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# National Country Report

*Ireland*



## ACKNOWLEDGMENTS

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**This report is up-to-date as of 18 December 2013**

## The AIDA project

The AIDA project is jointly coordinated by the European Council on Refugees and Exiles (ECRE), Forum Réfugiés-Cosi, Irish Refugee Council and the Hungarian Helsinki Committee. It aims to provide up-to date information on asylum practice in 14 EU Member States (AT, BE, BG, DE, FR, GR, HU, IE, IT, MT, NL, PL, SE, UK) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public and includes the development of a dedicated website which will be launched in the second half of 2013. Furthermore the project seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



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## Statistics

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

	Total applicants in 2012	Refugee status	Subsidiary protection	Humanitarian Protection	Rejections (in-merit and admissibility)	Refugee rate	Subs. Pr. rate	Hum. Pr. rate	Rejection rate
	A	B	C	D	E	B/(B+C+D+E) %	C/(B+C+D+E) %	D/(B+C+D+E) %	E/(B+C+D+E) %
<b>Total numbers</b>	955	65	30	0	840	7%	3%	0%	90%
<i>Breakdown by countries of origin of the total numbers</i>									
<b>Nigeria</b>	158	5	0	-	145	3,3%	0%	-	96,7%
<b>Pakistan</b>	104	0	10	-	115	0%	8%	-	92%
<b>DR Congo</b>	58	5	0	-	50	9%	0%	-	91%
<b>Zimbabwe</b>	48	0	0	-	35	0%	0%	-	100%
<b>Albania</b>	46	0	0	-	30	0%	0%	-	100%
<b>South Africa</b>	33	0	0	-	35	0%	0%	-	100%
<b>China</b>	32	0	0	-	15	0%	0%	-	100%
<b>Afghanistan</b>	31	5	0	-	40	11,1%	0%	-	88,9%
<b>Algeria</b>	29	0	0	-	35	0%	0%	-	100%
<b>Iran</b>	24	5	0	-	15	25%	0%	-	75%
<i>Others<sup>1</sup></i>									
<b>Syria</b>	15	15	0	-	5	75%	0%	-	25%
<b>Russia</b>	10	-	-	-	-	-	-	-	-
<b>Somalia</b>	10	0	10	-	10	0%	50%	-	50%

Source: Eurostat

<sup>1</sup> Other main countries of origin of asylum seekers in the EU.

**Table 2: Gender/age breakdown of the total numbers of applicants in 2012**

	Number	Percentage
<b>Total number of applicants</b>	<b>956</b>	
<b>Men</b>	599	62.7%
<b>Women</b>	357	37.3%
<b>Unaccompanied children</b>	23	2.4%

Source: Office of the Refugee Applications Commissioner (ORAC)

**Table 3: Comparison between first instance and appeal decision rates in 2012**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions</b>	<b>935</b>		-	
<b>Positive decisions</b>				
<i>Total</i>	<b>95</b>	10%	-	-
<i>Refugee Status</i>	<b>65</b>	6.90%	-	-
<i>Subsidiary protection<sup>2</sup></i>	<b>30</b>	2.70%	-	-
<i>Hum/comp protection<sup>3</sup></i>	<b>0</b>	0	-	-
<b>Negative decisions</b>	<b>840</b>	89.80%	-	-

Source: Eurostat

**Table 4: Applications processed under an accelerated procedure in 2012**

	Number	Percentage
<b>Total number of applicants</b>	956	
<b>Number of applications treated under an accelerated procedure at first instance</b>	34	3.6%

Source: Office of the Refugee Applications Commissioner (ORAC)

<sup>2</sup> No appeal.

<sup>3</sup> No appeal.

**Table 3: Subsequent applications submitted in 2012**

	Number of subsequent applications submitted
<b>Total number</b>	16
<b>Top 5 countries of origin</b>	
<b>Nigeria</b>	2
<b>Iran</b>	2
<b>Somalia</b>	1
<b>Albania</b>	1
<b>Bangladesh</b>	1

Source: Office of the Refugee Applications Commissioner (ORAC)

**Table 4: Subsidiary Protection Applications**

<b>Subsidiary Protection Applications Received in Ireland 2012 by Nationality, Gender and Age-group</b>		
	Nationality	Applications
1	Nigeria	66
2	Pakistan	53
3	Congo, The Democratic Republic Of The	42
4	Zimbabwe	34
5	Afghanistan	30
6	Algeria	24
7	Cameroon	18
8	Moldova, Republic Of	18
9	Somalia	17
10	Georgia	13
	Other	196
	<b>Total</b>	<b>511</b>

Source: Reporting and Analysis Unit of the Department of Justice

## Overview of the legal framework

The most recent version of relevant national legislation(s) is available at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### Acts

[Refugee Act 1996](#)

[Immigration Act 1999](#)

[Immigration Act 2003](#)

[Immigration Act 2004](#)

[Illegal Immigrants \(Trafficking\) Act 2000](#)

[European Convention on Human Rights Act 2003](#)

### Statutory Instruments:

[S.I. No. 426/2013 European Union \(Subsidiary Protection\) Regulations 2013](#)

[S.I. No. 51/2011 - European Communities \(Asylum Procedures\) Regulations 2011](#)

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

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

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

[Refugee Act 1996 unofficial restatement updated to 2004](#)

[S.I. No. 55 of 2005 - Immigration Act 1999 \(Deportation\) Regulations 2005](#)

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

[S.I. No. 708 of 2003 - Aliens \(Visas\) Order 2003](#)

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

[S.I. No. 424 of 2003 - Refugee Act 1996 \(Appeals\) Regulations 2003](#)

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

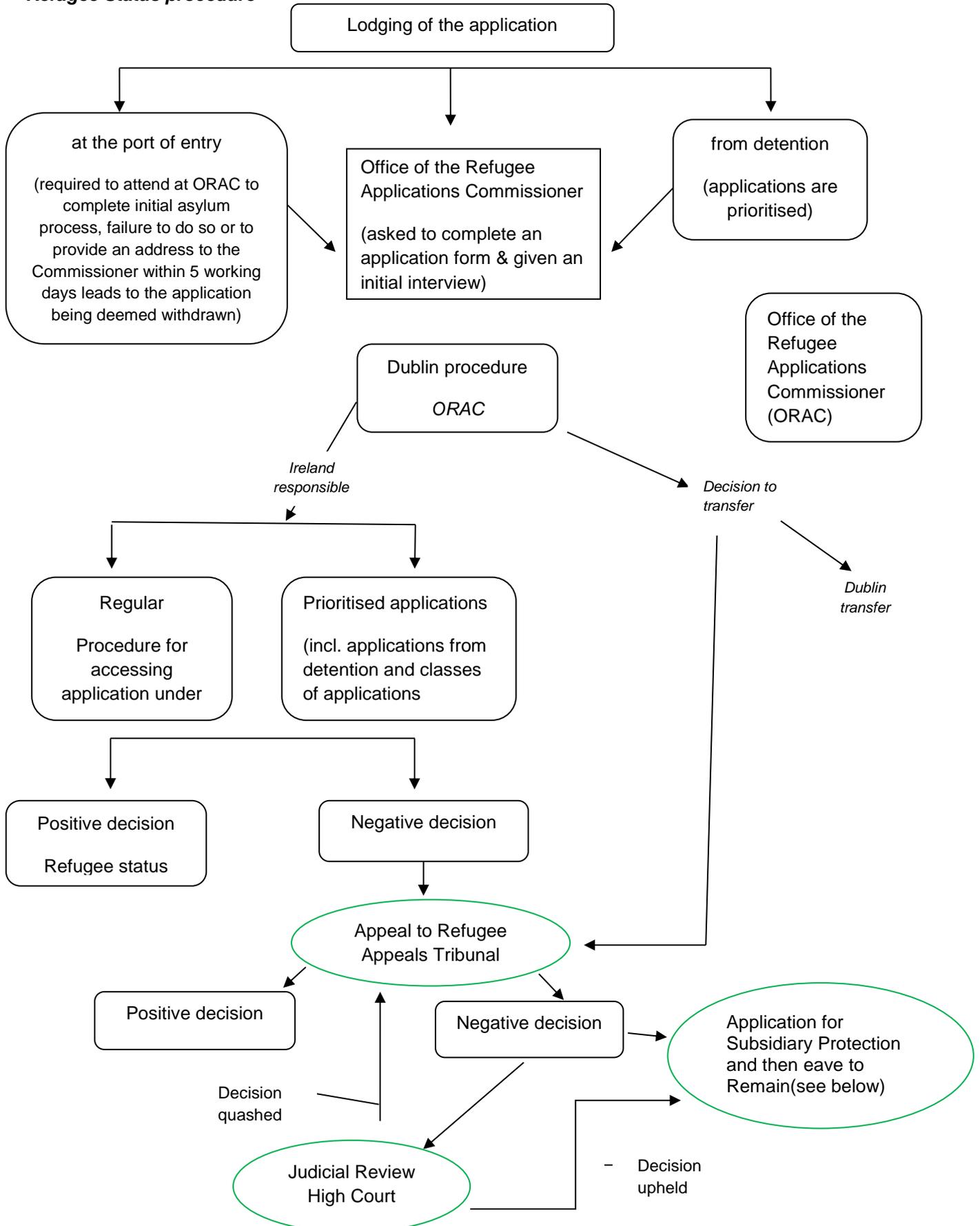
[S.I. No. 103 of 2002 - Immigration Act 1999 \(Deportation\) Regulations 2002](#)

# Asylum Procedure

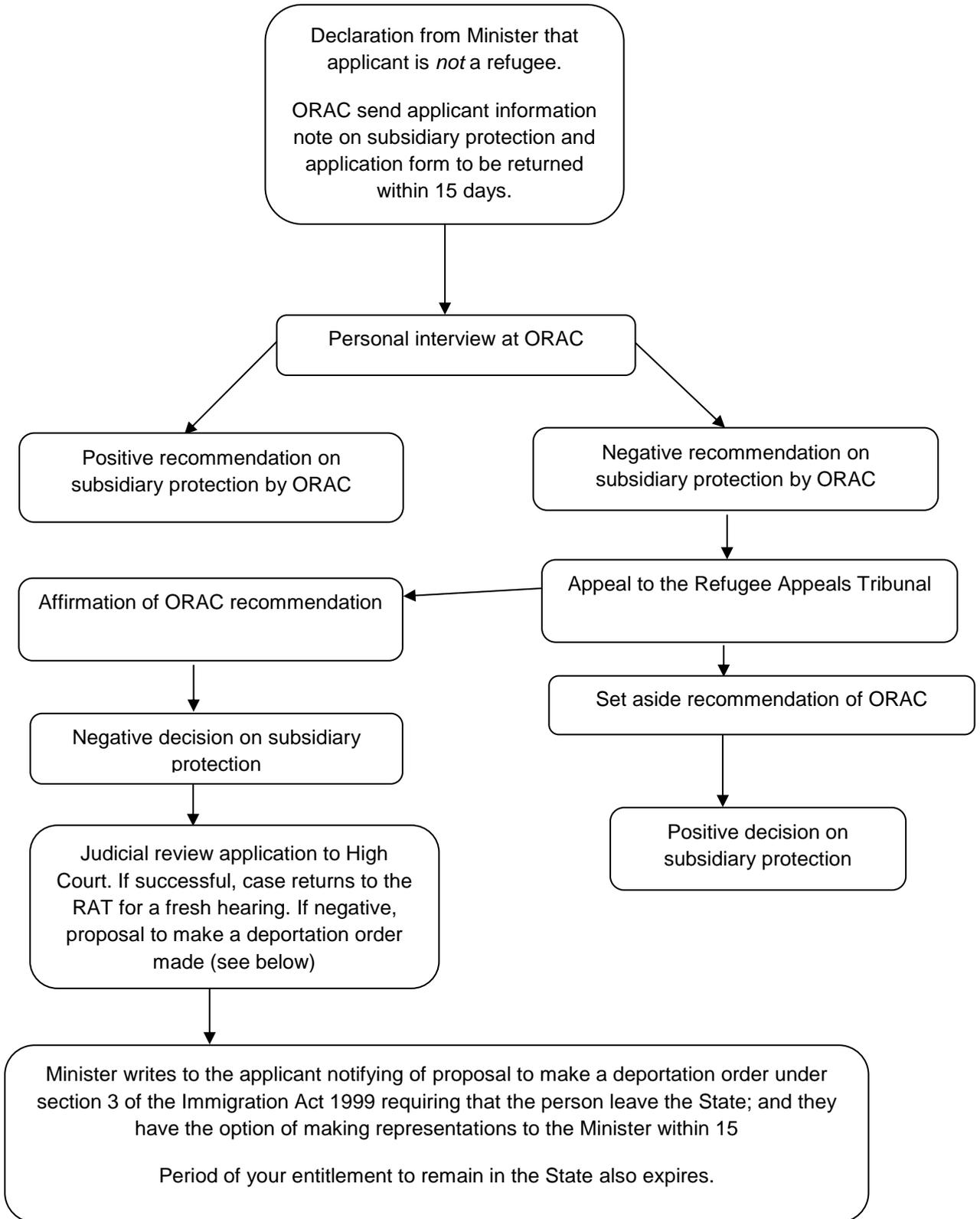
## A. General

### 1. Flow Chart of the Procedure

#### **Refugee Status procedure**



**Subsidiary protection procedure :**



## 2. Types of procedures

Indicators:

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

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

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

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

Stage of the procedure	Competent authority in original language
Application at the border:	Garda National Immigration Bureau
Application on the territory	Office of the Refugee Applications Commissioner (ORAC)
Dublin (responsibility assessment)	Office of the Refugee Applications Commissioner
Refugee status determination	Office of the Refugee Applications Commissioner
Appeal procedures: -Refugee and subsidiary protection appeals	Refugee Appeals Tribunal
Subsidiary Protection	Office of the Refugee Applications Commissioner (ORAC)
Initial determination of Subsequent application or Leave to Remain	Department of Justice

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? Y/N
Office of the Refugee Applications Commissioner	Not available	Independent Office (who submit recommendations to the Minister for Justice)	If the Minister considers that it is necessary in the interests of national security or public order, he by order: <ul style="list-style-type: none"> <li>a. Provide that s. 3 (certain rights of refugees), s.9 (leave to enter or remain in the State) and s.18 (family reunification) of the Refugee Act shall not apply</li> <li>b. Require the person to leave the State.</li> </ul>

## 5. Short overview of the asylum procedure

An asylum application may be lodged at the Office of the Refugee Applications Commissioner (ORAC). The application should be lodged at the earliest possible opportunity as any undue delay may prejudice the application. If the applicant made a claim for refugee status at the port of entry, they must attend ORAC to complete the initial asylum process. Failure to attend ORAC within 5 working days will lead to the application being deemed withdrawn.

The applicant first fills out an application form (known as Section 8 declaration) and is interviewed by an immigration officer or authorised officer of ORAC to establish basic information. The applicant is given a long questionnaire which must be completed and returned at a specified time and date. The information supplied in the questionnaire will be considered in assessing the asylum application. The applicant is also notified of the date and time of their substantive interview. The purpose of the interview is to establish the full details of the claim for asylum.<sup>4</sup>

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

The applicant is advised that they may obtain legal assistance from the Refugee Legal Service.

An application for refugee status may be examined under the Dublin II Regulation by ORAC. The Commissioner takes into account all relevant matters known to them, including written submissions made by the applicant when deciding if the application is to be transferred.

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

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

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<sup>4</sup> Ireland operates a split protection system so subsidiary protection is not considered at this stage. It is not possible to claim subsidiary protection until after a decision refusing the application for asylum has been received.

Where a positive recommendation is made the applicant receives a declaration of refugee status.

If a negative decision is reached the Minister may refuse to grant a declaration. The individual will then be sent a notice in writing stating that the application for a declaration as a refugee has been refused. The notice will include an Information Note on subsidiary protection and an application form. If the person considers that they may be eligible for subsidiary protection, they complete and return the form to the Commissioner within 15 working days from the sending of the notice.

Under new procedures introduced in 2013 as a result of the Court of Justice of the EU judgment in *M. M.*<sup>5</sup> all applicants for subsidiary protection are now being offered a personal interview with ORAC regarding their subsidiary protection application.

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

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

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

If the subsidiary protection application is unsuccessful the applicant will be sent a notice in writing stating that: (a) the application for subsidiary protection has been refused; (b) the period of entitlement to remain in the State has expired; (c) the Minister proposes to make a deportation order under section 3 of the Immigration Act 1999 requiring that the person leave the State; and (d) the person has the option of making representations to the Minister within 15 working days setting out why they should be allowed to remain in the State. This application is commonly referred to as an application for 'leave to remain' and is handled by a division of the Department of Justice. It is an administrative procedure and there is no oral hearing.

An applicant may seek to have a refugee or subsidiary protection recommendation judicially reviewed by the High Court. It is usually expected that an applicant will exhaust their remedies before applying for judicial review and therefore most judicial reviews are of recommendations of the Refugee Appeals Tribunal rather than ORAC. There are special time limits and procedures for bringing judicial review proceedings in respect of most asylum decisions. For judicial reviews of ORAC and the Refugee Appeals Tribunal an applicant must be granted leave at a pre-leave hearing before proceeding to judicial review. 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 huge backlog of cases awaiting determination. The court can affirm or set aside the decision of the first instance or appellate body. If the applicant is successful, their case is returned to the original decision making body for a further determination. Over the last number of years, it has not been uncommon for there to be a second judicial review after a further determination.

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

## B. Procedures

### 1. Registration of the Asylum Application

#### Indicators :

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

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

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

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

The question of whether an applicant can apply for subsidiary protection without having made an application for asylum was referred by the Irish Supreme Court to the Court of Justice of the European Union in *H.N. -v- Minister for Justice*<sup>6</sup>. The Court of Justice has not yet delivered a judgment, however, Advocate General Bot stated in his opinion<sup>7</sup> that the Qualification Directive must be interpreted as not precluding a national procedural rule that makes the consideration of an application for subsidiary protection subject to the prior refusal of an application for refugee status.

Thus, in practice, all protection applicants make an initial application to ORAC.

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

Immigration officers at the border, attached to the Garda National Immigration Bureau<sup>8</sup>, have no power to assess a claim for asylum. Where a person has stated an intention to claim asylum at the border, they must present themselves at ORAC in order to complete the initial asylum process. Failure to do so or, failure to provide an address to the Commissioner, within five working days will lead to the application being deemed withdrawn.

<sup>6</sup> Supreme Court, Order for Reference , *H.N. v. Minister for Justice* [2012] IESC 58, 19 December 2012)

<sup>7</sup> Opinion of Advocate General Bot delivered on 7 November 2013, Case C-604/12 *H. N. V Minister for Justice, Equality and Law Reform (Request for a preliminary ruling from the Supreme Court (Ireland))*, available at: .

<sup>8</sup> The Garda National Immigration Bureau is a department of An Garda Síochána, which is the national police service of Ireland and who performs duties similar to border guards in other countries.

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

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

There is no assistance given to enable someone to travel to the ORAC office in order to register a claim for asylum. Despite this, delay in making the application as soon as possible after arrival can damage the credibility of the claim. After a claim has been registered, an applicant accommodated in the Direct Provision system of accommodation will be funded by a Community Welfare Officer to travel to official appointments which includes further attendance at the ORAC office in connection with their application for asylum.

At the screening process with ORAC, the applicant makes a formal declaration that they wish to apply for asylum, this is known as the Section 8 declaration, which refers to the relevant Section in the 1996 Refugee Act. The applicant is interviewed by an authorised officer of ORAC to establish basic information, which is inserted into an ASY1 form. The interview takes place in a room (where other people are waiting and being interviewed) and is conducted by an official who sits behind a screen. If necessary, an interpreter may be made available if this is possible.

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

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

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

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

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

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

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

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

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

## 2. Regular procedure

### *General (scope, time limits)*

#### *Indicators:*

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

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

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

There is no time limit in law for ORAC to make a decision on the asylum application at first instance.<sup>9</sup> ORAC endeavour to deliver a recommendation at first instance on whether the person should be granted a declaration of refugee status within six months of the application. If a recommendation cannot be made within 6 months of the date of the application for a declaration, the Refugee Applications Commissioner shall, upon request from the applicant, provide information on the estimated time within which a recommendation may be made. However, there are no express consequences for failing to decide the application within a given time period. In 2012, non-prioritised cases were processed to completion within a median time of 9.1 weeks, 13 days ahead of the time period in 2011. In the latter half of 2012, the median processing time was 8.6 weeks.

Under section 12(1) of the Refugee Act 1996, the Minister may give a direction to the Commissioner to give priority to certain classes of applications. The Minister has issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, Croatia and South Africa. This means that if an applicant falls within the above categories their application will be given priority and may be dealt with by the Commissioner before other applications. All prioritised applicants were processed in a median time of 30 working days during 2011. In 2011, 3.5% of all applications were processed under the Ministerial Prioritisation Directive. These applications were normally scheduled for interview within 9 to 12 working days from the date of application and completed within a median processing time of 30 working days 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 2012 a total of 50 applications for asylum were received from persons in detention, which constituted 5.2% of all applications received in 2012. The preliminary interview in these cases took place within three working days of their date of application in so far as possible. Less than 15% of these were interviewed in a place of detention under section 11 of the Refugee Act, 1996, as the majority of cases were finalised in ORAC.

## Appeal

### Indicators:

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

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
o if yes, is the appeal	<input checked="" type="checkbox"/> judicial	<input type="checkbox"/> administrative
o If yes, is it suspensive	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
- Average delay for the appeal body to make a decision:  
 The median length of "time taken" by the Tribunal to process and complete Substantive 15 day appeals was approximately 22 weeks based on a sample of 735 cases. The median length of time taken by the Tribunal to process and complete Accelerated appeals received was 5 weeks in 2011 based on a sample of 335 cases.

The Refugee Appeals Tribunal (the 'RAT') was established on 4 October, 2000 to consider and decide appeals against Recommendations of the Refugee Applications Commissioner (ORAC) that applicants

<sup>9</sup> There is no time limit in law. Alan Shatter, Minister of Justice, [stated](#) in July 2013 that a reason Ireland was not opting in to the 'recast' asylum procedures directive was because the recast proposed that Member States would ensure that the examination procedure was concluded within 6 months after the date the application is lodged, with a possible extension of a further 6 months in certain circumstances. Alan Shatter stated that these time limits could impose additional burdens on the national asylum system if there was a large increase in the number of applications to be examined in the State, especially considering previous increases in the period 2001 to 2003.

should not be declared to be refugees. This legislation makes provision for both substantive appeals and accelerated appeals. It also provides for appeals of determinations made by ORAC pursuant to the Dublin II Regulation. S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 gives the RAT jurisdiction to hear appeals against decisions of ORAC on subsidiary protection. All appeals other than those against a Dublin II Regulation determination are suspensive.

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

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

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

In 2012 there were 23 Tribunal Members, their term of office expired in 2012 and 2013. On 11 November 2013, six Tribunal Members were appointed, five of whom were new Tribunal members, one was an existing Tribunal member.<sup>10</sup> Applications for expressions of interest for the recent appointment of members of the RAT were examined in the first instance by the Department of Justice in conjunction with the Public Appointments Service. Selection of candidates considered suitable for appointment by the Minister was based on a paper application.<sup>11</sup>

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

- a. If ORAC deems the application withdrawn, the Minister and applicant are advised of this recommendation. There is no appeal.
- b. Following a normal negative recommendation, the applicant has 15 working days to appeal to the RAT. The applicant is provided with the reasons for the negative recommendation. They may request an oral hearing before the RAT; if an oral hearing is not requested the appeal will be dealt with on the papers. Free legal representation can be obtained through the Refugee Legal Service.
- c. If the negative recommendation includes (1) a finding that the applicant showed little or no basis for the claim; (2) that the application is manifestly unfounded; (3) that the applicant failed to make an application as soon as reasonably practicable; (4) that the applicant has a prior application with another state; or (5) that the applicant is a national of, or has a right of residence in, a safe country, the deadline for filing an appeal is 10 working days. In these cases the applicant is not entitled to an oral hearing.
- d. If the applicant falls within a category of persons designated by the Minister and the recommendation includes one of the findings listed above, the applicant has 4 working days to lodge an appeal. There is no oral hearing.
- e. For subsidiary protection appeals the applicant has 15 working days from the sending of the notice of the Commissioner's negative recommendation. The Tribunal will hold an oral hearing where the applicant requests this in their notice of appeal; otherwise, the appeal may be determined without an oral hearing.

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<sup>10</sup> See the list of Members appointed on the Refugee Appeals Tribunal's [website](#).

<sup>11</sup> See the call for expression of interests [here](#)

The length of time for appealing a decision is generally between 10 and 15 working days depending on the recommendation of the Commissioner. There is legal provision for a 4 working day appeal; however this has not been used to date. All appeals other than those against a Dublin II Regulation determination are suspensive.

Legal aid for appeals is available through the Refugee Legal Service, however as legal representation is not provided for the first instance process, the applicant must engage and brief their solicitor within the limited time period for lodging an appeal.

Where an oral hearing is held, these are conducted in an informal manner and in private. The RAT holding hearings in private has been criticised by various NGOs. The applicant's legal representative may be present as well as any witnesses directed to attend by the Tribunal. Witnesses may attend to give evidence in support of the appeal, e.g. a country of origin expert or a family member. The Refugee Applications Commissioner or an authorised officer of the Commissioner can also attend. UNHCR may attend as an observer, in 2012 it did so in 'a number of cases' and also provided observations in a number of cases.<sup>12</sup>

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

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

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

The length of time for the Tribunal to issue a decision is not set out in law. The RAT annual report 2012 stated that the median length of "time taken" by the Tribunal to process and complete substantive 15 working day appeals was approximately 22 weeks based on a sample of 735 cases and the median length of time taken by the Tribunal to process and complete accelerated appeals received was 5 weeks in 2011 based on a sample of 335 cases.<sup>13</sup>

The chair of the Tribunal has discretion not to publish decisions that they consider are not of 'legal importance'.<sup>14</sup> The extent of the discretion was expounded in *A, O & F v RAT* (7 July 2006), where the Supreme Court held that the obligation to provide reasonable access to previous judgments was based on the general constitutional requirement of fair procedures and natural justice. The term 'legal importance' should not be given a narrow definition. The Supreme Court considered that in refugee cases it was generally beneficial for decision-makers to have access to the decisions of other tribunals in analogous situations from the same country of origin.<sup>15</sup> The Court also emphasised the value of published decisions to creating consistency in the interpretation of country of origin information.

That decisions of the RAT are not public has attracted criticism. The Honourable Mrs Justice McGuinness, a retired Supreme Court judge, expressed concerns over the lack of transparency and consistency brought about by the lack of published decisions:

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<sup>12</sup> UNHCR Ireland [2012 snapshot](#)

<sup>13</sup> [Refugee Appeals Tribunal Annual Report 2012](#)

<sup>14</sup> Sect. 19(4A)(a), Refugee Act 1996 as amended.

<sup>15</sup> *Manzeka v Secretary of State for the Home Department* [1997] Imm AR 524.

“One of the problems here is secrecy. The decisions of the Refugee Appeals Tribunal are only made available in a very limited way. The giving of reasons is very important in a common law system.....[the secrecy] means it is very difficult for lawyers to advise their clients, and there is no coherent jurisprudence of the right of appeal. Very different decisions have come from different members of the RAT and some members have resigned from it for principled reasons.”<sup>16</sup>

A decision of the RAT may be challenged by way of judicial review in the High Court. This is a review on a point of law only and cannot investigate the facts. In addition, the applicant must overcome a pre-leave hearing before proceeding to judicial review. This is a lengthy process. The Irish Courts Service Annual Report 2012 stated that the waiting time for asylum-related judicial reviews<sup>17</sup> was 37 months until the full hearing.<sup>18</sup> 440 new asylum-related judicial review applications were made in the High Court in 2012 – a 37% decrease on 2011.<sup>19</sup> Asylum related judicial reviews represented 44% of all judicial reviews applications made in 2012.<sup>20</sup> When the application for judicial review is made, a stay on the deportation process is also sought simultaneously.

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

### Personal Interview

*Indicators:*

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

### Refugee applications

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

- a) Whether the person wishes to make an application for a declaration of refugee status and is so, the general grounds upon which the application is based;
- b) The identity of the person;
- c) The nationality and country of origin of the person;

<sup>16</sup> ‘Replace refugee tribunal – McGuinness: Independent appeals system needed, says former judge’, *Irish Times*, 21 February 2011.

<sup>17</sup> ‘Asylum related’ is defined as applications generally seeking an order quashing the decision of a body such as the Refugee Appeals Tribunal, or an injunction restraining the Minister for Justice and Equality from deporting them.

<sup>18</sup> [Courts Service annual report 2012](#), page 10

<sup>19</sup> *Ibid* page 22

<sup>20</sup> *Ibid*, page 25

- d) The mode of transport used and the route travelled by the person to the State;
- e) The reason why the person came to the State; and
- f) The legal basis for the entry into or presence in the State of the person.

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

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

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

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

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

#### *Subsidiary protection applications*

As a result of S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 ORAC now considers and makes recommendations on applications for subsidiary protection. The S.I. is considered a response to the requirements suggested in the ruling of the Court of Justice of the EU in *M. M. v. Minister for Justice*.<sup>21</sup>

The S.I. creates various changes. The applicant is required to attend for an interview in relation to the application. The purpose of the interview is to establish the full details of the claim for subsidiary protection. Where an applicant does not attend for their scheduled interview their application may be deemed to be withdrawn. An applicant may make representations in writing to the Commissioner in

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<sup>21</sup> CJEU, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, 22 November 2012.

relation to any matter relevant to the investigation and the Commissioner shall take account of any representations that are made before or during an interview under the 2013 Regulations. Representations may also be made by the United Nations High Commissioner for Refugees and by any other person concerned.

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

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

### Legal assistance

#### Indicators:

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

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) 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.

An asylum applicant can register with the RLS as soon as they have made their application to ORAC. All applicants are assigned a solicitor and a caseworker. At first instance, however, an applicant does not normally meet the solicitor but is given legal information about the process by a caseworker under the supervision of a solicitor. It does not usually include advice on the facts of the case or assistance in completing the questionnaire, unless the applicant is particularly vulnerable (e.g. a minor or a person who cannot read or write).

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

Legal advice and representation is provided at appeal stage by in-house solicitors and through a panel of private solicitors and barristers maintained by the Refugee Legal Service.

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

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

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

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

### 3. Dublin

#### *Indicators:*

- Number of outgoing requests in the previous year: 199
- Number of incoming requests in the previous year: 245
- Number of outgoing transfers carried out effectively in the previous year: 70
- Number of incoming transfers carried out effectively in the previous year: 91

#### *Procedure*

#### *Indicator:*

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

The Dublin Regulation is transposed into Irish law through the Refugee Act 1996 (as amended).<sup>22</sup> It is implemented by the Dublin Unit in the Office of the Refugee Applications Commissioner (ORAC). The

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

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.

In 2011, 133 persons were transferred to Ireland under the Dublin II Regulation and 144 were transferred to another State.<sup>23</sup> In 2012, Ireland transferred 70 persons to another State, and 91 persons were transferred to Ireland.<sup>24</sup>

In 2011, a total of 125 Transfer Orders were made to the UK, with the top nationalities being Pakistan, Nigeria, DR Congo, Iraq, Iran and Afghanistan. In 2012, a total of 60 persons were transferred, with Pakistan, Afghanistan, Zimbabwe, Nigeria, Ghana, Somalia and Sudan representing the highest number of persons by nationality. Up until the 30<sup>th</sup> June 2013, a total of 40 persons were transferred to the UK with Nigeria, Afghanistan, Pakistan, Somalia, Kenya and Libya comprising the top nationalities.<sup>25</sup>

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

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

At any time during the first instance application process, the ORAC may determine that the person is subject to the Dublin II Regulation and make a decision that they will be transferred to another EU state. Where, before or during an interview under section 8 of the Act, it appears to an immigration officer or authorised officer that the application may be one which could be transferred under the Dublin Convention to another convention country under paragraph (1), they shall send a notice to that effect to the applicant, where possible in a language that the applicant understands. The individual can then make submissions in writing if they wish for their applications to be processed in Ireland. At this stage the Commissioner takes into account relevant information or submissions and representations made on the behalf of the individual in coming to a decision about their transfer.

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

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<sup>23</sup> See [ORAC 2011 Annual Report](#), page 71.

<sup>24</sup> See [ORAC 2012 Annual Report](#), page 69.

<sup>25</sup> [Statement](#) of Alan Shatter, Minister, Department of Justice, 09.07.2013.

When asked how long does it take in practice (on average) before the applicant is transferred to the responsible Member State, the Department of Justice stated: “We regret that we are not in a position to furnish this information.”

All applicants are given an ‘Information Leaflet for Applicants for Refugee Status in Ireland’ which is a guide to the procedures for processing applications for refugee status in Ireland. Chapter 4 of that document gives information about the Dublin II regulation and process.<sup>26</sup>

In cases where Ireland has agreed to take back an asylum seeker under the Regulation, the person may be detained on arrival and have difficulty in accessing the asylum procedure (possibly for a second time). If the person has already had a finally determined asylum application and seeks to make another asylum application they would have to make an application to the Minister under Section 17.7 of the 1996 Refugee Act (see section on subsequent applications).

It is possible that the authorities could then invoke Section 5 of the Immigration Act 2003 which states that a person whom an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects has been unlawfully in the State for a continuous period of less than 3 months, be removed from Ireland.

## Appeal

### Indicators:

- Does the law provide for an appeal against the decision in the Dublin procedure:
  - Yes       No
  - o if yes, is the appeal  judicial       administrative
  - o If yes, is it suspensive  Yes       No
- Average delay for the appeal body to make a decision: The median processing times for appeals dealt with by the RAT in 2011 was approximately 22 weeks in the case of substantive appeals (cases involving an oral hearing) and 5 weeks in the case of accelerated appeals (appeals dealt with on the papers). During 2011, 1,106 new appeals were received in the RAT with 1,330 decisions made.

An applicant has 15 working days to appeal from a decision of ORAC under the Dublin II Regulation. The appeal shall not be suspensive according to the legislation.<sup>27</sup> This may not be compatible with Article 27.3 of the Dublin III Regulation which seems to require that the appeal against a determination to transfer a person is suspensive or that there is an opportunity to request that it is suspensive. If the applicant is transferred before the Refugee Appeals Tribunal (RAT) has handed down its decision, the duty is on the applicant to notify the Tribunal of their address in the relevant country.

The RAT shall have regard only to whether or not the Member State responsible for examination of the application has been properly established in accordance with the criteria set out in the Regulation.<sup>28</sup> The limited scope of this appeal may not be compatible with Article 27 of the Dublin III Regulation which requires that a person shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

<sup>26</sup> See [Information Leaflet](#) for Applicants for Refugee Status in Ireland, A Guide to the procedures for processing applications for refugee status in Ireland in accordance with the provisions of the Refugee Act, 1996, as amended by the Immigration Act, 1999, the Illegal Immigrants (Trafficking) Act, 2000, and the Immigration Act, 2003.

<sup>27</sup> S. 6.2.b of S.I. No. 423/2003

<sup>28</sup> S. 8.8 of S.I. No. 423/2003

If the RAT overturns the decision of the Commissioner, the applicant is notified in writing and arrangements are made for their return if necessary. There are no oral hearings on appeals in relation to Dublin II.

The decisions of the RAT on Dublin II appeals are not published and there is no onward appeal. However, the decision of the RAT may be judicially reviewed.

In 2012, the RAT heard 40 appeals against the decision of ORAC relating to the Dublin II Regulation and affirmed 38 of them (95%).<sup>29</sup>

### *Personal Interview*

#### *Indicators:*

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

At any time during the initial asylum process (preliminary interview, long questionnaire, interview with a caseworker, report from caseworker), the Office of the Refugee Applications Commissioner (ORAC) may determine that a person is subject to the Dublin II Regulation and make a decision that they will be transferred to another state. If ORAC makes a determination that another Member State is responsible for determining the application under the Dublin II Regulation before the substantive interview generally no interview takes place. This practice may be incompatible with the requirement of Article 5 of the Dublin III Regulation to conduct a personal interview with the applicant.

### *Legal assistance*

#### *Indicators:*

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

An applicant may access legal information through the Refugee Legal Service but technically it is not completely free legal representation. There is a small amount to be paid but it is often waived (see the section on Legal Assistance under the Regular Procedure).

This assistance also applies to the appeal. Like all asylum applicants, there is the opportunity to register with the Refugee Legal Service as soon as an asylum application has been made. If a person is notified of the decision to transfer them to another Member State at the same time that transfer takes place then accessing effective legal advice prior to the transfer may be difficult or impossible.

<sup>29</sup> See [RAT 2012 Annual Report](#), page 31.

## Suspension of transfers

### Indicator:

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

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

## 4. Admissibility procedures

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

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

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

A person can be refused leave to land at a port or border and then subsequently make an application for asylum. In 2012 a total of 2397 non-nationals were refused leave to land, 158 of those persons were subsequently permitted to enter the State having made an application for asylum. In the first six months of 2013 967 non-nationals were refused leave to land, 74 were subsequently permitted to enter the State having made an application for asylum.<sup>30</sup>

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

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

<sup>30</sup> Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Derek Nolan TD; Dept. Of Justice and Equality: Refugee Status, 22nd July 2013



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

### Legal assistance

#### Indicators:

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

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

There is a difference to the regular procedure in that someone who has claimed asylum can register with the Refugee Legal Service.

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

### General (scope, time-limits)

#### Indicators:

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

The Refugee Act provides that a person arriving at the frontiers of the State seeking asylum shall be given leave to enter the State by the immigration officer concerned. This is on a temporary basis and does not entitle the person to apply to vary their leave. It is simply to admit them to proceed with their asylum claim. Persons to whom such temporary residence is granted is entitled to remain in the state

until (a) they are transferred under Dublin II; (b) their application is withdrawn; (c) they receive notice that their application for protection has been refused by the Minister.

S.I. No. 426/2013 European Union (Subsidiary Protection) Regulations 2013 requires that the Office of the Refugee Applications Commissioner (ORAC) shall give to an applicant a temporary residence certificate while their subsidiary protection application is being considered.

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

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

### Appeal

#### Indicator:

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

There is no appeal.

### Personal Interview

#### Indicators:

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

An immigration officer grants leave to enter the state following an interview at the border. Section 8 of the Refugee Act 1996 states that a person, who arrives at the frontiers of the State, seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution, shall be interviewed by an immigration officer as soon as practicable after such arrival, This interview shall seek to establish *inter alia* (a) whether the person wishes to make an application for a declaration and, if do so, the general grounds upon which the application is based, (b) the identity of the person, (c) the nationality and country of origin of the person, (d) the mode of transport used and the route travelled by the person to the State, (e) the reason why the person came to the State, and (f) the legal basis for the entry into or presence in the State of the person, and shall, where necessary and possible, be conducted with the assistance of an interpreter. A record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and to the Commissioner where

the interview was conducted by an immigration officer (see the section on Personal Interview under Admissibility Procedure).

### *Legal assistance*

#### *Indicators:*

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

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

## **6. Accelerated procedures**

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

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

1. the grounds for application for asylum;
2. the country of origin or habitual residence;
3. any family relationship between applicants;
4. the ages of applicants;
5. the dates on which applications were made;
6. considerations of national security or public policy;
7. the likelihood that the applications are well-founded;
8. if there are special circumstances regarding the welfare of the applicant or of their family members;
9. whether applications do not show on their face grounds for the contention that the applicant is a refugee;
10. whether applicants have made false or misleading representations in relation to their applications;
11. whether applicants had lodged prior applications for asylum in another country;
12. whether applications were made at the earliest opportunity after arrival;
13. whether applicants are nationals of or have a right of residence in a country of origin designated as safe under this section;
14. if the applicant is receiving from organs or agencies of the UN protection or assistance;
15. if the applicant is recognised by the competent authorities of the country of residence as having rights and obligations which are attached to the possession of the nationality of that country;
16. if there are serious grounds for considering that they have committed a crime against peace, a war crime or a crime against humanity, or has committed a serious non-political crime or is guilty of acts contrary to the purposes and principles of the UN.

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

ORAC, in their 2012 annual report stated that 3.6% of applications made in 2012 were processed under the Ministerial Prioritisation Directive and were normally scheduled for interview within 9 to 12 working

days from the date of application and completed within a median processing time of 20 working days from the date of application. In 2012, prioritised cases were finalised 10 days ahead of the 2011 time period.<sup>31</sup>

The Court of Justice of the European Union, in *H.I.D.*,<sup>32</sup> when considering Section 12 of the Refugee Act, found that the Asylum Procedures Directive must be interpreted as not precluding a Member State from examining, by way of prioritised or accelerated procedure, in compliance with the basic principles and guarantees set out in Chapter II of that Directive, certain categories of asylum applications defined on the basis of the criterion of the applicant's nationality or country of origin.

## Appeal

### Indicators:

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

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

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

they have four working days to make an appeal and that appeal shall be determined without an oral hearing.<sup>33</sup> The appeal is suspensive.

In 2012, the Refugee Appeals Tribunal considered 190 accelerated appeals, in comparison to 386 in 2011.<sup>34</sup>

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

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

<sup>31</sup> See [ORAC 2012 Annual Report](#) , page 5.

<sup>32</sup> CJEU, *H.I.D.*, *B.A. v Refugee Applications Commissioner, Refugee Appeals Tribunal, Minister for Justice, Equality and Law Reform, Ireland, Attorney General* - C-175/11, 31 January 2013

<sup>33</sup> Section 13.8 of the Refugee Act 1996

<sup>34</sup> See [RAT 2012 Annual Report](#), page 18.

## Personal Interview

### Indicators:

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

Personal interviews are conducted for all applicants at first instance. At appeal, there is no oral hearing where an applicant is subject to the accelerated procedure and the recommendation of the Commissioner includes one of the following findings that the applicant:

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

## Legal assistance

### Indicators:

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

Applicants under the accelerated procedure fall under the same rules for legal assistance as those not under the accelerated procedure.

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

### Indicators:

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

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

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

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

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

The Office of the Refugee Applications Commissioner (ORAC) provide written information to every asylum seeker and there is extensive information available on the ORAC website.

As stated above, information about the application of the Dublin II regulation is not sufficient and it is not uncommon for applicants to be unaware that they are being considered under Dublin II.

Access at reception centres is discretionary and in practice presents problems for NGOs.

## D. Subsequent applications

### Indicators:

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

Section 17(7) of the Refugee Act 1996 (as amended by S.I. No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011) sets out that a person who wishes to make a subsequent asylum application must apply to the Minister for permission to apply again. The application must set out the grounds of the application and why the person is seeking to re-enter the asylum process. The application is made in writing and there is no oral interview. The Minister shall consent to a subsequent application being made when new elements or findings have arisen or have been presented by the

person concerned which makes it significantly more likely that the person will be declared a refugee, and the person was capable of presenting those elements or findings for the purposes of their previous application for a declaration.

The law does not state whether or not an application to the Minister for a subsequent application for a declaration is suspensive. But Section 17(7) of the Refugee Act 1996 (as amended) states that the Minister shall, as soon as practicable after receipt of an application give to the person concerned a statement in writing specifying, in a language that the person may reasonably be supposed to understand (a) the procedures that are to be followed for the purposes of subsections (7) to (7H), (b) the entitlement of the person to communicate with the High Commissioner, (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 the effect of subsections (7) to (7H), and of any other relevant provision of this Act or of the Regulations of 2006.

If the Minister agrees, the person goes through the asylum procedure in the normal way i.e. attends for interview at the Office of the Refugee Applications Commissioner etc. From January-October 2013, ORAC considered seven 're-applications for a declaration as a refugee'.

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

In *A. v Minister for Justice & Equality & Ors*<sup>35</sup> the High Court of Ireland considered an application which had historically involved an 'appeal' of a decision to refuse to grant readmission to the process. This appeal in fact seems to have been a request for a review to the Minister of the original decision rather than a formal appeal. It is unclear how many unsuccessful applications were made to the Minister.

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

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

### 1. Special Procedural guarantees

#### Indicators:

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

<sup>35</sup> High Court of Ireland, *A. -v- Minister for Justice & Equality & Ors*, [2013] IEHC 355 (18 July 2013).

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

Where it appears to an immigration officer or an officer of the Office of the Refugee Applications Commissioner (ORAC) that a child under the age of 18 years, who has arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer informs the Health Services Executive (HSE) and the Child Care Act 1991 comes into play. The HSE is responsible for making an application for the child, where it appears to the HSE that an application should be made by or on behalf of the child. In which case, the HSE arranges for the appointment of an appropriate person to make application on behalf of the child. Any legal costs arising from the application are paid by the HSE.

Section 15 of the Refugee Act 1996 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.

Section 15 of the Refugee Act 1996 states that the application of Regulations 16 to 19 (which relate to family reunification, the issuing of permission to remain in the state and other rights) 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.

## 2. Use of medical reports

### Indicators:

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

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the Commissioner any relevant information. Applicants may approach an NGO called Spirasi, which specialises in assessing and treating trauma and victims of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately.

In cases looked at the Irish Refugee Council as part of its research on the assessment of credibility in the Irish asylum procedure,<sup>36</sup> both ORAC and the Refugee Appeal Tribunal noted that the medico-legal reports did not necessarily assist as they either do not say how the injuries were sustained or are mainly based on the testimony of the applicant.

<sup>36</sup> See Difficult to Believe, [The assessment of asylum claims in Ireland](#), section 6.4.

### 3. Age assessment and legal representation of unaccompanied children

#### *Indicators:*

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

Section 85(a) provides guidance on identification of unaccompanied children only once the applicant is recognised as a child. There is no procedure set out in law for assessment of age nor are there criteria to decide which young people should undergo age assessment. However, there is a method for assessing age. This is done by the Health Services Executive (HSE), by two social workers and often an interpreter by phone. They use a social age assessment methodology which includes questions about family, education, how the young person travelled to Ireland, etc. The social worker assesses the young persons aged based on how articulate they are, their emotional and physical developmental, etc. However, the Office of the Refugee Applications Commissioner has the final say. The procedure is commenced by ORAC or the Health Services Executive and initiated if a social worker in the HSE or an immigration official in ORAC believes the young person is over 18.

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

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

There are no exceptions for age; however, under the constitution anyone who is married under Irish law is no longer considered a child.

The provisions on the appointment of a legal representative do not differ depending on the procedure (e.g. Dublin). The Dublin II Regulation is engaged once an application is made. At that point, the child will typically have a solicitor, whose duty it is to provide advice and legal representation to the child. If the child is in care, they will also have a social worker whose duty it is to provide for the immediate and ongoing needs and welfare of the child through appropriate placement and links with health, psychological, social and educational services. .

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

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

The duties of the legal representatives with regards to the asylum procedure are set out in Section 8.5(a):

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

## F. The safe country concepts (if applicable)

### Indicators:

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

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

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

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

The Minister may amend or revoke any such order.

Where it appears to the Refugee Commissioner that an applicant is a national or has a right of residence in a designated safe country then the applicant is presumed not to be a refugee unless they can show reasonable grounds for the contention that they are a refugee. Their application will be given priority and may be dealt with by the Commissioner before other applications.

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

S.I. No. 714/2004 - Refugee Act 1996 (Safe Countries of Origin) Order 2004 listed Croatia and South Africa as safe countries of origin.

There has been no further designation of safe countries of origin since S.I. No. 714/2004.

Section 12(4) does not make provision for a review of a designation and no review seems to occur in practice. However, the Minister may, by order, amend or revoke a designation order.

Section 12(4) states that a person who is a national of one of those countries shall be presumed not to be a refugee unless he or she shows reasonable grounds for the contention that he or she is a refugee. There is no appeal against a designation that a person comes from a designated safe third country. Applications from nationals of these countries will have their applications fast tracked and therefore subject to an accelerated procedure.

## G. Treatment of specific nationalities

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

The Minister has also issued prioritisation directions that apply to persons who are nationals of, or have a right of residence in, Croatia and South Africa. This means that if an applicant falls within the above categories; their application will be given priority and may be dealt with by the Commissioner before other applications.

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

According to the European Asylum Support Office, in the first quarter 2013, 20% of all grants of refugee status in Ireland were to Syrians (5 cases).<sup>37</sup> Out of 15 positive decisions for Syrians in 2012<sup>38</sup>, all applicants were granted refugee status.<sup>39</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 (IRC) 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);

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<sup>37</sup> EASO, [Quarterly Asylum Report](#), Q1 2013, Table No 1.

<sup>38</sup> It should be noted that 15 new asylum applications were submitted by Syrian nationals the same year. See Eurostat data, accessed on 26 August 2013.

<sup>39</sup> Eurostat data, accessed on 26 August 2013.

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>40</sup>

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

In response to a flash appeal by UNHCR, Ireland has agreed to accept 30 persons from Syria for resettlement in 2013. This is in addition to the annual UNHCR-led resettlement programme in which Ireland participates.<sup>41</sup>

There is no special procedure or mechanism to grant asylum to family members of recognised refugees in Ireland who are still in Syria. Minister Alan Shatter has stated that applications for asylum can only be made by persons when they are in Ireland and applicants should seek asylum in the first safe country they reach.<sup>42</sup>

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

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<sup>40</sup> Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question, June 13, 2013.

<sup>41</sup> Alan Shatter, Minister, Department of Justice, Equality and Defence, Written answer to Parliamentary question, April 16, 2013.

<sup>42</sup> Alan Shatter – Written Answers to the Parliamentary question from Dara Calleary TD; Dept. Of Justice and Equality: Refugee Status, Nov. 6, 2012.

## Reception Conditions

### A. Access and forms of reception conditions

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

##### Indicators:

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

There is no legislation regulating reception conditions in Ireland. In practice, reception is carried out by the Reception and Integration Agency (RIA), a functional unit of the Irish Naturalisation and Immigration Service, which is a division of the department of Justice, under a policy known as Direct Provision and Dispersal. Despite the name, RIA has no integration function.

On lodging an application with the Office of the Refugee Applications Commissioner, the applicant is referred to RIA and brought to a reception centre near Dublin airport. Within a few weeks, the applicant is allocated a space in one of the privately operated accommodation centres dispersed throughout the country. The applicant remains in such accommodation until they are granted status, are deported or transferred under Dublin II.

Support, including free medical treatment, accommodation, and cash allowance may be withdrawn by RIA for disruptive behaviour or failure to cooperate. There is no avenue for appeal.

#### 2. Forms and levels of material reception conditions

##### Indicators:

- Amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): weekly cash allowance of €19.10 per adult or €9.60 per child

In 2000, following a dramatic 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>43</sup> Originally, it was intended that asylum seekers would spend no more than 6 months living in DP.

There are approximately 4,806 asylum seekers in Direct Provision, 1,632 – or 34% of whom are children. DP centres are predominantly former hostels, hotels and holiday sites, mostly run by private contractors on a for profit basis. Asylum seekers receive full board and their basic needs, such as toiletries, are directly provided. Asylum seekers also receive a weekly allowance of €19.10 per adult and €9.60 per child. They cannot work and are not entitled to social welfare or child benefit.

Due to delays in the asylum system, most residents have been in DP for over three years and significant numbers for more than seven. Broken, dilapidated furniture in common areas and infestations of mice, cockroaches and insects have been reported. Whole families including both parents and children of school-going age are often allocated just one room. Teenage children commonly share with siblings or parents of the opposite sex. Single residents and single mothers are often required to share bedroom and bathroom facilities.

A culture of fear and the constant threat of transfer mean residents are frequently afraid to complain and are discouraged from interacting with inspectors. Residents report incidents of intimidation and harassment by staff in some centres. Allegations have been made of abusive and foul language directed towards residents and frequent threats of transfer.

Residents have reported poor quality, repetitive, insufficient and even expired foodstuffs are commonplace. Culturally appropriate food, e.g. Halal, is not always provided, or utensils used to serve pork are used to serve other foods. The scheduled meal times cause problems during Ramadan. The majority of DP residents are obliged to use their small weekly allowance to buy food.

The rigid meal times and lack of self-catering facilities are especially problematic for children with special dietary needs or who need to eat more regularly than three times a day. Child malnutrition appears in a large number of requests for transfer to self-catering accommodation. The requests frequently contain doctors' letters which attribute childhood illnesses to poor nutrition.

Lack or unavailability of basic toiletries, i.e. soap, tissue, shampoo, is common. Some centres will not provide these provisions after 5pm. Some centres have communal bathroom facilities such that children share with unrelated adults. Communal facilities mean single parents have to choose between leaving a child unsupervised while the parent uses the facilities or bringing the child with them to the bathroom.

The 2012 report by 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 was raped and became pregnant by a male resident.<sup>44</sup>

Residents report that complaints about conditions are met with a transfer notice to a centre in a different part of the country. In recent years, centres have been closing in line with the decrease in asylum seekers. Residents are generally given little notice of closures and there is little consideration of the disruption of transferring children during the school year as well as the cost in terms of uniforms, etc.

Total cost of Direct Provision contracts 2000 – 2010 = €655 million

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<sup>43</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>44</sup> G. Shannon, ['Fifth Report of the Special Rapporteur on Child Protection'](#) (2012).

Cost per person (based on 2012 budget) = €13,000

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

Direct provision continues to be frequently debated in the Oireachtas.

In summer 2013, the then Ombudsman for Ireland, (now European ombudsman) Emma O'Reilly, in an article for the magazine 'Studies', described living in direct provision as "involving very little privacy, frequent overcrowding, no choice of diet, no facilities to have visitors, little scope for recreation or any meaningful activity and, not least, effectively no income. Enforced idleness and lack of engagement with wider society tend to be a feature of the lives of asylum seekers in Ireland."<sup>45</sup>

On 10 December 2013 the Irish Refugee Council launched a document offering alternatives to direct provision.<sup>46</sup> A TD<sup>47</sup> speaking on behalf of the Minister for Justice responded to the contents of the report stating, *inter alia*, that the document states that the proposals "are addressed on the basis that Ireland is now receiving less than 1,000 new asylum claims a year" and that the reality is asylum trends can fluctuate and we cannot assume that this will remain the case. In addition the TD stated that changes to the asylum system, including reception conditions, can and do impact on the number of asylum claims that are made and that this also needs to be borne in mind.

### 3. Types of accommodation

#### Indicators:

- Number of places in all the reception centres (both permanent and for first arrivals): 5522
- Number of places in private accommodation: all privately operated.
- Number of reception centres: 35
- Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
- What is, if available, the average length of stay of asylum seekers in the reception centres?  
Over 3 years
- Are unaccompanied children ever accommodated with adults in practice?  Yes  No

There are 35 accommodation centres located in 17 counties around Ireland with a total capacity of 5522 and occupancy of 4381 as of December 2013.<sup>48</sup> The Reception and Integration Agency (RIA) is currently reducing its capacity in line with the decrease in numbers arriving in the State. So far in 2013, one hostel in Donegal has shut down. Overcrowding of rooms is prevalent with whole families – adults and children of varying ages – sharing one bedroom. The centres are operated by private firms on contract with RIA.

<sup>45</sup> Emily O'Reilly, [SUMMER 2013 LEAD ARTICLE](#), Summer 2013, vol.102, no.406.

<sup>46</sup> Direct Provision: [Framing an alternative reception system for people seeking international protection](#), 10.12.2013.

<sup>47</sup> Ireland is a parliamentary democracy. The National Parliament (Oireachtas) consists of the President and two Houses: Dáil Éireann (House of Representatives) and Seanad Éireann (the Senate) A TD is a member of Dáil Éireann. A Member's official Irish title is "Teachta Dála" which in English means "Deputy to the Dáil". Members are generally called "TDs" or "Deputies".

<sup>48</sup> Dinny McGinley, TD, Written answer to Parliamentary question, 12th December 2013.

Types of accommodation include former tourist accommodation, a former student hostel, a former convent and a former caravan park. There is one reception centre, close to Dublin airport, where new arrivals are brought.

There are some men only hostels but none for women only or women and children only.

Unaccompanied children are under the care of the Health Service Executive until they turn 18. This means they should be in either a residential home or a supported lodging or foster care settings until, at least, their 18<sup>th</sup> birthdays. Children referred to the Health Service Executive will initially be placed in a registered and inspected residential home for children. There are four such homes in Dublin used for the purposes of housing unaccompanied children who are referred to the Social Work Team for Separated Children, based in Dublin. Each home has a maximum occupancy of 6 children at any one time. Children who are under the age of 12 are placed in a foster family upon referral. Those who are over 12 are typically placed with a foster family, or supported lodging, after some time, this could be weeks or months. Sometimes, a child remains in the residential home until they reach the age of 18. This usually happens where the child is nearing their 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>49</sup>

This does not always occur in practice, especially where the child's age is disputed. In cases where the child is age-disputed, or an 'unrecognised minor', the young person may be placed in Direct Provision accommodation. This means that the Office of the Refugee Applications Commissioner has taken the view that the asylum applicant is an adult.

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

#### 4. Reduction or withdrawal of reception conditions

*Indicators:*

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

In practice material reception conditions could be withdrawn by the Reception and Integration Agency for abusive, disruptive behaviour in the hostels, disappearance for more than one night with notifying the hostel management or for failure to comply with requirements to sign in while awaiting deportation. There is no appeal against a decision to withdraw reception conditions.

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

*Indicators:*

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

There is no law regulating access to reception centres. In practice access is granted on a discretionary basis and anyone wishing to visit must apply to Reception and Integration Agency (RIA) or get

<sup>49</sup> S.Arnold 2014 Closing a Protection Gap 2.0, Irish National Report, forthcoming.

permission from the centre management. Residents may invite guests into the centres, but they are confined to the communal areas.

There is little consistency in when access is granted. The Irish Refugee Council for example has been refused access to some centres. In general, access depends on the relationship between the person seeking access and RIA or the management of the hostel in question.

In a recent debate in the Seanad (the Irish Senate), Jan O'Sullivan TD<sup>50</sup>, (speaking on behalf of the Minister for Justice), responded to a proposal to allow all Members of the Oireachtas (the Irish Parliament) to have unrestricted access to any one of the 34 asylum accommodation centres. It was stated that unrestricted access might not be appropriate for a number of reasons, not least the rights of asylum seekers resident in these centres to privacy and the obligations placed on the service providers. O'Sullivan stated that: "Unannounced visits would have to take account of RIA's child protection policies which require, *inter alia*, the need for prior vetting. If politicians were being accompanied by other interested parties, such as media or non-governmental organisations, this requirement would have to be complied with. Of course, these centres are publicly funded, but so are many other facilities to which access rights for Members of the Oireachtas would never be sought or contemplated. These are people's homes and their privacy must be respected."

## 6. Addressing special reception needs of vulnerable persons

*Indicators:*

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

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

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

## 7. Provision of information

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

## 8. Freedom of movement

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>50</sup> Ireland is a parliamentary democracy. The National Parliament (Oireachtas) consists of the President and two Houses: Dáil Éireann (House of Representatives) and Seanad Éireann (the Senate) A TD is a member of Dáil Éireann. A Member's official Irish title is "Teachta Dála" which in English means "Deputy to the Dáil". Members are generally called "TDs" or "Deputies".

In practice it is restricted due to the very low level of income available to asylum seekers which means that, unless transport to and from a centre is free and at a suitable time, it is often too costly to travel out. Asylum seekers who spend more than three nights away from their centre risk losing accommodation.

## B. Employment and education

### 1. Access to the labour market

*Indicators:*

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

There is no access to the labour market for asylum seekers in Ireland. Section 9 (4) of the Refugee Act 1996 (as amended), states that an applicant shall not seek or enter employment or carry out any business before the final determination on their application. Anyone who contravenes this provision is deemed guilty of an offence and is liable on summary conviction to a fine not exceeding £500 (approx. €643) or to a term of imprisonment not exceeding 1 month or both.

Alan Shatter, Minister for Justice, stated in 2012 that extending the right to work to asylum seekers would almost certainly have a 'profoundly negative' impact on application numbers.<sup>51</sup>

### 2. Access to education

*Indicators:*

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

Children attend local national primary and secondary schools. In practice, as the centres are often located in rural areas local schools are not well-equipped to deal with the additional population. 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>52</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.

<sup>51</sup> Alan Shatter, Minister for Justice and Equality, Written Answers to Parliamentary question from Robert Dowds TD; Dept. Of Justice and Equality: Refugee Status, 16th April 2013

<sup>52</sup> Separated Children's Services, [Youth and Education Services](#).

## C. Health care

### Indicators:

- Is access to emergency health care for asylum seekers guaranteed in national legislation?  
 Yes       No
- In practice, do asylum seekers have adequate access to health care?  
 Yes       with limitations       No
- Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?  
 Yes       Yes, to a limited extent       No

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. They do not therefore pay for treatment but they need to meet the costs of a prescription from their weekly allowance.

Specialised treatment for trauma and victims of torture is available through an NGO called SPIRASI. SPIRASI staff have access to certain accommodation centres e.g. the reception centre in Dublin and can help to identify victims of torture. But no special arrangements or agreements exist to then deal with such people in a way that is different to someone who has not experienced torture. In addition, Spirasi has limited funding and resources and therefore they cannot provide support or care for all victims of torture in Ireland.

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.

## Detention of Asylum Seekers

### A. General

#### Indicators:

- Total number of asylum seekers detained in the previous year (including those detained in the course of the asylum procedure and those who applied for asylum from detention) Not available.
- Number of asylum seekers detained or an estimation at the end of the previous year (specify if it is an estimation): The Irish Prison Service stated that in 2012 there were 385 persons sent to prison in respect of immigration issues (it is unclear how many of these persons are asylum seekers).
- Number of detention centres: Every Garda Síochána (police) station is defined as a place of detention plus 9 prisons.
- Total capacity: Unknown 0

Detention is not widely used for asylum seekers. There are no detention centres for asylum seekers and irregular migrants in Ireland. When an asylum seeker is detained they are brought to a mainstream prison. 50 applications – 5.2% of all applications – were received from persons in places of detention in 2012, less than 15% of these were interviewed in a place of detention under section 11 of the Refugee Act, 1996, as the majority of cases were finalised in ORAC, i.e. the applicant was released before the substantive interview required by Section 11.<sup>53</sup>

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

There are no figures recorded for the numbers of asylum seekers in detention. The Irish Prison Service stated that 385 persons were sent to prison in 2012 in respect of immigration issues (it is unclear how many of these persons are asylum seekers).<sup>54</sup>

### B. Grounds for detention

#### Indicators:

- In practice, are most asylum seekers detained
  - o on the territory:  Yes  No
  - o at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never
- Are unaccompanied asylum-seeking children detained in practice?  
 Frequently  Rarely  Never
  - o If frequently or rarely, are they only detained in border/transit zones?  Yes  No
- Are asylum-seeking children in families detained in practice?  Frequently  Rarely  Never
- What is the maximum detention period set in the legislation (inc extensions): 21 days renewable – may be renewed indefinitely where detained under 9A of the Refugee Act 1996, as amended or 8 weeks where detained pending deportation
- In practice, how long in average are asylum seekers detained? Depends on reason for detention

<sup>53</sup> See ORAC 2012 Annual Report , page 27

<sup>54</sup> See [Irish Prison Service Annual Report 2012](#), page 14.

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

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

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

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

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

The detaining officer must inform the Refugee Applications Commissioner or Refugee Appeals Tribunal, 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.

Section 5 Immigration Act 1999: In the case of an unsuccessful applicant for whom a deportation order is in force, they may be detained if it is suspected that they:

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

A person detained pending deportation may not be detained for a period exceeding 8 weeks.

## C. Detention conditions

### Indicators:

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

Asylum seekers are detained in regular prisons. Irish prisons have been subject to international criticism in particular for over-crowding and the practice of 'slopping out'.

There is no specific provision relating to health care for detained asylum seekers. They would have access to the same health care as the general prison population.

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

The Refugee Act provides that the person detained is informed of their right to consult a solicitor and to notify the High Commissioner of their detention. There is no right of access to an NGO or to UNHCR.

Detention and prison conditions in Ireland have been criticised in relation to international standards but this has not been with specific reference to asylum seekers but to general prison population or specific groups such as young people.

The Council of Europe's Committee for the Prevention of Torture (CPT) published a report on its fifth periodic visit to Ireland in 2010. The CPT noted a series of concerns relating to the provision of healthcare at Cork, Midlands and Mountjoy Prisons. The CPT also criticised the use of special observation cells and encouraged the authorities to continue to improve access to psychiatric care in prisons. More generally, the CPT observed that several of the prisons visited remained overcrowded with poor living conditions, and that they offered only a limited regime for prisoners. Recommendations were also made in relation to the disciplinary process, complaints procedures and contacts with the outside world.<sup>55</sup>

The United Nations Committee against Torture stated in June 2011 that it was concerned at the placement of persons detained for immigration-related reasons in ordinary prison facilities together with convicted and remand prisoners. The Committee also stated that, while noting the State party's efforts to alleviate overcrowding in prisons it remained deeply concerned at reports that overcrowding remains a serious problem.<sup>56</sup>

<sup>55</sup> [Report](#) to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 January to 5 February 2010.

<sup>56</sup> Committee against Torture Forty-sixth session 9 May - 3 June 2011 Consideration of reports submitted by States parties under article 19 of the Convention, [Concluding observations of the Committee against Torture](#).

## D. Judicial Review of the detention order

### Indicators:

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

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

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 *habeus corpus*.

## E. Legal assistance

### Indicators:

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

The Refugee Legal Service provides representation for person detained in the District Court under Section 9(8) of the Refugee Act. This would be on the same basis as others seeking asylum i.e. a nominal fee if it is not waived. In practice it is difficult to access the RLS from prison.