RAT) is unsuccessful, the applicant must first of all seek the assistance of a private practitioner to get advice about challenging the decision by way of judicial review in the High Court. If they cannot get such private legal assistance, the RLS will consider the merits of the application for judicial review and may apply for legal aid to cover the proceedings.

A number of private Solicitors will bring cases for applicants for low cost where they are of the view that there is merit in the case and apply for legal costs in the event that the High Court action for judicial review is successful. There is anecdotal evidence that the climate of austerity has made taking such cases more risky for private practitioners as awards of costs are lower. As the Legal Aid Board has limited resources to bring judicial review proceedings themselves and where they do not pay private solicitors to bring such proceedings, it has been essential for applicants to have access to private practitioners who are willing to take cases without charging them significant fees upfront.

[54] For further information see The Researcher, Early Recognition of People in Need of International Protection: The Irish Refugee Council Independent Law Centre's Early Legal Advice and Representation Project, Jacki Kelly, Irish Refugee Council, October 2013.

3. Dublin

Indicators:

- Number of outgoing requests in 2013: 68 take charge requests and 108 take back requests: 176
- Number of incoming requests in 2013: 209
- Number of outgoing transfers carried out effectively in 2013: 84
- Number of incoming transfers carried out effectively in 2013 72

Source: ORAC Annual Report 2013.

Procedure

Indicator:

- If another EU Member State accepts responsibility for the asylum applicant, how long does it take in practice (on average) before the applicant is transferred to the responsible Member State?
  Information not available from authorities. The time will partly depend on the timing of the response from the responsible member state.

In 2014, 17 asylum seekers were transferred under the Dublin Regulation to other EU Member States.[55]

The Dublin II Regulation was transposed into Irish law through the Refugee Act 1996 (as amended).[56] It is implemented by the Dublin Unit in the Office of the Refugee Applications Commissioner (ORAC). The unit is responsible for determining whether applicants should be transferred to another state or have their application assessed in Ireland. The unit also responds to requests from other member states to transfer applicants to Ireland.

The Dublin III Regulation, as a Regulation, is binding in its entirety and applicable to Ireland. To give further effect to the Regulation in terms of changes to the national regulatory framework to assist its application in Ireland, Statutory Instrument No. 525 of 2014 European Union (Dublin System) Regulations 2014 was issued on 28 November 2014.

All applicants are photographed and fingerprinted during their initial interview with ORAC (see Registration of the Asylum Application). As part of the process applicants and dependent children are required to have photographs taken. They are also required to have their and their dependent children's fingerprints taken. Fingerprints may be disclosed in confidence to the relevant Irish authorities and to asylum authorities of other countries which may have responsibility for considering the application under the Dublin Regulation (an electronic system - Eurodac - facilitates transfer of fingerprint information between Dublin II Regulation countries).

Section 9A (5) of the Refugee Act 1996 states that an applicant who refuses to permit their fingerprints to be taken *shall* be deemed not to have made reasonable efforts to establish their true identity within the meaning of section 9(8)(c) of that Act, which means that they may be detained. This can have negative consequences for the applicant as a finding under this section shall mean that the applicant has failed in the duty to co-operate required by Section 11 C of the Refugee Act 1996. In turn, under Section 16 (2B), if it appears to the Tribunal that the applicant is failing in their duty to co-operate or if the Minister is of opinion that the applicant is in breach of subsection (4)(a), (4A) or (5) the Tribunal shall send to the applicant a notice in writing, inviting the applicant to indicate in writing (within 15 working

55 INIS Press Release, *Immigration in Ireland-2014*, 26 January 2015.

56 Section 22 Refugee Act 1996 (as amended), S.I. No. 423/2003 — Refugee Act 1996 (Section 22) Order 2003 and S.I. No. 343/2000 — Dublin Convention (Implementation) Order, 2000.

days of the sending of the notice) whether they wish to continue with their appeal and, if an applicant does not furnish an indication within the time specified in the notice, their appeal shall be deemed to be withdrawn.

At any time during the first instance application process, the ORAC may determine that the person is subject to the Dublin Regulation and make a decision that they will be transferred to another EU state. Where, before or during an interview under section 8 of the Act, it appears to an immigration officer or authorised officer that the application may be one which could be transferred under the Dublin Convention to another convention country under paragraph (1), they shall send a notice to that effect to the applicant, where possible in a language that the applicant understands. The individual can then make submissions in writing if they wish for their applications to be processed in Ireland. At this stage the Commissioner takes into account relevant information or submissions and representations made on the behalf of the individual in coming to a decision about their transfer. In accordance with Article 4 of Statutory Instrument No. 525 of 2014 European Union (Dublin System) Regulations 2014, ORAC must hold a personal interview with the person concerned as required under Article 5 of Regulation (EU) 604/2013.

In relation to specific guarantees for children in the Dublin procedure, ORAC is required under Section 3(3) of S.I. No. 525 of 2014 European Union (Dublin System) Regulations 2014 to consult with Tulsa (the Irish Child and Family Agency) on the best interests of the child particularly with respect to the child's well-being and social development and the views of the child.

In the past, some applicants have been unaware that they fall under the Dublin Regulation and do not make additional submissions. Anecdotal evidence also suggests that in the past some applicants are served with notice of a decision under the regulation and the transfer order simultaneously, thus precluding them from seeking assistance to challenge the decision. This also means that they are not ordinarily informed that a request has been made to take charge or take back. Detention may also occur at the same time in order to give effect to the removal to the third country.

All applicants are given recently issued information leaflets from ORAC and the European Commission entitled 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013which is a guide to the Dublin process in general. A separate information leaflet is also provided to persons who are subject to the Dublin procedure which provides more detailed information, which is entitled 'I'm in the Dublin procedure – what does this mean? Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013'. A separate information leaflet aimed specifically at unaccompanied children is also available, entitled 'Children asking for international protection, information for unaccompanied children who are applying for international protection pursuant to Article 4 of Regulation (EU) No 604/2013.[57]

In cases where Ireland has agreed to take back an asylum seeker under the Regulation, the person may be detained on arrival and have difficulty in accessing the asylum procedure (possibly for a second time). If the person has already had a finally determined asylum application and seeks to make another asylum application they would have to make an application to the Minister under Section 17.7 of the 1996 Refugee Act (see section on subsequent applications). It is possible that the authorities could invoke Section 5 of the Immigration Act 2003 which states that a person whom an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects has been unlawfully in the State for a continuous period of less than 3 months, be removed from Ireland.

[57] All information leaflets are available online at www.orac.ie

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure: ☒ Yes ☐ No
  - if yes, is the appeal ☒ judicial ☐ administrative
  - If yes, is it suspensive ☒ Yes ☐ No
- Average processing time for the appeal body to make a decision: The median processing times for appeals dealt with by the RAT in 2013 was approximately 10 weeks in the case of a Dublin Regulation appeal.
- During 2013, the RAT made 15 decisions on Dublin Regulation appeals. In 2013 the RAT received 30 Dublin Regulation appeals, compared to 45 Dublin Regulation appeals in 2012.[58]

An applicant has 15 working days to appeal from a decision of ORAC under the Dublin III Regulation in accordance with section 6 of S.I. No. 525 of 2014. The appeal has suspensive effect under section 7(1) S.I. No. 525 of 2014. The information leaflet for persons in the Dublin procedure states that while the appeal or review is pending the person may remain in Ireland. However it also states that "You can also ask for a suspension of the transfer for the duration of the appeal or review" so there is a lack of clarity as to whether the appeal is automatically suspensive or not for Dublin III Regulation decisions.[59]

The RAT shall have regard to both the facts and law when considering appeals under the Dublin III Regulation. This is in accordance with Article 27 of Dublin III which requires that a person shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a Court or Tribunal.

If the RAT overturns the decision of ORAC, the applicant and their legal representative and the Commissioner and Minister are notified in writing. The RAT may either affirm or set aside the transfer decision. When submitting a Dublin appeal to the RAT the person concerned can request that an oral hearing is conducted and the Tribunal may also hold an oral hearing even if the person concerned has not requested it if the RAT is of the opinion that it is in the interests of justice to do so.[60]

In the past decisions of the RAT on Dublin II appeals were not published however, on the 11th March 2014 the Chairperson of the RAT issued Guidance Note (No: 2014/1) which stated that from that date any person may access the archive of Tribunal decisions for any lawful purpose.

There is no onward appeal of a RAT decision on the Dublin Regulation however judicial review of the decision could be sought.

58 Refugee Appeals Tribunal, Annual Report 2013, page 21.

59 'I'm in the Dublin procedure – what does this mean? Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013; Office of the Refugee Applications Commissioner.

60 See Section 6 of S.I. No. 525/2014.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the regular procedure? ☒ Yes ☐ No

At any time during the initial asylum process the Office of the Refugee Applications Commissioner (ORAC) may determine that a person is subject to the Dublin III Regulation. In accordance with Section 4 of the S.I. No. 525/2014 ORAC must then conduct a personal interview for the purposes of the Dublin procedure.[61]

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at the first instance in the Dublin procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a Dublin decision? ☒ Yes ☐ always/with difficulty ☐ No

An applicant who is subject to the Dublin Regulation may access legal information through the Refugee Legal Service. Technically this is not completely free legal representation as there is a small amount to be paid but it is often waived (see the section on Legal Assistance under the Regular Procedure).

This assistance also applies to the appeal.

Suspension of transfers

Indicator:

- Are Dublin transfers systematically suspended as a matter of policy or as a matter of jurisprudence to one or more countries? ☒ Yes ☐ No
  - If yes, to which country/countries? Greece

Transfers to Greece were suspended following the European Court of Human Right's decision in *M.S.S. v Belgium and Greece*. The Minister was asked to formally indicate that removals were suspended and that Ireland would take responsibility but he did not respond. The decision to consider such applications has not been set out in any publicly accessible record and it is not therefore known if it is policy not to transfer or decide on a case by case basis. In such cases where the Office of the Refugee Applications Commissioner considers the substantive application, the applicant is able to remain in reception facilities until the application is fully determined.

[61] This is in line with Article 5 of Regulation (EU) No. 604/2013.

4. Admissibility procedures

General (scope, criteria, time limits)

There is no procedure for admissibility. Section 8.1 of the Refugee Act 1996, as amended, states that a person who arrives at the frontiers of the state (a) seeking asylum, (b) seeking protection of the State against persecution, (c) requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution shall be interviewed by an immigration officer as soon as practicable and may make an application for a declaration that they are a refugee to the Refugee Application Commissioner.

There are sometimes practical impediments to making that application (e.g. failure by officers at the port to allow entry to make the claim). Immigration officials at the port may conduct the initial screening (known as the 'Section 8 interview').

A person can be refused leave to land at a port or border and then subsequently make an application for asylum. In 2012 a total of 2397 non-nationals were refused leave to land, 158 of those persons were subsequently permitted to enter the State having made an application for asylum. In the first six months of 2013 967 non-nationals were refused leave to land, 74 were subsequently permitted to enter the State having made an application for asylum.[62] In 2014 some 2,147 persons were refused entry into the State at ports of entry and were returned to the place from where they had come.[63]

In 2012, 117 non-EEA nationals who had arrived from Istanbul, Turkey were refused leave to land (25 of whom were subsequently permitted to enter the State having made an asylum application pursuant to the Refugee Act, 1996 (as amended)); 58 non-EEA nationals who had arrived from Dubai, United Arab Emirates were refused leave to land (9 of whom were subsequently permitted to enter the State having made an asylum application), and 123 non-EEA nationals, who had arrived from Abu Dhabi, United Arab Emirates, were refused leave to land (21 of whom were subsequently permitted to enter the State having made an asylum application). In 2013, the equivalent figures for persons refused leave to land arriving from Ankara, Dubai and Abu Dhabi were 142, 52 and 167 respectively, of which 37, 5 and 46 persons were subsequently permitted to enter the State having made an application for asylum.[64]

Section 8.1 (c) provides that a person who at any time is in the State (whether lawfully or unlawfully) and wishes to seek asylum may apply to the Minister for a declaration and shall be interviewed by an ORAC officer at such time as the officer specifies.

All cases are processed even for example where the country of origin is deemed 'safe'. There are no specific time limits.

62 Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Derek Nolan TD; Dept. Of Justice and Equality: Refugee Status, 22nd July 2013.

63 INIS Press Release, *Immigration in Ireland – 2014*, 26 January 2015.

64 Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Jonathan O'Brien TD; Dept. Of Justice and Equality: Refugee Status, 4th February 2014.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the admissibility procedure:
  ☐ Yes ☒ No

The only way to challenge a decision refusing admittance in to the asylum procedure would be by way of judicial review to the High Court but there is often no way that a passenger is aware of this or has the knowledge and means to contact a legal representative before removal. Judicial review is not an appeal but an application for review of the decision leading to the decision to refuse admission to the procedure. This is different to a person who is allowed to make an asylum claim as, if refused, there would be a right of appeal (albeit possibly limited) to the Refugee Appeals Tribunal.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure? ☒ Yes ☐ No
  - If yes, is the personal interview limited to questions relating to nationality, identity and travel route? ☐ Yes ☒ No
  - If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are personal interviews ever conducted through video conferencing? ☐ Yes ☒ No

Section 8 interviews are conducted either by officers at the port or by the Office of the Refugee Applications Commissioner (ORAC) officials. There have been instances e.g. where a person already has leave to remain under a different category, where ORAC has refused to register an application for asylum. If that refusal is maintained, the only means of challenge would be by way of judicial review in the High Court. However, in other instances, ORAC has permitted the registration of an application if the person has an existing status, e.g. status in Ireland based on family reunification, but that family relation breaks down and the person fears for their life upon return to their country of origin. The decision not to register the application would not ordinarily be after a formal interview. In such cases, the potential applicant is informed through the early administrative procedure at ORAC that they cannot apply for asylum. The majority, however, will be allowed to make their claim and will fall within one of the applicable procedures, e.g. prioritised, Dublin III Regulation, substantive, etc.

A person with an outstanding asylum application cannot apply for a period of recovery and reflection as a victim of trafficking under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.[65] The Administrative Arrangements state that a foreign national who is the holder of a valid permission to be in the State (including as an asylum seeker) shall not require further immigration permission for the purpose of availing of a recovery and reflection period save where their

[65] Irish Naturalisation and Immigration Service, Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking.

permission expires. If a person who has been granted a recovery and reflection period applies for asylum, their period of recovery and reflection will not be renewed when it expires.[66]

The first part of the Section 8 application involves the completion of a form which states that the person is applying for a declaration as a refugee. Information such as family name, forename, date of birth, nationality, country of birth, address in own country, family details (such as name of spouse and children and their dates of birth) is taken. A copy of the completed form is given to the applicant.

The second part of the Section 8 application involves the person being asked questions such as: a) whether the person wishes to make an application for a declaration and, if they wish to do so, the general grounds upon which the application is based, b) the identity of the person, c) the nationality and country of origin of the person, d) the mode of transport used and the route travelled by the person to the State, e) the reason why the person came to the State, and (f) the legal basis for the entry into or presence in the State of the person. This interview is recorded in a form entitled 'ASY 1 form'. A copy of this form is given to the applicant.

After the completion of the application form and the interview the applicant is given a variety of documents including: Information Leaflet for Applicants for Refugee Status in Ireland; Addendum to Paragraph 3.3 of the Information Leaflet; Questionnaire in connection with my application to a Declaration as a Refugee; Change of Address Form; Refugee Legal Service Information Leaflet; Important Notice (re answering all questions in the Questionnaire, return of Questionnaire, change of address etc); Notice advising applicant of their right to obtain legal advice for assistance in relation to their claim; Information Leaflet – Amendment to Chapter 4 regarding Council Regulation 343/2003 (Dublin II Regulation); Information Note: European Communities (Eligibility for Protection) Regulations 2006, Customer Service Information; Customer Charter; Important Notice to Asylum Applicants (Male and Female) regarding their children; Information leaflet on the Dublin III Regulation, Notification where a Recommendation cannot be made within six months of application, Name Change of the Department with effect from 2nd June 2010; Information Note for Applicants – European Communities (Asylum Procedures) Regulations 2011 (SI No 51 of 2011); and the Refugee Act 1996 (Asylum Procedures) Regulations 2011 (SI No 52 of 2011); and, if applicable, Information regarding the prioritisation of certain categories of applicants and Notice to Pregnant Applications and note for completion by doctor/ hospital.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the admissibility procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against an admissibility decision? ☐ Yes ☐ not always/with difficulty ☐ No
  ☒ N/A as there is no appeal procedure in such cases. Judicial Review might be available but that is not an appeal.

There is no legal aid available to advise people who are seeking to be admitted to the procedure.[67] The Refugee Legal Service will only be available after the application for asylum has been registered by the Office of the Refugee Applications Commissioner (ORAC).

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66 For more information see: Immigrant Council of Ireland, 'Asylum seeking victims of human trafficking in Ireland, Legal and practical challenges'.

67 It should be noted that the Irish Refugee Council Independent Law Centre pilot project on Early Legal Advice also involves advice prior to the submission of an application for international protection, subject to capacity.

5. Border procedure (border and transit zones)

General (scope, time-limits)

Indicators:

- Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☒ Yes ☐ No
- Are there any substantiated reports of refoulement at the border (based on NGO reports, media, testimonies, etc)? ☒ Yes ☐ No
- Can an application made at the border be examined in substance during a border procedure? ☐ Yes ☒ No

The Refugee Act provides that a person arriving at the frontiers of the State seeking asylum shall be given leave to enter the State by the immigration officer concerned. This is on a temporary basis and does not entitle the person to apply to vary their leave. It is simply to admit them to proceed with their asylum claim. Persons to whom such temporary residence is granted is entitled to remain in the state until (a) they are transferred under Dublin III Regulation; (b) their application is withdrawn; (c) they receive notice that their application for protection has been refused by the Minister.

Applicants are referred to the Office of the Refugee Applications Commissioner (ORAC) to lodge their application for asylum. Section 11 B of the Refugee Act 1996 states that ORAC or the Refugee Appeals Tribunal (RAT) when assessing the credibility of an applicant shall have regard to, *inter alia*, whether the application was made other than at the frontiers of the State, whether the applicant has provided a reasonable explanation to show why they did not claim asylum immediately on arriving at the frontiers of the State, unless the application is grounded on events which have taken place since their arrival in the State.

Anyone applying for asylum, who does not have the means to support themselves can access support and accommodation through a section of the Department of Justice known as the Reception and Integration Agency (RIA).

In September 2014, Ms. Fitzgerald, TD, Minister for Justice and Equality, announced the civilianization of immigration services which are currently undertaken by An Garda Siochana (Irish Police Force). This means that civilian staff will be assigned to Dublin airport on border control duties once they undergo a substantive training programme.[68]

Appeal

Indicator:

- Does the law provide for an appeal against a decision taken in a border procedure? ☐ Yes ☒ No

There is no appeal.

[68] INIS Press Release, *Immigration in Ireland-2014*, 26 January 2015

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure? ☒ Yes ☐ No
  - If yes, is the personal interview limited to questions relating to nationality, identity and travel route? ☒ Yes ☐ No
  - If so, are interpreters available in practice, for interviews? ☐ Yes ☒ No
- Are personal interviews ever conducted through video conferencing? ☐ Yes ☒ No

An immigration officer grants leave to enter the state following an interview at the border. Section 8 of the Refugee Act 1996 states that a person, who arrives at the frontiers of the State, seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution, shall be interviewed by an immigration officer as soon as practicable after such arrival.

This interview shall seek to establish *inter alia* (a) whether the person wishes to make an application for a declaration and, if do so, the general grounds upon which the application is based, (b) the identity of the person, (c) the nationality and country of origin of the person, (d) the mode of transport used and the route travelled by the person to the State, (e) the reason why the person came to the State, and (f) the legal basis for the entry into or presence in the State of the person, and shall, where necessary and possible, be conducted with the assistance of an interpreter. A record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and to ORAC where the interview was conducted by an immigration officer (see the section on Personal Interview under Admissibility Procedure).

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in the border procedure in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under a border procedure? ☐ Yes ☐ not always/with difficulty ☒ No

There is no free legal assistance at first instance in the border procedure.

6. Accelerated procedures

General (scope, grounds for accelerated procedures, time limits)

Under section 12, Refugee Act 1996, the Minister may give a direction to the Office of the Refugee Applications Commissioner (ORAC) or the Refugee Appeals Tribunal (RAT) or to both, requiring them to accord priority to certain classes of applications by reference to one or more of:

a) the grounds for application for asylum;
b) the country of origin or habitual residence;
c) any family relationship between applicants;

d) the ages of applicants;
e) the dates on which applications were made;
f) considerations of national security or public policy;
g) the likelihood that the applications are well-founded;
h) if there are special circumstances regarding the welfare of the applicant or of their family members;
i) whether applications do not show on their face grounds for the contention that the applicant is a refugee;
j) whether applicants have made false or misleading representations in relation to their applications;
k) whether applicants had lodged prior applications for asylum in another country;
l) whether applications were made at the earliest opportunity after arrival;
m) whether applicants are nationals of or have a right of residence in a country of origin designated as safe under this section;
n) if the applicant is receiving from organs or agencies of the UN protection or assistance;
o) if the applicant is recognised by the competent authorities of the country of residence as having rights and obligations which are attached to the possession of the nationality of that country;
p) if there are serious grounds for considering that they have committed a crime against peace, a war crime or a crime against humanity, or has committed a serious non-political crime or is guilty of acts contrary to the purposes and principles of the UN.

This means that if an applicant falls within the above categories, their application will be given priority and will be dealt with by the Commissioner before other applications.

In 2013, 28 applications were processed under the Ministerial Prioritisation Directive. The 2013 ORAC Annual Report stated that these cases were scheduled for interview within 9 to 12 working days from date of application and were completed within a median processing time of 25 working days from date of application.[69]

The Court of Justice of the European Union, in *H.I.D.,*[70] when considering Section 12 of the Refugee Act, found that the Asylum Procedures Directive must be interpreted as not precluding a Member State from examining, by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of that Directive, certain categories of asylum applications defined on the basis of the criterion of the applicant's nationality or country of origin.

Appeal

Indicators:

- Does the law provide for an appeal against a decision taken in an accelerated procedure? ☒ Yes ☐ No
  - if yes, is the appeal: ☒ judicial ☐ administrative
  - If yes, is it suspensive? ☒ Yes ☐ No

Where an applicant is subject to the accelerated procedure and the recommendation of the Refugee Applications Commissioner includes one of the following findings that the applicant:

69 Office of the Refugee Applications Commissioner, Annual Report, 2013 page 5.

70 CJEU, Case C-175/11, *H.I.D., B.A. v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General* -, judgment of 31 January 2013.

a) showed either no basis or a minimal basis for the contention that the applicant is a refugee;
b) made statements or provided information in support of the application of a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
c) failed to make an application as soon as reasonably practicable, without reasonable cause;
d) had lodged a prior application in another state party to the Geneva Convention;
e) is a national of, or has a right of residence in, a designated safe country of origin,

they have four working days to make an appeal and that appeal shall be determined without an oral hearing.[71] The appeal is suspensive.

In 2013, the Refugee Appeals Tribunal considered 117 accelerated appeals, in comparison to 190 in 2012.[72] The median processing time for accelerated appeals in 2013 was 12 weeks.

An applicant who is unsuccessful at appeal retains the option of seeking leave for a judicial review of the decision of the Refugee Appeal Tribunal in the High Court.

At the appeals stage, the applicant may obtain free legal assistance; however, the short time frame for preparation of the appeal presents practical obstacles.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the accelerated procedure? ☒ Yes ☐ No
  - If yes, is the personal interview limited to questions relating to nationality, identity and travel route? ☐ Yes ☒ No
  - If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
- Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

Personal interviews are conducted for all applicants at first instance. In practice there is no difference between the scope and format of a personal interview in the accelerated procedure and the normal procedure.

At appeal, there is no oral hearing where an applicant is subject to the accelerated procedure and the recommendation of the Commissioner includes one of the following findings that the applicant:

a) showed either no basis or a minimal basis for the contention that the applicant is a refugee;
b) made statements or provided information in support of the application of a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;
c) failed to make an application as soon as reasonably practicable, without reasonable cause;
d) had lodged a prior application in another state party to the Geneva Convention;
e) is a national of, or has a right of residence in, a designated safe country of origin.

[71] Section 13.8 of the Refugee Act 1996.

[72] Refugee Appeals Tribunal, Annual Report 2013, page 21.

Legal assistance

Indicators:

- Do asylum seekers have access to free legal assistance at first instance in accelerated procedures in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers have access to free legal assistance in the appeal procedure against a decision taken under an accelerated procedure? ☐ Yes ☒ not always/with difficulty ☐ No

Applicants under the accelerated procedure fall under the same rules for legal assistance as those who are not under the accelerated procedure. Practical obstacles in giving legal assistance in the accelerated procedure could include that the legal representative has difficulty in assisting the applicant in the shorter time period.

C. Information for asylum seekers and access to NGOs and UNHCR

Indicators:

- Is sufficient information provided to asylum seekers on the procedures in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Is sufficient information provided to asylum seekers on their rights and obligations in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☐ not always/with difficulty ☒ No
- Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ not always/with difficulty ☐ No
- Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ not always/with difficulty ☐ No

A person who states an intention to seek asylum or an unwillingness to leave the state for fear of persecution is interviewed by an immigration officer as soon as practicable after arriving. The immigration officer informs the person that they may apply to the Minister for Justice and Equality for protection and that they are entitled to consult a solicitor and the UN High Commissioner for Refugees. Where possible this is communicated in a language that the person understands.

Where a person is detained, the immigration officer or member of the Garda Síochána (police) shall inform the person of the power under which they are being detained; that they shall be brought before a court to determine whether they should be detained or released; that they are entitled to consult a solicitor; that they are entitled to notify the High Commissioner of the detention; that they are entitled to leave the state at any time; and that they are entitled to the assistance of an interpreter.

On receipt of an application, the Office Refugees Application Commissioner (ORAC) provides in writing, where possible in a language the applicant understands, a statement of

a) the procedures to be observed in the investigation of the application;
b) the entitlement to consult a solicitor;
c) the entitlement to contact the High Commissioner;
d) the entitlement to make written submissions to the Commissioner;
e) the duty of the applicant to cooperate and to furnish relevant information;
f) the obligation to comply with the rules relating to the right to enter or remain in the state and the possible consequences of non-compliance;
g) the possible consequences of a failure to attend the personal interview.

The ORAC provides written information to every asylum seeker and there is extensive information available on the ORAC website.

All asylum applicants are given an information note about the Dublin III Regulation. A further information leaflet produced by the Commission and ORAC is provided specifically for asylum applicants in the Dublin procedure.[73] A specific information leaflet is also provided to unaccompanied children in the Dublin procedure.[74]

D. Subsequent applications

Indicators:

- Does the legislation provide for a specific procedure for subsequent applications?
  ☒ Yes ☐ No
- Is a removal order suspended during the examination of a first subsequent application?
  - At first instance ☒ Yes ☐ No
  - At the appeal stage ☒ Yes ☐ No
- Is a removal order suspended during the examination of a second, third, subsequent application?
  - At first instance ☒ Yes ☐ No
  - At the appeal stage ☒ Yes ☐ No

Section 17(7) of the Refugee Act 1996 (as amended by Statutory Instrument No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011) sets out that a person who wishes to make a subsequent asylum application must apply to the Minister for permission to apply again. The application must set out the grounds of the application and why the person is seeking to re-enter the asylum process. The application is made in writing and there is no oral interview. The Minister shall consent to a subsequent application being made when new elements or findings have arisen or have been presented by the person concerned, which makes it significantly more likely that the person will be declared a refugee, and the person was capable of presenting those elements or findings for the purposes of their previous application for a declaration.

There were a total of 46 Applications under 17.7 of the Refugee Act in 2013. Of these 5 were granted and the other 41 were refused. Top five nationalities of applications were Serbia, Democratic Republic of Congo, Ghana, Malawi and Pakistan.[75]

[73] 'I'm in the Dublin procedure – What does that mean?' Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No 604/2013.

[74] Children asking for International Protection, Information for unaccompanied children who are applying for international protection pursuant to Article 4 of Regulation (EU) No 604/2013.

[75] Information received from the Asylum Policy Division of the Irish Naturalisation and Immigration Service.

The law does not state whether or not an application to the Minister for a subsequent application for a declaration is suspensive.

Section 17(7) of the Refugee Act 1996 (as amended) states that the Minister shall, as soon as practicable after receipt of an application give to the person concerned a statement in writing specifying, in a language that the person may reasonably be supposed to understand (a) the procedures that are to be followed (b) the entitlement of the person to communicate with UNHCR (c) the entitlement of the person to make submissions in writing to the Minister, (d) the duty of the person to co-operate with the Minister and to furnish information relevant to their application, and (e) such other information as the Minister considers necessary to inform the person of and of any other relevant provision of this Act or of the Regulations of 2006.

If the Minister consents to the person making a subsequent asylum application they are subject to the asylum procedure in the normal way i.e. they attend the Office of the Refugee Applications Commissioner for an initial interview, are issued with a Questionnaire and then have a substantive asylum interview. In 2013 ORAC considered 8 're-applications' (Bangladesh x 2, Benin, China, Iran, Liberia, Syria and Uganda) for a declaration as a refugee'.[76]

If the Minister does not consent to allow the person to submit a subsequent asylum application, the only challenge that there can be is by way of judicial review in the High Court, i.e. there is no formal appeal, and removal from the state could occur unless the person obtains agreement not to remove pending a challenge or obtains an injunction preventing removal. This is despite Article 39 of the Procedures Directive which states that Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal, against, *inter alia*, a decision not to conduct an examination pursuant to Article 36.

In *A. v Minister for Justice & Equality & Ors* [77]the High Court of Ireland considered an application which had historically involved an 'appeal' of a decision to refuse to grant readmission to the process. This appeal in fact seems to have been a request for a review to the Minister of the original decision rather than a formal appeal.

Statutory Instrument (S.I.) No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 states that where the Minister gives consent under section 17(7) of the Refugee Act 1996 to an Applicant to make a subsequent application for a declaration for refugee status under that Act, and that person makes such an application, their subsidiary protection application will be deemed to have been withdrawn. Where a subsequent application for refugee status has been again refused the applicant will then be sent a new notice and have an opportunity to make an application for subsidiary protection in the normal fashion.

Persons seeking Ministerial consent to make a subsequent application for asylum have been told that they are not entitled to accommodation and financial support until the application is accepted on the grounds that they are not actually an asylum seeker.

[76] Information received from the Office of the Refugee Applications Commissioner.

[77] High Court of Ireland, *A. -v- Minister for Justice & Equality & Ors,* [2013] IEHC 355 (18 July 2013).

E. Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)

1. Special Procedural guarantees

Indicators:

- Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☐ Yes ☐ No ☒ Yes, but only for unaccompanied children
- Are there special procedural arrangements/guarantees for vulnerable people?
  ☐ Yes ☐ No ☒ Yes, but only for unaccompanied children

There is no mechanism for the identification of vulnerable people, except for unaccompanied children.

Section 8 (5) (a) of the Refugee Act 1996 states that where it appears to an immigration officer or an officer of the Office of the Refugee Applications Commissioner (ORAC) that a child under the age of 18 years, who has arrived at the frontiers of the State or has entered the State and is not in the custody of any person, the officer informs the Health Services Executive (HSE) and thereafter the provisions of the Child Care Act 1991 apply. The children and family services function of the HSE are now part of the children and family agency called Tulsa which was established since the 1st January 2014. Upon referral to Tulsa, each unaccompanied child is appointed a social worker.[78] Tulsa then become responsible for making an application for the child, where it appears to the Tulsa that an application should be made by or on behalf of the child. In which case, the Tulsa arranges for the appointment of an appropriate person to make application on behalf of the child. Any legal costs arising from the application are paid by the Tulsa. Accelerated procedures are not applied to unaccompanied children. According to recent EMN (European Migration Network) research, ORAC indicated that a group of experienced interviewers received additional specialised training, facilitated by the UNHCR, to assist them in working on cases involving unaccompanied children.[79] ORAC prioritises applications from unaccompanied children and the median processing time for such cases in 2013 was 24.9 weeks.[80] The Refugee Appeals Tribunal also stated in the EMN report that unaccompanied childrens' cases are treated as deserving of priority: median processing time for appeals made on behalf of unaccompanied children (excluding aged-out children) in 2013 was 31 weeks.[81]

Section 5 of Statutory Instrument (S.I.) No. 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006 states that the protection decision-maker shall take in to account, *inter alia*, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts, to which the applicant has been or could be exposed, would amount to persecution or serious harm. The High Court has indicated that a decision maker's failure to fulfil the requirements of Section 5 may amount to an error of law. In a recent case the High Court quashed a decision of the Department of Justice which refused to grant a national of the Democratic Republic of Congo subsidiary protection on the grounds that, inter alia, the decision maker had failed to adequately consider the individual position and circumstances of the applicant.[82] Similar findings were made in a case involving a Bangladeshi national.[83]

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78 Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

79 Ibid, page 27.

80 Ibid, page 29.

81 Ibid.

82 *E. D-N, L. D. S and Anor v The Minister for Justice & Equality* [2013] IEHC 447 (20 September 2013).

83 *Barua -v- Minister for Justice and Equality* [2012] IEHC 456 (09 November 2012).

Regulation 15 of Statutory Instrument No. 518 of 2006 European Communities (Eligibility for Protection) states that the specific situation of vulnerable persons (such as children, whether or not unaccompanied, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence), shall be taken into account when applying Regulations 16 to 19 of the Statutory Instrument. Regulations 16 to 19 relate to family reunification, the issuing of permission to remain in the state and other rights). In effect therefore the requirements of Regulation 15 seem to relate to persons who are granted subsidiary protection, not persons applying for subsidiary protection. It is unclear how exactly Regulation 15 is implemented in practice as its application would only be explained in a decision relating to family reunification or issuing of permission to remain, which are not public.

In December 2014 in the case of *BA & RA v. MJE & ORAC,* Mac Eochaidh J. held that Article 2 of S.I. No. 426 of 2013 the European Union (Subsidiary Protection) Regulations 2014 on the definition of serious harm under the Qualification Directive had unlawfully narrowed the definition of torture by limiting it to State actors.[84]

2. Use of medical reports

Indicators:

- Does the legislation provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?
  ☒ Yes ☐ Yes, but not in all cases ☐ No
- Are medical reports taken into account when assessing the credibility of the applicant's statements? ☒ Yes ☐ No

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the Commissioner any relevant information. Applicants may approach an NGO called SPIRASI, which specialises in assessing and treating trauma and victims of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately. In 2013, SPIRASI assisted 18% of all adult residents in the Direct Provision System in Ireland.[85] SPIRASI's services include the provision of medical-legal reports to the protection process, multidisciplinary assessments of survivors of torture, therapeutic interventions, psycho-social support, outreach and early identification, language and vocational training and training to third parties on survivors of torture.

In cases looked at the Irish Refugee Council as part of its research on the assessment of credibility in the Irish asylum procedure,[86] the organisation noted that both ORAC and the Refugee Appeal Tribunal noted that the medico-legal reports did not necessarily assist as they either do not say how the injuries were sustained or are mainly based on the testimony of the applicant.

84 *B.A. and R.A. v The Minister for Justice and Equality and the Refugee Applications Commissioner*, [2014 No. 31 JR]

85 Joint Oireachtas Committee on Public Service Oversight and Petitions, *Direct Provision Discussion*, 22 October 2014

86 Irish Refugee Council, See 'Difficult to Believe, The assessment of asylum claims in Ireland', section 6.4.

3. Age assessment and legal representation of unaccompanied children

Indicators:

- Does the law provide for an identification mechanism for unaccompanied children?
  ☒ Yes ☐ No
- Does the law provide for the appointment of a representative to all unaccompanied children?
  ☒ Yes ☐ No

Section 85(a) provides guidance on identification of unaccompanied children only once the applicant is recognised as a child. In practice in Ireland, interviews and age assessment tools are used to assess age and no statutory or standardised age assessment procedures appear to be in existence.[87] In the asylum procedure ORAC firstly forms an opinion of the age of the person presenting to claim asylum prior to any referral to Tulsa. Medical assessments are not carried out to determine age. Tulsa then conducts a general child protection risk assessment which explores age as part of that assessment.[88] This is done by two social workers and often an interpreter by phone. They use a social age assessment methodology which includes questions about family, education, how the young person travelled to Ireland, etc. The social worker assesses the young persons aged based on how articulate they are, their emotional and physical developmental, etc. However, the Office of the Refugee Applications Commissioner (ORAC) makes the final decision as to the person's age. The procedure is commenced by ORAC or the Tulsa and initiated if a social worker in the HSE or an immigration official in ORAC believes the young person is over 18.

Where the assessment cannot establish an exact age, young people are not generally given the benefit of the doubt. If someone seems over 18, even by a day, there is typically a decision to move the young person into adult accommodation.

The law provides for the appointment of a legal representative, but the sections of the Child Care Act that would need to be invoked, are not. Unaccompanied children are taken into care under Section 4 and 5 of the Child Care Act 1991 as amended, neither section provides for a legal guardian. There are no provisions stating that a child must be appointed a Solicitor. However, if the social worker determines that the child should submit a claim for asylum (which is the duty of the social worker in accordance with Section 8.5(a) of Refugee Act 1996) the young person would then be referred to the Refugee Legal Service in the same way an adult applicant would.

The provisions on the appointment of a legal representative do not differ depending on the procedure (e.g. Dublin). The Dublin III Regulation is engaged once an application is made. However the assignment of the Member State responsible for the examination of a child's claim differs for those of adults under Article 8 of the recast Dublin III Regulation. At that point, the child will typically have a solicitor, whose duty it is to provide advice and legal representation to the child. If the child is in care, they will also have a social worker whose duty it is to provide for the immediate and ongoing needs and welfare of the child through appropriate placement and links with health, psychological, social and educational services.

There is no time limit in law which requires the appointment of a solicitor by a particular time.

Capacity of social workers and solicitors presents practical obstacles to representatives being appointed as soon as possible. At present, it does not seem to be an issue for social workers. The eligibility requirement is that they are social workers in accordance with Section 8.5(a) of Refugee Act 1996.

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87 Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014

88 ibid, page 35.

The duties of immigration officers and the Tulsa with regards to the asylum procedure are set out in Section 8.5(a):

- where it appears to an immigration officer that a child under the age of 18 years who has arrived at the frontiers of the State is not in the custody of any person, the immigration officer shall, as soon as practicable, so inform the health board in whose functional area the place of arrival is situate and thereupon the provisions of the Child Care Act, 1991 , shall apply in relation to the child;
- where it appears to Tulsa staff members concerned, on the basis of information available to it, that an application for a declaration should be made by or on behalf of a child referred to in *paragraph (a)*, the health board shall arrange for the appointment of an officer of the health board or such other person as it may determine to make an application on behalf of the child.

F. The safe country concepts (if applicable)

Indicators:

- Does national legislation allow for the use of safe country of origin concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of safe third country concept in the asylum procedure? ☒ Yes ☐ No
- Does national legislation allow for the use of first country of asylum concept in the asylum procedure? ☒ Yes ☐ No
- Is there a list of safe countries of origin? ☒ Yes ☐ No
- Is the safe country of origin concept used in practice? ☒ Yes ☐ No
- Is the safe third country concept used in practice? ☒ Yes ☐ No

Under Section 12 (4) of the Refugee Act 1996 (as amended), the Minister for Justice may give a direction in writing to the Office of the Refugee Applications Commissioner (ORAC) or the Refugee Appeal Tribunal (RAT) or both, to prioritise certain classes of applications where applicants are nationals of or have a right of residence in a country of origin designated as safe.

The Minister may make an order designating a country as safe after consultation with the Minister for Foreign Affairs. In deciding to make such an order the Minister will have regards to:

1. Whether the country is a party to and generally complies with obligations under the Convention against Torture, the International Covenant on Civil and Political Rights, and where appropriate the European Convention on Human Rights;
2. Whether the country has a democratic political system and independent judiciary;
3. Whether the country is governed by the rule of law.

The Minister may amend or revoke any such order.

Where it appears to the ORAC that an applicant is a national or has a right of residence in a designated safe country then the applicant is presumed not to be a refugee unless they can show reasonable grounds for the contention that they are a refugee. Their application will be given priority and may be dealt with by the ORAC before other applications. There is no appeal against a designation that a person comes from a designated safe third country.

Statutory Instrument No. 422/2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003 designated some countries as safe countries of origin prior to their accession as Member States of the European Union.

Statutory Instrument No. 714/2004 - Refugee Act 1996 (Safe Countries of Origin) Order 2004 listed Croatia and South Africa as safe countries of origin. It is unclear if this is still applied with respect to Croatia given that it is now a member of the European Union. Section 12(4) does not make provision for a review of a designation and no review seems to occur in practice. However, the Minister may, by order, amend or revoke a designation order. Partly because there has been no further designation of safe countries of origin since 2004 it is unclear what sources are used to designate a safe country of origin and also what role the Minister for Foreign has.

G. Treatment of specific nationalities

On 15 November 2004, the Minister designated Croatia and South Africa as safe countries of origin, with effect from 9 December 2004. Therefore, if it appears to ORAC that an applicant for asylum is a national of, or has a right of residence in, a country designated by the Minister as a safe country of origin, then the applicant shall be presumed *not* to be an asylum seeker unless they can show reasonable grounds to that effect.

The Minister has also issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, Croatia and South Africa. This means that if an applicant falls within the above categories; their application will be given priority and may be dealt with by the Commissioner before other applications. Presumably, as Croatia is now a member state of the European Union, these designations no longer apply.

In addition, since 2003, applications from Nigerian nationals have also been prioritised and therefore subjected to accelerated procedures. This was challenged in a case[89] referred by the Irish High Court to the Court of Justice of the European Union. The Court of Justice held that the prioritisation of Nigerian claims was lawful. Appeals by nationals whose claims are prioritised are dealt with on the papers and therefore without an appeal hearing.

According to the European Asylum Support Office, in the first quarter 2013, 20% of all grants of refugee status in Ireland were to Syrians (5 cases).[90] Out of 15 positive decisions for Syrians in 2012[91], all applicants were granted refugee status.[92]

There is no evidence to suggest that the decisions on Syrian applications are being frozen or not being made.

To the knowledge of the Irish Refugee Council's Independent Law Centre, Convention grounds argued in relation to Syrian refugee claims included: imputed political opinion (on the grounds that the person has made an asylum claim abroad); imputed political opinion (professional and well educated and professional persons who are imputed to have a political opinion for or against a particular group); political opinion (i.e. pro or anti Syrian regime); religion (Sunni, Shia, Allawite etc.); race (Sunni 'race', Allawite 'race'); or particular social group (single females, females without protection).

89 CJEU, *H.I.D., B.A. v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General* - C-175/11, 31 January 2013.

90 European Asylum Support Office, 'Quarterly Asylum Report Q1 2013', 2013 Table No 1.

91 It should be noted that 15 new asylum applications were submitted by Syrian nationals the same year. See Eurostat data, accessed on 26 August 2013.

92 Eurostat data, accessed on 26 August 2013.

According to Irish Minister for Justice, Equality and Defence, Alan Shatter, since March 2011, no Syrian national has either been deported from Ireland or transferred from Ireland to Greece under the Dublin system.[93]

11 people who presented as Syrian nationals, at an Irish border, were refused leave to land in 2012, three of whom were subsequently permitted to enter the State having made an application pursuant to the Refugee Act, 1996 (as amended). The remaining eight persons were returned to their last port of departure.

In response to an appeal by UNHCR, Ireland has agreed to accept 30 persons from Syria for resettlement in 2013. This is in addition to the annual UNHCR-led resettlement programme in which Ireland participates.[94]

On the 12th March 2014, Minister for Justice, Equality and Defence, Alan Shatter announced that a humanitarian admission programme for Syrians was created.[95] The progamme aimed to provide further assistance to vulnerable persons affected by the conflict in the region. The "Syrian Humanitarian Admission Programme" (SHAP) will focus on offering temporary Irish residence for up to two years to vulnerable persons present in Syria, or who have fled from Syria to surrounding countries since the outbreak of the conflict in March 2011, who have close family members residing legally in Ireland. Priority will be given to persons deemed to be the most vulnerable, namely: elderly parents; children; unaccompanied mothers and their children; single women and girls at risk; and disabled persons. Of note is that the sponsor has to commit to supporting the beneficiary and the beneficiary cannot access social welfare during that time.[96] A total of 308 applications were received under the Syrian Humanitarian Admissions Programme introduced by Alan Shatter.[97] Anecdotal evidence suggests that newly arrived Syrian refugees have found it difficult to meet the financial requirements of the programme.

On the 8th May 2014 Ms. Frances Fitzgerald TD took over from Alan Shatter and was appointed Minister for Justice and Equality. In December 2014, Ms. Frances Fitzgerald announced that a total of 111 vulnerable people from Syria and the surrounding region have been granted admission to reside in Ireland following applications to the Department of Justice and Equality from relatives already resident here. Ireland also accepted 90 Syrian refugees in 2014 under the UNHCR resettlement programme. Ms. Frances Fitzgerald TD also stated that *"Ireland is committed to continuing with its resettlement programme. We have pledged an additional 220 resettlement places for the 2015/2016 period (100 in 2015 and 120 in 2016). The majority of these resettlement places will be available for the resettlement of refugees displaced by the Syrian conflict currently resident in Jordan and Lebanon."*[98]

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93 Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question of Joe Higgins TD, June 13, 2013.

94 Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question of Sean Crowe TD, April 16, 2013.

95 Department of Justice, Equality and Defence, *Minister Shatter announces Humanitarian Admission Programme to assist vulnerable persons suffering in Syria and surrounding countries*, 12 March 2014.

96 For more information, see Department of Justice, Equality and Defence, Irish Naturalisation and Immigration Service, *Syrian Humanitarian Admission Programme*.

97 Frances Fitzgerald TD, Minister, Department of Justice and Equality, Press Release: *111 Syrians admitted under Sponsorship Programme*, 9 December 2014.

98 ibid.

Reception Conditions

A. Access and forms of reception conditions

1. Criteria and restrictions to access reception conditions

Indicators:

- Are asylum seekers entitled to material reception conditions according to national legislation :
  - During the accelerated procedure?
    ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - During admissibility procedures:
    ☐ Yes ☐ Yes, but limited to reduced material conditions ☒ No
  - During border procedures:
    ☐ Yes ☐ Yes, but limited to reduced material conditions ☒ No
  - During the regular procedure:
    ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - during the Dublin procedure:
    ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - During the appeal procedure (first appeal and onward appeal):
    ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
  - In case of a subsequent application:
    ☒ Yes ☐ Yes, but limited to reduced material conditions ☐ No
- Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions? ☐ Yes ☒ No

In 2000, following an increase in the numbers applying for asylum in the 1990s, a decision was taken to withdraw social welfare from asylum seekers and to provide for their basic needs directly through a largely cash-less system. This became known as Direct Provision (DP).

The Reception and Integration Agency (RIA) was set up as a division within the Department of Justice to manage DP. RIA has no statutory basis and the decision to establish it is not a matter of public record.[99] Originally, it was intended that asylum seekers would spend no more than 6 months living in DP.

On lodging an application for asylum with the Office of the Refugee Applications Commissioner (ORAC), the applicant is referred to RIA and brought to a reception centre near Dublin airport named Balseskin. After a person has applied for asylum they will be issued with a Temporary Residence Certificate, in the form of a plastic card, which sets out the person's personal details and contains their photograph. When the Temporary Residence Certificate has been received they will be referred to the RIA office within the ORAC building.

Asylum seekers are not obliged to use RIA accommodation and may source their own accommodation or stay with relatives or friends. However, to do so means that the individual is not entitled to State

[99] In April 2000, Minister O'Donoghue still anticipated that RIA would be placed on a statutory basis (*J. O'Donoghue, 13 April 2000)*; this was later discounted by Taoiseach Bertie Ahern (*B. Ahern 5 December 2002).*

social welfare supports, e.g. medical card, rent allowance, etc. RIA have suggested that it is believed that a similar number of applicants live outside the direct provision system as within it.[100]

After claiming asylum the person is accommodated in Balseskin reception centre for a period of up to eight weeks in order to facilitate an interview with ORAC, health screening and registration for Community Welfare Service assistance. The majority of asylum applicants are dispersed from their accommodation in the initial reception centre after their initial ORAC interview has taken place.

In December 2013 RIA stated that their total capacity was 5309 with an occupancy of 4494 residents.[101] The number of residents in RIA accommodation in 2014 was 4,364 persons.[102]

Of note is that anecdotal reports suggest that a person making a subsequent application for asylum under Section 17.7 of the Refugee Act 1996, who has left Ireland and then re-entered the state, is not eligible for support until that subsequent application has been accepted by the Department of Justice and it can proceed to be considered by ORAC.

RIA also provides overnight accommodation to citizens of certain EU States who are destitute and who have expressed a wish to return to their own country. Programme refugees on their arrival in the State until permanent accommodation has been finalised are also accommodated. Victims of trafficking who are not asylum seekers are also accommodated during a 60 day reflection period.[103] In September 2014 the Immigrant Council of Ireland in a submission to the Minister for Justice and Equality as part of the National Action Plan for Combatting and Preventing Trafficking in Human Beings stated that the Direct Provision system and RIA accommodation was inappropriate for victims of trafficking and cited various independent reports on the problems inherent in such accommodation such as the accommodation leaving vulnerable young women open to further grooming and exploitation.[104]

There have been no reports of asylum seekers not being able to access material reception conditions due to a lack of capacity or space in the system. Alan Shatter, Minister for Justice, Equality and Defence, stated in October 2013 that, since 2000, no asylum seeker has been left homeless by the failure of the State to provide basic shelter or to meet basic needs.[105] In addition RIA does not seem to assess a person's means when considering to grant them accommodation and support. Alan Shatter, Minister for Justice, Equality and Defence, stated in April 2012 that RIA itself has no function in determining whether someone should stay or not in its accommodation, except in the context of rare instances of serious and repeated misbehaviour.[106] There is no appeal against such a decision to exclude a person if made.

RIA provides accommodation for applicants up to their return to their country of origin following a negative decision. It also continues to provide temporary accommodation for persons granted international protection or permission to remain in Ireland under Section 3 of the Immigration Act 1999.

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100 The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

101 Reception and Integration Agency, Monthly Statistics Report, December 2013

102 RIA Key Statistics and Expenditure Breakdown End of Year 2014.

103 The purpose of the reflection period is to allow a victim of trafficking to recover from the alleged trafficking, and to escape the influence of the alleged perpetrators of the alleged trafficking so that he or she can take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking. See 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking'.

104 Immigrant Council of Ireland, *Submission on the accommodation needs of adult victims of sex trafficking in Ireland*, September 2014.

105 Alan Shatter, Minister, Department of Justice, Equality and Defence, Seanad debate on Direct Provision 23rd October 2014.

106 Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Aengus Ó Snodaigh TD, 18th April 2012.

Persons issued with a deportation order which is not yet effected, continue to be housed in RIA accommodation.

Ireland has opted out of the Reception Conditions Directive. Alan Shatter, Minister for Justice, Equality and Defence, stated in March 2013 that the reason for the opt out was Article 11 of the Directive which states that if a decision at first instance has not been taken within one year of the presentation of an application for asylum, and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant. Shatter stated that "this is contrary to the existing statutory position in Ireland which provides that an asylum seeker shall not seek or enter employment. Extending the right to work to asylum seekers would almost certainly have a profoundly negative impact on application numbers, as was experienced in the aftermath of the July 1999 decision to do so."[107]

Ms. Frances Fitzgerald, TD, Minister for Justice and Equality acknowledged that the time spent in Direct Provision is an issue that needs to be addressed in June 2014. She further stated that *"My immediate priority is that the factors which lead to delays in the processing of cases are dealt with. In this regard, legislative reform aimed at establishing a single application procedure for the investigation of all grounds for protection is a key priority for this Government. Such reform would substantially simplify and streamline the existing arrangements by removing the current multi-layered and sequential processes and provide applicants with a final decision on their application in a more straightforward and timely fashion."*[108] One of the priorities for the Department of Justice and Equality is the enactment of a Protection Bill and the introduction of a new single protection system.[109]

2. Forms and levels of material reception conditions

Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2013 (per month, in original currency and in euros): weekly cash allowance of €19.10 per adult or €9.60 per child

As of February 2014 there are 4,355 residents in 34 centres, approximately 1666 residents were children. As of December 2013, the average length of stay in Direct Provision was 48 months. 1686 persons, approximately 38% of the population of Direct Provision, have been in Direct Provision for 60-84 months. As of end of year 2014 there are 4,634 residents in 34 centres across Ireland, approximately 33.9% of which are children. The occupancy rate was 85.8 % as of end of December 2014. Approximately 21% of the population of persons in Direct Provision have been in Direct Provision for more than 7 years.[110] The total expenditure by RIA for the system of Direct Provision in 2014 amounted to €53.22 million.

Financial support:
Asylum seekers are prohibited from working under Section 9 (4)(b) of the Refugee Act 1996. Section 15 of the Social Welfare and Pensions (No.2) Act 2009 states that an individual who does not have a 'right to reside' in the State shall not be regarded as being habitually resident in the State. As asylum seekers do not have a right to reside in Ireland they are therefore excluded from social welfare.

107 Alan Shatter, Department of Justice and Equality, written answer to the Parliamentary question of Mary Lou McDonald TD, 27th March 2013.

108 Ms. Frances Fitzgerald TD, Minister for Justice and Equality, written answer to the Parliamentary question of Finian McGrath, 1 July 2014.

109 INIS Press Release, *Immigration in Ireland-2014,* 26 January 2015

110 RIA Key Statistics and Expenditure Breakdown End of Year 2014.

Under Section 13 of the Social Welfare (Miscellaneous Provisions) Act, 2003 asylum applicants are specifically excluded from receiving rent supplement.

Asylum seekers receive a weekly allowance of €19.10 per adult and €9.60 per child, this allowance, despite inflation, has remained the same since introduction in 2000. Asylum seekers are not required to provide a monetary contribution to the cost of accommodation.

Both the Irish Refugee Council[111] and Free Legal Advice Centres (FLAC) [112] have stated that the small weekly allowance payment inhibits participation in family and community life. The Irish Refugee Council state that children are unable to 'fully participate in the Irish education system' due to limitations in purchasing uniforms, school supplies and to attend school trips.[113] On Universal Children's Day on 20th November 2014, the Irish Refugee Council repeated its call for an end to the Direct Provision system, noting that one third of Direct Provision residents are children.[114]

Food:

At all centres apart from self-catering accommodation, residents receive all meals. There are currently two self-catering accommodation centres, in Dublin and Louth, with a total capacity of 88.

In April 2014 an article in the Irish Times suggested that not allowing asylum seekers to cook their natural ethnic foods is cruel and degrading.[115]

In May 2014 Nasc released a report on food in Direct Provision. The report concluded that food provided in Direct Provision centres is not satisfactory, food does not represent the cultural and multi-faith religious needs of asylum seekers living in Direct Provision centres in Cork City, the food system in Direct Provision has a negative impact on families and children who are residents of Direct Provision centres.[116]

While persons receiving Direct Provision support are entitled to food, accommodation and a small financial allowance they are not entitled to access the mainstream welfare system because they are deemed not to be habitually resident.[117] This exclusion from the social welfare system makes it difficult to make a comparison between the level of material support given to persons receiving Direct Provision support and the allowance given to Irish nationals or other persons deemed habitually resident. However, the communal nature of the accommodation, the small financial allowance and the fact that persons are given food, rather than allowed to cook their own food, indicates that Direct Provision is at the very least inferior to social welfare. Of note is that, in April 2014, a legal challenge against Direct Provision was brought in the High Court.[118] One of the grounds of the challenges was the refusal to consider the applicant's right to work and the exclusion of asylum seekers and persons seeking subsidiary protection from accessing the mainstream social welfare system.

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111 "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

112 "One Size Doesn't Fit All, A legal analysis of the direct provision and dispersal system in Ireland, 10 years on." Free Legal Advice Centres, November 2009.

113 "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

114 Irish Refugee Council, *Direct Provision System Must End*, 20 November 2014

115 Irish Times, 'Stand up for the right to cook', 29 April 2014.

116 Nasc, 'What's Food Got To Do With It: Food Experiences of Asylum Seekers in Direct Provision' by Keelin Barry, Published by Nasc, the Irish Immigrant Support Centre.

117 Liam Thornton, 'Reception Conditions for Asylum Seekers in Ireland: The Need for a Legislative Basis', Human Rights in Ireland.

118 *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland.*

In September 2014 asylum seekers in one of the biggest Direct Provision centres in Ireland refused food in protest at the conditions at the Athlone Accommodation Centre. Asylum seekers resident there stated that ongoing concerns regarding food, hygiene and living conditions had not been addressed by the management of the Direct Provision centre.[119] Similar protests were also held at other Direct Provisions such as Mount Trenchard, Kinsale Road, Birchwood House and Atlantic House.

In relation to the legal challenge against Direct Provision Mr Justice Colm Mac Eochaidh delivered his decision in the case of *C.A. and T.A v The Minister for Justice and others* on Friday, 14 November 2014.[120] Specifically in relation to the challenge ground concerning whether the payment of weekly allowance was ultra vires, it was held by the High Court that that the payments of €19.10 and €9.60 for adults and children per week respectively were legal. Mr. Justice Colm Mac Eochaidh refused the main grounds of the challenge but held that elements of the house rules issued by RIA where unlawful and found that the applicants were entitled to an independent complaints handling process.[121]

3. Types of accommodation

Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 5522
- Type of accommodation most frequently used in a regular procedure :
  ☒ Reception centre ☐ Hotel/hostel ☐ Emergency shelter ☐ private housing ☐ other (please explain)
- Type of accommodation most frequently used in an accelerated procedure :
  ☒ Reception centre ☐ Hotel/hostel ☐ Emergency shelter ☐ private housing ☐ other (please explain)
- Number of places in private accommodation: all privately operated.
- Number of reception centres: 34
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
- What is, if available, the average length of stay of asylum seekers in the reception centres? Over 3 years
- Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

As of December 2014 there were 34 accommodation centres across 16 counties around Ireland with an occupancy of 4,364 residents.[122]

One centre in Dublin (Balseskin reception centre), with a capacity of 269, is designated as a reception centre where all newly arrived asylum seekers are accommodated.

Two of the 34 accommodation centres are self-catering (one in Dublin and one in County Louth) with a capacity of 88 and a current occupancy of 69. There are 7 single male only accommodation centres. There are currently no female only accommodation centres; however, in April 2014 RIA announced that a centre in Killarney, Co. Kerry will be considered as a 'pilot' women-only centre following its refurbishment in 2014. RIA have stated that the profile of the centre – i.e. whether it is used only for

119 The Irish Times, *Asylum Seekers refuse food in protest over conditions at Direct Provision Centre*, Carl O' Brien, 5 September 2014.

120 ibid

121 Mac Eochaid J. adjourned the challenge on the right to work as there is currently another High Court challenge pending on this issue. See Liam Thornton, Human Rights in Ireland, Direct Provision in the Irish High Court: The Decision, 17 November 2014.

122 RIA Key Statistics and Expenditure Breakdown End of Year 2014.

suspected trafficking victims, whether teenage male children could reside with their mothers there, and so on – will be determined by RIA in due course.[123]

As of December 2014 28.9% of the total population in RIA accommodation were adult females, 37.2% were adult males and there were 792 family units.[124]

From Balseskin Reception Centre, where the person usually spends several weeks, the person is then dispersed to one of the other accommodation centres, usually outside of Dublin. An applicant does not have a choice regarding where they are sent. The process for sending an applicant to particular centres is not set out in law and RIA stated that this is an 'informal practice' primarily based on a variety of factors that include: not overburdening a particular area, capacity in accommodation centres and the profile of the individual which includes specific medical needs, religious, cultural and ethnic backgrounds, social and family profile.[125]

Only three of the 34 RIA properties were built with the express purpose of accommodating asylum seekers. The majority of the properties are buildings which had a different initial purpose i.e. former hotels, guesthouses, hostels, former convents / nursing homes, a holiday camp and a mobile home site.[126]

All reception centres are operated by private external service providers who have a contract with RIA. Seven centres are owned by the Irish State with the remainder privately owned. Executive responsibility for the day-to-day management of reception centres lies with the private agencies, which provide services such as accommodation, catering, housekeeping etc.

RIA retains overall responsibility for the accommodation of applicants for international protection in the direct provision system. The Minister for Justice and Equality has stated that residents are not 'in the care' of the State but rather the State has a 'duty of care' which it discharges via external contractors.[127]

Unaccompanied children are under the care of Tulsa (Children and Family Agency) until they turn 18. This means they should be in either a residential home or a supported lodging or foster care settings until, at least, their 18th birthday. Children referred to the Tulsa will initially be placed in a registered and inspected residential home for children. There are four such homes in Dublin used for the purposes of housing unaccompanied children who are referred to the Social Work Team for Separated Children, based in Dublin. Each home has a maximum occupancy of 6 children at any one time. Children who are under the age of 12 are placed in a foster family upon referral. Those who are over 12 are typically placed with a foster family, or supported lodging, after some time, this could be weeks or months. Sometimes, a child remains in the residential home until they reach the age of 18. This usually happens where the child is nearing their 18th birthday. There may, however, be other reasons for keeping a child in the residential home for longer. These reasons could relate to medical, educational or other needs.[128]

In cases where the child is age-disputed, or an 'unrecognised minor', the young person may be placed in Direct Provision accommodation. This means that the Office of the Refugee Applications Commissioner has taken the view that the asylum applicant is an adult.

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123 Reception and Integration Agency, 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment', April 2014.

124 RIA Key Statistics and Expenditure Breakdown End of Year 2014.

125 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers',February 2014.

126 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers',February 2014.

127 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers',February 2014.

128 Samantha Arnold, 'Closing a Protection Gap 2.0, Irish National Report'

There are no provisions for traumatised asylum seekers or special facilities. In October 2014 the Rape Crisis Network Ireland (RCNI) published a report on sexual violence experienced by asylum seekers and refugees and found that the Direct Provision system not only exacerbated the trauma for survivors but also left individuals living in the system vulnerable to sexual violence.[129] The RCNI called for the immediate reform of the Direct Provision system and the provision of psycho-social supports to families of survivors of sexual violence among other recommendations.[130] In response to a parliamentary question raised on this report, Ms. Frances Fitzgerald stated that a number of recommendations in the report are in train including the procurement of training for staff which is underway along with the establishment of a women only centre when refurbishment works are completed on a State-owned reception centre.[131] Reports were heard of people in Direct Provision turning to precarious work in a bid to supplement the income of €19.10 per week. For example, reports were heard of vulnerable women in Direct Provision falling prey to sexual exploitation and prostitution.[132]

In addition the Group of Experts on Action against Trafficking in Human Beings, GRETA, recommended that the Irish government reviews its policy of accommodating victims of trafficking in Direct Provision centres and consider the setting up of specialized shelters for victims of trafficking.[133]

Geoffrey Shannon, the Special Rapporteur on Child Protection, highlighted the 'real risk' of child abuse in DP arising from the shared sleeping arrangements. He cites an incident where a 14 year old girl became pregnant by a male resident.[134] In the seventh report of the Special Rapporteur on Child Protection, Dr. Geoffrey Shannon called for an immediate review of the Direct Provision system and stated that the main recommendations of the Irish Refugee Council should be adopted and that Ireland should opt into the recast Reception Conditions Directive 2013.[135]

Families are generally accommodated together in the same accommodation centre. There have been no reports of members of the same family being required to live in different accommodation centres.

In April 2014 RIA published 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment'.[136] The document states that RIA and the centres under contract to it have a duty of care to all residents which includes a duty to provide safe accommodation which promotes the well-being of all of its residents. The document also describes the reporting structures, procedures and the record keeping required for an incident of domestic, sexual and gender-based violence and harassment. The policy was based on the discussions of a working group on safeguarding RIA residents against domestic, sexual and gender based violence the membership of which included RIA management and NGOs. RIA states that the policy complements other existing RIA protection policies including its Child Protection Policy. Since 2006 RIA has had a comprehensive Child Protection Policy in place based on the Health Service Executive's Children First - National Guidelines

129 The Irish Times, *Direct Provision System poses risk of sexual violence – report*, 29 October 2014.

130 Rape Crisis Network Ireland, *Asylum Seekers and Refugees Surviving On Hold – sexual violence disclosed to Rape Crisis Centres*, Cotober 2014.

131 Ms. Frances Fitzgerald, Minister, Department of Justice and Equality, written answer to the parliament question of Ruth Coppinger, Department of Justice and Equality, Asylum Support Services, 5 November 2014.

132 The Irish Times, *Minister 'shocked' by reports of direct provision prostitution*, Mary Minihan, 2 September 2014.

133 Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland.

134 Geoffrey Shannon, 'Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report'.

135 Dr, Geoffrey Shannon. Seventh Report of the Special Rapporteur on Child Protection, A Report Submitted to the Oireachtas, 2014; Irish Refugee Council, *The IRC welcomes the Seventh Annual Report of Ireland's Special Rapporteur on Child Protection,* 2 December 2014.

136 Reception and Integration Agency, 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment', April 2014.

for the protection and welfare of children. A Child and Family Services unit, in RIA, is well established and its role is to manage, deliver, coordinate, monitor and plan all matters relating to child and family services for all persons residing in RIA accommodation centres and to act as a conduit between RIA and the HSE.

4. Conditions in reception facilities

Asylum seekers are accommodated in reception centres. The majority of the properties are buildings which had a different initial purpose i.e. former hotels, guesthouses, hostels, former convents / nursing homes, a holiday camp and a mobile home site.

The Reception and Integration Agency (RIA) state[137] that all accommodation centres operate in compliance with relevant legislation, specifically the Housing Act, 1966 which refers to a definition of overcrowding, in essence the Act provides that there must be no less than 400 cubic feet (about 11m3) per person in each room and that a house shall be deemed to be overcrowded when [the number of persons] are such that any two of those persons, being persons of ten years of age or more of the opposite sexes and not being persons living together as husband and wife, must sleep in the same room.

The Irish Refugee Council (IRC) report, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers'[138], considered the quality of life for children living in the direct provision system. Research for the report included two focus groups with residents. Residents reported that overcrowding was one of the main problems, with families often living in one room or single-parent families required to share a room with another family. Overcrowding of rooms was recorded as being prevalent with whole families – adults and children of varying ages – sharing one bedroom. The report stated that this could lead to familial disputes and increased incidents of abuse, as well as the spreading of childhood illnesses. The report also recorded parents stating that they often had no control of the physical conditions of the room, with inadequate heating, poor insulation and general lack of cleanliness and safety reported. The report noted that children often had no privacy and had no access to a safe space for play; the spaces allocated were often dirty or not appropriate with insufficient toys for the number of children using the area. Inadequate provision of food was also reported with reports of non-nutritional food being served. Children with specific dietary needs were especially vulnerable.

Concerns regarding overcrowding were also expressed by residents in a study[139] by the NGO Nasc (an Irish word meaning 'link'), with persons of different religious faiths often accommodated in the same room. Other commentators stated that the system of Direct Provision 'infantilises adults and sexualises children' with parents not being able to cook for their children and losing their sense of independence and autonomy and children being crammed into close proximity with adults and thereby seeing things they should not.[140]

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137 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers', February 2014.

138 Samantha Arnold, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012.

139 Nasc, 'Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System', 2008.

140 The Journal, *Opinion: Ireland warehouses asylum-seekers, institutionalises them and leaves them in limbo,* Donal O' Keeffe, 22 June 2014.

In November, the Irish President Michael D. Higgins criticised the Direct Provision system and called it 'totally unsatisfactory in almost every aspect' and called for reform of the system.[141]

A contractual obligation of accommodation providers is that entertainment and leisure facilities are provided free of charge. RIA's 2012 annual report[142] states that activities and facilities included on site activities for children, summer camps, sports, outdoor playgrounds, indoor playrooms, computers, homework club/areas, mother and toddler groups, seasonal celebrations, after school activities. Off-site activities include: crèche/ playschool, off-site pre-school, youth club, GAA (sports) club, soccer club, rugby club, other sports, local park/playground, swimming lessons and after school activities.

The IRC report[143] recorded a complaint that an accommodation centre did not have a play area and children took to playing in the parking lot.

In an article in the Irish Law Times, of October 2013, Samantha K. Arnold, (Children and Young Persons at the Irish Refugee Council) noted that in accommodation centres where there is a common recreational space, it is often shared between adults and children.[144]

Arnold notes that in one Dublin centre, the main common space has a TV, couches and a pool table, but no room where children can play without interacting with other adult residents. In some centres there are very few toys to play with onsite. Further, Arnold noted that centres with outside play space are reportedly unsafe or run-down. Arnold notes that the lack of play space and opportunity relate to two main anomalies. Certain centres are registered as temporary accommodation and are staffed by a catering company and therefore have insurance concerns relating to play that may inhibit the child's exercise of this right. In addition Arnold notes that due to the limited financial support received this money goes largely towards providing food supplements for the child where the child's nutritional needs are not catered for by the centre and/or mobile phone credit and there is little left over to pay for external recreation or to buy toys for child residents of direct provision.

RIA's House Rules and Procedures document[145] states that where possible and practical, an accommodation centre will cater for 'ethnic food preferences' and the centre will provide tea and coffee making facilities, and drinking water, outside normal meal times.

The Economic Research Institute (ERSI), in a study of the Direct Provision system published in February 2014[146] referenced criticism of the quality, appropriateness, and overall nutritional value of food provided in accommodation centres (including incorporation of dietary and cultural differences). Free Legal Advice Centres (FLAC), in a study[147] from 2009 noted that the 'right to food' as provided for by various international instruments 'entails more than mere provision of foodstuffs'. FLAC also noted a lack of choice for residents is reported, with residents using their weekly allowance to supplement their diet. There are also difficulties in storing additional food, specifically prohibited in the RIA Rules and Procedures.

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141 RTE News, *President Higgins criticises Direct Provision*, 20 November 2014; RTE News, As*ylum seekers welcome President Higgins' comments on Direct Provision*, 20 November 2014.

142 Reception and Integration Agency, 'Annual Report 2012', 2013.

143 Samantha Arnold, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012.

144 Samantha K. Arnold , *A childhood lost: exploring the right to play in direct provision*, Irish .Law .Times. 2013, 31(10), 149-152, available here: http://www.legalperiodicals.org/disp.php?pub=Irish+Law+Times

145 Reception and Integration Agency, 'House Rules and Procedures'.

146 The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

147 The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

The Irish Human Rights and Equality Commission published a policy statement on the system of Direct Provision in Ireland on World Human Rights Day, 10th December 2014. It found that the system of Direct Provision is 'not in the best interests of children, has a significant impact on the right to family life and has failed adequately to protect the rights of those seeking asylum in Ireland.' It framed a number of recommendations not only with respect to the Direct Provision but also the introduction of a single protection procedure.[148]

The supervision rate (number of staff per applicant) is decided on an individual basis in the contract between RIA and the service provider. ESRI states that this takes account of the geographical position and type of centre involved. RIA states that it provides training and support to proprietors and management of centres. RIA states that this has included co-ordinating. The Health Service Executive delivered training to accommodation centre managers on subjects such as child protection, it also maintains a training database of all trainings undertaken by centre personnel and identifying and organising training needs of centre staff as appropriate.[149]

On the 23rd April 2013 asylum seekers, refugees, human rights supporters and members of the public had a day of action to end Direct Provision. Events took place across Ireland including in Dublin, Cork, Tralee, Limerick, Castlebar. In Dubin two current residents and one former resident of Direct Provision addressed a gathering outside the Irish Parliament before marching to the Department of Justice. Five children from Direct Provision centres across the country, accompanied by former Supreme Court judge Catherine McGuinness, presented personal messages to the Minister for Justice. At the events in Cork, Limerick, Tralee, Galway and Castlebar, messages to the Minister were recorded on camera and posted online, as well as emailed to the Minister. In Castlebar, asylum seekers and supporters delivered their message to the constituency office of Prime Minister (An Taoiseach), Enda Kenny.

In July 2014 Aodhan O' Riordian, at the time the newly appointed Minister for State at the Department of Justice stated that the reform of the Direct Provision system was an immediate priority of the Government.[150] Furthermore Aodhan O' Riordain acknowledged that 'the treatment of asylum seekers in Direct Provision centres will be compared to the Magdalene laundries in years to come' and he emphasised that the working group on reform of the system will focus on creating a more fair and dignified asylum system in Ireland.[151]

In August, September and October 2014 further protests took place at a number of Direct Provision accommodation centres in Cork, Clare, Westmeath, Waterford, Limerick and Laois. According to Ms. Frances Fitzgerald, TD, Minister for Justice and Equality, the protests centred around two categories: a) local issues in the centres concerning food and transport; b) national issues such as the length of time spent in Direct Provision by individuals.[152] In August 2014 over 200 people attended a rally in Limerick against the Direct Provision system. Previous to that a number of asylum seekers had gone on hunger strike in protest against the conditions at the Direct Provision centre, Mount Trenchard facility in Co. Limerick.[153]

Accommodation centres are not subject to Health Information and Quality Authority (HIQA) inspections and no equivalent of HIQA national quality standards for residential services. RIA subcontracts inspections to private firm known as QTS Ltd, which follows a standardised inspection form. RIA now

148 Irish Human Rights and Equality Commission, *Policy Statement on the System of Direct Provision in Ireland*, 10 December 2014.

149 Reception and Integration Agency, 'Annual Report 2012', 2013, available here: http://www.ria.gov.ie/

150 The Irish Independent, *Ireland must change our treatment of asylum-seekers*, 26 July 2014. See Section 4 below for more information on the Working Group.

151 The Irish Examiner, *Asylum reform to cut ruling waits to six months*, 30 December 2014.

152 Dail Debate – Other Questions on the Direct Provision System, 18 November 2014.

153 The Irish Times, *We fled persecution and did not come here to be put in prison again*, 23 August 2014; The Irish Examiner, *'There was literally no food at asylum centre,' Hundreds protest in Limerick*, 22 August 2014.

publishes all inspections which take place after 1st October 2013 on a dedicated website.[154] There is little interaction between residents and inspectors. RIA and DP centres are outside of the remit of the Ombudsman and the Ombudsman for Children. Section 11(1)(e)(i) of the Ombudsman for Children Act 2002 provides that the Ombudsman for Children shall not investigate an action taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship. As a result of this the Ombudsman for Children has on a number of occasions called for the Oireachtas to amend the 2002 Act to ensure that there are no impediments to children and families in Direct Provision accessing an independent complaint's mechanism.[155] On 27 January 2015 an Oireachtas Committee delegation called for the Ombudsman's jurisdiction to be extended to the Direct Provision system.[156] This came after a number of recommendations from non-governmental organisations operating in this field.[157]

In summer 2013, the then Ombudsman for Ireland, (now European Ombudsman) Emma O'Reilly, in an article for the magazine 'Studies', described living in direct provision as "involving very little privacy, frequent overcrowding, no choice of diet, no facilities to have visitors, little scope for recreation or any meaningful activity and, not least, effectively no income. Enforced idleness and lack of engagement with wider society tend to be a feature of the lives of asylum seekers in Ireland."

On 10 December 2013 the Irish Refugee Council launched a document offering alternatives to direct provision.[158] The report recommended that accommodation respects family life and embodies the best interests of the child, identifies and properly supports individuals with special needs and vulnerabilities, includes the availability of early legal advice and residents are transferred to independent living within a maximum of six months.

A Member of Parliament (TD) speaking on behalf of the Minister for Justice responded to the contents of the report stating, inter alia, that the document states that the proposals "are addressed on the basis that Ireland is now receiving less than 1,000 new asylum claims a year" and that asylum trends can fluctuate and it cannot be assumed that this number will remain the same. In addition the TD stated that changes to the asylum system, including reception conditions, can impact on the number of asylum claims that are made and that this also needs to be borne in mind.[159]

Direct provision continues to be frequently debated in the Oireachtas (Irish Parliament). In December 2013 an Irish TD (member of parliament) stated that Alan Shatter, Minister for Justice, Equality and Defence had answered more than 50 parliamentary questions on Direct Provision in the last year.[160] In October 2013 a motion was put to the Éireann Seanad (Irish Senate) that: "That Seanad Éireann noted the call from civil society organisations, legal practitioners, academics, human rights activists and Members of the Oireachtas for reform of Direct Provision." The motion also called for, if appropriate, an alternative form of support and accommodation could be adopted which is more suitable for families and particularly children and the establishment in the interim of an independent complaints mechanism and independent inspections of Direct Provision centres and give consideration to these being undertaken through either HIQA (inspections) or the Ombudsman for Children (complaints).[161]

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154 For more information see here.

155 Ombudsman for Children, Annual Report 2013.

156 The Irish Times, *Asylum centres should come under the Ombudsman, say TDs*. Lorna Siggins, 27 January 2015.

157 See for further information: Submission by the Irish Refugee Council to the Joint Oireachtas Committee on Public Service Oversight and Petitions, 22 October 2014; Spiritan Asylum Services Initative Ltd, Presentation to the Joint Committee on Public Service Oversight and Petitions – Direct Provision System within Ireland.

158 Irish Refugee Council, 'Direct Provision: Framing an alternative reception system for people seeking International protection', 2013.

159 Dinny McGinley TD, Seanad debate on Direct Provision, 12 December 2013.

160 Dinny McGinley TD, Seanad debate on Direct Provision, 12 December 2013.

161 Jillian van Turnhout Senator, Motion, 23 October 2013

In September 2014, Independent TD Thomas Pringle introduced a Dail (national parliament)motion to abolish the Direct Provision System.[162] The motion also called for the introduction of a legislative framework for specialised reception centres which respect family life and the rights of all human beings.[163] It called for the Government to provide appropriate self-catering accommodation which respects family life in a system that embodies the best interests of the child, as well as identifying and properly supporting individuals with special needs and vulnerabilities and the removal on the prohibition on employment. However the motion was subsequently rejected in the Dail. A separate Seanad motion was also brought by Senator Ronan Mullen calling for sweeping reforms of the Direct Provision system.[164]

- Establishment of an Independent Working Group

As part of Statement of Government Priorities 2014-2016 the government committed itself to address the current system of Direct Provision to "make it more respectful to the applicant and less costly to the taxpayer".[165] It also proposed the establishment of an independent working group to report to the Government on improvements within the protection process, including reforms to the Direct Provision system and supports for asylum seekers. The working group was subsequently established in October 2014 and is chaired by retired High Court Judge Mr. Justice Bryan MacMahon. It includes representatives from relevant Government departments and offices, academia, non-governmental organisations and members of the refugee community. According to the press release, the working group is essentially concerned with respecting the dignity and improving the quality of life of applicants for international protection within the protection process in Ireland.[166]

The terms of reference of the working group are set at as follows: "recommend to the Government what improvements should be made to the State's existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards:(i) improving existing arrangements in the processing of protection applications; (ii) showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available; ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised."[167]

The work of the working group is progressing also within smaller more technical groups under three themes: 1) Improvements to the Direct Provision System; 2) Improved supports (financial, health, educational); 3) Improvements to existing arrangements for the processing of asylum applications with particular regard to the length of the process.[168] The Working Group has also developed a consultation process and plans to visit a number of accommodation centres throughout the country whilst also meeting particular consultation groups such as children, victims of torture, victims of trafficking/sexual violence, members of the LGBTI community. The working group is due to report to the government with its recommendations by Easter 2015.

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162 Thomans Pringle, TD. *Introduces Motion to abolish Direct Provision*, 30 September 2015

163 Thomas Pringle, TD, Motion (Private Members), 30 September 2014.

164 Oireachtas Debates: Direct Provision System: Motion, 17 September 2014.

165 Statement of Government Priorities, 2014-2016.

166 Irish Naturalisation and Immigration Service, *Ministers Fitzgerald and O' Riordan announce composition of Working Group to examine improvements to the Protection Process and the Direct Provision System*, 13 October 2014.

167 Department of Justice and Equality, *Terms of Reference for the Working Group,* October 2014

168 Department of Justice and Equality, Summary of Progress 2014—12-22; 2014-11-19; 2014-11-10.

- High Court Judgment on Direct Provision

In April 2014 a legal challenge against Direct Provision was brought in the High Court.[169] The applicants challenged the system of direct provision on a number of grounds, including: the lack of statutory basis for direct provision and the nature of direct provision allowance; that the system of direct provision is a violation of rights under the Irish Constitution, the European Convention on Human Rights and the European Charter of Fundamental Rights. The applicant also challenged the refusal to consider the applicant's right to work and the exclusion of asylum seekers and persons seeking subsidiary protection from accessing social welfare.[170] In November 2014 the High Court issued the judgment in this challenge to the Direct Provision system and found that certain aspects of the House rules which govern the day to day operation of the system were unlawful or disproprotionate to the objective to be achieved.and the complaints procedure was also found to be unlawful.[171] MacEochaidh J. found that the monitoring of asylum seekers presence or absence from their accommodation centre was an interference with their private life and that room inspection methods of the Reception and Integration Agency was incompatible with Article 40.1 of the Irish Consitution. Furthermore the Judge held that the complete ban on visitors to the asylum seeker's bedroom went much further than what was required to meet the stated aims of the law.[172] Due to its lack of independence the complaints mechanism was found to be flawed and unlawful.

5. Reduction or withdrawal of reception conditions

Indicators:

- Does the legislation provide for the possibility to reduce material reception conditions?
  ☐ Yes ☒ No
- Does the legislation provide for the possibility to withdraw material reception conditions?
  ☐ Yes ☒ No

Paragraph 4.24- 4.27 of RIA's House Rules and Procedures[173] state that in very serious circumstances, RIA, in the interest of maintaining good order and the safe and effective management of accommodation centres, can immediately and without notice transfer a resident to another centre within the Direct Provision system; or, expel a resident from a centre, which may mean expulsion from the Direct Provision system entirely.

The Rules and Procedures state that these actions can only be done if directed by a RIA official at a senior level. However, in extremely grave or urgent circumstances, the accommodation centre manager may expel a resident from a centre without first getting approval from RIA. If this happens, the centre will notify RIA as soon as possible so that RIA can confirm or revoke the centre's decision. The Rules and Procedures state that when a resident is expelled from the Direct Provision system entirely, they can write to the Operations Manager of RIA at PO Box 11487, Dublin 2 (after one week of expulsion) asking to be re-accommodated on foot of undertakings on their future conduct. This appeal will be considered and responded to by RIA within three working days of receipt of request. The RIA

169 *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland.*

170 Liam Thornton, 'Direct Provision System Challenged Before the Irish High Court: Day 1', Human Rights in Ireland.

171 *C.A. and T.A. (a minor) v. Minister for Justice and Equality, Minister for Social Protection, Attorney General and Ireland*, (Record No. 2013/751/JR)

172 KOD Lyons, *High Court finds some Direct Provision House Rules unlawful and in breach of ECHR.*

173 Reception and Integration Agency, 'House Rules and Procedures', available here: http://www.ria.gov.ie/en/RIA/Pages/House_Rules_Pubs

Rules and Procedures also state that if a resident is expelled from Direct Provision RIA will immediately write to An Garda Síochána (Irish Police) and the relevant social services to let them know.

The Economic and Social Research Institute (ESRI) state that RIA note that that such expulsions are usually occasions of last resort and may be preceded by a transfer to another centre, warning letter(s) or asking a resident to sign a declaration of good behaviour. ESRI also state that RIA has indicated that permanent exclusion does not, in reality, arise. RIA will eventually need to provide accommodation to such excluded persons and this is done on the basis of undertakings through a legal representative or other group representing the individual. Some such persons choose not to return to direct provision or may be imprisoned if the matter relates to conviction of criminal offences.[174]

In 2008, a legal challenge was presented by a "homeless and destitute" asylum seeker aimed at obtaining re-admittance to Direct Provision. He had been barred from his original accommodation centre due to behaviour related to health issues. A return to State-provided accommodation for asylum seekers (with the exclusion of an accommodation centre in which he had previously resided and been barred from) was obtained for the Afghan asylum seeker after agreement that he would adhere to the rules of the accommodation. The individual had spent three months sleeping in a factory and in his legal proceedings his lawyer ascertained that he had not been given an opportunity to respond to the claims about his behaviour; had been banned from his previous accommodation at a time when he was ill; that no other accommodation option was available to the man; and that due to restrictions on asylum seekers working while in Ireland he was unable to work.[175]

6. Access to reception centres by third parties

Indicators:

- Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?
  ☐ Yes ☒ with limitations ☐ No

There is no law regulating access to reception centres. In practice access is granted on a discretionary basis and anyone wishing to visit must apply to Reception and Integration Agency (RIA) or get permission from the centre management. Residents may invite guests into the centres, but they are confined to the communal areas.

In general, access depends on the relationship between the person seeking access and RIA or the management of the hostel in question. The Irish Refugee Council for example has been refused access to some centres but given access to others.

In a recent debate in the Seanad (the Irish Senate),[176] Jan O'Sullivan TD, (speaking on behalf of the Minister for Justice), responded to a proposal to allow all Members of the Oireachtas (the Irish Parliament) to have unrestricted access to any one of the 34 asylum accommodation centres. It was stated that unrestricted access might not be appropriate for a number of reasons, not least the rights of asylum seekers resident in these centres to privacy and the obligations placed on the service providers.

174 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers', February 2014.

175 Corona Joyce 'European Migration Network 2008 Annual Policy Report On Migration And Asylum', 2009.

176 Ireland is a parliamentary democracy. The National Parliament (Oireachtas) consists of the President and two Houses: Dáil Éireann (House of Representatives) and Seanad Éireann (the Senate) A TD is a member of Dáil Éireann. A Member's official Irish title is "Teachta Dála" which in English means "Deputy to the Dáil". Members are generally called "TDs" or "Deputies").

O'Sullivan stated that: "Unannounced visits would have to take account of RIA's child protection policies which require, *inter alia*, the need for prior vetting. If politicians were being accompanied by other interested parties, such as media or non-governmental organisations, this requirement would have to be complied with. Of course, these centres are publicly funded, but so are many other facilities to which access rights for Members of the Oireachtas would never be sought or contemplated. These are people's homes and their privacy must be respected."[177]

In May 2014 election candidates for local elections were refused entry to accommodation centres. A RIA circular stated that centres should remain politically neutral environment for residents and that centre managers should ensure that political leaflets, posters or circulars are not displayed or circulated within a centre and that politically orientated meetings do not occur.[178] After criticism by various organisations including Irish Refugee Council,[179] Immigrant Council of Ireland and Nasc, a circular was released which stated that candidates who call into centres may be allowed to drop off election leaflets to be picked up and read by residents if they wish and that this material may be left in a suitable designated area of the centre such as the reception desk and that candidates may, if they wish, place on their leaflets their contact details or details of political meetings outside the centre to which residents can be invited.[180]

Access to certain accommodation centres continued to be an issue towards the end of 2014. A plan to invite the Irish President Michael D Higgins to visit a Direct Provision centre was cancelled after the Department of Justice and Equality refused permission for the meeting on the basis of issues surrounding logistics and safety.[181]

Also a parish priest was only allowed entry to a Direct Provision centre after a decision to initially refuse him was reversed after extensive media coverage.[182]

7. Addressing special reception needs of vulnerable persons

Indicators:

- Is there an assessment of special reception needs of vulnerable persons in practice? ☐ Yes ☒ No

There is no legislation on reception conditions in Ireland, nor are there any provisions to identify or assess special reception needs of vulnerable people. The one exception is unaccompanied children, who are not accommodated in reception centres until after they turn 18. They are taken into the care of the Health Services Executive and accommodated in foster home settings. If the young person is deemed to be an adult they are placed in Direct Provision.

Geoffrey Shannon the Special Rapporteur on Child Protection stated in 2012, in his report to the Irish Parliament, that research was needed on the specific vulnerability of children accommodated in DP and the potential or actual harm which is being created by the particular circumstances of their residence including the inability of parents to properly care for and protect their children and the damage that may be done by living for a lengthy period of time in an institutionalised setting which was not designed for

177 Jan O'Sullivan TD, Seanad debate on Direct Provision, 19 November 2013.

178 Reception and Integration Agency, Circular 1-14, 23 April 2014.

179 Irish Refugee Council, The campaign trail, asylum seekers, and access to Direct Provision centres, 15 May 2014.

180 Reception and Integration Agency, Circular 2-14, 14 May 2014.

181 The Irish Times, *Department vetoes President invite to asylum centre event,* 7 October 2014.

182 The Irish Times, *Monsignor John Byrne allowed entry to direct provision centre for asylum seekers,* Carl O' Brien, 25 November 2014.

long term residence.[183]

There are no provisions in practice that take into account the needs of vulnerable persons and there are no special reception conditions.[184] Upon arrival, it is standard practice for all applicants for asylum to be offered medical screening as well as access to a General Practitioner (doctor), public health nurse and psychological services. Applicants may be assigned to certain subsequent reception facilities as a result e.g. near a particular medical facility or in the case of a disability.[185]

The Irish Refugee Council has stated that the current system 'does not take into consideration the needs of persons with disabilities', as well as other vulnerabilities such as families with children and survivors of torture.[186] With respect to trafficking victims, recent EMN (European Migration Network) research indicated that proactive screening of trafficking victims as opposed to self-reporting, is generally not in evidence within asylum procedures in Ireland. ORAC provides in-house training on the three phrases of trafficking for all relevant front-line staff.[187]

8. Provision of information

There is no legislation on reception conditions in Ireland. In practice, information is provided by the Reception and Integration Agency (RIA) on rights and obligations in reception and accommodation through the House Rules and Procedures, which are available in each centre. These rules are available in 11 other languages on the RIA website.

9. Freedom of movement

Accommodation is not allocated according to the procedure that the applicant is in or according to the stage in the procedure.

Freedom of movement is not restricted but the Reception and Integration Agency (RIA) house rules require residents to seek permission if they are going to be away from their accommodation overnight.

Paragraph 2.14 of RIA's 'House Rules and Procedures'[188] state that "If you ever plan to be away from the centre for any overnight period, you must let the centre manager know in advance. The RIA may reallocate your room if: you leave it unused for any period of time without letting the centre manager know in advance; or if you are consistently absent from the centre." Presumably long term absence will not be permitted by accommodation centre managers.

Paragraph 2.15 of the House Rules and Procedures state that the accommodation centre manager is obliged to notify the Community Welfare Officer (now known as a Department of Social Protection representative), the official who grants the asylum seeker their weekly allowance, that they have been

183 Geoffrey Shannon, 'Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report'.

184 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers', February 2014.

185 Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers', February 2014.

186 Irish Refugee Council (2011). 'Direct Provision and Dispersal: Is there an alternative?' Report prepared for the NGO Forum on Direct Provision.

187 Corona Joyce, Emma Quinn, European Migration Network, *Identifying Victims of Trafficking in Human Beings in Asylum and Forced Return Procedures*: Ireland, April 2014.

188 Reception and Integration Agency, 'House Rules and Procedures'.

away without telling management and that this may affect whether or not you are entitled to the Direct Provision Allowance.

In practice freedom of movement is restricted due to the very low level of financial support given to asylum seekers which means that, unless transport to and from a centre is free and at a suitable time, it is often too costly to travel out.

RIA's 'House Rules and Procedures'[189] state that 'You are expected to stay at your centre until a decision has been made on your protection application. You have no right to be moved to another centre of your choice. Transfer is possible, but only when we decide to allow it based on its merits and in rare and exceptional circumstances. If you ask for a transfer due to medical reasons, an independent medical referee may be asked to evaluate your request. If you decide to request a transfer to another centre, your centre can give you an application form that you must fill in and send to us at:' RIA's decision is final and a person cannot complain under the complaints procedure, as outlined in 'Part 4: Complaints procedures' of this document.

If a person has complained about accommodation on the grounds that the centre failed to provide services, RIA will share the complaint with the centre manager and the their observations will be considered before the complaint is responded to. RIA state that where appropriate the details of the person making the complaint will be kept anonymous.'

A person can also be transferred to another accommodation centre, without having requested it themselves, for various reasons that include the capacity of the accommodation centre and the profile of applicants. Anecdotal evidence suggests that persons who have been in direct provision for a more than around two years have often lived in more than one accommodation centre.

NGOs have criticised the closing down of centres as it requires individuals and families to leave an area whether they have lived for several years and which they have significant links to. In September 2012 Lisbrook House accommodation centre was closed by RIA. The Irish Refugee Council criticised the decision on the ground that it came at the start of a new school year and "will severely disrupt the lives of up to 300 families and school children, some of whom have been living in the community for up to four years". The Irish Refugee Council, said: "There is a real need for the Department of Justice, which oversees these centres, to ensure that those who have been living in them for several years, are accommodated within the local area to ensure as little disruption as possible."[190]

B. Employment and education

1. Access to the labour market

Indicators:

- Does the legislation allow for access to the labour market for asylum seekers? ☐ Yes ☒ No
- Are there restrictions to access employment in practice? ☐ Yes ☒ No

There is no access to the labour market for asylum seekers in Ireland. Section 9 (4) of the Refugee Act 1996 (as amended), states that an applicant shall not seek or enter employment or carry out any business before the final determination on their application. Anyone who contravenes this provision is deemed guilty of an offence and is liable on summary conviction to a fine not exceeding £500 (approx.

189 Reception and Integration Agency, 'House Rules and Procedures'.

190 Irish Refugee Council, 'Closure of Galway accommodation centre shows complete disregard for family and children's rights', 10 September 2012

€643) or to a term of imprisonment not exceeding 1 month or both. It is unclear whether and if so the extent to which asylum seekers actually engage in work despite this prohibition.

In response to a parliamentary question on whether the prohibition on the right to work for asylum seekers would be reviewed, the Minister for Justice and Equality Ms. Fitzgerald referred to Section 9(4) of the Refugee Act 1996 (as amended) and referred to consultation as part of the Independent Working Group on the protection process without acknowledging whether there would be a review of the right to work as part of the reform of the asylum process. [191] Minister for State Aodhan O' Riordain has stated that asylum seekers who spend long periods of time in the Direct Provision system should be granted the right to work.[192]

Alan Shatter, the former Minister for Justice, Equality and Defence, stated in 2012 that extending the right to work to asylum seekers would almost certainly have a 'profoundly negative' impact on application numbers.[193]

2. Access to education

Indicators:

- Does the legislation provide for access to education for asylum seeking children? ☐ Yes ☒ No
- Are children able to access education in practice? ☒ Yes ☐ No

Asylum seeking children can attend local national primary and secondary schools on the same basis as Irish citizen children.

The City of Dublin Education and Training Board Separated Children's Service has offered educational services and support to separated children since 2001. The most prominent feature of the service is their Refugee Access Programme which is a transition service for newly-arrived separated children and other young people 'from refugee backgrounds'. The programme provides intensive English instruction, integration programmes and assists young people in preparing to navigate the Irish education system. Additionally, the service provides support after transition, including study support, outreach, a drop-in and a youth group. [194]

There is no automatic access to third level education (education in Universities and Colleges), or vocational training. Asylum seekers can access third level and vocational training if they can cover the costs of the fees, get the fees waived or access private grants or scholarships. Basic instruction on English and computer skills are offered to residents of some Direct Provision centres.

The Irish Refugee Council referenced a complaint from 2006, in which a child diagnosed with Down Syndrome lived with his parents and his sister in one room. The Irish Refugee Council report quotes the Health Service Executive providing recommendations stating that the child's 'living environment [was] very inadequate… Apart from preschool, he does not have sufficient opportunity to explore or develop his sense of curiosity. This level of social deprivation is a known risk factor for deepening intellectual disability'.[195]

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191 Frances Fitzgerald, Minister for Justice and Equality, Written Answers to Parliamentary question from Mick Wallace, 14 October 2014.

192 The Irish Times, *Right to work urged for asylum seekers*, Carl O Brien, 16 September 2014.

193 Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Robert Dowds TD; 16th April 2013.

194 Separated Children's Services, Youth and Education Services.

195 "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

The dispersal system of Direct Provision also impacts upon the provision of education for children in the asylum procedure. The Irish Times reported that young asylum seekers who have been awarded scholarships for further education were at risk of losing their scholarship places after RIA informed them that they would be dispersed to another accommodation centre.[196]

As part of the reform of the protection process within the Working Group, the Minister for Education, Jan O' Sullivan stated that she 'intends on ensuring that asylum seekers will be able to apply for third-level grants for access to third-level education. In the current system asylum seekers are treated as international students meaning they face a higher fee which makes it prohibitive for them to further their education at the third level.[197]

C. Health care

Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?
  ☒ Yes ☐ No
- In practice, do asylum seekers have adequate access to health care?
  ☒ Yes ☐ with limitations ☐ No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice? ☒ Yes ☐ Yes, to a limited extent ☐ No
- If material reception conditions are reduced/ withdrawn are asylum seekers still given access to health care? ☐ Yes ☐ No ☐ with limitations
-

Access to health care is free for asylum seekers living in Direct Provision and therefore has no legislative basis. Once in Direct Provision, they receive medical cards which allow them to attend a local doctor or general practitioner who are located in or attend the accommodation centres. A person with a medical card is entitled to prescribed drugs and medicines but must pay a charge for prescribed medicines and other items on prescription from pharmacies. The prescription charge is €2.50 for each item that is dispensed to under the medical card scheme and is up to a maximum of €25 per month per person or family. The Department of Health has recently stated that there are no plans to exempt asylum seekers from prescription charges,[198] despite claims they adversely impact asylum seekers and that some people spend all of their weekly allowance of 19.10 euro on prescription charges.[199]

Specialised treatment for trauma and victims of torture is available through an NGO called SPIRASI which is a humanitarian, intercultural, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. SPIRASI staff have access to certain accommodation centres e.g. Balseskin reception centre in Dublin and can help to identify victims of torture. No formal arrangements or agreements exist to deal with torture survivors in a way that is different to someone who has not experienced torture. An article in the newspaper the Medical Independent stated that the number of asylum seekers and refugees being referred to SPIRASI was the highest level in more than a decade.[200]

196 The Irish Times, *Young asylum seekers with scholarships ordered to move*, Sinead O Shea, 30 August 2014.

197 The Journal, *Third-level grants could be open to asylum-seekers next year,* 31 August 2014.

198 Irish Medical News, 'No exemptions on prescriptions fee-Department', 31 March 2014.

199 Medical Independent, 'Outside Looking in', 3 April 2014.

200 Medical Independent, 'Increase in torture treatment service numbers for refugees', 3 April 2014.

In August 2014, a young asylum seeker referred to as Ms. Y who was described as extremely vulnerable unsuccessfully sought an abortion after arriving in Ireland pregnant as a result of an alleged rape. She was suicidal at the time. The controversial case drew attention to the inadequacy of the abortion legislation in Ireland in general as well as the treatment of asylum seekers in the Direct Provision system, The Health Service Executive (HSE) are currently undertaking a review of the handling of Ms. Y's case.[201] Ms. Y is currently planning legal action against a number of bodies, including the Health Service Executive, the Department of Justice, the Reception and Integration Agency and the Garda National Immigration Bureau.[202]

The Irish Family Planning Association (IFPA) stated that asylum-seeking women seeking an abortion face insurmountable obstacles in trying to travel abroad in order to access terminations. The IFPA has raised these concerns with the UN Human Rights Committee and expressed concerns about the restrictive laws on abortion with the Government.[203]

There are significant issues about access to particular medical care which may arise from the location of asylum seekers away from specialised centres of treatment. Sue Conlan, Chief Executive of the Irish Refugee Council, stated in April 2014 that "(s)o many people with serious health issues cannot access the healthcare they need because of either geographical location or they can't afford to fund the prescriptions they are given or can't get to appointments because of a lack of funding."[204] Furthermore the actual system of Direct Provision can exacerbate the mental health concerns of individual asylum seekers. The Irish Refugee Council reported that children as young as 11 living in Direct Provision have expressed thoughts of suicide. Social services have been alerted to more than 1,500 cases of welfare concerns at Direct Provision centres across the country.[205]

Frances Fitzgerald, TD, Minister for Justice and Equality in response to a parliamentary question raised reported that between 2002 and 2014, 61 people have died in the Direct Provision system, 16 of whom were children aged five and under.[206]

201 The Medical Independent, *Slipping through the gaps*, Dr. Sara Burke, 11 September 2014.

202 The Irish Times, *Ms. Y plans legal action against HSE and other agencies*, 22 January 2015.

203 The Irish Times, *Dozens of migrant women unable to travel for abortions*, Carl O' Brien, 15 December 2014; The Irish Times, *Odds against migrant women trying to travel abroad for abortion*, 15 December 2014.

204 Medical Independent, 'Outside Looking in', 3 April 2014.

205 The Irish Examiner, *'11-year olds 'expressing suicidal thoughts' in asylum-seeker centres*, 9 August 2014.

206 The Journal,ie, *Why have 16 children died in Direct Provision?,* 22 January 2015. No further information was provided on the cause of death of individuals in the Direct Provision system.

Detention of Asylum Seekers

A. General

Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention) Not available
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): The Irish Prison Service stated that in 2013 there were 396 persons sent to prison in respect of immigration issues (it is unclear how many of these persons are asylum seekers).
- Number of detention centres: Every Garda Síochána (police) station is defined as a place of detention plus 9 prisons.
- Total capacity: Unknown

Detention is not widely used for asylum seekers in Ireland. There are no detention centres for asylum seekers and irregular migrants. Asylum seekers are detained within the general prison population, at a Garda Síochána (police) station or another designated place of detention.

In 2012, 50 applications – 5.2% of all asylum applications – were received from persons in places of detention. Less than around 8 of these persons had their substantive asylum interview under section 11 of the Refugee Act, 1996 in prison as persons were released from detention and the substantive interview took place at the Office of the Refugee Applications Commissioner (ORAC).[207]

In 2012 35 applications for asylum were made from Cloverhill Prison, 7 from Mountjoy prison, 4 from Castlerea prison, 2 from Cork prison.[208]

Every Garda Síochána (police) station, plus 9 prisons, are listed as 'places of detention' by Statutory Instrument No. 56 of 2005 Immigration Act 2003 (Removal Places of Detention) Regulations 2005.

There are no figures recorded for the numbers of asylum seekers in detention. The Irish Prison Service stated that 396 persons were sent to prison in 2013 under immigration law offences but it is unclear how many of these persons are asylum seekers.[209] Department of Justice Minister, Alan Shatter, stated in April 2014, in answer to a parliamentary question requesting the number of persons detained under immigration and asylum laws, that in the time available it had not been possible to obtain the information and that it was possible that some of the information would not be available in the form requested and may not be obtainable due to the disproportionate expenditure of time and resources relative to the information sought.[210]

Asylum seekers and immigrants who may be detained generally fall in to six categories:

- Non-nationals who arrive in Ireland and are refused "permission to land".
- Asylum seekers who are deemed to engage one of the categories of Section 9.8 of the Refugee Act 1996.[211]

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207 Office of the Refugee Applications Commissioner, 'Annual Report 2012', 2013, page 27.

208 Reception and Integration Agency, 'Annual Report 2012', 2013.

209 Irish Prison Service, 'Annual Report 2013', March 2014 page 22. At the time of writing the third update of this country report no statistics relating to 2014 were available.

210 Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Catherine Murphy TD, 27 February 2014.

211 These include (a) poses a threat to national security or public order in the State, (b) has committed a serious non-political crime outside the State, (c) has not made reasonable efforts to establish his or her true identity,

- Asylum seekers subject to the Dublin Regulation.
- Non-nationals who cannot establish their identity.
- Non-nationals with outstanding deportation orders.
- Non-nationals awaiting trial for a criminal immigration-related offence(s).

Asylum seekers are detained in regular prisons. Detainees are held in one of the following penal institutions run by the Irish Prison Service: Castlerea Prison; Cloverhill Prison; Cork Prison; Limerick Prison; the Midlands Prison; Mountjoy Prison; Saint Patrick's Institution, Dublin; the Training Unit, Glengariff Parade, Dublin; and, Wheatfield Prison, Dublin.

Females are generally detained at the Dochas Centre in Dublin which has a capacity of 105. Males are generally detained at Cloverhill Prison in west Dublin which has a capacity of 431.

B. Grounds for detention

Indicators:

- In practice, are most asylum seekers detained
  - on the territory: ☐ Yes ☒ No
  - at the border: ☐ Yes ☒ No
- Are asylum seekers detained in practice during the Dublin procedure?
  ☐ Frequently ☒ Rarely ☐ Never
- Are asylum seekers detained during a regular procedure in practice?
  ☐ Frequently ☐ Rarely ☒ Never
- Are unaccompanied asylum-seeking children detained in practice?
  ☐ Frequently ☐ Rarely ☒ Never
  - If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
- Are asylum seeking children in families detained in practice? ☐ Frequently ☒ Rarely ☐ Never
- What is the maximum detention period set in the legislation (inc extensions): Refugee Act 1996: renewable periods of 21 days; Immigration Act 2003: a period not exceeding 8 weeks
- In practice, how long in average are asylum seekers detained? In practice, how long in average are asylum seekers detained? Depends on reason for detention

Detention is not used on a regular basis in Ireland, except in the following circumstances:

<u>Detention under the Refugee Act 1996:</u>

Section 9A Refugee Act 1996 as amended: Asylum seekers may be detained by an immigration officer or a member of An Garda Síochána (the Police) if it is suspected that they:

1. Pose a threat to national security or public policy;
2. Have committed a serious non-political crime outside the State;
3. Have not made reasonable efforts to establish identity (including non-compliance with the requirement to provide fingerprints);
4. Intend to avoid removal from the State, in the event of their application being transferred to a Dublin II Regulation;
5. Intend to avoid removal from the State, in the event that their application is unsuccessful;
6. Intend to leave the State and enter another without lawful authority;

(d) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22 , (e) intends to leave the State and enter another state without lawful authority, or (f) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

7. Without reasonable cause, have destroyed identity or travel documents or are in possession of forged identity documents.

Persons can be detained for a renewable period of 21 days. Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they:

1. Are being detained
2. Shall be brought before a court as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application.
3. Are entitled to consult a solicitor
4. Are entitled to have notification of his or her detention, the place of detention and every change of such place sent to the High Commissioner
5. Are entitled to leave the state at any time during the period of their detention and if they indicate a desire to do so, they shall be brought before a court. The court may make such orders as may be necessary for their removal.
6. Are entitled to the assistance of an interpreter for the purposes of consulting with a solicitor.

The detaining officer must inform the Office Refugee Applications Commissioner (ORAC) or Refugee Appeals Tribunal (RAT), as relevant about the detention. The appropriate body then ensures that the application of the detained person is dealt with as soon as possible and, if necessary, before any other application for persons who are not in detention.

If a person is detained at the beginning of the asylum procedure they are often released during the procedure and before an interview takes place. 50 asylum applications were received from persons in places of detention in 2012, less than 15% of these were interviewed in a place of detention under section 11 of the Refugee Act, 1996, as in the majority of cases persons were released and then interviewed at ORAC.

<u>Detention of a person with a deportation order:</u>

Section 5 Immigration Act 1999: In the case of an unsuccessful applicant for whom a deportation order is in force, a person may be detained by an immigration officer or a member of the Garda Síochána (Irish Police Force), if it is suspected that they:

1. Have failed to comply with any provision of the deportation order;
2. Intends to leave the state and enter another state without lawful authority;
3. Has destroyed identity documents or is in possession of forged identity documents; or
4. Intends to avoid removal from the state.

Section 5(6) of the 1999 Act prohibits detention for any single period of more than eight weeks and multiple detentions for periods of less than eight weeks where the total period exceeds eight weeks.

A non-national detained under Section 5 of the Immigration Act 1999 can challenge the validity of his or her deportation in court. If a challenge is filed, he or she can also challenge his/her continued detention. Challenge to the legality of his/her detention can be made in habeas corpus proceedings before the High Court pursuant to Article 40(4) of the Constitution.

<u>Detention under the Dublin Regulation:</u>

Statutory Instrument No. 423/2003 - Refugee Act 1996 (Section 22) Order 2003, which passes the Dublin Regulation in to Irish law, states that a person may be detained by an immigration officer or a member of the Garda Síochána for the purpose of ensuring transfer under the Dublin Regulation

It is unclear how exactly the Irish authorities will implement the detention provision of the Dublin III regulation. In addition, it is unclear how the authorities will interpret whether an individual is at risk of absconding. In an information leaflet issued by ORAC to applicants regarding the Dublin III regulation it is stated that: "Please be aware that if we consider that you are likely to try to run away or hide from us because you do not want us to send you to another country, you may be put in detention (a closed centre). If so, you will have the right to a legal representative and will be informed by us of your other rights, including the right to appeal against your detention."[212]

Detention under Section 12 of the Immigration Act 2004:

In the past, many asylum seekers were detained as a result of Section 12 of the Immigration Act 2004 which stated that every non-national shall produce on demand, unless he or she gives a satisfactory explanation of the circumstances which prevent him or her from so doing a valid passport or other equivalent document, or registration document. Failure to do so constituted an offence and a person was liable to a fine of 3,000 euro and/or 12 months imprisonment. In the case of *Dokie -v- D. P. P.*[213] the Irish High Court found that Section 12 was found to be unconstitutional on the grounds that its vagueness is such as to fail basic requirements for the creation of a criminal offence and that it gives rise to arbitrariness and legal uncertainty.

Section 12 was replaced by Section 34 of the Civil Law (Miscellaneous Provisions) Act 2011 which added that in proceedings brought against a person for an offence under this section, it shall be a defence for the person to prove that, at the time of the alleged offence, he or she had reasonable cause for not complying with the requirements of this section to which the offence relates.

There are no formal alternatives to detention. Section 9(5) of the Refugee Act 1996 could be considered a possible alternative in that it allows an immigration officer or other authorised person to require an applicant for asylum to reside or remain in particular districts or places in the country, or, to report at specified times to an immigration officer or other designated person.

212 Office of the Refugee Applications Commissioner, 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013',

213 *Dokie -v- D. P. P.* [2010] IEHC 110 (25 March 2011).

C. Detention conditions

Indicators:

- Does national legislation allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☒ Yes ☐ No
- If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedures? ☒ Yes ☐ No
- Do detainees have access to health care in practice? ☒ Yes ☐ No
  - If yes, is it limited to emergency health care? ☐ Yes ☒ No
- Is access to detention centres allowed to
  - Lawyers: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - NGOs: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - UNHCR: ☒ Yes ☐ Yes, but with some limitations ☐ No
  - Family members: ☒ Yes ☐ Yes, but with some limitations ☐ No

Legislation provides for principles which are required to be regarded when a person is detained.[214] Applicable provisions include that due respect shall be had for the personal rights of detainees and their dignity as human persons, and regard shall be had for the special needs of any of them who may be under a physical or mental disability. Secondly that when a detainee has family in the state, regard shall be had for the right of the detainee to maintain reasonable contact with the other members of that group, whether other members of the group are also detained or not. Thirdly that information regarding a detainee shall not be conveyed to the consular authorities of the state from which the detainee claims to be fleeing, and contact shall not be made with those authorities, except at the express request, or with the express consent, in writing of the detainee.

The legislation further states how a detainee shall be treated when detained.[215] A detainee shall be allowed such reasonable time for rest as is necessary. A detainee shall be provided with such meals as are necessary and, in any case, at least two light meals and one main meal in any twenty-four hour period. The detainee may have meals supplied at their own expense where it is practicable for the member in charge to arrange this. Access to toilet facilities shall be provided for a detainee. Where it is necessary to place persons in cells, as far as practicable not more than one person shall be placed in each cell. Persons of the opposite sex shall not be placed in a cell together. A violent person shall not be placed in a cell with other persons if this can be avoided. A detainee shall not be placed in a cell with other persons who are not detainees, for example persons detained under criminal law provisions, if this can be avoided, this presumably means that immigration detainees should not be held with persons detained under other criminal law provisions. Where a person is kept in a cell, a member of the Garda Síochána (Irish police force) shall visit them at intervals of approximately half an hour. A member shall be accompanied when visiting a person of the opposite sex who is alone in a cell.

There is no specific provision relating to health care for detained asylum seekers and they would have access to the same health care as the general prison population. Section 33 of the Irish Prison Service Rules[216] state that a prisoner shall be entitled, while in prison, to the provision of healthcare of a diagnostic, preventative, curative and rehabilitative nature (in these Rules referred to as "primary healthcare") that is, at least, of the same or a similar standard as that available to persons outside of prison who are holders of a medical card (a medical card allows a person to access health care free of charge). In relation to persons who require psychiatric care, the Prison Rules simply state that the Minister may arrange for the provision of psychiatric and other healthcare as is considered appropriate.

214 Section 4 of S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

215 Section 18 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

216 Statutory Instrument No. 252 of 2007, Prison Rules, 2007.

A detainee shall have reasonable access to a solicitor of his or her choice and shall be enabled to communicate with him or her privately. A detainee may receive a visit from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the visit can be adequately supervised and will not be prejudicial to the interests of justice. A detainee may make a telephone call of reasonable duration free of charge to a person reasonably named by him or her or send a letter (for which purpose writing materials and, where necessary, postage stamps shall be supplied on request).[217]

Where the person detained has custody of a child, the health authorities are informed and the child is taken into care.

A detainee may receive a visit from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the Garda member in charge is satisfied that the visit can be adequately supervised and that it will not be prejudicial to the interests of justice. A detainee may make a telephone call of reasonable duration free of charge to a person reasonably named by him or her or send a letter. [218]A prison visiting committee is appointed to each prison under the Prisons (Visiting Committees) Act 1925 and Prisons (Visiting Committees) Order 1925. The function of visiting committees is to visit the prison to which they are appointed and hear any complaints made to them by any prisoner. The committee reports to the Minister any abuses observed or found by them in the prison and any repairs which they think may be urgently needed. The visiting committee has free access, either collectively or individually, to every part of their prison. In inspecting prisons, the visiting committees focus on issues such as the quality of accommodation and the catering, medical, educational and welfare services and recreational facilities.

The visiting committee for Cloverhill Prison, where the majority of asylum seekers are detained, stated in their 2012 annual report that the issue of foreign nationals being held in Cloverhill contributed to overcrowding and that the committee suggested that they should not be held in prison but elsewhere.[219] The committee stated that the main issues raised by prisoners (it is unknown whether any of these prisoners were asylum seekers) were requests for non-smoking cells, return to general population, access to the gym, medical issues, visits, harassment, education and access to the prison shop.

Media and politicians do not generally have access to prisons. There is no dedicated NGO or other organisation that provides services and information to asylum seekers and migrants who are detained.

Detention and prison conditions in Ireland have been criticised in relation to international standards. The concluding observations of the United Nations Committee against Torture, after a visit to Ireland in June 2011, stated that, "while noting the State party's efforts to alleviate overcrowding in prisons it remained deeply concerned at reports that overcrowding remains a serious problem."[220] The Committee also stated that they were concerned at the placement of persons detained for immigration-related reasons in ordinary prison facilities together with convicted and remand prisoners.

The Council of Europe's Committee for the Prevention of Torture (CPT) published a report on its fifth periodic visit to Ireland in 2010. The CPT noted a series of concerns relating to the provision of healthcare at Cork, Midlands and Mountjoy Prisons. The CPT also criticised the use of special observation cells and encouraged the authorities to continue to improve access to psychiatric care in

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217 Section 17 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

218 Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

219 Cloverhill Visiting Committee, 'Annual Report' 2012, 17 May 2013.

220 Committee against Torture Forty-sixth session 9 May - 3 June 2011 Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture.

prisons. More generally, the CPT observed that several of the prisons visited remained overcrowded with poor living conditions, and that they offered only a limited regime for prisoners. Recommendations were also made in relation to the disciplinary process, complaints procedures and contacts with the outside world.[221]

In 2010 the NGO Jesuit Refugee Service interviewed female asylum seekers and immigrants detained at the Dochas Centre.[222] The women interviewed were young, with most under the age of 30. Most were single and only three were married. The average amount of time that the women were detained was 12.33 days, with the minimum being 2 days and the maximum being 43 days. Four of the women were rejected asylum seekers. Three of the women were seeking asylum. Two of the women were pending deportation after having been in an irregular status in Ireland. JRS commented that all of the women had been informed of the reasons for their detention, most felt that they did not have sufficient information to understand their rights as migrants or asylum seekers in Ireland. JRS stated that the primary issue of concern identified during the research was the lack of information experienced by all of the women interviewed, relating to: the operating rules of the prison; asylum procedures and access to legal representation; the final outcome of their detention; and the deportation process. This lack of information contributed in great part to the sense of vulnerability, anxiety and isolation felt by the women.

D. Procedural safeguards and judicial review of the detention order

Indicators:

- Is there an automatic review of the lawfulness of detention? ☒ Yes ☐ No

Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they shall be brought before a court as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application.

In 2012, 50 applications were received from persons in places of detention but less than 8 of these had their personal interview, examining the application, take place in the place of detention. Where a person is interviewed in a place of detention, an interpreter would be brought to the prison. An application from a person in detention is prioritised and ORAC states that the preliminary interviews of these applicants were carried out within three working days of their application.[223]

If the District Court judge commits the person to a place of detention, that person may be detained for further periods of time (each period not exceeding 21 days) by order of a District Court. However, if during the period of detention the applicant indicates a desire to voluntarily leave, they will be brought before the District Court in order that arrangements may be made.

The lawfulness of detention can be challenged in the High Court by way of an application for *habeas corpus*.

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221 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010', 10 February 2011.

222 Jesuit Refugee Service, 'Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union', June 2010.

223 Office of the Refugee Applications Commissioner, 'Annual Report 2012', 2013.

Asylum seekers who are detained under Sections 9(8) or (13) of the Refugee Act 1996 must also be brought before a District Court judge as soon as practicable after being detained. The judge may order continued detention or release of the asylum seeker.

The question of whether grounds for detention continue to exist must be re-examined by the District Court judge every 21 days. In addition to this form of review, a detained asylum-seeker can challenge the legality of the detention in habeas proceedings under Article 40(4) of the Constitution in the High Court. The Refugee Legal Service provides representation for person detained in the District Court under Section 9(8) of the Refugee Act.

E. Legal assistance

Indicators:

- Does the law provide for access to free legal assistance for the review of detention?
  ☒ Yes ☐ No
- Do asylum seekers have effective access to free legal assistance in practice? ☒ Yes ☐ No

The legislation states that "a detainee shall have reasonable access to a solicitor of his or her choice and shall be enabled to communicate with him or her privately".[224] A consultation with a solicitor may take place in the sight but out of the hearing of a member of the Garda Síochána (Irish police force).

Statutory Instrument No. 252 of 2007 sets out rules (Prison Rules) to be applied to persons in prisons including persons detained under immigration law. The Prison Rules state that a foreign national shall be provided with the means to contact a counsel and, in addition, an asylum applicant shall be provided with the means to contact UNHCR and organisations whose principal object is to serve the interests of refugees or stateless persons or to protect the civil and human rights of such persons. A person shall also be informed of their entitlements to receive a visit from his or her legal adviser at any reasonable time for the purposes of consulting in relation to any matter of a legal nature in respect of which the prisoner has a direct interest.

Section 8 of the Refugee Act 1996 states that when a person makes an application for asylum, regardless of whether that application is made from detention or elsewhere, they should be informed of their rights to consult a lawyer and UNHCR.

Where an asylum seeker is detained under Section 9(8) or (13) of the Refugee Act 1996, Section 10 of the Refugee Act 1996 states that an immigration officer or a member of the Garda Síochána (police) must give an asylum seeker certain information without delay.

The information includes that the person is being detained, that he or she shall, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending consideration of that person's application for a declaration under section 8, that he or she is entitled to consult a solicitor (and entitled to the assistance of an interpreter for such a consultation), that he or she is entitled to have notification of his or her detention sent to UNHCR, that he or she is entitled to leave the State. The information should be given, where possible, in a language that the person understands.

The Refugee Legal Service provide legal assistance to asylum seekers who are detained. Jesuit Refugee Service Ireland noted in June 2011 that visits and assistance by Refugee Legal Service

[224] Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

solicitors to detained asylum seekers seemed inconsistent.[225] No NGO provides routine legal assistance to detained asylum seekers.

[225] Jesuit Refugee Service Ireland, Submission to Universal Periodic Review, June 2011.