

# Country Report: Ireland



2017  
Update



## Acknowledgements & Methodology

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

The information in this report is up-to-date as of 31 December 2017, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is accessible to researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA), funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative by the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of this report are the sole responsibility of ECRE and can in no way be taken to reflect the views of EPIM or the European Commission.



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## Glossary & List of Abbreviations

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

**TUSLA**

Irish Child and Family Agency

**UNHCR**

United Nations High Commissioner for Refugees

## Statistics

### Overview of statistical practice

Since January 2017, the International Protection Office (IPO) is responsible for receiving and examining applications. The IPO publishes brief monthly statistical reports on asylum applications, as well as a more comprehensive annual report in April of each year.<sup>1</sup>

### Applications and granting of protection status at first instance: 2017

	Applicants in 2017	Pending at end 2017	Refugee status	Subsidiary protection	Rejection	Refugee rate	Subs. Prot. rate	Rejection rate
<b>Total</b>	2,910	5,670	600	115	90	74.5%	14.5%	11.1%

Breakdown by countries of origin of the total numbers

Syria	545	135	470	0	0	100%	0%	0%
Georgia	300	370	0	0	5	0%	0%	100%
Albania	280	635	0	0	0	0%	0%	0%
Zimbabwe	260	510	10	5	0	67%	33%	0%
Pakistan	195	930	0	5	25	0%	17%	83%
Nigeria	185	500	0	20	15	0%	57%	43%
South Africa	105	225	0	10	0	0%	100%	0%
DRC	95	240	0	15	0	0%	100%	0%
Iraq	85	95	55	10	0	85%	15%	0%
Algeria	80	195	0	5	0	0%	100%	0%

Source: Eurostat

<sup>1</sup> IPO, *Statistics*, available at: <http://bit.ly/2FIF0Nn>.

### Gender/age breakdown of the total number of applicants: 2017

	Number	Percentage
<b>Total number of applicants</b>	2,910	100%
Men	1,840	63.2%
Women	1,090	37.4%
Children	840	28.8%
Unaccompanied children	:	:

Source: Eurostat

### Comparison between first instance and appeal decision rates: 2017

Statistics on appeals are not available.

## Overview of the legal framework

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

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

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

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

Title (EN)	Web Link
S.I. No. 409 of 2017 European Union (Subsidiary Protection) Regulations 2017	<a href="http://bit.ly/2E7pPbd">http://bit.ly/2E7pPbd</a>
S.I. No 116/2017 International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017	<a href="http://bit.ly/2xoWEz8">http://bit.ly/2xoWEz8</a>
S.I. No. 134 of 2016 Immigration Act 1999 (Deportation) (Amendment) Regulations 2016	<a href="http://bit.ly/2DFrK9N">http://bit.ly/2DFrK9N</a>
International Protection Act 2015 (Deportation) Regulations 2016	<a href="http://bit.ly/2E8uN7G">http://bit.ly/2E8uN7G</a>
International Protection Act 2015 (Travel Document) Regulations 2016	<a href="http://bit.ly/2GfErpC">http://bit.ly/2GfErpC</a>
International Protection Act 2015 (Places of Detention) Regulations 2016	<a href="http://bit.ly/2rDSkL0">http://bit.ly/2rDSkL0</a>
International Protection Act 2015 (Voluntary Return) Regulations 2016	<a href="http://bit.ly/2GeKxGL">http://bit.ly/2GeKxGL</a>
International Protection Act 2015 (Permission to Remain) Regulations 2016	<a href="http://bit.ly/2rFcFiP">http://bit.ly/2rFcFiP</a>
International Protection Act 2015 (Temporary Residence Certificate) (Prescribed Information) Regulations 2016	<a href="http://bit.ly/2Gh8WLO">http://bit.ly/2Gh8WLO</a>
International Protection Act 2015 (Establishment Day) Order 2016	<a href="http://bit.ly/2GhLyhl">http://bit.ly/2GhLyhl</a>
International Protection Act 2015 (Application for International Protection Form) Regulations 2016	<a href="http://bit.ly/2FeRwy5">http://bit.ly/2FeRwy5</a>

International Protection Act 2015 (Commencement) (No.3) Order 2016	<a href="http://bit.ly/2GhLBd1">http://bit.ly/2GhLBd1</a>
International Protection Act 2015 (Commencement) (No. 2) Order 2016	<a href="http://bit.ly/2nbsOht">http://bit.ly/2nbsOht</a>
International Protection Act 2015 (Commencement) Order 2016	<a href="http://bit.ly/2FeTbnj">http://bit.ly/2FeTbnj</a>
S.I. No. 62 of 2018 European Union (Dublin System) Regulations 2018	<a href="https://bit.ly/2H4mj2y">https://bit.ly/2H4mj2y</a>
European Communities (Eligibility for Protection) Regulations 2006	<a href="http://bit.ly/1OpPpWj">http://bit.ly/1OpPpWj</a>
Civil Legal Aid (Refugee Appeals Tribunal) Order 2005	<a href="http://bit.ly/1HNmQ3j">http://bit.ly/1HNmQ3j</a>
S.I. No. 55 of 2005 Immigration Act 1999 (Deportation) Regulations 2005	<a href="http://bit.ly/1frafsP">http://bit.ly/1frafsP</a>
S.I. No. 714 of 2004- Refugee Act 1996 (Safe Country of Origin) Order 2004	<a href="http://bit.ly/1CYMinC">http://bit.ly/1CYMinC</a>
S.I. No 708 of 2003- Aliens (Visas) Order 2003	<a href="http://bit.ly/1lme8uH">http://bit.ly/1lme8uH</a>
S.I. No. 103 of 2002- Immigration Act 1999 (Deportation) Regulations 2002	<a href="http://bit.ly/1MM0BMq">http://bit.ly/1MM0BMq</a>

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

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

This report was previously updated in **March 2017**.

### *Asylum procedure*

- ❖ **Processing times:** With the rollout of the new procedures under the International Protection Act (IPA), the newly-instated International Protection Office (IPO) announced transitional arrangements whereby all persons who had lodged an application under the old procedure and had not received a final decision on their case, would be brought back into the IPO for another interview under the single procedure.<sup>2</sup> The IPO, in consultation with UNHCR Ireland, developed prioritisation guidelines setting out how cases would be scheduled during this transitional period.<sup>3</sup> As of December 2017, on the basis of information received at a meeting between IPO and stakeholders working with people in the asylum process, the IPO was still processing many of the transitional cases, resulting in substantial delays for anyone who makes a new application under the IPA. The IPO indicated to stakeholders that new applicants could be waiting at least 20 months before being scheduled for a substantive interview.<sup>4</sup>

### *Reception conditions*

- ❖ **Opt-in to recast Reception Conditions Directive:** To date, Ireland had chosen not to opt in to either version of the EU Reception Conditions Directive. The rationale provided for this decision was that transposing the right to work, as contained within the Directive, would generate a 'pull factor', resulting in an increase in asylum applications in the State. The Irish Supreme Court dealt with Ireland's prohibition on employment for asylum seekers in the case of *N.V.H v Minister for Justice & Equality*, which in its judgment of 30 May 2017 declared the existing prohibition on employment to be unconstitutional. The State was provided with six months to respond to the Court with a solution, which it did in November 2017 by announcing that it would provide a legislative framework for employment for asylum seekers by opting in to the recast Reception Conditions Directive.<sup>5</sup> Opt-in is not actually envisaged until at least June 2018, provided the European Commission is satisfied that Ireland has met the compliance standards for opt-in. This will also be the first time that Ireland has put accommodation of asylum seekers on a legislative footing, which is likely to have a profound impact on the quality of reception conditions in Ireland generally.

### *Detention of asylum seekers*

- ❖ **Place of detention:** In July 2017, the Department of Justice stated that work on the dedicated facility was expected to begin on site at Dublin Airport in September 2017 with an estimated timeframe of 10 months before becoming operational.<sup>6</sup>
- ❖ **Opt-in to recast Reception Conditions Directive:** Ireland will opt in to the Reception Conditions Directive in 2018. The Directive sets out more extensive provisions on detention of persons in the

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<sup>2</sup> International Protection Office, *Information note on transitional arrangements under the International Protection Act 2015*, available at: <http://bit.ly/2Bs96m2>.

<sup>3</sup> International Protection Office & UNHCR Ireland, 'Prioritisation of Applications for International Protection under the International Protection Act 2015', 27 February 2017, available at: <http://bit.ly/2m1PIbi>.

<sup>4</sup> Irish Refugee Council, 'Refugee decision making waiting times at crisis point', 13 December 2017, available at: <http://bit.ly/2nZr2Nm>.

<sup>5</sup> INIS, 'Government agrees framework for access to work for International Protection Applicants', 22 November 2017, available at: <http://bit.ly/2DDGaUE>.

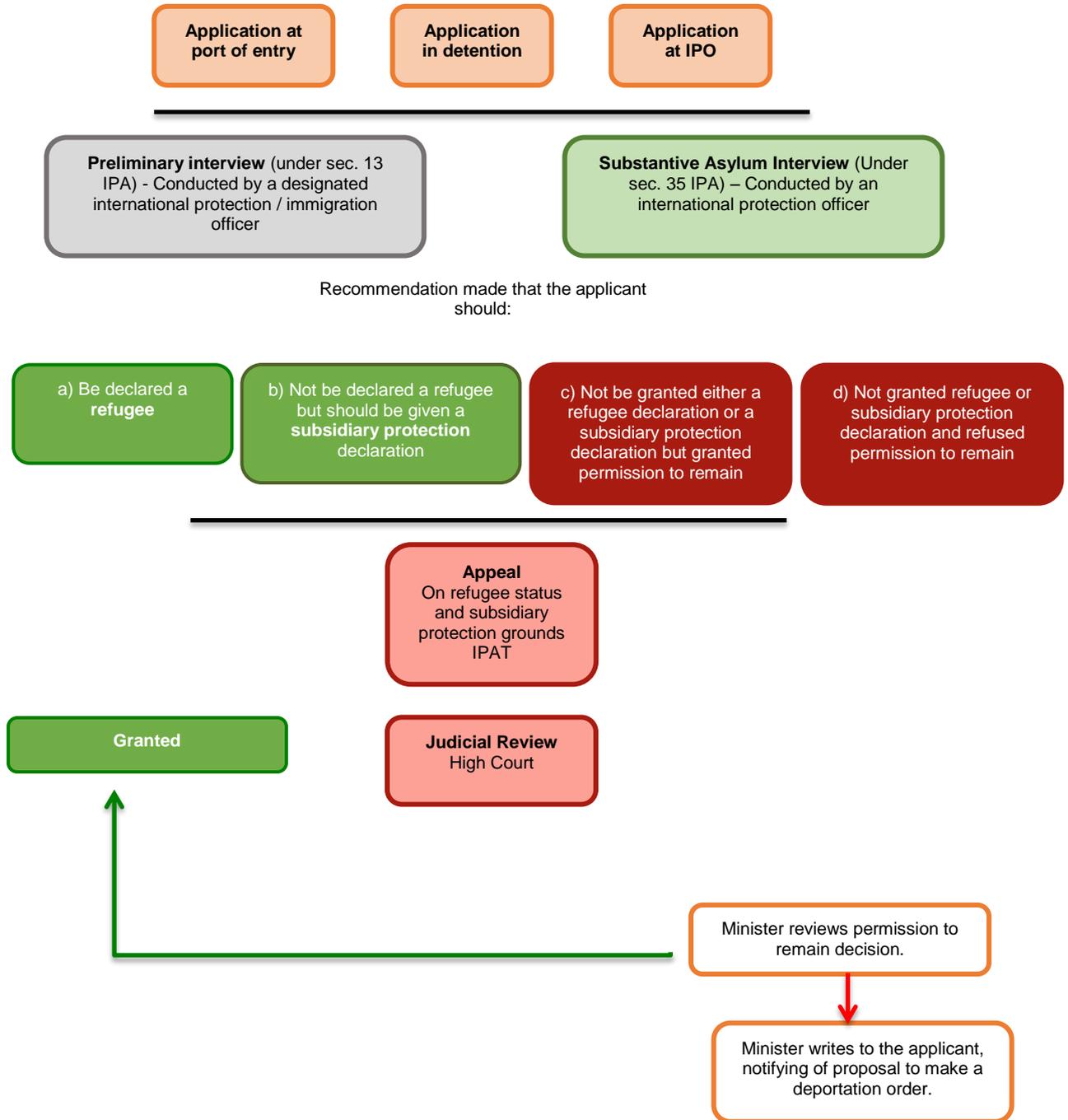
<sup>6</sup> Irish Times, 'Work on Dublin Airport immigration detention centre to begin', 28 July 2017, available at: <http://bit.ly/2r8zKKE>.

asylum process than are currently contained in the IPA – which could lead to an increase in detention in practice.

# Asylum procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

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

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

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
International Protection Office (IPO)	100	Department of Justice	Not known

The International Protection Act 2015 in Sections 74 and 75 states that the International Protection Officers are independent in the performance of their duties. It remains to be seen how this will be implemented in practice, given that very few decisions have been issued under the IPA to date, but it is important to note that the independent agency of ORAC is now abolished and subsumed into the Department of Justice and Equality under the new title of International Protection Office (IPO).

According to previous Minister for Justice, Frances Fitzgerald, there are over 100 staff assigned to the IPO at present who have been authorised to perform the functions of international protection officers. These staff will be used to support the single procedure process and in undertaking a variety of functions such as the registration and fingerprinting of applicants, the issue of Temporary Residence Certificates, the scheduling of cases for interview as well as interviewing applicants and preparing and issuing international protection recommendations and decisions in relation to permission to remain. The permanent staff are supported by a Panel of some 35 persons with legal expertise who are retained on a

contract for service basis to undertake interviews and prepare international protection recommendations and permission to remain decisions.<sup>7</sup>

## 5. Short overview of the asylum procedure

The International Protection Act 2015 (IPA) is Ireland's key legislative instrument enshrining the State's obligations under international refugee law. The final version of the IPA was signed into law by the President of Ireland in December 2016 and officially commenced on 6 January 2017.<sup>8</sup> As the transition to new procedures under the IPA is ongoing and there is a significant delay in the processing of new applications while the IPO prioritises processing of its existing caseload, the full impact of the new legislation, including decision-making times and other statistics, will likely not be seen for some time.

The IPA introduces a single procedure where refugee status, subsidiary protection and leave to remain are all examined together in one procedure compared to the previous bifurcated system under the Refugee Act. Under the IPA, an asylum application may be lodged either at the port of entry, or directly at the International Protection Office (IPO). The application should be lodged at the earliest possible opportunity as any undue delay may prejudice the application. If the applicant made a claim for international protection status at the port of entry, they must proceed to the IPO to complete the initial asylum process and attend a preliminary interview under Section 13 IPA.

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

Upon presenting at the IPO, the applicant is given a more in-depth application form 'Application for International Protection Questionnaire' which must be completed and returned by a specified time and date. Applicants are also provided with a detailed information booklet explaining key terms and process associated with the international protection status determination process in Ireland.<sup>10</sup> The application questionnaire shall include, as held in Section 15(5) IPA, all relevant information pertaining to the grounds for the application, as well as relevant information pertaining to permission to remain for the applicant, family reunification and right to reside for family members already present in the State, in case such considerations arise at later stages in the process. The information provided in the detailed application form will be duly considered throughout the assessment of the application, including in the applicant's substantive interview. Given the weight afforded to information provided in this questionnaire in determining the outcome of a person's application, the IPO recommends that applicants seek legal advice before completing the questionnaire.<sup>11</sup> In this respect, the information booklet contains information on the services of the State-funded Refugee Legal Service, operating out of the Legal Aid Board, who can provide legal advice on the international protection process. However, the extent to which the Legal Aid Board is able to assist with completion of application questionnaires is unclear. The Irish Refugee Council's Information and Referral Service and Law Centre has assisted with the completion of up to 80

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<sup>7</sup> Parliamentary response from Minister Fitzgerald to question no. 86 of 23 February 2017 available at: <http://bit.ly/2mxc0N9>.

<sup>8</sup> International Protection Act 2015 (Commencement) (No. 3) Order 2016.

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

<sup>10</sup> IPO, *Information Booklet for Applicants for International Protection*, January 2017, available at: <http://bit.ly/2D9Jqdl>.

<sup>11</sup> *Ibid*, para. 3.7.2.

application questionnaires (involving appointments of 3-5 hours, depending on the case) since the rollout of the new legislation in January 2017.

**Dublin:** An application for international protection status may be examined under the Dublin Regulation by the IPO if it appears that another Member State may be responsible for the examination of the protection application.<sup>12</sup> During the initial appointment at the IPO, an applicant's fingerprints are taken and are entered in to the Eurodac database. The applicant is also advised that they may obtain legal assistance from the Refugee Legal Service. The applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA) for accommodation if they have no other means of accommodating themselves, at which point the applicant will be taken to a RIA reception centre in Dublin and later dispersed elsewhere to other Direct Provision centres in Ireland.

**Regular procedure:** After registering at the IPO, applicants are given a non-statutory deadline of 20 working days to complete the application questionnaire. After submitting the questionnaire, applicants are notified by post of the date and time of their substantive interview before the IPO. The purpose of the interview is to establish the full details of their claim for international protection. The applicant may have a legal representative and an interpreter present at the interview, if necessary. As of December 2017, the waiting time for applicants to receive a date for their substantive interview is estimated at 20 months, due to the backlog of cases before the IPO and the need for increased staffing to meet the demands of the transition to the single procedure.<sup>13</sup>

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

- ❖ If a positive recommendation is made with regards to refugee status, the applicant is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of refugee status.
- ❖ If a positive recommendation is made with regards to subsidiary protection, the application is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of subsidiary protection, the applicant can also seek an upgrade appeal to the International Protection Appeals Tribunal for refugee status.
- ❖ If the recommendation is negative, the applicant is provided with the reasons for such a decision. The implications of a negative recommendation depend on the nature of the recommendation. The applicant will be advised of their right to appeal any negative decision before the International Protection Appeals Tribunal (IPAT) and their right to seek legal advice if they haven't done so already.

**Appeal:** Under the IPA an applicant may make an appeal to the IPAT against: (i) a recommendation that the applicant should not be given a refugee declaration; or (ii) a recommendation that the applicant should be given neither a refugee declaration nor a subsidiary protection declaration. An appeal under those two categories may be lodged before the IPAT in writing, laying out the grounds of appeal within a time limit prescribed by the Minister under Section 41(2)(a) IPA. They may request an oral hearing before the IPAT; if an oral hearing is not requested the appeal will be dealt with on the papers unless a member of the Tribunal finds it in the interests of justice to hold such an oral hearing nevertheless. Free legal representation can be obtained through the Refugee Legal Service. The deadline for submitting an appeal will be prescribed by the Minister in consultation with the Chairperson of the IPAT.<sup>14</sup>

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<sup>12</sup> S.I. No. 62 of 2018 European Union (Dublin System) Regulations 2018.

<sup>13</sup> Irish Refugee Council, 'Refugee decision making waiting times at crisis point', 13 December 2017, available at: <http://bit.ly/2nZr2Nm>.

<sup>14</sup> Section 77 IPA.

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

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

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

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

## B. Access to the procedure and registration

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

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs?  Yes  No

There have been no official reports of push backs of asylum seekers or *refoulement* at the frontiers of the State. A person who arrives in Ireland seeking entry may be refused leave to land and due to the lack of independent oversight and transparency at airports or ports of entry, it is unclear whether or not a person refused leave to land had protection grounds or had intended to apply for asylum. There is no access for independent authorities or NGOs at air or land borders in order to monitor the situation. Anecdotal evidence received by the Irish Refugee Council Independent Law Centre suggests that some people may

be refused leave to land and enter Ireland even when they have grounds for protection. If that person then seeks to claim asylum they should be permitted to enter the country for that purpose.

In response to a parliamentary question on 31 January 2017, former Minister Frances Fitzgerald stated that in 2016 in total, 178 Afghan, 7 Eritrean, 26 Iraqi and 37 Syrian nationals were refused leave to land at approved ports of entry. However, a total of 57 persons of those nationalities sought asylum and were admitted to the State to make an international protection application.<sup>15</sup> According to the INIS annual review 2016, 3,951 non-EU nationals who were refused entry into the State at ports of entry and were returned to the place from where they had come.<sup>16</sup>

In its review before the UN Committee against Torture in July 2017, the Irish State was asked for detailed information on the numbers of persons denied leave to land, disaggregated by country of origin and who were not allowed to enter the country as asylum seekers. The State did not provide these figures in its response, prompting the Committee in its Concluding Observations to call on the Irish government to ensure that all persons refused leave to land are guaranteed access to legal advice before any return is effected and that the State provides data on refusals of leave to land in its next periodic report.<sup>17</sup>

Section 78 IPA amends Section 5 of the Immigration Act 2004 in a way which allows for people to be detained for short periods of time in facilities at ports of entry and/or airports instead of being placed in custody in police stations (see [Detention of Asylum Seekers](#)). The Department of Justice and Equality are working on plans to establish a dedicated immigration facility at Dublin airport.<sup>18</sup> At time of writing, this facility has still not been finalised, despite previous Minister for Justice Frances Fitzgerald indicating in July 2016 that the new facility would be completed within 12 months. In July 2017, the UN Committee against Torture expressed concern that the State had not followed through with the completion of a dedicated immigration detention facility and at the continued practice of detaining persons for immigration-related reasons together with remand and convicted prisoners in prisons and police stations.<sup>19</sup> In response to an Irish Times report on the detention of a Brazilian woman at Dochas Women's Prison in July 2017, a Department of Justice Spokesperson stated that work on the dedicated facility was expected to begin on site at Dublin Airport in September 2017 with an estimated timeframe of 10 months before becoming operational.<sup>20</sup>

## 2. Registration of the asylum application

### Indicators: Registration

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

The right to apply for asylum is contained in Section 15 IPA. When a person presents themselves at the frontiers of the State seeking international protection, he or she shall go through a preliminary interview at a time specified by an immigration officer or an international protection officer. That time limit is not, however, specified in the IPA.

<sup>15</sup> Parliamentary Question response by Minister Frances Fitzgerald, 100 of 31 January 2017, available at: <http://bit.ly/2kQ9qBt>.

<sup>16</sup> Department of Justice and Equality, *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2016*, available at: <http://bit.ly/2lx8fT5>, 12.

<sup>17</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, available at: <http://bit.ly/2hPIVem>, para 12(e).

<sup>18</sup> Parliamentary Question response by Minister Frances Fitzgerald 69 of 7 July 2016, available at: <http://bit.ly/2JmNTb>.

<sup>19</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, para. 12(d).

<sup>20</sup> Irish Times, 'Work on Dublin Airport immigration detention centre to begin', 28 July 2017. Available at: <http://bit.ly/2r8zKKE>.

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

The IPO's role involves making recommendations to the Minister for Justice on an applicant's eligibility for refugee status, subsidiary protection and permission to remain under a single procedure. This system replaces the previous multi-layered process overseen by ORAC that was fraught with administrative delays and backlogs.

In the case of families applying for international protection, all adult family members must make their own applications. An adult who applies for protection is deemed to be applying on behalf of his or her dependent children where the child is not an Irish citizen and is under the age of 18 years and present in the State, or is born in the State while the person is in the protection procedure or not having attained the age of 18 years, enters the State while the parent is still in the protection procedure. There is no separate right for accompanied children to apply for asylum independently even if they have different protection grounds to their parents.

## 2.1. Preliminary interview

Immigration officers at the border have the right to conduct a preliminary interview with the applicant but then the person's case is transferred to the IPO under Section 13 IPA. According to the most up to date available figures, from the ORAC Annual Report for 2016, there were 510 applications lodged at airports in that year, accounting for 22.7% of the overall applications submitted in 2016.<sup>21</sup> It is also worth noting that the ORAC annual reports refer to a third category of applications lodged in "other" locations in addition to those lodged at airports and at ORAC itself. It is not clear where exactly these other locations are, whether they are in places of detention or at other ports of entry, such as where people may arrive by sea. The last ORAC annual report before that office was replaced with the IPO states that a total of 54 applications were made at "other" locations in 2016.

Following the case referral to the IPO, the applicant makes a formal declaration they wish to apply for international protection, outlined under Section 13 IPA. The applicant is interviewed by an authorised officer of the IPO to establish basic information, which is inserted into a standard form by the IPO officer entitled 'IPF1'. This preliminary interview takes place in a room (where other people are waiting and being interviewed) and is conducted by an official who sits behind a screen. If necessary, an interpreter may be made available.

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

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

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<sup>21</sup> ORAC, *Summary Report of Key Developments in 2016*, available at: <http://bit.ly/2D5kCzg>, 13.

The information taken at the screening interview enables the IPO to ascertain if the person applying for asylum has submitted an application for asylum in, or travelled through, another EU country by making enquiries through Eurodac which will assist in determining if the Dublin III Regulation is applicable or not.

## 2.2. Application for International Protection Questionnaire

At the end of the preliminary interview the applicant is given detailed information on the asylum process. This information is available in 18 languages.<sup>22</sup> The applicant is given an in-depth questionnaire, the Application for International Protection Questionnaire, in their preferred language, which must be completed and returned within 20 working days. In response to expressions of concern from civil society, NGOs and legal advocates regarding the 20-day 'deadline', the Department of Justice has indicated that this is not a statutory deadline but an indicative, administrative timeframe in which applicants should aim to have their questionnaire returned to the IPO. As such, the Department has made clear that there are no negative consequences if questionnaires are not returned within the timeframe.<sup>23</sup> As such, applicants may submit the completed questionnaire beyond the 20 working days. As a precautionary measure, the Irish Refugee Council recommends that applicants indicate in writing to the IPO if they require more than 20 working days to submit the questionnaire.

As part of the new consolidated asylum process under the IPA, all of the details relevant to a claim for international protection (refugee status, subsidiary protection and permission to remain), including details relevant to the right to enter and reside for family members, are compiled within this single, detailed questionnaire. In the previous system, applicants would have made separate applications for refugee status, subsidiary protection and leave to remain respectively, and all details related to family reunification would be collected in an application subsequent to being granted refugee or subsidiary protection status. As such, the questionnaire plays a crucial role in the status determination process and section 1 of the introductory preamble to the questionnaire recommends that the applicant "seek legal advice" to assist with completing the questionnaire.<sup>24</sup> Contact details for the Legal Aid Board, who assist applicants for international protection, and other relevant statutory bodies and international organisations are included in an annex to the Information Booklet for Applicants for International Protection, which applicants receive at the same time as the questionnaire. The questionnaire usually has to be completed and returned to the IPO within 20 working days, although the IPO has clarified that this is an administrative deadline and that flexibility may be given to applicants requiring more time.<sup>25</sup> If the questionnaire is not in English it is submitted by the IPO for translation, usually to a privately contracted translation and interpretation firm.

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

The questionnaire is divided into 13 parts across approximately 60 pages:

**Part 1** gathers the principal applicant's basic details (full name, identification numbers, address and contact details).

**Part 2** requests general information pertaining to the principal applicant, including languages, medical conditions relevant to the application and circumstances affecting the applicant's capacity to attend interviews at the IPO (including special needs, etc.).

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<sup>22</sup> The Information Booklet for International Protection is available in 18 languages: <http://bit.ly/2lOwxfr>.

<sup>23</sup> Parliamentary Question response by Minister Frances Fitzgerald, 23 February 2017, available at: <http://bit.ly/2mxc0N9>.

<sup>24</sup> Application for International Protection Questionnaire, draft document received from ORAC by the Irish Refugee Council in November 2016.

<sup>25</sup> IPO, 'Clarification regarding the deadline for the return of the Application for International Protection Questionnaire (IPO 2)', available at: <http://bit.ly/2mlf2QD>.

**Part 3** collects basic biographical information.

**Part 4** is for inputting family information, with separate spaces for spouses/civil partners, dependent children, parents, siblings and “other dependents”.

**Part 5** allows for the applicant to detail all documentation potentially relevant to the application, including material already submitted and that which may be submitted at a later date.

**Part 6** gathers visa, residency and travel information pertaining to previous travel outside of the country of origin of the principal applicant and his/her dependents.

**Part 7** focuses on the basis of the claim for protection, allowing space for the applicant’s personal testimony; questions on any grounds for both refugee status and subsidiary protection; any action taken by the applicant to obtain protection in their country of origin; whether the person could relocate elsewhere within their country of origin; their fears if returned; whether or not the applicant or their dependents have been “sought, interrogated, arrested, detained or imprisoned by the state authorities in any country”; any affiliation to religious, political or other organisations and any military/paramilitary activity.

**Part 8** contains information on whether or not the applicant has lodged an application for protection or residency in other countries, including applications lodged with UNHCR.

**Part 9** deals with permission to remain; in the event that the applicant should be refused both refugee status and subsidiary protection, the minister will take into account the person’s personal circumstances in order to determine whether he or she may be permitted leave to remain. In the previous system, this would have been considered once all initial applications for protection and appeals had been exhausted. However, under the new system, a case for permission to remain must be lodged at the first instance, which will be taken into account automatically in the event that other protection avenues are denied. The applicant is encouraged to notify the IPO of any new information or circumstances pertaining to permission to remain at any stage they might arise in the process including following an appeal at the IPAT, which adds an extra degree of responsibility upon the applicant. It is important to note that under S.I. 664/2016 International Protection Act (Permission to remain) Regulations 2016 an applicant only has a 5-day period to provide a further submission on permission to remain after the IPAT decision.

**Part 10** of the questionnaire contains information relating to possible future applications for family reunification, including details of family members who may be eligible for reunification, such as a spouse, civil partner, minor children, and the parents of unaccompanied minor applicants. As per the restricted definition of ‘family’ for the purposes of family reunification under Section 56 (9) IPA, part 10 of the questionnaire contains no provision for dependent or extended family members.

**Parts 11-13** of the questionnaire ask for information about completion of the questionnaire, including any assistance received in its completion and the details of the applicant’s legal representative, if applicable.

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

As the IPO has indicated that persons who make or have made an application for international protection in the State after January 2017 are unlikely to receive a date for their substantive interview for 20 months, it is impossible at this point to identify any trends (positive or negative) associated with the reformatted application questionnaire in line with the rollout of the single procedure. On the coming into force of the IPA, **all** applicants in the system (including those who had previously lodged applications and were awaiting a decision following their substantive interview before ORAC) were issued with the new questionnaire. The fact that some people who had already completed a questionnaire and been interviewed under the old system were being expected to recomplete a more detailed questionnaire and attend the IPO for a subsequent interview caused a great deal of confusion amongst applicants, particularly in relation to the workability of the ‘20 day deadline’.<sup>26</sup> This prompted the IPO to issue clarification on the submission timeframe, and the office reiterated on their website that the return timeframe is “purely an administrative deadline to commence the processing of single procedure applications as soon as possible.”<sup>27</sup>

The Irish Refugee Council’s Law Centre and Information and Referral Service have assisted with approximately 80 questionnaires since the coming into force of the IPA.<sup>28</sup> The Refugee Legal Service within the Legal Aid Board ostensibly provides free legal assistance for people once they have entered the international protection process. However, the Irish Refugee Council has assisted a number of people who had registered with the Refugee Legal Service and been told to complete the questionnaire by themselves due to a general lack of capacity within the Legal Aid Board. A number of other issues arising in connection with the questionnaire include (on the basis of Irish Refugee Council casework): translation errors in a number of the non-English questionnaires; persons with special needs being provided with the questionnaire but provided with no assistance completing it (i.e. illiterate applicants being provided with the questionnaire despite being unable to read it); people receiving questionnaires in English where there exists no version in their preferred language.

## C. Procedures

### 1. Regular procedure

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

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | None  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2017:  | 5,610   |

As of 31 December 2016, the number of cases pending a decision was 1,550 according to ORAC’s final Annual Report.<sup>29</sup> International protection interviews were suspended from October 2016 to January 2017 in order to facilitate the transition to the new procedures under the IPA. Figures for pending cases as of 31 December 2017 referred to 5,610 according to Eurostat.

<sup>26</sup> The Irish Times, ‘Questionnaires cause ‘distress’ for people in direct provision’, 20 February 2017, Available at: <http://bit.ly/2D6CKsn>.

<sup>27</sup> International Protection Office, ‘Clarification re: deadline for the return of the Application for International Protection Questionnaire (IPO 2)’, Available at: <http://bit.ly/2mlf2QD>.

<sup>28</sup> Information provided by the Irish Refugee Council’s Drop-in Centre database, January 2018.

<sup>29</sup> ORAC, *Summary of Key Developments in 2016*, 5.

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

There is no time limit in Irish law for the determining authority to make a decision on an asylum application at first instance.<sup>30</sup> Under Section 39(5) IPA, if a recommendation cannot be made within 6 months of the date of the application for a declaration, the IPO may, 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.

According to the latest available statistics, the median processing time for (non-prioritised) applications at the end of 2016 was 41 weeks in comparison with 29 weeks in 2015.<sup>31</sup> In line with prioritisation provisions in Section 73 IPA, the IPO published criteria for prioritisation of international protection cases, in cooperation with UNHCR Ireland.<sup>32</sup> The median processing time for cases meeting the criteria for prioritisation in 2016 was 16 weeks.<sup>33</sup> In December 2017, the IPO indicated that due to the transitional case backlog, persons who made an application after January 2017 and whose cases fall outside of the prioritisation criteria will likely be waiting at least 20 months before they receive a date for their substantive interview.<sup>34</sup>

## 1.2. Prioritised examination and fast-track processing

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

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

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

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<sup>30</sup> There is no time limit in law. Alan Shatter, then Minister for Justice, stated in July 2013 that a reason Ireland was not opting in to the recast Asylum Procedures Directive was because the recast proposed that Member States would ensure that the examination procedure was concluded within 6 months after the date the application is lodged, with a possible extension of a further 6 months in certain circumstances. Alan Shatter stated that these time limits could impose additional burdens on the national asylum system if there was a large increase in the number of applications to be examined in the State, especially considering previous increases in the period 2001 to 2003, available at: <http://bit.ly/1Lwomep>.

<sup>31</sup> ORAC, *Summary of Key Developments in 2016*, 5.

<sup>32</sup> IPO and UNHCR, *Prioritisation of Applications for International Protection under the International Protection Act 2015*, available at: <http://bit.ly/2m1Plbi>.

<sup>33</sup> ORAC, *Summary of Key Developments in 2016*, 5.

<sup>34</sup> Irish Refugee Council, ‘Refugee decision making waiting times at crisis point’, 13 December 2017, available at: <http://bit.ly/2nZr2Nm>.

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

Applications from certain nationalities can be prioritised, which leads to a quicker determination of the application and the curtailment of appeal rights. Other nationalities (currently South African) may also find themselves subjected to a truncated procedure on the grounds that those countries have been designated by the Minister for Justice and Equality as **Safe Countries of Origin** for the purposes of considering asylum applications from those states. If an applicant is from a country designated a safe country of origin, a burden is placed on the applicant to rebut the presumption that they are not in need of international protection (see section on **Accelerated Procedure**).

On 27 January 2017 UNHCR issued a statement in conjunction with the International Protection Office on the prioritisation of applications. UNHCR Ireland stressed the need for fairness and efficiency in dealing with all applications for international protection.<sup>35</sup> Under the new system the scheduling of interviews will occur under two processing streams which will run concurrently on the basis of 'oldest case first' and according to specific criteria warranting prioritisation.

According to the UNHCR and the IPO statement setting out the prioritisation procedure:<sup>36</sup>

1. Stream one will comprise the majority of applications, which will be scheduled on the mainly on the basis of **oldest cases first**. This includes new applications made after the commencement of the IPA as well as those cases that were under processing prior to the new procedures coming into force. Within this stream, cases will be scheduled according to the following stages and order of priority: (i) pending subsidiary protection recommendations; (ii) pending appeal at the former Refugee Appeals Tribunal; (iii) pending refugee status recommendations.
2. Stream two pertains to both cases that were open before the commencement of the IPA and those lodged after that meet specific prioritisation criteria: (i) **The age of applicants** – under this provision the following cases will be prioritised: unaccompanied minors in the care of Tusla; applicants who applied as unaccompanied minors, but who have now aged out; applicants over 70 years of age, who are not part of a family group; (ii) the **likelihood that applications are well-founded**....; (iii) the likelihood that applications are **well-founded due to the country of origin or habitual residence** (specifically, Syria, Eritrea, Iraq, Afghanistan, Iran, Libya and Somalia); (iv) **health grounds** - applicants who notify the IPO after the commencement date that evidence has been submitted, certified by a medical consultant, of an ongoing severe/life threatening

<sup>35</sup> IPO and UNHCR, *Prioritisation of applications for international protection under the International Protection Act 2015*, available at: <http://bit.ly/2ISEaOy>.

<sup>36</sup> *Ibid.*

medical condition will be prioritised. Cases within stream two will be processed on the basis of oldest case first.

Moreover, in the context of **Relocation**, previous Minister for Justice, Frances Fitzgerald, had indicated that the assessment and decisions on refugee status for these relocated asylum seekers will be made within weeks, so although not formally prioritised as such their claims are examined very quickly.<sup>37</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

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

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

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

The system under the Refugee Act 1996 obligated the ORAC to conduct separate interviews for each application being submitted, i.e. refugee status or subsidiary protection. This led to systematic delays whereby, if a person goes through the refugee application process (including an interview) and is ultimately denied status, that person must begin the process anew and attend another interview if he or she wants to apply for subsidiary protection. However, under the IPA, consideration of eligibility for refugee status, subsidiary protection and permission to remain is given under a single interview, as held in Section 35 IPA.

A personal interview may be dispensed with where the IPO officer is of the opinion that:<sup>38</sup>

<sup>37</sup> Department of Justice and Equality, 'Statement by Minister Fitzgerald on the Migration Crisis following an Emergency Meeting of Justice and Home Affairs Ministers', 22 September 2015, available at: <http://bit.ly/1kg180z>.

<sup>38</sup> Section 35(8) IPA.

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

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

International Protection Officers are required to “be sufficiently competent to take account of the personal or general circumstance surrounding the application, including the applicant’s cultural origin or vulnerability” and must provide the services “interpreters who are able to ensure appropriate communication between the applicant and the person who conducts the interview.”<sup>39</sup>

Unaccompanied children are usually accompanied by their social worker or another responsible adult. Where this is the case, the officer conducting the interview will require the accompanying adult to prove that he or she is responsible for the care and protection of the applicant. Section 35(5)(a) IPA states that interviews are conducted without the presence of family members save in certain circumstances where the International Protection Officer considers it necessary for an appropriate investigation. Anecdotal evidence suggests that such circumstances rarely occur. The interview is the primary opportunity for the applicant to give their personal account of why they are seeking international protection and cannot return home.

### **Interpretation**

Section 35(2) IPA states that an applicant who is having a substantive interview shall, whenever necessary for the purpose of ensuring appropriate communication during the interview, be provided by the Minister or International Protection Officer with the services of an interpreter. As mentioned above the IPA requires that interpreters are fully competent and able to ensure appropriate communication between the applicant and the interviewer. How this will be realised in practice remains to be seen. If an interpreter is deemed necessary for ensuring communication with an applicant, and one cannot be found, the interview is usually postponed until one can be found. There are no known languages of countries from which asylum seekers in Ireland typically originate for which interpreters are not available. If issues arise between the applicant and the interpreter during the interview (for example, in circumstances where the interpreter speaks a different dialect of the language requested by the applicant, or where the applicant is uncomfortable with the interpreter provided for any reason), the applicant is encouraged to indicate this to the international protection officer and/or their legal representative. This may involve postponing the interview until the issue can be resolved and/or another interpreter can be found.

### **Transcript**

Typically, the officer conducting the interview makes a record of the information given and that information is read back to the applicant periodically during the interview or at the end of the interview and are requested to sign each page to confirm that it is accurate or to flag any inaccuracies. The interview is usually recorded via hand-typed transcription on a desktop. There is no system for independent recording of the interviews (interviews are not audio or video recorded), even where a legal representative is not present. A copy of the interview record is not given to the applicant or their legal representative until and

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<sup>39</sup> Section 35(3) IPA.

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

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

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

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

### 1.4.1. Appeal before the International Protection Appeals Tribunal (IPAT)

Decisions of the IPO may be challenged before the International Protection Appeals Tribunal (IPAT) within 15 working days of receiving a negative decision.<sup>40</sup> The IPAT is the second-instance decision making body for the Irish asylum process. The IPAT is a quasi-judicial body and, according to the IPA, it shall be independent in the performance of its functions. Under Section 41 IPA, the IPAT may hear appeals against recommendations that an applicant not be given a refugee declaration, or recommendations that an applicant should be given neither a refugee declaration nor a subsidiary protection declaration. The IPA also hears appeals regarding Dublin III Regulation transfers and on paper, inadmissibility appeals. Applications to the IPAT must be made in writing, within a given time-frame, including the grounds of appeal and whether or not the applicant wishes to have an oral hearing.

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

According to the latest up to date official figures on appeals, there were 2,174 appeals before the previous Refugee Appeals Tribunal (RAT) in 2016, as well as 1,255 cases scheduled and 1,163 decisions issued.<sup>41</sup>

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

Where an oral hearing is held, these are conducted in an informal manner and in private. The applicant's legal representative may be present as well as any witnesses directed to attend by the Tribunal. Witnesses may attend to give evidence in support of the appeal, e.g. a country of origin expert or a family member. The Presenting Officer for the IPO also attends. UNHCR may attend as an observer.

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

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

- ❖ Notice of Appeal submitted by the applicant or their legal representative;
- ❖ All material furnished to the Tribunal by the Minister that is relevant to the case;

<sup>40</sup> Section 41(2)(a) IPA; Section 3(c) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

<sup>41</sup> RAT, *Annual Report 2016*, available at: <http://bit.ly/2ELpfib>, 21.

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

The length of time for the Tribunal to issue a decision is not set out in law. In previous years, the length of ‘time taken’ by the Tribunal to process and complete a substantive appeal has varied. For example, according to latest available figures from the RAT 2016 annual report, the median length of time taken by the Tribunal to complete substantive 15 day appeals was approximately 90 weeks; 41 weeks for accelerated appeals and 54 weeks for subsidiary protection appeals.

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

On 11 March 2014 the Chairperson of the RAT issued Guidance Note (No: 2014/1) which stated that from that date any person may access the archive of Tribunal decisions for any lawful purpose.<sup>42</sup> The Note also stated that all matters which would tend to identify a person as an applicant for refugee status have been removed/omitted so that the identity of applicants is kept confidential; if removal could not sufficiently protect the identity of an applicant the decision would not be published. This is a significant change in practice; a major criticism of the RAT in the past has been that decisions were not publicly available. Access to the online Tribunal decisions archive requires completion of a simple registration process upon which the user is furnished with a password valid for one year for use with the database.<sup>43</sup>

### 1.4.2. Judicial review

A decision of the IPAT (as with the IPO) may be challenged by way of judicial review in the High Court. This is a review on a point of law only under Irish administrative law and cannot investigate the facts. In addition, the applicant must obtain permission (also called ‘leave’) to apply for judicial review. This is a lengthy and costly process. According to latest available figures from the RAT Annual Report for 2016, the Tribunal had 156 active Judicial Reviews on hand at the beginning of 2016.<sup>44</sup> The number of new Judicial Reviews filed in 2016 was 84. The RAT’s latest annual report indicates that “a significant number” of new Judicial Reviews filed relate to a legal issue in respect of the correct interpretation of the Dublin III Regulation.

### 1.5. Legal assistance

#### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?
  - ❖ Does free legal assistance cover:
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
<input type="checkbox"/> Representation in interview		
<input checked="" type="checkbox"/> Legal advice		
  
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?
  - ❖ Does free legal assistance cover
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> With difficulty	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Representation in courts		
<input checked="" type="checkbox"/> Legal advice		

<sup>42</sup> Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.

<sup>43</sup> International Protection Appeals Tribunal Decision Archive, available at: <http://bit.ly/2B4bsRz>.

<sup>44</sup> RAT, *Annual Report 2016*, 13.

The Refugee Legal Service (RLS) is a division of the state-funded Legal Aid Board, an independent statutory body funded by the State. To qualify for legal services in respect of their asylum application, the applicant's income (less certain allowances) must be less than €18,000 per annum. Applicants in Direct Provision (the state system of reception, accommodation and support for asylum seekers) 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 RLS. According to the latest available information in the Legal Aid Board's Annual Report for 2015, 1,537 persons availed of the services of the RLS, an increase in 70% on the previous year.<sup>45</sup>

Asylum applicants can register with the RLS as soon as they have made their application to the IPO. All applicants are assigned a solicitor and a caseworker. There are three branches of the RLS, with dedicated law centres located in **Cork**, **Galway** and **Dublin** Cities, with a dedicated unit in the Dublin law centre that deals with international protection applications made by children. The Legal Aid Board has normally provided services only at the appeal stage but now they are also including services in-house for early legal advice (ELA) and via a Private Practitioners' Panel whereby private solicitors provide ELA for the Legal Aid Board for a set fee. The ELA service normally does not cover attendance at the actual personal interview with the applicant and only covers guidance on completing the Questionnaire rather than actual assisting with the completion of the Questionnaire form itself. The Legal Aid Board has established some best practice guidelines under the new procedure.<sup>46</sup>

Since 2011, the Irish Refugee Council Independent Law Centre has run a free ELA service which involves providing intensive legal assistance to the applicant at the very early stages of the asylum process.<sup>47</sup> The ELA package offered by the Irish Refugee Council Law Centre provides an initial advice appointment with a solicitor (preferably prior to the application for asylum being made), accompaniment to ORAC to claim asylum, assistance with the completion of the in-depth application questionnaire and drafting of a personal statement based on the applicant's instruction, attendance at the substantive interview and submission of representations. In November 2015, following the success of the Irish Refugee Council's ELA programme, the Law Centre published a manual on the provision of ELA to persons seeking protection.<sup>48</sup> The manual is geared towards promoting best practice towards practitioners working in the EU asylum context. According to the Irish Refugee Council's latest Impact Report for 2016, the Law Centre (with a staff team of two solicitors and two legal officers in 2016) provided detailed advice and representation to 38 new clients in their protection applications and 80% of decisions received in 2016 were positive.<sup>49</sup>

The 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 an appeal to the IPAT is unsuccessful, the applicant must first of all seek the assistance of a private practitioner to get advice about challenging the decision by way of judicial review in the High Court. If they cannot get such private legal assistance, the RLS will consider the merits of the application for judicial review and may apply for legal aid to cover the proceedings but it is important to note that judicial review will only be an appropriate avenue in some circumstances and should not be viewed as an appeal procedure.

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<sup>45</sup> Legal Aid Board, *Annual Report 2015*, available at: <http://bit.ly/2mKtgx9>, 14.

<sup>46</sup> The best practice guidelines are available at: <http://bit.ly/2moPO3D>.

<sup>47</sup> For further information, see The Researcher, 'Early Recognition of People in Need of International Protection: The Irish Refugee Council Independent Law Centre's Early Legal Advice and Representation Project', October 2013.

<sup>48</sup> Irish Refugee Council Independent Law Centre, *A Manual on Providing Early Legal Advice for Persons Seeking Protection*, available at: <http://bit.ly/1OCmkdJ>.

<sup>49</sup> Irish Refugee Council, *2016 Impact Report*, available at: <http://bit.ly/2FE0hTg>

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2017

2017 statistics are not available. In 2016, Ireland issued 547 outgoing requests and a total of 41 asylum seekers were transferred under the Dublin Regulation to other EU Member States. A total of 594 outgoing transfer decisions were processed by ORAC (including a number carried over from 2015) in 2016, as compared to 302 transfer decisions processed in 2015 – representing a 96% increase in the number of Dublin decisions processed. 41 transfers were carried out in practice in 2016. In 2016 Ireland accepted 133 of 223 pending incoming requests (included in that number are requests carried over from 2015), which represented an acceptance rate of over 59.5%. 61 incoming Dublin transfers were effected in 2016.

The Dublin Regulation is implemented by the Dublin Unit of the IPO. The unit is responsible for determining whether applicants should be transferred to another state or have their application assessed in Ireland. The unit also responds to requests from other member states to transfer applicants to Ireland. The IPA repeals under Section 6 the European Union (Dublin System) Regulations 2014 (S.I. No. 525 of 2014), which has been replaced by the European Union (Dublin System) (Amendment) Regulations 2016 (S.I. No. 140 of 2016). The European Union (Dublin System) Regulations 2018 (S.I. No. 62 of 2018) were adopted in 2018.

#### Application of the Dublin criteria

No information is publicly available on the application of certain criteria of the Dublin III Regulation. The latest available data in relation to practice around the Dublin System in Ireland contained in the ORAC Annual Report 2016. The IPO has yet to issue any official data in relation to the Dublin procedure since it took over duties in this area from ORAC in January 2017.

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

In response to a parliamentary question in November 2016, Minister Frances Fitzgerald stated that “where a request to take charge of an asylum application for family reasons is received, proof of that familial relationship is required. Often supporting documentary proof is not available, is incomplete or is not capable of being authenticated with a reasonable degree of certainty. In the limited number of such cases, the results of biometric tests can provide a greater degree of certainty of a family link. This is particularly important in the case of a transfer involving a minor or other vulnerable person so as to ensure that they are being placed in the right family unit in the interests of their welfare and safety, as required by law.”<sup>50</sup>

In terms of family reunion the following parliamentary question response from Minister Frances Fitzgerald provided information in particular on family reunion for Syrian nationals during the 2014 to 2016 period which has been quoted below:

“Requests to join applicants together for family reasons may be made under the Dublin Regulation provided that the circumstances of the case meet the criteria laid down in the particular articles viz. Articles 8, 9, 10 and 11. In 2014 there were 11 such requests made to Ireland from other Member States in 2014, 1 of which related to a Syrian national. Of these, 4 were accepted including the Syrian national and 7 were rejected as they did not meet the Dublin criteria. In addition, Articles 16.1 and 17.2 may be invoked for dependency reasons, the former for care reasons while the latter is a more general discretionary provision whereby family members may be brought together on humanitarian grounds, even if a State is not responsible under the normal determining criteria of

<sup>50</sup> Parliamentary Question response by Minister Frances Fitzgerald, 138 of 15 November 2016, available at: <http://bit.ly/2luwyUP>.

the Regulation. There were 2 such requests made to Ireland from other Member States in 2014, both of which were accepted under Article 16.1 and neither of which involved Syrian nationals.

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

In respect of 2016 (1st January to 30th September) there were 8 requests to join applicants together for family reasons made to Ireland from other Member States none of which involved Syrian nationals, and all of which are still under consideration pending further information. In respect of Articles 16.1 and 17.2 cases there were 4 such requests made to Ireland from other Member States in the same period, 3 of which involved Syrian nationals which were declined and 1 other case is still under consideration.”<sup>51</sup>

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

According to ORAC, requests to Ireland from other Member States to take charge of / take back applicants based on family links or the use of discretionary clauses were assessed carefully on their merits and decided on in accordance with the provisions of the Dublin III Regulation, the supporting Commission Implementing Regulation (No. 118/2014) and the domestic Statutory Instrument (No. 525 of 2014) giving further effect to the Dublin Regulation in national law, as well as any relevant jurisprudence of the CJEU and Irish courts. Pending the release of the IPO’s first Annual Report, specific information pertaining to the implementation of the Dublin procedure since the commencement of the IPA is unavailable.

## 2.2. Procedure

### Indicators: Dublin: Procedure

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

As part of the general application procedure, all applicants are photographed and fingerprinted, (with the exception of applicants believed by the relevant officer to be under the age of 14 years old and not accompanied by a parent or guardian) during their initial interview with IPO (see section on [Registration](#)). As part of the process applicants and dependent children are required to have photographs taken. They are also required to have their and their dependent children’s fingerprints taken. Fingerprints may be disclosed in confidence to the relevant Irish authorities and to asylum authorities of other countries which may have responsibility for considering the application under the Dublin Regulation. Eurodac facilitates transfer of fingerprint information between Dublin III Regulation countries).

Section 19 IPA sets out the procedure for members of the Garda Síochána or immigration officers to take fingerprints for the purposes of (a) establishing the identity of a person for any purpose concerned with the implementation of the IPA, and (b) checking whether the person has previously lodged an application for international protection in another Member State.<sup>52</sup> Where a person refuses to provide their fingerprints, they shall be deemed not to have made reasonable efforts to establish their identity and shall

<sup>51</sup> Parliamentary Question response by Minister Frances Fitzgerald, 79 of 5 October 2016 available at: <http://bit.ly/2luo1Bi>.

<sup>52</sup> Section 19(1) IPA.

be deemed to have failed to fulfil their obligation to cooperate with the application process.<sup>53</sup> The IPA does not legislatively provide for the use of force to take fingerprints, however, as not volunteering to provide fingerprints is viewed as a failure to make reasonable efforts to establish one’s identity (in line with Section 20(1) IPA setting out grounds for detention), applicants who refuse to be fingerprinted may be detained.

In relation to specific guarantees for children in the Dublin procedure, IPO is required under Regulation 3(b) of the European Union (Dublin System) Regulations 2018 to consult with Tusla, the Irish Child and Family Agency, on the best interests of the child particularly with respect to the child’s well-being and social development and the views of the child. No information is available on the practice under the new single procedure.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

Same as regular procedure

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

At any time during the initial asylum process the IPO may determine that a person is subject to the Dublin III Regulation and hold a personal interview where necessary to conduct the Dublin procedure.<sup>54</sup>

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

### 2.4. Appeal

#### Indicators: Dublin: Appeal

Same as regular procedure

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

The appeal against a transfer decision must be lodged within 10 working days and has suspensive effect.<sup>55</sup>

The IPAT shall have regard to both the facts and law when considering appeals under the Dublin III Regulation. This is in accordance with Article 27 of the Dublin III Regulation which requires that a person

<sup>53</sup> Section 19(4) IPA.

<sup>54</sup> Regulation 4 European Union (Dublin System) Regulations 2018.

<sup>55</sup> Regulations 6 and 8 European Union (Dublin System) Regulations 2018.

shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a Court or Tribunal.

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

There is no onward appeal of an IPAT decision on the Dublin Regulation, however, judicial review of the decision could be sought. At the moment there are some pending cases before the High Court (unreported) regarding the remit of the IPAT's appeal and whether they can apply the sovereignty clause under Article 17 themselves. These cases are pending at time of writing, however, in November 2017, the High Court referred a number of questions to the Court of Justice of the European Union (CJEU) on the application of the Dublin Regulation including on the issue of application of Article 17. Some of the questions referred include: whether the words "determining member state" in the Dublin III Regulation includes a state exercising an Article 17 function and whether the functions of a member state under Article 6 (best interests of the child) include the discretion under Article 17 not to transfer.<sup>56</sup>

In 2016 the Tribunal received 396 appeals in relation to the Dublin Regulation, representing a 132% increase on the previous year's figure of 171 appeals. A total of 276 appeals related to the Dublin Regulation were completed and 193 decisions were issued by the RAT in 2016, 94% of which upheld the first-instance decision by ORAC.<sup>57</sup>

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

Same as regular procedure

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

An applicant who is subject to the Dublin Regulation may access legal information through the Refugee Legal Service (RLS). Technically this is not completely free legal representation as there is a small amount of 10 € to be paid (see section on [Regular Procedure: Legal Assistance](#)). The RLS has also issued guidance on the role of Private Practitioners on their panel as regards legal advice which shows that it also applies in the context of the Dublin procedure.<sup>58</sup>

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

<sup>56</sup> CJEU, Case C-661/17 *M.A.*, Reference of 27 November 2017. Irish Times, 'High Court asks European Court of Justice to Clarify EU Law amid Brexit Concerns', 23 November 2017, available at: <http://bit.ly/2mCGk6M>.

<sup>57</sup> RAT, *Annual Report 2016*, 25.

<sup>58</sup> See further Legal Aid Board, *Best practice guidelines*, February 2017, available at: <http://bit.ly/2moPO3D>.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

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

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

In response to a Parliamentary Question from February 2017 enquiring whether the Department of Justice was intending to implement the 2016 European Commission proposal that States gradually resume transfers to Greece, previous Minister for Justice Frances Fitzgerald stated that "No transfers of unaccompanied minors are foreseen for the time being. The resumption of transfers is not to be applied retroactively and will only apply to applicants who have entered Greece irregularly from 15 March 2017 onwards or for whom Greece is responsible from this date under the Dublin Regulation criteria."<sup>59</sup> Whether such transfers have occurred in practice since March 2017 is unknown at time of writing.

There is no blanket suspension of transfers to any Member State apart from Greece.<sup>60</sup>

## 2.7. The situation of Dublin returnees

In response to a request by the Irish Refugee Council, the IPO indicated that they comply with the provisions of Article 31 (Exchange of relevant information before a transfer is carried out) and Article 32 (Exchange of health data before a transfer is carried out) of the Dublin Regulation in relation to incoming transfers.<sup>61</sup>

Under the previous system in cases where Ireland had agreed to take back an asylum seeker under the Regulation, the person could be detained on arrival and have difficulty in accessing the asylum procedure (possibly for a second time). If the person has already had a finally determined asylum application and seeks to make another asylum application they would have to make an application to the Minister under Section 22 IPA (see section on [Subsequent Applications](#)). It is possible that the authorities could invoke Section 5 of the Immigration Act 2003 which states that a person whom an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects has been unlawfully in the State for a continuous period of less than 3 months, be removed from Ireland.

## 3. Admissibility procedure

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

Section 21 IPA contains provisions outlining the circumstances under which an application may be deemed inadmissible by the presiding International Protection Officer. According to Section 21(2) IPA, an application for international protection may be deemed inadmissible where:

- a. Another Member State has granted refugee status or subsidiary protection to the applicant; or
- b. A country other than a Member State is a [First Country of Asylum](#) for the applicant.

<sup>59</sup> Response to Parliamentary Question 155, 28 February 2017, available at: <http://bit.ly/2DiG5YV>.

<sup>60</sup> Information provided by IPO, January 2017.

<sup>61</sup> Information provided by IPO, August 2017.

Where the international protection officer is of the opinion that the above inadmissibility criteria are met, he or she shall make a recommendation to the Minister that the application be deemed inadmissible. In such circumstances, the Minister shall notify the applicant and his or her legal representative of the recommendation, including a statement of the reasons for the recommendations, a copy of the international protection officer's report and a statement informing the person of their entitlements, including the right to an appeal (without an oral hearing) to the IPAT within ten days of receiving the decision.

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

Same as regular procedure

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

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

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

Same as regular procedure

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

Where an inadmissibility recommendation is made, the applicant may make an appeal against that decision within a timeframe designated by the Minister. The time limit for appealing inadmissibility decisions has been set at 10 working days according to International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (S.I. No. 116/2017), prescribing specific time periods for different classes of appeal.<sup>62</sup>

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

<sup>62</sup> Section 21(6) IPA; Section 3(a) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

The appeal procedure against inadmissibility decisions differs from the [Regular Procedure: Appeal](#) insofar as there is no option for an oral hearing.<sup>63</sup>

### 3.4. Legal assistance

#### Indicators: Admissibility Procedure: Legal Assistance

Same as regular procedure

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

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

However, if the inadmissibility procedure happens prior to being provided with a Questionnaire or at the frontiers of the State it is likely that the applicant will not know how to avail themselves of legal advice so in practice may not receive assistance in an admissibility procedure. Furthermore the guidance issued by the RLS to solicitors on its private practitioner’s panel appears to indicate that legal advice is only available once the applicant has been admitted into the single procedure.<sup>64</sup> The lack of transparency with respect to the information and legal assistance provided to persons refused access to the international protection procedure, particularly at the frontiers of the state who are refused ‘leave to land’, remains an ongoing concern. The Concluding Observations of the UN Committee against Torture specifically called on the Irish State to ensure that all persons refused ‘leave to land’ are provided with legal advice informing them of their right to seek international protection, in a language they can understand.<sup>65</sup>

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

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

#### Indicators: Border Procedure: General

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

The IPA does not technically provide for a border procedure. However, a person who is at the frontiers of the State or is in the State and indicates that he or she needs asylum shall undergo a preliminary interview be it at the border or elsewhere by an International Protection Officer or immigration officer under Section 13 IPA. They are then given permission to enter and remain in the State as an applicant of international

<sup>63</sup> Section 21(7) IPA.

<sup>64</sup> Legal Aid Board, *Best Practice Guidelines, Information Note for Private Practitioners*, February 2017, available at: <http://bit.ly/2moPO3D>.

<sup>65</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, available at: <http://bit.ly/2hPIVem>, para 12(e).

protection under Section 16 IPA and upon arrival at the IPO premises are granted a temporary residence certificate.

#### 4.2. Personal interview

##### Indicators: Border Procedure: Personal Interview

Same as admissibility procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?
 

	Not yet known
❖ If so, are questions limited to nationality, identity, travel route?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
  
2. Are interviews conducted through video conferencing?  Frequently  Rarely  Never

Section 13 IPA enables a preliminary interview to be conducted at the border by an International Protection Officer or immigration officer.

This interview shall seek to establish *inter alia* (a) whether the person wishes to make an application for international protection and, if do so, the general grounds upon which the application is based, (b) the identity of the person, (c) the nationality and country of origin of the person, (d) the mode of transport used and the route travelled by the person to the State and any details of any person who assisted the person in travelling to the State, (e) the reason why the person came to the State, and (f) the legal basis for the entry into or presence in the State of the person, and whether any grounds exist for the application to be deemed inadmissible under Section 21(2) IPA. The interview shall, where necessary and possible, be conducted with the assistance of an interpreter. A record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to Minister and the IPO.

#### 4.3. Appeal

##### Indicators: Border Procedure: Appeal

Same as regular procedure

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

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

There is no appeal. If someone is refused leave to land at the border under the Immigration Act 2004 and they are represented by a solicitor, then the only action available is seeking judicial review. This, however, should not occur if the person expresses a wish to make an application for international protection or requests not to be expelled or returned to a territory where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment, or fears or faces persecution or serious harm if returned to his or her country of origin. Then they should be granted entry and a preliminary interview conducted in accordance with Section 13 IPA (see above). There is an appeal if the application is found inadmissible under Section 21 IPA (see [Admissibility Procedure: Appeal](#)) which may arise during the preliminary interview.

It should be noted that the grounds for refusing leave to land at airports and ports of entry under the Immigration Act 2004 have been extended by virtue of Section 81 IPA which states that a person may be refused leave to land by amending Section 4(3) of the Immigration Act 2004 to include “(l) that the non-national – (i) is a person to whom leave to enter or leave to remain in a territory (other than the State) of the Common Travel Area (within the meaning of the International Protection Act 2015) applied at any time during the period of 12 months immediately preceding his or her application, in accordance with subsection (2), for a permission, (ii) travelled to the State from any such territory, and (iii) entered the

State for the purposes of extending his or her stay in the said Common Travel Area regardless of whether or not the person intends to make an application for international protection.” As there is a complete lack of independent oversight at Ireland’s borders and data on practice around ‘leave to land’ is sparse, it remains to be seen how these provisions are applied in practice.

#### 4.4. Legal assistance

**Indicators: Border Procedure: Legal Assistance**

Same as regular procedure

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

Yes                       With difficulty     No

❖ Does free legal assistance cover:

Representation in interview

Legal advice

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

No appeal

There is no free legal assistance at first instance in the border procedure. The need for procedural safeguards and access to information and legal assistance at the border, particularly in respect to ‘leave to land’ for persons who may have grounds for seeking international protection, has been emphasised by the Irish Refugee Council, the Irish Human Rights and Equality Commission and the UN Committee against Torture, among others, in relation to Ireland’s *non-refoulement* obligations.<sup>66</sup> In the event that someone is found inadmissible at the border they should be advised of the possibility to seek legal advice for their appeal with the Legal Aid Board. The appeal is on paper only with no oral hearing.

### 5. Accelerated procedure

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

Certain cases may be prioritised under Section 73 IPA under 10 grounds, as mentioned in the section on [Prioritised Examination](#). Whereas that prioritisation of cases does not generally entail different guarantees, Section 43 IPA foresees different rules for appeals in cases where the applicant:<sup>67</sup>

- ❖ In submitting his or her application and in presenting the grounds for his or her application in his or her preliminary interview or personal interview or any time before the conclusion of the examination, has raised only issues that are not relevant or are of minimal relevance to his or her eligibility for international protection;
- ❖ Has made inconsistent, contradictory, improbable or insufficient representations which make his or her claim to be eligible for international protection clearly unconvincing;
- ❖ For a reason related to the availability of internal protection,<sup>68</sup> is not in need of international protection;
- ❖ Failed to make an application as soon as reasonably practicable, without reasonable cause;
- ❖ Comes from a [Safe Country of Origin](#).

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

<sup>66</sup> Irish Refugee Council, *Submission to the UN Committee against Torture on the Examination of Ireland’s National Report*, June 2017, available at: <http://bit.ly/2w2dzU6>, 8; Irish Human Rights and Equality Commission, *Ireland and the Convention against Torture – Submission to the United Nations Committee against Torture on Ireland’s second periodic report*, July 2017, available at: <http://bit.ly/2wettOs>; UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, para 12(e).

<sup>67</sup> Section 43 IPA, citing Section 39(4) IPA.

<sup>68</sup> Section 32 IPA.

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

Same as regular procedure

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

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

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

Same as regular procedure

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

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

Under Section 43 IPA, applicants then have 10 working days instead of 15 working days to make an appeal,<sup>69</sup> which shall be determined without an oral hearing, unless the Tribunal considers it necessary in the interests of justice to have such a hearing. The appeal is suspensive.

## 5.4. Legal assistance

### Indicators: Accelerated Procedure: Legal Assistance

Same as regular procedure

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

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

<sup>69</sup> Section 43(a) IPA; Section 3(d) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

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

Section 58(1) IPA defines as vulnerable persons individuals ‘such as persons under the age of 18 years (whether or not accompanied), disabled persons, elderly persons, pregnant women, single parents with children under the age of 18 years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.’ The provision, however, applies solely to the application of Sections 53 to 57, which refer to content of international protection.

#### 1.1. Screening of vulnerability

There is no formal mechanism for the identification of vulnerable people, except for unaccompanied children under the IPA. The government has considered the development of a ‘Vulnerability Assessment’ for newly arrived asylum seekers, in order to implement the recommendations of the June 2015 Working Group Report on improvements to the protection process prior to the reform brought about by the IPA.<sup>70</sup> However, there has not been an unequivocal commitment or concrete plan to date to establish a formal vulnerability identification mechanism.<sup>71</sup>

In response to a Supreme Court judgment focusing specifically on the issue of the right to work for asylum seekers in Ireland, in which the Court found the ban on asylum seekers accessing employment to be in principle unconstitutional, the State announced its intention to opt-in to the recast Reception Conditions Directive as a remedy.<sup>72</sup> Article 22 of that Directive also incorporates an obligation on the State to ‘assess whether the applicant is an applicant with special reception needs’ for the purposes of ensuring support for the reception needs of vulnerable persons in the international protection process. The exact nature and format of that assessment as transcribed into Irish practice remains to be seen.

For the time being, the IPO does not collect disaggregated statistics on the number of asylum seekers belonging to vulnerable groups.

#### 1.2. Age assessment of unaccompanied children

Section 14 IPA states that where it appears to an immigration officer or an officer of the IPO that a child under the age of 18 years, who has arrived at the frontiers of the State or has entered the State and is not accompanied by an adult who is taking responsibility for the care and protection of the child, the officer shall inform, as soon as practicable, the Child and Family Agency (Tusla) and thereafter the provisions of the Child Care Act 1991 apply.

Under the system governed by the Refugee Act 1996, interviews and age assessment tools were used to assess age and no statutory or standardised age assessment procedures appeared to be in

<sup>70</sup> Report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Third and final progress report on the implementation of the Report’s recommendations*, June 2017, available at: <http://bit.ly/2w12bLC>, 12.

<sup>71</sup> UN Committee against Torture, *Concluding observations on the second periodic report of Ireland*, 11 August 2017, available at: <http://bit.ly/2hPIVem>, para 12(b) to that effect.

<sup>72</sup> INIS, ‘Government agrees framework for access to work for international protection applicants’, 22 November 2017, available at: <http://bit.ly/2DDGaUE>.

existence.<sup>73</sup> In the asylum procedure ORAC would firstly form an opinion of the age of the person presenting to claim asylum prior to any referral to Tusla. Medical assessments were not carried out to determine age. Tusla would then conduct a general child protection risk assessment which would explore age as part of that assessment.<sup>74</sup> They used a social age assessment methodology which included questions about family, education, how the young person travelled to Ireland, etc. The social worker assessed the young person's age based on how articulate they are, their emotional and physical developmental, etc. However, ORAC made the final decision as to the person's age.

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

The IPA contains a number of provisions relating to age assessment and identification of unaccompanied children. Section 24 IPA allows the Minister, or an international protection officer to arrange an examination to determine the age of an applicant to see if he/she is under the age of 18 years. An examination is required to be:

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

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

It should be noted that in relation to the recommendations of the Working Group report on the Protection System, the government's progress report references implementation of the following recommendation in June 2016 by the HSE and RIA and yet no further information is provided as to how it is implemented in practice: The establishment of formal mechanisms of referral in the case of disclosed or diagnosed vulnerabilities to ensure that such persons are provided with appropriate information, health or psychological services and procedural supports.<sup>75</sup> The immigrant support organisation, Nasc, in their in-depth evaluation of the government's progress reports, conducted in December 2017, found this recommendation to not have been progressed at all, with requests for information from key agencies yielding 'no evidence of the development of a formal system of referral' for vulnerable applicants.<sup>76</sup> In relation to age assessment procedures specifically, Nasc found the government's report of recommendations that such procedures are clarified to be 'implemented', in fact only 'partially implemented.' The organisation highlighted, among a number of issues, 'considerable concerns about Tusla's age assessment procedures, or more specifically when their age assessment procedures are not being called upon, as we are aware of cases where age disputed minors end up in direct provision centres,

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<sup>73</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>74</sup> *Ibid*, 35.

<sup>75</sup> Department of Justice and Equality, *Working Group Second Progress Table*, February 2017, available at: <http://bit.ly/2IZUvSM>.

<sup>76</sup> Nasc, *Nasc Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, available at: <http://bit.ly/2EOi8Wz>, 27.

with no access to appeal the initial age assessment, which is usually conducted at the frontiers of the state, and therefore unable to access the supports and aftercare provided to separated children.<sup>77</sup>

Neither the IPO nor Tusla collect statistics on age assessments conducted in Ireland.<sup>78</sup>

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?  Yes  For certain categories  No  
❖ If for certain categories, specify which:<sup>79</sup> Unaccompanied children, elderly, severely ill

Section 58 IPA states that the specific situation of vulnerable persons shall be taken into account when applying Sections 53 to 57 of the International Protection Act. Sections 53 to 57 relate to the rights granted to beneficiaries of international protection including a travel document, family reunification, the issuing of permission to reside in the state and other rights. In effect therefore the requirements of Section 57 only relate to persons who are granted refugee status or subsidiary protection, not persons applying for international protection. It remains to be seen how this will be implemented in practice, including whether these provisions may be applied to persons in the status determination process. Anecdotal information indicates that Section 58 has been applied successfully in the case of a minor who aged-out while awaiting a decision on his asylum case, thereby rendering him an adult for the purposes of the new **Family Reunification** provisions contained in Section 56 IPA. By reference to Section 58 the applicant could be considered vulnerable for the purposes of benefitting from the more favourable family reunification provisions for minors.

### 2.1. Adequate support during the interview

Section 28(4)(c) IPA states that the protection decision-maker shall take in to account, *inter alia*, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts, to which the applicant has been or could be exposed, would amount to persecution or serious harm. The High Court has indicated that a decision maker's failure to fulfil the requirements of Section 5 may amount to an error of law. In a case in 2013 the High Court quashed a decision of the Department of Justice which refused to grant a national of the Democratic Republic of Congo subsidiary protection on the grounds that, *inter alia*, the decision maker had failed to adequately consider the individual position and circumstances of the applicant.<sup>80</sup> Similar findings were made in a case involving a Bangladeshi national.<sup>81</sup>

The IPO does not have specialised units or officers dealing with claims by vulnerable groups, although it intends to hold further information sessions with UNHCR similar to those done under ORAC. Moreover, a group of Panel Members / Caseworkers have received specialised training, based on a module developed by UNHCR, on cases involving unaccompanied children. Only officials who have conducted this training can interview unaccompanied children. The IPO has also issued guidelines on best practices for reporting cases of potential or actual child abuse or neglect ('Children First Guidelines') to its staff.<sup>82</sup>

According to a European Migration Network (EMN) report, ORAC had indicated that a group of experienced interviewers received additional specialised training, facilitated by the UNHCR, to assist them

<sup>77</sup> *Ibid*, 13.

<sup>78</sup> Information provided by Tusla, August 2017.

<sup>79</sup> The IPO has produced a prioritisation note which sets out prioritisation criteria such as age, health and country of origin, available at: <https://bit.ly/2m1Plbi>.

<sup>80</sup> High Court, *E. D-N, L. D. S v Minister for Justice and Equality* [2013] IEHC 447, Judgment of 20 September 2013.

<sup>81</sup> High Court, *Barua v Minister for Justice and Equality* [2012] IEHC 456, Judgment of 9 November 2012.

<sup>82</sup> Information provided by IPO, August 2017.

in working on cases involving unaccompanied children.<sup>83</sup> These same staff have been retained and are now in the IPO.

UNHCR conducts several general training sessions for new staff per year and as requested by the relevant authority. In 2017, UNHCR delivered training to other agencies that work with international protection applicants, for example the Border Management Unit and the Legal Aid Board, as well as multi-agency training on child protection which included participants from Tusla, the Legal Aid Board, the IPO and IPAT staff, among others. The subjects covered in the training are identified by the needs of the specific authorities. Training covers the international protection determination procedure (refugee definition, subsidiary protection, credibility assessment etc.), child protection training (best interests assessment, child-specific protection determination procedures, child-specific procedural safeguards etc.) and training on particular topics such as asylum claims related to sexual orientation and/or gender identity.<sup>84</sup>

Other NGOs, such as SPIRASI also provide training on working with victims of torture, however such training is conducted on an *ad-hoc* basis upon request. SPIRASI have indicated to the state that they would be open to providing training for the early identification of victims of torture but such a facility does not exist at present.<sup>85</sup>

It should be noted that Ireland has opted in to the first iteration of the Asylum Procedures Directive, which requires that officials carrying out the personal interview of the applicant be suitably 'competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability.'<sup>86</sup> Besides general training received by all IPO staff, there is not specific reference to vulnerability identification in the IPA and in practice, there does not seem to be a systematic approach to identification or addressing the needs of vulnerable persons in advance of the substantive interview. Furthermore, Ireland has announced its intended opt-in to the recast Reception Conditions Directive by mid-2018, which calls for a mechanism by which to identify the special reception needs of vulnerable persons. What this mechanism will look like in practice remains to be seen.<sup>87</sup>

## 2.2. Prioritisation and exemption from special procedures

Accelerated procedures are not applied to unaccompanied children but their applications may be prioritised by IPO. Section 73 IPA grants the Minister power to 'accord priority to any application' or request the International Protection Appeals Tribunal Chairperson to prioritise any appeal, having regard to *inter alia* 'whether the applicant is a person in respect of whom the Child and Family Agency is providing care and protection.'<sup>88</sup>

In accordance with Section 73 IPA, the IPO (in consultation with UNHCR Ireland), issued a statement setting out prioritisation procedures for scheduling the substantive interviews of certain categories of applicant in February 2017.<sup>89</sup> Under this note, when considering whether to prioritise an application, the IPO may have regard to certain categories of vulnerable applicant with respect to: the age of the applicant (specifically unaccompanied minors in the care of TUSLA; applicants who applied as unaccompanied minors, but who have now aged out; applicants over 70 years of age, who are not part of a family group) and applicants with serious health grounds requiring prioritisation (specifically, applicants who notify the

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<sup>83</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014, 27.

<sup>84</sup> Information provided by UNHCR, January 2018.

<sup>85</sup> Information provided by SPIRASI, August 2017.

<sup>86</sup> Article 13(3)(a) Asylum Procedures Directive.

<sup>87</sup> UNHCR, 'UNHCR welcomes Irish decision to opt in to EU Law on right to work for asylum-seekers', 22 November 2017, available at: <http://bit.ly/2zaUy3D>.

<sup>88</sup> Section 73(2)(i) IPA.

<sup>89</sup> IPO and UNHCR, 'Prioritisation of Applications for International Protection under the International Protection Act 2015', 27 February 2017, available at: <http://bit.ly/2m1Plbi>.

IPO after the commencement date that evidence has been submitted, certified by a medical consultant, of an ongoing severe/life threatening medical condition will be prioritised). Given that there is no formal vulnerability identification mechanism at any stage in the applicant process, the onus will be on the applicant and/or their representative to request prioritisation.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

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

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

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the International Protection Office any relevant information. Applicants may approach an NGO called SPIRASI, which specialises in assessing and treating trauma and survivors of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately. SPIRASI has always heavily subsidised the preparation of these reports, receiving a fee of 492 € per report from the State through the Legal Aid Board's Refugee Legal Service while the cost to produce each report is 1,190 €. For clients who have private legal representation the cost of an MLR can be a barrier to access.<sup>90</sup>

SPIRASI's services include the provision of medico-legal reports to the protection process, multidisciplinary assessments of survivors of torture, therapeutic interventions, psycho-social support, outreach and early identification, language and vocational training and training to third parties on survivors of torture. Due to reduced funding in 2016, SPIRASI was forced to halt the production of MLRs between August 2016 and January 2017, which led to long delays for applicants in obtaining a report and created a significant backlog in cases for the organisation itself. With the assistance of additional funding from the Asylum Migration and Integration Fund and the UN Voluntary Fund for Victims of Torture, SPIRASI has been able to resume producing medico-legal reports and SPIRASI puts the waiting time for appointments for reports at 8-10 months from the date of referral.<sup>91</sup> In their 2017 submission to the UN Committee against Torture, SPIRASI expressed concern at victims of torture not being able to access reports to support their asylum application in advance of a first-instance decision in the envisaged shorter process under the single application procedure. Additionally, SPIRASI have indicated that due to the drain on resources in a climate of reduced funding, they are restricted in their capacity to provide the additional rehabilitative supports required by victims of torture.<sup>92</sup>

Picking up on these concerns, the UN Committee against Torture in its Concluding Observations on Ireland in August 2017 recommended that the State: 'Provide adequate funding to ensure that all persons undergoing the single procedure under the International Protection Act have timely access to medico-

<sup>90</sup> SPIRASI, *Submission to the UN Committee against Torture in advance of their review of Ireland*, June 2017, available here: <http://bit.ly/2eNn1Y6>, 14.

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid.*, 15.

legal documentation of torture, ensure that all refugees who have been tortured have access to specialized rehabilitation services that are accessible country-wide and to support and train personnel working with asylum-seekers with special needs.<sup>93</sup>

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

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

Section 14 IPA states that where it appears to an immigration officer or an IPO officer that a child under the age of 18 years, who has arrived at the frontiers of the State or has entered the State and is not accompanied by an adult who is taking responsibility for the care and protection of the child, the officer shall inform, as soon as practicable, the Child and Family Agency (Tusla) and thereafter the provisions of the Child Care Act 1991 apply.

The 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 in practice. Unaccompanied children are taken into care under Section 4 and 5 of the Child Care Act 1991 as amended. Neither section provides for a legal guardian. There are no provisions stating that a child must be appointed a solicitor, nor is there any legislative provision that a legal representative must be assigned within a certain period of time. Upon referral to Tusla, each unaccompanied child is appointed a social worker.<sup>94</sup> Tusla then become responsible for making an application for the child, where it appears to Tusla that an application should be made by or on behalf of the child on the basis of information including legal advice in accordance with Section 15(4) IPA. In that case, Tusla arranges for the appointment of an appropriate person to make application on behalf of the child. There is no legislative or policy guidance setting out how Tusla should make a decision on whether or not an unaccompanied minor should make an international protection application. The sole decision on whether or not an unaccompanied child may make an application for international protection is entirely at the discretion of the Child and Family Agency, which raises concerns in relation to the child's individual right to seek asylum under Article 18 of the Charter of Fundamental Rights.<sup>95</sup>

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

<sup>93</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, available at: <http://bit.ly/2hPIVem>, para 12(c).

<sup>94</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>95</sup> Irish Refugee Council, *Submission to the UN Committee against Torture on its Review of Ireland's National Report*, June 2017, available at: <http://bit.ly/2w2dzU6>, 11.

## E. Subsequent applications

### Indicators: Subsequent Applications

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

Section 22 IPA sets out that a person who wishes to make a subsequent asylum application must apply to the Minister for permission to apply again. The application must set out the grounds of the application and why the person is seeking to re-enter the asylum process including a written statement of the reasons why the person concerned considers that the consent of the Minister should be given. The application is made in writing and there is no oral interview. The Minister shall consent to a subsequent application being made when new elements or findings have arisen or have been presented by the person concerned, which makes it significantly more likely that the person will qualify for international protection, and the person was incapable of presenting those elements or findings for the purposes of their previous application for a declaration and if the person was an applicant whose previous application was withdrawn or deemed withdrawn through no fault of their own and therefore they are incapable of pursuing their previous application. If the Minister refuses to consent to a subsequent application in a written decision the applicant can submit an appeal to the IPAT within 10 working days.<sup>96</sup> The Tribunal shall make its decision without an oral hearing.

Section 22 IPA states that the Minister shall, as soon as practicable after receipt of an application give to the person concerned a statement in writing specifying, in a language that the person may reasonably be supposed to understand (a) the procedures that are to be followed (b) the entitlement of the person to communicate with UNHCR (c) the entitlement of the person to make submissions in writing to the Minister, (d) the duty of the person to co-operate with the Minister and to furnish information relevant to their application, and (e) such other information as the Minister considers necessary to inform the person of and of any other relevant provision of the International Protection Act and regulations made under it.

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

<sup>96</sup> Section 22(8) IPA; Section 3(b) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

## F. The safe country concepts

### Indicators: Safe Country Concepts

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

### 1. Safe country of origin

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

The Minister may amend or revoke any such order and shall review on a regular basis the situation of any country designated under Section 72. The Minister must also notify the European Commission of any country designated on our safe country of origin list. At the moment there is no new list of safe countries of origin. To date no countries have been designated as safe countries of origin under the 2015 Act. South Africa is designated as a safe country of origin under the Refugee Act 1996 (Safe Countries of Origin) Order 2004 (S.I. No. 714 of 2004), which remains in force.

Where it appears to the IPO that an applicant is a national or has a right of residence in a designated safe country then the country will be deemed to be a safe country of origin for the purposes of an assessment of an applicant's international protection application only where: (a) the country is the country of origin of the applicant; and (b) the applicant has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her eligibility for international protection.<sup>97</sup> There is no appeal against a designation that a person comes from a designated safe country of origin. It remains to be seen how this will be applied in practice.

### 2. First country of asylum

Under Section 21(15) IPA a country is a first country of asylum for a person if he or she: (a) has been recognised in that country as a refugee and can still avail himself or herself of that protection, or otherwise

<sup>97</sup> Section 33 IPA.

enjoys sufficient protection in that country including benefiting from the principle of non-*refoulement*, and (b) will be re-admitted to that country.

An application for international protection is inadmissible if a country is deemed to be a first country of asylum for an applicant. It remains to be seen how this concept will be applied in practice.

## G. Relocation

### Indicators: Relocation

1. Number of persons effectively relocated since the start of the scheme 1,017
2. Are applications by relocated persons subject to a fast-track procedure?  Yes  No

### Relocation statistics: 22 September 2015 – 31 March 2018

Relocation from Italy			Relocation from Greece		
	Requests	Relocations		Requests	Relocations
<b>Total</b>		0	<b>Total</b>		1,017

Source: European Commission

Under the relocation strand of the Irish Refugee Protection Programme (IRPP), the Irish state has pledged to relocate approximately 2,622 persons from Greece and Italy through the EU relocation mechanism established by two EU Council Decisions in 2015. As per its commitment, Ireland has agreed to take in 1,089 asylum seekers from Greece; 623 asylum seekers from Italy, and an allocation of 910 asylum seekers from either Italy or Greece which has not yet been assigned by the European Commission to the Irish authorities.<sup>98</sup>

With regards to the nationality of the relocated persons, the majority are overwhelmingly Syrian, with some Eritreans and Iraqis.

### 1. Relocation procedure

In relation to relocation of the cohort from Greece, Ireland was expected to meet its commitment in 2018, with 552 relocations having been effected by October 2017 and an additional 489 having been assessed and ready for transportation as of September 2017.<sup>99</sup> However, according to an Irish Times report quoting a Department of Justice briefing note from April 2017, the Government has considered halting all transfers under the IRPP from Greece and Lebanon due to a lack of available suitable accommodation and the State-provided Emergency Reception and Orientation Centres (EROC) and Direct Provision housing being at full or near-full capacity.<sup>100</sup> Transfers eventually picked up by the end of the year and early 2018.

A difficulty with regard to unaccompanied children relocated from Greece was the different definition of unaccompanied child in the Greek system. According to former Minister Fitzgerald, 'In announcing the [Irish Refugee Protection Programme] IRPP, the Government recognised the importance of prioritising family groups and addressing the position of unaccompanied children. A significant number of those who have arrived to date are young children with one or two parents. Ireland has taken in four unaccompanied

<sup>98</sup> Response to Parliamentary Question from Minister David Stanton, 11 September 2017, available at: <http://bit.ly/2DvDVWP>.

<sup>99</sup> *Ibid.*

<sup>100</sup> The Irish Times, 'Shelving refugee programme considered due to housing crisis', 27 November 2017, available at: <http://bit.ly/2ruQCvq>.

minors with another to follow very shortly; the State has indicated its willingness to take further unaccompanied minors from Greece under relocation and work continues in this regard. Such minors are placed in the care of Tusla. Unaccompanied children that Ireland takes from Greece are additional to the commitments made by Ireland in respect to the 200 that Ireland has committed to relocate who were previously resident in the migrant camp in **Calais**.<sup>101</sup> As of May 2017, 21 of that 200 pledge had been fulfilled.<sup>102</sup>

According to the Greek Asylum Service, Ireland has rejected 68 requests so far.

## 2. Post-arrival treatment

The relocated and resettled programme refugees under the IRPP are housed in Emergency Reception and Orientation Centres (EROC) which are very similar to Direct Provision apart from the fact that it is aimed that people will only stay there for a short period of approximately three months.

Relocated asylum seekers actually have their claims examined at the EROC centres, taking into account screening that has already been carried out by IRPP officers on the ground in Greece. In 2017 relocated asylum seekers from Greece have also been placed in Direct Provision centres as the pace of relocation speeds up and most have their claims examined in a prioritised procedure including at **Balseskin** centre, a Direct Provision centre in the locality of **Dublin** where new arrivals go. As mentioned already, accommodation of people in the international protection process in Ireland is reaching capacity and in January 2018, the Department of Justice, through the RIA, issued a call for tenders to establish additional emergency accommodation centres for approximately 240 people for a contract duration of 12 months.<sup>103</sup> An additional call for tenders for accommodation of a longer-term period from mid-2018 is expected later in the year.<sup>104</sup>

Orientation for new arrivals under both the relocation and resettlement strands of the IRPP are largely the same, taking into account that some elements of orientation may not be able to take place until those who have arrived via relocation receive a decision on their application. It should be noted that EROC mirrors many aspects of the Direct Provision centres, with the key distinction that residents there are generally processed within a shorter timeframe, considering that IRPP staff have already conducted assessments before arrival.<sup>105</sup>

According to the Department of Justice, some of the support measures provided to new arrivals under the IRPP include:<sup>106</sup>

- IRPP staff and interpreters, along with representatives of the Irish Red Cross, meet families and individuals upon arrival at Dublin Airport and accompany them to their accommodation in the EROC.
- During the days following arrival in Ireland the asylum seekers are registered with the Department of Social Protection for a public services card and receive an exceptional needs payment (ENP).
- IRPP officials provide assistance to ensure that families and individuals receive a medical card.
- IRPP liaise with the local Education and Training Board in each catchment area to ensure that groups receive a Language Training and Cultural Orientation programme.

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<sup>101</sup> Parliamentary response from Minister Frances Fitzgerald to Question 95 of 21 February 2017, available at: <http://bit.ly/2mW6SPQ>.

<sup>102</sup> Response to Parliamentary Question from Minister Katherine Zappone, 11 May 2017, available at: <http://bit.ly/2DpB1P4>.

<sup>103</sup> Irish Examiner, 'State tender seeks €40m worth of services for refugees', 6 January 2018, available at: <http://bit.ly/2rnnsOQ>.

<sup>104</sup> Irish Examiner, 'Government seeks urgent refugee accommodation', 17 January 2018, available at: <http://bit.ly/2mWbCqb>.

<sup>105</sup> The Irish Times, "'Similarities' between refugee centres and direct provision', 23 September 2015, available at: <http://bit.ly/1KzABB5>.

<sup>106</sup> Statement by Minister David Stanton during a Dáil Éireann Debate, 19 October 2017, available at: <http://bit.ly/2DqNuCo>.

- Local Service Providers, volunteers and NGOs visit the EROC to provide services and information and to support and befriend the refugees.
- A general practitioner is assigned to the individuals and families to ensure that their immediate medical needs are met including referral to dental and optical services.
- Free Childcare is provided wherever possible to allow the adults to attend the Language and Orientation programme in their EROC.
- Education provision is made for school age children by the Department of Education and Skills.
- Emergency medical matters are followed up while resident in the EROC.

Once the asylum seekers receive refugee status and when housing is made available with the support of the Local Authority, the refugees will be transferred to the community with the support of the IRPP and volunteers in the local community. Each family has the support of an assigned IRPP resettlement worker to assist with the transition along with the support of a full-time Resettlement Support Worker and an Intercultural Support Worker. Local authorities also receive funding to provide counselling, transport and other supports.<sup>107</sup>

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

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

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

A person who states an intention to seek asylum or an unwillingness to leave the state for fear of persecution is interviewed by an immigration or international protection officer as soon as practicable after arriving, depending on the location where such an intention is expressed. The relevant officer informs the person that they may apply to the Minister for Justice and Equality for protection and that they are entitled to consult a solicitor and UNHCR. Where possible this is communicated in a language that the person understands. With respect to persons seeking protection at the border, see to earlier sections which appear to indicate that people may sometimes be refused leave to land though they may have protection needs.

Where a person is detained, the immigration officer or member of the Garda Síochána 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 UNHCR 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.

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

- a) the procedures to be observed in the investigation of the application;
- b) the entitlement to consult a solicitor;

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

- c) the entitlement of the applicant under the International Protection Act to be provided with the services of an interpreter
- d) the entitlement to make written submissions to the Commissioner in relation to his/her application;
- e) the duty of the applicant to cooperate and to furnish relevant information;
- f) the obligation to comply with the rules relating to the right to enter or remain in the state and the possible consequences of non-compliance;
- g) the possible consequences of a failure to attend the personal interview.

The IPO provides written information to every asylum seeker and there is a copy of the information booklet available on the recently established IPO website and is available in 18 languages.<sup>108</sup>

All applicants are given recently issued information leaflets from IPO and the European Commission entitled 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013' which is a guide to the Dublin process in general. A separate information leaflet is also provided to persons who are subject to the Dublin procedure which provides more detailed information, which is entitled 'I'm in the Dublin procedure – what does this mean? Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013'. A separate information leaflet aimed specifically at unaccompanied children is also available, entitled 'Children asking for international protection, information for unaccompanied children who are applying for international protection pursuant to Article 4 of Regulation (EU) No 604/2013'.<sup>109</sup>

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

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded?  Yes  No  
❖ If yes, specify which:
2. Are applications from specific nationalities considered manifestly unfounded?<sup>110</sup>  Yes  No  
❖ If yes, specify which: EU Member States, South Africa

Legislation in Ireland does not single out any particular nationality as manifestly well-founded. However, with respect to the scheduling of substantive interviews of applicants, the IPO may prioritise cases of certain nationalities on the basis of 'the likelihood that applications are well-founded due to the country of origin or habitual residence of applicants.'<sup>111</sup> The Department of Justice has specified that applications from persons from Syria, Iraq, Afghanistan, Iran, Libya, Eritrea and Somalia may be prioritised on the basis 'of country of origin information, protection determination rates in EU member states and UNHCR position papers indicating the likely well foundedness of applications from such countries.'<sup>112</sup>

<sup>108</sup> IPO, *Publications*, available at: <http://bit.ly/2mWLkmK>.

<sup>109</sup> All information leaflets are available online at: <http://bit.ly/2IGDCL9>.

<sup>110</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>111</sup> IPO and UNHCR, 'Prioritisation of Applications for International Protection under the International Protection Act 2015', 27 February 2017, available at: <http://bit.ly/2m1Plbi>.

<sup>112</sup> *Ibid*

## Reception Conditions

Until 2018, Ireland has not been party to the Reception Conditions Directive. The Minister for Justice and Equality stated in March 2013 that the reason for the opt out was Article 11 of the Directive – Article 15 of its 2013 recast – which states that if a decision at first instance has not been taken within one year (now nine months) of the presentation of an application for asylum, and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant. The Minister stated that ‘this is contrary to the existing statutory position in Ireland which provides that an asylum seeker shall not seek or enter employment. Extending the right to work to asylum seekers would almost certainly have a profoundly negative impact on application numbers, as was experienced in the aftermath of the July 1999 decision to do so.’<sup>113</sup>

However, the Supreme Court in its judgment in *N.V.H. v. Minister for Justice and Equality*, which dealt with the situation of an asylum seeker who had been living in Direct Provision for 8 years with no access to employment, declared that the indefinite prohibition on employment for people in the asylum process was unconstitutional. The Court provided the State with a 6-month period within which to review the ban on employment (see [Access to the Labour Market](#)) and to make proposals for providing effective access to the labour market for people in the asylum process. In its response, the Government announced on 22 November 2017 that it would opt in to the recast Reception Conditions Directive.<sup>114</sup> While the prohibition on seeking employment was struck down on 9 February 2018, opt in to the Directive will not take effect until May or June 2018 at the earliest. Considering that Ireland has never placed accommodation of international protection applicants on a statutory footing and many of the provisions set out in the Directive set out standards that go beyond the right to work, opt in to the Reception Conditions Directive is likely to have a dramatic impact on the state of reception in Ireland in the coming year.

### A. Access and forms of reception conditions

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

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

1. Does the law make material reception conditions available to asylum seekers in the following stages of the asylum procedure?<sup>115</sup>

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?  Yes  No

In 2000, following an increase in the numbers applying for asylum in the 1990s, a decision was taken to withdraw social welfare from asylum seekers and to provide for their basic needs directly through a largely cash-less system. This became known as Direct Provision, which is the system of accommodation for persons in the international protection application process in Ireland today.

The Reception and Integration Agency (RIA) was set up as a division within the Department of Justice to manage Direct Provision. RIA has no statutory basis and the decision to establish it is not a matter of

<sup>113</sup> Alan Shatter, Department of Justice and Equality, written answer to the Parliamentary question of Mary Lou McDonald TD, 27 March 2013.

<sup>114</sup> Department of Justice and Equality, ‘Government agrees framework for access to work for International Protection Applicants’, 21 November 2017, available at: <http://bit.ly/2BgSGXj>.

<sup>115</sup> Note that there is no statutory basis for the Direct Provision system.

public record.<sup>116</sup> Originally, it was intended that asylum seekers would spend no more than 6 months living in Direct Provision.

On lodging an application for asylum with the IPO, the applicant is referred to RIA and brought to a reception centre near Dublin Airport named **Balseskin**. After a person has applied for asylum they will be issued with a Temporary Residence Certificate, in the form of a plastic card, which sets out the person's personal details and contains their photograph. When the Temporary Residence Certificate has been received they will be referred to the RIA office within the IPO building. The person is accommodated in **Balseskin** reception centre for a period of up to 8 weeks in order to facilitate an interview with IPO, health screening and registration for Community Welfare Service assistance. The majority of asylum applicants are dispersed to Direct Provision centres in other parts of the country from Balseskin after their initial IPO interview has taken place. To date, this practice has been upheld with the transition to the IPA.

Asylum seekers are not obliged to use RIA accommodation and may source their own accommodation or stay with relatives or friends. However, to do so means that the individual is not entitled to State social welfare supports, e.g. medical card, rent allowance, etc. RIA have suggested that it is believed that a similar number of applicants live outside the Direct Provision system as within it.<sup>117</sup>

RIA also provides overnight accommodation to citizens of certain EU States who are destitute and who have expressed a wish to return to their own country. Programme refugees on their arrival in the State until permanent accommodation has been finalised are also accommodated in both DP centres and Emergency Reception and Orientation Centres. Victims of trafficking who are not asylum seekers are also accommodated during a 60 day reflection period.<sup>118</sup> In September 2014 the Immigrant Council of Ireland in a submission to the Minister for Justice and Equality as part of the National Action Plan for Combatting and Preventing Trafficking in Human Beings stated that the Direct Provision system and RIA accommodation were inappropriate for victims of trafficking and cited various independent reports on the problems inherent in such accommodation such as the accommodation leaving vulnerable young women open to further grooming and exploitation.<sup>119</sup>

RIA provides accommodation for applicants up to their return to their country of origin following a negative decision. It also continues to provide temporary accommodation for persons granted international protection or permission to remain in Ireland under Section 3 of the Immigration Act 1999. Persons issued with a deportation order which is not yet effected, continue to be housed in RIA accommodation.

In relation to the establishment of a Working Group on the Protection Process and Direct Provision that the Report on the Working Group to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers was published in June 2015 and included over 170 recommendations. It represented the first review of the protection process since the establishment of the Direct Provision system 15 years ago. The Chair of the Working Group, Bryan McMahon, on publication of the report stated that the 'single most important issue to be resolved was the length of time that many of those in the system have to wait before their cases are finally determined'.<sup>120</sup> Former Minister Fitzgerald

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<sup>116</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>117</sup> The Organisation Of Reception Facilities For Asylum Seekers, The Economic and Social Research Institute, Corona Joyce and Emma Quinn, February 2014.

<sup>118</sup> The purpose of the reflection period is to allow a victim of trafficking to recover from the alleged trafficking, and to escape the influence of the alleged perpetrators of the alleged trafficking so that he or she can take an informed decision as to whether to assist Gardaí or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking. See 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking', available at: <http://bit.ly/1HTRdmE>.

<sup>119</sup> Immigrant Council of Ireland, *Submission on the accommodation needs of adult victims of sex trafficking in Ireland*, September 2014.

<sup>120</sup> Department of Justice and Equality, *Chair's remarks on the publication of the report to Government*, 30 June 2015, available at: <http://bit.ly/1MxniZe>.

in launching the report acknowledged that successful implementation of key recommendations is dependent on the early enactment of the IPA.<sup>121</sup>

To date, the Government has published three progress reports on the implementation of these recommendations, with the final report having been published in July 2017.<sup>122</sup> On releasing the report, Minister for Justice Charlie Flanagan stated that ‘133 recommendations have been reported as fully implemented and a further 36 are in progress or partially implemented. This represents 98% full or partial implementation.’ However, Nasc conducted an independent review of the implementation progress and published their findings in a working paper on the 18 December 2017.<sup>123</sup> Their findings suggest that in reality only 20 of the 170 Working Group Report recommendations could be verified as implemented, with 51% of the recommendations fully or partially implemented, noting poor implementation particularly among recommendations for which responsibility lies with agencies other than the Department of Justice (such as the Health Service Executive, for example). Key concerns emerging from the Nasc review of the implementation progress, which contradict the official progress reports include: lack of regard for children’s rights, including the principle of the best interests of the child; slow and *ad hoc* implementation of recommendations relating to cooking and living spaces; persistent delays in the international protection process, and the lack of a multidisciplinary approach to identification of vulnerabilities.<sup>124</sup> How the State opts in to the recast Reception Conditions Directive will undoubtedly have a significant impact on how these recommendations are implemented in 2018 and beyond.

## 2. Forms and levels of material reception conditions

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

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2017 (in original currency and in €): 86.40 €

As of December 2017, the total State expenditure for the system of Direct Provision in the previous seven years amounted to over €400 million.<sup>125</sup> In the eleven month period from January to November 2017, the State had spent €48.7 million on privately contracted centres and over €8 million on State-owned centres.<sup>126</sup>

### 2.1. Financial support

At time of writing, asylum seekers are prohibited from working under Section 16(3)(b) IPA. However, on foot of the Supreme Court’s decision in the *NVH* case (see [Access to the Labour Market](#)), this provision is to be struck down, with access to employment to be given effect through opt in to the recast Reception Conditions Directive. Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 states that an individual who does not have a ‘right to reside’ in the State shall not be regarded as being habitually resident in the State. As asylum seekers do not have a right to reside in Ireland they are therefore excluded from social welfare. Under the IPA this prohibition remains unless a person has a pre-existing right to work on their previous status in Ireland.

Under Section 13 of the Social Welfare (Miscellaneous Provisions) Act, 2003 asylum applicants are specifically excluded from receiving rent supplement. The Working Group report noted that ‘apart from

<sup>121</sup> Department of Justice and Equality, Speech by Minister Fitzgerald: Publication of the Report of the Working Group on the Protection Process, 30 June 2015 available at: <http://bit.ly/1XDJEKi>.

<sup>122</sup> Department of Justice, ‘Third and Final Progress Report on the implementation of the Justice McMahon Report recommendations’, 17 July 2017, available at: <http://bit.ly/2DsuuXW>.

<sup>123</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, available at: <http://bit.ly/2Donjfx>.

<sup>124</sup> *Ibid*, 4.

<sup>125</sup> The Irish Times, ‘State paid private firms €400m to run direct provision centres’, 18 December 2017, available at: <http://bit.ly/2G0O23z>.

<sup>126</sup> Response to Parliamentary Question by Minister David Stanton, 12 December 2017, available at: <http://bit.ly/2mWmLr1>.

the weekly allowance, residents are not eligible to apply for other social protection supports with the exception of Exceptional Needs Payments (ENPs) and the Back to School Clothing and Footwear Allowance.<sup>127</sup>

Asylum seekers receive a weekly allowance of €21.60 per adult and €9.60 per child. In early 2016 the allowance for children was raised by €9.60 to €15.60 in response to a Working Group recommendation. The allowance for adults had remained the same since its introduction in 2000 until the allowances for both adults and children were matched at €21.60 from August 2017.<sup>128</sup> The Working Group on the Protection Process in June 2015 received contributions from resident asylum seekers which indicated that the weekly allowance was wholly inadequate to meet essential needs such as clothing including for school going children and it did not enable participation in social and community activities. The weekly allowance was also often used to supplement the food provided at Direct Provision centres. The Working Group recommended that the weekly allowance was increased for adults from €19.10 to €38.74 and increased from €9.60 to €29.80 for children.<sup>129</sup>

Asylum seekers are not required to provide a monetary contribution to the cost of accommodation. However it remains to be seen whether this will remain the case in practice with the opt in to the Reception Conditions Directive (which, at Article 17(4) for example, allows Member States to require applicants who have sufficient means to cover the cost of material reception conditions) and asylum seekers have access to employment.

## 2.2. Food

At all centres apart from self-catering accommodation, residents receive all meals.

In relation to food the Working Group recommended the following:

- ❖ The RIA should engage a suitably qualified person to conduct a nutrition audit to ensure that the food served meets the required standards including for children, pregnant and breastfeeding women, and the needs of those with medical conditions affected by food, such as diabetes.
- ❖ Include an obligation in new contracts to consult with residents when planning the 28 day menu cycle.<sup>130</sup>

According to the Government's progress report on the recommendations of the Working Group Report, 15 of 33 accommodation centres under contract in 2017 have 'some form of personal catering', ranging from 'fully fitted kitchens ... for reheating food and preparing breakfast to communal cooking stations.'<sup>131</sup> The report also indicated that work was ongoing to commence pilots for fully independent living, that would 'include home cooking within the family accommodation units in some instances and access to communal cooking stations for residents in others.' In their review of the implementation progress released in December 2017, Nasc stated that on receipt of information from RIA, it appeared that personal catering facilities had only been established in centres for family centres and family units, and that none of these facilities had been provided to centres housing single adults.<sup>132</sup> RIA had failed to respond to their request for a timeframe in which the additional facilities would be established. Accordingly, Nasc deemed that this recommendation is 'not being progressed.'

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<sup>127</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, para 5.5, 203.

<sup>128</sup> Department of Social Protection Statement, 'Tánaiste & Minister Varadkar increase payments for children & adults in Direct Provision', 14 June 2017, available at: <http://bit.ly/2rtk4Sj>.

<sup>129</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, para 5.30, 208.

<sup>130</sup> *Ibid*, para 4.102, 174.

<sup>131</sup> Department of Justice, *Third and Final Progress Report on the Implementation of the Report's Recommendations*, June 2017, available at: <http://bit.ly/2w12bLC>, 9.

<sup>132</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, 45.

While persons receiving Direct Provision support are entitled to food, accommodation and a small financial allowance they are not entitled to access the mainstream welfare system because they are deemed not to be habitually resident.<sup>133</sup> This exclusion from the social welfare system makes it difficult to make a comparison between the level of material support given to persons receiving Direct Provision support and the allowance given to Irish nationals or other persons deemed habitually resident. However, the communal nature of the accommodation, the small financial allowance and the fact that persons are given food, rather than allowed to cook their own food in many of the centres, indicates that Direct Provision is at the very least inferior to social welfare. In April 2014, a legal challenge against Direct Provision was brought in the High Court for the first time in the case of *C.A. and T.A (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*.<sup>134</sup> One of the grounds of the challenges was the refusal to consider the applicant’s right to work and the exclusion of asylum seekers and persons seeking subsidiary protection from accessing the mainstream social welfare system. While these challenges were unsuccessful, the High Court made important pronouncements on the illegality of RIA’s House Rules. In particular, rules on unannounced inspections, monitoring of presence and requirement to notify RIA of intended absences and rules against permitting guests to bedrooms were found to be a disproportionate interference with rights under the Constitution and Article 8 ECHR. The Court also deemed the lack of an independent complaints mechanism to be unacceptable; this power was extended to the Office of the Ombudsman in 2017.

The ban on cooking in many of the Direct Provision centres has been a point of advocacy for a number of civil society demonstrations against Direct Provision. Irish celebrity chef, Darina Allen, has been outspoken on the inability for many asylum seekers to cook for themselves<sup>135</sup> and has provided internships for people at her cookery school.<sup>136</sup> In November 2016 a pop-up café called ‘Our Table’ was established in **Dublin** to highlight the cooking ban for Direct Provision residents across the country. The café was established to raise awareness of the conditions in Direct Provision for asylum seekers.<sup>137</sup>

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

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

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

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

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
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There is no legislative framework for Ireland’s reception system for asylum seekers within Direct Provision. However, as the Government has indicated that it will opt in to the recast Reception Conditions Directive which provides for the withdrawal and reduction of material reception conditions, in 2018 this may be subject to change depending on how the Directive is incorporated into the Irish system.

Paragraphs 4.24-4.27 of RIA’s House Rules and Procedures, revised in 2015, state that in very serious circumstances, RIA, in the interest of maintaining good order and the safe and effective management of accommodation centres, can immediately and without notice transfer a resident to another centre within the Direct Provision system; or, expel a resident from a centre, which may mean expulsion from the Direct Provision system entirely.<sup>138</sup> The Rules and Procedures state that these actions can only be done if

<sup>133</sup> Liam Thornton, ‘Reception Conditions for Asylum Seekers in Ireland: The Need for a Legislative Basis’, Human Rights in Ireland, available at: <http://bit.ly/1CWykmi>.  
<sup>134</sup> High Court, *C.A and T.A. (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland*, Judgment of 14 November 2014.  
<sup>135</sup> Irish Times, ‘Darina Allen: Direct provision “cooking ban” makes me ashamed to be Irish’, 18 July 2016, available at: <http://bit.ly/2rnGCUM>.  
<sup>136</sup> Irish Examiner, ‘Asylum seeker in the system of Direct Provision secures internship with Darina Allen’, 28 January 2017, available at: <http://bit.ly/2n0cFoQ>.  
<sup>137</sup> [www.ourtable.ie](http://www.ourtable.ie); Irish Times, ‘New café addresses direct provision’s cooking ban’, 9 November 2016, available at: <http://bit.ly/2CpRzp3>.  
<sup>138</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

directed by a RIA official at a senior level. However, in extremely grave or urgent circumstances, the accommodation centre manager may expel a resident from a centre without first getting approval from RIA. If this happens, the centre will notify RIA as soon as possible so that RIA can confirm or revoke the centre's decision.

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

In September 2017, RIA issued letters to cohorts of (predominantly single male) asylum seekers living in Direct Provision who had received final decisions on their case – both those with positive decision on refugee status and subsidiary protection and those with a deportation order – but had not been able to source alternative accommodation, stating that RIA had 'no role in the provision of accommodation to persons once a decision has been made on their application' and asking them to vacate the centres within a month.<sup>139</sup> This prompted backlash from a number of NGOs such as Nasc, who stated the letters represent 'a catastrophic shift in policy, which will actively make those on deportation orders that have not been effected by the State at severe risk of homelessness and destitution.'<sup>140</sup>

In response, the Department of Justice cited reduced capacity of Direct Provision centres as an explanation for the letters and drew a distinction from those who were awaiting a decision on their international protection application and those who were on deportation orders stating that '[c]ontinuing to allocate limited accommodation to people who are legally obliged to remove themselves from the State would undermine our laws and adversely impact our capacity to assist those who are seeking refugee status. At current rate of demand, accommodation capacity in the Centres will run out for all applicants within a number of weeks unless remedial action is taken.'<sup>141</sup> Due to the ongoing housing crisis in Ireland, as well as already over-subscribed homelessness centres, emergency accommodation and supports, there is a real risk that without transitional support, expecting people to leave Direct Provision could result in long term homelessness and / or destitution.

This issue is still ongoing at time of writing and the Irish Refugee Council has encountered both categories of affected person through its direct service provision who are advised to remain in their accommodation centre and assisted by providing written representations to RIA and other relevant agencies.

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<sup>139</sup> Irish Times, 'Asylum seekers facing deportation given a month to leave hostels', 20 September 2017, available at: <http://bit.ly/2CpLN6Q>.

<sup>140</sup> Nasc, 'Nasc Condemns Proposed Eviction of Asylum Seekers from Direct Provision', 20 September 2017, available at: <http://bit.ly/2EOV6CF>.

<sup>141</sup> Response to Parliamentary Question by Minister David Stanton, 25 October 2017, available at: <http://bit.ly/2Bk1M5B>.

## 4. Freedom of movement

### Indicators: Freedom of Movement

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

### 4.1. Dispersal across Direct Provision centres

Accommodation is not allocated according to the procedure that the applicant is in or according to the stage in the procedure. A dispersal mechanism is used so that asylum seekers are spread across Ireland in different Direct Provision centres. From **Baleskin** Reception Centre, where the person usually spends several weeks, the person is then dispersed to one of the other accommodation centres, usually outside of **Dublin**. An applicant does not have a choice regarding where they are sent. The process for sending an applicant to particular centres is not set out in law and RIA stated that this is an 'informal practice' primarily based on a variety of factors that include: not overburdening a particular area, capacity in accommodation centres and the profile of the individual which includes specific medical needs, religious, cultural and ethnic backgrounds, social and family profile.<sup>142</sup>

The RIA may reallocate a room if it is left unused for any period of time without letting the centre manager know in advance; or if a resident is consistently absent from the centre. Presumably long term absence will not be permitted by accommodation centre managers.

Paragraph 2.15 of the House Rules and Procedures state that the accommodation centre manager is obliged to notify the Community Welfare Office, now known as a Department of Social Protection representative, the official who grants the asylum seeker their weekly allowance, that they have been away without telling management and that this may affect access to the Direct Provision Allowance.

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

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

A person can also be transferred to another accommodation centre, without having requested it themselves, for various reasons that include the capacity of the accommodation centre and the profile of applicants.

### 4.2. Restrictions on freedom of movement

Freedom of movement is not restricted but the RIA house rules require residents to seek permission if they are going to be away from their accommodation overnight.<sup>143</sup>

<sup>142</sup> Corona Joyce and Emma Quinn, The Economic and Social Research Institute, 'The Organisation of Reception Facilities for Asylum Seekers', February 2014, available at: <http://bit.ly/1kIPkR>.

<sup>143</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

In practice, freedom of movement is restricted due to the very low level of financial support given to asylum seekers which means that, unless transport to and from a centre is free and at a suitable time, it is often too costly to travel. The Irish Human Rights and Equality Commission has described the conditions in some Direct Provision as amounting to deprivation of liberty due to the extent of those restrictions.<sup>144</sup>

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>145</sup> 34
2. Total number of places in the reception centres: 5,503
3. Total number of places in private accommodation:<sup>146</sup> Not available
4. Type of accommodation most frequently used in a regular procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other
5. Type of accommodation most frequently used in an accelerated procedure:  
 Reception centre  Hotel or hostel  Emergency shelter  Private housing  Other

#### 1.1. Direct Provision centres

As of the end of 2017 there were approximately 5,096 persons registered as living in Direct Provision.<sup>147</sup> At the end of the year, the RIA accommodation portfolio was comprised of a total of 34 centres throughout 17 counties, with a contracted capacity of 5,503. These centres were: 1 Reception Centre, located in **Dublin**, 31 Accommodation Centres, 2 Self Catering Centres, located in **Dublin** and **Louth**.<sup>148</sup>

Capacity and occupancy of Direct Provision centres: 2017		
Centre	Capacity	Occupancy at end 2017
<i>Reception centres</i>		
Balseskin	320	315
<i>Self-catering centres</i>		
Dublin	68	58
Louth	60	45
<i>Accommodation centres (by county)</i>		
Clare	250	240
Cork	849	789
Dublin	938	837
Galway	362	342
Kerry	392	320
Kildare	87	83
Laois	202	194
Limerick	203	200

<sup>144</sup> Human Rights and Equality Commission, *Ireland and the OPCAT*, September 2017, available at: <http://bit.ly/2fEh5h6>, 32.

<sup>145</sup> Both permanent and for first arrivals.

<sup>146</sup> Data from the June 2015 Working Group Report shows that 55% of applicants (4,330) live outside of Direct Provision and the living circumstances of these people are unknown.

<sup>147</sup> RIA, *Monthly Statistics Report*, December 2017, available at: <http://bit.ly/2EwU7f>.

<sup>148</sup> *Ibid.*

Longford	80	75
Louth	60	45
Mayo	267	236
Meath	600	602
Monaghan	175	160
Sligo	215	205
Tipperary	115	111
Waterford	408	397
Westmeath	300	260
<b>Total</b>	<b>5,503</b>	<b>5,096</b>

Source: RIA, Statistics, December 2017.

Of those centres in the RIA portfolio, only three were built ('system built') for the express purpose of accommodating asylum seekers. The majority of the portfolio comprises buildings which had a different initial purpose i.e. former hotels, guesthouses (B&B), hostels, former convents / nursing Homes, a holiday camp and a mobile home site.

There are 7 single male only accommodation centres. There is one female-only reception centre in Killarney, **Kerry** named Park Lodge. The centre has an occupancy rate of 41 out of 55 places.<sup>149</sup>

The **Balseskin** reception centre, with a capacity of 320, is designated as a reception centre where all newly arrived asylum seekers are accommodated.

Seven centres are state-owned: Knockalisheen, **Clare**; Kinsale Road, **Cork**; Atlas House Killarney, Atlas House Tralee, Johnston Marina and Park Lodge, **Kerry**; and Athlone, **Westmeath**. All reception centres are operated by private external service providers who have a contract with RIA. Seven centres are owned by the Irish State with the remainder privately owned. Executive responsibility for the day-to-day management of reception centres lies with the private agencies, which provide services such as accommodation, catering, housekeeping etc.

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

## 1.2. Emergency Reception and Orientation Centres (EROC)

Emergency Reception and Orientation Centres (EROC) were specifically designed for the accommodation of persons arriving in Ireland through **Relocation** and resettlement.

As for people living outside the Direct Provision system, their personal circumstances are generally unknown and figures are not maintained by RIA. According to latest available data obtained during the Working Group process in 2015, their report indicated that 55% of protection applications live outside of Direct Provision i.e. 4,330 persons.<sup>150</sup> In terms of people who lived in Direct Provision and then subsequently left it for whatever reasons whilst their asylum application was pending, for example to live with family members, a partner or friends, anecdotal information suggests that it may be difficult for them to access the Direct Provision system again, should their situation change.

<sup>149</sup> *Ibid.*

<sup>150</sup> Working Group Report, June 2015, 66.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places?  Yes  No
2. What is the average length of stay of asylum seekers in the reception centres?<sup>151</sup> 16 months
3. Are unaccompanied children ever accommodated with adults in practice?  Yes  No

RIA states that all accommodation centres operate in compliance with relevant legislation, specifically the Housing Act 1966 which refers to a definition of overcrowding, in essence the Act provides that there must be no less than 400 cubic feet (about 11m<sup>3</sup>) per person in each room and that a house shall be deemed to be overcrowded when [the number of persons] are such that any two of those persons, being persons of ten years of age or more of the opposite sexes and not being persons living together as husband and wife, must sleep in the same room.

The supervision rate (number of staff per applicant) is decided on an individual basis in the contract between RIA and the service provider. The Economic and Social Research Institute (ESRI) states that this takes account of the geographical position and type of centre involved. RIA states that it provides training and support to proprietors and management of centres. RIA states that this has included co-ordinating. The Health Service Executive delivered training to accommodation centre managers on subjects such as child protection, it also maintains a training database of all trainings undertaken by centre personnel and identifying and organising training needs of centre staff as appropriate.<sup>152</sup> RIA subcontracts inspections to private firm known as QTS Ltd, which follows a standardised inspection form. RIA now publishes all inspections which take place after 1 October 2013 on a dedicated website.<sup>153</sup> There is little interaction between residents and inspectors in those.

Direct Provision has been under intense scrutiny since inception in 2000 for the conditions imposed on residents, exacerbated by the fact that systemic delays in the asylum procedure result in people spending far longer in Direct Provision than was originally intended by the State. In November 2014, the Irish President Michael D. Higgins criticised the Direct Provision system and called it 'totally unsatisfactory in almost every aspect' and called for reform of the system. The Ombudsman has received 97 complaints on Direct Provision between April and December 2017, of which 12 related to accommodation, 8 to food, 3 to the state of facilities and 4 to the conduct of staff.<sup>154</sup>

There has been wide news coverage of poor conditions in some Direct Provision centres and the impact that quality of living there can have on residents. In March 2018, there were reports of rat infestation in one Direct Provision centres.<sup>155</sup>

NGOs and civil society have drawn attention to key areas of concern with regards to Direct Provision, which have been extensively documented in recent years, including the following:

### 2.1. Length of time spent in Direct Provision

One of the primary issues with Direct Provision is the length of time people spend living in a system that was initially conceived to accommodate people for a maximum of six months while their application was processed. This accommodation that is effective unfit for its intended purpose, combined with an asylum

<sup>151</sup> RIA, *Monthly Statistics Report*, December 2017, 17.

<sup>152</sup> RIA, *Annual Report 2012*, available at: <http://bit.ly/1foEY9U>.

<sup>153</sup> RIA, *Inspection Reports*, available at: <http://bit.ly/1JgSYPe>.

<sup>154</sup> See e.g. Ombudsman, *The Ombudsman & Direct Provision – the story so far*, January 2018, available at: <http://bit.ly/2FXmJWX>, 19.

<sup>155</sup> Irish Times, 'Direct provision residents in Sligo complain of "rat infestation"', 26 March 2018, available at: <https://bit.ly/2GezLQp>.

procedure riddled with systemic delays (see [Regular Procedure: General](#)), led to a reception environment that has forced people into circumstances of idleness, and exacerbated trauma and mental health issues. As a result the system has been subject to national and international scrutiny.<sup>156</sup> Therefore it is unlikely that the single procedure introduced by the IPA will bring any tangible reduction in delays in the foreseeable future.

Research has demonstrated that even where applicants are eventually granted status, they face a number of difficulties transitioning out of DP and into independent living due to the length of time they have spent out of the workforce, with limited opportunity for personal or professional development. This, combined with limited economic resources and Ireland’s ongoing employment and housing shortages has led to a significant challenge for people attempting to leave Direct Provision (see [Content of Protection: Housing](#)).<sup>157</sup>

As of the end 2017, the following periods of stay in Direct Provision have been reported by RIA:

Average stay in Direct Provision: 31 December 2017		
Period	Number of persons	Percentage
Less than 6 months	1,221	22%
Over 6 months	1,000	18%
Over 1 year	1,116	20.1%
Over 2 years	1,117	20.2%
Over 3 years	438	7.9%
Over 4 years	213	3.8%
Over 5 years	127	2.3%
Over 6 years	101	1.8%
Over 7 years	204	3.7%

RIA, Monthly Statistics Report, December 2017, 17.

## 2.2. Quality of food and lack of self-catering provisions

Another persistent criticism of the conditions within Direct Provision centres pertains to the availability of nutritionally and culturally appropriate food, in conjunction with the lack of self-catering facilities for residents to prepare food for themselves and their families. RIA’s House Rules and Procedures document states that, where possible and practical, an accommodation centre will cater for ‘ethnic food preferences’ and the centre will provide tea and coffee making facilities, and drinking water, outside normal meal times.<sup>158</sup>

However, complaints about the quality and presentation of food persist across centres.<sup>159</sup> In 2015, the Working Group recommended that all families should have access to cooking facilities, either through access to a communal kitchen or as part of a self-contained family-accommodation unit. According to the Nasc review of the Government’s implementation of the Working Group’s recommendations in December 2017, this recommendation is implemented, albeit gradually and with some concerns as to quality, in 15 of 33 Direct Provision centres.<sup>160</sup> The Working Group also made the recommendation that

<sup>156</sup> See e.g. Ombudsman, *The Ombudsman & Direct Provision – the story so far*, January 2018, available at: <http://bit.ly/2FXmJWX>; United Nations Committee on the Rights of the Child, *Concluding observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, 1 March 2016, available at: <http://bit.ly/1Qetbq6>.

<sup>157</sup> Dr. Muireann Ní Raghallaigh, Maeve Foreman and Maggie Feeley, ‘Transition: From Direct Provision to life in the Community’, June 2016, available at: <http://bit.ly/2lBtlnP>.

<sup>158</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

<sup>159</sup> Ombudsman, *The Ombudsman & Direct Provision – the story so far*, January 2018, 10.

<sup>160</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, 41.

centres for single people should be fitted with communal kitchens by the end of 2016. However, NASC's review indicates that by the end of 2017, any progress with regards to provision of self-catering and communal kitchens has been limited only to family centres and units, with no progress in relation to accommodation for single adults.<sup>161</sup>

### 2.3. Monitoring: Independent Working Group on the Irish International Protection Process and Direct Provision

Efforts to address the situation of Direct Provision have intensified in recent years, as political will on the issue is budging somewhat as civil society pressure (particularly in the wake of the June 2015 Working Group Report) mounts on the issue. Under the Statement of Government Priorities 2014-2016 the government committed itself to address the current system of Direct Provision to "make it more respectful to the applicant and less costly to the taxpayer".<sup>162</sup> It established a Working Group in October 2014 to report to the Government on improvements within the protection process, including reforms to the Direct Provision system and support for asylum seekers.

The terms of reference of the Working Group were set at as follows: "recommend to the Government what improvements should be made to the State's existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards: (i) improving existing arrangements in the processing of protection applications; (ii) showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available; ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised."<sup>163</sup>

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

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

The views of persons in the protection system also formed part of a consultation process undertaken by the Working Group where they found that the length of time was seen as the main issue. However, the Irish Refugee Council undertook an analysis of the contributions made by people directly affected by the Direct Provision system and the response from the Working Group and noted that a number of issues raised were not adequately addressed by the Working Group. Many contributions stated lack of personal autonomy over the most basic aspects of their lives and daily living, such as cooking, going to the shops, cleaning and the loss of skills and the creation of dependency, and the negative impacts on physical, emotional and mental health.<sup>164</sup>

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<sup>161</sup> *Ibid*, 44.

<sup>162</sup> Statement of Government Priorities, 2014-2016, available at: <http://bit.ly/1CWJ1Fu>.

<sup>163</sup> Department of Justice and Equality, Terms of Reference for the Working Group, October 2014, available at: <http://bit.ly/1TTABD9>.

<sup>164</sup> Irish Refugee Council, *What asylum seekers told the Working Group about the length of time and the decision making system*, October 2015, available at: <http://bit.ly/1Pg7VU9>.

The report stated that the length of time in the asylum procedure, and the time waiting for a decision on an asylum claim were the central issues for people within the protection system as well as the lack of a single procedure.<sup>165</sup>

The IRC suggested that the Working Group failed in three related ways: firstly, by refusing to analyse the reasons why the system takes so long; secondly, by not having due regard to the clearly articulated views of asylum seekers about the impact and implications of poor decisions on their claims; and thirdly, by missing an opportunity to place a cap on the length of time spent in any reception system. The Irish Refugee Council noted that the introduction of a single procedure will be a welcome benefit for people in the system but it may not address all the structural faults in the system and there was a lost opportunity by the Working Group to fully analyse all of the reasons behind the lengthy time people spend in the asylum system.<sup>166</sup> Other NGOs and academics also criticised the Working Group report, and the lack of a human rights analysis of the Direct Provision system was highlighted.<sup>167</sup>

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

Throughout 2015 and 2016 human rights groups continued to protest and call for abolishment of the Direct Provision system in Ireland.<sup>168</sup> Collective groups such as MASI – the Movement of Asylum Seekers in Ireland have continued to campaign for change and removal of the current DP system.<sup>169</sup> However, from the government there is no political momentum to replace the Direct Provision system and instead it is taking an approach of incremental reform. Minister Fitzgerald in response to a parliamentary question stated that “While the operation of this system is kept under continual review, there are no plans to replace it with any other system at present. I am satisfied that this system is in compliance with human rights obligations placed on the State by domestic and international law. The State provided accommodation system is one of the central features of the State's asylum system. I am also satisfied that the treatment of asylum seekers in this country is at least on a par with any other country and that the State provided accommodation system delivers a high standard of service and value for money to the taxpayer through coordinated service delivery to asylum seekers. The principal issue with Direct Provision is of course the length of time asylum applicants are residing in it - invariably as a result of the multi-layered processes arising from the Refugee Act which will shortly be replaced when the new International Protection Act comes into force. It is worth noting that no person in the protection process is left without services or shelter at Christmas time or indeed at any other time.”<sup>170</sup>

To date, the Government has published three progress reports on the implementation of these recommendations, with the final report having been published in July 2017.<sup>171</sup> On releasing the last report,

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<sup>165</sup> Irish Refugee Council, *The Working Group and the time factor: a missed opportunity*, October 2015, available at: <http://bit.ly/1Pg7VU9>.

<sup>166</sup> Irish Refugee Council. *The Working Group and the time factor: a missed opportunity*, October 2015 available at: <http://bit.ly/1Pg7VU9>.

<sup>167</sup> See: Doras Luimni, *Working group report on Direct Provision lacks vision and ambition*, 1 July 2015 available at: <http://bit.ly/1OolqlU>; Dr. Liam Thornton, *A preliminary human rights analysis of the Working Group report and Recommendations on Direct Provision*, UCD School of Law and UCD Human Rights Network, available at: <http://bit.ly/1LPOwqy>.

<sup>168</sup> The Irish Times, *Direct Provision is killing our souls, protest hears*, 12 November 2016, available at: <http://bit.ly/2maTwiq>.

<sup>169</sup> More information available at: <http://bit.ly/2mb2v3r>.

<sup>170</sup> Response to a Parliamentary Question by Minister Fitzgerald, question no.23, 16 December 2017, available at: <http://bit.ly/2me7XnA>.

<sup>171</sup> Department of Justice, ‘Third and Final Progress Report on the implementation of the Justice McMahon Report recommendations’, 17 July 2017, available at: <http://bit.ly/2DsuuXW>.

Minister for Justice Charlie Flanagan stated that “133 recommendations have been reported as fully implemented and a further 36 are in progress or partially implemented. This represents 98% full or partial implementation.” However, the organisation Nasc conducted an independent review of the implementation progress and published their findings in a working paper on 18 December 2017.<sup>172</sup> Their findings suggest that in reality only 20 of the 170 Working Group Report recommendations could be verified as implemented, with 51% of the recommendations fully or partially implemented, noting poor implementation particularly among recommendations for which responsibility lies with agencies other than the Department of Justice (such as the Health Service Executive, for example). Key concerns emerging from Nasc’s review of the implementation progress, which contradict the official progress reports include: lack of regard for children’s rights, including the principle of the best interests of the child; slow and ad hoc implementation of recommendations relating to cooking and living spaces; persistent delays in the international protection process, and the lack of a multidisciplinary approach to identification of vulnerabilities.<sup>173</sup>

How the State opts in to the recast Reception Conditions Directive will undoubtedly have a significant impact on how these recommendations are implemented in 2018 and beyond.

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

1. Does the law allow for access to the labour market for asylum seekers?  Yes  No  
 ❖ If yes, when do asylum seekers have access the labour market?
2. Does the law allow access to employment only following a labour market test?  Yes  No
3. Does the law only allow asylum seekers to work in specific sectors?  Yes  No  
 ❖ If yes, specify which sectors:
4. Does the law limit asylum seekers’ employment to a maximum working time?  Yes  No  
 ❖ If yes, specify the number of days per year
5. Are there restrictions to accessing employment in practice?  Yes  No

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

The Supreme Court recently dealt with the prohibition on international protection applicants seeking employment in the case of *NVH v Minister for Justice and Equality*. The case concerned a Burmese man who had been in the Irish international protection process for eight years. His application had been refused twice but ultimately quashed before the process began again. During this process, he lived in a DP centre in County Monaghan. He was offered employment in the DP centre and the applicant applied to the Minister for permission to accept this employment, which was refused. The applicant challenged this decision before the High Court on grounds including that the statutory ban violated his constitutional rights.

<sup>172</sup> Nasc, ‘NASC Publish ‘Working Paper’ on Government’s Progress on McMahon Report’, 18 December 2017, available at: <http://bit.ly/2Donjfx>.

<sup>173</sup> Nasc, ‘Nasc Working Paper on the Progress of Implementation of the McMahon Report’, December 2017, 4.

The challenge was unsuccessful in the High Court and the Court of Appeal before ultimately being heard by the Supreme Court.

In its judgement, the Court held that in circumstances where there is no temporal limit in the asylum process, that the absolute prohibition on seeking employment is contrary to the constitutional right to seek employment. However, the court adjourned consideration of the order of unconstitutionality for a period of six months and provided the State with six months to consider the judgement and propose how to give effect to access to work for asylum seekers.<sup>174</sup>

The Government responded to the judgement by indicating its intention to initiate the process of opting-in to the recast Reception Conditions Directive, which to date Ireland had not been party to.<sup>175</sup> The Directive sets out minimum standards for the reception of asylum seekers while they are undergoing the status determination process, including provision of a legislative basis for access to employment for people seeking asylum. As per the opt-in process and relevant constitutional requirements, the Irish Dáil and Seanad will have to pass motions consenting to Ireland's opt-in before the European Commission can begin the procedure to ensure that Irish law is in compliance with the regulation. As the prohibition was struck down by the Supreme Court on 9 February 2018 and the compliance procedure will take at least four months, it is unlikely that opt-in will take effect until at least June 2018.

This means that there will be a legal vacuum in relation to the right to work for asylum seekers from February 9<sup>th</sup> to the actual opt-in taking place, while a Government Implementation Group makes the necessary arrangements to meet European Commission compliance standards. Minister Flanagan has announced that an 'interim measure' will be established from February 9<sup>th</sup> to allow asylum seekers access to work through the Employment Permits System of the Department of Business, Enterprise and Innovation on the same basis as other non-EEA nationals.<sup>176</sup>

The interim scheme has been met with staunch resistance from NGOs and academics, who state that the Employment Permit System will benefit very few people in the international protection system due to onerous application requirements such as the need to pay a fee of up to €1000, the employment must have a minimum salary of €30,000, and the types of jobs applicable are subject to a list of prohibited categories of employment.<sup>177</sup> Furthermore, access to employment is to be restricted to persons who have not received a first-instance decision on their claim within 9 months. Therefore, applicants who are at appeal stage within 9 months of making an application are excluded. Whether these restrictions will carry over after transposition of the Reception Conditions Directive remains to be seen.

While the Minister has indicated that these interim measures are temporary and that the right to work will be more favourable once opt-in to the Directive is complete, it is still unclear what that right will look like and whether it will be 'effective' in the spirit of the Supreme Court's ruling and the Reception Conditions Directive itself.

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<sup>174</sup> *NVH v Minister for Justice and Equality* [2017] IESC 35, available at: <http://bit.ly/2qx3g8l>.

<sup>175</sup> RTE, 'Minister outlines proposals on asylum seekers accessing work', 21 November 2017, available at: <http://bit.ly/2Ba8exf>.

<sup>176</sup> Department of Justice, Minister Flanagan announces interim arrangements for labour market access for international protection applicants, pending Commission approval of Ireland's opt in to the EU (recast) Reception Conditions Directive, 23 January 2018. <http://bit.ly/2Fbn87R>.

<sup>177</sup> Irish Refugee Council, 'Current proposals indicate right to work threatens to be 'an illusion' for many', 23 January 2018. Available at: <http://bit.ly/2Bnaa4k>; Liam Thornton, 'The Most Limited of Rights: Freedom to Work for Asylum Seekers in Ireland', 17 January 2018. Available at: <http://bit.ly/2E7ib0e>.

## 2. Access to education

### Indicators: Access to Education

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

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

The City of Dublin Education and Training Board Separated Children's Service has offered educational services and support to separated children since 2001. The most prominent feature of the service is their Refugee Access Programme which is a transition service for newly-arrived separated children and other young people 'from refugee backgrounds'. The programme provides intensive English instruction, integration programmes and assists young people in preparing to navigate the Irish education system. Additionally, the service provides support after transition, including study support, outreach, a drop-in and a youth group.<sup>178</sup>

There is no automatic access to third level education in Universities and Colleges, or vocational training. Asylum seekers can access third level education and vocational training if they can cover the costs of the fees, get the fees waived or access private grants or scholarships. Basic instruction on English and computer skills are offered to residents of some Direct Provision centres. Universities have some flexibility on whether to charge refugees third level non-EU fees or EU fees. Both are expensive but non-EU fees are much more expensive.

In 2016 a number of Irish Universities have taken steps to improve access for refugees. For example, NUI Galway announced four new scholarships would be available for people who are asylum applicants or have status including permission to remain.<sup>179</sup> In December 2016 Dublin City University (DCU) was designated as a 'University of Sanctuary' in recognition of a range of initiatives demonstrating a commitment to welcoming refugees and asylum seekers into the University community and fostering a culture of inclusion for all.<sup>180</sup> The initiatives include fifteen scholarships for undergraduate or postgraduate studies. Most recently the University of Limerick with 17 scholarships and University College Cork (UCC) with seven scholarships for asylum seekers and refugees have been designated 'Universities of Sanctuary'.<sup>181</sup>

Third-level student grants are available to asylum seekers since September 2015 under changes announced by Minister for Education Jan O'Sullivan. The changes were recommended by Judge Bryan McMahon in his recent Working Group report on the Direct Provision system and will be rolled out on a pilot basis initially. To avail of the grants, the students must have been spent five years in the Irish school system, obtained their Leaving Certificate, have been accepted on a post-Leaving Certificate or undergraduate course, meet the definition of an asylum seeker and have been in the asylum system for a combined period of five years.<sup>182</sup> There are concerns that the pilot scheme is so restrictive in nature that it may be very difficult to access.<sup>183</sup>

<sup>178</sup> Separated Children's Services, Youth and Education Services, available at: <http://bit.ly/1Jh3fea>.

<sup>179</sup> NUI Galway, 'Inclusive Centenaries Scholarship Scheme Announcement', 17 June 2016, available at: <http://bit.ly/28ZnvVq>.

<sup>180</sup> DCU, 'DCU designated as a University of Sanctuary', 21 December 2016, available at: <http://bit.ly/2mLhkwK>.

<sup>181</sup> The Journal, 'Seven asylum seekers and refugees will receive scholarships to study at UCC', 19 January 2018, available at: <http://bit.ly/2DIVC4e>.

<sup>182</sup> Irish Times, 'Asylum seekers to receive student grants for first time', 28 August 2015 available at: <http://bit.ly/1P1vfpC>.

<sup>183</sup> See e.g. Subpri.me, *Access to Education and the McMahon report*, available at: <http://bit.ly/1ipZjNo>.

In practice, very few applicants could access the support given the restrictive criteria and in 2015 only 2 out of 37 applications for assistance were successful.<sup>184</sup> In 2016 again only 2 people were successful and in 2017 the Irish Refugee Council is aware of only 1 person that was successful. The Irish Refugee Council has written to the Department of Education asking for a meeting to discuss the criteria which we feel is too strict but these requests went without response. NGOs like the Irish Refugee Council, Nasc and Doras Lumni try to assist students where they can. The Irish Refugee Council recommended that the criteria be amended to reduce the five-year requirement.<sup>185</sup> The Irish Human Rights and Equality Commission (IHREC) recommended that the pilot support scheme for free fees be altered to remove the criterion of having spent five years in the Irish education system as this presents for many an insurmountable barrier to accessing affordable third-level education.<sup>186</sup> Unfortunately the criteria remain unchanged.

The dispersal system of Direct Provision also impacts upon the provision of education for children in the asylum procedure. The Irish Times reported that young asylum seekers who have been awarded scholarships for further education were at risk of losing their scholarship places after RIA informed them that they would be dispersed to another accommodation centre.<sup>187</sup>

## D. Health care

### Indicators: Health Care

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

Access to health care is free for asylum seekers living in Direct Provision and therefore has no legislative basis. Once in Direct Provision, they receive medical cards which allow them to attend a local doctor or general practitioner who are located in or attend the accommodation centres. A person with a medical card is entitled to prescribed drugs and medicines but must pay a charge for prescribed medicines and other items on prescription from pharmacies. The prescription charge is 2.50 € for each item that is dispensed to under the medical card scheme and is up to a maximum of 25 € per month per person or family. Asylum seekers living in Direct Provision are to be exempted from paying the prescription charge of up to 2.50 € per item levied on medical-card holders.<sup>188</sup>

RIA's website states that "Health Screening is made available in our Reception Centre to all asylum seekers on a voluntary and strictly confidential basis. Screening covers Hepatitis, TB, HIV, immunisation status and any other ailments or conditions that the medical officers feel require further investigation and/or treatment. Screening staff also check the vaccination needs of the resident and their family. Arrangements are in place in various parts of the country to offer this service to those who did not avail of it in Dublin. The outcome of any medical tests undergone by an asylum seeker will not affect their application for a declaration as a refugee in any way."<sup>189</sup>

<sup>184</sup> Irish Times, 'No asylum in Ireland's education system', 25 October 2016, available at: <http://bit.ly/2IRCDIU>.

<sup>185</sup> The Irish Examiner, 'The Irish Refugee Council: Reform aid scheme for asylum seekers students', 27 August 2016, available at: <http://bit.ly/2bHLCf9>.

<sup>186</sup> IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women, Submission to the UN Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports*, January 2017, available at: <http://bit.ly/2IAMB4T>.

<sup>187</sup> Irish Times, 'Young asylum seekers with scholarships ordered to move', 30 August 2014, available at: <http://bit.ly/1ejf5Yu>.

<sup>188</sup> Citizens Information, 'Prescription Charges for Medical Card Holders', 1 January 2018, available at: <http://bit.ly/2DHShIW>.

<sup>189</sup> RIA, *Medical*, available at: <http://bit.ly/2matETK>.

Specialised treatment for trauma and victims of torture is available through an NGO called **SPIRASI** which is a humanitarian, intercultural, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. SPIRASI staff have access to certain accommodation centres e.g. **Baleskin** reception centre in Dublin and can help to identify victims of torture. No formal arrangements or agreements exist to deal with torture survivors in a way that is different to someone who has not experienced torture. In 2016, SPIRASI met with 410 new clients and held a total of 3,248 appointments throughout the year.<sup>190</sup>

A particular health issue for asylum seekers in Ireland is access to abortion due to restrictive abortion legislation in Ireland, as well as the treatment of asylum seekers in the Direct Provision system.<sup>191</sup> The Irish Family Planning Association (IFPA) stated that asylum-seeking women seeking an abortion face insurmountable obstacles in trying to travel abroad in order to access terminations. The IFPA has raised these concerns with the UN Human Rights Committee and expressed concerns about the restrictive laws on abortion with the Government.<sup>192</sup>

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

Frances Fitzgerald, former Minister for Justice and Equality, in response to a parliamentary question reported that between 2002 and 2014, 61 people have died in the Direct Provision system, 16 of whom were children aged five and under.<sup>193</sup> When asked by way of Parliamentary question for the number of deaths that had occurred in Direct Provision between 2007 and 2017, Minister David Stanton responded that “some deaths of residents have occurred in this period... The Department has no access to death certificates, nor would it be appropriate under data protection safeguards for it to seek such access, and it is therefore not possible to provide the information sought.”<sup>194</sup>

The Royal College of Physicians of Ireland, Faculty of Public Health Medicine wrote a position paper on the health of asylum seekers, refugees and relocated individuals in June 2016.<sup>195</sup> It set out a number of important recommendations:

- ❖ There should be early and adequate screening for chronic diseases and mental health issues, as well as for infectious diseases, and referral to specialised services as required. Community

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<sup>190</sup> SPIRASI, *Submission to the UN Committee against Torture*, June 2017, available at: <http://bit.ly/2eNn1Y6>, 1.

<sup>191</sup> See e.g. The Medical Independent, *Slipping through the gaps*, 11 September 2014, available at: <http://bit.ly/1TTDxQh>; Irish Times, ‘Ms. Y plans legal action against HSE and other agencies’, 22 January 2015, available at: <http://bit.ly/1JAv50T>. See also Irish Times, ‘Ms Y to sue 11 respondents over abortion refusal’, 19 September 2015, available at: <http://bit.ly/1SzTpGq>.

<sup>192</sup> Irish Times, *Dozens of migrant women unable to travel for abortions*, Carl O’ Brien, 15 December 2014, available at: <http://bit.ly/1gQ54nh>; Irish Times, ‘Odds against migrant women trying to travel abroad for abortion’, 15 December 2014, available at: <http://bit.ly/1Mn0UiZ>.

<sup>193</sup> The Journal.ie, ‘Why have 16 children died in Direct Provision?’, 22 January 2015, available at: <http://bit.ly/1HUtBya>. No further information was provided on the cause of death of individuals in the Direct Provision system.

<sup>194</sup> Response to Parliamentary Question by David Stanton, 26 September 2017, available at: <http://bit.ly/2DGkJEV>.

<sup>195</sup> Royal College of Physicians of Ireland Faculty of Public Health Medicine, *the Migrant Health-the Health of Asylum Seekers, Refugees and Relocated Individuals*, June 2016, available at: <http://bit.ly/2mayikR>.

- medical/nursing services, primary care, mental health and acute services should be adequately resourced as a priority to meet current and projected requirements;
- ❖ There should be immediate and adequate access to primary care, sexual and reproductive health;
  - ❖ Care and mental health services, which are culturally and linguistically competent. These services should be adequately resourced to provide treatment for the complex physical and mental health needs of asylum seekers and refugees;
  - ❖ Funding for additional vaccinations for asylum seekers and refugees should be ring-fenced so that all necessary vaccines can be administered in a timely manner;
  - ❖ Translation services should be readily available in primary care and to all health providers that care for asylum seekers and refugees;
  - ❖ Specialised services, such as psychotherapy for survivors of torture and other traumas, should be available and accessible for those who need them, wherever they are resettled;
  - ❖ A formal assessment of the broader health needs of asylum seekers, refugees, and relocated individuals in Ireland should be undertaken;
  - ❖ There is a need for much greater investment by the Irish government in health services for asylum seekers, refugees, and relocated individuals. These services will largely be provided by the Health;
  - ❖ Services Executive, GPs, and voluntary organisations require appropriate funding;
  - ❖ The processing of asylum applications should be done in a timely fashion. Time spent in direct provision and other accommodation centres (including EROC) should be limited to the absolute minimum;
  - ❖ There should be inter-sectoral collaboration to ensure the development of health and social policies that promote inclusion and integration of all migrants into Irish society, minimising the negative impact of migration, and reducing health inequity. Asylum seekers, refugees, and relocated individuals should be represented and involved in all decisions and policies that affect them;
  - ❖ Long term housing, education, employment and health needs of all asylum seekers must be addressed as a government priority.

In August 2016 an asylum seeker tragically committed suicide in a Direct Provision centre, highlighting the failings of identifying specific mental health needs.<sup>196</sup> An inquest concerning her death found that no-one could have foreseen that she was going to take her own life on the day she died in her hostel accommodation. A member of the HSE mental health team had met the woman four days before her death but she told her to leave as she didn't want to talk about her mental health.<sup>197</sup>

In November 2016 a man in Direct Provision also went on hunger strike for approximately 35 days after receiving a transfer decision to the UK under the Dublin Regulation.<sup>198</sup> After being hospitalised he was subsequently admitted to the asylum procedure in Ireland following interventions from local groups and politicians.<sup>199</sup>

In response to a Seanad Debate raised on the health needs of asylum seekers in October 2016 Minister of State Stanton stated that "Health services for asylum seekers are mainstreamed and provided on the same basis as for Irish citizens. Asylum seekers in direct provision accommodation qualify for a medical card and do not have to pay the prescription charge. They can access the same GPs, mental health and other health supports as any other medical card user in their locality."<sup>200</sup>

<sup>196</sup> Irish Times, 'Korean woman found dead in direct provision centre', 24 August 2016, available at: <http://bit.ly/2n58qX1>; The Irish Examiner, 'Campaigners call for an end to Direct Provision after young mother dies at Cork centre', 25 August 2016, available at: <http://bit.ly/2mvl4Sd>.

<sup>197</sup> Irish Times, 'Woman's suicide in hostel was not foreseen – inquest', 26 January 2017, available at: <http://bit.ly/2mLn3SW>.

<sup>198</sup> The Journal.ie, 'Asylum Seeker enters 35th day of hunger strike in Sligo centre', 14 November 2016, available at: <http://bit.ly/2maCuRx>.

<sup>199</sup> The Journal.ie, 'Hunger-striking Iranian man to be granted access to asylum process', 15 November 2016, available at: <http://bit.ly/2mWjo11>.

<sup>200</sup> Seanad Debate, Direct Provision System, 4 October 2016, available at: <http://bit.ly/2mb23C4>.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

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

At time of writing, 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 Tusla and accommodated in foster home settings and small residential units. If the young person is deemed to be an adult they are placed in Direct Provision.

However, Ireland intends to opt-in to the recast Reception Conditions Directive in mid-2018, which sets out legislative standards for reception of asylum seekers, including an obligation on States to incorporate a vulnerability assessment into their national procedure in order to identify special reception needs. It is unlikely that opt-in will occur until at least June 2018, so it is unknown at time of writing what such an assessment will look like in practice.

As it stands, there are no special reception provisions or conditions for applicants and any accommodation provision for an applicant's individual circumstances occurs purely on an ad hoc basis. Upon arrival, it is standard practice for all applicants for asylum to be offered medical screening as well as access to a General Practitioner (doctor), public health nurse and psychological services. Applicants may be assigned to certain subsequent reception facilities as a result e.g. near a particular medical facility or in the case of a disability.

It should be noted that under the Irish Refugee Protection Programme (IRPP) for relocated and resettled refugees, however, it is reported that a vulnerability assessment is undertaken as part of the security clearance stage of the IRPP. It is not known what this vulnerability assessment consists of in practice.<sup>201</sup>

### 1. Reception of unaccompanied children

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

In July 2017, the Department of Children and Youth Affairs published their findings from report that involved consultations with key stakeholders and took account of written submissions from over 31 children and young people living in Direct Provision. Key findings from the report indicate that children and young people in Direct Provision:

- are unhappy about the length of their stays in the system with a number of children saying they have lived in the system since they were born;
- are stigmatised because of where they live, in addition to experiencing some racism;

<sup>201</sup> IRPP, *Expression of Interests Sought*, available at: <http://bit.ly/2n594DB>.

- want their families to get their papers so that they can live normal lives;
- are unhappy with the level of financial assistance their parents receive, which impacts directly and indirectly on them;
- dislike the cramped, shared and often sub-standard accommodation they live in
- often have nothing to do, when recreational facilities are inadequate or lacking entirely;
- say that the food they are served is not culturally appropriate;
- is of low nutritional value; and is often poorly cooked to the point of being dangerous to their health;
- state that menus are monotonous and packed school lunches are exactly the same every day;
- feel unsafe when families are sharing space with single men;
- experience disrespectful attitudes from staff at the centres towards them and their mothers;
- cannot enjoy a normal social life due to lack of suitable transport, clothing and money;
- worry about their education when they have no space or support for homework, and also worry about limited third level opportunities.<sup>202</sup>

## 2. Reception of families with children

Reports have detailed the unsuitability of Direct Provision accommodation for children and families with children. Overcrowding of rooms is a major concern, with families sharing one room and examples of lone parents having to share a room with another family. Families, including adults and children of various ages, are often expected to share one bedroom, raising issues around privacy, hygiene and child safety. The Irish Human Rights and Equality Commission (IHREC) published a policy statement on the system of Direct Provision in Ireland on World Human Rights Day, 10 December 2014. It found that the system of Direct Provision is 'not in the best interests of children, has a significant impact on the right to family life and has failed adequately to protect the rights of those seeking asylum in Ireland.'<sup>203</sup>

Another concern in relation to children is the lack of suitable leisure, recreational and study spaces for children and young people. While some centres have dedicated play or homework rooms – these are in some cases open for limited periods only or in the context of a general prohibition on children up to the age of 14 being unattended in a centre, not practically accessible. The result is that many children often end up doing their homework in the bedroom shared with their parents and siblings, where there may not be a desk or any other dedicated space to study. A side effect of overcrowding and the lack of dedicated child-friendly space is that many children end up frequenting communal spaces used by other adults living in the centre, resulting in parents not being able to control who their children come into contact with.<sup>204</sup>

The length of time spent in DP has a disproportionately negative impact on children, many of whom spend their formative years growing up in the system. Many children and young people living in Direct Provision have talked about the feeling of stigma they associate with living in DP, describing the difficulty of inviting school friends to their home, or feeling excluded where they cannot attend events due to the limited financial allowance they receive in DP. This allowance was recently increased from €15.60 to €21.60 for children, only the second increase since the system was established in 2000 (children were originally provided €9.60 until that was increased in January 2016).<sup>205</sup>

While these concerns have been raised for years, most issues persist to the time of writing this report. In March 2017, the remit of the Office of the Ombudsman for Children became open to receive complaints from children and on behalf of children living in DP, which would allow the office to investigate complaints

<sup>202</sup> Department of Children and Youth Affairs, *Consultations with children and young people living in Direct Provision*, July 2017, available at: <http://bit.ly/2HvYjFv>.

<sup>203</sup> Irish Human Rights and Equality Commission, *Policy Statement on the System of Direct Provision in Ireland*, 10 December 2014.

<sup>204</sup> Working Group Report, 167.

<sup>205</sup> The Irish Times, Asylum seekers to get extra €2.50 per week to live on, 14<sup>th</sup> June 2017. Available at: <http://bit.ly/2BqNkc4>.

in relation to children living in DP on a number of issues, including: standards of accommodation; meals; cleaning; facilities.<sup>206</sup> In July 2017, the Ombudsman for Children stated that his office had received thirteen complaints from children living in DP, as well as a number of queries that had not advanced to complaint stage. Issues raised include the variety and nutritional value of food available, overcrowding, lack of play facilities and mental health issues. Many of the complaints raised are in relation to finance, with some highlighting that parents cannot afford to send their children to school events and they struggle to buy school books and clothes. Similarly, some complaints highlighted that the DP allowance was insufficient to access other key services such as hospitals and doctor appointments, and that in rural areas where public transport is limited and very expensive, accessing key services for children is very difficult.<sup>207</sup> Other concerns raised included access to food from their own country, overcrowding and access to leisure facilities.

### 3. Reception of victims of torture, violence or trafficking

There are no special facilities for traumatised asylum seekers. In October 2014 the Rape Crisis Network Ireland (RCNI) published a report on sexual violence experienced by asylum seekers and refugees and found that the Direct Provision system not only exacerbated the trauma for survivors but also left individuals living in the system vulnerable to sexual violence.<sup>208</sup> The RCNI called for the immediate reform of the Direct Provision system and the provision of psycho-social supports to families of survivors of sexual violence among other recommendations.<sup>209</sup> In response to a parliamentary question raised on this report, Ms. Frances Fitzgerald stated that a number of recommendations in the report are in train including the procurement of training for staff which is underway along with the establishment of a women only centre when refurbishment works are completed on a State-owned reception centre.<sup>210</sup> Reports were heard of people in Direct Provision turning to precarious work in a bid to supplement the income of €19.10 per week. For example, reports were heard of vulnerable women in Direct Provision falling prey to sexual exploitation and prostitution.<sup>211</sup>

In addition the Group of Experts on Action against Trafficking in Human Beings (GRETA) recommended that the Irish government reviews its policy of accommodating victims of trafficking in Direct Provision centres and consider the setting up of specialised shelters for victims of trafficking.<sup>212</sup> At the end of January 2015 RIA was accommodating 65 persons who were identified as alleged victims of trafficking by the Garda Síochána. The majority were protection applicants.<sup>213</sup> GRETA reiterated its concern as to the housing of victims of trafficking in Direct Provision in its second report on Ireland's compliance with the Council of Europe Convention on Trafficking in September 2017. The report raised other issues such as the State's implementation of the National Action Plan on Anti-Trafficking and failure to address

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<sup>206</sup> Office of the Ombudsman, Press Release: Ombudsman and Ombudsman for Children can now investigate complaints from those in Direct Provision, 30th March 2017. Available at: <http://bit.ly/2s4JMuP>.

<sup>207</sup> RTE, 13 direct provision complaints in four months to ombudsman, 1<sup>st</sup> August 2017. Available at: <http://bit.ly/2BoVzpn>.

<sup>208</sup> The Irish Times, 'Direct Provision System poses risk of sexual violence – report', 29 October 2014, available at: <http://bit.ly/1FV9cL4>.

<sup>209</sup> Rape Crisis Network Ireland, Asylum Seekers and Refugees Surviving On Hold – sexual violence disclosed to Rape Crisis Centres, October 2014, available at: <http://bit.ly/1tHj71C>.

<sup>210</sup> Ms. Frances Fitzgerald, Minister, Department of Justice and Equality, written answer to the parliament question of Ruth Coppinger, Department of Justice and Equality, Asylum Support Services, 5 November 2014, available at: <http://bit.ly/1HLhUvV>.

<sup>211</sup> The Irish Times, 'Minister "shocked" by reports of direct provision prostitution', Mary Minihan, 2 September 2014, available at: <http://bit.ly/1CWz2Qr>.

<sup>212</sup> Council of Europe, Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, *Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland*, available at: <http://bit.ly/1g85mG3>.

<sup>213</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report June 2015*, fn. 280, para 4.206, 195.

obstacles victims face accessing redress and to discourage demand for services through labour exploitation.<sup>214</sup>

Geoffrey Shannon, the Special Rapporteur on Child Protection, highlighted the ‘real risk’ of child abuse in DP arising from the shared sleeping arrangements. He cites an incident where a 14 year old girl became pregnant by a male resident.<sup>215</sup> In the seventh report of the Special Rapporteur on Child Protection, Dr. Geoffrey Shannon called for an immediate review of the Direct Provision system and stated that the main recommendations of the Irish Refugee Council should be adopted and that Ireland should opt into the recast Reception Conditions Directive 2013.<sup>216</sup> In 2014 RIA published a child protection and welfare policy and practice document but it is unclear if this is fully abided by in practice.<sup>217</sup>

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

In April 2014 RIA published ‘RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment’.<sup>218</sup> The document states that RIA and the centres under contract to it have a duty of care to all residents which includes a duty to provide safe accommodation which promotes the well-being of all of its residents. The document also describes the reporting structures, procedures and the record keeping required for an incident of domestic, sexual and gender-based violence and harassment. The policy was based on the discussions of a working group on safeguarding RIA residents against domestic, sexual and gender based violence the membership of which included RIA management and NGOs. RIA states that the policy complements other existing RIA protection policies including its Child Protection Policy. Since 2006 RIA has had a comprehensive Child Protection Policy in place based on the Health Service Executive’s Children First - National Guidelines for the protection and welfare of children. A Child and Family Services unit, in RIA, is well established and its role is to manage, deliver, coordinate, monitor and plan all matters relating to child and family services for all persons residing in RIA accommodation centres and to act as a conduit between RIA and the HSE.

In terms of identifying vulnerable asylum seekers early in the protection process the Working Group recommended that the existing HSE Health Screening Process be reviewed and strengthened so as to facilitate a multidisciplinary needs assessment at an early stage.<sup>219</sup> At the time of writing it is unclear if that recommendation has been implemented. The Immigrant Council of Ireland, in 2017, set out recommendations to deal with the specific issue of identification of victims of trafficking in the asylum process. The report called for, inter alia, a dedicated identification mechanism, as well as increased transparency and frequency of data on victims of trafficking in Ireland.<sup>220</sup>

The Irish Refugee Council has stated that the current system ‘does not take into consideration the needs of persons with disabilities’, as well as other vulnerabilities such as families with children and survivors of

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<sup>214</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland, Second Evaluation Round*, 20 September 2017, available at: <https://bit.ly/2usuWBB>.

<sup>215</sup> Geoffrey Shannon, ‘Fifth Report of the Special Rapporteur on Child Protection A Report Submitted to the Oireachtas, 2011 Report’, available at: <http://bit.ly/1MKcra5>.

<sup>216</sup> Dr. Geoffrey Shannon, Seventh Report of the Special Rapporteur on Child Protection, A Report Submitted to the Oireachtas, 2014; Irish Refugee Council, *The IRC welcomes the Seventh Annual Report of Ireland’s Special Rapporteur on Child Protection*, 2 December 2014, available at: <http://bit.ly/1LFIZb6>.

<sup>217</sup> RIA, Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency and Centres under Contract to RIA, October 2014, available at: <http://bit.ly/1SLHPvA>.

<sup>218</sup> Reception and Integration Agency, *RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment*, April 2014.

<sup>219</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, available at: <http://bit.ly/1LSZc6j>, para 46.

<sup>220</sup> Immigrant Council of Ireland, *Identification and Response to the Needs of Trafficked Asylum Seekers Summary Report*, 2017, available at: <https://bit.ly/2Gefuyg>.

torture.<sup>221</sup> With respect to trafficking victims, EMN research indicated that proactive screening of trafficking victims as opposed to self-reporting, is generally not in evidence within asylum procedures in Ireland. ORAC provides in-house training on the three phrases of trafficking for all relevant front-line staff.<sup>222</sup>

In terms of gender-sensitive asylum procedures the Irish Human Rights and Equality Commission has called for the International Protection Act 2015 to be amended to provide the power to the Minister for Justice and Equality to develop statutory guidelines on gender-sensitive approaches to credibility assessment and the promotion of gender equality throughout the international protection process, including in the provision of accommodation.<sup>223</sup>

The IHREC also called for the Irish government to stop housing trafficked women, both within and outside the asylum system, in Direct Provision centres which is the current practice. The Commission reiterated that direct provision accommodation does not respect the rights of victims of trafficking in human beings and does not comply with the Convention. It recommends that victims of trafficking be accommodated in appropriate single gender facilities with access to the necessary support services, in keeping with the State's obligations under the CEDAW Convention of prevention and to provide support services to victims.<sup>224</sup> The IHREC also noted that there were reports of harassment of refugee women in certain DP centres including catcalling, verbal abuse and men propositioning women for sex. It should be noted that RIA has guidelines on safeguarding RIA residents against sexual harassment and sexual violence which includes information on the reporting structures and procedures but the implementation of these guidelines is questionable.<sup>225</sup>

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

### 1. Provision of information on reception

There is no legislation on reception conditions in Ireland. In practice, information is provided by the Reception and Integration Agency (RIA) on rights and obligations in reception and accommodation through the House Rules and Procedures, which are available in each centre. These rules are available in 11 other languages on the RIA website. Revised House Rules and Procedures were published in 2015 and are still awaiting translation to some of the main languages.<sup>226</sup> As of January 2018, this remains the case and the RIA website states: "The updated House Rules & Procedure document has been sent for translation into the 11 other languages previously published. When these are returned those versions will be published on this website." This remains the same as of March 2018.

According to the RIA annual report 2016, RIA has established information clinics on a bi-annual basis to provide information on a one to one basis and also review the operation of the Direct Provision centre. According to the report:

"While residents can raise their concerns and address complaints at any time either to their centre manager or by using the official complaints procedure, information clinics provide an opportunity for face-to-face communication with RIA staff. This allows residents to address any issues of concern, complaints, queries and information requests in person. RIA staff seek to address concerns as appropriate, investigate

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<sup>221</sup> Irish Refugee Council, *'Direct Provision and Dispersal: Is there an alternative?'* Report prepared for the NGO Forum on Direct Provision, 2011, available at: <http://bit.ly/1InP4VP>.

<sup>222</sup> Corona Joyce, Emma Quinn, European Migration Network, *Identifying Victims of Trafficking in Human Beings in Asylum and Forced Return Procedures: Ireland*, April 2014.

<sup>223</sup> IHREC, Ireland and the Convention on the Elimination of all forms of Discrimination against Women, Submission to the UN Committee on the Elimination of Discrimination against Women on Ireland's combined sixth and seventh periodic reports, January 2017, available at: <http://bit.ly/2lAMB4T>.  
<sup>224</sup> *Ibid*, 69.

<sup>225</sup> Reception and Integration Agency (RIA), Policy and Practice Document on safeguarding residents against Domestic, sexual and gender-based violence and harassment, April 2014, available at: <http://bit.ly/2lvYqK0>.

<sup>226</sup> RIA, RIA House Rules and Procedures (Revised 2015), Paragraph 2.14, available at: <http://bit.ly/1MxvvMV>.

issues raised and provide information and referral details where necessary. The residents are assured that any issues raised will be addressed confidentially and will only be discussed with relevant personnel with their agreement.”<sup>227</sup>

One exception is Mosney Accommodation centre, which accommodates over 700 residents, where RIA holds information clinics on a monthly basis. In addition, where a number of smaller centres are located within a close distance of each other, residents of one centre might be invited to attend information clinics at a neighbouring centre.<sup>228</sup>

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

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

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

In general, access depends on the relationship between the person seeking access and RIA or the management of the hostel in question. The Irish Refugee Council for example has been refused access to some centres but given access to others. In other examples some election candidates for local elections were also refused entry to accommodation centres as well as a parish priest in another incident.

It is important to note that the High Court judgment of *C.A. and T.A.* found that the complete prohibition on guests in bedrooms was unlawful finding that resident’s rooms could be protected as their ‘home’ under Article 40(5) of the Constitution.<sup>229</sup> The Working Group report recommended that RIA ensure in Direct Provision centres that rooms without CCTV are available for receiving visitors, social workers, legal representatives and other advocates.<sup>230</sup> According to Nasc’s review of the Government’s progress reports on implementation of the Working Group recommendations, implementation of this recommendation could not be verified. No detailed information in relation to this information had been provided in any of the Government’s three progress reports and RIA failed to respond to NASC’s request for information.<sup>231</sup>

## G. Differential treatment of specific nationalities in reception

In terms of discrimination between different groups of asylum seekers, anecdotal evidence shows that **relocated applicants** from Greece are sometimes placed in DP centres instead of EROC and when they are they often receive better conditions than other asylum seekers who have been a longer time in the system such as, for example, new furniture for their rooms. This creates tension within the asylum-seeking community. Relocated asylum seekers also receive more support with regards to housing when transitioning out of Direct Provision and EROC compared to other asylum seekers.<sup>232</sup>

<sup>227</sup> Department of Justice and Equality, RIA Annual Report 2016, available at: <http://bit.ly/2E8mkRy>, 42.

<sup>228</sup> *Ibid.*

<sup>229</sup> See e.g. PILA, Guest article by Colin Lenihan – ‘High Court finds some Direct Provision house rules unlawful and in breach of ECHR’, November 2014, available at: <http://bit.ly/1HgZqWK>.

<sup>230</sup> Working Group to report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015, para.4.122, 176.

<sup>231</sup> Nasc, *Working Paper on the Implementation of the Working Group Recommendations*, December 2017, 48.

<sup>232</sup> Irish Refugee Council, *Submission to the Housing and Homelessness Committee, the reception and housing of asylum seekers and refugees in Ireland*, May 2016, available at: <http://bit.ly/29fwYuH>.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2017: <sup>233</sup>	Not available
2. Number of asylum seekers in detention at the end of 2017:	Not available
3. Number of detention centres (prisons):	10
4. Total capacity of detention centres:	Not available

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

There are no disaggregated figures available for the numbers of asylum seekers that have been detained. Asylum seekers and immigrants who may be detained generally fall into six categories:

- ❖ Non-nationals who arrive in Ireland and are refused “leave to land” (see [Access to the Territory](#));
- ❖ Asylum seekers who are deemed to engage one of the categories of Section 20(1) IPA (see [Grounds for Detention](#));
- ❖ Asylum seekers subject to the Dublin Regulation;
- ❖ Non-nationals who cannot establish their identity;
- ❖ Non-nationals with outstanding deportation orders;
- ❖ Non-nationals awaiting trial for a criminal immigration-related offence(s).

According to the latest data from the Irish Prison Service, in 2016 there were 421 committals to Irish prisons under immigration law, involving 408 detainees.<sup>234</sup> This is a significant increase on the numbers registered in 2015 where there were 342 committals involving 335 detainees.

Furthermore, there are no specially designated detention centres for asylum seekers and irregular migrants. Asylum seekers are detained within the general prison population, at a Garda Síochána (police) station or another designated place of detention. Every Garda Síochána (police) station, plus nine prisons and one psychiatric hospital, are listed as “places of detention” by S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016.

### B. Legal framework for detention

#### 1. Grounds for detention

#### Indicators: Grounds for Detention

- In practice, are most asylum seekers detained
  - ❖ on the territory:  Yes  No
  - ❖ at the border:  Yes  No
- Are asylum seekers detained in practice during the Dublin procedure?  
 Frequently  Rarely  Never
- Are asylum seekers detained during a regular procedure in practice?  
 Frequently  Rarely  Never

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

<sup>233</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>234</sup> Irish Prison Service, *Annual Report 2016*, available at: <http://bit.ly/2qMyJXz>, 25.

## 1.1. Detention under the International Protection Act 2015

Section 20 IPA provides that asylum seekers may be detained by an immigration officer or a member of Garda Síochána and be arrested without warrant if it is suspected that they:

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

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

- ❖ Are being detained;
- ❖ Shall be brought before a judge of the District court as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application in accordance with Section 20(2) and (3) IPA;
- ❖ Are entitled to consult a solicitor;
- ❖ Are entitled to have notification of his or her detention, the place of detention and every change of such place sent to the High Commissioner;
- ❖ Are entitled to leave the state at any time during the period of their detention and if they indicate a desire to do so, they shall be brought before a court as soon as practicable. The court may make such orders as may be necessary for their removal;
- ❖ Are entitled to the assistance of an interpreter for the purposes of consulting with a solicitor.

The detaining officer must inform the IPO or IPAT, as relevant about the detention. The appropriate body then ensures that the application of the detained person is dealt with as soon as possible and, if necessary, before any other application for persons who are not in detention.

It should be noted that while the above is relevant as of time of writing, the legal framework for detention could be subject to change with the opt-in to the Reception Conditions Directive, which sets out more extensive provisions on detention than those contained in the IPA. Furthermore, the planned establishment of a dedicated detention facility at Dublin Airport could lead to increased detention in practice.

## 1.2. Detention for the purpose of removal

Section 5 Immigration Act 1999 provides that in the case of an unsuccessful applicant for whom a deportation order is in force, a person may be detained by an immigration officer or a member of the Garda Síochána, if it is suspected that he or she:

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

Section 5(6) of the 1999 Act prohibits detention for any single period of more than eight weeks and multiple detentions for periods of less than eight weeks where the total period exceeds eight weeks. Section 5 Immigration Act 1999 has been amended under Section 78 IPA so that such persons in the category above may be arrested without warrant. Another new ground under Section 5 is that a person may now be arrested without warrant if they have failed to leave the State within the time specified in a deportation

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

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

It should be noted that under the amendments to Section 5 under Section 78 IPA an immigration officer or member of Garda Síochána may enter (if necessary, by use of reasonable force) and search any premises (including a dwelling) where a person is or where the immigration officer or the member, with reasonable cause, suspects that person to be, and where the premises is a dwelling, the immigration officer or the member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the immigration officer or the member to be in charge of the dwelling, enter that dwelling unless (a) the person ordinarily resides at that dwelling or (b) he or she believes on reasonable grounds that the person is within the dwelling.<sup>235</sup>

### 1.3. Detention under the Dublin Regulation

The European Union (Dublin System) Regulations 2018 provide the possibility to detain an asylum seeker for the purpose of carrying out a Dublin transfer where an immigration officer or member of Garda Síochána determines that there is a “significant risk of absconding”.<sup>236</sup>

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

- |  |   |
|--|---|
| 1. Which alternatives to detention are laid down in the law? | <input checked="" type="checkbox"/> Reporting duties                |
|  | <input type="checkbox"/> Surrendering documents                     |
|  | <input type="checkbox"/> Financial guarantee                        |
|  | <input checked="" type="checkbox"/> Residence restrictions          |
| 2. Are alternatives to detention used in practice?           | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

There are no formal alternatives to detention. Section 20(3)(b) IPA could be considered a possible alternative in that it allows an immigration officer or other authorised person to require an applicant for asylum to reside or remain in particular districts or places in the country, or, to report at specified times to an immigration officer or other designated person.

However, the District Court judge when reviewing the applicability of detention may commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention or release the person and make such a release subject to conditions, including conditions requiring him or her to (i) reside or remain in a specified district or place in the State; (ii) report at specified intervals to a specified Garda Síochána station or surrender any passport or other travel document that he or she holds. The District Court judge may vary, revoke or add a condition to the release on the application of the person, an immigration officer or a member of the Gardai Síochána.<sup>237</sup>

A member of the Gardai Síochána may arrest without warrant and detain, in a place of detention, a person who in their opinion has failed to comply with the Court’s reporting conditions under Section 20(9) IPA. In such a case the applicant shall be brought before the District Court again and if the judge feels grounds for detention apply under subsection (9) or (3) above then they may commit the applicant for further periods (each period being a period not exceeding 21 days) pending the determination of the person’s

<sup>235</sup> Section 78(11) IPA.

<sup>236</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

<sup>237</sup> Section 20(5) IPA.

application for international protection under Section 20(12) IPA. In effect this means that an applicant can be detained for consecutive 21 day periods of detention which means the detention may be continuous and indefinite. There is no limit to the number of 21 day periods of detention which can run consecutively.

### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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  - ❖ If frequently or rarely, are they only detained in border/transit zones?  Yes  No
2. Are asylum seeking children in families detained in practice?
 

<input type="checkbox"/> Frequently	<input type="checkbox"/> Rarely	<input checked="" type="checkbox"/> Never
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The IPA specifically prohibits detention of unaccompanied children. There is no available information on this issue, however detention is rarely used in practice in Ireland.

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

### 4. Duration of detention

#### Indicators: Duration of Detention

1. What is the maximum detention period set in the law:
 

❖ Dublin detention	7 days
❖ Other grounds	None
2. In practice, how long in average are asylum seekers detained?
 

	Not available
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Ireland has not opted into the Returns Directive or the Reception Conditions Directive. However, detention under the Dublin Regulation shall not exceed 7 days.<sup>238</sup>

Data is not available on how long asylum seekers are detained but it is generally considered to be a short period of time pre-removal. The Irish Prison Service data does not break down between detention on other immigration grounds and detention as an asylum seeker. According to the latest data from the Irish Prison Service, in 2016 there were 421 committals to Irish prisons under immigration law, involving 408 detainees.<sup>239</sup>

As noted in [Alternatives to Detention](#), Section 20 IPA shows that District Court judges can apply detention for consecutive 21 day time periods with no upper limit so detention could be indefinite under this provision.

<sup>238</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

<sup>239</sup> Irish Prison Service, *Annual Report 2016*, 25.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)?  Yes  No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?  Yes  No

S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016 provides the following list of places of detention:

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

Women are generally detained at the **Dochas Centre** in Dublin which has a capacity of 105 places. Men are generally detained at **Cloverhill Prison** in west Dublin which has a capacity of 431.

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

This practice of detaining asylum seekers in prisons has been criticised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and on two occasions by the UN Committee against Torture which found that a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence.<sup>240</sup> In response, the Irish government stated that they planned to establish a specific immigration detention centre at **Dublin Airport** in 2016. In response to an Irish Times report on the detention of a Brazilian woman at Dochas Women’s Prison in July 2017, a Department of Justice Spokesperson stated that work on the dedicated facility was expected to begin on site at Dublin Airport in September 2017 with an estimated timeframe of 10 months before becoming operational.<sup>241</sup>

Beyond those facilities, the Irish Human Rights and Equality Commission in a recent commissioned report on Ireland and the Optional Protocol to the Convention against Torture indicated that Direct Provision could be considered *de facto* detention.<sup>242</sup> This is due to the fact that while people are free to leave Direct Provision centres at any time, due to peoples’ limited financial allowance and often isolated location, this may be difficult or impossible in practice.

<sup>240</sup> CPT, *Report to the Government of Ireland on the visit to Ireland from 16 to 26 September 2014*, Council of Europe, 17 November 2015; United Nations Committee against Torture, *Concluding observations on the second periodic report of Ireland*, August 2017, para 12(d).

<sup>241</sup> Irish Times, ‘Work on Dublin Airport immigration detention centre to begin’, 28 July 2017, available at: <http://bit.ly/2r8zKKE>.

<sup>242</sup> Irish Human Rights and Equality Commission, *Ireland and the Optional Protocol to the Convention against Torture*, September 2017, Available at: <http://bit.ly/2fEh5h6>, 32.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

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

Previously legislation provided for principles which are required to be regarded when a person is detained; S.I. No 344 of 2000 on Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.<sup>243</sup> It should be noted that this legislation has been revoked under Section 6 IPA. It is unclear if it will be replaced but the Minister has the power to issue regulations under Section 3 for the purposes of applying the IPA. This will likely be addressed once the Reception Conditions Directive is transposed in mid-2018.

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

The legislation further stated how a detainee shall be treated when detained.<sup>244</sup> A detainee shall be allowed such reasonable time for rest as is necessary. A detainee shall be provided with such meals as are necessary and, in any case, at least two light meals and one main meal in any twenty-four hour period. The detainee may have meals supplied at their own expense where it is practicable for the member in charge to arrange this. Access to toilet facilities shall be provided for a detainee. Where it is necessary to place persons in cells, as far as practicable not more than one person shall be placed in each cell. Persons of the opposite sex shall not be placed in a cell together. A violent person shall not be placed in a cell with other persons if this can be avoided. A detainee shall not be placed in a cell with other persons who are not detainees, for example persons detained under criminal law provisions, if this can be avoided, this presumably means that immigration detainees should not be held with persons detained under other criminal law provisions. Where a person is kept in a cell, a member of the Garda Síochána (Irish police force) shall visit them at intervals of approximately half an hour. A member shall be accompanied when visiting a person of the opposite sex who is alone in a cell.

There is no specific provision relating to health care for detained asylum seekers and they would have access to the same health care as the general prison population. Section 33 of the Irish Prison Service Rules state that a prisoner shall be entitled, while in prison, to the provision of healthcare of a diagnostic, preventative, curative and rehabilitative nature (in these Rules referred to as “primary healthcare”) that is, at least, of the same or a similar standard as that available to persons outside of prison who are holders of a medical card (a medical card allows a person to access health care free of charge).<sup>245</sup> In relation to persons who require psychiatric care, the Prison Rules simply state that the Minister may arrange for the provision of psychiatric and other healthcare as is considered appropriate.

A detainee shall have reasonable access to a solicitor of his or her choice and shall be enabled to communicate with him or her privately. A detainee may receive a visit from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the visit can be adequately supervised and will not be prejudicial to the interests of justice. A detainee may make a telephone call of

<sup>243</sup> Section 4 S.I. No. 344/2000 - Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.

<sup>244</sup> Section 18 S.I. No. 344/2000 - Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.

<sup>245</sup> S.I. No. 252/2007 - Prison Rules 2007.

reasonable duration free of charge to a person reasonably named by him or her or send a letter (for which purpose writing materials and, where necessary, postage stamps shall be supplied on request).<sup>246</sup>

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

Detention and prison conditions generally in Ireland have been criticised in relation to international standards, most recently by the United Nations Committee against Torture which addressed issues relating to poor conditions and overcrowding, independent monitoring of places of deprivation of liberty and the establishment of an independent complaints mechanism.<sup>247</sup>

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

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

A detainee may receive a visit from a relative, friend or other person with an interest in his or her welfare provided the detainee consents and the Garda member in charge is satisfied that the visit can be adequately supervised and that it will not be prejudicial to the interests of justice. A detainee may make a telephone call of reasonable duration free of charge to a person reasonably named by him or her or send a letter.<sup>248</sup> A prison visiting committee is appointed to each prison under the Prisons (Visiting Committees) Act 1925 and Prisons (Visiting Committees) Order 1925. The function of visiting committees is to visit the prison to which they are appointed and hear any complaints made to them by any prisoner. The committee reports to the Minister any abuses observed or found by them in the prison and any repairs which they think may be urgently needed. The visiting committee has free access, either collectively or individually, to every part of their prison. In inspecting prisons, the visiting committees focus on issues such as the quality of accommodation and the catering, medical, educational and welfare services and recreational facilities.

Media and politicians do not generally have access to prisons. There is no dedicated NGO or other organisation that provides services and information to asylum seekers and migrants who are detained. Prisoners can access lawyers but they need to ask for it. There is not enough detention of asylum seekers in Ireland to have such a service at the moment though that may change of course if Dublin airport gets a dedicated immigration facility. In relation to the issue of independent monitoring of places of detention more generally, in its Concluding Observations on Ireland in August 2017, the United Nations Committee against Torture called on the state to:

'Ensure that existing bodies which currently monitor places of detention as well as civil society organizations are allowed to make repeated and unannounced visits to all places of deprivation of liberty, publish reports and have the State party act on their recommendations.'<sup>249</sup>

<sup>246</sup> Section 17 S.I. No. 344/2000 - Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.

<sup>247</sup> Irish Penal Reform Trust, 'UN Committee against Torture publishes Concluding Observations on Ireland', 11 August 2017, available at: <http://bit.ly/2nudwgW>.

<sup>248</sup> Section 17 S.I. No. 344/2000 - Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.

<sup>249</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, available at: <http://bit.ly/2hPIVem>, para 8(b).

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

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

Where an asylum seeker is detained, they must be informed, where possible in a language that they understand, that they shall be brought before a District court judge as soon as practicable to determine whether or not they should be committed to a place of detention or released pending consideration of the asylum application under Section 20 IPA.

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

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

The question of whether grounds for detention continue to exist must be re-examined by the District Court judge every 21 days. In addition to this form of review, a detained asylum-seeker can challenge the legality of the detention in habeas proceedings under Article 40(4) of the Constitution in the High Court. The Refugee Legal Service provides representation for person detained in the District Court under Section 20 IPA.

### 2. Legal assistance for review of detention

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

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

The law states that ‘a detainee shall have reasonable access to a solicitor of his or her choice and shall be enabled to communicate with him or her privately.’<sup>250</sup> A consultation with a solicitor may take place in the sight but out of the hearing of a member of the Garda Síochána.

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

Section 20 IPA states that when a person makes an application for asylum, regardless of whether that application is made from detention or elsewhere, they should be informed of their rights to consult a lawyer and UNHCR.

<sup>250</sup> Section 17 S.I. No. 344/2000 - Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000.

Where an asylum seeker is detained under Section 20 IPA, Section 20(15) states that an immigration officer or a member of the Garda Síochána (police) must give an asylum seeker certain information without delay.

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

The Refugee Legal Service provides legal assistance to asylum seekers who are detained. No NGO provides routine legal assistance to detained asylum seekers. There is not enough detention of asylum seekers in Ireland to have such a service at the moment though that may change of course when **Dublin Airport** gets a dedicated immigration facility in 2018 and depending on the impact of Reception Conditions Directive opt-in on the legal framework for detention in Ireland.

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

There is no differential treatment of specific nationalities known.

# Content of International Protection

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?
  - ❖ Refugee status 1 year
  - ❖ Subsidiary protection Specified period, usually 3 years

Refugees and subsidiary protection beneficiaries in Ireland receive a ‘Stamp 4’ residence permit.<sup>251</sup> For **refugees** this grants permanent residency and a Garda National Immigration Bureau (GNIB) card is issued firstly for one year and then renewed for three years renewable. Refugees are able to apply for naturalisation after 3 years from the date of their asylum application (see [Naturalisation](#)).

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

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

### 2. Civil registration

The Civil Registration Service, operating under the Health Service Executive, maintains all records of births, deaths and marriages in the State.<sup>252</sup>

With respect to registration of births it is legally required in Ireland that all births that take place on the territory of the State are registered with the local Registrar’s Office within 3 months of the birth taking place.<sup>253</sup> The mother of the child will be provided with a “Birth Notification Form” at the hospital where the birth took place before being discharged and the parents must then proceed to the Registrar’s Office to complete the registration. A valid photo ID (such as a passport or temporary residence card, in the case of international protection applicants) must be provided. Information on the birth registration process is available in a number of languages, including Arabic, Chinese and French.<sup>254</sup>

For a marriage to be considered legal in Ireland, the relevant Registrar’s Office must be notified, in person, at least 3 months in advance of a marriage taking place, irrespective of whether or not that marriage is a religious or civil ceremony. The same procedural requirements apply to beneficiaries of international protection as to Irish citizens.

### 3. Long-term residence

Ireland has not opted into the Long-Term Residents Directive. Under the Irish national system, long-term residency can be granted with a Stamp 4 permission to remain which is valid for five years. This applies to persons who have been legally resident in the State for a minimum of five years on work permit, work

<sup>251</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>252</sup> Civil Registration Service, information available at: <https://bit.ly/2usn7M7>.

<sup>253</sup> *Ibid.*

<sup>254</sup> Civil Registration Service, *Translated Information*: <https://bit.ly/2pLwGkr>.

authorisation or working visa conditions. Applications for long-term residency do not apply for persons granted refugee status or granted permission to remain on humanitarian grounds. It also does not apply for people who entered the State under a family reunification scheme.<sup>255</sup>

#### 4. Naturalisation

Indicators: Naturalisation	
1. What is the waiting period for obtaining citizenship?	
❖ Refugee status	3 years
❖ Subsidiary protection	5 years
2. Number of citizenship grants in 2017:	6,850

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

People with **refugee status** can apply for naturalisation after three years' residence in the State from the date they arrived in the country not from the date when they were granted refugee status. For other non-EEA nationals, the residence required is five years. To apply for citizenship a form entitled 'Form 8' must be completed by the person concerned and submitted to INIS. This amended form was introduced in September 2016 and now applicants must submit their original passports with their application for naturalisation.<sup>256</sup> It must include accompanying evidence of the applicant's residence in Ireland and a copy of the declaration of refugee status.

There are no fees for **refugees**, stateless persons or programme refugees to apply for naturalisation except for the 175 € application fee. Once the application is granted the certification of naturalisation is free for refugees. For other adults the cost for issuing a certificate of naturalisation is 950 €. The Minister for Justice and Equality holds citizenship ceremonies and according to latest figures over 3,200 people were granted citizenship in Ireland at the latest ceremony in November 2017,<sup>257</sup> and 6,850 persons were granted citizenship in total in 2017.<sup>258</sup> It is unclear how many of them previously held refugee status or were beneficiaries of subsidiary protection. No information is available on any obstacles at present but in the past applications for citizenship were often subject to lengthy delays.

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

Indicators: Cessation	
1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3. Do beneficiaries have access to free legal assistance at first instance in practice?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> With difficulty <input type="checkbox"/> No

Cessation is permitted under Irish law but it is not often applied in practice so limited information is available on it in Ireland.

<sup>255</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>256</sup> The application form is available at: <http://bit.ly/2kotiX7>.

<sup>257</sup> INIS, *Citizenship Ceremonies*, available at: <http://bit.ly/2GyrgQQ>.

<sup>258</sup> INIS, 'Minister Flanagan congratulates the 6,850 people granted Irish citizenship at Citizenship Ceremonies over the course of 2017', 31 December 2017, available at: <http://bit.ly/2n9mDDU>.

The IPA provides for cessation of **refugee status** and subsidiary protection under Section 9 and 11 of the Act respectively. A person ceases to be a refugee if he or she:

- ❖ has voluntarily re-availed himself or herself of the protection of the country of nationality;
- ❖ having lost his or her nationality, has voluntarily re-acquired it;
- ❖ has acquired a new nationality (other than as an Irish citizen), and enjoys the protection of the country of his or her new nationality;
- ❖ has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution;
- ❖ can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of his or her country of nationality / country of former habitual residence if stateless. There is an exception to (e) in that it shall not apply if the person is able to invoke compelling reasons arising out of past persecution for refusing to avail of protection in his or her country of nationality.

Cessation of **subsidiary protection** occurs when the circumstances which led to a person's eligibility for subsidiary protection have ceased to exist or have changed to such a degree that international protection is no longer required. An exception to this is if there are compelling reasons arising out of past persecution for refusing to avail of protection in the applicant's country of nationality. No information is available on the amount of decisions relating to cessation in 2017.

The IPA indicates the procedure for cessation under the procedure of revocation under Section 52. According to Section 52(4) the Minister shall send a notice in writing of the proposal to revoke and of the reasons for it to the applicant, including information regarding the person's entitlement to make written representations to the Minister in relation to the notice within 15 working days. Where a declaration that the person's status be revoked is made, the individual may appeal to the Circuit Court, which may then either affirm the revocation or direct the Minister to withdraw it. There is no legislative provision for an oral hearing as part of this procedure.

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure?  Yes  No
2. Does the law provide for an appeal against the withdrawal decision?  Yes  No
3. Do beneficiaries have access to free legal assistance at first instance in practice?  Yes  With difficulty  No

Revocation of status is also provided in the IPA under Section 52 on grounds such as where the person has misrepresented or omitted facts, whether or not including the use of false documents, and that was decisive in the decision granting the person a refugee declaration. Revocation has an established procedure in place under Section 52 and the applicant can appeal to the Circuit Court if necessary. Even though no personal interview of the beneficiary is conducted, they can submit information in writing.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
 Yes  No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
 Yes  No  
12 months  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  
 Yes  No

The most significant change in the International Protection Act 2015 relates to the family reunification provisions under Sections 56 and 57 IPA. A beneficiary of international protection must apply for family reunification within 12 months of being issued with a refugee declaration or subsidiary protection declaration. No reference is made in the legislation to any income or health insurance requirement. It is the duty of the sponsor (refugee or subsidiary protection beneficiary) and the person who is the subject of the application (family member) to co-operate fully in the investigation including by providing all relevant information in his or her possession, control or procurement which is relevant to the family reunification application.

No differences exist between the right to apply for family reunification for refugees and subsidiary protection beneficiaries. Once a family reunification application has been granted that permission will cease to be in force if the family member does not enter and reside in the State by a date specified by the Minister when giving the permission in accordance with Section 56(5) IPA. It remains to be seen how this will be applied in practice. The Irish Refugee Council has yet to see a grant of Family Reunification under the IPA, however, if there is any indication that there will be any sort of delay in the family member being able to come to Ireland – this should be relayed to the Family Reunification as soon as possible.

One significant change from the previous legal regime is that there is now no possibility for beneficiaries of international protection to apply for dependent family members i.e. adult children, parents of adult applicants, nieces, nephews who are dependent on the refugee or are suffering from a mental or physical disability to such extent that it is not reasonable for them to maintain themselves. Under the previous Refugee Act 1996 as amended it was possible for the Minister to use her discretion to grant family reunification in such circumstances. There is no reference to dependent family members in the IPA.

In July 2017, a group of Senators presented the International Protection Act (Family Reunification Amendment) Bill 2017 to the Government. The content of the bill seeks to reinstate the dependency provision contained in the Refugee Act 1996.<sup>259</sup> The bill is currently before the Seanad from which it will proceed to the Dail.<sup>260</sup> If passed in the Dail, the Bill would amend the International Protection Act with a view to enabling a wider range of family members to apply for family reunification, including grandparents, siblings, children (over the age of 18), grandchildren, where dependency can be demonstrated.

On 14 November 2017, the government announced the introduction of a Family Reunification Humanitarian Admission Programme (FRHAP).<sup>261</sup> While no commencement date for FRHAP has been

<sup>259</sup> Irish Times, 'Senators seek expanded family reunification rights for refugees', 19 July 2017, available at: <http://bit.ly/2tM049C>.

<sup>260</sup> Houses of the Oireachtas, International Protection Act (Family Reunification) (Amendment) Bill 2017, available at: <http://bit.ly/2rEXDd4>.

<sup>261</sup> INIS, 'Minister Flanagan and Minister of State Stanton announce new Family Reunification Scheme in support of refugees and their families under the Irish Refugee Protection Programme', 14 November 2017, available at: <http://bit.ly/2A4u6Nh>.

announced as of yet, the proposal aims to provide for family reunification for “up to 530 family members of refugees from UNHCR-recognised conflict zones to come to Ireland as part of [the] overall Refugee Protection Programme.” As the programme has been developed within the ambit of the Minister’s discretion, it will allow for reunification for immediate family members who would normally fall outside of family reunification provisions held in the IPA. The exact details regarding eligibility for the programme are unknown at the time of writing. While it is unclear what exactly is meant by “UNHCR-recognised conflict zones”, considering that the programme is being established within the remit of the existing IRPP, FRHAP will likely apply to those who are already registered with UNHCR in countries such as Lebanon and Jordan, from which Ireland has already committed to take Syrian refugees. Priority will be accorded to vulnerable family members and to “sponsors who can meet the accommodation requirements of eligible family members.”<sup>262</sup>

## 2. Status and rights of family members

Family members must enter and reside within the State within a specified period of time issued by the Minister for Justice and Equality. They are entitled to the same rights and privileges as their sponsors as specified under Section 53 IPA. The permission to reside in the State is linked to the sponsor so if the family member is a spouse or civil partner that permission shall cease to be in force where the marriage or civil partnership concerned ceases to exist.

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection can reside anywhere in the State and are not restricted to particular areas, although social housing shortages can mean that it can be difficult for them to locate in heavily populated areas such as **Dublin**.

Beneficiaries of international protection are entitled to the same medical care and social welfare benefits as Irish citizens so the provision of material conditions is not subject to actual residence in a specific place but there is a shortage of available and suitable accommodation which impacts both Irish citizens and refugees alike at the moment in Ireland.

### 2. Travel documents

According to Section 55 IPA the Minister for Justice and Equality on application by the person concerned shall issue a travel document to a qualified person and his or her family member. The Minister for Justice may not, however, issue a travel document if the person has not furnished the required information as requested by the Minister, or the Minister considers that to issue it would not be in the best interests of national security, public health or public order or would be contrary to public policy.

Both refugees and beneficiaries of subsidiary protection in Ireland are entitled to apply for travel documents, which is done by application form to the INIS Travel Document Section. The application requirements differ slightly between the two categories of applicant, in that the applications of subsidiary protection beneficiaries are subject to the Minister’s satisfaction that the applicant is “unable to obtain a travel document from the relevant authority of the country of his or her nationality or, as the case may be, former habitual residence.”<sup>263</sup> While this does not reflect an overt distinction in theory, in practice, it means that beneficiaries of subsidiary protection can be required to demonstrate that they have made every effort

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<sup>262</sup> *Ibid.*

<sup>263</sup> Regulation 24(2) European Union (Subsidiary Protection) Regulations 2013.

to prove that they are unable to obtain a travel document from another relevant authority before they are issued with an Irish travel document.

Beyond that, the travel document application process for both refugees and beneficiaries of subsidiary protection is uniform. Applicants are required to fill out an application form,<sup>264</sup> submit four passport-sized photographs,<sup>265</sup> a copy of documentation from the Department of Justice issuing permission to remain in the state, a copy of the applicant's Garda Naturalisation and Immigration Bureau registration card, and an €80 application fee.<sup>266</sup>

According to the INIS, the validity of travel documents for a holder of a "1951 Convention Travel Document" (person with **refugee status**) is 10 years, in line with the validity of Irish passports.<sup>267</sup>

Travel Documents granted on foot of **subsidiary protection** are issued for the duration of their permission to remain. This is generally for a period of 3 years from when status is granted under Section 23 of the European Union (Subsidiary Protection) Regulations 2013.<sup>268</sup> The travel document is renewed in line with the period of permission granted after that by the person's local Registration / Immigration Office.<sup>269</sup> Furthermore, Schedule 3 of the Subsidiary Protection Regulations states that the "maximum validity of a travel document is 10 years."

The primary limitation on use of travel documents is that the country of origin/persecution of the holder is not permitted for the purposes of travel.<sup>270</sup> Other than that, beneficiaries of refugee or subsidiary protection status in Ireland are both equally entitled to travel in or out of the state with their respective travel documents. While this enables travel to most EU Member States without a visa, it is impressed upon document holders to enquire with the embassy of their intended travel destination in advance, in order to ascertain the necessity to obtain a visa as each state may have individual requirements based on nationality, etc.<sup>271</sup> Holders of Irish refugee and subsidiary protection documents do not require a re-entry permit upon return to Ireland.<sup>272</sup>

## D. Housing

### Indicators: Housing

- |   |             |
|---|-------------|
| 1. For how long are beneficiaries entitled to stay in reception centres?        | Not defined |
| 2. Number of beneficiaries staying in reception centres as of 14 November 2017: | 430         |

The main source of accommodation is social (public) housing or private rental accommodation. Local authorities are the main providers of social housing but people need to be on housing lists which can take a considerable amount of time.

According to the Minister of State, David Stanton 'Once some form of status is granted, residents cease to be ordinarily entitled to the accommodation supports provided through RIA. Notwithstanding this fact, RIA have always continued to provide such persons with continued accommodation until they secure their own private accommodation. RIA are particularly mindful of the reality of the housing situation in the State

<sup>264</sup> Department of Justice and Equality, *Travel Document Application Form*, available at: <https://bit.ly/2ldmmZj>.

<sup>265</sup> INIS, *Travel Document Photo Requirements*, available at: <https://bit.ly/2pNZUhK>.

<sup>266</sup> INIS, *Travel Document Information Note*, available at: <https://bit.ly/2lb8miT>.

<sup>267</sup> *Ibid.*

<sup>268</sup> Regulation 23 European Union (Subsidiary Protection) Regulations 2013.

<sup>269</sup> Information provided by INIS, March 2018.

<sup>270</sup> Information provided by INIS, March 2018.

<sup>271</sup> Citizens Information, *Travel documents for people with refugee or subsidiary protection status*, available at: <https://bit.ly/2GjMhIN>.

<sup>272</sup> INIS, *Travel Document Information Note*, available at: <https://bit.ly/2lb8miT>.

and the pressures on the Community Welfare Service in respect of Rent Supplement or the City and County Councils in respect of Housing Assistance Payments and Housing Lists. The Government is committed to ensuring that persons who are availing of State provided accommodation, including those who have come to Ireland under the Irish Refugee Protection Programme, are supported in sourcing and securing private accommodation.<sup>273</sup>

Difficulties exist for beneficiaries on accessing housing once status is granted as there is currently a housing crisis in Ireland which impacts everyone. This means that beneficiaries have difficulty leaving Direct Provision and finding suitable housing. This is exacerbated by the accommodation crisis in Ireland, where waiting lists for social housing are long and rental costs exceed the amounts paid in rent supplements.<sup>274</sup>

The situation for beneficiaries of international protection who are finding difficulty obtaining independent accommodation is exacerbated by the concurrent lack of capacity in Direct Provision centres. As of 14 November 2017, there were 639 persons with status residing in either Direct Provision or an EROC, 430 of whom had been granted international protection and 209 of whom had been granted leave to remain.<sup>275</sup>

In September 2017, RIA issued letters to cohorts of (predominantly single male) refugees living in Direct Provision who had received final decisions on their case (both those with positive decision on refugee status and subsidiary protection and those with a deportation order) but had not been able to source alternative accommodation, stating that RIA had 'no role in the provision of accommodation to persons once a decision has been made on their application' and asking them to vacate the centres within a month.<sup>276</sup> This prompted backlash from a number of NGOs such as Nasc, who stated the letters represent 'a catastrophic shift in policy, which will actively make those on deportation orders that have not been effected by the State at severe risk of homelessness and destitution.'<sup>277</sup> In response, the Department of Justice cited reduced capacity of Direct Provision centres as an explanation for the letters and drew a distinction from those who were awaiting a decision on their international protection application and those who were on deportation orders stating that '[c]ontinuing to allocate limited accommodation to people who are legally obliged to remove themselves from the State would undermine our laws and adversely impact our capacity to assist those who are seeking refugee status. At current rate of demand, accommodation capacity in the Centres will run out for all applicants within a number of weeks unless remedial action is taken.'<sup>278</sup>

Due to the ongoing housing crisis in Ireland, as well as already over-subscribed homelessness centres, emergency accommodation and supports, there is a real risk that without transitional support, expecting people to leave Direct Provision could result in long term homelessness and/or destitution.

This issue is still ongoing at time of writing and the Irish Refugee Council has encountered both categories of affected persons through its direct service provision who are advised to remain in their accommodation centre and are assisted by the Irish Refugee Council's direct support services with providing written representations to RIA and other relevant agencies.

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<sup>273</sup> Response to Parliamentary Question by Minister for State David Stanton, 26 January 2017, available at: <http://bit.ly/2lBeDgu>.

<sup>274</sup> For further information see Irish Research Council in partnership with the Irish Refugee Council, *Transition from Direct Provision to life in the community*, June 2016, available at: <http://bit.ly/2lBtlnP>.

<sup>275</sup> Response to Parliamentary Question by Minister for Justice Charlie Flanagan, 22 November 2017, available at: <http://bit.ly/2n5Owx8>.

<sup>276</sup> Irish Times, 'Asylum seekers facing deportation given a month to leave hostels', 20 September 2017, available at: <http://bit.ly/2CpLN6Q>.

<sup>277</sup> Nasc, 'Nasc Condemns Proposed Eviction of Asylum Seekers from Direct Provision', 20 September 2017, available at: <http://bit.ly/2EOV6CF>.

<sup>278</sup> Response to Parliamentary Question by Minister David Stanton, 25 October 2017, available at: <http://bit.ly/2Bk1M5B>.

## E. Employment and education

### 1. Access to the labour market

According to Section 53(a) IPA, beneficiaries of international protection are entitled to seek and enter employment, to engage in any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen. There are few schemes specifically devised and tailored for beneficiaries of international protection to access employment within the Department of Social Protection but they can avail of the supports provided to Irish citizens. The ESRI have reported that refugees in Ireland can face many challenges in navigating the system of mainstream service provision.<sup>279</sup> Information barriers can make it difficult for beneficiaries to navigate the system to access employment supports and the support available varies from region to region. A 2014 UNHCR report on integration in Ireland noted barriers such as language barriers, literacy problems, lack of recognition of foreign qualifications and lack of understanding of the work environment in Ireland.<sup>280</sup>

An example of the tailored schemes available is Employment for People from Immigrant Communities (EPIC) which is a project run by the Business Community of Ireland and is a labour market programme aimed at assisting migrants including beneficiaries of international protection to enter the labour market. As regards recognition of qualifications the Irish National Academic Recognition Information Centre (NARIC Ireland) facilitates the recognition of foreign qualifications in Ireland by advising clients on how these qualifications compare to the Irish qualifications on the National Framework of Qualifications.<sup>281</sup>

### 2. Access to education

People who have been granted refugee or subsidiary protection status have the right to access education and training in a similar manner to Irish citizens.<sup>282</sup> Child asylum seekers can access primary and second-level education. Under the Education (Welfare) Act 2000 education in Ireland is compulsory for all children from the age 6 to 16 years old. The education is provided through the regular school system and parents of children living in Direct Provision centres can apply for financial assistance towards the purchase of school uniforms under the Back to School Clothing and Footwear Allowance Scheme from their local community welfare officer. There is no automatic access to third level education for asylum seekers in Ireland. Some schemes have been introduced by way of the government and individual university initiatives.

Some organisations have stepped in to support student access to third-level education. For example, in the Irish Refugee Council a volunteer administers donations made by the public to help with education access. The funds are then spent on course fees, books, transport and other related expenses.<sup>283</sup> Some Universities have also assisted asylum seekers such as the National University of Ireland, Galway (NUIG) which announced in June 2016 that it will provide four scholarships for asylum seekers or refugees, subsidiary protection beneficiaries or those persons with permission to remain in Ireland.<sup>284</sup> In December 2016 Dublin City University (DCU) was also designated as a University of Sanctuary due to its commitment to welcome asylum seekers and refugees into the university community. DCU has offered fifteen academic scholarships available at either undergraduate or postgraduate level. It also has established a number of other welcoming initiatives such as a Langua-Culture Space initiative where DCU

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<sup>279</sup> ESRI, EMN, Integration of Beneficiaries of International Protection into the Labour Market, Policies and Practices in Ireland, available at: <http://bit.ly/2lbCXof>.

<sup>280</sup> UNHCR, Towards a New Beginning, Refugee Integration in Ireland, May 2014.

<sup>281</sup> Available at: <http://bit.ly/2lbKT90>.

<sup>282</sup> Department of Justice and Equality, Your Guide to Living Independently, An information booklet for people who have been granted refugee or subsidiary protection status or permission to remain, 2016.

<sup>283</sup> Irish Times, 'No asylum in Ireland's education system', 25 October 2016. Doras Lumni and NASC along with the Irish Refugee Council support third-level education access for asylum seekers.

<sup>284</sup> NUIG, Inclusive Centenaries Scholarship Scheme, Announcement, 17 June 2016.

students teach beginners level English to asylum seekers and refugees. In 2017, the University of Limerick and in 2018, University College Cork, became designated Universities of Sanctuary, respectively – granting scholarship access to a limited number of asylum seekers and refugees.

As regards preparatory courses to access school, the Refugee Access Programme is part of the City of Dublin ETB's Separated Children Service which prepares newly arrived separated children seeking asylum and other young people from refugee backgrounds for mainstream school and life in Ireland. The programme is from 12-20 weeks.

As regards access to education and vocational training for adults, for asylum seekers English language programmes are available but access often depends on the location of the Direct Provision centre. There are local based initiatives such as the SOLAS Orientation and Learning for Asylum Seekers programme in Galway and Mayo, the CREW project in **Carlow** and the Refugee Access Programme in **Dublin**.<sup>285</sup> Reports show that people transition from Direct Provision having been granted an international protection status often face practical barriers to further education such as their English competency not being at the required level, previous qualifications not being recognised, not being eligible for grants, not understanding admission procedures and having missed deadlines for college applications.<sup>286</sup>

## F. Social welfare

Section 53(b) IPA states that a beneficiary of international protection “shall be entitled... to receive, upon and subject to the same conditions applicable to Irish citizens, the same medical care and the same social welfare benefits as those to which Irish citizens are entitled.”

As such, there are a broad range of social welfare entitlements to which a beneficiary of international protection may avail, including: access to jobseeker's allowance, for those who are unemployed but actively seeking work; access to disability allowance for those unable to provide for themselves due to disability or illness; access to the one-parent family payment for single parents, and access to child benefit for parents/guardians. Application for various grants is carried out at the individual's local office of the [Department of Employment Affairs and Social Protection](#).

## G. Health care

Beneficiaries of international protection are entitled to the same medical care as Irish citizens in accordance with Section 53(b) IPA. Access to health care for asylum seekers is also on the same basis as Irish citizens and they eligible for medical cards subject to a means test and can register with local GPs. They have access to the Public Health Nursing System as well as dedicated asylum seeker psychological service operating out of St. Brendan's Hospital in Dublin. However, a report by the Royal College of Physicians of Ireland in June 2016 noted problems as regards access to health by way of a number of linguistic, cultural and financial barriers such as inconsistent availability of interpreters and translation services across the health service.<sup>287</sup> Furthermore, the report highlighted that where asylum seekers are moved from one direct provision or EROC centre to another, continuity of care with existing healthcare providers may be disrupted or lost.

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<sup>285</sup> For further information see European Commission, ICF study, *Labour market integration of asylum seekers and refugees*, Ireland, April 2016.

<sup>286</sup> Irish Research Council in partnership with the Irish Refugee Council, *Transition from Direct Provision to life in the Community, the experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland*, June 2016.

<sup>287</sup> Royal College of Physicians, Faculty of Public Health Medicine, *Migrant Health- the Health of Asylum Seekers, Refugees and Relocated Individuals, A position paper*, June 2016.

Specialised treatment for torture survivors is mainly provided by SPIRASI which receives some funding from the Health Service Executive. However, its resources are limited and therefore the need for such specialised services outweighs the resources and capacity available though it is difficult to find quantifiable data on this. The Royal College of Physicians of Ireland reported “While voluntary organisations such as SPIRASI may provide these services in urban centres, there is no access to many others. Mainstream mental health services, already overburdened and under-resourced in caring for the general population, may not have the cultural or linguistic expertise to effectively deal with the mental health problems experienced by refugees and asylum seekers, and do not have adequate resources to liaise with the agencies responsible for asylum seekers.”