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National Country Report

Ireland



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This report is up-to-date as of the 16th May 2014

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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TABLE OF CONTENTS

Statistics	6
Overview of the legal framework	9
Overview of the main changes since the previous report update	10
Asylum Procedure	12
A. General	12
1. Flow Chart.....	12
2. Types of procedures.....	14
3. List of authorities intervening in each stage of the procedure	14
4. Number of staff and nature of the first instance authority (responsible for taking the decision on the asylum application at the first instance)	14
5. Short overview of the asylum procedure.....	15
B. Procedures	17
1. Registration of the Asylum Application.....	17
2. Regular procedure.....	19
General (scope, time limits)	19
Appeal	20
Personal Interview.....	23
3. Dublin	27
Procedure.....	27
Appeal	28
Personal Interview.....	29
Indicators:.....	29
Legal assistance.....	30
Suspension of transfers	30
4. Admissibility procedures	30
General (scope, criteria, time limits).....	30
Appeal	31
Personal Interview.....	32
Legal assistance.....	33

5.	Border procedure (border and transit zones)	33
	General (scope, time-limits)	33
	Appeal	34
	Personal Interview	34
	Legal assistance	35
6.	Accelerated procedures	35
	General (scope, grounds for accelerated procedures, time limits)	35
	Appeal	36
	Personal Interview	37
	Legal assistance	37
C.	Information for asylum seekers and access to NGOs and UNHCR	38
D.	Subsequent applications	39
E.	Guarantees for vulnerable groups of asylum seekers (children, traumatised persons, survivors of torture)	40
	1. Special Procedural guarantees	40
	2. Use of medical reports	41
	3. Age assessment and legal representation of unaccompanied children	42
F.	The safe country concepts (if applicable)	43
G.	Treatment of specific nationalities	44
	Reception Conditions	46
A.	Access and forms of reception conditions	46
	1. Criteria and restrictions to access reception conditions	46
	2. Forms and levels of material reception conditions	48
	3. Types of accommodation	49
	4. Conditions in reception facilities	51
	5. Reduction or withdrawal of reception conditions	54
	6. Access to reception centres by third parties	55
	7. Addressing special reception needs of vulnerable persons	56
	8. Provision of information	57

9. Freedom of movement	57
B. Employment and education	58
1. Access to the labour market	58
2. Access to education	58
C. Health care	59
Detention of Asylum Seekers	61
A. General	61
B. Grounds for detention	62
C. Detention conditions	64
D. Procedural safeguards and judicial review of the detention order	67
E. Legal assistance	67

Statistics

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

	Total applicants in 2013	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%
<i>Breakdown by countries of origin of the total numbers</i>									
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%
<i>Others¹</i>									
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

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

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

	Number
Total number of applicants	910
Men	570
Women	340

Source: Office of the Refugee Applications Commissioner (ORAC)

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 protection²	20	2.3%	⁻³	-
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 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.

³ 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

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 ⁴
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

⁴ 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

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. 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 December 2013

- The recognition rate at first instance in Ireland rose again in 2013 and is currently around 15%-18% depending on calculation methods.
- From November 2013 subsidiary protection applications have been decided by the Office of the Refugee Applications Commissioner (ORAC) (they were previously decided by the Department of Justice). As part of ORAC's investigation of the subsidiary protection application a person has an oral interview which they previously did not have. In addition a person receiving a negative decision on a subsidiary application has the right of appeal to the Refugee Appeals Tribunal (RAT). These changes are 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*.⁵
- ORAC will work through a back log of outstanding subsidiary protection applications which numbers around 3000-3500 persons. In March 2014 ORAC announced a prioritisation process. Cases will be dealt with in two streams that will be considered simultaneously: Stream one will include applications processed on the basis of oldest applications first. Stream two will process the following cases first: age of applicants (unaccompanied children in the care of the Health Services Executive (HSE); aged out unaccompanied children; applicants over 70 years of age, who are not part of a family group); the likelihood applications are well-founded (including whether a Medico Legal Report indicates well foundedness); the likelihood applications are well-founded due to the country of origin or habitual residence (Afghanistan, Chad, Eritrea, Iraq, Mali, Somalia, South Sudan, Sudan, Syria).
- New asylum applicants in Ireland will continue to have their claim for refugee status decided before their subsidiary protection application. A person cannot apply for subsidiary protection without having been first refused refugee status. In 2012 the Irish Supreme Court made a reference to the Court of Justice of the European Union asking whether this requirement satisfies the requirements of Directive 2004/83/EC and, in particular, the principle of good administration laid down in Article 41 of the Charter of Fundamental Rights of the European Union. The Court of Justice stated in May 2014⁶ 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.⁷
- The RAT published a strategy statement in early 2014, which listed five high level goals for 2014-2017. These included deciding appeals to the highest professional standards; achieving and maintaining quality standards by the training and development of RAT Members; efficiently and actively managing cases in the Superior Courts to which the RAT is a party; ensuring the good administration of the RAT to the highest professional standards.
- In a significant change in previous practice, decisions of the RAT are now publicly [available](#) (information that may lead to the identification of the appellant is removed). A major criticism of the RAT in the past has been that decisions were not publicly available.
- How the Dublin III Regulation will be interpreted by the Irish authorities is so far unclear, partly considering the short time that it has been in effect for. An information note given to all asylum applicants about the Regulation seems to suggest that persons subject to the Regulation may have

⁵ CJEU, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012

⁶ CJEU, Case C-604/12, *H. N. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*.

⁷ Irish Refugee Council, [European Court judgment shows need for urgent legislative reform](#), 12th May 2014.

to request that an appeal is suspensive of transfer rather than the appeal automatically suspending transfer.

- In April 2014, a legal challenge against Direct Provision was brought in the High Court.⁸ 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 is also challenging 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.⁹

⁸ *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*

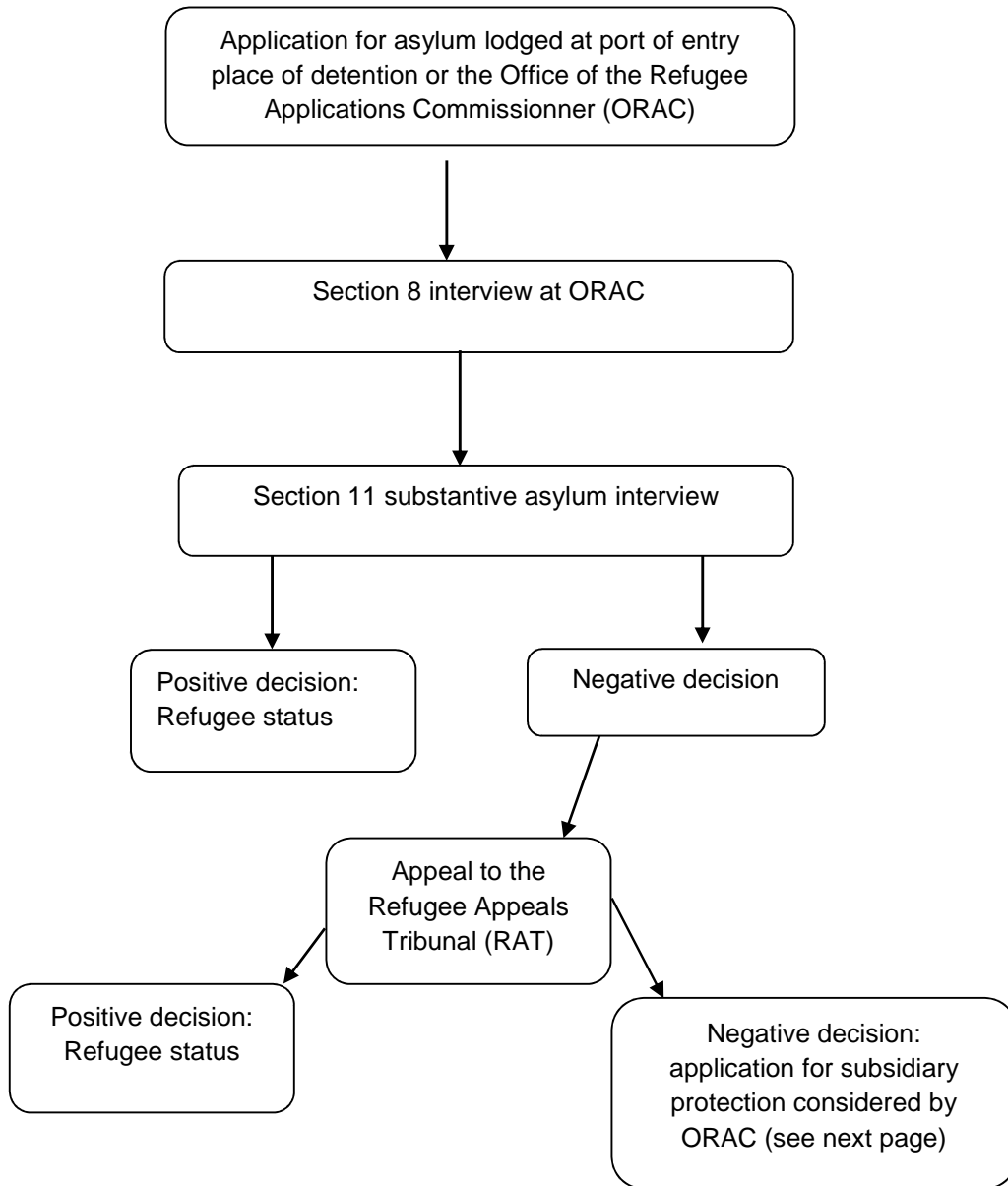
⁹ Liam Thornton, '[Direct Provision System Challenged Before the Irish High Court: Day 1](#)', Human Rights in Ireland.

Asylum Procedure

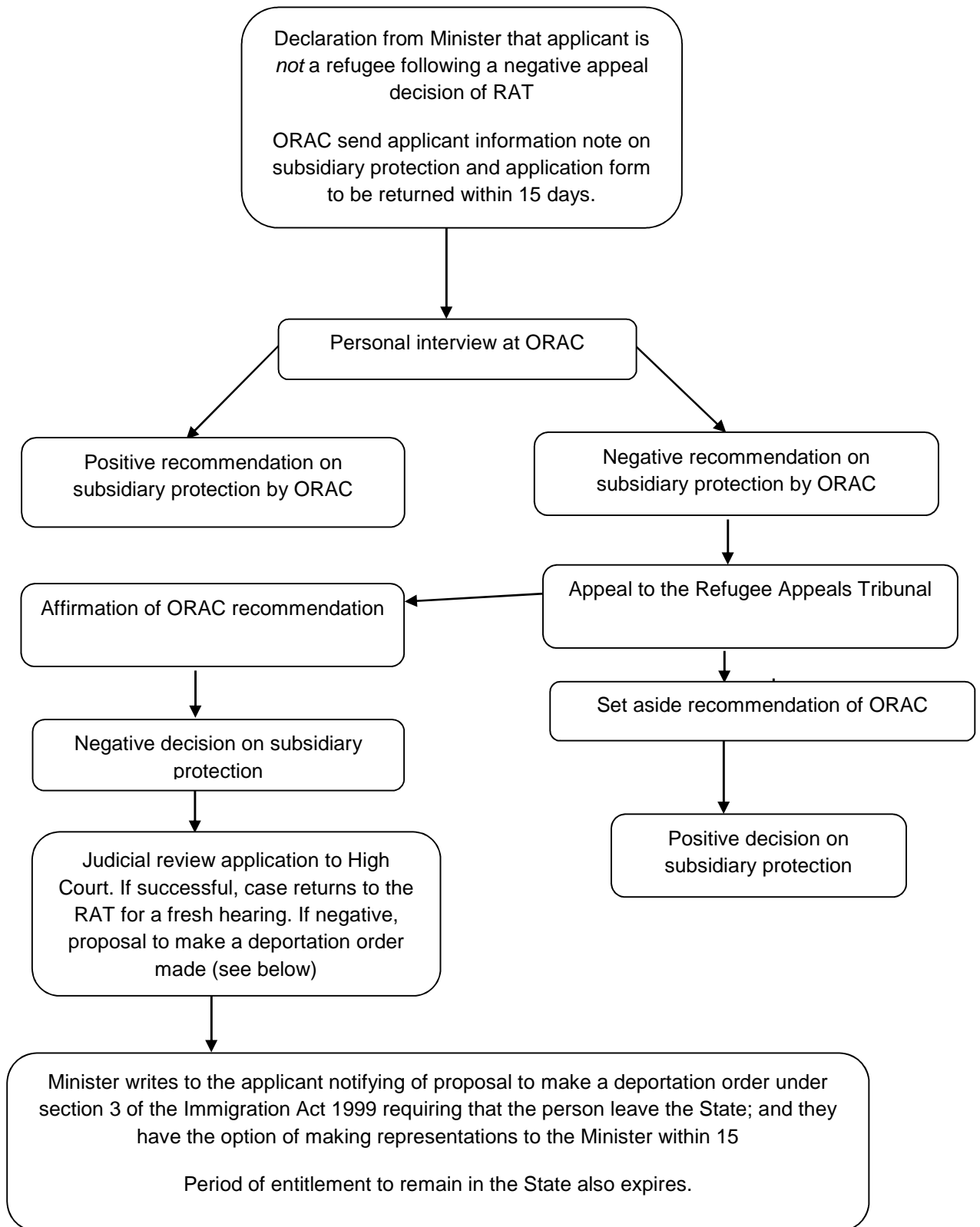
A. General

1. Flow Chart

Refugee Status procedure



Subsidiary protection procedure:



2. Types of procedures

Indicators:

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

- | | | |
|---|---|--|
| - regular procedure: | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - border procedure: | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - admissibility procedure: | yes <input type="checkbox"/> | no <input checked="" type="checkbox"/> |
| - accelerated procedure (labelled as such in national law): | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - Accelerated examination ("fast-tracking" certain case caseloads as part of regular procedure): | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - Prioritised examination (application likely to be well-founded or vulnerable applicant as part of regular procedure): | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |
| - Dublin Procedure | yes <input checked="" type="checkbox"/> | no <input type="checkbox"/> |

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 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: <ol style="list-style-type: none"> 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 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.

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.¹⁰ 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. 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.

- 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.

¹⁰ Ireland operates a split protection system so subsidiary protection is not considered at this stage. It is not possible to claim subsidiary protection until after a decision refusing the application for asylum has been received.

- 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.*¹¹ all applicants for subsidiary protection are now being offered a personal interview with ORAC regarding their subsidiary protection application.

In the last year there were anecdotal reports of persons who had outstanding subsidiary protection applications being offered leave to remain for a period of time in return for withdrawing their subsidiary protection application. The prevalence of this practice is unclear. It may be that this was an attempt to deal with the backlog of applicants awaiting a decision on their subsidiary protection application which numbered around 3000-3500.

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 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

¹¹ 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.

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.

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
 - o the time limit at the border: 5 working days
 - o the time limit on the territory: n/a
 - o 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

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*¹². 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.¹³

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)¹⁴, 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.

¹² Supreme Court, Order for Reference , *H.N. v. Minister for Justice* [2012] IESC 58, 19 December 2012).

¹³ Irish Refugee Council, [European Court judgment shows need for urgent legislative reform](#), 12th May 2014.

¹⁴ 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.

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.

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 Baleskin 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 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.

There is no time limit in law for ORAC to make a decision on the asylum application at first instance.¹⁵ ORAC endeavour to deliver a recommendation at first instance on whether the person should be 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 an application in 2012 was around 8.6 weeks.¹⁶

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, 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. In 2012 and 2013, 62 applications were processed under the Ministerial Prioritisation Directive. In the same period, there were a total of 66 decisions made under the Directive, 65 of which were negative, 1 positive.¹⁷

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 2012 a total of 50 applications for asylum were received from persons in detention, which constituted 5.2% of all applications received in 2012. The preliminary interview in these cases took place within three working days of their date of application in so far as possible. Less than 15% of these were interviewed in a place of detention under section 11 of the Refugee Act, 1996, as the majority of persons were released from prison and the cases were finalised in ORAC.

Appeal

Indicators:

- Does the law provide for an appeal against the first instance decision in the regular procedure:

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
o if yes, is the appeal	<input checked="" type="checkbox"/> judicial	<input type="checkbox"/> administrative
o If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> 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.

¹⁵ 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 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.

¹⁶ Office of the Refugee Applications Commissioner, 'Annual Report 2012', 2013.

¹⁷ Office of the Refugee Applications Commissioner, [Monthly statistical reports](#).

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.

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 2014.¹⁸ 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.¹⁹

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.²⁰ 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. Alan Shatter stated that RAT Users Group had considered draft procedural guidelines which set out the practice and procedure relating to how appeals are dealt with by the RAT. Other guidelines are also in preparation, including a comprehensive guideline for dealing with child applicants.

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.
- 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

¹⁸ See the list of Members appointed on the Refugee Appeals Tribunal's [website](#).

¹⁹ See the call for expression of interests [here](#).

²⁰ Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Catherine Murphy TD, 27 February 2014.

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 heard 651 appeals in 2013. 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 are suspensive.

It is unclear if appeals against decisions made under the Dublin III regulation will be suspensive, as required by the Regulation. When asked in January 2014 Alan Shatter, the Minister for the Department of Justice stated that his department was aware of the need to ensure that the Refugee Act 1996 (Section 22) Order 2003 (Statutory Instrument No. 423 of 2003) is operated in a way which gives effect to the recast Dublin Regulation.²¹ In an information leaflet issued by ORAC to applicants regarding the Dublin III regulation (currently not available online), it is stated that an applicant can ask to remain in this country until the appeal or review of a decision to transfer the person to another country is decided.²²

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.²³

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

²¹ Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Derek Nolan TD, 16 January 2014 .

²² 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013', Office of the Refugee Applications Commissioner. This document is currently not available online.

²³ [UNHCR Ireland 2012 snapshot](#).

- Notice of enquiries made or observations furnished by ORAC or the High Commissioner.

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.²⁴

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.²⁵ 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 Irish Courts Service Annual Report 2012 stated that the waiting time for asylum-related judicial reviews²⁶ was 37 months until the full hearing.²⁷ 440 new asylum-related judicial review applications were made in the High Court in 2012 – a 37% decrease on 2011.²⁸ Asylum related judicial reviews represented 44% of all judicial reviews applications made in 2012.²⁹ When the application for judicial review is made, a stay on the deportation process is also sought simultaneously.

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.

Personal Interview

Indicators:

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

²⁴ Information received from the Refugee Appeals Tribunal.

²⁵ Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.

²⁶ ‘Asylum related’ is defined as applications generally seeking an order quashing the decision of a body such as the Refugee Appeals Tribunal, or an injunction restraining the Minister for Justice and Equality from deporting them.

²⁷ Courts Service, [‘Annual Report 2012’](#), 2013, page 10.

²⁸ Courts Service, [‘Annual Report 2012’](#), 2013, page 10, page 22.

²⁹ Courts Service, [‘Annual Report 2012’](#), 2013, page 10, page 25.

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 2013,³⁰ 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*.³¹ 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.

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

³⁰ Statutory Instrument No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013.

³¹ CJEU, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012.

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 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. 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.

3. Dublin

Indicators:

- Number of outgoing requests in 2013: 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 2012:³² 91

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.

The Dublin II Regulation was transposed into Irish law through the Refugee Act 1996 (as amended).³³ 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 has not yet been recognised by Irish law. In January 2014, Alan Shatter, Minister for Justice, has stated that the Dublin III Regulation is binding in its entirety and directly applicable in all Member States including Ireland. Shatter stated that consultations between his Department and the Office of the Attorney General were ongoing in relation to changes to the national regulatory framework to facilitate the smooth operation in Ireland of the recast Dublin Regulation. He stated that it appeared that the most likely outcome of these consultations is that it will be necessary to amend or replace the Order made under section 22 of the Refugee Act.

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 days of the sending of the notice) whether they wish to continue with their appeal and, if an applicant does not furnish

³² Data for 2013 was not yet available at the time of this update.

³³ 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.

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 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 an 'Information Leaflet for Applicants for Refugee Status in Ireland' which is a guide to the procedures for processing applications for refugee status in Ireland. Chapter 4 of that document gives information about the Dublin regulation and process.³⁴ Since the commencement of the Dublin III Regulation applicants have also been given an information leaflet that includes some information about the Dublin III Regulation.

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.

Appeal

Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
 - Yes No
 - o if yes, is the appeal judicial administrative
 - o 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

³⁴ See [Information Leaflet](#) for Applicants for Refugee Status in Ireland, A Guide to the procedures for processing applications for refugee status in Ireland in accordance with the provisions of the Refugee Act, 1996, as amended by the Immigration Act, 1999, the Illegal Immigrants (Trafficking) Act, 2000, and the Immigration Act, 2003.

An applicant has 15 working days to appeal from a decision of ORAC under the Dublin II Regulation. The appeal shall not be suspensive according to the legislation³⁵ although this may change in light of the requirement of Article 27.3 of the Dublin III Regulation, which requires that the appeal against a determination to transfer a person is suspensive or that there is an opportunity to request that it is suspensive. An information leaflet about the Dublin III Regulation states that an applicant can ask to remain in the country until the appeal against a decision to transfer has been decided.³⁶

The RAT shall have regard only to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in the Regulation.³⁷ The limited scope of this appeal may not be compatible with Article 27 of the Dublin III Regulation 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 is notified in writing and arrangements are made for their return if necessary. There are no oral hearings on appeals in relation to Dublin II.

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.

In 2013, the RAT heard 15 appeals against the decision of ORAC relating to the Dublin II Regulation and affirmed 14 of them.³⁸

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 II Regulation and make a decision that they will be transferred to another state. If ORAC makes a determination that another Member State is responsible for determining the application under the Dublin II Regulation before the substantive asylum interview, generally no interview takes place. This practice may be incompatible with the requirement of Article 5 of the Dublin III Regulation to conduct a personal interview with the applicant.

³⁵ S. 6.2.b of S.I. No. 423/2003.

³⁶ 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013', Office of the Refugee Applications Commissioner. This document is currently not available online.

³⁷ S. 8.8 of S.I. No. 423/2003.

³⁸ Information received by the Irish Refugee Council from the Refugee Appeals Tribunal.

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. If a person is notified of the decision to transfer them to another Member State at the same time that transfer takes place then accessing effective legal advice prior to the transfer may be difficult or impossible.

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
 - o 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.

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.³⁹

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.⁴⁰

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.

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.

³⁹ 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.

⁴⁰ 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.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the admissibility procedure? Yes No
 - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route? Yes No
 - o 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, 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.⁴¹ 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 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.⁴²

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.

⁴¹ Irish Naturalisation and Immigration Service, [Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking](#).

⁴² For more information see: Immigrant Council of Ireland, ['Asylum seeking victims of human trafficking in Ireland, Legal and practical challenges'](#).

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; 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. 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).

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; (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).

Appeal

Indicator:

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

There is no appeal.

Personal Interview

Indicators:

- Is a personal interview of the asylum seeker conducted in most cases in practice in the border procedure? Yes No
 - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route? Yes No
 - o 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 2012 and 2013, 62 applications were processed under the Ministerial Prioritisation Directive. In the same period, there were a total of 66 decisions made under the Directive, 65 of which were negative, 1 positive.⁴³

ORAC, in their 2012 annual report stated that 3.6% of applications made in 2012 were processed under the Ministerial Prioritisation Directive and were normally scheduled for interview within 9 to 12 working days from the date of application and completed within a median processing time of 20 working days from the date of application. In 2012, prioritised cases were finalised 10 days ahead of the 2011 time period.⁴⁴

The Court of Justice of the European Union, in *H.I.D.*,⁴⁵ 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
 - o if yes, is the appeal: judicial administrative
 - o 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:

- 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.⁴⁶ The appeal is suspensive.

In 2012, the Refugee Appeals Tribunal considered 190 accelerated appeals, in comparison to 386 in 2011.⁴⁷

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.

⁴³ Office of the Refugee Applications Commissioner, [Monthly statistical reports](#).

⁴⁴ Office of the Refugee Applications Commissioner, 'Annual Report 2012', 2013, page 5.

⁴⁵ 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.

⁴⁶ Section 13.8 of the Refugee Act 1996.

⁴⁷ Refugee Appeals Tribunal, 'Annual Report 2012', page 18.

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
 - o If yes, is the personal interview limited to questions relating to nationality, identity and travel route? Yes No
 - o 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.

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 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.

Applicants are given an information note about the Dublin III Regulation.⁴⁸ It is unknown whether or not the specific leaflet for unaccompanied children (Article 4(3) recast Dublin Regulation) drawn up by the European Commission is provided to asylum seekers in practice.

⁴⁸ Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013, Office of the Refugee Applications Commissioner.

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?
 - o At first instance Yes No
 - o At the appeal stage Yes No
- Is a removal order suspended during the examination of a second, third, subsequent application?
 - o At first instance Yes No
 - o 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.⁴⁹

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'.⁵⁰

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

⁴⁹ Information received from the Asylum Policy Division of the Irish Naturalisation and Immigration Service.

⁵⁰ Information received from the Office of the Refugee Applications Commissioner.

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*⁵¹ 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.

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 HSE then become responsible for making an application for the child, where it appears to the HSE that an application should be made by or on behalf of the child. In which case, the HSE 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 HSE. Accelerated or prioritised procedures are not applied to unaccompanied children.

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

⁵¹ High Court of Ireland, *A. -v- Minister for Justice & Equality & Ors*, [2013] IEHC 355 (18 July 2013).

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.⁵² Similar findings were made in a case involving a Bangladeshi national.⁵³

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.

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 cases looked at the Irish Refugee Council as part of its research on the assessment of credibility in the Irish asylum procedure,⁵⁴ 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.

⁵² *E. D-N, L. D. S and Anor v The Minister for Justice & Equality* [2013] IEHC 447 (20 September 2013).

⁵³ *Barua -v- Minister for Justice and Equality* [2012] IEHC 456 (09 November 2012).

⁵⁴ 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. There is no procedure set out in law for assessment of age nor are there criteria to decide which young people should undergo age assessment. However, there is a method for assessing age. This is done by the Health Services Executive (HSE), 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 Health Services Executive 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 II Regulation is engaged once an application is made. 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.

The duties of immigration officers and the Health Service Executive 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 the health board 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. 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 case⁵⁵ 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).⁵⁶ Out of 15 positive decisions for Syrians in 2012⁵⁷, all applicants were granted refugee status.⁵⁸

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).

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.⁵⁹

⁵⁵ 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.

⁵⁶ European Asylum Support Office, '[Quarterly Asylum Report Q1 2013](#)', 2013 Table No 1.

⁵⁷ 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.

⁵⁸ Eurostat data, accessed on 26 August 2013.

⁵⁹ Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question of Joe Higgins TD, June 13, 2013.

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.⁶⁰

On the 12th March 2014, Minister for Justice, Equality and Defence, Alan Shatter announced that a humanitarian admission programme for Syrians was created.⁶¹ The programme 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.⁶² Anecdotal evidence suggests that newly arrived Syrian refugees have found it difficult to meet the financial requirements of the programme.

There is no special procedure or mechanism to grant asylum to family members of recognised refugees in Ireland who are still in Syria. Minister Alan Shatter has stated that applications for asylum can only be made by persons when they are in Ireland and applicants should seek asylum in the first safe country they reach.⁶³

Those who have been granted refugee status or subsidiary protection in Ireland are entitled to make a family reunification application to the Minister for permission for a family member to enter and to reside in the State.

⁶⁰ Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question of Sean Crowe TD, April 16, 2013.

⁶¹ 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.

⁶² For more information, see Department of Justice, Equality and Defence, Irish Naturalisation and Immigration Service, [Syrian Humanitarian Admission Programme](#).

⁶³ Alan Shatter, Written Answers to the Parliamentary question from Dara Calleary TD; Dept. Of Justice and Equality: Refugee Status, Nov. 6, 2012.

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 :
 - o During the accelerated procedure?
 Yes Yes, but limited to reduced material conditions No
 - o During admissibility procedures:
 Yes Yes, but limited to reduced material conditions No
 - o During border procedures:
 Yes Yes, but limited to reduced material conditions No
 - o During the regular procedure:
 Yes Yes, but limited to reduced material conditions No
 - o during the Dublin procedure:
 Yes Yes, but limited to reduced material conditions No
 - o During the appeal procedure (first appeal and onward appeal):
 Yes Yes, but limited to reduced material conditions No
 - o 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.⁶⁴ 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 Baleskin. 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 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.⁶⁵

⁶⁴ 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*).

⁶⁵ The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

After claiming asylum the person is accommodated in Baleskin 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.⁶⁶

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.⁶⁷

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.⁶⁸ 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.⁶⁹ 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. 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."⁷⁰

⁶⁶ Reception and Integration Agency, Monthly Statistics Report, December 2013

⁶⁷ 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](#)'.

⁶⁸ Alan Shatter, Minister, Department of Justice, Equality and Defence, Seanad debate on Direct Provision 23rd October 2014.

⁶⁹ Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Aengus Ó Snodaigh TD, 18th April 2012.

⁷⁰ Alan Shatter, Department of Justice and Equality, written answer to the Parliamentary question of Mary Lou McDonald TD, 27th March 2013.

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.

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.

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 Council⁷¹ and Free Legal Advice Centres (FLAC)⁷² 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.⁷³

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.⁷⁴

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

⁷¹ "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

⁷² "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.

⁷³ "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

⁷⁴ Irish Times, '[Stand up for the right to cook](#)', 29 April 2014.

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.⁷⁵

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.⁷⁶ 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.⁷⁷ 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.

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 2013 there were 34 accommodation centres located in 17 counties around Ireland with a total capacity was 5309 with an occupancy of 4494 residents.⁷⁸

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 suspected trafficking

⁷⁵ 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.

⁷⁶ Liam Thornton, ['Reception Conditions for Asylum Seekers in Ireland: The Need for a Legislative Basis'](#), Human Rights in Ireland.

⁷⁷ *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland.*

⁷⁸ Reception and Integration Agency, Monthly Statistics Report, December 2013.

victims, whether teenage male children could reside with their mothers there, and so on – will be determined by RIA in due course.⁷⁹

As of December 2013 9% of the total population in RIA accommodation were single females, 27% were single males, 64% were persons in a family unit.⁸⁰

From Baleskin 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.⁸¹

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.⁸²

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.⁸³

RIA is currently reducing its capacity in line with the decrease in numbers arriving in Ireland. In June 2013 Cliffview Accommodation Centre in Donegal, with a capacity of 61, was closed. In September 2012 Lisbrook House accommodation centre was closed.

Unaccompanied children are under the care of the Health Service Executive 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 Health Service Executive 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.⁸⁴

⁷⁹ Reception and Integration Agency, 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment', April 2014.

⁸⁰ Reception and Integration Agency, '[Monthly Statistic Report](#)', December 2013.

⁸¹ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

⁸² Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

⁸³ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

⁸⁴ Samantha Arnold, 'Closing a Protection Gap 2.0, Irish National Report', forthcoming.

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.

There are no provisions for traumatised asylum seekers or special facilities.

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.⁸⁵

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'.⁸⁶ 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 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) state⁸⁷ 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'⁸⁸, considered the quality of life for children living in the direct provision system. Research for the report included two focus groups with residents. Residents

⁸⁵ Geoffrey Shannon, '[Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report](#)'.

⁸⁶ Reception and Integration Agency, 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment', April 2014.

⁸⁷ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

⁸⁸ Samantha Arnold, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012.

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 study⁸⁹ by the NGO Nasc (an Irish word meaning 'link'), with persons of different religious faiths often accommodated in the same room.

A contractual obligation of accommodation providers is that entertainment and leisure facilities are provided free of charge. RIA's 2012 annual report⁹⁰ 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 report⁹¹ 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.⁹²

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 document⁹³ 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 2014⁹⁴ 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

⁸⁹ Nasc, '[Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System](#)', 2008.

⁹⁰ Reception and Integration Agency, '[Annual Report 2012](#)', 2013.

⁹¹ Samantha Arnold, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012.

⁹² 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>

⁹³ Reception and Integration Agency, '[House Rules and Procedures](#)'.

⁹⁴ The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

Centres (FLAC), in a study⁹⁵ 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.

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.⁹⁶

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 Dublin 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.

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 publishes all inspections which take place after 1st October 2013 on a dedicated website.⁹⁷ 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.

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.⁹⁸ 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

⁹⁵ The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

⁹⁶ Reception and Integration Agency, 'Annual Report 2012', 2013, available here: <http://www.ria.gov.ie/>

⁹⁷ For more information see [here](#).

⁹⁸ Irish Refugee Council, '[Direct Provision: Framing an alternative reception system for people seeking International protection](#)', 2013.

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.⁹⁹

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.¹⁰⁰ 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).¹⁰¹

In April 2014 a legal challenge against Direct Provision was brought in the High Court.¹⁰² 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.¹⁰³

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 Procedures¹⁰⁴ 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)

⁹⁹ Dinny McGinley TD, Seanad debate on Direct Provision, 12 December 2013.

¹⁰⁰ Dinny McGinley TD, Seanad debate on Direct Provision, 12 December 2013.

¹⁰¹ Jillian van Turnhout Senator, Motion, 23 October 2013

¹⁰² *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland.*

¹⁰³ Liam Thornton, ‘[Direct Provision System Challenged Before the Irish High Court: Day 1](#)’, Human Rights in Ireland.

¹⁰⁴ Reception and Integration Agency, ‘House Rules and Procedures’, available here: http://www.ria.gov.ie/en/RIA/Pages/House_Rules_Pubs

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 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.¹⁰⁵

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.¹⁰⁶

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),¹⁰⁷ 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

¹⁰⁵ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

¹⁰⁶ Corona Joyce '[European Migration Network 2008 Annual Policy Report On Migration And Asylum](#)', 2009.

¹⁰⁷ 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").

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. 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."¹⁰⁸

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.¹⁰⁹ After criticism by various organisations including Irish Refugee Council,¹¹⁰ 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.¹¹¹

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 long term residence.¹¹²

There are no provisions in practice that take into account the needs of vulnerable persons and there are no special reception conditions.¹¹³ 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

¹⁰⁸ Jan O'Sullivan TD, Seanad debate on Direct Provision, 19 November 2013.

¹⁰⁹ Reception and Integration Agency, [Circular 1-14](#), 23 April 2014.

¹¹⁰ Irish Refugee Council, The campaign trail, asylum seekers, and access to Direct Provision centres, 15 May 2014.

¹¹¹ Reception and Integration Agency, [Circular 2-14](#), 14 May 2014.

¹¹² Geoffrey Shannon, 'Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report'.

¹¹³ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, '[The Organisation Of Reception Facilities For Asylum Seekers](#)', February 2014.

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.¹¹⁴

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.¹¹⁵

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’¹¹⁶ 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 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’¹¹⁷ 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

¹¹⁴ Corona Joyce and Emma Quinn, The Economic and Social Research Institute, [‘The Organisation Of Reception Facilities For Asylum Seekers’](#), February 2014.

¹¹⁵ Irish Refugee Council (2011). [‘Direct Provision and Dispersal: Is there an alternative?’](#) Report prepared for the NGO Forum on Direct Provision.

¹¹⁶ Reception and Integration Agency, [‘House Rules and Procedures’](#).

¹¹⁷ Reception and Integration Agency, [‘House Rules and Procedures’](#).

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 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."¹¹⁸

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. €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.

Alan Shatter, 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.¹¹⁹

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

¹¹⁸ Irish Refugee Council, 'Closure of Galway accommodation centre shows complete disregard for family and children's rights', 10 September 2012

¹¹⁹ Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Robert Dowds TD; 16th April 2013.

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.¹²⁰

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'.¹²¹

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

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

¹²⁰ Separated Children's Services, [Youth and Education Services](#).

¹²¹ "State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers", Irish Refugee Council.

from prescription charges,¹²² despite claims they adversely impact asylum seekers and that some people spend all of their weekly allowance of 19.10 euro on prescription charges.¹²³

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. Baleskin 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.¹²⁴

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.”¹²⁵

¹²² Irish Medical News, ‘No exemptions on prescriptions fee-Department’, 31 March 2014.

¹²³ Medical Independent, ‘Outside Looking in’, 3 April 2014.

¹²⁴ Medical Independent, ‘Increase in torture treatment service numbers for refugees’, 3 April 2014.

¹²⁵ Medical Independent, ‘Outside Looking in’, 3 April 2014.

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).¹²⁶

In 2012 35 applications for asylum were made from Cloverhill Prison, 7 from Mountjoy prison, 4 from Castlerea prison, 2 from Cork prison.¹²⁷

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.¹²⁸ 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.¹²⁹

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 1996.¹³⁰

¹²⁶ Office of the Refugee Applications Commissioner, [‘Annual Report 2012’](#), 2013, page 27.

¹²⁷ Reception and Integration Agency, [‘Annual Report 2012’](#), 2013.

¹²⁸ Irish Prison Service, [‘Annual Report 2013’](#), March 2014 page 22.

¹²⁹ Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Catherine Murphy TD, 27 February 2014.

¹³⁰ 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
 - o on the territory: Yes No
 - o 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
 - o 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:

Detention under the Refugee Act 1996:

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;

(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.

6. Intend to leave the State and enter another without lawful authority;
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.

Detention of a person with a deportation order:

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.

Detention under the Dublin Regulation:

Statutory Instrument No. 423/2003 - Refugee Act 1996 (Section 22) Order 2003, which passes the Dublin Regulation into 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.”¹³¹

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.*¹³² 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.

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
 - o If yes, is it limited to emergency health care? Yes No
- Is access to detention centres allowed to
 - o Lawyers: Yes Yes, but with some limitations No
 - o NGOs: Yes Yes, but with some limitations No
 - o UNHCR: Yes Yes, but with some limitations No
 - o Family members: Yes Yes, but with some limitations No

¹³¹ 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’,

¹³² *Dokie -v- D. P.* [2010] IEHC 110 (25 March 2011).

Legislation provides for principles which are required to be regarded when a person is detained.¹³³ 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.¹³⁴ 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 Rules¹³⁵ 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.

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).¹³⁶

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

¹³³ Section 4 of S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

¹³⁴ Section 18 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

¹³⁵ Statutory Instrument No. 252 of 2007, Prison Rules, 2007.

¹³⁶ Section 17 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

a letter.¹³⁷ 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.¹³⁸ 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."¹³⁹ 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 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.¹⁴⁰

In 2010 the NGO Jesuit Refugee Service interviewed female asylum seekers and immigrants detained at the Dochas Centre.¹⁴¹ 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

¹³⁷ Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

¹³⁸ Cloverhill Visiting Committee, '[Annual Report' 2012](#), 17 May 2013.

¹³⁹ 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](#).

¹⁴⁰ 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.

¹⁴¹ Jesuit Refugee Service, '[Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the European Union](#)', June 2010.

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.¹⁴²

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*.

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

¹⁴² Office of the Refugee Applications Commissioner, 'Annual Report 2012', 2013.

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”.¹⁴³ 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 solicitors to detained asylum seekers seemed inconsistent.¹⁴⁴ .No NGO provides routine legal assistance to detained asylum seekers.

¹⁴³ Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

¹⁴⁴ Jesuit Refugee Service Ireland, [Submission to Universal Periodic Review](#), June 2011.