

# Country Report: Ireland



2016  
Update



## Acknowledgements & Methodology

The first edition of this report was written by Sharon Waters (LLB) (MA), Communications and Public Affairs Officer with the Irish Refugee Council and was edited by ECRE. The first and second updates of this report were written by Nick Henderson, Legal Officer at the Irish Refugee Council Independent Law Centre. The third and fourth updates were written by Maria Hennessy (LLB) (LLM), Legal Officer at the Irish Refugee Council Independent Law Centre. The current version, the fifth update, was written by Maria Hennessy, Legal Officer and Luke Hamilton (BA)(LLM), Legal Researcher, at the Irish Refugee Council Independent Law Centre.

This report draws on information obtained through a mixture of desk-based research and direct correspondence with relevant agencies. Of particular relevance throughout were the latest up to date statistics from the Office of the Refugee Applications Commissioner (ORAC), including their annual and monthly reports; data from the Refugee Appeals Tribunal (RAT); the final report of the Government Working Group on the Protection Process, as well as various NGO statements and reports, and information obtained through the Irish Refugee Council's own casework and policy work. The Irish Refugee Council is grateful to the Office of the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the Reporting and Analysis Unit of the Department of Justice for its assistance in obtaining information used to compile this report.

The information in this report is up-to-date as of 31 December 2016, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 20 countries. This includes 17 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SE, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also 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.



This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations.



# Table of Contents

<b>Glossary &amp; List of Abbreviations .....</b>	<b>6</b>
<b>Statistics.....</b>	<b>7</b>
<b>Overview of the legal framework.....</b>	<b>9</b>
<b>Overview of the main changes since the previous report update.....</b>	<b>10</b>
<b>Asylum procedure .....</b>	<b>12</b>
<b>A. General .....</b>	<b>12</b>
1. Flow chart.....	12
2. Types of procedures .....	13
3. List of authorities intervening in each stage of the procedure .....	13
4. Number of staff and nature of the first instance authority .....	13
5. Short overview of the asylum procedure.....	14
<b>B. Access to the procedure and registration.....</b>	<b>16</b>
1. Access to the territory and push backs .....	16
2. Registration of the asylum application .....	17
<b>C. Procedures.....</b>	<b>20</b>
1. Regular procedure .....	20
2. Dublin .....	28
3. Admissibility procedure .....	33
4. Border procedure (border and transit zones).....	35
5. Accelerated procedure .....	37
<b>D. Guarantees for vulnerable groups .....</b>	<b>38</b>
1. Identification .....	38
2. Special procedural guarantees .....	40
3. Use of medical reports .....	41
4. Legal representation of unaccompanied children .....	41
<b>E. Subsequent applications.....</b>	<b>42</b>
<b>F. The safe country concepts.....</b>	<b>43</b>

1.	Safe country of origin .....	43
2.	First country of asylum .....	44
<b>G.</b>	<b>Relocation .....</b>	<b>44</b>
<b>H.</b>	<b>Information for asylum seekers and access to NGOs and UNHCR .....</b>	<b>46</b>
<b>I.</b>	<b>Differential treatment of specific nationalities in the procedure.....</b>	<b>47</b>
	<b>Reception Conditions.....</b>	<b>50</b>
<b>A.</b>	<b>Access and forms of reception conditions .....</b>	<b>50</b>
1.	Criteria and restrictions to access reception conditions.....	50
2.	Forms and levels of material reception conditions.....	53
3.	Reduction or withdrawal of material reception conditions.....	56
4.	Freedom of movement.....	57
<b>B.</b>	<b>Housing .....</b>	<b>58</b>
1.	Types of accommodation .....	58
2.	Conditions in reception facilities.....	60
<b>C.</b>	<b>Employment and education .....</b>	<b>68</b>
1.	Access to the labour market.....	68
2.	Access to education .....	69
<b>D.</b>	<b>Health care .....</b>	<b>71</b>
<b>E.</b>	<b>Special reception needs of vulnerable groups .....</b>	<b>73</b>
<b>F.</b>	<b>Information for asylum seekers and access to reception centres.....</b>	<b>77</b>
1.	Provision of information on reception.....	77
2.	Access to reception centres by third parties .....	77
<b>G.</b>	<b>Differential treatment of specific nationalities in reception .....</b>	<b>78</b>
	<b>Detention of Asylum Seekers .....</b>	<b>79</b>
<b>A.</b>	<b>General .....</b>	<b>79</b>
<b>B.</b>	<b>Legal framework for detention.....</b>	<b>80</b>
1.	Grounds for detention .....	80
2.	Alternatives to detention.....	83
3.	Detention of vulnerable applicants.....	83
4.	Duration of detention.....	83

<b>C.</b>	<b>Detention conditions</b>	<b>84</b>
1.	Place of detention	84
2.	Conditions in detention facilities	85
3.	Access to detention facilities	86
<b>D.</b>	<b>Procedural safeguards</b>	<b>87</b>
1.	Judicial review of the detention order	87
2.	Legal assistance for review of detention	87
<b>E.</b>	<b>Differential treatment of specific nationalities in detention</b>	<b>88</b>
	<b>Content of International Protection</b>	<b>89</b>
<b>A.</b>	<b>Status and residence</b>	<b>89</b>
1.	Residence permit	89
2.	Long-term residence	89
3.	Naturalisation	89
4.	Cessation and review of protection status	90
5.	Withdrawal of protection status	91
<b>B.</b>	<b>Family reunification</b>	<b>91</b>
1.	Criteria and conditions	91
2.	Status and rights of family members	92
<b>C.</b>	<b>Movement and mobility</b>	<b>92</b>
1.	Freedom of movement	92
2.	Travel documents	92
<b>D.</b>	<b>Housing</b>	<b>93</b>
<b>E.</b>	<b>Employment and education</b>	<b>93</b>
1.	Access to the labour market	93
2.	Access to education	94
<b>F.</b>	<b>Health care</b>	<b>95</b>

## Glossary & List of Abbreviations

<b>CJEU</b>	Court of Justice of the European Union
<b>CPT</b>	European Committee for the Prevention of Torture
<b>DP</b>	Direct Provision – System for the material reception of asylum seekers
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ELA</b>	Early Legal Advice
<b>EMN</b>	European Migration Network
<b>EROC</b>	Emergency Reception and Orientation Centre
<b>ESRI</b>	Economic and Social Research Institute
<b>FLAC</b>	Free Legal Advice Centres
<b>GNIB</b>	Garda National Immigration Bureau
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings
<b>HIQA</b>	Health Information and Quality Authority
<b>HSE</b>	Health Services Executive
<b>IFPA</b>	Irish Family Planning Association
<b>IHREC</b>	Irish Human Rights and Equality Commission
<b>INIS</b>	Irish Naturalisation and Immigration Service
<b>IPA</b>	International Protection Act 2015
<b>IPAT</b>	International Protection Appeals Tribunal (Replaces RAT)
<b>IPO</b>	International Protection Office (Replaces ORAC)
<b>IRC</b>	Irish Refugee Council
<b>IRPP</b>	Irish Refugee Protection Programme
<b>JRS</b>	Jesuit Refugee Service
<b>OPMI</b>	Office for the Promotion of Migrant Integration
<b>ORAC</b>	Office of the Refugee Applications Commissioner
<b>PILA</b>	Public Interest Law Alliance, a project of FLAC
<b>RAT</b>	Refugee Appeals Tribunal
<b>RCNI</b>	Rape Crisis Network Ireland
<b>RIA</b>	Reception and Integration Agency
<b>RLS</b>	Refugee Legal Service
<b>SHAP</b>	Syrian Humanitarian Admission Programme
<b>SI</b>	Statutory Instrument
<b>SPIRASI</b>	NGO specialising in assessing and treating trauma and victims of torture
<b>TD</b>	Teachta Dála (Irish equivalent term for Member of Parliament)
<b>TUSLA</b>	Irish Child and Family Agency
<b>UNHCR</b>	United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

The Office of the Refugee Applications Commissioner (ORAC) published monthly statistical reports with basic information on asylum applications and decisions. Since January 2017, the International Protection Office (IPO) is responsible for receiving and examining applications.

### Applications and granting of protection status at first instance: 2016

	Applicants in 2016	Pending applications in 2016	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	2,245	4,055	445	50	1,645	20.8%	2.3%	76.9%

Breakdown by countries of origin of the total numbers

Syria	245	135	150	0	0	100%	0%	0%
Pakistan	235	760	5	5	450	1.1%	1.1%	97.8%
Albania	220	385	5	0	165	2.9%	0%	97.1%
Zimbabwe	190	335	25	10	110	17.2%	6.9%	75.9%
Nigeria	175	415	0	5	165	0%	2.9%	97.1%
Afghanistan	120	115	35	5	45	41.2%	5.9%	52.9%
South Africa	95	170	0	0	70	0%	0%	100%
Iraq	100	80	35	0	5	87.5%	0%	12.5%
Libya	70	45	55	0	5	91.6%	0%	8.4%
DRC	65	175	10	0	50	16.7%	0%	83.3%

Source: Eurostat (rounded).

### Gender/age breakdown of the total number of applicants: 2016

	Number	Percentage
<b>Total number of applicants</b>	2,245	100%
Men	1,390	61.9%
Women	855	38.1%
Children	720	32.1%
Unaccompanied children	:	:

Source: Eurostat (rounded).

### Comparison between first instance and appeal decision rates: 2016

According to the INIS 2016 Immigration in Ireland Annual Review, 2,244 asylum applications were received in 2016 as compared to 3,276 in 2015 equating to a 32 % decrease. The report stated that the decrease is due, almost exclusively, to the reduction in applications from Pakistan and Bangladesh, with many such applicants showing previous immigration history in the UK. The top five countries of application in 2016 were Syria, Pakistan, Albania, Zimbabwe and Nigeria.<sup>1</sup>

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<sup>1</sup> Department of Justice and Equality, Irish Naturalisation and Immigration Service, Immigration in Ireland: Annual Review 2016, available at: <http://bit.ly/2lx8fT5>.



## Overview of the legal framework

The most recent version of relevant national legislation is available at: <http://bit.ly/2kneBnp>.

### Main legislative acts relevant to asylum procedures, reception conditions and detention

Title (EN)	Web Link
International Protection Act 2015	<a href="http://bit.ly/2inFha1">http://bit.ly/2inFha1</a>
Immigration Act 1999	<a href="http://bit.ly/1SFAWqw">http://bit.ly/1SFAWqw</a>
Immigration Act 2003	<a href="http://bit.ly/1CTTd1H">http://bit.ly/1CTTd1H</a>
Immigration Act 2004	<a href="http://bit.ly/1Kovj0V">http://bit.ly/1Kovj0V</a>
Illegal Immigrants (Trafficking Act) 2000	<a href="http://bit.ly/1IifDWh">http://bit.ly/1IifDWh</a>
European Convention on Human Rights Act 2003	<a href="http://bit.ly/1g8Sks4">http://bit.ly/1g8Sks4</a>

### Main implementing decrees and administrative guidelines and regulations relevant to asylum procedures, reception conditions and detention

Title (EN)	Web Link
S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013	<a href="http://bit.ly/1MriX8D">http://bit.ly/1MriX8D</a>
S.I. No. 525 of 2014 European Union (Dublin system) Regulations 2014	<a href="http://bit.ly/1LAm261">http://bit.ly/1LAm261</a>
European Communities (Eligibility for Protection) Regulations 2006	<a href="http://bit.ly/1OpPpWj">http://bit.ly/1OpPpWj</a>
Civil Legal Aid (Refugee Appeals Tribunal) Order 2005	<a href="http://bit.ly/1HNmQ3j">http://bit.ly/1HNmQ3j</a>
Refugee Act 1996 unofficial restatement updated to 2004	<a href="http://bit.ly/1SFBtc1">http://bit.ly/1SFBtc1</a>
S.I. No. 55 of 2005- Immigration Act 1999 (Deportation) Regulations 2005	<a href="http://bit.ly/1frafsP">http://bit.ly/1frafsP</a>
S.I. No. 714 of 2004- Refugee Act 1996 (Safe Country of Origin) Order 2004	<a href="http://bit.ly/1CYMinC">http://bit.ly/1CYMinC</a>
S.I. No 708 of 2003- Aliens (Visas) Order 2003	<a href="http://bit.ly/1lme8uH">http://bit.ly/1lme8uH</a>
S.I. No. 103 of 2002- Immigration Act 1999 (Deportation) Regulations 2002	<a href="http://bit.ly/1MM0BMq">http://bit.ly/1MM0BMq</a>

The International Protection Act 2015 has repealed many of the previous statutory instruments and regulations pertaining to the Irish asylum system. Now the Minister has the power to make new regulations under Section 3 for any matter referred to in the International Protection Act 2015.

## Overview of the main changes since the previous report update

This report was previously updated in **November 2015**.

### *Asylum procedure*

- ❖ **Entry into force of the International Protection Act:** The most significant development in the period since the previous update is the commencement of the International Protection Act 2015, which was signed into law in December 2015 and officially entered into effect on 31 December 2016.
- ❖ **Single procedure:** The Act will introduce a single procedure whereby applications for international protection will encompass a concurrent determination of eligibility for refugee status; subsidiary protection and permission to remain, respectively. An applicant will make a single application under which all grounds for protection will be considered. Up until 2017, these assessments have been carried out separately, in a bifurcated procedure, leading to applicants spending a significant amount of time in the asylum process. The new system aims to address the delays by introducing a single protection procedure, whereby all avenues for international protection are assessed under a single application – i.e. if an applicant is found not to be eligible for refugee status, his or her eligibility under subsidiary protection will be assessed without needing to begin the process under a new application.
- ❖ **New authorities:** Additionally, the 2015 Act will abolish the Office of the Refugee Applications Commissioner, which will be subsumed into the Department of Justice as the International Protection Office (IPO). The Refugee Appeals Tribunal will be replaced by the International Protection Appeals Tribunal (IPAT).

### *Reception conditions*

- ❖ **No legal framework for reception:** Ireland has not opted into the Reception Conditions Directive, and the new Act makes no mention of reception conditions, maintaining the approach of the previous system under the Refugee Act 1996 as amended. This means that applicants for international protection will still be accommodated under the administrative system of Direct Provision which has no statutory legal framework. The Irish Refugee Council made extensive recommendations to the government on the draft of the International Protection Bill at the time calling for a legal framework for reception conditions and facilities to be included, however this has not been addressed in the adopted legislation.<sup>2</sup> Asylum applicants continue to be housed in the Direct Provision system and although the Department of Justice and Equality has stated that the Working Group report on improvements to the Protection Process, including Direct Provision and other supports for asylum seekers recommendations have been implemented, partially implemented or are in progress, there is only little changes in practice.

### *Content of international protection*

- ❖ **Restrictive family reunification changes:** the new Act introduces more restrictive provisions for family reunification than those contained in the previous legislation. Under the new provisions, the definition of “member of the family” excludes such people as siblings and parents for adult beneficiaries of international protection, children over the age of 18 and dependents such as grandparents and other extended relatives. This is a significant step back from family reunification rights under Article 18 Refugee Act 1996 as amended. Furthermore, restrictive time limits have

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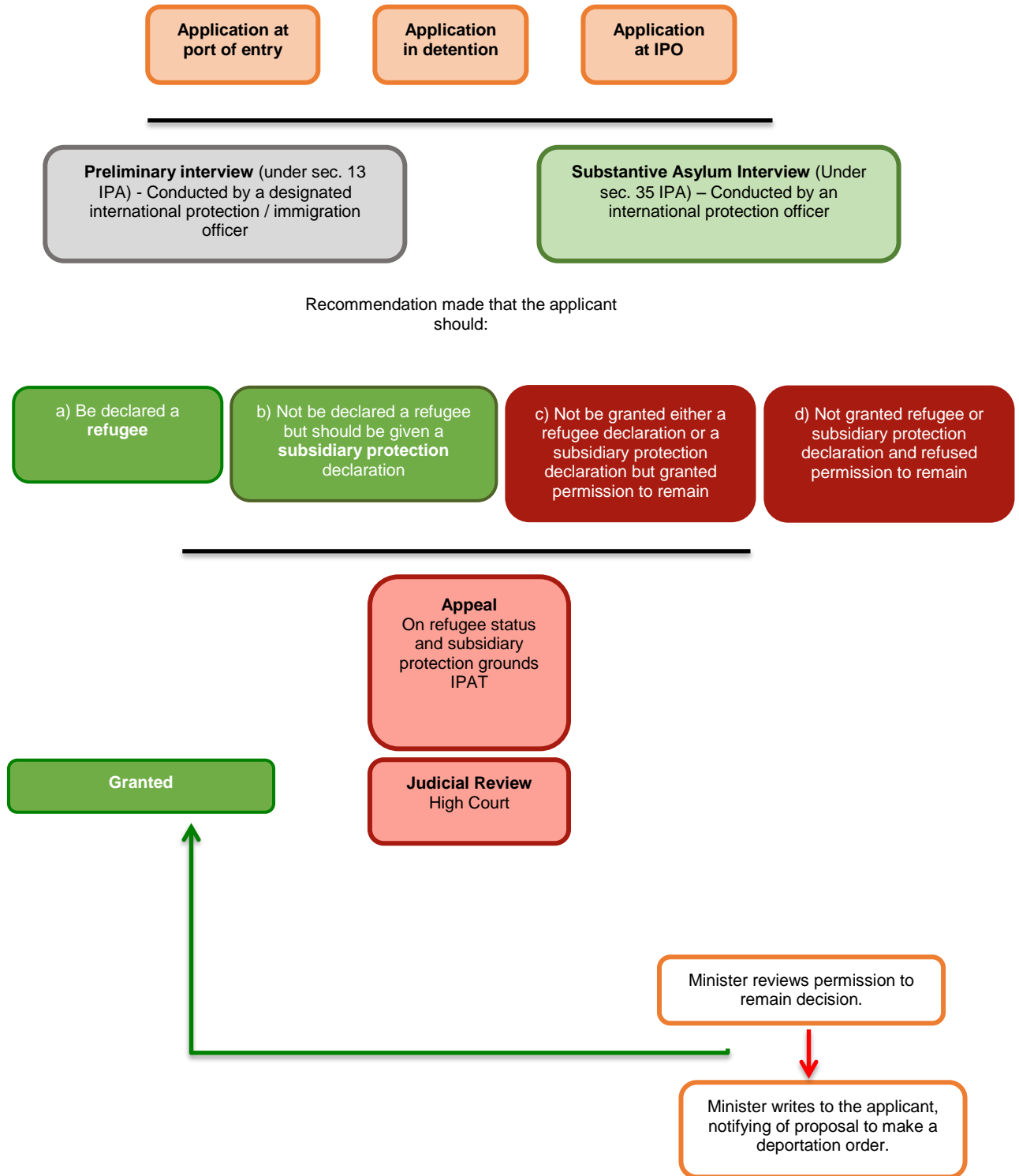
<sup>2</sup> Irish Refugee Council Recommendations on the International Protection Bill 2015, accessible at: <http://bit.ly/2lawRV7>.

been placed on sponsors in which they can lodge an application for family reunification (within 12 months of receiving international protection status) and on family members in which they can enter the state upon being granted permission to enter the state (by “a date specified by the Minister when giving the permission”).

# Asylum procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |                            |   |  |
|----------------------------|---|--|
| ❖ Regular procedure:       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing:   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure: | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:        | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure:   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other:                   |   |  |

Are any of the procedures that are foreseen in the law, not being applied in practice?  Yes  No

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

Stage of the procedure	Competent authority (EN)
Application at the border	Garda National Immigration Bureau
National security clearance	Garda National Immigration Bureau
Dublin procedure	International Protection Office (IPO)
Accelerated procedure	International Protection Office (IPO)
Refugee status determination	International Protection Office (IPO)
Appeal	International Protection Appeals Tribunal (IPAT)
Judicial review	High Court
Subsequent application (admissibility)	The Minister for Justice and Equality in the Department of Justice and Equality

## 4. Number of staff and nature of the first instance authority

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?
<b>Until December 2016</b> Office of the Refugee Applications Commissioner (ORAC)	Not available	Independent	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>From January 2017</b> International Protection Office (IPO)	Not available	Department of Justice	Not available

The International Protection Act 2015 in section 74 and section 75 states that the International Protection Officers are independent in the performance of their duties. It remains to be seen how this will be implemented in practice but it is important to note that the independent agency of ORAC is now abolished and subsumed into the Department of Justice and Equality under the new title of International Protection Office. According to Minister Fitzgerald there are over 100 staff assigned to the IPO at present all of whom have been authorised to perform the functions of international protection officers. These staff will be used to support the single procedure process and in undertaking a variety of functions such as the registration and fingerprinting of applicants, the issue of Temporary Residence Certificates, the scheduling of cases for interview as well as interviewing applicants and preparing and issuing international protection recommendations and decisions in relation to permission to remain. The permanent staff are supported

by a Panel of some 35 persons with legal expertise who are retained on a contract for service basis to undertake interviews and prepare international protection recommendations and permission to remain decisions.<sup>3</sup>

## 5. Short overview of the asylum procedure

The International Protection Act 2015 (IPA) replaces the Refugee Act 1996 (as amended) as Ireland's key legislative instrument enshrining the State's obligations under international refugee law. The President of Ireland, Michael D. Higgins, signed the IPA into law in December 2015.<sup>4</sup> Prior to being drafted, consultations on improving the Irish asylum system were held under the auspices of the Government Working Group on the Protection Process, which published its report and extensive recommendations in June 2015.<sup>5</sup> Additionally, the Irish Refugee Council published a list of recommendations for reform of the Bill and highlighted a number of significant concerns arising in the draft legislation.<sup>6</sup> Other bodies and organisations also published their recommendations on the draft bill.<sup>7</sup> However, the Act was guillotined through the Seanad and Dail with limited debate and consideration of concerns raised. The final version of the IPA and the legislation was signed into law by the President of Ireland in December 2016 and officially commenced on 6 January 2017.<sup>8</sup> As such, the Irish asylum process is, at time of writing this report, undergoing considerable transformation and transition into the new system and the contents contained herein will be subject to change as new information becomes available.

The most important reform under the IPA is the introduction of a single procedure where refugee status, subsidiary protection and leave to remain are all examined together in one procedure compared to the previous bifurcated system. Under the IPA, an asylum application may be lodged either at the port of entry, or directly at the International Protection Office (IPO). 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 international protection status at the port of entry, they must proceed to the IPO to complete the initial asylum process and attend a preliminary interview under section 13 IPA.

Upon lodging an application for international protection, the applicant first fills out an application form and is given a short interview conducted either by an international protection officer, or an immigration official – depending on where the application is lodged. Under section 21 IPA an application for international protection may be found inadmissible and a recommendation shall be made to the Minister by an international protection officer. Inadmissibility is on the grounds that another Member State has granted refugee status or subsidiary protection status to the person or a country other than a Member State is considered to be a 'first country of asylum' for the person.<sup>9</sup> A person has the right to an appeal to the International Protection Appeals Tribunal (IPAT) regarding an inadmissibility decision.

Upon presenting at the IPO, the applicant is given a more in-depth application form which must be completed and returned by a specified time and date. This application form shall include, as held in section 15(5) IPA, all relevant information pertaining to the grounds for the application, as well as relevant

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<sup>3</sup> Parliamentary response from Minister Fitzgerald to question no. 86 of 23 February 2017 available at: <http://bit.ly/2mxc0N9>.

<sup>4</sup> Irish Times, 'President Michael D Higgins signs asylum Bill into law, Irish Times', 30 December 2015, <http://bit.ly/2kiIhqH>.

<sup>5</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, June 2015, <http://bit.ly/1GYBUL5>.

<sup>6</sup> Irish Refugee Council Recommendations on the International Protection Bill 2015, <http://bit.ly/1Oq2OAS>

<sup>7</sup> Doras Lumni, Irish Refugee Council, NASC and MRCI, 'Joint Statement: NGOS call for International Protection bill to be withdrawn', <http://bit.ly/2kJIIOO>; NASC, *Recommendations on the International Protection Bill*, November 2015, <http://bit.ly/2kBBm8d>; Irish Human Rights and Equality Commission, *Recommendations on the General Scheme of the International Protection Bill 2015*, June 2015, <http://bit.ly/2kZ1mLE>; Law Society of Ireland, *Submission on the General Scheme of the International Protection Bill*, May 2015, <http://bit.ly/2kiGUbc>.

<sup>8</sup> International Protection Act 2015 (Commencement) (No. 3) Order 2016, <http://bit.ly/2IHmfef>.

<sup>9</sup> A first country of asylum is defined under section 21(15) IPA.

information pertaining to permission to remain for the applicant, family reunification and right to reside for family members already present in the State, in case such considerations arise at later stages in the process. The information provided in the detailed application form will be duly considered throughout the assessment of the application, including in the applicant's substantive interview.

An application for international protection status may be examined under the Dublin Regulation by the IPO if it appears that another Member State may be responsible for the examination of the protection application.<sup>10</sup> During the initial appointment at the IPO, an applicant's fingerprints are taken and are entered in to the Eurodac database. The applicant is also advised that they may obtain legal assistance from the Refugee Legal Service operating out of the Legal Aid Board. The applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA) for accommodation if they have no other means of accommodating themselves, at which point the applicant will be taken to a RIA reception centre in Dublin and later dispersed elsewhere to other Direct Provision centres in Ireland.

After registering at the IPO, the applicant is notified by post of the date and time of their substantive asylum interview. Before that they are given a non-statutory deadline of 20 working days to complete a Questionnaire on their international protection claim. The purpose of the interview is to establish the full details of their claim for international protection. The applicant may have a legal representative and an interpreter present at the interview, if necessary.

After the substantive asylum interview, a report is compiled by the international protection officer based on the information raised at the interview and in the in-depth questionnaire, as well as relevant country of origin information and/or submissions by UNHCR and/or legal representatives. The report contains a recommendation as to whether or not status should be granted:

- ❖ If a positive recommendation is made with regards to refugee status, the applicant is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of refugee status.
- ❖ If a positive recommendation is made with regards to subsidiary protection, the application is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of subsidiary protection, the applicant can also seek an upgrade appeal to the International Protection Appeals Tribunal for refugee status.
- ❖ If the recommendation is negative, the applicant is provided with the reasons for such a decision. The implications of a negative recommendation depend on the nature of the recommendation.

Under the IPA an applicant may make an appeal to the International Protection Appeals Tribunal (IPAT) against: (i) a recommendation that the applicant should not be given a refugee declaration; or (ii) a recommendation that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration. An appeal under those two categories may be lodged before the IPAT in writing, laying out the grounds of appeal within a time limit prescribed by the Minister under section 41(2)(a) IPA. They may request an oral hearing before the IPAT; if an oral hearing is not requested the appeal will be dealt with on the papers unless a member of the Tribunal finds it in the interests of justice to hold such an oral hearing nevertheless. Free legal representation can be obtained through the Refugee Legal Service. The deadline for submitting an appeal will be prescribed by the Minister in consultation with the Chairperson of the IPAT.<sup>11</sup>

If the IPAT decides to set aside the IPO decision, the file will also be transferred to the Department of Justice so the Minister can declare the applicant a refugee or a beneficiary of subsidiary protection. If the IPAT decides to affirm the IPO decision, the individual will be sent a notice in writing stating that the application for a declaration as a refugee and/or subsidiary protection beneficiary has been refused.

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<sup>10</sup> Article 3 of S.I. No. 525 of 2014 European Union (Dublin System) Regulations 2014.

<sup>11</sup> Section 77 IPA.

If an application for international protection is unsuccessful the applicant will be sent a notice in writing stating that the application for international protection has been refused and that the Minister proposes to make a deportation order under section 3 of the Immigration Act 1999 requiring that the person leave the State within a given timeframe.

Throughout all stages of the asylum process, prior to receiving a final decision on their claim, the applicant is encouraged to inform the IPO of any circumstances arising that may give rise to the Minister granting the applicant permission to remain in the event that the applicant has been denied both refugee status and subsidiary protection. This status is commonly referred to as 'leave to remain' and takes account of criteria such as humanitarian considerations and the person's connections to the State in order to determine whether or not there are compelling reasons to allow the person permission to remain in Ireland. This assessment is conducted in the event that a both a claim for refugee status and subsidiary protection are ultimately refused. However, permission to remain can also be issued at first instance at the IPO examination stage. There is no oral hearing with regards to permission to remain at the interview stage at first instance but it is important that the applicant includes all relevant information in writing concerning their grounds for being granted permission to remain. It is important to note that if an applicant is refused permission to remain they do not have a right to an appeal on this decision.

An applicant may seek to have a refugee or subsidiary protection recommendation of the IPO or a decision of the IPAT judicially reviewed by the High Court under Irish administrative law for example where there has been an error of law in the determination process. It is expected that an applicant will exhaust all available remedies before applying for judicial review and therefore most judicial reviews are of appeal recommendations, rather than first instance decisions. Applicants must be granted permission (known as leave) to apply for judicial review before proceeding to a full judicial review hearing. Because of the volume of judicial review cases that have been brought to challenge decisions over the last number of years, and the procedure of having both pre-leave and full hearings, there is a large backlog of cases awaiting determination. The High Court can affirm or set aside the decision of the first instance or appellate body. If the applicant is successful, their case is returned to the original decision making body for a further determination.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. 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

There were no official reports of push backs of asylum seekers or *refoulement* at the frontiers of the State. A person who arrives in Ireland seeking entry may be refused leave to land and sometimes it is unclear whether or not that person had protection grounds or had intended to apply for asylum. It is unclear due to the lack of independent oversight and transparency at airports or ports of entry. There is no presence of independent authorities or NGOs at air or land borders in order to monitor the situation. Anecdotal evidence received by the Irish Refugee Council Independent Law Centre suggests that some people may be refused leave to land and enter Ireland even when they have grounds for protection. If that person then seeks to claim asylum they should be permitted to enter the country for that purpose.

In a response to a parliamentary question in November 2016, inquiring about the numbers of those refused leave to land, Minister Frances Fitzgerald stated that from the period of 1 January to 30 September



2016, there were a total of 3,036 refusals of permission to enter the State. Of that number, 267 were subsequently permitted entry for the purposes of claiming asylum.<sup>12</sup>

In response to a parliamentary question on 31 January 2017, Minister Frances Fitzgerald stated that in 2016 in total, 178 Afghan, 7 Eritrean, 26 Iraqi and 37 Syrian nationals were refused leave to land at approved ports of entry. However, a total of 57 persons of those nationalities sought asylum and were admitted to the State to make an international protection application.<sup>13</sup> According to the INIS annual review 2016 3,951 non EU nationals who were refused entry into the State at ports of entry and were returned to the place from where they had come.<sup>14</sup>

Last February 2016, news media highlighted the detection of 8 refugees discovered in the back of a truck in **Rosslare** harbour having arrived from Cherbourg.<sup>15</sup>

Section 78 IPA amends section 5 of the Immigration Act 2004 in a way which enables people to be detained for short periods of time in facilities at ports of entry and/or airports instead of being placed in custody in police stations. The Department of Justice and Equality are working on plans to establish a dedicated immigration facility at Dublin airport.<sup>16</sup>

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time-limits laid down in law for asylum seekers to lodge their application?  Yes  No
2. If so, what is the time-limit for lodging an application?

The right to apply for asylum, as previously contained in section 8 of the Refugee Act 1996, is now contained in section 15 of the International Protection Act 2015 (IPA). When a person presents themselves at the frontiers of the State seeking international protection, he or she shall go through a preliminary interview at a time specified by an immigration officer or an international protection officer. That time limit is not, however, specified in the IPA.

Up until January 2017, the Office of the Refugee Applications Commissioner (ORAC) has been the body responsible for registering asylum applications and making the first instance decision. With the introduction of the IPA, ORAC has been replaced by the International Protection Office (IPO), which carries out asylum registration and decision making duties under the umbrella of the Irish Naturalisation and Immigration Service in the Department of Justice and Equality.

With the commencement of the IPA, the IPO's remit is extended to making recommendations on an applicant's eligibility for refugee status, subsidiary protection and permission to remain under a single procedure. This system replaces the previous multi-layered process overseen by ORAC that was fraught with administrative delays and backlogs.

In the case of families applying for international protection, all adult family members must make their own applications. An adult who applies for protection is deemed to be applying on behalf of his or her

<sup>12</sup> Parliamentary Question response by Minister Frances Fitzgerald, 64-67 of 2 November 2016, available at: <http://bit.ly/2lbeCyW>.

<sup>13</sup> Parliamentary Question response by Minister Frances Fitzgerald, 100 of 31 January 2017, available at: <http://bit.ly/2kQ9qBt>.

<sup>14</sup> Department of Justice and Equality, Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2016, p. 12, available at: <http://bit.ly/2lx8fT5>.

<sup>15</sup> Irish Independent, 'Refugees found in truck at Rosslare', 28 February 2016, available at: <http://bit.ly/2lckQvE>; Irish Times, 'The number denied entry into Ireland rises significantly', available at: <http://bit.ly/2mg15nL>.

<sup>16</sup> Parliamentary Question response by Minister Frances Fitzgerald 69 of 7 July 2016, available at: <http://bit.ly/2lJmNTb>.

dependent children where the child is not an Irish citizen and is under the age of 18 years and present in the State, or is born in the State while the person is in the protection procedure or not having attained the age of 18 years, enters the State while the parent is still in the protection procedure. There is no separate right for accompanied children to apply for asylum independently even if they have different protection grounds to their parents.

### **Preliminary interview**

Immigration officers at the border have the right to conduct a preliminary interview with the applicant but then the person's case is transferred to the IPO under section 13 IPA. According to the most up to date available figures from the ORAC Annual Report 2015, there were 300 applications lodged at airports in that year, accounting for 9.2% of the overall applications submitted in 2015.<sup>17</sup> It is also worth noting that the ORAC annual reports refer to a third category of applications lodged in "other" locations in addition to those lodged at airports and at ORAC itself. It is not clear where exactly these other locations are, whether they are in places of detention or at other ports of entry, such as where people may arrive by sea. The latest ORAC annual report states that a total of 88 applications were made at "other" locations in 2015.

Following the case referral to the IPO, the applicant makes a formal declaration he or she wishes to apply for international protection, outlined under Section 13 IPA. The applicant is interviewed by an authorised officer of the IPO to establish basic information, which is inserted into a form entitled 'IPF1'. This preliminary 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. Practice on the implementation of this procedure is not known at the moment, but there is no provision in IPA requiring the interview to be carried out in the IPO premises. Accordingly, it could be contemplated that the preliminary interview would possibly be held also at ports of entry and airports.

The short initial interview seeks to establish the applicant's identity; country of origin; nationality, details of the journey taken to Ireland, including countries passed through in which there was an opportunity to claim asylum and any assistance obtained over the journey and the details of any person who assisted the person in travelling to the State; the method and route of entry into the state (legally or otherwise); brief details of why the applicant wishes to claim asylum, their preferred language and whether the application could be deemed inadmissible under section 21 IPA. This interview usually takes place on the day that the person attends the IPO. If the person is detained, the interview may take place in prison.

The applicant is required to be photographed and fingerprinted. If the applicant refuses to be fingerprinted, he or she may be deemed not to have made reasonable effort to establish his or her true identity and to have failed to cooperate.

The information taken at the screening interview enables the IPO 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 which will assist in determining if the Dublin III Regulation is applicable or not.

### **Application for International Protection Questionnaire**

At the end of the preliminary interview the applicant is given detailed information on the asylum process. This information is available in 18 languages.<sup>18</sup> The applicant is given a long questionnaire, the Application for International Protection Questionnaire (IPO 2), which must be completed and returned within 20 working days. If necessary, during this transitional phase to the single procedure, to access legal support, applicants can submit the completed questionnaire beyond the 20 working days. As part of the new consolidated asylum process under the IPA, all of the details relevant to a claim for international protection (refugee status, subsidiary protection and permission to remain), including details relevant to the right to enter and reside for family members, are compiled within this single, detailed questionnaire. In the previous system, applicants would have made separate applications for refugee status, subsidiary

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<sup>17</sup> ORAC, Annual Report 2015, available at: <http://bit.ly/2jFiNz5>, 55.

<sup>18</sup> The Information Booklet for International Protection is available in 18 languages: <http://bit.ly/2lOwxfr>.

protection and leave to remain respectively, and all details related to family reunification would be collected in an application subsequent to being granted refugee or subsidiary protection status. As such, the questionnaire plays a crucial role in the status determination process and section 1 of the introductory preamble to the questionnaire recommends that the applicant “seek legal advice” to assist with completing the questionnaire.<sup>19</sup> Contact details for the Legal Aid Board, who assist applicants for international protection, and other relevant statutory bodies and international organisations are included in an annex to the Information Booklet for Applicants for International Protection, which applicants receive at the same time as the questionnaire. The questionnaire usually has to be completed and returned to the IPO within 20 working days, although the IPO has clarified that this is an administrative deadline and that flexibility may be given to applicants requiring more time.<sup>20</sup> 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.

The questionnaire itself is much more in depth than previous iterations issued by ORAC and requires information that bears relevance across every stage of the protection process. The rationale behind this is that all information relevant to assessing numerous grounds for international protection will be captured at the first instance, with the intention of reducing the duration of the process overall.

The questionnaire is now divided into 13 parts:

1. Part 1 gathers the principal applicant’s basic details.
2. Part 2 requests general information pertaining to the principal applicant, including languages, medical conditions relevant to the application and circumstances affecting the applicant’s capacity to attend interviews at the IPO (including special needs, etc.).
3. Part 3 collects basic biographical information.
4. Part 4 is for inputting family information, with separate spaces for spouses/civil partners, dependent children, parents, siblings and “other dependents”.
5. Part 5 allows for the applicant to detail all documentation potentially relevant to the application.
6. Part 6 gathers visa, residency and travel information of the principal applicant and his/her dependents.
7. Part 7 focuses on the basis of the claim for protection, allowing space for the applicant’s personal testimony; questions on any grounds for both refugee status and subsidiary protection; any action taken by the applicant to obtain protection in their country of origin; whether the person could relocate elsewhere within their country of origin; their fears if returned; whether or not the applicant or their dependents have been “sought, interrogated, arrested, detained or imprisoned by the state authorities in any country”; any affiliation to religious, political or other organisations and any military/paramilitary activity.
8. Part 8 contains information on whether or not the applicant has lodged an application for protection or residency in other countries, including applications lodged with UNHCR.
9. Part 9 deals with permission to remain; in the event that the applicant should be refused both refugee status and subsidiary protection, the minister will take into account the person’s personal circumstances in order to determine whether he or she may be permitted leave to remain. In the previous system, this would have been considered once all initial applications for protection and appeals had been exhausted. However, under the new system, a case for permission to remain must be lodged at the first instance, which will be taken into account automatically in the event that other protection avenues are denied. The applicant is encouraged to notify the IPO of any new information or circumstances pertaining to permission to remain at any stage they might arise in the process including following an appeal at the IPAT, which adds an extra degree of responsibility upon the applicant. It is important to note that under S.I. 664/2016 International

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<sup>19</sup> Application for International Protection Questionnaire, draft document received from ORAC by the Irish Refugee Council in November 2016

<sup>20</sup> IPO, ‘Clarification regarding the deadline for the return of the Application for International Protection Questionnaire (IPO 2)’, available at: <http://bit.ly/2mlf2QD>.

Protection Act (Permission to remain) Regulations 2016 an applicant only has a five day period to provide a further submission on permission to remain after the decision of IPAT.

10. Part 10 of the questionnaire contains information relating to possible future applications for family reunification, including details of family members who may be eligible for reunification, such as a spouse, civil partner, minor children, and the parents of unaccompanied minor applicants.
11. Parts 11 – 13 of the questionnaire ask for information about completion of the questionnaire, including any assistance received in its completion.

Upon registering their claim, 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). If the applicant requires accommodation, he or she will be taken to **Baleskin** Reception Centre in Dublin (near Dublin airport). Upon arrival at **Baleskin**, the applicant may receive medical screening and counselling. After a short period of time the applicant may be transferred to a Direct Provision centre elsewhere in the country. Applicants typically do not have any say as to where in the country they are transferred. Applicants may make their own arrangements for accommodation if they have the financial resources to do so, however it is crucial that they keep the IPO apprised of their address as any correspondence in relation to their claim will be made to that location.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time-limit set in law for the determining authority to make a decision on the asylum application at first instance:     | None  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases as of 31 December 2016:  | 4,055   |

Due to the large number of open cases from 2015 being carried over into 2016, there was a significant backlog throughout 2016 but the actual figure of pending cases as of 31 December 2016 is unknown to the author, as the figures for that year have not been published yet.

As of January 2017, with the commencement of the International Protection Act 2015 (IPA), the International Protection Office (IPO) has replaced the Office of the Refugee Applications Commissioner (ORAC) as the specialised office tasked with determining refugee status and subsidiary protection applications at first instance, as well as assessing whether the Dublin III Regulation or permission to remain applies.

There is no time limit in Irish law for the determining authority to make a decision on an asylum application at first instance.<sup>21</sup> Under the Refugee Act 1996, ORAC has endeavoured 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 could not be made within 6 months of the date of the application

<sup>21</sup> There is no time limit in law. Alan Shatter, Minister for 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, available at: <http://bit.ly/1Lwomep>.

for a declaration, ORAC would, 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. That provision also exists under section 39(5) IPA. According to the latest comprehensive statistics, the median processing time for general asylum applications was 29 weeks at year-end 2015.<sup>22</sup> ORAC attributed this increase on the 2014 figures to the large number of applications received in 2015.

Similarly, there is no time limit for processing cases under the new system set out in the IPA. However, it is envisaged that the single procedure (which will now see applications for refugee status, subsidiary protection and leave to remain assessed concurrently), by design, will reduce the length of time required to finalise a case. Whether this occurs in practice remains to be seen as, at time of writing this report, the single procedure is at the early stages of being rolled out.

## 1.2. Prioritised examination and fast-track processing

Under section 12(1) of the Refugee Act 1996, the Minister could give a direction to ORAC to give priority to certain classes of applications. The Minister has issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, South Africa.<sup>23</sup> 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 2015, there were 53 cases prioritised on the basis of safe country of origin designations, with a median processing time for such cases of 10.8 weeks from the date of application.

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 2015, there was a minor decrease, with 35 persons in places of detention making asylum applications, constituting 1% of all applications made that year.<sup>24</sup>

In the new system, prioritisation is now dealt with under section 73 IPA, giving the Minister power to “accord priority to any application”, or “to any appeal” in consultation with the chairperson of the Tribunal. Under section 72(2) the Minister may have regard to certain matters such as whether the applicant is a person (unaccompanied minor) in respect of whom the Child and Family Agency is providing care and protection.

The grounds for prioritised applications are not explicitly set out in the IPA but section 73(2) states that in according priority the Minister may have regard to the following:

- (a) whether the applicant possesses identity documents, and if not, whether he or she has provided a reasonable explanation for the absence of such documents;
- (b) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin;
- (c) whether the applicant has provided a full and true explanation of how he or she travelled to and arrived in the State;
- (d) where the application was made other than at the frontier of the State, whether the applicant has provided a reasonable explanation to show why he or she did not make an application for international protection, or as the case may be, an application under section 8 of the Refugee Act

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<sup>22</sup> ORAC, Annual Report 2015, 16.

<sup>23</sup> It should be noted that the Refugee Act 1996 (Safe Countries of Origin) Order 2004 (S.I. No. 714 of 2004) and Refugee Act 1996 (Safe Countries of Origin) Order 2003 (S.I. No. 422 of 2003) have been revoked under the new International Protection Act 2015.

<sup>24</sup> ORAC, Annual Report 2015, 16.



- 1996 (as amended) immediately on arriving at the frontier of the State unless the application is grounded on events which have taken place since his or her arrival in the State;
- (e) where the applicant has forged, destroyed or disposed of any identity or other documents relating to his or her application, whether he or she has a reasonable explanation for so doing;
  - (f) whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing; g) whether the applicant has adduced manifestly false evidence in support of his or her application, or has otherwise made false representations, either orally or in writing;
  - (g) whether the applicant, without reasonable cause, has made an application following the notification of a proposal under section 3(3)(a) of the Immigration Act 1999;
  - (h) whether the applicant has complied with the requirements of section 27(1) IPA;
  - (i) whether the applicant is a person in respect of whom the Child and Family Agency is providing care and protection;
  - (j) whether the applicant has, without reasonable cause, failed to comply with the requirements of paragraphs (a),(c) or (d) of section 16(3) IPA which refers to reporting obligations.

Applications from certain nationalities 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 for Justice and Equality as [Safe Countries of Origin](#) 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 (see section on [Accelerated Procedure](#)). It remains to be seen how section 73 is applied in practice as the IPA new procedure is only currently being rolled out.

On 27 January 2017 UNHCR issued a statement in conjunction with the International Protection Office on the prioritisation of applications. UNHCR Ireland stressed the need for fairness and efficiency in dealing with all applications for international protection.<sup>25</sup> Under the new system the scheduling of interviews will occur under two processing streams which will run concurrently. According to UNHCR's statement "Stream one, will comprise of the majority of applications for international protection which will be scheduled mainly on the basis of oldest cases first. These include new applications and cases which were open before the commencement date of the International Protection Act 2015 at the following stages and order of priority: (I) pending subsidiary protection recommendations; (ii) pending appeal at the former Refugee Appeals Tribunal; (iii) pending refugee status recommendations. Stream two will comprise of certain categories of cases which were open at the commencement of the International Protection Act 2015 as well as some new cases based on the criteria below. Within each of these classes of cases, priority will be mainly accorded on the basis of the oldest cases first: (i) The age of applicants – under this provision the following cases will be prioritised: unaccompanied minors in the care of Tusla; applicants who applied as unaccompanied minors, but who have now aged out; applicants over 70 years of age, who are not part of a family group; (ii) the likelihood that applications are well-founded....; (iii) the likelihood that applications are well-founded due to the country of origin or habitual residence." The following countries are then listed in terms of priority: Syria, Eritrea, Iraq, Afghanistan, Iran, Libya and Somalia. A final ground for prioritisation is on health grounds in that applicants who notify the IPO after the

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<sup>25</sup> UNHCR and International Protection Office, Prioritisation of applications for international protection under the International Protection Act 2015, available at: <http://bit.ly/2lSEaOy>.

commencement date that evidence has been submitted, certified by a medical consultant, of an ongoing severe/life threatening medical condition will be prioritised.<sup>26</sup>

In terms of prioritisation of certain nationalities, anecdotal information suggests that in practice some asylum applications from **Syrians** were prioritised in 2016 on the basis of the well-founded nature of the claims, given the abundance of public attention afforded to the human rights situation on-going in Syria.

Moreover, in relation to the Irish response to the European Refugee Crisis, in September 2015 the Department of Justice and Equality established an 'Irish Refugee Protection Programme' (IRPP) where a network of what is referred to as 'Emergency Reception and Orientation Centres' (EROCC) will provide accommodation for relocated asylum seekers to Ireland (see section on [Relocation](#)). The Minister for Justice, Frances Fitzgerald, has indicated that the assessment and decisions on refugee status for these relocated asylum seekers will be made within weeks, so although not formally prioritised as such their claims will be examined very quickly.<sup>27</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
  
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?
  - ❖ Preliminary interview  Not necessarily
  - ❖ In-depth interview  Yes  No
  
3. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Both the Refugee Act 1996 and the International Protection Act 2015 (IPA) replacing it allow for a preliminary interview of the applicant upon arrival on the territory of the State in order to, among other things, capture basic information about the applicant before they formally register an application for international protection. Section 13 IPA enables an immigration officer or an IPO officer to conduct the preliminary interview. It is not clear from the legislation when it would be an immigration officer or an IPO officer conducting the interview but the immigration officer must furnish a record of the interview to the Minister. Under section 13 IPA, the preliminary interview seeks to establish, among other details: whether the person wishes to make an application for international protection, as well as the grounds for that application; the identity, nationality and country of origin of the person; the route travelled by the person and other travel details, and whether any initial inadmissibility grounds arise in the case.

The legislation provides for a further substantive personal interview for all applicants, including those prioritised, after the submission of the in depth International Protection Questionnaire. The substantive interview is conducted by an International Protection Officer who will have extensively reviewed the applicant's questionnaire and relevant country of origin information in advance. The purpose of this interview is to establish the full details of the claim for international protection and the interview can last a number of hours, depending on the circumstances of the particular case. A legal representative can attend the interview and is asked to sign a code of conduct to be observed when attending the interview.

The system under the Refugee Act 1996 obligated the Office of the Refugee Applications Commissioner (ORAC) to conduct separate interviews for each application being submitted, i.e. refugee status or subsidiary protection. This led to systematic delays whereby, if a person goes through the refugee

<sup>26</sup> *Ibid.*

<sup>27</sup> Department of Justice and Equality, *Statement by Minister Fitzgerald on the Migration Crisis following an Emergency Meeting of Justice and Home Affairs Ministers*, 22 September 2015, available at: <http://bit.ly/1kg180z>.

application process (including an interview) and is ultimately denied status, that person must begin the process anew and attend another interview if he or she wants to apply for subsidiary protection. However, with the commencement of the IPA in January 2017, consideration of eligibility for refugee status, subsidiary protection and permission to remain is given under a single interview, as held in section 35 IPA.

Under the new legislation, International Protection Officers are required to “be sufficiently competent to take account of the personal or general circumstance surrounding the application, including the applicant’s cultural origin or vulnerability” and must provide the services “interpreters who are able to ensure appropriate communication between the applicant and the person who conducts the interview.”<sup>28</sup> Historically, ORAC has facilitated requests for interviewers of a particular gender. ORAC stated that in 2012 that 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. Where this is the case, the officer conducting the interview will require the accompanying adult to prove that he or she is responsible for the care and protection of the applicant. Section 35(5)(a) IPA states that interviews are conducted without the presence of family members save in certain circumstances where the International Protection Officer considers it necessary for an appropriate investigation. Anecdotal evidence suggests that such circumstances rarely occur. The interview is the primary opportunity to give their personal account of why they are seeking international protection and cannot return home.

Section 35(2) IPA states that an applicant who is having a substantive interview shall, whenever necessary for the purpose of ensuring appropriate communication during the interview, be provided by the Minister or International Protection Officer with the services of an interpreter. As mentioned above the IPA requires that interpreters are fully competent and able to ensure appropriate communication between the applicant and the interviewer. How this will be realised in practice remains to be seen. 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.

Typically, the 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 via hand-typed transcription on a desktop. There is no system for independent recording of the interviews (interviews are not audio or video recorded), even where a legal representative is not present. A copy of the interview record 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. Whether or not the format of the substantive interview will change with the rollout of the IPA remains to be seen as interviews under the new legislation have not begun at time of writing this report.

A personal interview may be dispensed with where the IPO officer is of the opinion that:<sup>29</sup>

- ❖ based on the available evidence, the applicant is a person in respect of whom a refugee declaration should be given;
- ❖ where the applicant has not attained the age of 18 years, he or she is of such an age and degree of maturity that an interview would not usefully advance the examination; or
- ❖ the applicant is unfit or unable to be interviewed owing to circumstances that are enduring and beyond his or her control.

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<sup>28</sup> Section 35(3) IPA.

<sup>29</sup> Section 35(8) IPA.



Where an applicant does not attend his or her scheduled interview, the application may be deemed to be withdrawn. However, the IPO will first contact the applicant to find out if there is a reasonable cause for his or her failure to attend the interview. An applicant may make representations in writing to the International Protection Office in relation to any matter relevant to the investigation following the interview and the International Protection Officer shall take account of any representations that are made before or during an interview under section 35 IPA. Representations may also be made by UNHCR and by any other person concerned.

#### 1.4. Appeal

##### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?
 

❖ If yes, is it	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
  
2. Average processing time for the appeal body to make a decision: Not available

Up until January 2017, the Refugee Appeals Tribunal (RAT) has been the body considering and deciding on appeals against recommendations of the Office of the Refugee Applications Commissioner (ORAC) that applicants should not be declared to be refugees or beneficiaries of subsidiary protection. They also hear appeals concerning Dublin III Regulation transfers. According to the latest available figures, the median processing time for appeals of refugee status decisions before the RAT in 2014 was 49 weeks (343 days) for oral appeals and 38 weeks (273 days) for paper only appeals. The recognition rate for 2014 was 49% for oral appeals and 33% for paper only appeals. The median processing time for appeals of subsidiary protection status decisions was 28 weeks.<sup>30</sup>

With the commencement of the International Protection Act 2015 (IPA), the RAT is replaced by the International Protection Appeals Tribunal (IPAT) as the second-instance decision making body for the Irish asylum process. The IPAT is a quasi-judicial body and, according to the IPA, it shall be independent in the performance of its functions. Under section 41 IPA, the IPAT may hear appeals against recommendations that an applicant not be given a refugee declaration, or a recommendation that an applicant should be given neither a refugee declaration nor a subsidiary protection declaration. The IPA also hears appeals regarding Dublin III Regulation transfers and on paper, inadmissibility appeals. Applications to the IPAT must be made in writing, within a given time-frame, including the grounds of appeal and whether or not the applicant wishes to have an oral hearing.

Section 61(4) IPA states that members of the IPAT shall be appointed by the Minister. They work and are paid on a per case basis. The IPAT consists of a Chairperson, 2 deputy chairpersons, and such number of ordinary members appointed on either a whole-time or part-time capacity as the Minister for Justice and Equality, with the consent of the Minister for Public Expenditure & Reform, considers necessary for carrying out the extent of the casework before the Tribunal.

According to the latest up to date official figures on appeals, there were 1,386 appeals before the RAT in 2015, as well as 799 cases scheduled and 640 decisions issued.<sup>31</sup>

Legal aid for appeals is available through the Refugee Legal Service in the Legal Aid Board.

Where an oral hearing is held, these are conducted in an informal manner and in private. The applicant's legal representative may be present as well as any witnesses directed to attend by the Tribunal.

<sup>30</sup> Working group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, available at: <http://bit.ly/1KJWai4>.

<sup>31</sup> Refugee Appeals Tribunal, *Annual Report 2015*, available at: <http://bit.ly/2js9ful>, 21.

Witnesses may attend to give evidence in support of the appeal, e.g. a country of origin expert or a family member. The Presenting Officer for the IPO also attends. UNHCR may attend as an observer.

Section 42(6)(c) IPA provides for the services of an interpreter to be made available whenever necessary for the purpose of ensuring appropriate communication during the interview.

Before reaching a decision, the Tribunal considers, among other things:

- ❖ Notice of Appeal submitted by the applicant or their legal representative;
- ❖ All material furnished to the Tribunal by the Minister that is relevant to the case;
- ❖ Any further supporting documents submitted by the applicant or their legal representative, as well as any observations made to the Tribunal by the Minister or the UNHCR;
- ❖ Where an oral hearing is being held, the representations made at that hearing.

The length of time for the Tribunal to issue a decision is not set out in law. In previous years, the length of 'time taken' by the Tribunal to process and complete a substantive appeal has varied. According to the latest figures from the RAT 2015 annual report, the median length of time taken by the Tribunal to process and complete Substantive 15 day appeals was approximately 69 weeks based on a sample of 385 cases. It was 77 weeks for Accelerated Appeals based on a sample of 73 cases and 52 weeks for Subsidiary Protection Appeals based on a sample of 123 cases.

On 11 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.<sup>32</sup> 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.

### **Judicial review**

A decision of the IPAT (as with the IPO) may be challenged by way of judicial review in the High Court. This is a review on a point of law only under Irish administrative law and cannot investigate the facts. In addition, the applicant must obtain permission (also called 'leave') to apply for judicial review. This is a lengthy process. The RAT had 812 active judicial reviews by the end of year 2013 and 75 of which were applications filed for judicial review in 2013.<sup>33</sup> At the start of 2014 the Refugee Appeals Tribunal had 812 active judicial review cases on hand. In 2014 only four new applications for judicial review were filed marking a significant decline in the numbers of judicial review applications of RAT decision.<sup>34</sup> At the start of 2015 the Tribunal had 455 active Judicial Reviews on hand and the number of new Judicial Reviews filed was 33. 332 Judicial Reviews were determined by the end of 2015.<sup>35</sup>

According to the Irish Court Service Annual Report 2013 the waiting time for judicial review applications to be considered is lengthy with pre-leave times for applying for judicial review of 30 months and post-leave times of four months.<sup>36</sup> There was a 13% decrease in asylum-related judicial review applications in 2013 compared to 2012.<sup>37</sup> 385 new asylum-related judicial review applications were made in the High Court in 2013 compared to 440 in 2012.<sup>38</sup> Asylum related judicial reviews represented 40% of all judicial review applications in 2013.<sup>39</sup> According to the Irish Court Service Annual Report 2014 the President of the High Court assigned an additional judge to assist with the hearing of asylum cases. This, along with

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<sup>32</sup> Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.

<sup>33</sup> Refugee Appeals Tribunal, *Annual Report 2013*, 12.

<sup>34</sup> Refugee Appeals Tribunal, *Annual Report 2014*, 12.

<sup>35</sup> Refugee Appeals Tribunal, *Annual Report 2015*, available at: <http://bit.ly/2js9ful>, 13.

<sup>36</sup> Irish Court Services, *Annual Report 2013*, available at: <http://bit.ly/1CWucTp>, 56.

<sup>37</sup> *Ibid*, 31.

<sup>38</sup> Asylum-related judicial review applications denotes judicial review applications submitted against ORAC, RAT and /or the Minister for Justice and Equality in the field of asylum.

<sup>39</sup> *Ibid*.

other initiatives resulted in a significant reduction in delays for hearing asylum cases. In 2014 the waiting time for pre-leave asylum cases was reduced from 30 months to 9 months.<sup>40</sup> Overall in 2015, there were only 187 asylum-related judicial review applications which was a 51% decrease on 2014. The Courts Service's annual report for 2015 noted a significant decrease over the 2013-2015 period for the waiting time for asylum pre-leave to appeal hearings had decreased from 30 months to six months.<sup>41</sup> Throughout 2015, there were 164 asylum-related judicial review applications, reflecting a 12% decrease on 2014 and a 57% decrease on 2013 figures.<sup>42</sup>

Under Section 49(7) IPA, where the Tribunal affirms a recommendation from the IPO that an applicant not be declared a refugee nor in need of subsidiary protection, the Minister may reassess the eligibility of the applicant to be granted permission to remain. For the purposes of such a review, the applicant may submit documentation or information about a change of circumstances relevant to a review of permission to remain (such as evidence of an established connection to the state, information indicating humanitarian reasons to grant permission to remain, etc. Such information must be submitted within a period of time prescribed by the Minister under section 49(10) IPA.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover:
 

<input type="checkbox"/> Representation in interview
<input checked="" type="checkbox"/> Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
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  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Representation in courts
<input checked="" type="checkbox"/> Legal advice

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 (RLS).

Asylum applicants can register with the RLS (the Legal Aid Board section which deals with legal aid services for asylum seekers) as soon as they have made their application to ORAC/IPO. All applicants are assigned a solicitor and a caseworker. The Legal Aid Board has normally provided services only at the appeal stage but now they are also including services in-house for early legal advice (ELA) and via a Private Practitioners' Panel whereby private solicitors provide ELA for the Legal Aid Board for a set fee. The ELA service normally does not cover attendance at the actual personal interview with the applicant and only covers guidance on completing the Questionnaire rather than actual assisting with the completion of the Questionnaire form itself. The Legal Aid Board has established some best practice guidelines under the new procedure.<sup>43</sup>

Since 2011, the Irish Refugee Council (IRC) Independent Law Centre has run a free ELA service which involves providing intensive legal assistance to the applicant at the very early stages of the asylum

<sup>40</sup> Irish Court Services, Annual Report 2014, available at: <http://bit.ly/1PUkaXC>, 19.

<sup>41</sup> Irish Court Services, Annual Report 2015, available at: <http://bit.ly/2iz97VS>, 5.

<sup>42</sup> *Ibid*, 35.

<sup>43</sup> The best practice guidelines are available at: <http://bit.ly/2moPO3D>.

process.<sup>44</sup> The ELA package offered by the IRC Law Centre provides an initial advice appointment with a solicitor (preferably prior to the application for asylum being 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. In November 2015, following the success of the IRC's ELA programme, the Law Centre published a manual on the provision of ELA to persons seeking protection.<sup>45</sup> The manual is geared towards promoting best practice towards practitioners working in the EU asylum context.

The RLS's 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 International Protection Appeals Tribunal 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 but it is important to note that judicial review will only be an appropriate avenue in some circumstances and should not be viewed as an appeal procedure.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2016

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	:	42	<b>Total</b>	:	:
:	:	:	:	:	:
:	:	:	:	:	:
:	:	:	:	:	:

Source: INIS, Annual Review 2016: <http://bit.ly/2lx8fT5>.

In 2015, Ireland issued 617 outgoing requests and a total 19 asylum seekers were transferred under the Dublin Regulation to other EU Member States. In 2015 Ireland also accepted 109 incoming requests which represented an acceptance rate of over 70 per cent.

The Dublin Regulation is implemented by the Dublin Unit the IPO. 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 IPA repeals under section 6 the European Union (Dublin System) Regulations 2014 (S.I. No. 525 of 2014) but these have been replaced by the European Union (Dublin System) (Amendment) Regulations 2016 (S.I. No. 140 of 2016).

<sup>44</sup> For further information see The Researcher, Early Recognition of People in Need of International Protection: The Irish Refugee Council Independent Law Centre's Early Legal Advice and Representation Project, Jacki Kelly, Irish Refugee Council, October 2013.

<sup>45</sup> Irish Refugee Council Independent Law Centre, A Manual on Providing Early Legal Advice for Persons Seeking Protection, available at: <http://bit.ly/1OCmkdJ>.

In 2015 some 302 outgoing transfer decisions were made under the Dublin III Regulation but only 19 transfers were actually carried out.<sup>46</sup> Some 380 Dublin interviews were also carried out by ORAC in 2015. 617 formal requests to other Member States were also made by ORAC under the Dublin III Regulation in 2015. A total of 52 transfers into Ireland and 19 transfers out of Ireland were completed under the Regulation during 2015.<sup>47</sup> In 2016 42 people were transferred to other Member States under the Dublin Regulation.<sup>48</sup>

### **Application of the Dublin criteria**

No information is publicly available on the application of certain criteria of the Dublin III Regulation. Only information referring to the number of information requests, decisions and transfers are available as shown in the ORAC Annual Report 2015 on Dublin Regulation statistics.

### **Family criteria, dependent persons and humanitarian clause**

In response to a parliamentary question, Minister Frances Fitzgerald stated that “where a request to take charge of an asylum application for family reasons is received, proof of that familial relationship is required. Often supporting documentary proof is not available, is incomplete or is not capable of being authenticated with a reasonable degree of certainty. In the limited number of such cases, the results of biometric tests can provide a greater degree of certainty of a family link. This is particularly important in the case of a transfer involving a minor or other vulnerable person so as to ensure that they are being placed in the right family unit in the interests of their welfare and safety, as required by law.”<sup>49</sup>

In terms of family reunion the following parliamentary question response from Minister Frances Fitzgerald provided information in particular on family reunion for Syrian nationals which has been quoted below:

“Requests to join applicants together for family reasons may be made under the Dublin Regulation provided that the circumstances of the case meet the criteria laid down in the particular articles viz. Articles 8, 9, 10 and 11. In 2014 there were 11 such requests made to Ireland from other Member States in 2014, 1 of which related to a Syrian national. Of these, 4 were accepted including the Syrian national and 7 were rejected as they did not meet the Dublin criteria. In addition, Articles 16.1 and 17.2 may be invoked for dependency reasons, the former for care reasons while the latter is a more general discretionary provision whereby family members may be brought together on humanitarian grounds, even if a State is not responsible under the normal determining criteria of the Regulation. There were 2 such requests made to Ireland from other Member States in 2014, both of which were accepted under Article 16.1 and neither of which involved Syrian nationals.

The comparable figures for 2015 were that there were 5 requests to join applicants together for family reasons made to Ireland from other Member States in 2015 - none of which were Syrian. All 5 were accepted. In respect of Articles 16.1 and 17.2 cases there was 1 such request made to Ireland from another Member State in 2015 - which was rejected and was not a Syrian national.

In respect of 2016 (1st January to 30th September) there were 8 requests to join applicants together for family reasons made to Ireland from other Member States none of which involved Syrian nationals, and all of which are still under consideration pending further information. In respect of Articles 16.1 and 17.2 cases there were 4 such requests made to Ireland from other Member States

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<sup>46</sup> ORAC, Annual Report 2015, 62. Interesting to note that compared to 19 transfers out of Ireland there were 52 incoming transfers to Ireland under the Dublin Regulation.

<sup>47</sup> A. Sheridan, S. Whelan, *EMN Annual Report on Migration and Asylum 2015: Ireland*, available at: <http://bit.ly/2lOaOQS>.

<sup>48</sup> Department of Justice, Irish Naturalisation and Immigration Service, *Immigration in Ireland, Annual Review 2016*, available at: <http://bit.ly/2lx8fT5>, 12.

<sup>49</sup> Parliamentary Question response by Minister Frances Fitzgerald, 138 of 15 November 2016, available at: <http://bit.ly/2luwyUP>.

in the same period, 3 of which involved Syrian nationals which were declined and 1 other case is still under consideration.”<sup>50</sup>

In her replies to both parliamentary questions, the Minister also went on to state that “the primary purpose of the EU Dublin Regulation is the determination of the Member State responsible for examining an application for international protection (usually the country where the asylum application is first made) and not family reunification which the Department operates under separate legal provisions” which somewhat overlooks the family reunion provisions in the hierarchy of criteria under the Dublin III Regulation.

According to ORAC, requests to Ireland from other Member States to take charge of / take back applicants based on family links or the use of discretionary clauses were assessed carefully on their merits and decided on in accordance with the provisions of the Dublin III Regulation, the supporting Commission Implementing Regulation (No. 118/2014) and the domestic Statutory Instrument (No. 525 of 2014) giving further effect to the Dublin Regulation in national law, as well as any relevant jurisprudence of the CJEU and Irish courts.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? Not known

All applicants are photographed and fingerprinted (14 years and older) during their initial interview with IPO (see section on [Registration](#)). 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 III Regulation countries).

In relation to specific guarantees for children in the Dublin procedure, ORAC is required under Section 3(3) of S.I. No. 525 of 2014 European Union (Dublin System) Regulations 2014 to consult with Tulsa (the Irish Child and Family Agency) on the best interests of the child particularly with respect to the child’s well-being and social development and the views of the child. It should be noted that that S.I. No. 525 of 2014 on the Dublin System Regulations has been revoked so only the parts remaining in the Amendment Regulations in 2016 appear to be applicable at the moment. No information is available on the practice under the new single procedure.

## 2.3. Personal interview

### Indicators: Dublin: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  Yes  No  
❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

At any time during the initial asylum process the IPO may determine that a person is subject to the Dublin III Regulation. Limited information is available on how Dublin procedure interviews are conducted in practice but applicants are provided with the common information leaflet stating that they are in the Dublin

<sup>50</sup> Parliamentary Question response by Minister Frances Fitzgerald, 79 of 5 October 2016 available at: <http://bit.ly/2luo1Bi>.



procedure. However it is not always clear that the asylum seeker understands that they are having a specific Dublin procedure interview as anecdotal evidence suggests it seems to be presented as an interview just asking questions about the person’s journey to Ireland without fully explaining the implications in terms of which country is responsible for the person’s asylum application and that it means that the person may be transferred there. The onus is placed on the asylum seeker to be able to read the Dublin information leaflet rather than ensuring that it is properly explained by the caseworker and not the interpreter at the Dublin personal interview.

## 2.4. Appeal

**Indicators: Dublin: Appeal**

Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

<ul style="list-style-type: none"> <li>❖ If yes, is it</li> <li>❖ If yes, is it suspensive</li> </ul>	<table style="width: 100%; border: none;"> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td><input checked="" type="checkbox"/> Judicial</td> <td><input type="checkbox"/> Administrative</td> </tr> <tr> <td><input checked="" type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> </table>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No						
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative						
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No						

The information leaflet for persons in the Dublin procedure states that while the appeal or review is pending the person may remain in Ireland. However it also states that “You can also ask for a suspension of the transfer for the duration of the appeal or review”, so there is a lack of clarity as to whether the appeal is automatically suspensive or not for Dublin III Regulation decisions.<sup>51</sup>

The IPAT shall have regard to both the facts and law when considering appeals under the Dublin III Regulation. This is in accordance with Article 27 of 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 IPAT overturns the decision of the IPO, the applicant and their legal representative and the Commissioner and Minister are notified in writing. The IPAT may either affirm or set aside the transfer decision. When submitting a Dublin appeal to the IPAT the person concerned can request that an oral hearing is conducted and the Tribunal may also hold an oral hearing even if the person concerned has not requested it if the IPAT is of the opinion that it is in the interests of justice to do so. No information is available on the current practice as the Irish system just recently changed under the IPA.

There is no onward appeal of a RAT decision on the Dublin Regulation, however, judicial review of the decision could be sought. At the moment there are some pending cases before the High Court (unreported) regarding the remit of the IPAT’s appeal and whether they can apply the sovereignty clause (Article 17) themselves. These cases are still pending at the time of writing.

In 2015 the Tribunal received 171 appeals in relation to the Dublin Regulation and a total of 29 Tribunal decisions were issued during the year, all affirming ORAC’s recommendation.<sup>52</sup>

<sup>51</sup> ORAC, "I'm in the Dublin procedure – what does this mean?' Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013, available at: <http://bit.ly/1JzYzfb>.

<sup>52</sup> A. Sheridan, S, Whelan, *EMN Annual Report on Migration and Asylum 2015: Ireland*, available at: <http://bit.ly/2lOaOQS>.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
 Yes                       With difficulty     No  
❖ Does free legal assistance cover:  
 Representation in interview  
 Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?  
 Yes                       With difficulty     No  
❖ Does free legal assistance cover  
 Representation in courts  
 Legal advice

An applicant who is subject to the Dublin Regulation may access legal information through the Refugee Legal Service (RLS). Technically this is not completely free legal representation as there is a small amount to be paid (10 Euro) (see section on [Regular Procedure: Legal Assistance](#)). The RLS has also issued guidance on the role of Private Practitioners on their panel as regards legal advice which shows that it also applies in the context of the Dublin procedure.<sup>53</sup>

This assistance also applies to the appeal where legal representation is available.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries?  
 Yes                       No  
❖ If yes, to which country or countries?                      Greece

Transfers to Greece were suspended following the European Court of Human Rights' 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 IPO considers the substantive application, the applicant is able to remain in reception facilities until the application is fully determined.

There is no blanket suspension of transfers to any Member State apart from Greece.<sup>54</sup>

## 2.7. The situation of Dublin returnees

Under the previous system in cases where Ireland had agreed to take back an asylum seeker under the Regulation, the person could 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.

Under the IPA there is no information available on the practice but if a person's case had already been examined in Ireland, he or she would have to request consent from the Minister to be granted a subsequent application under section 22 IPA.

<sup>53</sup> See further Legal Aid Board, *Best practice guidelines*, February 2017, available at: <http://bit.ly/2moPO3D>.

<sup>54</sup> Information provided by IPO in January 2017 via email correspondence.



### 3. Admissibility procedure

Prior to the commencement of the International Protection Act 2015 (IPA), there was no admissibility procedure in Ireland. However, in the new legislation, section 21 contains provisions outlining the circumstances under which an application may be deemed inadmissible by the presiding international protection officer. It is too early since the commencement of the new legislation to determine the practice regarding these provisions.

#### 3.1. General (scope, criteria, time limits)

According to Section 21(2) IPA, an application for international protection may be deemed inadmissible where:

- ❖ Another Member State has granted refugee status or subsidiary protection to the applicant; or
- ❖ A country other than a Member State is a **First Country of Asylum** for the applicant.

Where the international protection officer is of the opinion that the above inadmissibility criteria are met, he or she shall make a recommendation to the Minister that the application be deemed inadmissible. In such circumstances, the Minister shall notify the applicant and his or her legal representative of the recommendation, including a statement of the reasons for the recommendations, a copy of the international protection officer's report and a statement informing the person of their entitlements, including the right to an appeal to the International Protection Appeals Tribunal.

Where an inadmissibility recommendation is made, the applicant may make an appeal against that decision within a timeframe designated by the Minister. The Minister, under section 77 IPA, may "prescribe different periods in respect of different provisions or different classes of appeal", so the length of time provided in which to lodge an appeal upon receipt of a decision may vary depending on the facts of the particular case.

#### 3.2. Personal interview

##### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?  
 Yes  No
  - ❖ If so, are questions limited to identity, nationality, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

All applicants upon lodging an application for international protection at the International Protection Office are granted a preliminary interview to obtain basic information about the applicant and their claim. This preliminary interview may also be carried out by an immigration officer and it is unclear from the wording of the legislation if this could occur at the frontiers of the State at ports of entry. Section 13(2) IPA states that a preliminary interview with the applicant shall be conducted to ascertain, among other things, whether any circumstances giving rise to inadmissibility considerations may arise. If any of the inadmissibility criteria arising under section 21(2) IPA are identified, then a recommendation is made by the international protection officer to the Minister that the application be deemed inadmissible and an application for international protection may not proceed.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the admissibility procedure?
  - Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

Under section 21(6) IPA, a person who receives notification from the Minister detailing the inadmissibility of their case, at the same time receives a statement informing the person of his or her entitlement to appeal to the IPAT against such a recommendation.

The appeal procedure against inadmissibility decisions is the same as those under [Regular Procedure: Appeal](#), other than the fact that there is no option for an oral hearing (Section 21 (7) IPA).<sup>55</sup>

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
  - Yes  With difficulty  No
  - ❖ Does free legal assistance cover: Not yet clear
2. Do asylum seekers have access to free legal assistance on appeal against an inadmissibility decision in practice?
  - Yes  With difficulty  No
  - ❖ Does free legal assistance cover  Representation in courts  Legal advice

All asylum applicants can register with the Refugee Legal Service (RLS - the Legal Aid Board section which deals with legal aid services for asylum seekers) as soon as they have made their application to the IPO. Information and guidance on legal advice is contained in Section 3.14 of the Information Booklet provided to applicants with the questionnaire that they are required to fill out as part of their application. Applicants who access the RLS are assigned a solicitor and a caseworker.

However, if the inadmissibility procedure happens prior to being provided with a Questionnaire or at the frontiers of the State it is likely that the applicant will not know how to avail themselves of legal advice so in practice may not receive assistance in an admissibility procedure. Furthermore the guidance issued by the Refugee Legal Service to solicitors on its private practitioners panel appears to indicate that legal advice is only available once the applicant has been admitted into the single procedure.<sup>56</sup> It remains to be seen what will happen in practice.

<sup>55</sup> Section 21(7) IPA.

<sup>56</sup> Legal Aid Board, Best Practice Guidelines, Information Note for Private Practitioners, February 2017, available at: <http://bit.ly/2moPO3D>.

## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time-limits)

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities?  Yes  No
2. Can an application made at the border be examined in substance during a border procedure?  Yes  No
3. Is there a maximum time-limit for border procedures laid down in the law?  Yes  No
  - ❖ If yes, what is the maximum time-limit?

Neither the IPA nor the former Refugee Act technically provided for a border procedure. However, a person who is at the frontiers of the State or is in the State and indicates that he or she needs asylum shall undergo a preliminary interview be it at the border or elsewhere by an IPO officer or immigration officer under section 13 IPA. They are then given permission to enter and remain in the State as an applicant of international protection under section 16 IPA and upon arrival at the IPO premises are granted a temporary residence certificate.

### 4.2. Personal interview

#### Indicators: Border Procedure: Personal Interview

Same as regular procedure for preliminary interview at IPO

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Section 13 enables a preliminary interview to be conducted at the border by an IPO officer or immigration officer.

This interview shall seek to establish *inter alia* (a) whether the person wishes to make an application for international protection 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 and any details of any person who assisted the person in travelling 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 whether any grounds exist for the application to be deemed inadmissible under section 21(2) IPA. The interview 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 Minister and the IPO.

### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- |                            |                                   |   |
|----------------------------|-----------------------------------|---|
| ❖ If yes, is it            | <input type="checkbox"/> Yes      | <input checked="" type="checkbox"/> No  |
| ❖ If yes, is it suspensive | <input type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
|                            | <input type="checkbox"/> Yes      | <input type="checkbox"/> No             |

There is no appeal. If someone is refused leave to land at the border under the Immigration Act 2004 and they are represented by a solicitor then the only action available is seeking judicial review. This, however, should not occur if the person expresses a wish to make an application for international protection or requests not to be expelled or returned to a territory where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, or fears or faces persecution or serious harm if returned to his or her country of origin. Then they should be granted entry and a preliminary interview conducted in accordance with section 13 IPA (see above).

It should be noted that the grounds for refusing leave to land at airports and ports of entry under the Immigration Act 2004 have been extended by virtue of section 81 IPA which states that a person may be refused leave to land by amending section 4(3) of the Immigration Act 2004 to include "(l) that the non-national – (i) is a person to whom leave to enter or leave to remain in a territory (other than the State) of the Common Travel Area (within the meaning of the International Protection Act 2015) applied at any time during the period of 12 months immediately preceding his or her application, in accordance with subsection (2), for a permission, (ii) travelled to the State from any such territory, and (iii) entered the State for the purposes of extending his or her stay in the said Common Travel Area regardless of whether or not the person intends to make an application for international protection." It remains to be seen how this will be applied in practice.

There is an appeal though if the application is found inadmissible under section 21 IPA (see section on [Admissibility Procedure: Appeal](#)) which may arise during the preliminary interview

### 4.4. Legal assistance

#### Indicators: Border Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |  |  |  |
|-------------------------------------|--|--|--|
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Yes                         | <input type="checkbox"/> With difficulty | <input checked="" type="checkbox"/> No |
|                                     | <input type="checkbox"/> Representation in interview |  |  |
|                                     | <input type="checkbox"/> Legal advice                |  |  |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice? No appeal

There is no free legal assistance at first instance in the border procedure. However, if someone is found inadmissible at the border they should be advised of the possibility to seek legal advice for their appeal with the Legal Aid Board. The appeal is on paper only with no oral hearing.

## 5. Accelerated procedure

### 5.1. General (scope, grounds for accelerated procedures, time limits)

Certain cases may be prioritised under section 73 IPA under 10 grounds, as mentioned in the section on [Prioritised Examination](#). Whereas that prioritisation of cases does not generally entail different guarantees, section 43 IPA foresees different rules for appeals in cases where the applicant:<sup>57</sup>

- ❖ In submitting his or her application and in presenting the grounds for his or her application in his or her preliminary interview or personal interview or any time before the conclusion of the examination, has raised only issues that are not relevant or are of minimal relevance to his or her eligibility for international protection;
- ❖ Has made inconsistent, contradictory, improbable or insufficient representations which make his or her claim to be eligible for international protection clearly unconvincing;
- ❖ For a reason related to the availability of internal protection,<sup>58</sup> is not in need of international protection;
- ❖ Failed to make an application as soon as reasonably practicable, without reasonable cause;
- ❖ Comes from a [Safe Country of Origin](#).

The existence of an internal protection alternative as a ground for accelerating appeals under section 43 IPA raises serious concerns.

### 5.2. Personal interview

#### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?  
 Yes  No
  - ❖ If so, are questions limited to nationality, identity, travel route?  Yes  No
  - ❖ If so, are interpreters available in practice, for interviews?  Yes  No
2. 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.

### 5.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?  
 Yes  No
  - ❖ If yes, is it  Judicial  Administrative
  - ❖ If yes, is it suspensive  Yes  No

Where an applicant is subject to the prioritised procedure it should continue like the regular procedure. However where the recommendation of the IPO includes one of the findings mentioned in the section on [Accelerated Procedure: General](#) there may be accelerated appeals under the IPA.

<sup>57</sup> Section 43 IPA, citing section 39(4) IPA.

<sup>58</sup> Section 32 IPA.

Under section 43 IPA, applicants then have a shorter number of working days to make an appeal (number of days yet to be defined) and that appeal shall be determined without an oral hearing, unless the Tribunal considers it necessary in the interests of justice to have such a hearing. The appeal is suspensive.

## 5.4. Legal assistance

### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?
  - Yes  With difficulty  No
  - ❖ Does free legal assistance cover:
    - Representation in interview
    - Legal advice
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
  - Yes  With difficulty  No
  - ❖ Does free legal assistance cover
    - Representation in courts
    - Legal advice

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.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
  - Yes  For certain categories  No
  - ❖ If for certain categories, specify which: Unaccompanied children

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

Section 14 of the IPA states that where it appears to an immigration officer or an officer of the International Protection Office (IPO) 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 accompanied by an adult who is taking responsibility for the care and protection of the child, the officer shall inform, as soon as practicable, the Child and Family Agency (Tusla) and thereafter the provisions of the Child Care Act 1991 apply. The children and family services are part of the children and family agency called Tusla which was established since the 1<sup>st</sup> of January 2014. Upon referral to Tusla, each unaccompanied child is appointed a social worker.<sup>59</sup> Tusla then become responsible for making an application for the child, where it appears to the Tulsa that an application should be made by or on behalf of the child on the basis of information including legal advice in accordance with section 15(4) IPA. In which case, the Tulsa arranges for the appointment of an appropriate person to make application on behalf of the child. Accelerated procedures are not applied to unaccompanied children but their applications may be prioritised by IPO. According to a European Migration Network (EMN) research, ORAC indicated that a group of experienced interviewers received additional specialised training, facilitated by the UNHCR, to assist them in working on cases involving unaccompanied children.<sup>60</sup> These same staff have been retained and are now in the IPO.

<sup>59</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>60</sup> *Ibid*, 27.

Previously in Ireland, interviews and age assessment tools are used to assess age and no statutory or standardised age assessment procedures appear to be in existence.<sup>61</sup> In the asylum procedure ORAC would firstly form an opinion of the age of the person presenting to claim asylum prior to any referral to Tusla. Medical assessments were not carried out to determine age. Tusla would then conduct a general child protection risk assessment which would explore age as part of that assessment.<sup>62</sup> They used a social age assessment methodology which included questions about family, education, how the young person travelled to Ireland, etc. The social worker assessed the young person's age based on how articulate they are, their emotional and physical developmental, etc. However, the Office of the Refugee Applications Commissioner (ORAC) made the final decision as to the person's age.

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

At the time of writing this report, the practice under the new international protection system is not known. However, the IPA contains a number of provisions relating to age assessment and identification of unaccompanied children. Section 24 IPA allows the Minister, or an international protection officer to arrange an examination to determine the age of an applicant to see if he/she is under the age of 18 years. An examination is required to be:

- ❖ performed with full respect for the applicant's dignity,
- ❖ consistent with the need to achieve a reliable result, the least invasive examination possible, and
- ❖ where the examination is a medical examination, carried out by a registered medical practitioner or such other suitably qualified medical professional as may be prescribed.

The consent of the applicant and/or the adult responsible for him or her including an employee or other person appointed by Tusla is required for the age examination. Section 24(6) requires that the best interests of the child is a primary consideration when applying section 24. Section 25 also provides for an age examination to take place under the direction of a member of the Garda Síochána (national police) or immigration officer if they request the Minister to carry out such an examination when an applicant in detention appears to be under the age of 18 years. Detention for unaccompanied children is prohibited but detention may occur under section 20(7) if a member of the Garda Síochána or immigration officer believes the applicant is over 18 years pending an age examination.

It should be noted that out of the Working Group report on the Protection System, the progress report references implementation of the following recommendation in June 2016 by the HSE and RIA and yet no further information is provided as to how it is implemented in practice: The establishment of formal mechanisms of referral in the case of disclosed or diagnosed vulnerabilities to ensure that such persons are provided with appropriate information, health or psychological services and procedural supports.<sup>63</sup>

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<sup>61</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>62</sup> *Ibid*, 35.

<sup>63</sup> Department of Justice and Equality, Working Group Second Progress Table, February 2017, available at: <http://bit.ly/2IZUvSM>.



## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No  
❖ If for certain categories, specify which: Unaccompanied children

ORAC prioritises applications from unaccompanied children and this continued in 2015 with the median processing time for such cases in that year being 20.1 weeks.<sup>64</sup>

In 2015 ORAC received 33 applications from unaccompanied children amounting to 1% of all asylum applications received in 2015.

Section 28(4)(c) states that the protection decision-maker shall take in to account, *inter alia*, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts, to which the applicant has been or could be exposed, would amount to persecution or serious harm. The High Court has indicated that a decision maker's failure to fulfil the requirements of Section 5 may amount to an error of law. In a case in 2013 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.<sup>65</sup> Similar findings were made in a case involving a Bangladeshi national.<sup>66</sup>

Section 58 of the IPA 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 sections 53 to 57 of the International Protection Act. Sections 53 to 57 relate to the rights granted to beneficiaries of international protection including a travel document, family reunification, the issuing of permission to reside in the state and other rights. In effect therefore the requirements of section 57 only relate to persons who are granted refugee status or subsidiary protection, not persons applying for international protection. It remains to be seen how this will be implemented in practice.

In December 2014 in the case of *BA & RA v. MJE & ORAC*, Mac Eochaidh J. held that Article 2 of S.I. No. 426 of 2013 the European Union (Subsidiary Protection) Regulations 2014 on the definition of serious harm under the Qualification Directive had unlawfully narrowed the definition of torture by limiting it to State actors.<sup>67</sup> This was subsequently amended in S.I. no 137 of 2015 European Union (Subsidiary Protection) (Amendment) Regulations 2015.

As part of the Working Group process on the protection system, ORAC indicated that as part of its initial and on-going training to decision-makers, it includes modules on how to deal with vulnerable and child applicants; particular aspects of the training provided on interview techniques and procedures address how to cater to vulnerable applicants. The Refugee Appeals Tribunal has also delivered training on vulnerable groups and the Chairman of the RAT indicated that a new level of cooperation between the RAT and NGOs working with vulnerable groups is developing.<sup>68</sup> This training is expected to continue and cross over into the International Protection Office and the International Protection Appeals Tribunal.

<sup>64</sup> ORAC, Annual Report 2015, 26

<sup>65</sup> High Court, *E. D-N, L. D. S and Anor v The Minister for Justice & Equality* [2013] IEHC 447, Judgment of 20 September 2013.

<sup>66</sup> High Court, *Barua -v- Minister for Justice and Equality* [2012] IEHC 456, Judgment of 9 November 2012.

<sup>67</sup> High Court, *B.A. and R.A. v The Minister for Justice and Equality and the Refugee Applications Commissioner*, [2014 No. 31 JR].

<sup>68</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, 130, para 3.2.1, 130.



### 3. Use of medical reports

#### Indicators: Use of medical reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
 Yes  In some cases  No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
 Yes  In some cases  No

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the International Protection Office any relevant information. Applicants may approach an NGO called SPIRASI, which specialises in assessing and treating trauma and survivors of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately. In 2013, SPIRASI assisted 18% of all adult residents in the Direct Provision System in Ireland.<sup>69</sup> SPIRASI's services include the provision of medical-legal reports to the protection process, multidisciplinary assessments of survivors of torture, therapeutic interventions, psycho-social support, outreach and early identification, language and vocational training and training to third parties on survivors of torture. Between 2007 and 2013 an average of 14% of protection applicants were referred to SPIRASI but this may not only have been on the basis of medical reports but also for counselling etc.<sup>70</sup>

In cases looked at by the Irish Refugee Council as part of its research on the assessment of credibility in the Irish asylum procedure,<sup>71</sup> the organisation observed that both ORAC and the Refugee Appeal Tribunal had 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.

Under section 23 IPA a report in relation to the health of the applicant may be furnished if required by the officer of the IPO. This may occur if an officer of the IPO or a member of the IPAT has a question regarding the physical or psychological health of the applicant. The applicant can choose a nominated medical practitioner from a panel established by the Minister for such health reports. The IPA is silent on how the results of the health report will be used and no reference is made to the consent of the applicant being required for such health examinations to be carried out. It remains to be seen how this will be applied in practice.

### 4. Legal representation of unaccompanied children

#### Indicators: Unaccompanied Children

1. Does the law provide for an identification mechanism for unaccompanied children?  
 Yes  No
2. Does the law provide for the appointment of a representative to all unaccompanied children?  
 Yes  No

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 from Tusla

<sup>69</sup> Joint Oireachtas Committee on Public Service Oversight and Petitions, Direct Provision Discussion, 22 October 2014, available at: <http://bit.ly/1tiCmgC>.

<sup>70</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, 130, para 3.2.1, 195.

<sup>71</sup> Irish Refugee Council, 'Difficult to Believe, The assessment of asylum claims in Ireland', 2012, available at: <http://bit.ly/1SDT8kp>, Section 6.4.

determines that the child should submit a claim for asylum (which is the duty of the social worker in accordance with section 15(4) based on the information provided including legal advice) the young person would then be referred to the Refugee Legal Service in the same way an adult applicant would.

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

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

Capacity of social workers and solicitors presents practical obstacles to representatives being appointed as soon as possible. At present, it does not seem to be an issue for social workers within Tusla.

The duties of immigration officers, officers of the IPO and the Tusla with regards to the asylum procedure are set out in Section 14 and Section 15 IPA:

- ❖ Where it appears to an immigration officer or officer of the IPO that a child under the age of 18 years who has arrived at the frontiers of the State is not accompanied by an adult who is taking responsibility for the care and protection of the child, the immigration officer or officer of the IPO shall, as soon as practicable, so inform the Child and Family Agency, Tusla and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child;
- ❖ Where it appears to Tusla staff members concerned, on the basis of information available to it, including legal advice, that an application for a declaration should be made by or on behalf of a child referred to in *paragraph (a)*, Tusla shall arrange for the appointment of an officer of Tusla or such other person as it may determine to make an application on behalf of the child.

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications?  Yes  No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance  Yes  No
  - ❖ At the appeal stage  Yes  No

Section 22 of the International Protection Act 2015 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 including a written statement of the reasons why the person concerned considers that the consent of the Minister should be given. 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 qualify for international protection, and the person was incapable of presenting those elements or findings for the purposes of their previous application for a declaration and if the person was an applicant whose previous application was withdrawn or deemed withdrawn through no fault of their own and therefore they are incapable of pursuing their previous application. If the Minister refuses to consent to a subsequent

application in a written decision the applicant can submit an appeal to the IPAT. The Tribunal shall make its decision without an oral hearing. It remains to be seen how this will apply in practice.

There were a total of 46 applications under Section 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.<sup>72</sup> Up to end of July 2015 for this year there have been only four requests for subsequent applications for asylum to ORAC.<sup>73</sup>

Section 22 IPA 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 the International Protection Act and regulations made under it.

If the Minister consents to the person making a subsequent asylum application they are subject to the single procedure in the normal way.

## F. The safe country concepts

### Indicators: Safe Country Concepts

- |  |   |
|--|---|
| 1. Does national legislation allow for the use of “safe country of origin” concept?  | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is there a national list of safe countries of origin?                              | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe country of origin concept used in practice?                            | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Does national legislation allow for the use of “safe third country” concept?      | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| ❖ Is the safe third country concept used in practice?                                | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Does national legislation allow for the use of “first country of asylum” concept? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

### 1. Safe country of origin

Under section 72 of the International Protection Act the Minister may make an order designating a country as safe and should be deemed a safe country of origin for the purposes of the single procedure. In deciding to make such an order the Minister must be satisfied that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict. In making the assessment, the Minister shall have regard to the extent to which protection is provided against persecution or mistreatment by (a) the relevant laws and regulations of the country and the manner in which they are applied, b) observance of the rights and freedoms laid down in the European Convention on Human Rights, ICCPR and UN Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2); c) respect for the non-*refoulement* principle in accordance with the Geneva Convention, and (d) provision for a system of effective remedies against violations of those rights and freedoms.

The Minister shall base her decision on a number of sources of information including in particular information from other Member States, the European Asylum Support Office (EASO), the High

<sup>72</sup> Information received from the Asylum Policy Division of the Irish Naturalisation and Immigration Service.

<sup>73</sup> Email correspondence with ORAC.

Commissioner, the Council of Europe and such other international organisations as the Minister considers appropriate.

The Minister may amend or revoke any such order and shall review on a regular basis the situation of any country designated under section 72. The Minister must also notify the European Commission of any country designated on our safe country of origin list. At the moment there is no new list of safe countries of origin.

Where it appears to the IPO that an applicant is a national or has a right of residence in a designated safe country then the country will be deemed to be a safe country of origin for the purposes of an assessment of an applicant's international protection application only where (a) the country is the country of origin of the applicant and (b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection.<sup>74</sup> There is no appeal against a designation that a person comes from a designated safe third country. It remains to be seen how this will be applied in practice.

Statutory Instrument No. 422/2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003 and Statutory Instrument No. 714/2004 - Refugee Act 1996 (Safe Countries of Origin) Order 2004 have both been revoked in accordance with section 6 IPA.

## 2. First country of asylum

The International Protection Act 2015 introduces the concept of first country of asylum for the first time in Ireland. Under section 21(15) IPA a country is a first country of asylum for a person if he or she (a) has been recognised in that country as a refugee and can still avail himself or herself of that protection, or otherwise enjoys sufficient protection in that country including benefiting from the principle of non-*refoulement* and (b) will be re-admitted to that country. An application for international protection is inadmissible if a country is deemed to be a first country of asylum for an applicant. It remains to be seen how this concept will be applied in practice.

## G. Relocation

### Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 320

### Relocation statistics: 2016

Relocation from Italy			Relocation from Greece		
	Received requests	Relocations		Received requests	Relocations
<b>Total</b>			<b>Total</b>		
1 <sup>st</sup> country			1 <sup>st</sup> country		
2 <sup>nd</sup> country			2 <sup>nd</sup> country		
3 <sup>rd</sup> country			3 <sup>rd</sup> country		

Source:

320 people have been relocated from Greece according to the Department of Justice and Equality. Information on the number of pledges is only known via the European Commission Ninth Report on Relocation and Resettlement which states that Ireland has formally pledged places for another 494

<sup>74</sup> Section 33 International Protection Act 2015

persons from Greece as of 7th February 2017.<sup>75</sup> Another 78 people have been formally accepted and are awaiting transport arrangements, and a further 155 have been assessed and are awaiting clearance at the time of writing this report. According to Minister Frances Fitzgerald “A monthly schedule has been agreed with the Greek authorities which will sustain the pace of intakes throughout 2017 at the levels required to allow Ireland to meet its commitments to Greece within the time frame envisaged by the Programme.”<sup>76</sup> So far Ireland has not relocated any person from Italy and has only pledged 20 places so far. The majority of the relocated persons are Syrians with some Eritreans and Iraqis.

The relocation procedure from Greece takes approximately 6-8 weeks and in 2016 was up to three – six months. Since September 2016 the pace of relocation has been significantly quicker with plans to take in approximately 80 people from Greece per month. No requests have been rejected from the Irish authorities as regards relocation from Greece as far as the author is aware. A difficulty with regard to unaccompanied children relocated from Greece was the different definition of unaccompanied child in the Greek system. According to Minister Fitzgerald “In announcing the IRPP, the Government recognised the importance of prioritising family groups and addressing the position of unaccompanied children. A significant number of those who have arrived to date are young children with one or two parents. Ireland has taken in four unaccompanied minors with another to follow very shortly; we have indicated our willingness to take further unaccompanied minors from Greece under relocation and work continues in this regard. Such minors are placed in the care of Tusla. Unaccompanied minors that Ireland takes from Greece are additional to the commitments made by Ireland in respect those previously resident in the migrant camp in **Calais**.”<sup>77</sup>

Minister Frances Fitzgerald stated “As regards Italy, the relocation mechanism from Italy has yet to commence for many countries, including Ireland, due to issues with the Italian authorities surrounding the security assessment of migrants assigned to other Member States. Intensive efforts are ongoing to resolve this, both bilaterally with Italian counterparts at official, diplomatic and Ministerial level, and at EU level, including through the European Commission.”<sup>78</sup>

The relocated and resettled programme refugees under the IRPP (Irish Refugee Protection Programme) are to be housed (although some programme refugees have already arrived) in EROC’s (Emergency Reception and Orientation Centres) which are very similar to Direct Provision apart from the fact that it is aimed that people will only stay there for a short period of approximately three months and relocated asylum seekers will actually have their claims examined at the EROC centres. Now relocated asylum seekers from Greece are also placed in Direct Provision centres as the pace of relocation speeds up and most have their claims examined in a prioritised procedure including in **Balseskin** centre, a Direct Provision centre in the locality of **Dublin** where new arrivals go.

Overall the government has committed to relocating 2622 asylum seekers from Greece (1089) and Italy (623) and a further 910 from a Member State yet to be determined (Greece or Italy and resettling 520 refugees from camps in Lebanon and Jordan by 2017.<sup>79</sup> The remainder will also include the 200 unaccompanied children formerly residing in the camp of Calais under the all-party government motion. It should be noted that within the Budget proposals for 2016 by the Government, €25 million has been allocated for the necessary supports and structure for the new Irish Refugee Protection Programme. It also includes funding for the provision of new emergency reception and orientation centres in response

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<sup>75</sup> European Commission, Annex 1 Relocation from Greece by 7 February 2016.

<sup>76</sup> Parliamentary response from Minister Frances Fitzgerald to Question 94 of 21 February 2017, available at: <http://bit.ly/2mW6SPQ>.

<sup>77</sup> Parliamentary response from Minister Frances Fitzgerald to Question 95 of 21 February 2017 available at: <http://bit.ly/2mW6SPQ>.

<sup>78</sup> Parliamentary response from Minister Frances Fitzgerald to Question 72 of 16 February 2017 available at: <http://bit.ly/2lvr2TH>.

<sup>79</sup> Parliamentary response from Minister Frances Fitzgerald to Question 72 of 16 February 2017 available at: <http://bit.ly/2lvr2TH>.

to the Refugee Crisis. It should be noted that EROC mirrors many aspects of the Direct Provision centres, albeit that people there will be processed within a shorter timeframe.<sup>80</sup>

## H. Information for asylum seekers and access to NGOs and UNHCR

### Indicators: Information and Access to NGOs and UNHCR

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice?  Yes  With difficulty  No
  - ❖ Is tailored information provided to unaccompanied children? Some information
2. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
3. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice?  Yes  With difficulty  No
4. 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  With difficulty  No

A person who states an intention to seek asylum or an unwillingness to leave the state for fear of persecution is interviewed by an immigration officer as soon as practicable after arriving. The immigration officer informs the person that they may apply to the Minister for Justice and Equality for protection and that they are entitled to consult a solicitor and the UN High Commissioner for Refugees. Where possible this is communicated in a language that the person understands. However in this respect please refer to earlier sections which appear to indicate that people may sometimes be refused leave to land though they may have protection needs.

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 IPO as soon as possible after receipt of an application shall give or cause to be given to the applicant a statement in writing, specifying in a language that the applicant may reasonably be supposed to understand:

- a) the procedures to be observed in the investigation of the application;
- b) the entitlement to consult a solicitor;
- c) the entitlement of the applicant under the International Protection Act to be provided with the services of an interpreter
- d) the entitlement to make written submissions to the Commissioner in relation to his/her application;
- 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 IPO provides written information to every asylum seeker and there is a copy of the information booklet available on the recently established IPO website.

<sup>80</sup> The Irish Times, ‘“Similarities” between refugee centres and direct provision’, 23 September 2015, available at: <http://bit.ly/1KzABB5>.



All applicants are given recently issued information leaflets from IPO and the European Commission entitled 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013 which is a guide to the Dublin process in general. A separate information leaflet is also provided to persons who are subject to the Dublin procedure which provides more detailed information, which is entitled 'I'm in the Dublin procedure – what does this mean? Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013'. A separate information leaflet aimed specifically at unaccompanied children is also available, entitled 'Children asking for international protection, information for unaccompanied children who are applying for international protection pursuant to Article 4 of Regulation (EU) No 604/2013'.<sup>81</sup>

The new Information Booklet on the International Protection Procedure is available in 18 languages.<sup>82</sup>

## I. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>83</sup>  Yes  No  
❖ If yes, specify which: EU Member States, South Africa

In the first six months of 2015, 17 asylum applications were received by Syrian nationals in ORAC.<sup>84</sup> 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.<sup>85</sup>

On 12 March 2014, Minister for Justice, Equality and Defence, Alan Shatter announced that a humanitarian admission programme for Syrians had been created.<sup>86</sup> 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

<sup>81</sup> All information leaflets are available online at: <http://bit.ly/2IGDCL9>.

<sup>82</sup> More information available at: <http://bit.ly/2mL1Zfo>.

<sup>83</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>84</sup> Parliamentary Question 462 by Deputy Ruth Coppinger to the Minister for Justice and Equality, 14 July 2015, available at: <http://bit.ly/1HgdiM5>.

<sup>85</sup> Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question of Joe Higgins TD, 13 June 2013.

<sup>86</sup> 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, available at: <http://bit.ly/1g7OsaB>.

welfare during that time.<sup>87</sup> A total of 308 applications were received under the Syrian Humanitarian Admissions Programme introduced by Alan Shatter.<sup>88</sup> Anecdotal evidence suggests that newly arrived Syrian refugees have found it difficult to meet the financial requirements of the programme.

On 8 May 2014 Ms. Frances Fitzgerald TD took over from Alan Shatter and was appointed Minister for Justice and Equality. In December 2014, Ms. Frances Fitzgerald announced that a total of 111 vulnerable people from Syria and the surrounding region have been granted admission to reside in Ireland following applications to the Department of Justice and Equality from relatives already resident here under the SHAP.

There are no plans to run another such scheme in Ireland. Since the end of the SHAP programme there has been no political appetite for a further SHAP programme and now the government focus is on relocation and resettlement via the Irish Refugee Protection Programme. Minister of State, Stanton noted that some of those who arrived via the SHAP programme later entered the asylum procedure in Ireland with 23 of those family members under SHAP having their protection applications granted. UNHCR expressed the view in an EMN report that insecurity of residency (i.e. two years with no automatic right to renewal) may have led SHAP beneficiaries to apply for asylum before the end of the two-year period.<sup>89</sup> Minister of State Stanton at a UNHCR sponsorship conference in Dublin stated that

“The Irish Refugee Protection Programme is a far superior scheme in relation to offering security and status for displaced people in need of protection. SHAP by virtue of its conditions resulted in a large administrative burden especially in our Family Reunification Unit and it excluded other nationalities who called for a similar programme.... With the implementation of a far superior Irish Refugee Protection Programme, SHAP is not a relevant or attractive option in the new circumstances.”<sup>90</sup>

However, organisations such as NASC are advocating for a new version of SHAP to run with community support models.<sup>91</sup> In a recent EMN report INIS (Irish Naturalisation Immigration Service) confirmed that SHAP was a once-off programme and it will not be renewed.<sup>92</sup>

Ireland also accepted 90 Syrian refugees in 2014 under the UNHCR resettlement programme. Ms. Frances Fitzgerald TD also stated that:

“Ireland is committed to continuing with its resettlement programme. We have pledged an additional 220 resettlement places for the 2015/2016 period (100 in 2015 and 120 in 2016). The majority of these resettlement places will be available for the resettlement of refugees displaced by the Syrian conflict currently resident in Jordan and Lebanon.”<sup>93</sup>

For further information on relocation and resettlement see section on [Relocation](#). Under the Irish Refugee Protection programme, the Government has pledged to accept a total of 4,000 persons into the State, 2,622 through the EU relocation mechanism established by two EU Council Decisions in 2015 to assist Italy and Greece, and 1,040 (519 by the end of 2016 and the remainder in 2017) under the UNHCR-led

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<sup>87</sup> For more information, see Department of Justice, Equality and Defence, Irish Naturalisation and Immigration Service, Syrian Humanitarian Admission Programme, available at: <http://bit.ly/1CRHsbW>.

<sup>88</sup> Frances Fitzgerald TD, Minister, Department of Justice and Equality, Press Release: 111 Syrians admitted under Sponsorship Programme, 9 December 2014, available at: <http://bit.ly/1Vzccis>.

<sup>89</sup> EMN, Resettlement of Refugees and Private Sponsorship in Ireland, S. Arnold and E.Quinn. December 2016, p.50 available at: <http://bit.ly/2malFGg>.

<sup>90</sup> UNHCR National Conference on Refugee Sponsorship Programmes and Student Sponsorship Schemes: Opening Speech by Minister of State with special responsibility for Equality, Immigration and Nationality, Mr. David Stanton, TD, 9 September 2016 available at: <http://bit.ly/2n54zZZ>.

<sup>91</sup> NASC, Proposal for New Humanitarian Admission Programme, 23 November 2015.

<sup>92</sup> EMN, Resettlement of Refugees and Private Sponsorship in Ireland, S. Arnold and E.Quinn. December 2016, p.51 available at: <http://bit.ly/2malFGg>.

<sup>93</sup> *Ibid.*



refugee resettlement programme currently focussed on resettling refugees from Lebanon. Taking account of the situation in the Middle East, and the plight of the refugees, the Tánaiste announced that Ireland would accept 520 persons for resettlement over an 18-month period to the end of 2017. This was almost double the figure proposed for Ireland by the European Commission and was delivered a year ahead of the Commission deadline. In addition, the Government recently announced that it is extending the resettlement programme to take in a further 520 refugees from Lebanon in 2017, most of whom are of Syrian origin. 260 refugees have already been selected during a selection mission to Lebanon in October 2016 and are expected to arrive in spring 2017. Most of these refugees are also Syrian. A further selection mission to Lebanon will be arranged in the coming months to select the remaining refugees due to come to Ireland in 2017 under the resettlement programme.<sup>94</sup> 320 asylum seekers have also been relocated from Greece under the IRPP relocation strand with approximately 80 asylum seekers per month arriving from there at the moment. No asylum seekers have been relocated from Italy so far.

In terms of funding as part of the Budget 2016 announcements Minister Fitzgerald confirmed that funding of €25 million has been allocated for the necessary structures and supports for the new Irish Refugee Protection Programme and the Office of the Refugee Applications Commissioner. According to the Department of Justice, Budget 2016 will also provide additional resources to process cases already in the system and to deal with the general increase in protection applications as well as providing additional resources for enforcement. It will also facilitate the return home of those who are not found to be in need of protection and will be also be used to ensure that appropriate border control measures remain in place.<sup>95</sup> The expenditure allocations in Budget 2017 for the period 2017-2019 indicates that there will be continued support for services for refugees, mainly from the Syrian conflict who will be resettled in Ireland.<sup>96</sup>

As regards Ireland's response to the refugee crisis a coalition of NGOs have also called upon the Irish government to show leadership at the European political level and develop a firm plan of action to respond to the needs of those seeking asylum here as well as calling for an increase in the number of people relocated and resettled here and calling for the suspension of the Dublin Regulation as well as working towards addressing the root causes of such conflicts.<sup>97</sup>

Under the Department of Defence Irish naval forces have also been on a humanitarian mission in the Mediterranean and have been involved in search and rescue missions since May 2015 under a bilateral agreement with the Italian Navy. Since the deployment of the first ship in May, L.E. Eithne, a total of 15,500 persons have been rescued there by the Irish naval forces as of December 2016. In December 2016 a documentary was also made about the work of the Irish naval forces in the Mediterranean called 'The Crossing' which highlighted the great humanitarian work they are doing in saving lives.<sup>98</sup>

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<sup>94</sup> Parliamentary question response by Minister Frances Fitzgerald to question 95 of 21 January 2017, available at: <http://bit.ly/2mW6SPQ>.

<sup>95</sup> Department of Justice and Equality, 'Fitzgerald announces 600 new Gardai to be recruited in 2016', 13 October 2015, available at: <http://bit.ly/1R9bR7y>.

<sup>96</sup> Budget 2017 Part II Expenditure Allocations 2017-2019, available at: <http://bit.ly/2mL5IJO>.

<sup>97</sup> Coalition statement, Cabinet ministers must show leadership on refugee crisis, 9 September 2015 signed by: ActionAid Ireland, Comhlámh, Christian Aid Ireland, Community Workers Co-operative, CORI, CrossCare Migrant and Refugee Project, Dochas, European Network Against Racism Ireland, Immigrant Council of Ireland, Irish Missionary Union, Irish Refugee Council, Mayo Intercultural Action, Mercy International Association, Migrant Rights Centre Ireland, Oxfam Ireland, Trocaire, available at: <http://bit.ly/1LjYTj2>.

<sup>98</sup> More information available at: <http://bit.ly/2mW3Lr7>.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?<sup>99</sup>
- |                          |   |  |  |
|--------------------------|---|--|--|
| ❖ Regular procedure      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Dublin procedure       | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Border procedure       | <input type="checkbox"/> Yes            | <input type="checkbox"/> Reduced material conditions | <input checked="" type="checkbox"/> No |
| ❖ Accelerated procedure  | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ First appeal           | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Onward appeal          | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
| ❖ Subsequent application | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Reduced material conditions | <input type="checkbox"/> No            |
2. 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.<sup>100</sup> 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 International Protection Office (IPO), the applicant is referred to RIA and brought to a reception centre near Dublin airport named **Balseskin**. After a person has applied for asylum they will be issued with a Temporary Residence Certificate, in the form of a plastic card, which sets out the person's personal details and contains their photograph. When the Temporary Residence Certificate has been received they will be referred to the RIA office within the IPO 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.<sup>101</sup>

After claiming asylum the person is accommodated in **Balseskin** reception centre for a period of up to eight weeks in order to facilitate an interview with ORAC, health screening and registration for Community Welfare Service assistance. The majority of asylum applicants are dispersed from their accommodation in the initial reception centre after their initial ORAC interview has taken place. It appears likely that this practice will continue under the new International Protection System.

In December 2013 RIA stated that their total capacity was 5,309 with an occupancy of 4,494 residents.<sup>102</sup> The number of residents in RIA accommodation in 2014 was 4,364 persons.<sup>103</sup> According to the Working

<sup>99</sup> Note that there is no statutory basis for the Direct Provision system.

<sup>100</sup> 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*).

<sup>101</sup> The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

<sup>102</sup> Reception and Integration Agency, Monthly Statistics Report, December 2013.

<sup>103</sup> RIA, Key Statistics and Expenditure Breakdown End of Year 2014, available at: <http://bit.ly/1SQn52y>.

Group report on the Protection Process published in June 2015, of the 7,937 persons in the asylum system, 3,607 or 45% live in Direct Provision accommodation centres in the State. This figure excludes 679 persons living in the Direct Provision system who have been granted some form of status.<sup>104</sup>

The Working Group report stated that “of the 3,607 persons residing in accommodation centres:

- ❖ 41% (1,480) have been in the system for more than five years;
- ❖ 59% (2,140) are in the protection process;
- ❖ 25% (890) are at the leave to remain stage;
- ❖ 16% (577) are at the deportation order stage;
- ❖ 30% are children.”<sup>105</sup>

As of the end of December 2016 there were approximately 4,308 persons registered as living in Direct Provision.<sup>106</sup> At the end of December 2016, the RIA accommodation portfolio was comprised of a total of 34 centres throughout 16 counties, with a contracted capacity of 5,273. These centres were: 1 Reception Centre, located in **Dublin**, 31 Accommodation Centres, 2 Self Catering Centres, located in **Dublin** and **Co. Louth**.<sup>107</sup> 3.4% of residents in DP have been there up to five years, with a further 2.3 % over 6 years and 8.3% beyond that time period.<sup>108</sup>

In 2016 the number of persons with some form of status residing in DP centres varied from approximately 450 people to 600 people.<sup>109</sup>

According to the recently published INIS Annual Review 2016 “At end 2016 there were 4,420 protection applicants residing in State-provided accommodation centres under contract to the Reception and Integration Agency. Not all those 4,420 persons were awaiting decisions on their protection application; this figure included approximately 450 with some form of status residing there while they source private accommodation as well as 269 who have been issued with a Deportation Order requiring that they remove themselves from the State. The figure of 4,420 is 276 less than at the end of 2015 (a decrease of 5.9%). However, this masks the fact that over 1,600 persons entered the system of State-provided accommodation in 2016, while over 1,900 persons left the system over the same period. As the State provided accommodation is entirely voluntary, some of those leaving the system were exercising their right to live elsewhere. In addition, the length of time applicants spend in the system has reduced significantly with only a very small number now in the system for more than 5 years. This is due to a concerted effort to process such cases during 2016.”<sup>110</sup>

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. It is unclear if this practice will continue under the new International Protection Act.

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

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<sup>104</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, available at: <http://bit.ly/1LSZc6j>, para 3.10, 66.

<sup>105</sup> *Ibid*, para 3.11, 66.

<sup>106</sup> Reception and Integration Agency, *Monthly Statistics Report*, December 2016.

<sup>107</sup> *Ibid*.

<sup>108</sup> *Ibid*.

<sup>109</sup> Parliamentary response from Minister Frances Fitzgerald to Question no. 70 of 16 February 2017, available at: <http://bit.ly/2mxc0N9>.

<sup>110</sup> Department of Justice and Equality, Irish Naturalisation and Immigration Service, *Immigration in Ireland, Annual Review 2016*, available at: <http://bit.ly/2lx8fT5>.

are not asylum seekers are also accommodated during a 60 day reflection period.<sup>111</sup> In September 2014 the Immigrant Council of Ireland in a submission to the Minister for Justice and Equality as part of the National Action Plan for Combatting and Preventing Trafficking in Human Beings stated that the Direct Provision system and RIA accommodation were inappropriate for victims of trafficking and cited various independent reports on the problems inherent in such accommodation such as the accommodation leaving vulnerable young women open to further grooming and exploitation.<sup>112</sup>

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.<sup>113</sup> In addition RIA does not seem to assess a person's means when considering to grant them accommodation and support. Alan Shatter, also 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.<sup>114</sup> 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. The Minister for Justice and Equality 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. The Minister 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."<sup>115</sup>

Ms. Frances Fitzgerald, TD, Minister for Justice and Equality acknowledged that the time spent in Direct Provision is an issue that needs to be addressed in June 2014. She further stated that:

"My immediate priority is that the factors which lead to delays in the processing of cases are dealt with. In this regard, legislative reform aimed at establishing a single application procedure for the investigation of all grounds for protection is a key priority for this Government. Such reform would substantially simplify and streamline the existing arrangements by removing the current multi-layered and sequential processes and provide applicants with a final decision on their application in a more straightforward and timely fashion."<sup>116</sup>

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<sup>111</sup> 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', available at: <http://bit.ly/1HTRdmE>.

<sup>112</sup> Immigrant Council of Ireland, *Submission on the accommodation needs of adult victims of sex trafficking in Ireland*, September 2014.

<sup>113</sup> Alan Shatter, Minister, Department of Justice, Equality and Defence, Seanad debate on Direct Provision 23rd October 2014.

<sup>114</sup> Alan Shatter, Minister, Department of Justice and Equality, written answer to the Parliamentary question of Aengus Ó Snodaigh TD, 18 April 2012.

<sup>115</sup> Alan Shatter, Department of Justice and Equality, written answer to the Parliamentary question of Mary Lou McDonald TD, 27 March 2013.

<sup>116</sup> Ms. Frances Fitzgerald TD, Minister for Justice and Equality, written answer to the Parliamentary question of Finian McGrath, 1 July 2014.

Despite continued recommendations from national, international bodies, NGOs and others the government has not made plans to abolish the Direct Provision system but more to limit the amount of time spent in such centres. Minister Fitzgerald confirmed in a Parliamentary question response that she has no plans to end Direct Provision but rather work on improving the system and supports for asylum seekers.<sup>117</sup> This is the same approach in terms of the new government established in early 2016. Under the new government the Programme for Partnership Government noted that “Long durations in direct provision are acknowledged to have a negative impact on family life. We are therefore committed to reforming the Direct Provision system, with particular focus on families and children.”<sup>118</sup>

Please note below in relation to the establishment of a Working Group on the Protection Process and Direct Provision that in June 2015 the Report on the Working Group to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers was published and included over 170 recommendations. It represented the first review of the protection process since the establishment of the Direct Provision system 15 years ago. The Chair of the Working Group Dr, Bryan McMahon on publication of the report stated that the “single most important issue to be resolved was the length of time that many of those in the system have to wait before their cases are finally determined”.<sup>119</sup> Minister Fitzgerald in launching the report acknowledged that successful implementation of key recommendations is dependent on the early enactment of an International Protection Bill.<sup>120</sup>

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2016 (in original currency and in €):
 

❖ Adult	19.10 per week
❖ Child	15.60 per week

The total expenditure by RIA for the system of Direct Provision in 2014 amounted to €53.22 million. In 2016 apart from government run Direct Provision centres, eight contractors operating a network of DP centres across Ireland were paid a total of 43.5 million in 2016.<sup>121</sup>

### 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 the IPA this prohibition remains unless a person has a pre-existing right to work on their previous status in Ireland. Section 16(3)(b) IPA states that an applicant shall not seek, enter or be in employment or engage for gain in any business, trade or profession.

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 €15.60 per child. This allowance for adults, despite inflation, has remained the same since introduction in 2000. In early 2016 the allowance for children was raised in response to a Working Group recommendation. The Working Group on the

<sup>117</sup> Minister for Justice and Equality, Written answer to the Parliamentary question of Deputy Robert Troy, no. 406, 16 June 2015, available at: <http://bit.ly/1M0XoYc>.

<sup>118</sup> A programme for a partnership government, May 2016, available at: <http://bit.ly/1T4VooO>.

<sup>119</sup> Department of Justice and Equality, *Chair's remarks on the publication of the report to Government*, 30 June 2015, available at: <http://bit.ly/1MxniZe>.

<sup>120</sup> Department of Justice and Equality, Speech by Minister Fitzgerald: Publication of the Report of the Working Group on the Protection Process, 30 June 2015 available at: <http://bit.ly/1XDJEKI>.

<sup>121</sup> The Irish Times, State paid €43.5 million to eight Direct Provision operators in 2016, 23 February 2017.



Protection Process in June 2015 received contributions from resident asylum seekers which indicated that the weekly allowance was wholly inadequate to meet essential needs such as clothing including for school going children and it did not enable participation in social and community activities. The weekly allowance was also often used to supplement the food provided at Direct Provision centres. The Working Group recommended that the weekly allowance was increased for adults from €19.10 to €38.74 and increased from €9.60 to €29.80 for children.<sup>122</sup> In 2015 the allowances was increased as noted above but no allowance increase was provided to adults. Despite this recommendation, no reference was made to an increase in the Weekly Allowance for adult residents of Direct Provision centres as part of the Budget 2016 priorities.<sup>123</sup> Asylum seekers are not required to provide a monetary contribution to the cost of accommodation.

The small amount of Christmas bonus given to asylum seekers in DP also effectively excluded them from being able to celebrate over the festive period with adults only receiving a bonus of €16.23 and children receiving €13.2. The weekly allowance for asylum seekers and their children, and the “bonus”, are so low that families in direct provision are “effectively unable to participate in Christmas” according to Tanya Ward, chief executive of the Children’s Rights Alliance. “We know children in direct provision try to hide the fact that they live there because they are so ashamed of the poverty. Christmas makes the reality of that poverty even starker for them.”<sup>124</sup>

The Working Group report noted that “apart from the weekly allowance, residents are not eligible to apply for other social protection supports with the exception of Exceptional Needs Payments (ENPs) and the Back to School Clothing and Footwear Allowance.”<sup>125</sup>

Both the Irish Refugee Council<sup>126</sup> and Free Legal Advice Centres (FLAC)<sup>127</sup> 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.<sup>128</sup> On Universal Children’s Day on 20 November 2014, the Irish Refugee Council repeated its call for an end to the Direct Provision system, noting that one third of Direct Provision residents are children.<sup>129</sup> Similarly April 2015 marked fifteen years since the establishment of the Direct Provision, The Human Rights in Ireland blog marked it by hosting a week-long event with contributions from a cross section of civil society, NGOs, supporters and legal professionals highlighting the issue of Direct Provision: 15 years of reports, research, newspaper articles, blogs, videos and quotes about the damage this system has caused and continues to cause.

## 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. Apart from

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<sup>122</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, para 5.30, 208.

<sup>123</sup> Department of Justice and Equality, *Budget allocation for Justice Sector will help Gardai to tackle crime and will support important reforms and developments across a range of Agencies according to Minister Fitzgerald*, 13 October 2015, available at: <http://bit.ly/1R9bR7y>.

<sup>124</sup> The Irish Times, Christmas bonus for asylum seekers in Direct Provision is 16 Euros, 28 November 2016, available at: <http://bit.ly/2n5GUZc>.

<sup>125</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, para 5.5, 203.

<sup>126</sup> Irish Refugee Council, “State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers”.

<sup>127</sup> “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.

<sup>128</sup> Irish Refugee Council, “State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers”.

<sup>129</sup> Irish Refugee Council, Direct Provision System Must End, 20 November 2014, available at: <http://bit.ly/1vrVi0k>.

these self-catering centres, in general residents are not allowed to cook their own food while living in an accommodation centre and have no autonomy in relation to their own personal food choices.<sup>130</sup>

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.<sup>131</sup>

In May 2014 Nasc released a report on food in Direct Provision. The report concluded that food provided in Direct Provision centres is not satisfactory, food does not represent the cultural and multi-faith religious needs of asylum seekers living in Direct Provision centres in Cork City, and that the food system in Direct Provision has a negative impact on families and children who are residents of Direct Provision centres.<sup>132</sup>

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.<sup>133</sup> 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.<sup>134</sup> 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.

In September 2014 asylum seekers in one of the biggest Direct Provision centres in Ireland refused food in protest at the conditions at the **Athlone Accommodation Centre**. Asylum seekers resident there stated that ongoing concerns regarding food, hygiene and living conditions had not been addressed by the management of the Direct Provision centre.<sup>135</sup> Similar protests were also held at other Direct Provisions such as **Mount Trenchard, Kinsale Road, Birchwood House** and **Atlantic House**. In December 2014 the Irish Human Rights and Equality Commission among other recommendations concerning Direct Provision explicitly recommended "respecting residents' right to prepare and cook food appropriate to their culture, diet and individual needs during time spent in Direct Provision."<sup>136</sup> Another issue was the times in which meals were available for residents. Some children complained of hunger and said that they were not given enough food according to the consultations with the Working Group. Direct provision kitchen opening times are not necessarily tailored to cater for children returning from school.<sup>137</sup>

In relation to food the Working Group recommended the following:

- ❖ The Reception and Integration Agency should engage a suitably qualified person to conduct a nutrition audit to ensure that the food served meets the required standards including for children, pregnant and breastfeeding women, and the needs of those with medical conditions affected by food, such as diabetes.

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<sup>130</sup> Oireachtas Library and Research Service, *Overview of the system of Direct Provision in Ireland*, 27 May 2015, available at: <http://bit.ly/1EZRvFM>.

<sup>131</sup> Irish Times, 'Stand up for the right to cook', 29 April 2014, available at: <http://bit.ly/1KliiX>.

<sup>132</sup> 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, available at: <http://bit.ly/1IUQuZH>.

<sup>133</sup> Liam Thornton, 'Reception Conditions for Asylum Seekers in Ireland: The Need for a Legislative Basis', Human Rights in Ireland, available at: <http://bit.ly/1CWykmi>.

<sup>134</sup> High Court, *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*, Judgment of 14 November 2014.

<sup>135</sup> The Irish Times, 'Asylum Seekers refuse food in protest over conditions at Direct Provision Centre', Carl O' Brien, 5 September 2014, available at: <http://bit.ly/1LF9wkb>.

<sup>136</sup> Irish Human Rights and Equality Commission, *Policy Statement on the System of Direct Provision in Ireland*, 10 December 2014, available at: <http://bit.ly/20flaZ5>.

<sup>137</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, para 4.93, 173.



- ❖ Include an obligation in new contracts to consult with residents when planning the 28 day menu cycle.<sup>138</sup>

In relation to the legal challenge against Direct Provision Mr Justice Colm Mac Eochaidh delivered his decision in the case of *C.A. and T.A v The Minister for Justice and others* on Friday, 14 November 2014.<sup>139</sup> Specifically in relation to the challenge ground concerning whether the payment of weekly allowance was ultra vires, it was held by the High Court that that the payments of €19.10 and €9.60 for adults and children per week respectively were legal. Mr. Justice Colm Mac Eochaidh refused the main grounds of the challenge but held that elements of the house rules issued by RIA were unlawful and found that the applicants were entitled to an independent complaints handling process.<sup>140</sup>

In November 2016 a pop-up café called ‘Our Table’ was established in **Dublin** to highlight the cooking ban for DP residents across the country. The café was established to raise awareness of the conditions in DP for asylum seekers.<sup>141</sup> A similar café was also established in **Galway**. In response to a parliamentary question in 2016 Minister Fitzgerald stated that pilot projects were being carried out in relation to access to cooking facilities across some DP centres.<sup>142</sup> On reporting on the progress of implementing the recommendations of the Working Group report, Minister Fitzgerald stated with respect to cooking that “a programme of independent living is being rolled out across the centres to enable residents to have access to self-catering options. Self-catering is now in operation in **Mosney** with further kitchens installed and becoming available for use by residents in centres in **Clonakilty, Kinsale Road, Knocklisheen and St Patrick’s in Monaghan**. In addition a food hall was opened at **Mosney** in January this year which allows residents to acquire their own food through a points system. Variants of this system will be rolled out to other centres such as **Athlone**.”<sup>143</sup>

### 3. Reduction or withdrawal of material reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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2. Does the legislation provide for the possibility to withdraw material reception conditions?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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There is no legislative framework for Ireland’s reception system for asylum seekers within Direct Provision.

Paragraph 4.24- 4.27 of RIA’s House Rules and Procedures 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.<sup>144</sup> This is maintained with the revised 2015 RIA House Rules and Procedures.

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

<sup>138</sup> *Ibid*, para 4.102, 174.

<sup>139</sup> *C.A. & T.A. v Minister for Justice and others* [2014] IEHC 532.

<sup>140</sup> Mac Eochaidh J. adjourned the challenge on the right to work as there is currently another High Court challenge pending on this issue. See Liam Thornton, Human Rights in Ireland, Direct Provision in the Irish High Court: The Decision, 17 November 2014.

<sup>141</sup> [www.ourtable.ie](http://www.ourtable.ie); The Irish Times, *New café addresses direct provision’s cooking ban*, 9 November 2016.

<sup>142</sup> Response to parliamentary question, Minister Frances Fitzgerald, question 136 of 16 September 2016, available at: <http://bit.ly/2ISDFnO>.

<sup>143</sup> Department of Justice and Equality, Tanaiste Fitzgerald and Minister Stanton announce further significant progress on the McMahon report, Direct Provision and supports to asylum seekers, 23 February 2017, available at: <http://bit.ly/2msQnwS>.

<sup>144</sup> Reception and Integration Agency, ‘House Rules and Procedures’, available at: <http://bit.ly/1eiZdFd>.

Procedures state that when a resident is expelled from the Direct Provision system entirely, they can write to the Operations Manager of RIA at PO Box 11487, Dublin 2 (after one week of expulsion) asking to be re-accommodated on foot of undertakings on their future conduct. This appeal will be considered and responded to by RIA within three working days of receipt of request. The RIA Rules and Procedures also state that if a resident is expelled from Direct Provision, the 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.<sup>145</sup>

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  Yes  No
2. Does the law provide for restrictions on freedom of movement?  Yes  No

Accommodation is not allocated according to the procedure that the applicant is in or according to the stage in the procedure. A dispersal mechanism is used so that asylum seekers are spread across Ireland in different DP centres.

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.<sup>146</sup>

The RIA may reallocate a room if it is left unused for any period of time without letting the centre manager know in advance; or if a resident is 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 access 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.

RIA's 'House Rules and Procedures'<sup>147</sup> state that asylum seekers are expected to stay at a centre until a decision has been made on the protection application. Transfer is possible, but only in rare and exceptional circumstances. If a transfer is asked for due to medical reasons, an independent medical referee may be asked to evaluate a request. RIA's decision is final and a person cannot complain under the complaints procedure, as outlined in 'Part 4: Complaints procedures' of this document.

<sup>145</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation of Reception Facilities for Asylum Seekers', February 2014, available at: <http://bit.ly/1kIPkR>.

<sup>146</sup> Reception and Integration Agency, 'House Rules and Procedures', available at: <http://bit.ly/1eiZdFd>.

<sup>147</sup> *Ibid.*

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 the Direct Provision system for more than two years have often lived in more than one accommodation centre.

## B. Housing

### 1. Types of accommodation

Indicators: Types of Accommodation	
1. Number of reception centres: <sup>148</sup>	35
2. Total number of places in the reception centres:	5230
3. Total number of places in private accommodation: <sup>149</sup>	Not available
4. Type of accommodation most frequently used in a regular procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	
5. Type of accommodation most frequently used in an accelerated procedure:	
<input checked="" type="checkbox"/> Reception centre <input type="checkbox"/> Hotel or hostel <input type="checkbox"/> Emergency shelter <input type="checkbox"/> Private housing <input type="checkbox"/> Other	

In December 2016 4425 asylum seekers were accommodated in the Direct Provision system across 33 reception centres in 16 counties. 30 of these were Accommodation centres, 2 self-catering centre and 1 reception centre. There are 5230 places which leads to an occupancy rate of 84.6%. 38% of the occupants were single males, 27% partners in a marriage or a different form of family life, 24% in lone parent families and 11% single women.<sup>150</sup> Seven centres are state-owned: seven state-owned centres are: **Knockalisheen, Co. Clare; Kinsale Road, Cork City; Atlas House, Killarney; Atlas House, Tralee; Johnston Marina, Tralee; Park Lodge , Killarney; Athlone.**

By end of 2015 4696 asylum seekers were accommodated in the Direct Provision system across 35 reception centres.<sup>151</sup> They included two self-catering facilities which can accommodate up to 128 persons which are used for exceptional reasons such as where there is a medical necessity. RIA spent €57.025 million in respect of the accommodation of asylum seekers in 2015, an increase of 4.7% on the 2014 outturn.<sup>152</sup> 26% of the occupants were lone parent families with 44% percent being single males. Only 9% were single females.

One centre in Dublin (**Balseskin** reception centre), with a capacity of 320, is designated as a reception centre where all newly arrived asylum seekers are accommodated.

Two of the reception centres are self-catering (one in **Dublin** and one in **County Louth**) with a capacity of 128 and a current occupancy of 117. There are 7 single male only accommodation centres. There is

<sup>148</sup> Both permanent and for first arrivals.

<sup>149</sup> Data from the Working Group Report shows that 55% of applicants (4,330) live outside of DP and the living circumstances of these people are unknown.

<sup>150</sup> Department of Justice and Equality, Reception and Integration Agency, Monthly statistics report December, available at: <http://bit.ly/2IDrEGU>.

<sup>151</sup> Department of Justice and Equality, Reception and Integration Agency, Annual Report 2015, available at: <http://bit.ly/2mW2IHA>.

<sup>152</sup> *Ibid.*

one female-only reception centre in Killarney named Park Lodge. The centre has an occupancy rate of 39 out of 55 places.<sup>153</sup>

According to the Working Group report “as of 16 February 2015, adult males accounted for 38% of the residents with adult females accounting for 28% and children accounting for 34%. Of the children, some 594 are recorded as having been born in the State.”<sup>154</sup>

From **Balseskin** Reception Centre, where the person usually spends several weeks, the person is then dispersed to one of the other accommodation centres, usually outside of **Dublin**. An applicant does not have a choice regarding where they are sent. The process for sending an applicant to particular centres is not set out in law and RIA stated that this is an ‘informal practice’ primarily based on a variety of factors that include: not overburdening a particular area, capacity in accommodation centres and the profile of the individual which includes specific medical needs, religious, cultural and ethnic backgrounds, social and family profile.<sup>155</sup>

Only three of the 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.<sup>156</sup>

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.<sup>157</sup>

Unaccompanied children are under the care of Tusla (Children and Family Agency) until they turn 18. This means they should be in either a residential home or a supported lodging or foster care settings until, at least, their 18<sup>th</sup> birthday. Children referred to the Tusla 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 18<sup>th</sup> 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.<sup>158</sup>

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. It should be noted that the International Protection Act 2015 (see above) introduces a new provision for age assessment under which permits a medical examination to determine the age of an unaccompanied child. In May 2015 the Health Information

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<sup>153</sup> Department of Justice and Equality, Reception and Integration Agency, Monthly statistics report December, available at: <http://bit.ly/2IDrEGU>.

<sup>154</sup> *Ibid*, para. 4.16, 154.

<sup>155</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, ‘The Organisation of Reception Facilities for Asylum Seekers’, February 2014, available at: <http://bit.ly/1kIPkR>.

<sup>156</sup> *Ibid*.

<sup>157</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, ‘The Organisation Of Reception Facilities For Asylum Seekers’, February 2014, available at: <http://bit.ly/1kIPkR>.

<sup>158</sup> Samantha Arnold, ‘Closing a Protection Gap 2.0, Irish National Report’, available at: <http://bit.ly/1JA3T28>.

and Quality Authority (HIQA) published a report on its inspection of the child protection and welfare services provided to children living in direct provision accommodation in four of the Child and Family Service Areas (see section on [Special Reception Needs](#)).

As for people living outside the Direct Provision system, their personal circumstances are unknown according to the Working Group report. The report shows that 55% of protection applications live outside of Direct Provision i.e. 4,330 persons.<sup>159</sup> In terms of people who lived in Direct Provision and then subsequently left it for whatever reasons whilst their asylum application was pending for example support from family etc., anecdotal information suggests that it may be difficult for them to access the Direct Provision system again should their situation change.

According to Minister Fitzgerald, RIA are also working on the development of standards for the provision and maintenance of services in accommodation centres, enhancing the complaints mechanisms for residents of those centres and the provision of ongoing diversity and equality training and awareness programmes across all centres.<sup>160</sup>

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

It is difficult to estimate the length of stay of asylum seekers in the reception centres as this will depend on many factors including the individual circumstances of the asylum seeker's claim. However, the Working Group identified that 'length of time in the system' was the single most important issue to be resolved in the protection procedure.<sup>161</sup>

There are no separated children living in direct provision centres and though there may be some age disputed children in such centres, there are no specific statistics available on this.

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) states that all accommodation centres operate in compliance with relevant legislation,<sup>162</sup> 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 11m<sup>3</sup>) 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.

<sup>159</sup> *Ibid*, 66.

<sup>160</sup> Response to parliamentary question by Minister Fitzgerald, question no. 23, 16 December 2017, available at: <http://bit.ly/2me7XnA>.

<sup>161</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para 3.3, 64 available at: <http://bit.ly/1LSZc6j>.

<sup>162</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation Of Reception Facilities For Asylum Seekers', February 2014, available at: <http://bit.ly/1IkIPkR>.



The Irish Refugee Council (IRC) report, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers',<sup>163</sup> considered the quality of life for children living in the direct provision system. Research for the report included two focus groups with residents. Residents reported that overcrowding was one of the main problems, with families often living in one room or single-parent families required to share a room with another family. Overcrowding of rooms was recorded as being prevalent with whole families – adults and children of varying ages – sharing one bedroom. The report stated that this could lead to familial disputes and increased incidents of abuse, as well as the spreading of childhood illnesses. The report also recorded parents stating that they often had no control of the physical conditions of the room, with inadequate heating, poor insulation and general lack of cleanliness and safety reported. The report noted that children often had no privacy and had no access to a safe space for play; the spaces allocated were often dirty or not appropriate with insufficient toys for the number of children using the area. Inadequate provision of food was also reported with reports of non-nutritional food being served. Children with specific dietary needs were especially vulnerable.

Concerns regarding overcrowding were also expressed by residents in a study<sup>164</sup> by the NGO Nasc (an Irish word meaning 'link'), with persons of different religious faiths often accommodated in the same room. Overcrowding as a problem was also reported by commentators,<sup>165</sup> and in the Irish Times newspaper in 2014, where it was noted that families of up to six were sharing a single room or living space in some centres.<sup>166</sup>

In November 2014, the Irish President Michael D. Higgins criticised the Direct Provision system and called it 'totally unsatisfactory in almost every aspect' and called for reform of the system.<sup>167</sup>

A contractual obligation of accommodation providers is that entertainment and leisure facilities are provided free of charge. RIA's 2014 annual report states that activities and facilities on site included activities for children, summer camps, sports, outdoor playgrounds, indoor playrooms, computers, homework club/areas, mother and toddler groups, seasonal celebrations, after school activities.<sup>168</sup> 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 RIA Annual Report for 2014 also lists the facilities and service provision for children both on-site and off-site according to each Direct Provision centre.<sup>169</sup>

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.<sup>170</sup>

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

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<sup>163</sup> Samantha Arnold, 'State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers', 2012.

<sup>164</sup> Nasc, 'Hidden Cork: The Perspectives of Asylum Seekers on Direct Provision and the Asylum Legal System', 2008, available at: <http://bit.ly/1KmpTAF>.

<sup>165</sup> The Journal, *Opinion: Ireland warehouses asylum-seekers, institutionalises them and leaves them in limbo*, Donal O' Keeffe, 22 June 2014, available at: <http://bit.ly/1wmYZkV>

<sup>166</sup> The Irish Times, *Overcrowding and lack of facilities in asylum centres reported*, Sinead O' Shea, 9 August 2014, available at: <http://bit.ly/1pkv5fi>

<sup>167</sup> RTE News, President Higgins criticises Direct Provision, 20 November 2014, available at: <http://bit.ly/1qqDa56>; RTE News, Asylum seekers welcome President Higgins' comments on Direct Provision, 20 November 2014, available at: <http://bit.ly/1F4sn1M>.

<sup>168</sup> RIA, *Annual Reprt 2014*, 28 July 2015, 44, available at <http://bit.ly/1H6EUsh>

<sup>169</sup> *Ibid.*

<sup>170</sup> Samantha K. Arnold, *A childhood lost: exploring the right to play in direct provision*, Irish .Law .Times. 2013, 31(10), 149-152, available at: <http://bit.ly/1RTJi2J>

therefore have insurance concerns relating to play that may inhibit the child's exercise of this right. In addition Arnold notes that due to the limited financial support received this money goes largely towards providing food supplements for the child where the child's nutritional needs are not catered for by the centre and/or mobile phone credit and there is little left over to pay for external recreation or to buy toys for child residents of direct provision.

RIA's House Rules and Procedures document 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.<sup>171</sup>

The Economic and Social Research Institute (ERSI), in a study of the Direct Provision system published in February 2014 referenced criticism of the quality, appropriateness, and overall nutritional value of food provided in accommodation centres (including incorporation of dietary and cultural differences).<sup>172</sup> Free Legal Advice Centres (FLAC), in a study from 2009 noted that the 'right to food' as provided for by various international instruments 'entails more than mere provision of foodstuffs'.<sup>173</sup> 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 Irish Human Rights and Equality Commission (IHREC) published a policy statement on the system of Direct Provision in Ireland on World Human Rights Day, 10 December 2014. It found that the system of Direct Provision is 'not in the best interests of children, has a significant impact on the right to family life and has failed adequately to protect the rights of those seeking asylum in Ireland.' It framed a number of recommendations not only with respect to the Direct Provision but also the introduction of a single protection procedure.<sup>174</sup> The IHREC also joined its European network's (European network of national Human Rights Institutions – ENNHRI) call for an urgent EU-wide response to the refugee crisis, with IHREC specifically calling for reception centres to be of a standard that will facilitate longer term integration and recovery for the individuals involved.<sup>175</sup>

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.<sup>176</sup>

In July 2014 Aodhan O' Riordian, at the time the newly appointed Minister for State at the Department of Justice stated that the reform of the Direct Provision system was an immediate priority of the Government,<sup>177</sup> emphasising that the working group on reform of the system would focus on creating a fairer and more dignified asylum system in Ireland.<sup>178</sup>

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<sup>171</sup> Reception and Integration Agency, 'House Rules and Procedures', available at: <http://bit.ly/1eiZdFd>

<sup>172</sup> The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

<sup>173</sup> The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

<sup>174</sup> Irish Human Rights and Equality Commission, *Policy Statement on the System of Direct Provision in Ireland*, 10 December 2014.

<sup>175</sup> Irish Human Rights and Equality Commission, IHREC joins European network call for an urgent EU-wide response to refugee crisis, 15 September 2015, available at: <http://bit.ly/1ka3kY8>

<sup>176</sup> Reception and Integration Agency, 'Annual Report 2012', 2013, available here: <http://bit.ly/1foEY9U>.

<sup>177</sup> The Irish Independent, Ireland must change our treatment of asylum-seekers, 26 July 2014, available at: <http://bit.ly/1gPWbdB> See Section 4 below for more information on the Working Group.

<sup>178</sup> The Irish Examiner, Asylum reform to cut ruling waits to six months, 30 December 2014, available at: <http://bit.ly/1MpK9Vf>.



In August, September and October 2014 protests took place at a number of Direct Provision accommodation centres in **Cork, Clare, Westmeath, Waterford, Limerick** and **Laois**, and a number of asylum seekers went on hunger strike in protest at the Direct Provision centre, **Mount Trenchard** facility in **Co. Limerick**.<sup>179</sup> According to Ms. Frances Fitzgerald, TD, Minister for Justice and Equality, the protests centred around two categories: a) local issues in the centres concerning food and transport; b) national issues such as the length of time spent in Direct Provision by individuals.<sup>180</sup>

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 1 October 2013 on a dedicated website.<sup>181</sup> There is little interaction between residents and inspectors. RIA and DP centres are outside of the remit of the Ombudsman and the Ombudsman for Children. Section 11(1)(e)(i) of the Ombudsman for Children Act 2002 provides that the Ombudsman for Children shall not investigate an action taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship. As a result of this the Ombudsman for Children has on a number of occasions called for the Oireachtas to amend the 2002 Act to ensure that there are no impediments to children and families in Direct Provision accessing an independent complaint's mechanism.<sup>182</sup> On 27 January 2015 an Oireachtas Committee delegation called for the Ombudsman's jurisdiction to be extended to the Direct Provision system.<sup>183</sup> This came after a number of recommendations from non-governmental organisations operating in this field.<sup>184</sup>

In May 2015 the Joint Committee on Public Service Oversight and Petitions reported on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors.<sup>185</sup> The report recommended that the Reception and Integration Agency (RIA) establish a pre-Ombudsman independent complaints system for residents as well as recommending that responsibility for inspections be carried out by an independent body such as HIQA. The report also recommended that the Joint Committee on Justice, Defence and Equality consider that the Direct Provision System is not fit for purpose and recommend that it should be replaced with a reception system that respects the dignity of all persons in line with best international human rights practice as well as opting into the Reception Conditions Directive.<sup>186</sup> In terms of specific groups the Committee report also recommended to the Joint Committee on Justice Defence and Equality that in relation to signing-on requirements; that to eliminate the unintended consequence of stigmatising children, be changed so that children are only required to attend during times when schools are on holidays.<sup>187</sup>

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<sup>179</sup> The Irish Times, We fled persecution and did not come here to be put in prison again, 23 August 2014, available at: <http://bit.ly/1KmqYZc> ; The Irish Examiner, 'There was literally no food at asylum centre,' Hundreds protest in Limerick, 22 August 2014, available at: <http://bit.ly/1g87VrE> .

<sup>180</sup> Dail Debate – Other Questions on the Direct Provision System, 18 November 2014, available at: <http://bit.ly/1Kmfyax>

<sup>181</sup> Further information available at: <http://bit.ly/1JgSYPe>

<sup>182</sup> Ombudsman for Children, Annual Report 2013, available at: <http://bit.ly/1qY2Ob9>

<sup>183</sup> The Irish Times, Asylum centres should come under the Ombudsman, say TDs. Lorna Siggins, 27 January 2015, available at: <http://bit.ly/1InzcTe>

<sup>184</sup> See for further information: Submission by the Irish Refugee Council to the Joint Oireachtas Committee on Public Service Oversight and Petitions, 22 October 2014, available at: <http://bit.ly/1gPWlFf> ; Spiritan Asylum Services Initiative Ltd, Presentation to the Joint Committee on Public Service Oversight and Petitions – Direct Provision System within Ireland, available at: <http://bit.ly/1CWlZqP>

<sup>185</sup> Houses of the Oireachtas, Joint Committee on Public Service Oversight and Petitions reported on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors, May 2015 available at: <http://bit.ly/1HqzinB>

<sup>186</sup> Houses of the Oireachtas, Direct Provision system must be made subject to Ombudsman and FOI Acts: Public Service Oversight Committee 7 May 2015 available at: <http://bit.ly/1ka3wXc>

<sup>187</sup> Houses of the Oireachtas, Joint Committee on Public Service Oversight and Petitions reported on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies

It should be noted that under its assurance programme, HIQA, the Health Information and Quality Authority did a number of on-site inspections of direct provision centres to ascertain whether the accommodation was in line with the National Standards for the Protection and Welfare of Children.<sup>188</sup>

On 10 December 2013 the Irish Refugee Council launched a document offering alternatives to Direct Provision.<sup>189</sup> 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.

In September 2014, Independent TD Thomas Pringle introduced a Dail (national parliament) motion to abolish the Direct Provision System.<sup>190</sup> The motion also called for the introduction of a legislative framework for specialised reception centres which respect family life and the rights of all human beings.<sup>191</sup> It called for the Government to provide appropriate self-catering accommodation which respects family life in a system that embodies the best interests of the child, as well as identifying and properly supporting individuals with special needs and vulnerabilities and the removal on the prohibition on employment. However the motion was subsequently rejected in the Dail. A separate Seanad motion was also brought by Senator Ronan Mullen calling for sweeping reforms of the Direct Provision system.<sup>192</sup>

Throughout 2015 and 2016 human rights groups continued to protest and call for abolishment of the Direct Provision system in Ireland.<sup>193</sup> Collective groups such as MASI – the Movement of Asylum Seekers in Ireland have continued to campaign for change and removal of the current DP system.<sup>194</sup> However, from the government there is no political momentum to replace the Direct Provision system and instead it is taking an approach of incremental reform. Minister Fitzgerald in response to a parliamentary question stated that “While the operation of this system is kept under continual review, there are no plans to replace it with any other system at present. I am satisfied that this system is in compliance with human rights obligations placed on the State by domestic and international law. The State provided accommodation system is one of the central features of the State's asylum system. I am also satisfied that the treatment of asylum seekers in this country is at least on a par with any other country and that the State provided accommodation system delivers a high standard of service and value for money to the taxpayer through coordinated service delivery to asylum seekers. The principal issue with Direct Provision is of course the length of time asylum applicants are residing in it - invariably as a result of the multi-layered processes arising from the Refugee Act which will shortly be replaced when the new International Protection Act comes into force. It is worth noting that no person in the protection process is left without services or shelter at Christmas time or indeed at any other time.”<sup>195</sup>

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associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors, May 2015, 29, available at: <http://bit.ly/1HqzinB>

<sup>188</sup> Health Information and Quality Authority, Report on Inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of children and section 8(1)(c) of the Health Act 2007 available at: <http://bit.ly/1FyVVY2>.

<sup>189</sup> Irish Refugee Council, *Direct Provision: Framing an alternative reception system for people seeking international protection*, December 2013, available at: <http://bit.ly/1Phtd4V>.

<sup>190</sup> Thomas Pringle, TD. Introduces Motion to abolish Direct Provision, 30 September 2014, available at: <http://bit.ly/1JAj6At>

<sup>191</sup> Thomas Pringle, TD, Motion (Private Members), 30 September 2014.

<sup>192</sup> Oireachtas Debates: Direct Provision System: Motion, 17 September 2014, available at: <http://bit.ly/1HLtp6l>

<sup>193</sup> The Irish Times, Direct Provision is killing our souls, protest hears, 12 November 2016, available at: <http://bit.ly/2maTwiq>.

<sup>194</sup> More information available at: <http://bit.ly/2mb2v3r>.

<sup>195</sup> Response to a Parliamentary Question by Minister Fitzgerald, question no.23, 16 December 2017, available at: <http://bit.ly/2me7XnA>.

## Establishment of an Independent Working Group

As part of Statement of Government Priorities 2014-2016 the government committed itself to address the current system of Direct Provision to “make it more respectful to the applicant and less costly to the taxpayer”.<sup>196</sup> It established a Working Group in October 2014 to report to the Government on improvements within the protection process, including reforms to the Direct Provision system and support for asylum seekers.

The terms of reference of the Working Group are set at as follows: “recommend to the Government what improvements should be made to the State’s existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards:(i) improving existing arrangements in the processing of protection applications; (ii) showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available; ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised.”<sup>197</sup>

In June 2015 the Working Group published its report on improvements to the Protection Process, including recommendations on Direct Provision and Supports to Asylum Seekers. The 257-page report contained 173 recommendations to the government, including:

- ❖ Improvements to Direct Provision including access to cooking facilities and residents having access to ‘their own private living space *in so far as practicable*’.
- ❖ Improvements to the support for protection applicants including a recommended increase in the Direct Provision weekly allowance from €19.10 for adults to €38.74. and the creation of a Taskforce to focus on the issues of residents of Direct Provision transitioning out of the Direct Provision system
- ❖ Improvements to the processing of protection applications with a focus on solving the length of time issue and improving the quality of the protection process

The views of persons in the protection system also formed part of a consultation process undertaken by the Working Group where they found that the length of time was seen as the main issue. However, the Irish Refugee Council undertook an analysis of the contributions made by people directly affected by the Direct Provision system and the response from the working group and noted that a number of issues raised were not adequately addressed by the Working Group. Many contributions lack of personal autonomy over the most basic aspects of their lives and daily living – cooking, going to the shops, cleaning and the loss of skills and the creation of dependency, and the negative impacts on physical, emotional and mental health.<sup>198</sup>

The report stated that the length of time in the asylum procedure, and the time waiting for a decision on an asylum claim were the central issues for people within the protection system as well as the lack of a single procedure.<sup>199</sup>

The IRC suggested that the Working Group failed in three related ways: firstly, by refusing to analyse the reasons why the system takes so long; secondly, by not having due regard to the clearly articulated views of asylum seekers about the impact and implications of poor decisions on their claims; and thirdly, by missing an opportunity to place a cap on the length of time spent in any reception system. The Irish Refugee Council noted that the introduction of a single procedure will be a welcome benefit for people in the system but it may

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<sup>196</sup> Statement of Government Priorities, 2014-2016, available at: <http://bit.ly/1CWJ1Fu>

<sup>197</sup> Department of Justice and Equality, Terms of Reference for the Working Group, October 2014, available at: <http://bit.ly/1TTABD9>

<sup>198</sup> Irish Refugee Council, *What asylum seekers told the Working Group about the length of time and the decision making system*, October 2015 available at: <http://bit.ly/1Pg7VU9>.

<sup>199</sup> Irish Refugee Council, *The Working Group and the time factor: a missed opportunity*, October 2015, available at: <http://bit.ly/1Pg7VU9>.

not address all the structural faults in the system and there was a lost opportunity by the Working Group to fully analyse all of the reasons behind the lengthy time people spend in the asylum system.<sup>200</sup>

Other NGOs and academics also criticised the Working Group report, and the lack of a human rights analysis of the Direct Provision system was highlighted.<sup>201</sup>

In terms of length of time in the system one of the most significant recommendations in the Working Group report is that in the case of all persons awaiting a decision at the protection process and leave to remain stages who have been in the system for five years or more, the solution proposed is that they should be granted protection status or leave to remain (subject to certain conditions) as soon as possible and within a maximum of six months from the implementation start date (para. 3.128). A similar recommendation is framed as an exceptional measure for people subject to a deportation order within the system for five years. It is unclear when the implementation date for these recommendations will commence.

Doras Luimni, an NGO working in this area found that the Working Group report lacked vision and ambition noting that the Working Group never considered an alternative to the Direct Provision system which was a missed opportunity from the outset.<sup>202</sup> Similar sentiments were raised by the Irish Refugee Council.<sup>203</sup> UNHCR, a member of the Working Group welcomed the launch of the report and called for swift implementation of its recommendations and stated that it stands ready to assist on the implementation of its recommendations.<sup>204</sup> The Ombudsman for Children, Dr. Niall Muldoon supported and welcomed the recommendations regarding the establishment of a standard-setting committee to recommend a set of standards for Direct Provision services and the establishment of an independent inspectorate to carry out inspections in Direct Provision centres against the newly approved standards.<sup>205</sup>

Dr. Liam Thornton, an academic in this area also noted in his analysis of the Working Group report that there was a noted lack of any human rights analysis on the system of Direct Provision and the ancillary supports provided for asylum seekers.<sup>206</sup> In analysing the recommendations of the report he also noted a distinction between unqualified recommendations, qualified recommendations and requests for further reviews of different aspects of the Direct Provision system. He goes on to state that the report “implicitly supports the continued private delivery of accommodation and services of those in Direct Provision.” He further concludes that:

“To date law and administration, and now the McMahon Report (Working Group Report), will be used to justify exclusion, separation and distancing of protection seekers from Irish society and placing people in the direct provision system. Until there is more fundamental societal introspection, on “the rights of others”, institutionalised and impoverished living for protection seekers will continue”.<sup>207</sup> As part of the recommendations implementation a Task Force was set up to report

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<sup>200</sup> Irish Refugee Council. *The Working Group and the time factor: a missed opportunity*, October 2015 available at: <http://bit.ly/1Pg7VU9>.

<sup>201</sup> See: Doras Luimni, *Working group report on Direct Provision lacks vision and ambition*, 1 July 2015 available at: <http://bit.ly/1OolqlU>; Dr. Liam Thornton, *A preliminary human rights analysis of the Working Group report and Recommendations on Direct Provision*, UCD School of Law and UCD Human Rights Network, available at: <http://bit.ly/1LPOwqy>.

<sup>202</sup> Doras Luimni, 'Working group report on Direct Provision lacks vision and ambition', 1 July 2015, available at: <http://bit.ly/1OolqlU>.

<sup>203</sup> IRC, 'The Working Group report while welcome is a missed opportunity', 30 June 2015, available at: <http://bit.ly/1GMslwB>.

<sup>204</sup> UNHCR, 'UNHCR welcomes the launch of the Report to Government on Improvements to the Protection Process, including Direct Provision', 30 June 2015, available at: <http://bit.ly/1SzSExl>.

<sup>205</sup> Ombudsman for Children, Statement by the Ombudsman for Children, Dr. Niall Muldoon encouraging implementation of recommendations of the Working Group on the Protection Process, 24 July 2015 available at: <http://bit.ly/20D76tx>. See also related press release IHREC, 'IHREC Recommendations on International Protection Bill 2015 and Direct Provision', 5 July 2015 available at: <http://bit.ly/1LYWj5i>.

<sup>206</sup> Dr. Liam Thornton, *A preliminary human rights analysis of the Working Group report and Recommendations on Direct Provision*, UCD School of Law and UCD Human Rights Network, available at: <http://bit.ly/1LPOwqy>.

<sup>207</sup> *Ibid*, 31.

back to the Government on certain key aspects of the report and it is chaired by the Minister of State for New Communities, Culture and Equality and Drug Strategy, Mr Aodhán Ó Riordáin, TD.<sup>208</sup>

### High Court judgment on Direct Provision

In April 2014 a legal challenge against Direct Provision was brought in the High Court.<sup>209</sup> 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.<sup>210</sup> In November 2014 the High Court issued the judgment in this challenge to the Direct Provision system and found that certain aspects of the House rules which govern the day to day operation of the system were unlawful or disproportionate to the objective to be achieved and the complaints procedure was also found to be unlawful.<sup>211</sup> MacEochaidh J. found that the monitoring of asylum seekers presence or absence from their accommodation centre was an interference with their private life and that room inspection methods of the Reception and Integration Agency was incompatible with Article 40.1 of the Irish Constitution. Furthermore the Judge held that the complete ban on visitors to the asylum seeker's bedroom went much further than what was required to meet the stated aims of the law.<sup>212</sup> Due to its lack of independence the complaints mechanism was found to be flawed and unlawful. In October 2015 the issue of costs in this case was before the High Court and Judge Mac Eochaidh only awarded 20% of the cost of the proceedings to the applicant party linking to the grounds they were successful in the Court challenge.<sup>213</sup>

The implications of this High Court judgment were also considered by the Working Group report on the Protection Process. For example in relation to the House Rules the report recommends the extension of the remit of the Ombudsman and the Ombudsman for Children to include complaints relating to services provided to residents and transfer decisions following a breach of those rules.<sup>214</sup>

The 2009 Reception and Integration Agency (RIA) House Rules and Procedures were revised in October 2015 part of which deals with the complaints procedure. It suggests a number of phases for handling a complaint starting with an informal phase which requires the person affected to contact the Centre Manager directly which may not always be appropriate. Then if the person is not happy with the response they are permitted to contact RIA. Direct complaints to RIA seem to only be allowed when there are exceptional and serious circumstances.<sup>215</sup> It appears this complaint procedure envisaged may not actually be fully in accordance with the judgment and certainly does not go as far as the recommendations in the Working Group report.

In February 2017, Minister Fitzgerald and Minister Stanton published a second progress audit of the implementation of the Working Group report recommendations and stated that 92% of the reports 173

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<sup>208</sup> Irish Naturalisation and Immigration Service, 'Minster of State O'Riordain to chair Taskforce established by government to assist with transition of persons from Direct Provision', 16 July 2015, available at: <http://bit.ly/1NiK2qb>.

<sup>209</sup> *C.A. and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*.

<sup>210</sup> Liam Thornton, 'Direct Provision System Challenged Before the Irish High Court: Day 1', Human Rights in Ireland, available at: <http://bit.ly/1o2C7Tj>.

<sup>211</sup> *C.A. and T.A. (a minor) v. Minister for Justice and Equality, Minister for Social Protection, Attorney General and Ireland*, (Record No. 2013/751/JR).

<sup>212</sup> KOD Lyons, High Court finds some Direct Provision House Rules unlawful and in breach of ECHR., available at: <http://bit.ly/1CWQx30>.

<sup>213</sup> *C.A. and T.A. (Costs) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* [2015] IEHC 432.

<sup>214</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para.43, p.g. 20 available at: <http://bit.ly/1LSZc6j>.

<sup>215</sup> Reception and Integration Agency, House Rules and Procedures, Revised 2015 available at: <http://bit.ly/1QfNBmo>.



recommendations are now implemented, partially implemented or are in progress.<sup>216</sup> It noted in particular that the number of people in the direct provision system for 5 years or more reduced by 58% from 1,946 persons to 811. As regards crowding in rooms in DP the progress shows as of January 2017 38% of single people have their own room, 44% are sharing with one other person and a further 15% are sharing with two other persons. The accommodation centres are all different and feasibility and solutions will differ accordingly. There remain technical challenges in some instances, including planning, fire safety and insurance according to RIA.<sup>217</sup> Overall, the progress report, whilst outlining some improvements does not clearly show how some of the recommendations have actually been implemented in practice and more transparency is required.

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No

There is no access to the labour market for asylum seekers in Ireland. Section 16(3)(b) of the International Protection Act states that no applicant shall seek, enter or be in employment or engage for the gain in any business, trade or profession. This prohibition only does not apply when the person has a pre-existing right to work under another immigration status as evidenced 16(6) which states that prohibitions to employment do not apply 'who, were he or she not an applicant, would be entitled to remain in the State under any other enactment or rule of law.'

The position on access to the labour market remains unchanged, but the Working Group suggested the following qualified recommendations in 2015:

"Provision for access to the labour market for protection applicants who are awaiting a first instance decision for nine months or more and who have co-operated with the protection process (under the relevant statutory provisions), should be included in the International Protection Bill and should be commenced when the single procedure is operating efficiently. This recommendation takes account of the fact that, under the current statutory arrangements, first instance decisions in respect of refugee status and subsidiary protection do not (in the normal course) issue within nine months at present. Any permission given to access the labour market should continue until the final determination of the protection claim. A protection applicant who has the right to access the labour market and is successful in finding employment, and who wishes to remain in Direct Provision, should be subject to a means test to determine an appropriate contribution to his/ her accommodation and the other services provided to him/her."<sup>218</sup>

Politically there is no momentum from the government to move on this and as recently as January 2017 the Minister Frances Fitzgerald stated, in response to a question raised as to the rationale in such a prohibition stated that "There is an effective visa and immigration system in place for those who wish to lawfully migrate to the State for employment purposes. The key concern in this regard is that both the asylum process and the wider immigration system would be undermined by giving people who secure

<sup>216</sup> Department of Justice and Equality, Tanaiste Fitzgerald and Minister Stanton announce significant progress on the McMahon Report, Direct Provision and supports to asylum seekers, 23 February 2017, available at: <http://bit.ly/2msQnwS>.

<sup>217</sup> Department of Justice and Equality, Working Group Report, Second Progress Table 2017, available at: <http://bit.ly/2IZUvSM>.

<sup>218</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para.5.49, 211.

entry to the State, on foot of claims to asylum yet to be determined, the same access to employment as legal immigrants who follow the lawful route to employment.”<sup>219</sup>

Currently the case of *N.H.V. and F.T. v. The Minister for Justice and Equality (Respondent) and the Irish Human Rights Commission (Notice Party)* [2015] IEHC 246, 17 April 2015 is pending before the Supreme Court regarding the right to work for asylum seekers who have spent several years in the Direct Provision system.<sup>220</sup>

## 2. Access to education

### Indicators: Access to Education

1. Does the law provide for access to education for asylum-seeking children?  Yes  No
2. Are children able to access education in practice?  Yes  No

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

The City of Dublin Education and Training Board Separated Children’s Service has offered educational services and support to separated children since 2001. The most prominent feature of the service is their Refugee Access Programme which is a transition service for newly-arrived separated children and other young people ‘from refugee backgrounds’. The programme provides intensive English instruction, integration programmes and assists young people in preparing to navigate the Irish education system. Additionally, the service provides support after transition, including study support, outreach, a drop-in and a youth group.<sup>221</sup>

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. Universities have some flexibility on whether to charge refugees third level non-EU fees or EU fees. Both are expensive but non-EU fees are much more expensive. Some universities also don’t accept GNIB cards as a form of identity which also creates practical restrictions for refugees.

In 2016 a number of Irish Universities have taken steps to improve access for refugees, for example, NUI Galway announced the four new inclusive scholarships would be available for people who are asylum applicants or have status including permission to remain.<sup>222</sup> In December 2016 Dublin City University (DCU) was also designated as a University of sanctuary in recognition of a range of initiatives demonstrating a commitment to welcoming refugees and asylum seekers into the University community and fostering a culture of inclusion for all.<sup>223</sup> The initiatives include fifteen scholarships for undergraduate or postgraduate studies.

The dispersal system of Direct Provision also impacts upon the provision of education for children in the asylum procedure. The Irish Times reported that young asylum seekers who have been awarded

<sup>219</sup> Parliamentary response from Minister Frances Fitzgerald to question no. 93 of 15 February 2017, available at: <http://bit.ly/2max494>.

<sup>220</sup> For further information see EDAL case summary available at: <http://bit.ly/2IRZcNk>; EDAL Blog The right to work for asylum seekers: Ireland’s prohibition on employment, 25 January 2017, available at: <http://bit.ly/2kitKYc>.

<sup>221</sup> Separated Children’s Services, Youth and Education Services, available at: <http://bit.ly/1Jh3fea>.

<sup>222</sup> NUI Galway, Inclusive Centenaries Scholarship Scheme Announcement, 17 June 2016, available at: <http://bit.ly/28ZnvVq>.

<sup>223</sup> DCU, DCU designated as a University of Sanctuary, 21 December 2016, available at: <http://bit.ly/2mLhkwK>.



scholarships for further education were at risk of losing their scholarship places after RIA informed them that they would be dispersed to another accommodation centre.<sup>224</sup>

As part of the reform of the protection process within the Working Group, the Minister for Education, Jan O' Sullivan stated that she 'intends on ensuring that asylum seekers will be able to apply for third-level grants for access to third-level education. In the current system asylum seekers are treated as international students meaning they face a higher fee which makes it prohibitive for them to further their education at the third level.<sup>225</sup>

Third-level student grants will be available to asylum seekers for the first time from September 2015 under changes announced by Minister for Education Jan O'Sullivan. The changes were recommended by Judge Bryan McMahon in his recent Working Group report on the Direct Provision system and will be rolled out on a pilot basis initially. To avail of the grants, the students must have been spent five years in the Irish school system, obtained their Leaving Certificate, have been accepted on a post-Leaving Certificate or undergraduate course, meet the definition of an asylum seeker and have been in the asylum system for a combined period of five years.<sup>226</sup> There are concerns that the pilot scheme is so restrictive in nature that it may be very difficult to access.<sup>227</sup>

In practice very few applicants could access the supports given the restrictive criteria and in 2015 only 2 out of 37 applications for assistance were successful.<sup>228</sup> NGOs like the Irish Refugee Council, NASC and Doras Lumni try to assist students where they can. The Irish Refugee Council recommended that the criteria be amended to reduce the five year requirement.<sup>229</sup> Unfortunately the criteria remain unchanged.

On 3 June 2016 the Minister for Education and Skills, Richard Bruton announced his intention to continue the pilot student support scheme for asylum seeking children for the year 2016/2017. This decision was taken following a review of the 2015 support scheme.<sup>230</sup>

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<sup>224</sup> The Irish Times, Young asylum seekers with scholarships ordered to move, Sinead O Shea, 30 August 2014, available at: <http://bit.ly/1ejf5Yu>.

<sup>225</sup> The Journal, 'Third-level grants could be open to asylum-seekers next year', 31 August 2014, available at: <http://bit.ly/1VA5kXB>.

<sup>226</sup> The Irish Times, 'Asylum seekers to receive student grants for first time', 28 August 2015 available at: <http://bit.ly/1P1vfpC>.

<sup>227</sup> See e.g. Subpri.me, *Access to Education and the McMahon report*, available at: <http://bit.ly/1ipZjNo>.

<sup>228</sup> The Irish Times, No asylum in Ireland's education system, 25 October 2016, available at: <http://bit.ly/2lRCDIU>.

<sup>229</sup> The Irish Examiner., *the Irish Refugee Council: Reform aid scheme for asylum seekers students*, 27 August 2016, available at: <http://bit.ly/2bHLCf9>.

<sup>230</sup> Department of Education and Skills, *Supports for Students in the Protection System to Continue*, 3 June 2016, available at: <http://bit.ly/2masrvO>.

## D. Health care

### Indicators: Health Care

1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?  
 Yes  No
2. Do asylum seekers have adequate access to health care in practice?  
 Yes  Limited  No
3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes  Limited  No
4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care?  
Not available

Access to health care is free for asylum seekers living in Direct Provision and therefore has no legislative basis. Once in Direct Provision, they receive medical cards which allow them to attend a local doctor or general practitioner who are located in or attend the accommodation centres. A person with a medical card is entitled to prescribed drugs and medicines but must pay a charge for prescribed medicines and other items on prescription from pharmacies. The prescription charge is €2.50 for each item that is dispensed to under the medical card scheme and is up to a maximum of €25 per month per person or family. The Department of Health has recently stated that there are no plans to exempt asylum seekers from prescription charges,<sup>231</sup> despite claims they adversely impact asylum seekers and that some people spend all of their weekly allowance of €19.10 on prescription charges.<sup>232</sup> However the situation changed in 2015 when the Minister for Health announced that the levies for prescription charges would not apply to asylum seekers when accessing health care. Therefore asylum seekers living in direct provision are to be exempted from paying the prescription charge of €2.50 per item levied on medical-card holders.<sup>233</sup>

RIA's website states "Health Screening is made available in our Reception Centre to all asylum seekers on a voluntary and strictly confidential basis. Screening covers Hepatitis, TB, HIV, immunisation status and any other ailments or conditions that the medical officers feel require further investigation and/or treatment. Screening staff also check the vaccination needs of the resident and their family. Arrangements are in place in various parts of the country to offer this service to those who did not avail of it in Dublin. The outcome of any medical tests undergone by an asylum seeker will not affect their application for a declaration as a refugee in any way."<sup>234</sup>

Specialised treatment for trauma and victims of torture is available through an NGO called SPIRASI which is a humanitarian, intercultural, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. SPIRASI staff have access to certain accommodation centres e.g. **Balseskin** reception centre in **Dublin** and can help to identify victims of torture. No formal arrangements or agreements exist to deal with torture survivors in a way that is different to someone who has not experienced torture. An article in the newspaper the Medical Independent stated that the number of asylum seekers and refugees being referred to SPIRASI was the highest level in more than a decade.<sup>235</sup>

A particular health issue in for asylum seekers in Ireland is access to abortion due to the restrictive abortion legislation in Ireland, as well as the treatment of asylum seekers in the Direct Provision system.<sup>236</sup> The Irish Family Planning Association (IFPA) stated that asylum-seeking women seeking an abortion

<sup>231</sup> Irish Medical News, 'No exemptions on prescriptions fee-Department', 31 March 2014.

<sup>232</sup> Medical Independent, 'Outside Looking in', 3 April 2014.

<sup>233</sup> The Irish Times, 'Direct Provision residents exempt from prescription charge', 7 July 2015, available at: <http://bit.ly/1P9LtvM>; Department of Health, 'Prescription Charges waived for asylum seekers', 10 September 2015, available at: <http://bit.ly/1XEta4B>.

<sup>234</sup> More information available at: <http://bit.ly/2matETK>.

<sup>235</sup> Medical Independent, 'Increase in torture treatment service numbers for refugees', 3 April 2014.

<sup>236</sup> See for ex.: The Medical Independent, *Slipping through the gaps*, Dr. Sara Burke, 11 September 2014, available at: <http://bit.ly/1TTDxQh> ; and The Irish Times, Ms. Y plans legal action against HSE and other agencies, 22 January 2015, available at: <http://bit.ly/1JAv50T>. See also Irish Times, 'Ms Y to sue 11 respondents over abortion refusal', 19 September 2015, available at: <http://bit.ly/1SzTpGq>.

face insurmountable obstacles in trying to travel abroad in order to access terminations. The IFPA has raised these concerns with the UN Human Rights Committee and expressed concerns about the restrictive laws on abortion with the Government.<sup>237</sup>

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, CEO 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.”<sup>238</sup> Furthermore the actual system of Direct Provision can exacerbate the mental health concerns of individual asylum seekers. The Irish Refugee Council reported that children as young as 11 living in Direct Provision have expressed thoughts of suicide. Social services have been alerted to more than 1,500 cases of welfare concerns at Direct Provision centres across the country.<sup>239</sup>

Frances Fitzgerald, TD, Minister for Justice and Equality in response to a parliamentary question reported that between 2002 and 2014, 61 people have died in the Direct Provision system, 16 of whom were children aged five and under.<sup>240</sup>

The Royal College of Physicians of Ireland, Faculty of Public Health Medicine wrote a position paper on the health of asylum seekers, refugees and relocated individuals in June 2016.<sup>241</sup> It set out a number of important recommendations:

- ❖ There should be early and adequate screening for chronic diseases and mental health issues, as well as for infectious diseases, and referral to specialised services as required. Community medical/nursing services, primary care, mental health and acute services should be adequately resourced as a priority to meet current and projected requirements;
- ❖ There should be immediate and adequate access to primary care, sexual and reproductive health;
- ❖ Care and mental health services, which are culturally and linguistically competent. These services should be adequately resourced to provide treatment for the complex physical and mental health needs of asylum seekers and refugees;
- ❖ Funding for additional vaccinations for asylum seekers and refugees should be ring-fenced so that all necessary vaccines can be administered in a timely manner;
- ❖ Translation services should be readily available in primary care and to all health providers that care for asylum seekers and refugees;
- ❖ Specialised services, such as psychotherapy for survivors of torture and other traumas, should be available and accessible for those who need them, wherever they are resettled;
- ❖ A formal assessment of the broader health needs of asylum seekers, refugees, and relocated individuals in Ireland should be undertaken;
- ❖ There is a need for much greater investment by the Irish government in health services for asylum seekers, refugees, and relocated individuals. These services will largely be provided by the Health;
- ❖ Services Executive, GPs, and voluntary organisations, and require appropriate funding;
- ❖ The processing of asylum applications should be done in a timely fashion. Time spent in direct provision and other accommodation centres (including European Relocation and Orientation;
- ❖ Centres- EROCs should be limited to the absolute minimum;

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<sup>237</sup> The Irish Times, Dozens of migrant women unable to travel for abortions, Carl O’ Brien, 15 December 2014, available at: <http://bit.ly/1gQ54nh>; The Irish Times, Odds against migrant women trying to travel abroad for abortion, 15 December 2014, available at: <http://bit.ly/1Mn0UiZ>.

<sup>238</sup> Medical Independent, ‘Outside Looking in’, 3 April 2014.

<sup>239</sup> The Irish Examiner, ‘11-year olds ‘expressing suicidal thoughts’ in asylum-seeker centres’, 9 August 2014, available at: <http://bit.ly/1CSaWGI>.

<sup>240</sup> The Journal.ie, ‘Why have 16 children died in Direct Provision?’, 22 January 2015, available at: <http://bit.ly/1HUtBya>. No further information was provided on the cause of death of individuals in the Direct Provision system.

<sup>241</sup> Royal College of Physicians of Ireland Faculty of Public Health Medicine, the Migrant Health-the Health of Asylum Seekers, Refugees and Relocated Individuals, June 2016, available at: <http://bit.ly/2mayikR>.

- ❖ There should be intersectoral collaboration to ensure the development of health and social policies that promote inclusion and integration of all migrants into Irish society, minimising the negative impact of migration, and reducing health inequity. Asylum seekers, refugees, and relocated individuals should be represented and involved in all decisions and policies that affect them;
- ❖ Long term housing, education, employment and health needs of all asylum seekers must be addressed as a government priority;

In August 2016 an asylum seeker tragically committed suicide in a Direct Provision centre, highlighting the failings of identifying specific mental health needs.<sup>242</sup> An inquest concerning her death found that no-one could have foreseen that she was going to take her own life on the day she died in her hostel accommodation. A member of the HSE mental health team had met the woman four days before her death but she told her to leave as she didn't want to talk about her mental health.<sup>243</sup>

In November 2016 a man in Direct Provision also went on hunger strike for approximately 35 days after receiving a transfer decision to the UK under the Dublin Regulation.<sup>244</sup> After being hospitalised he was subsequently admitted to the asylum procedure in Ireland following interventions from local groups and politicians.<sup>245</sup>

In response to a Seanad Debate raised on the health needs of asylum seekers in October 2016 Minister of State Stanton stated that "Health services for asylum seekers are mainstreamed and provided on the same basis as for Irish citizens. Asylum seekers in direct provision accommodation qualify for a medical card and do not have to pay the prescription charge. They can access the same GPs, mental health and other health supports as any other medical card user in their locality."<sup>246</sup>

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. 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 Child and Family Agency, Tusla and accommodated in foster home settings and small residential units. 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 Direct Provision 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

<sup>242</sup> The Irish Times, Korean woman found dead in direct provision centre, 24 August 2016, available at: <http://bit.ly/2n58qX1>; The Irish Examiner, Campaigners call for an end to Direct Provision after young mother dies at Cork centre, 25 August 2016, available at: <http://bit.ly/2mvl4Sd>.

<sup>243</sup> The Irish Times, Woman's suicide in hostel was not foreseen – inquest, 26 January 2017, available at: <http://bit.ly/2mLn3SW>.

<sup>244</sup> The Journal.ie, Asylum Seeker enters 35th day of hunger strike in Sligo centre, 14 November 2016, available at: <http://bit.ly/2maCuRx>.

<sup>245</sup> The Journal.ie, Hunger-striking Iranian man to be granted access to asylum process, 15 November 2016, available at: <http://bit.ly/2mWjo11>.

<sup>246</sup> Seanad Debate, Direct Provision System, 4 October 2016, available at: <http://bit.ly/2mb23C4>.

designed for long term residence.<sup>247</sup>

In May 2015 the Health Information and Quality Authority (HIQA) published a report on its inspection of the child protection and welfare services provided to children living in direct provision accommodation in four of the Child and Family Service Areas. On the publication of the report, Mary Dunnion, Director of Regulation of HIQA said:

“The Authority has grave concerns about the high number of children living in direct provision centres who have been referred to The Child and Family Agency. Approximately 14% of the population of children living in direct provision were referred to the Child and Family Agency in one year which is a significantly higher referral rate than for the general child population of 1.6%.”<sup>248</sup>

Among some of the welfare and protection concerns raised they included: welfare referrals made on the basis of the physical or mental illness of the parent impacting on their capacity to look after the child, a lack of clothes and toys and protection referrals made on the basis of exposure to incidents of domestic violence, physical abuse due to excessive physical chastisement and the proximity of children to unknown adults living on the same site and inappropriate contact by adults towards some children.<sup>249</sup>

On the basis of the report HIQA made the following recommendations to the Child and Family Agency (TUSLA):

- ❖ Develop an inter-cultural strategy to inform the provision of social services to ethnic minority children and families;
- ❖ Complete an audit to ensure there are no children at risk of harm because of outstanding or incomplete assessments due to the movement of families between accommodation centres;
- ❖ Ensure effective interagency and inter-professional co-operation with key stakeholders to ensure decisions consider the best interests of children; and
- ❖ Gather information on referrals to their services about children in direct provision accommodation to inform strategic planning.

Tusla, the Child and Family Agency, issued a press release in response to the HIQA report findings stating that it accepts some areas need improvement and they were focused on a rapid improvement programme in certain areas such as **Laois/Offaly** and **Louth/Meath** area. It stated that it was preparing an Action Plan in response to the report to be submitted to HIQA.<sup>250</sup> The Children’s Rights Alliance also issued a press release in response to the HIQA report noting that the report was significant in that it was the first time that an official body with inspection powers was able to shed some light on children’s lives in Direct Provision.<sup>251</sup> In terms of children accessing individual complaints mechanisms with the Ombudsman for children, previously children in Direct Provision were denied access to that procedure. All complaints went through the manager of each Direct Provision centre. However, it was recently announced that in April 2017 the Ombudsman for children will be in the position to accept individual complaints from children in Direct Provision. Dr. Niall Muldoon welcomed this announcement and stated that “Children in Direct Provision will now have equal access to the Ombudsman for Children’s Office. This will enable my Office

<sup>247</sup> Geoffrey Shannon, ‘Fifth Report of the Special Rapporteur on Child Protection a Report Submitted to the Oireachtas, 2011 Report’.

<sup>248</sup> HIQA, ‘Findings of HIQA Inspection of the child protection and welfare services provided to children living in direct provision raises serious concerns’, 25 May 2015, available at: <http://bit.ly/1FyVVY2>; The Irish Times, ‘Safety of children in Direct Provision flagged by report’, 22 May 2015, available at: <http://bit.ly/1FH73oX>.

<sup>249</sup> HIQA, *Report on inspection of the child protection and welfare services provided to children living in direct provision accommodation under the National Standards for the Protection and Welfare of Children*, and Section 8(1)(c) of the Health Act 2007 25 May 2015.

<sup>250</sup> TUSLA, Child and Family Agency, Statement on the findings of the HIQA Assurance Programme Report, May 2015 available at: <http://bit.ly/1QcenbJ>.

<sup>251</sup> Children’s Rights Alliance, *Children in Direct Provision Forgotten by the State*, 25 May 2015, available at: <http://bit.ly/1ipYuEj>.



to make a constructive contribution to the overall welfare of children living in Direct Provision accommodation.”<sup>252</sup>

There are no provisions in practice that take into account the needs of vulnerable persons and there are no special reception conditions.<sup>253</sup> Upon arrival, it is standard practice for all applicants for asylum to be offered medical screening as well as access to a General Practitioner (doctor), public health nurse and psychological services. Applicants may be assigned to certain subsequent reception facilities as a result e.g. near a particular medical facility or in the case of a disability.<sup>254</sup> It should be noted that under the IRPP for relocated and resettled refugees, however, it is reported that a vulnerability assessment is undertaken as part of the security clearance stage of the Irish Refugee Protection Programme. It is not known what this vulnerability assessment consists of in practice.<sup>255</sup>

There are no special facilities for traumatised asylum seekers. In October 2014 the Rape Crisis Network Ireland (RCNI) published a report on sexual violence experienced by asylum seekers and refugees and found that the Direct Provision system not only exacerbated the trauma for survivors but also left individuals living in the system vulnerable to sexual violence.<sup>256</sup> The RCNI called for the immediate reform of the Direct Provision system and the provision of psycho-social supports to families of survivors of sexual violence among other recommendations.<sup>257</sup> In response to a parliamentary question raised on this report, Ms. Frances Fitzgerald stated that a number of recommendations in the report are in train including the procurement of training for staff which is underway along with the establishment of a women only centre when refurbishment works are completed on a State-owned reception centre.<sup>258</sup> Reports were heard of people in Direct Provision turning to precarious work in a bid to supplement the income of €19.10 per week. For example, reports were heard of vulnerable women in Direct Provision falling prey to sexual exploitation and prostitution.<sup>259</sup>

In addition the Group of Experts on Action against Trafficking in Human Beings (GRETA) recommended that the Irish government reviews its policy of accommodating victims of trafficking in Direct Provision centres and consider the setting up of specialised shelters for victims of trafficking.<sup>260</sup> At the end of January 2015 RIA was accommodating 65 persons who were identified as alleged victims of trafficking by the Garda Síochána. The majority were protection applicants.<sup>261</sup>

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.<sup>262</sup> In the seventh report of the Special Rapporteur on Child Protection, Dr. Geoffrey Shannon called for an immediate review of the Direct Provision system and stated that the main

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<sup>252</sup> Ombudsman for Children, Children in Direct Provision will now share equal rights with other children in Ireland, February 2017, available at: <http://bit.ly/2INMwaY>.

<sup>253</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, ‘The Organisation of Reception Facilities for Asylum Seekers’, February 2014, available at: <http://bit.ly/1klPKR>.

<sup>254</sup> *Ibid.*

<sup>255</sup> Irish Refugee Protection Programme, Expression of Interests Sought, available at: <http://bit.ly/2n594DB>.

<sup>256</sup> The Irish Times, ‘Direct Provision System poses risk of sexual violence – report’, 29 October 2014, available at: <http://bit.ly/1FV9cL4>.

<sup>257</sup> Rape Crisis Network Ireland, Asylum Seekers and Refugees Surviving On Hold – sexual violence disclosed to Rape Crisis Centres, October 2014, available at: <http://bit.ly/1tHj71C>.

<sup>258</sup> Ms. Frances Fitzgerald, Minister, Department of Justice and Equality, written answer to the parliament question of Ruth Coppinger, Department of Justice and Equality, Asylum Support Services, 5 November 2014, available at: <http://bit.ly/1HLhUvV>.

<sup>259</sup> The Irish Times, ‘Minister “shocked” by reports of direct provision prostitution’, Mary Minihan, 2 September 2014, available at: <http://bit.ly/1CWz2Qr>.

<sup>260</sup> Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, *Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, available at: <http://bit.ly/1g85mG3>.

<sup>261</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, fn. 280, para 4.206, 195.

<sup>262</sup> Geoffrey Shannon, ‘Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report’, available at: <http://bit.ly/1MKcra5>.



recommendations of the Irish Refugee Council should be adopted and that Ireland should opt into the recast Reception Conditions Directive 2013.<sup>263</sup> In 2014 RIA published a child protection and welfare policy and practice document but it is unclear if this is fully abided by in practice.<sup>264</sup>

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'.<sup>265</sup> 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.

In terms of identifying vulnerable asylum seekers early in the protection process the Working Group recommended that the existing HSE Health Screening Process be reviewed and strengthened so as to facilitate a multidisciplinary needs assessment at an early stage.<sup>266</sup> At the time of writing is unclear if that recommendation has been implemented.

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.<sup>267</sup> With respect to trafficking victims, EMN research indicated that proactive screening of trafficking victims as opposed to self-reporting, is generally not in evidence within asylum procedures in Ireland. ORAC provides in-house training on the three phrases of trafficking for all relevant front-line staff.<sup>268</sup>

In terms of gender-sensitive asylum procedures the Irish Human Rights and Equality Commission has called for the International Protection Act 2015 to be amended to provide the power to the Minister for Justice and Equality to develop statutory guidelines on gender-sensitive approaches to credibility assessment and the promotion of gender equality throughout the international protection process, including in the provision of accommodation.<sup>269</sup>

The IHREC also called for the Irish government to stop housing trafficked women, both within and outside the asylum system, in Direct Provision centres which is the current practice. The Commission reiterated

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<sup>263</sup> Dr, Geoffrey Shannon. Seventh Report of the Special Rapporteur on Child Protection, A Report Submitted to the Oireachtas, 2014; Irish Refugee Council, *The IRC welcomes the Seventh Annual Report of Ireland's Special Rapporteur on Child Protection*, 2 December 2014, available at: <http://bit.ly/1LFiZb6>.

<sup>264</sup> RIA, Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency and Centres under Contract to RIA, October 2014, available at: <http://bit.ly/1SLHPvA>.

<sup>265</sup> Reception and Integration Agency, 'RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment', April 2014.

<sup>266</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para 46, 21 available at: <http://bit.ly/1LSZc6j>.

<sup>267</sup> Irish Refugee Council, 'Direct Provision and Dispersal: Is there an alternative?' Report prepared for the NGO Forum on Direct Provision, 2011, available at: <http://bit.ly/1lnP4VP>.

<sup>268</sup> Corona Joyce, Emma Quinn, European Migration Network, *Identifying Victims of Trafficking in Human Beings in Asylum and Forced Return Procedures: Ireland*, April 2014.

<sup>269</sup> IHREC, Ireland and the Convention on the Elimination of all forms of Discrimination against Women, Submission to the UN Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports, January 2017, available at: <http://bit.ly/2IAMB4T>.

that direct provision accommodation does not respect the rights of victims of trafficking in human beings and does not comply with the Convention. It recommends that victims of trafficking be accommodated in appropriate single gender facilities with access to the necessary support services, in keeping with the State's obligations under the CEDAW Convention of prevention and to provide support services to victims.<sup>270</sup> The IHREC also noted that there were reports of harassment of refugee women in certain DP centres including catcalling, verbal abuse and men propositioning women for sex. It should be noted that RIA has guidelines on safeguarding RIA residents against sexual harassment and sexual violence which includes information on the reporting structures and procedures but the implementation of these guidelines is questionable.<sup>271</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

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. New revised House Rules and Procedures were published in 2015 and is still awaiting translation to some of the main languages.<sup>272</sup> This remains and the RIA website states: "The updated House Rules & Procedure document has been sent for translation into the 11 other languages previously published. When these are returned those versions will be published on this website."

According to the RIA annual report 2015, RIA has established information clinics on a bi-annual basis to provide information on a one to one basis and also review the operation of the Direct Provision centre. According to the report "While residents can raise their concerns and address complaints at any time either to their centre manager or by using the official complaints procedure, information clinics provide an opportunity for face-to-face communication with RIA staff. This allows residents to address any issues of concern, complaints, queries and information requests in person. RIA staff seek to address concerns as appropriate, investigate issues raised and provide information and referral details where necessary. The residents are assured that any issues raised will be addressed confidentially and will only be discussed with relevant personnel with their agreement."<sup>273</sup>

### 2. Access to reception centres by third parties

#### Indicators: Access to Reception Centres

1. 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. For example some election candidates for local elections were also refused entry to accommodation centres as well as a parish priest in another incident.

<sup>270</sup> *Ibid*, p. 69.

<sup>271</sup> Reception and Integration Agency (RIA), Policy and Practice Document on safeguarding residents against Domestic, sexual and gender-based violence and harassment, April 2014, available at: <http://bit.ly/2lvYqK0>.

<sup>272</sup> RIA, RIA House Rules and Procedures (Revised 2015), Paragraph 2.14, available at: <http://bit.ly/1MxvvMV>.

<sup>273</sup> Department of Justice and Equality, RIA Annual Report 2015, available at: <http://bit.ly/2mW2IHA>.

It is important to note that the High Court judgment of *C.A. and T.A.* found that the complete prohibition on guests in bedrooms was unlawful finding that resident's rooms could be protected as their 'home' under Article 40.5 of the Constitution.<sup>274</sup> The working group report recommended that RIA ensure in Direct Provision centres that rooms without CCTV are available for receiving visitors, social workers, legal representatives and other advocates.<sup>275</sup>

## G. Differential treatment of specific nationalities in reception

In terms of discrimination between different groups of asylum seekers, anecdotal evidence shows that relocated applicants from Greece are sometimes placed in DP centres instead of EROC's and when they are they often receive better conditions than other asylum seekers who have been a longer time in the system such as, for example, new furniture for their rooms. This creates tension within the asylum seeking community. Relocated asylum seekers also receive more support with regards to housing when transitioning out of Direct Provision and EROC's compared to other asylum seekers.<sup>276</sup>

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<sup>274</sup> See e.g. PILA, Guest article by Colin Lenihan – 'High Court finds some Direct Provision house rules unlawful and in breach of ECHR', November 2014, available at: <http://bit.ly/1HgZqWK>.

<sup>275</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para.4.122, 176.

<sup>276</sup> Irish Refugee Council, Submission to the Housing and Homelessness Committee, the reception and housing of asylum seekers and refugees in Ireland, May 2016, available at: <http://bit.ly/29fwYuH>.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2016: <sup>277</sup>	Not available
2. Number of asylum seekers in detention at the end of 2016: <sup>278</sup>	Not available
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	Not available

It should be noted that Ireland places very few asylum seekers or migrants in immigration detention.

In 2015 there were 342 407 committals in respect of immigration issues involving 390 detainees. This represents a slight decrease on 2014 (407 committals involving 374 detainees). The average daily number of persons in custody under this category in 2015 was 4, down from 6 in the previous year.<sup>279</sup>

There are no specially designated 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. This practice of detaining asylum seekers in prisons has been criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which found that a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence.<sup>280</sup> In response the Irish government stated that they planned to establish a specific immigration detention centre at Dublin airport in 2016 but in a parliamentary question response in July 2016 Minister Fitzgerald stated that “plans are being progressed for the provision of a dedicated immigration detention facility at Dublin Airport. I am informed that plans for the facility have been drawn up and agreement reached with the Office of Public Works and the Dublin Airport Authority for the necessary redevelopment work to be carried out. This redevelopment will be completed as soon as possible within the next 12 months and will replace the existing Garda Station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility.”

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.<sup>281</sup> Since the new system has just started it is not possible to determine if this practice will continue under the IPO. 35 applications for asylum were received from persons in prison in 2015.<sup>282</sup> 35 applications for asylum representing 1% of all applications were received from persons in places of detention in 2015.<sup>283</sup> Out of those, 17 were interviewed in places of detention.

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.<sup>284</sup>

<sup>277</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>278</sup> Specify if this is an estimation.

<sup>279</sup> Irish Prison Service, *Annual Report 2015*, available at: <http://bit.ly/2ISaaTd>.

<sup>280</sup> 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 16 to 26 September 2014, Council of Europe, 17 November 2015.

<sup>281</sup> ORAC, *Annual Report 2012*, available at: <http://bit.ly/1CWSYm6>.

<sup>282</sup> RIA, Annual Report 2015.

<sup>283</sup> ORAC, *Annual Report 2015*, 16.

<sup>284</sup> This regulation has not been revoked under the International Protection Act but Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 (S.I. No. 344 of 2000) has been revoked

There are no figures recorded for the numbers of asylum seekers in detention. 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 20(1) of the International Protection Act 2015(see [Grounds for Detention](#));
- ❖ 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).

It can be seen that detention is used for irregular entry. For example in September 2015 four Iranian asylum seekers were detained trying to enter Ireland on an Irish Ferries vessel at Rosslare Harbour.<sup>285</sup> It is unclear from the report as to whether they later had access to the asylum procedure in Ireland.

## B. Legal framework for detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |   |                                     |  |
|---|-------------------------------------|--|
| 1. In practice, are most asylum seekers detained                        |                                     |  |
| ❖ on the territory:   | <input type="checkbox"/> Yes        | <input checked="" type="checkbox"/> No     |
| ❖ at the border:  | <input type="checkbox"/> Yes        | <input checked="" type="checkbox"/> No     |
| 2. Are asylum seekers detained in practice during the Dublin procedure? | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
|   | <input type="checkbox"/> Never      |  |
| 3. Are asylum seekers detained during a regular procedure in practice?  | <input type="checkbox"/> Frequently | <input checked="" type="checkbox"/> Rarely |
|   | <input type="checkbox"/> Rarely     | <input checked="" type="checkbox"/> Never  |

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

#### Detention under the International Protection Act 2015

Section 20 International Protection Act 2015: Asylum seekers may be detained by an immigration officer or a member of An Garda Síochána (the Police) and be arrested without warrant if it is suspected that they:

- ❖ Pose a threat to public security or public order in the State;
- ❖ Have committed a serious non-political crime outside the State;
- ❖ Have not made reasonable efforts to establish their identity (including non-compliance with the requirement to provide fingerprints);
- ❖ Intend to leave the State and without lawful authority enter another State,
- ❖ Has acted or intends to act in a manner that would undermine (i) the system for granting persons international protection in the State, or (ii) any arrangement relating to the Common Travel Area
- ❖ Without reasonable excuse, have destroyed identity or travel documents or is or has been in possession of forged identity documents.

Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they:

- ❖ Are being detained

<sup>285</sup> The Irish Independent, ‘Iranian Asylum Seekers detained at Rosslare’, 7 September 2015, available at: <http://bit.ly/1M1268f>.

- ❖ Shall be brought before a judge of the District 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 accordance with Section 20(2) and (3) IPA.
- ❖ Are entitled to consult a solicitor
- ❖ 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
- ❖ 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 as soon as practicable. The court may make such orders as may be necessary for their removal.
- ❖ Are entitled to the assistance of an interpreter for the purposes of consulting with a solicitor.

The detaining officer must inform the IPO or IPAT, 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.

The District Court judge when reviewing the applicability of detention may commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention or release the person and make such a release subject to conditions, including conditions requiring him or her to (i) reside or remain in a specified district or place in the State; (ii) report at specified intervals to a specified Garda Síochána station or surrender any passport or other travel document that he or she holds. The District Court judge may vary, revoke or add a condition to the release on the application of the person, an immigration officer or a member of the Gardai Síochána.<sup>286</sup>

A member of the Gardai Síochána may arrest without warrant and detain, in a place of detention, a person who in their opinion has failed to comply with the Court's reporting conditions under Section 20(9) IPA. In such a case the applicant shall be brought before the District court again and if the judge feels grounds for detention apply under subsection (9) or (3) above then they may commit the applicant for further periods (each period being a period not exceeding 21 days) pending the determination of the person's application for international protection under section 20(12). In effect this means that an applicant can be detained for consecutive 21 day periods of detention which means the detention may be continuous and indefinite. There is no limit to the number of 21 day periods of detention which can run consecutively.

If a dependent child is with his or her parent and that parent is detained under Section 20 IPA, the immigration officer or member of the Gardai Síochána concerned shall, without delay, notify Tusla of the detention and of the circumstances thereof.

#### **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 he or she:

- ❖ Has failed to comply with any provision of the deportation order;
- ❖ Intends to leave the state and enter another state without lawful authority;
- ❖ Has destroyed identity documents or is in possession of forged identity documents; or
- ❖ 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. Section 5 Immigration Act 1999 has been amended under section 78 of the International Protection Act 2015 so that such persons in the category above may be arrested without warrant. Another ground under section 5 now is that a person may be arrested without warrant if they have failed to leave the State within the

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<sup>286</sup> Section 20(5) International Protection Act 2015.



time specified in a deportation order. Section 78(3) also enables persons to be detained at airport and ports of entry for periods not exceeding 12 hours.

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.

It should be noted that under the amendments to Section 5 under Section 78 IPA an immigration officer or member of Gardai Síochána may enter (if necessary, by use of reasonable force) and search any premises (including a dwelling) where a person is or where the immigration officer or the member, with reasonable cause, suspects that person to be, and where the premises is a dwelling, the immigration officer or the member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the immigration officer or the member to be in charge of the dwelling, enter that dwelling unless (a) the person ordinarily resides at that dwelling or (b) he or she believes on reasonable grounds that the person is within the dwelling.<sup>287</sup>

### **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."<sup>288</sup>

### **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 and/or 12 months imprisonment. In the case of *Dokie -v- D. P. P.* 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.<sup>289</sup>

Section 12 was replaced by Section 34 of the Civil Law (Miscellaneous Provisions) Act 2011 which states 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.

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<sup>287</sup> Section 78(11) International Protection Act 2015.

<sup>288</sup> ORAC, 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013'.

<sup>289</sup> High Court, *Dokie -v- D. P. P.* [2010] IEHC 110, Judgment of 25 March 2011.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?  
 Reporting duties  
 Surrendering documents  
 Financial guarantee  
 Residence restrictions
2. Are alternatives to detention used in practice?  Yes  No

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. Similarly Section 20(3)(b) IPA could be read in the same light as it contains the same alternative reporting conditions.

## 3. Detention of vulnerable applicants

### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  Frequently  
 Rarely  
 Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?  Frequently  
 Rarely  
 Never

The International Protection Act specifically prohibits detention of unaccompanied children. There is no available information on this issue, however detention is rarely used in practice in Ireland.

Age disputed children who two immigration officers or two members of the Gardai Síochána suspect, on reasonable grounds, to believe the person to be over the age of 18 years may be detained under section 20(7) IPA. However, they then must undergo an examination as to their age as soon as possible under section 25 IPA.

## 4. Duration of detention

### Indicators: Duration of Detention

1. What is the maximum detention period set in the law (incl. extensions): No maximum time
2. In practice, how long in average are asylum seekers detained? Not available

Ireland has not opted into the Returns Directive or the Reception Conditions Directive or the recast Asylum Procedures Directive. Data is not available on how long asylum seekers are detained but it is generally considered to be a short period of time pre-removal. The Irish Prison Service data does not break down between detention on other immigration grounds and detention as an asylum seeker. The 2015 Irish Prison Service Annual Report states that “in 2015 there were 342 committals in respect of immigration issues involving 335 detainees. This represents a decrease on the previous year (407 committals involving 390 detainees). The average daily number of persons in custody under this category was 4.”<sup>290</sup>

<sup>290</sup> Irish Prison Service, Annual Report 2015, available at: <http://bit.ly/2ISaaTd>, 23. For further data see also Global Detention Project, Ireland Immigration Detention Profile, January 2017, available at: <http://bit.ly/2kZtuAY>.

As noted above section 20 IPA shows that District Court judges can apply detention for consecutive 21 day time periods with no upper limit so detention could be indefinite under this provision.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law 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
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

Detainees were previously 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.

In December 2016 the Minister Frances Fitzgerald issued S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016 which provides the following list of places of detention:

- ❖ Castlerea Place of Detention
- ❖ Central Mental Hospital, Dundrum
- ❖ Cloverhill Prison
- ❖ Cork Prison
- ❖ Limerick Prison
- ❖ The Midlands Prison
- ❖ Mountjoy Prisons
- ❖ Saint Patrick's Institution, Dublin
- ❖ The Training Unit, Glengarriff Parade, Dublin
- ❖ Wheatfield Place of Detention, Dublin and every Gardai Siochana station.

Section 78(4) IPA states that a person detained under that section (78(1) and (2) i.e. with deportation order in force) may be placed on a ship, railway train, road vehicle or aircraft about to leave the State by an immigration officer or a member of the Gardai Siochana and shall be deemed to be in lawful custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves the State.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

1. Do detainees have access to health care in practice?  Yes  No  
❖ If yes, is it limited to emergency health care?  Yes  No

Previously legislation provided for principles which are required to be regarded when a person is detained.<sup>291</sup> 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 have a physical or mental disability. Secondly, 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, 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 stated how a detainee shall be treated when detained.<sup>292</sup> 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. However S.I. No 344 of 2000 on Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000 has been revoked under section 6 IPA. It is unclear if it will be replaced but the Minister has the power to issue regulations under section 3 for the purposes of applying the International Protection Act.

There is no specific provision relating to health care for detained asylum seekers and they would have access to the same health care as the general prison population. Section 33 of the Irish Prison Service Rules 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).<sup>293</sup> 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).<sup>294</sup>

<sup>291</sup> Section 4 of S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

<sup>292</sup> Section 18 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

<sup>293</sup> Statutory Instrument No. 252 of 2007, Prison Rules, 2007.

<sup>294</sup> Section 17 of the S.I. No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

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

Detention and prison conditions in Ireland have been criticised in relation to international standards.

In July 2015, an Afghan stowaway who was found at the side of a road after coming off a lorry was detained in **Cloverhill** prison. During a prison riot he was attacked and has his arm broken and face slashed by fellow prisoners. He subsequently sought asylum, in Ireland but his case highlights the fact that asylum seekers should not be detained in prisons in Ireland.<sup>295</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

- |  |   |                                  |                             |
|--|---|----------------------------------|-----------------------------|
| 1. Is access to detention centres allowed to |   |                                  |                             |
| ❖ Lawyers:                                   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ NGOs:                                      | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ UNHCR:                                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| ❖ Family members:                            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

A detainee may receive a visit from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the Garda member in charge is satisfied that the visit can be adequately supervised and that it will not be prejudicial to the interests of justice. A detainee may make a telephone call of reasonable duration free of charge to a person reasonably named by him or her or send a letter.<sup>296</sup> 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.<sup>297</sup> 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. Prisoners can access lawyers but they need to ask for it. There is not enough detention of asylum seekers in Ireland to have such a service at the moment though that may change of course if Dublin airport gets a dedicated immigration facility.

<sup>295</sup> The Irish Times, 'Afghan man assaulted in Cloverhill riot applies for asylum', 31 July 2015, available at: <http://bit.ly/20fQ9FI>.

<sup>296</sup> Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.

<sup>297</sup> Cloverhill Visiting Committee, 'Annual Report' 2012, 17 May 2013, available at: <http://bit.ly/1HUuoj>.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic review of the lawfulness of detention?  Yes  No
2. If yes, at what interval is the detention order reviewed? 21 days renewable

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 District court judge 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 under section 20 International Protection Act 2015.

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*.

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 20 International Protection Act 2015.

### 2. Legal assistance for review of detention

#### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  Yes  No
2. Do asylum seekers have effective access to free legal assistance in practice?  Yes  No

The law 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”.<sup>298</sup> 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 20 International Protection Act 2015 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.

<sup>298</sup> Section 17 of Statutory Instrument No. 344/2000 - Refugee Act, 1996 (Places and Conditions of Detention) Regulations, 2000.



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. This is also the same under section 20(15) International Protection Act.

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.<sup>299</sup> No NGO provides routine legal assistance to detained asylum seekers. There is not enough detention of asylum seekers in Ireland to have such a service at the moment though that may change of course if Dublin airport gets a dedicated immigration facility.

### **E. Differential treatment of specific nationalities in detention**

There is no known differential treatment of specific nationalities.

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<sup>299</sup> Jesuit Refugee Service Ireland, Submission to Universal Periodic Review, June 2011, available at: <http://bit.ly/1Jh536Z>.

## Content of International Protection

### A. Status and residence

#### 1. Residence permit

##### Indicators: Residence Permit

- |  |                  |
|--|------------------|
| 1. What is the duration of residence permits granted to beneficiaries of protection? |                  |
| ❖ Refugee status   | 1 year           |
| ❖ Subsidiary protection  | Specified period |

Refugees and subsidiary protection beneficiaries in Ireland receive a 'Stamp 4' residence permit.<sup>300</sup> For refugees this grants permanent residency and a Gardai National Immigration Bureau (GNIB) card is issued firstly for one year and then renewed for three years renewable. Refugees are able to apply for naturalisation after 3 years from the date of their asylum application (see the section on [Naturalisation](#)).

Subsidiary protection beneficiaries also receive a 'Stamp 4' residence permit. This allows them to stay in Ireland for a specified period of time which is normally of three years renewable duration. They have a right to apply for naturalisation after 5 years from the date they were granted subsidiary protection.

For renewal of their GNIB cards refugees do not require a letter from the Irish Immigration and Naturalisation Service (INIS). However, subsidiary protection beneficiaries do require a letter from INIS to receive a further three years of stay in Ireland. No further information was available on any difficulties related to this process. However it should be noted that all migrants report difficulties with the long queues at INIS quay were permits are renewed with some people queuing overnight to access the office.

#### 2. Long-term residence

##### Indicators: Long-Term Residence

- |   |               |
|---|---------------|
| 1. Number of long-term residence permits issued to beneficiaries in 2016: | Not available |
|---|---------------|

Ireland has not opted into the Long-Term Residents Directive. Under the Irish national system, long-term residency can be granted with a Stamp 4 permission to remain which is valid for five years. This applies to persons who have been legally resident in the State for a minimum of five years on work permit, work authorisation or working visa conditions. Applications for long-term residency do not apply for persons granted refugee status or granted permission to remain on humanitarian grounds. It also does not apply for people who entered the State under a family reunification scheme.<sup>301</sup>

#### 3. Naturalisation

##### Indicators: Naturalisation

- |   |               |
|---|---------------|
| 1. What is the waiting period for obtaining citizenship?  |               |
| ❖ Refugee status  | 3 years       |
| ❖ Subsidiary protection                                   | 5 years       |
| 2. Number of citizenship grants to beneficiaries in 2016: | Not available |

Section 16(1)(g) of the Irish Nationality and Citizenship Act 1956 gives the Minister the power to dispense with certain conditions of naturalisation in certain cases, including if an applicant has refugee status or is stateless. It should be noted that the issuing of a certification of naturalisation is at the discretion of the Minister for Justice and Equality in Ireland. There are different criteria in place for non-EEA nationals and refugees.

<sup>300</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>301</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

People with refugee status can apply for naturalisation after three years' residence in the State from the date they arrived in the country not from the date when they were granted refugee status. For other non-EEA nationals, the residence required is five years. To apply for citizenship a form entitled 'Form 8' must be completed by the person concerned and submitted to INIS. This amended form was introduced in September 2016 and now applicants must submit their original passports with their application for naturalisation.<sup>302</sup> It must include accompanying evidence of the applicant's residence in Ireland and a copy of the declaration of refugee status.

There are no fees for refugees, stateless persons or programme refugees to apply for naturalisation except for the €175 application fee. Once the application is granted the certification of naturalisation is free for refugees. For other adults the cost for issuing a certificate of naturalisation is €950. The Minister for Justice and Equality holds citizenship ceremonies and in November 2016 2,000 people were granted citizenship in Ireland. It is unclear how many of them previously held refugee status or were beneficiaries of subsidiary protection. No information is available on any obstacles at present but in the past applications for citizenship were often subject to lengthy delays.

#### 4. Cessation and review of protection status

**Indicators: Cessation**

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?  Yes  No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Cessation is permitted under Irish law but it is not often applied in practice so limited information is available on it in Ireland.

The new International Protection Act (IPA) provides for cessation of refugee status and subsidiary protection under Section 9 and 11 of the Act respectively. A person ceases to be a refugee if he or she:

- ❖ has voluntarily re-availed himself or herself of the protection of the country of nationality;
- ❖ having lost his or her nationality, has voluntarily re-acquired it;
- ❖ has acquired a new nationality (other than as an Irish citizen), and enjoys the protection of the country of his or her new nationality;
- ❖ has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- ❖ can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of his or her country of nationality / country of former habitual residence if stateless. There is an exception to (e) in that it shall not apply if the person is able to invoke compelling reasons arising out of past persecution for refusing to avail of protection in his or her country of nationality.

Cessation of subsidiary protection occurs when the circumstances which led to a person's eligibility for subsidiary protection have ceased to exist or have changed to such a degree that international protection is no longer required. An exception to this is if there are compelling reasons arising out of past persecution for refusing to avail of protection in the applicant's country of nationality. As the new Act has only recently commenced there is no information on how it is applied in practice. No information is available on the amount of decisions relating to cessation in 2016. The Act indicates the procedure for cessation under the procedure of revocation under section 52 IPA.

<sup>302</sup> The application form is available at: <http://bit.ly/2kotix7>

## 5. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the regular procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Revocation of status is also provided in the International Protection Act under Section 52 on grounds such as where the person has misrepresented or omitted facts, whether or not including the use of false documents, and that was decisive in the decision granting the person a refugee declaration. Revocation has an established procedure in place under Section 52 and the applicant can appeal to the Circuit Court if necessary. Even though no personal interview of the beneficiary is conducted, they can submit information in writing.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  Yes  No
  - ❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  Yes  No
  - ❖ If yes, what is the time limit?  
12 months
3. Does the law set a minimum income requirement?  Yes  No

The most significant change in the International Protection Act 2015 relates to the family reunification provisions under sections 56 and 57 IPA. A beneficiary of international protection must apply for family reunification within 12 months of being issued with a refugee declaration or subsidiary protection declaration. No reference is made in the legislation to any income or health insurance requirement. It is the duty of the sponsor (refugee or subsidiary protection beneficiary) and the person who is the subject of the application (family member) to co-operate fully in the investigation including by providing all relevant information in his or her possession, control or procurement which is relevant to the family reunification application.

No differences exist between the right to apply for family reunification for refugees and subsidiary protection beneficiaries. Once a family reunification application has been granted that permission will cease to be in force if the family member does not enter and reside in the State by a date specified by the Minister when giving the permission in accordance with section 56(5) IPA. It remains to be seen how this will be applied in practice.

One significant change from the previous legal regime is that there is now no possibility for beneficiaries of international protection to apply for dependent family members i.e. adult children, parents of adult applicants, nieces, nephews who are dependent on the refugee or are suffering from a mental or physical disability to such extent that it is not reasonable for them to maintain themselves. Under the previous

Refugee Act 1996 as amended it was possible for the Minister to use her discretion to grant family reunification in such circumstances. There is no reference to dependent family members in the IPA.

## 2. Status and rights of family members

Family members must enter and reside within the State within a specified period of time issued by the Minister for Justice and Equality. They are entitled to the same rights and privileges as their sponsors as specified under section 53 IPA. The permission to reside in the State is linked to the sponsor so if the family member is a spouse or civil partner that permission shall cease to be in force where the marriage or civil partnership concerned ceases to exist.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of International Protection can reside anywhere in the State and are not restricted to particular areas, although social housing shortages can mean that it can be difficult for them to locate in heavily populated areas such as **Dublin**. Asylum seekers are subject to dispersal within the Direct Provision system under RIA and are required to remain in the specified Direct Provision centre for the duration of their international protection application.

Beneficiaries of international protection are entitled to the same medical care and social welfare benefits as Irish citizens so the provision of material conditions is not subject to actual residence in a specific place but there is a shortage of available and suitable accommodation which impacts both Irish citizens and refugees alike at the moment in Ireland.

### 2. Travel documents

According to section 55 IPA the Minister for Justice and Equality on application by the person concerned shall issue a travel document to a qualified person and his or her family member. The Minister for Justice may not, however, issue a travel document if the person has not furnished the required information as requested by the Minister or if the person is a person in respect of whom a subsidiary protection declaration is in force and who is able to obtain a national passport, or the Minister considers that to issue it would not be in the best interests of national security, public health or public order or would be contrary to public policy.

It is unclear how this will be applied in practice but it is problematic to note that the application form includes a section on efforts made to obtain a national passport which asks where the applicant has sought the assistance of his/her consular service to obtain a national passport and states 'you must enclose with this application a letter from your Embassy/High Commission showing that they have formally and unreasonably refused your application for a passport or travel document'.<sup>303</sup> Such a section could put refugees and subsidiary protection beneficiaries at risk by requesting them to contact their local embassy in Ireland. The application fee for a travel document is €80.

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<sup>303</sup> INIS Travel Document Form, January 2017, <http://bit.ly/2kjqNdK>.

## D. Housing

### Indicators: Housing

1. For how long are beneficiaries entitled to stay in reception centres?	Not defined
2. Number of beneficiaries staying in reception centres as of 26 January 2017:	475

The main source of accommodation is social (public) housing or private rental accommodation. Local authorities are the main providers of social housing but people need to be on housing lists which can take a considerable amount of time.

As of 26 January 2017, 475 persons are currently in Direct Provision centres after receiving their international protection status. According to the Minister of State, David Stanton “Once some form of status is granted, residents cease to be ordinarily entitled to the accommodation supports provided through RIA. Notwithstanding this fact, RIA have always continued to provide such persons with continued accommodation until they secure their own private accommodation. RIA are particularly mindful of the reality of the housing situation in the State and the pressures on the Community Welfare Service in respect of Rent Supplement or the City and County Councils in respect of Housing Assistance Payments and Housing Lists. The Government is committed to ensuring that persons who are availing of State provided accommodation, including those who have come to Ireland under the Irish Refugee Protection Programme, are supported in sourcing and securing private accommodation.”<sup>304</sup>

Difficulties exist for beneficiaries on accessing housing once status is granted as there is currently a housing crisis in Ireland which impacts everyone. This means that beneficiaries have difficulty leaving Direct Provision and finding suitable housing. This is exacerbated by the accommodation crisis in Ireland, where waiting lists for social housing are long and rental costs exceed the amounts paid in rent supplements.<sup>305</sup>

## E. Employment and education

### 1. Access to the labour market

According to Section 53(a) of the International Protection Act, beneficiaries of international protection are entitled to seek and enter employment, to engage in any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen. There are few schemes specifically devised and tailored for beneficiaries of international protection to access employment within the Department of Social Protection but they can avail of the supports provided to Irish citizens. The ESRI have reported that refugees in Ireland can face many challenges in navigating the system of mainstream service provision.<sup>306</sup> Information barriers can make it difficult for beneficiaries to navigate the system to access employment supports and the support available varies from region to region. A 2014 UNHCR report on integration in Ireland noted barriers such as language barriers, literacy problems, lack of recognition of foreign qualifications and lack of understanding of the work environment in Ireland.<sup>307</sup>

An example of the tailored schemes available is EPIC – Employment for People from Immigrant Communities which is a project run by the Business Community of Ireland and is a labour market programme aimed at assisting migrants including beneficiaries of international protection to enter the

<sup>304</sup> Parliamentary Question response by Minister for State, David Stanton available at: <http://bit.ly/2lBeDgu>.

<sup>305</sup> For further information see Irish Research Council in partnership with the Irish Refugee Council, *Transition from Direct Provision to life in the community*, June 2016, available at: <http://bit.ly/2lBtlnP>.

<sup>306</sup> ESRI, EMN, Integration of Beneficiaries of International Protection into the Labour Market, Policies and Practices in Ireland available at: <http://bit.ly/2lbcXof>.

<sup>307</sup> UNHCR, Towards a New Beginning, Refugee Integration in Ireland, May 2014.



labour market. As regards recognition of qualifications the Irish National Academic Recognition Information Centre (NARIC Ireland) facilitates the recognition of foreign qualifications in Ireland by advising clients on how these qualifications compare to the Irish qualifications on the National Framework of Qualifications.<sup>308</sup>

## 2. Access to education

People who have been granted refugee or subsidiary protection status have the right to access education and training in a similar manner to Irish citizens.<sup>309</sup> Child asylum seekers can access primary and second-level education. Under the Education (Welfare) Act 2000 education in Ireland is compulsory for all children from the age 6 to 16 years old. The education is provided through the regular school system and parents of children living in Direct Provision centres can apply for financial assistance towards the purchase of school uniforms under the Back to School Clothing and Footwear Allowance Scheme from their local community welfare officer. There is no automatic access to third level education for asylum seekers in Ireland. Some schemes have been introduced by way of the government and individual university initiatives.

In 2015 a pilot student support scheme was introduced to provide supports in line with the current student grant scheme to eligible school leavers who are in the asylum procedure. The scheme was repeated in 2016 and the Minister for Education and Skills announced in June 2016 that it would be continued for 2017. However, the pilot student support scheme has a number of onerous requirements to be met: a) the applicant meets the definition of a protection applicant or a person at leave to remain stage; b) have obtained their leaving certificate; c) have been accepted on an approved Post Leaving Certificate course or an approved undergraduate course; d) have attained a minimum of five academic years in the Irish school system and e) have been part of an application for protection or leave to remain for a combined period of five years. In 2015 only two students met the strict criteria for this government scheme.<sup>310</sup> The Irish Human Rights and Equality Commission (IHREC) recommended that the pilot support scheme for free fees be altered to remove the criterion of having spent five years in the Irish education system as this presents for many an insurmountable barrier to accessing affordable third-level education.<sup>311</sup>

Some organisations have stepped in to support student access to third-level education. For example, in the Irish Refugee Council a volunteer administers donations made by the public to help with education access. The funds are then spent on course fees, books, transport and other related expenses.<sup>312</sup> Some Universities have also assisted asylum seekers such as the National University of Ireland, Galway (NUIG) which announced in June 2016 that it will provide four scholarships for asylum seekers or refugees, subsidiary protection beneficiaries or those persons with permission to remain in Ireland.<sup>313</sup> In December 2016 Dublin City University (DCU) was also designated as a University of Sanctuary due to its commitment to welcome asylum seekers and refugees into the university community. DCU has offered fifteen academic scholarships available at either undergraduate or postgraduate level. It also has established a number of other welcoming initiatives such as a Langua-Culture Space initiative where DCU students teach beginners level English to asylum seekers and refugees.

As regards preparatory courses to access school, the Refugee Access Programme is part of the City of Dublin ETB's Separated Children Service which prepares newly arrived separated children seeking

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<sup>308</sup> Available at: <http://bit.ly/2lbKT90>.

<sup>309</sup> Department of Justice and Equality, Your Guide to Living Independently, An information booklet for people who have been granted refugee or subsidiary protection status or permission to remain, 2016.

<sup>310</sup> The Irish Examiner, Irish Refugee Council: Reform aid scheme for asylum seeker students, 27 August 2016.

<sup>311</sup> IHREC, Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women, Submission to the UN Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports, January 2017.

<sup>312</sup> The Irish Times, No asylum in Ireland's education system, 25 October 2016. Doras Lumni and NASC along with the Irish Refugee Council support third-level education access for asylum seekers.

<sup>313</sup> NUIG, Inclusive Centenaries Scholarship Scheme, Announcement, 17 June 2016.

asylum and other young people from refugee backgrounds for mainstream school and life in Ireland. The programme is from 12-20 weeks.

As regards access to education and vocational training for adults, for asylum seekers English language programmes are available but access often depends on the location of the Direct Provision centre. There are local based initiatives such as the SOLAS Orientation and Learning for Asylum Seekers programme in Galway and Mayo, the CREW project in **Carlow** and the Refugee Access Programme in **Dublin**.<sup>314</sup> Reports show that people transition from Direct Provision having been granted an international protection status often face practical barriers to further education such as their English competency not being at the required level, previous qualifications not being recognised, not being eligible for grants, not understanding admission procedures and having missed deadlines for college applications.<sup>315</sup>

## F. Health care

Beneficiaries of International Protection are entitled to the same medical care as Irish citizens in accordance with Section 53(b) IPA. Access to health care for asylum seekers is also on the same basis as Irish citizens and they eligible for medical cards subject to a means test and can register with local GPs. They have access to the Public Health Nursing System as well as dedicated asylum seeker psychological service operating out of St. Brendan's Hospital in Dublin. However, a report by the Royal College of Physicians of Ireland in June 2016 noted problems as regards access to health by way of a number of linguistic, cultural and financial barriers such as inconsistent availability of interpreters and translation services across the health service.<sup>316</sup> Furthermore, the report highlighted that where asylum seekers are moved from one direct provision or EROC centre to another, continuity of care with existing healthcare providers may be disrupted or lost.

Specialised treatment for torture survivors is mainly provided by SPIRASI which receives some funding from the Health Service Executive. However, its resources are limited and therefore the need for such specialised services outweighs the resources and capacity available though it is difficult to find quantifiable data on this. The Royal College of Physicians of Ireland reported "While voluntary organisations such as SPIRASI may provide these services in urban centres, there is no access to many others. Mainstream mental health services, already overburdened and under-resourced in caring for the general population, may not have the cultural or linguistic expertise to effectively deal with the mental health problems experienced by refugees and asylum seekers, and do not have adequate resources to liaise with the agencies responsible for asylum seekers."

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<sup>314</sup> For further information see European Commission, ICF study, *Labour market integration of asylum seekers and refugees*, Ireland, April 2016.

<sup>315</sup> Irish Research Council in partnership with the Irish Refugee Council, *Transition from Direct Provision to life in the Community, the experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland*, June 2016.

<sup>316</sup> Royal College of Physicians, Faculty of Public Health Medicine, *Migrant Health- the Health of Asylum Seekers, Refugees and Relocated Individuals, A position paper*, June 2016.