

# Country Report: Ireland



2020  
Update

## Acknowledgements & Methodology

The first edition of this report was written by Sharon Waters, Communications and Public Affairs Officer with the Irish Refugee Council and was edited by ECRE. The first and second updates of this report were written by Nick Henderson, Legal Officer at the Irish Refugee Council Independent Law Centre. The third and fourth updates were written by Maria Hennessy, Legal Officer at the Irish Refugee Council Independent Law Centre. The 2017 update was written by Luke Hamilton, Legal Officer with the Irish Refugee Council Independent Law Centre. The 2018 update was written by Luke Hamilton, Legal Officer with the Irish Refugee Council Independent Law Centre and Rosemary Hennigan, Policy and Advocacy Officer with the Irish Refugee Council. The 2019 update was written by Luke Hamilton, Legal Officer with the Irish Refugee Council Independent Law Centre and Rosemary Hennigan, Policy and Advocacy Officer with the Irish Refugee Council. The 2020 update was written by Nick Henderson and Brian Collins, with the assistance of Carmen del Prado. The 2021 update was written by Nick Henderson and Hayley Dowling.

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) and the International Protection Accommodation Service (IPAS), including their annual and monthly reports; data from the International Protection Appeals Tribunal (IPAT); as well as various reports and statements from stakeholders such as the Irish Human Rights and Equality Commission, UNHCR Ireland and NGOs working on the ground with refugees and asylum seekers. The Irish Refugee Council is grateful to all colleagues for their assistance in obtaining information used to compile this report.

The information in this report is up-to-date as of 31 December 2020, 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 19 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, and SI) and 4 non-EU countries (Serbia, Switzerland, Turkey, and the United Kingdom) 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>CERD</b>	United Nations Committee for the Elimination of Racial Discrimination
<b>CJEU</b>	Court of Justice of the European Union
<b>Co.</b>	County
<b>CPT</b>	European Committee for the Prevention of Torture
<b>DP</b>	Direct Provision – System for the material reception of asylum seekers
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ELA</b>	Early Legal Advice
<b>EMN</b>	European Migration Network
<b>EROC</b>	Emergency Reception and Orientation Centre
<b>ESRI</b>	Economic and Social Research Institute
<b>FLAC</b>	Free Legal Advice Centres
<b>GNIB</b>	Garda National Immigration Bureau
<b>GRETA</b>	Group of Experts on Action against Trafficking in Human Beings
<b>HIQA</b>	Health Information and Quality Authority
<b>HSE</b>	Health Services Executive
<b>IFPA</b>	Irish Family Planning Association
<b>IHAP</b>	IRPP Humanitarian Admission Programme
<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>IPAS</b>	International Protection Accommodation Services
<b>IPAT</b>	International Protection Appeals Tribunal
<b>IPO</b>	International Protection Office
<b>IRC</b>	Irish Refugee Council
<b>IRPP</b>	Irish Refugee Protection Programme
<b>ISD</b>	Immigration Service Delivery
<b>JRS</b>	Jesuit Refugee Service
<b>MLR</b>	Medico-Legal Report
<b>MASI</b>	Movement of Asylum Seekers Ireland
<b>OPMI</b>	Office for the Promotion of Migrant Integration
<b>ORAC</b>	Office of the Refugee Applications Commissioner
<b>PILA</b>	Public Interest Law Alliance, a project of FLAC
<b>RAT</b>	Refugee Appeals Tribunal
<b>RCNI</b>	Rape Crisis Network Ireland
<b>RIA</b>	Reception and Integration Agency

<b>RLS</b>	Refugee Legal Service
<b>SHAP</b>	Syrian Humanitarian Admission Programme
<b>SI</b>	Statutory Instrument
<b>SPIRASI</b>	NGO specialising in assessing and treating trauma and victims of torture
<b>TD</b>	Teachta Dála (Irish equivalent term for Member of Parliament)
<b>TUSLA</b>	Irish Child and Family Agency
<b>UNHCR</b>	United Nations High Commissioner for Refugees



## Statistics

### Overview of statistical practice

Since January 2017, the International Protection Office (IPO) is responsible for receiving and examining applications. The IPO publishes brief monthly statistical reports on international protection applications.<sup>1</sup> The Immigration Service Delivery (ISD) (formerly Irish Naturalisation and Immigration Service (INIS)) is part of the Department of Justice and Equality and provides data about asylum and managed migration in Ireland to Eurostat, the statistical office of the European Union. This data is published on the EU open data portal along with data from other European countries.<sup>2</sup>

### Applications and granting of protection status at first instance: 2020

	Applicants in 2020	Pending at end 2020	Refugee status	Subsidiary protection	Hum. status	Rejection	Inadmiss.	Refugee rate	Subs. Prot. rate	Hum. rate	Rejection Rate
<b>Total</b>	1, 566	5,279	438	85	200	1,553	18	19.24%	3.73%	8.78%	68.23%

Breakdown by countries of origin of the total numbers

Nigeria	208	-	-	-	-	-	-	-	-	-	-
Somalia	167	-	-	-	-	-	-	-	-	-	-
Pakistan	87	-	-	-	-	-	-	-	-	-	-
South Africa	84	-	-	-	-	-	-	-	-	-	-
Zimbabwe	82	-	-	-	-	-	-	-	-	-	-

Source: IPO, April 2021. Rejection of international protection includes refusal of international protection and permission to remain, as well as refusal pursuant to s.37 of the IPA 2015 whereby an applicant withdraws from the International protection process.

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

<sup>2</sup> ISD, *Open Data*, available at: <https://bit.ly/3atHKHG>.

**Gender/age breakdown of the total number of applicants: 2020**

	Number	Percentage
<b>Total number of applicants</b>	1,926	-
Men	992	51.5%
Women	574	29.8%
Children	360	18.69%
Unaccompanied children	30	1.5%

Source: IPO, April 2021.

**Comparison between first instance and appeal decision rates: 2020**

	First instance		Appeal	
	Number	Percentage	Number	Percentage
<b>Total number of decisions on merits</b>	2,276	-	1,083	-
Decisions granting international protection	723	31.76%	289	26.68%
Rejection	1,553	68.23%	783	72.29%

Source: IPO, April 2021.

## 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/1lifDWb">http://bit.ly/1lifDWb</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. 725 of 2020 International Protection Act 2015 (Safe Third Country) Order 2020	<a href="https://bit.ly/3cgp1nc">https://bit.ly/3cgp1nc</a>
S.I. No. 436 of 2020 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020	<a href="https://bit.ly/2NAaNDf">https://bit.ly/2NAaNDf</a>
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 of 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 230 of 2018 European Communities (Reception Conditions) Regulations 2018	<a href="https://bit.ly/2KW1T09">https://bit.ly/2KW1T09</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>
S.I. No. 62 of 2018 European Union (Dublin System) Regulations 2018	<a href="https://bit.ly/2H4mj2y">https://bit.ly/2H4mj2y</a>
S.I. No 121 of 2018 International Protection Act 2015 (Safe Countries of Origin) Order 2018	<a href="https://bit.ly/2l9j2Cm">https://bit.ly/2l9j2Cm</a>
S.I. No 668 of 2016 International Protection Act 2015 (Deportation) Regulations 2016	<a href="http://bit.ly/2E8uN7G">http://bit.ly/2E8uN7G</a>
S.I. No 667 of 2016 International Protection Act 2015 (Travel Document) Regulations 2016	<a href="http://bit.ly/2GfErpC">http://bit.ly/2GfErpC</a>
S.I. No 666 of 2016 International Protection Act 2015 (Places of Detention) Regulations 2016	<a href="http://bit.ly/2rDSkL0">http://bit.ly/2rDSkL0</a>

S.I. No 665 of 2016 International Protection Act 2015 (Voluntary Return) Regulations 2016	<a href="http://bit.ly/2GeKxGL">http://bit.ly/2GeKxGL</a>
S.I. No 664 of 2016 International Protection Act 2015 (Permission to Remain) Regulations 2016	<a href="http://bit.ly/2rFcFiP">http://bit.ly/2rFcFiP</a>
S.I. No 662 of 2016 International Protection Act 2015 (Temporary Residence Certificate) (Prescribed Information) Regulations 2016	<a href="http://bit.ly/2Gh8WLO">http://bit.ly/2Gh8WLO</a>
S.I. No 661 of 2016 International Protection Act 2015 (Establishment Day) Order 2016	<a href="http://bit.ly/2GhLyhl">http://bit.ly/2GhLyhl</a>
S.I. No 660 of 2016 International Protection Act 2015 (Application for International Protection Form) Regulations 2016	<a href="http://bit.ly/2FeRwy5">http://bit.ly/2FeRwy5</a>
S.I. No 663 of 2016 International Protection Act 2015 (Commencement) (No.3) Order 2016	<a href="http://bit.ly/2GhLBd1">http://bit.ly/2GhLBd1</a>
S.I. No 133 of 2016 International Protection Act 2015 (Commencement) (No. 2) Order 2016	<a href="http://bit.ly/2nbsOHt">http://bit.ly/2nbsOHt</a>
S.I. No 26 of 2016 International Protection Act 2015 (Commencement) Order 2016	<a href="http://bit.ly/2FeTbnj">http://bit.ly/2FeTbnj</a>
S.I. No 518 of 2006 European Communities (Eligibility for Protection) Regulations 2006	<a href="http://bit.ly/1OpPpWj">http://bit.ly/1OpPpWj</a>
S.I. No. 81 of 2017 Civil Legal Aid (International Protection Appeals Tribunal) Order 2017	<a href="https://bit.ly/2BezlvK">https://bit.ly/2BezlvK</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 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 **May 2020**.

### *Asylum procedure*

- ❖ **Length of procedures:** The International Protection Office continues to process cases. However, there has been a significant decline in the number of protection applications as a result of the Covid-19 pandemic, with a decrease of approximately 67.3% in the numbers claiming protection in 2020 (1,566 as of December 2020)<sup>3</sup> compared with the previous year (4,781).

Prior to the outbreak of Covid-19 in Ireland, persons whose circumstances fell outside the prioritisation criteria were waiting between 8-10 months for their substantive interview, whilst applicants who successfully requested prioritisation were likely to be interviewed within 5 months. Following the outbreak of Covid-19, however, restrictions on the operation of the International Protection Office have resulted in significant delays to the overall procedure. As of December 2020, individuals whose circumstances fell outside the prioritisation criteria were waiting approximately 18 months for the processing of their application, while those who successfully requested prioritisation were waiting approximately 14 months.<sup>4</sup>

Media reports in May 2020 indicated that the IPO had suspended the issuing of first instance decisions, with this suspension entirely due to the impact of Covid-19 restrictions.<sup>5</sup> The issuing of decisions has now resumed, albeit with significant delays.

- ❖ **Access to procedure:** Media reports in December 2019 stated that immigration control measures in place at Dublin Airport were targeting individuals seeking to disembark from arriving aircraft with false documentation. One such report indicated that “airlines have been told to take such individuals back on return flights before any opportunity to claim international protection arises.”<sup>6</sup> In January 2020, the Irish Refugee Council wrote to the then-Minister for Justice and Equality, Charlie Flanagan, requesting clarification regarding these instructions, the criteria used and their adherence to Ireland’s legal obligations. A written response from the Department of Justice stated that the purpose of these checks on arrival was to determine whether an individual was permitted leave to land, rather than any assessment of asylum. A freedom of information request made by the Irish Refugee Council for information on the policies and procedures on this issue was declined. Despite indications from the Department of Justice that this practice had been largely scaled back, media reports suggest that the policy continued to operate as of March 2020.<sup>7</sup>

Following the outbreak of Covid-19 in Ireland, the International Protection Office continues to accept new applications for international protection and is providing a limited registration service to new applicants.<sup>8</sup>

- ❖ **Examination of applications:** Following the onset of the Covid-19 pandemic in March 2020, all substantive protection interviews at the IPO were postponed. Interviews recommenced in July 2020 in line with government guidelines. However, following the reintroduction of Covid-19 restrictions in October 2020, all scheduled protection interviews were suspended from 22 October until 10

<sup>3</sup> IPO, *December Statistics*, available at: <https://bit.ly/3sGviOS>.

<sup>4</sup> Minister for Justice, Response to Parliamentary question No 33, 10 December 2020, available at: <https://bit.ly/3swoCmF>.

<sup>5</sup> RTE News, ‘Granting of Refugee Status Delayed due to Covid-19’, 8 May 2020, available at: <https://bit.ly/3c8Pkfp>.

<sup>6</sup> Irish Times, ‘Immigrant airport checks revised over destruction of fake papers’, 31 December 2020, available at: <https://bit.ly/3u5tmjR>.

<sup>7</sup> The Irish Times, ‘Ireland is illegally turning back Georgian and Albanian Immigrants’, 2 March 2020, available at: <https://bit.ly/3ot1UJE>.

<sup>8</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland - updated 5 February 2021*, available at: <https://bit.ly/35hNTa8>.

December. Restrictions were implemented once again in late December and with effect from the 30 December 2020, all substantive interviews were cancelled until further notice.

All scheduled hearings at the International Protection Appeals Tribunal (IPAT) were suspended in a similar manner, although the Tribunal continues to accept and process appeals. Further to the introduction of the latest set of Covid-19 restrictions in December 2020, the Tribunal indicated that its previous blanket Covid-19 policy, which had been in effect since the onset of the pandemic, and under which late filing of Notices of Appeal were accepted, would no longer apply. Instead, the Tribunal has indicated that it will consider applications for the late acceptance of appeals on a case-by-case basis, pursuant to the relevant legal test established in the International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.<sup>9</sup> The Tribunal has further indicated that it is also open to appellants to withdraw their request for an oral hearing and instead have their appeal dealt with on the papers, where the assigned Tribunal Member is of the opinion that such a course of action is in accordance with fair procedures and natural justice.<sup>10</sup>

- ❖ **Decentralised international protection interviews and interviews via video-link:** In light of the outbreak of Covid-19, a small number of applicants for international protection were offered the possibility of conducting their substantive international protection interview remotely under a pilot process. Approximately 90 interviews were carried out remotely.<sup>11</sup> Interviews took place via video-link, with the applicant attending from a remote location in Co. Cork and the interviewer attending at the IPO. Following the resumption of face-to-face interviews in July, legal representatives and interpreters were required to attend client interviews remotely via telephone dial-in.

The IPAT is conduct some appeal hearings remotely by way of audio-video link. The IPAT has indicated that it will identify those cases in which a remote hearing may be suitable and will be in direct contact with appellants and their legal representatives in due course.<sup>12</sup> Anecdotal evidence suggests video hearings are only taking place in English.

#### *Reception conditions*

- ❖ **Implementation of the provisions of the recast Reception Conditions Directive:** Ireland has transposed the recast Reception Conditions Directive into Irish law through the enactment of the European Communities (Reception Conditions) Regulations 2018. The extent to which the provisions of the Regulations have been implemented in practice continues to vary.
- ❖ **Absence of vulnerability assessment:** The Regulations provide for a vulnerability assessment. However, no standardised assessment was carried out in respect of applicants throughout 2020, despite this being a clear requirement in law. In July 2020, the Minister for Justice, Helen McEntee, confirmed that vulnerability assessments would be implemented by the end of the year<sup>13</sup>. At the end of January 2021, a pilot project to assess the vulnerability of asylum seekers was established at Baleskin reception centre in Dublin. Officials from the International Protection Accommodation Service (IPAS) carried out assessments with the assistance of a social worker from the IPO. As of the end of January 2021, the Minister for Children, Equality, Disability, Integration and Youth, Roderic O' Gorman had indicated that four assessments had taken place.<sup>14</sup> According to information received from the Department of Children, Equality, Disability, Integration and Youth Affairs in April 2021, the

<sup>9</sup> International Protection Appeals Tribunal, *Covid-19 Frequently Asked Questions*, 4 August 2020, available at: <https://bit.ly/3aer0aj>.

<sup>10</sup> *ibid.*

<sup>11</sup> Information provided by IPO, April 2021.

<sup>12</sup> International Protection Appeals Tribunal, *IPAT - Covid-19*, 29 January 2021, available at: <https://bit.ly/3aXNZps>.

<sup>13</sup> The Journal, 'We need treatment': McEntee commits to vulnerability assessments for asylum seekers amid fresh calls to close Cahersiveen', 29 July 2020, available at: <https://bit.ly/3nMXhZS>.

<sup>14</sup> Information provided by the Department of Children, Equality, Disability, Integration and Youth, 12<sup>th</sup> April 2021.

pilot scheme initially assessed applicants who were seeking accommodation from the State, however, from the beginning of February 2021, the pilot has been extended to all new applicants for international protection. Over 100 applicants have now been assessed and vulnerabilities have been identified in approximately 60% of cases so far.<sup>15</sup> While the introduction of the programme is a welcome development, migrants' rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.<sup>16</sup>

- ❖ **National Standards on Direct Provision:** Following public consultation, the final draft of the National Standards on Direct Provision was published by the Working Group on National Standards in August 2019. The National Standards are designed to constitute a set of standardised rules for every Direct Provision accommodation centre in Ireland and aim to provide a framework for the continual development of services and support for residents, while also ensuring consistent accommodation conditions across all Direct Provision centres in Ireland. The National Standards became applicable and legally binding on 1 January 2021. The Department of Children, Equality, Disability and Integration and Youth are currently engaged in talks with the Department of Health and the Health Information and Quality Authority (HIQA) with regard to undertaking the role of monitoring the implementation of the National Standards. It is hoped that monitoring will begin in the coming months. However, in the interim, accommodation centres continue to be subject to inspections by both IPAS and an independent inspectorate company.<sup>17</sup>
- ❖ **Publication of the Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process:** On 21 October 2020, the Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process was published. The Advisory Group, chaired by Dr. Catherine Day, was established in October 2019 with a view to advising on the development of a long-term approach to the provision of support, including accommodation, to persons in the international protection process. The report makes a series of recommendations to end Direct Provision and transform the international protection process by mid-2023.<sup>18</sup> In its Programme for Government 2020, the Government committed to ending Direct Provision and replacing it with a new accommodation policy based on a not-for-profit approach.<sup>19</sup>
- ❖ **Publication of the Government's White Paper on Ending Direct Provision:** The Government's long-awaited White Paper to End Direct Provision and to Establish a New International Protection Support Service was published on the 26<sup>th</sup> of February 2021. The paper establishes a variety of measures aimed at ending the system of Direct Provision and replacing it with a revised, not-for-profit model. The paper includes some of the recommendations of the Advisory Group's report and sets out a roadmap towards establishing a new international protection support service, to be in place by 2024.<sup>20</sup> Some recommendations of the Advisory Group were not included in the White Paper, including the recommendation that people in the process for more than two years be offered permission to remain.

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<sup>15</sup> Irish Examiner, 'Nasc: State's Pilot Project on Vulnerability of Asylum Applicants is too Limited', 11th February 2021, available at: <https://bit.ly/3sfKjWo>.

<sup>16</sup> *Ibid.*

<sup>17</sup> Minister for Children, Equality, Disability, Integration and Youth Roderic O' Gorman, Response to Parliamentary Question No 263 and 264, 21 January 2021, available at: <https://bit.ly/2ZmglnS>.

<sup>18</sup> Advisory Group on Direct Provision, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, 21 October 2020, available at: <https://bit.ly/3qgSmC3>.

<sup>19</sup> Department of the Taoiseach, *Programme for Government 2020: Our Shared Future*, 29 October 2020, available at: <https://bit.ly/3qAyRVd>, 76.

<sup>20</sup> Department of Children, Equality, Disability, Integration and Youth, *White Paper on Ending Direct Provision*, 26 February 2021, available at: <https://bit.ly/3t2Xqv6>.



- ❖ **Reception capacity and continued use of emergency accommodation:** Capacity in Direct Provision continued to be a significant issue, with approximately 1,382 asylum seekers housed in emergency accommodation as of September 2020.<sup>21</sup> The housing crisis in Ireland continued to exacerbate the situation, meaning that a significant number of individuals who have been granted protection status or permission to remain have been unable to move out of Direct Provision accommodation owing to a lack of available and affordable housing. Additionally, the onset of the Covid-19 pandemic resulted in the opening of a number of new emergency centres at very short notice so as to enable residents to socially distance and reduce overcrowding. These centres were also used to facilitate self-isolation.
- ❖ **Transfer of responsibility for Direct Provision:** Following the Irish government's commitment to ending the Direct Provision system, responsibility for the system was transferred to the Department of Children, Disability, Equality and Integration in October 2020. Responsibility for administering the system of Direct Provision was previously held by the Department of Justice and Equality.<sup>22</sup>
- ❖ **Final report of the Oireachtas Special Committee on Covid-19 Response:** On 6 October 2020, the Oireachtas Special Committee on Covid-19 Response published its final report, highlighting the areas requiring ongoing oversight and accountability, including Direct Provision. The Report highlighted the need for a stronger regulatory framework, as well as a rapid and robust test and trace system for individuals living in Direct Provision. Arising out of its consideration of the topic, the Committee also referred a number of issues to the Joint Committee on Children, Disability, Equality and Integration, including the need for the Department to review the practice of accommodating people seeking international protection in direct provision centres, hotels and B&Bs, the need for better data sharing between Departments so that adequate services can be provided to residents, and the need to ensure that staff working in Direct Provision services receive appropriate training, including in infection control measures.<sup>23</sup>

#### *Detention of asylum seekers*

- ❖ **Dedicated immigration detention facilities:** A dedicated immigration detention facility was scheduled to open at Dublin Airport in late 2019 in response to ongoing criticism regarding the detention of asylum seekers in general prisons. The unit was set to contain facilities for individuals refused permission to land in Ireland. However, media reports indicate that as of August 2020, the facility had yet to open.<sup>24</sup>
- ❖ **Covid-19 and immigration detention:** A particular issue of concern emerged following the onset of the pandemic with regard to the spread of Covid-19 in prisons used to hold migrants and asylum seekers. In Cloverhill prison, a number of inmates and staff are known to have contracted the virus, while in the Midlands Prison, five prisoners were also reported to have tested positive for Covid-19 as of October 2020.<sup>25</sup>
- ❖ **7<sup>th</sup> Periodic Visit Report of the European Committee for Prevention of Torture:** In late November 2020, the European Committee for the Prevention of Torture released its 7<sup>th</sup> periodic visit report on Ireland. In the report, the Committee reiterated its long-standing call for Irish authorities to suspend the use of prisons for immigration detention, noting that "a prison is by definition not a suitable place

<sup>21</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15 September 2020, available at: <https://bit.ly/3ih594H>.

<sup>22</sup> S.I. No. 436/2020 – Disability, Equality, Human Rights Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020.

<sup>23</sup> Special Committee on Covid-19 Response, *Final Report*, October 2020, available at: <https://bit.ly/2M5BO16>.

<sup>24</sup> The Irish Times, 'Dedicated immigration facility still not operational', 11 August 2020, available at: <https://bit.ly/3spUCJ6>.

<sup>25</sup> Global Detention Project, 'Covid-19 Update: Ireland', available at: <https://bit.ly/3p2k4Ce>.



in which to detain someone who is neither suspected nor convicted of a criminal offence.”<sup>26</sup> The Committee reported that it had met with several immigration detainees who detailed the harassment and abuse they had received from other prisoners. It noted one case in particular whereby a “middle-aged diminutive foreign national was placed in a cell with two young remand prisoners who allegedly attempted to rape him as well as physically aggressed and verbally intimidated him.”<sup>27</sup>

#### *Content of international protection*

- ❖ **Family reunification:** The 12-month time limit for family reunification in Ireland was the subject of a challenge of constitutionality before the Supreme Court in the joint cases of *A v. Minister for Justice & Equality & Ors*, *S v. Minister for Justice & Equality & Ors* and *I v. Minister for Justice & Equality & Ors*. [2020] IESC 20. The case concerned an applicant who became estranged from her family in 2011 and travelled to Ireland as an unaccompanied minor. She subsequently applied for, and was granted, international protection in 2014. After resuming phone contact with her family in 2018, she applied for family reunification with her parents and sister but the applicant was refused on the basis that the application was not brought within the 12-month time frame specified by s.56(8). In a judgment delivered on 8 December 2020, Justice Dunne determined that the 12-month time limit established pursuant to s.56(8) of the 2015 Act was not unconstitutional nor was it incompatible with the ECHR. The Court noted in its decision that it remained open to the applicant to apply under the 2016 Family Reunification Policy Document, whereby the Minister for Justice can exercise her discretion to grant family reunification on humanitarian grounds.<sup>28</sup> In the same judgment, Justice Dunne also overturned a finding of unconstitutionality concerning a law preventing the recognition, for family reunification purposes, of marriages of refugees which took place after they sought protection in the State.<sup>29</sup>

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<sup>26</sup> European Committee for the Prevention of Torture, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 23 September to 4 October 2019*, 24 November 2020, available at: <https://bit.ly/3d5To06>, 17.

<sup>27</sup> *Ibid.*, 17.

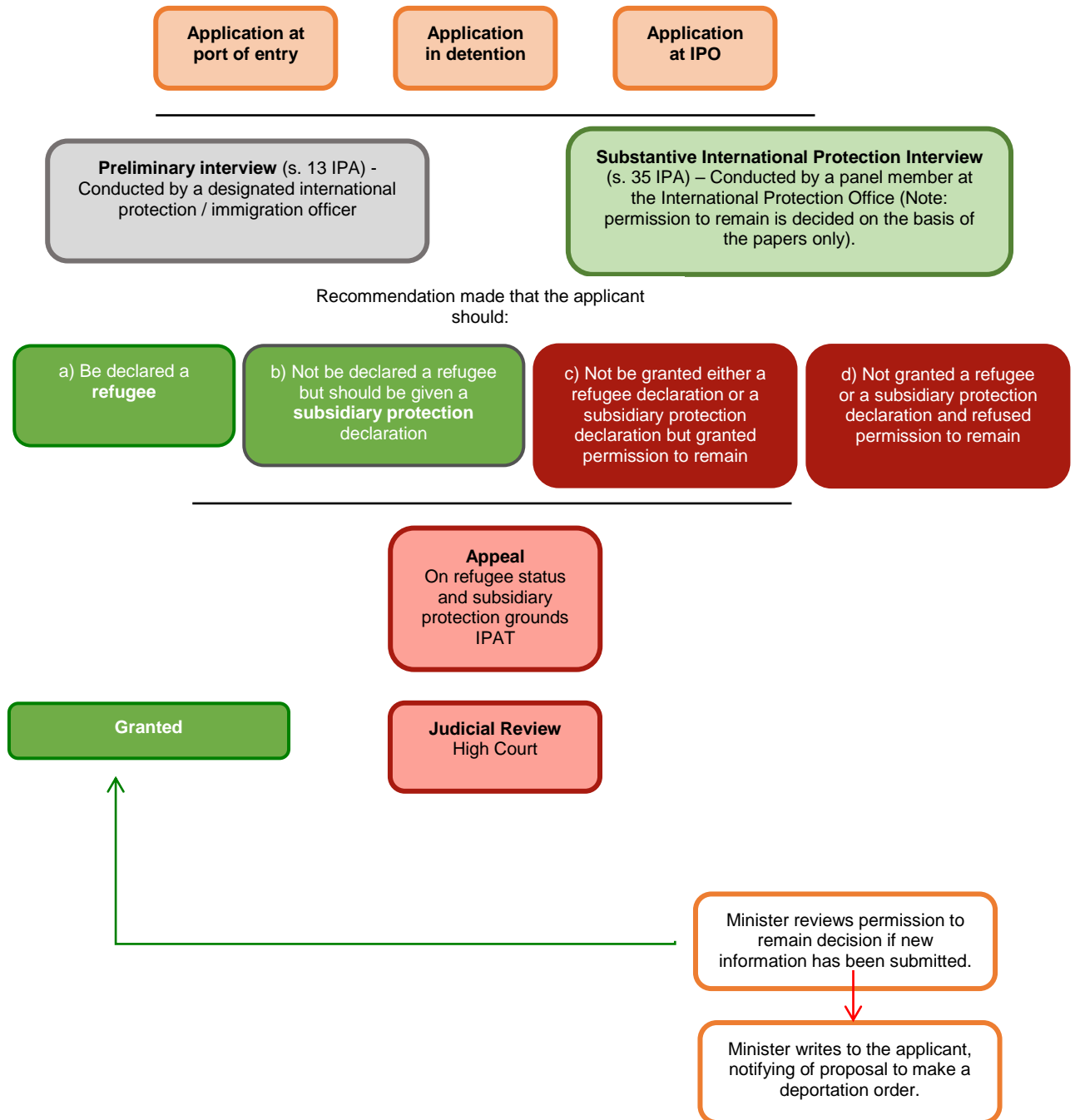
<sup>28</sup> *A v. Minister for Justice & Equality & Ors*, *S v. Minister for Justice & Equality & Ors* and *I v. Minister for Justice & Equality & Ors*. [2020] IESC 20, available at: <https://bit.ly/3oHD5JW>.

<sup>29</sup> *Ibid.*

# 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 type="checkbox"/> Yes            | <input checked="" 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 determining 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 determining authority?
International Protection Office (IPO)	148.1	Department of Justice	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Up until January 2017, the Office of the Refugee Applications Commissioner (ORAC) was the body responsible for registering asylum applications and making the first instance decision. With the introduction of the IPA, ORAC was 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 the single procedure. This system replaces the previous multi-layered process overseen by ORAC that was fraught with administrative delays and backlogs.

At the end of 2019, the IPO was composed of a total of 149 staff. At the end of 2020, there were 148.1 staff (full time equivalent) serving in the IPO. Of the 148.1 staff, there were 27.6 staff directly involved in making first instance determinations on applications for international protection at year end.<sup>30</sup>

### **Quality assurance and control:**

While the authors are not aware of any specific quality assurance or control mechanisms in place within the IPO, the UNHCR, in line with its advisory role, states that it regularly works in conjunction with the IPO with a view to improving the quality of decision making. This work includes the development and delivery of training, and the review of decisions and other support initiatives, and draws on the best practice developed by the UNHCR through activities implemented in other EU Member States and internationally.<sup>31</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>32</sup> Four years on from the commencement of the act, the IPO has now dealt with the "backlog" of transitional cases. Prior to the outbreak of Covid-19, persons whose circumstances fell outside the prioritisation criteria were likely to be waiting between 8 and 10 months for their substantive interview, whilst applicants who successfully requested prioritisation were interviewed within 4 to 5 months of their initial application.<sup>33</sup> Generally, a person whose case was not prioritised could expect to receive a recommendation on their application within 15 months of claiming protection, while an individual whose case fell within the prioritisation criteria could expect to be waiting 9-10 months.<sup>34</sup> However the International Protection Office ceased undertaking international protection interviews due Covid-19 for several months over the year. This resulted in significant delays in the overall procedure. As of December 2020, individuals whose circumstances fell outside the prioritisation criteria were waiting approximately 18 months for their case to be processed, while those who successfully requested prioritisation were waiting approximately 14 months for a decision on their application. As of December 2020, the number of pending cases awaiting determination by the International Protection Office was just over 5,000.<sup>35</sup>

The IPA introduced a single procedure where refugee status, subsidiary protection and permission to remain are all examined together in one procedure compared to the previous bifurcated system under the Refugee Act, 1996. Under the IPA, an application for international protection 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.<sup>36</sup> 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.

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<sup>30</sup> Information provided by the International Protection Office, April 2021.

<sup>31</sup> UNHCR, 'Ireland Fact Sheet – January – December 2019', available at: <https://bit.ly/3naOy4N>.

<sup>32</sup> International Protection Act 2015 (Commencement) (No. 3) Order 2016.

<sup>33</sup> IPO Customer Service Liaison Panel (CSLP) Meeting, December 2019

<sup>34</sup> Minister for Justice Charles Flanagan, Response to Parliamentary question No 384, 16 June 2020, available at: <https://bit.ly/3bDNZNb>.

<sup>35</sup> Minister for Justice Helen McEntee, Response to Parliamentary question No 33, 10 December 2020, available at: <https://bit.ly/3swoCmF>.

<sup>36</sup> Section 28(7)(d) 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 that person, or a country other than a Member State is considered to be a “first country of asylum” for that person.<sup>37</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, entitled ‘Application for International Protection Questionnaire’, which must be completed and returned by a specified time and date. The deadline for submission of the Questionnaire is non-statutory and extensions of time for submission of the document can be sought if necessary, at the discretion of the IPO. Applicants are also provided with a detailed information booklet explaining key terms and processes associated with the international protection status determination process in Ireland.<sup>38</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>39</sup> In this respect, the information booklet contains information on the services of the State-funded Legal Aid Board, operating out of the Legal Aid Board, that 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. To date, the Irish Refugee Council’s Information and Referral Service and Law Centre has assisted with the completion of approximately 318 applications for international protection questionnaires (involving appointments of three-five hours, depending on the case) since the rollout of the legislation in January 2017.

## Dublin Regulation

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>40</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 Legal Aid Board. As per the regular procedure, the applicant is issued a Temporary Residence Certificate and referred to the International Protection Accommodation Service (IPAS) for accommodation if they have no other means of accommodating themselves. At this point the applicant will be taken to an IPAS reception centre in Dublin and later dispersed elsewhere to another Direct Provision centre. If the applicant’s details are flagged on the Eurodac database, they may be called for a personal interview to assess the applicability of a transfer to another responsible Member State.<sup>41</sup>

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<sup>37</sup> A first country of asylum is defined under Section 21(15) IPA.

<sup>38</sup> IPO, *Information Booklet for Applicants for International Protection*, January 2017, available at: <http://bit.ly/2D9Jqdl>.

<sup>39</sup> *Ibid*, para. 3.7.2.

<sup>40</sup> S.I. No. 62 of 2018 European Union (Dublin System) Regulations 2018.

<sup>41</sup> Regulation 4 European Union (Dublin System) Regulations 2018.

## 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. The waiting time for applicants for their substantive interview is estimated at between eight and ten months.<sup>42</sup>

After the substantive asylum interview, a so-called draft “s.39” report is compiled by the authorised 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 draft report must then be considered and finalised by a civil servant within the IPO and once this has been done a recommendation is issued from the IPO. The finalised recommendation (s.39 report) contains a recommendation as to whether or not status should be granted:

- ❖ If a positive recommendation is made with regard 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 regard to subsidiary protection, the applicant 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 (IPAT) 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 IPAT and their right to seek legal advice if they have not done so already. Under the single procedure, where a person is found ineligible for refugee status or subsidiary protection, the decision-maker also considers whether or not there are humanitarian grounds to recommend a grant of permission to remain. This decision is made on the basis of information provided in the applicant's questionnaire, as well as in any submissions made by or on behalf of the applicant throughout the procedure. There is no right of appeal on permission to remain decisions.

## 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 this basis of the papers unless a member of the Tribunal finds it in the interests of justice to hold such an oral hearing. Free legal representation can be obtained through the Legal Aid Board. The deadline for submitting an appeal will be prescribed by the Minister in consultation with the Chairperson of the IPAT.<sup>43</sup>

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

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<sup>42</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 531, 12 June 2018, available at: <https://bit.ly/2T6aLkL>.

<sup>43</sup> Section 77 IPA.

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 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 an 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 regard 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 appeal 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.

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. 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.

Throughout 2020, the High Court continued to implement measures to reduce the backlog in the 'Asylum List', remaining fully operational throughout the Covid-19 pandemic and associated restrictions, albeit on a largely remote basis. The latest available statistics demonstrate a 30% decrease in new asylum cases lodged, down from 530 cases in 2018 to 368 cases in 2019. Moreover, the High Court more than doubled the number of asylum cases decided or resolved in court, with a total of 262 cases decided in court in 2019, while 135 cases were settled outside of court.<sup>44</sup>

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<sup>44</sup> Courts Service of Ireland, *Annual Report 2019*, 22 July 2020, available at: <https://bit.ly/3hQ1vyc>, 55.



## 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
2. Is there a border monitoring system in place? ☐ Yes ☒ No

There have been no official reports of push backs of protection applicants 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 currently no access for independent authorities or NGOs at air or land borders in order to monitor the situation, nor do there appear to be any plans to allow such access in the future.

Anecdotal evidence received by the Irish Refugee Council Independent Law Centre suggests that some people may be refused leave to land and to enter Ireland even when they have grounds for protection. The Irish Refugee Council's services have witnessed a number of cases of applicants describing that they had only been permitted entry for the purposes of seeking asylum subject to rigorous examination by the border authorities. The Irish Times reported in December 2019 that "Airlines have been told to take such individuals back on a return flight before any opportunity to claim international protection arises." The Irish Refugee Council wrote to the Minister for Justice and Equality, Charlie Flanagan TD, in January 2020 requesting clarification about these instructions, criteria used and how they adhere to Ireland's legal obligations. A written response from the Department of Justice stated that the purpose of checks on arrival was to determine if a person is allowed leave to land rather than any assessment of asylum. The response added that checks conducted at the point of exit from the plane have "always been a part of immigration control and as a standard procedure it complies with all legal obligations not impeding persons from claiming asylum." A freedom of information request made by the Irish Refugee Council for information on the policies and procedures on this issue was declined. Despite indications from the Department of Justice that this practice has largely been scaled back, media reports suggest that the policy continued in effect as of March 2020.<sup>45</sup>

Data pertaining to refusals of leave to land at the Irish border is neither disaggregated nor made publicly accessible, with the exception of limited information released in the Irish Naturalisation and Immigration Service (INIS)' annual reports. In its annual report for 2018, INIS noted that 4,797 people were refused entry to the State at various borders and ports. The top five nationalities of persons refused leave to land were Albanian, Brazilian, South African, USA and Bolivian. No further information is provided with respect to grounds for refusal of entry.<sup>46</sup> The nationalities of other persons refused entry include 48 Afghans, 67 Iraqis, 91 Nigerians and 52 Syrians. According to statistics published by Eurostat in July 2020, 7,455 individuals were denied leave to land in Ireland in 2019. The top five nationalities of persons refused leave to land were Albanian, Brazilian, South African, Bolivian and Georgian.<sup>47</sup> Statistics for 2020 were not available at the time of writing.

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

<sup>45</sup> The Irish Times, 'Ireland is illegally turning back Georgian and Albanian Immigrants', 2 March 2020 available at: <https://bit.ly/3ot1UJE>.

<sup>46</sup> INIS, *Immigration in Ireland Statistics*, 2019, available at: <https://bit.ly/3a6lx25>.

<sup>47</sup> Eurostat, 'Enforcement of immigration legislation statistics', July 2020, available at: <https://bit.ly/3aSiigY>.



have been working on plans to establish a dedicated immigration facility at **Dublin Airport** since 2015.<sup>48</sup> Reports note that a contract for developing the facilities was awarded in April 2018 by the Office of Public Works, for the building of a dedicated immigration unit at Dublin Airport, including detention facilities. The new structure would be an expansion of existing facilities and would include “provision of distinct areas for garda immigration officers, which include; offices and communal facilities like changing areas and a canteen” and “detention cells and other essential support space.”<sup>49</sup> According to a subsequent statement from the Minister for Justice, development work commenced in May 2018, “with completion expected by the end of 2018.”<sup>50</sup> However, as of August 2020, the facility remains unopened.<sup>51</sup>

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for making an application? ☐ Yes ☒ No  
❖ If so, what is the time limit for lodging an application?
2. Are specific time limits laid down in law for lodging an application? ☐ Yes ☒ No  
❖ If so, what is the time limit for lodging an application?
3. Are registration and lodging distinct stages in the law or in practice? Not available
4. Is the authority with which the application is lodged also the authority responsible for its examination? ☒ Yes ☐ No
5. Can an application be lodged at embassies, consulates or other external representations? ☐ Yes ☒ No

The right to apply for asylum is contained in Section 15 IPA. When a person presents themselves either at the IPO or 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.

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.

Following the outbreak of Covid-19 in Ireland, the IPO continues to accept new applications for international protection and is providing a limited registration service to new applicants. Applicants are permitted to attend the IPO on a restricted basis in order to make their application for asylum.<sup>52</sup>

<sup>48</sup> Minister for Justice and Equality Frances Fitzgerald, Response to Parliamentary Question No 69, 7 July 2016, available at: <http://bit.ly/2IJmNTb>.

<sup>49</sup> The Journal, ‘Contract awarded for new immigration unit with detention cells at Dublin Airport’, 22 April 2018, available at: <https://bit.ly/2sFM3w7>.

<sup>50</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 545, 12 June 2018, available at: <https://bit.ly/2Wav0Q7>.

<sup>51</sup> The Irish Times, ‘Airport immigration detention facility still not operational’, 11 August 2020, available at: <https://bit.ly/3spUCJ6>.

<sup>52</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland - updated 5 February 2021*, available at: <https://bit.ly/35hNTa8>.

## 1.1. Preliminary interview

Once an applicant presents to the IPO, the applicant makes a formal declaration that 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. The preliminary interview takes place in a room where other applicants are waiting and being interviewed, and is conducted by an official who sits behind a screen. If necessary and possible, an interpreter may be made available. Interpreters are provided by the IPO and typically must be requested in advance. Whereby an applicant presents without having requested an interpreter and an interpreter is not available, it is usually the case that the applicant's basic details are taken by the IPO and they are then called back at a later stage, once an interpreter can be arranged.

The information provided by the applicant at interview is inserted into a standard form by the IPO officer entitled 'IPF1'. The IPF1 contains the applicant's biographical data, including their name, address and nationality, as well as the route travelled to Ireland and a brief summary of their asylum claim. The contents of the form are read back to the applicant, who is then required to sign it, and a copy is provided to them.

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, though due to restrictions associated with the Covid-19 outbreak and resultant delays, sometimes applicants were called back for their initial interview on a separate day following registration of their claim. In such circumstances, the time period between a claim being registered and the initial interview taking place varies on a case-to-case basis. In the experience of the Irish Refugee Council, typical waiting periods are approximately 2-4 weeks. However, the Irish Refugee Council Information and Referral Service is aware of cases whereby it has taken clients 2-3 months to complete their preliminary interview. 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 a reasonable effort to establish his or her true identity and to have failed to cooperate.<sup>53</sup>

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.

## 1.2. 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>54</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

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<sup>53</sup> The consequences of such refusal are laid out in Section 38 IPA.

<sup>54</sup> The Information Booklet for International Protection is available in 18 languages: <http://bit.ly/2lOwxfr>.

no negative consequences if questionnaires are not returned within the timeframe.<sup>55</sup> Therefore, 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. Applicants will not go into the “queue” for a substantive international protection interview until they have submitted their completed 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>56</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. 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 (applicants are permitted to attach additional pages, if needed):

**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.).

**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

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<sup>55</sup> Minister for Justice and Equality Frances Fitzgerald, Response to Parliamentary Questions No 86, 88, 89 and 102, 23 February 2017, available at: <http://bit.ly/2mxc0N9>.

<sup>56</sup> Application for International Protection Questionnaire, draft document received from ORAC by the Irish Refugee Council in November 2016.

within their country of origin; their fears if returned; whether or not the applicant or their dependants 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 on the basis of humanitarian considerations. 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 five-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 asks 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 is referred to the International Protection Accommodation Services (IPAS). If the applicant requires accommodation, he or she will usually be taken to **Balseskin** Reception Centre in Dublin (near Dublin airport), though due to a lack of capacity in the Direct Provision system, some applicants are brought directly to emergency accommodation, this is problematic as it means a person may not receive the supports that are offered at **Balseskin**. Upon arrival at **Balseskin**, the applicant is entitled to avail themselves of voluntary 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, however the clinical team at **Balseskin** medical centre may request a “hold” to keep certain applicants in **Dublin** on the basis of medical, psychological or other needs. 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 sent to that location. Following the onset of Covid-19, newly arrived asylum seekers were subject to medical checks at Dublin airport. Applicants were screened on the basis of health questionnaires, subject to temperature checks and were required to self-report symptoms of Covid-19. Based on their personal situation and circumstances, applicants were then transferred to designated facilities for the purposes of self-isolation for a two-week period.

On the coming into force of the IPA in January 2017, *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>57</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>58</sup> The 20-day non-statutory deadline remains in effect as of January 2021. While the majority of legacy cases have now been processed to completion, a number continue to be dealt with.<sup>59</sup>

Applicants for protection are directed to the international protection unit within the Legal Aid Board for free legal assistance and support completing the questionnaire, once they have entered the international protection process. However, the Irish Refugee Council has assisted a number of people who had registered with the Legal Aid Board and had been told to complete the questionnaire by themselves due to a general lack of capacity within the Legal Aid Board or a lack of capacity within the solicitors on the Legal Aid Board panel, with anecdotal reports that the level of funding provided to the panel is insufficient to cover the number of hours required to give comprehensive representation. This issue persisted throughout 2020. The Irish Refugee Council's Law Centre and Information and Referral Service have assisted with approximately 318 questionnaires since the coming into force of the IPA.<sup>60</sup> 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. This issue persists for a small number of languages such as Tigrinya.

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<sup>57</sup> Irish Times, 'Questionnaires cause "distress" for people in direct provision', 20 February 2017, available at: <http://bit.ly/2D6CKsn>.

<sup>58</sup> IPO, 'Clarification re: deadline for the return of the Application for International Protection Questionnaire (IPO 2)', Available at: <http://bit.ly/2mlf2QD>.

<sup>59</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary question No 384, 16 June 2020, available at: <https://bit.ly/2NuCI7J>.

<sup>60</sup> Information provided by the Irish Refugee Council's Drop-in Centre database, January 2021.

## 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? ☒ Yes ☐ No
3. Backlog of pending cases at first instance as of 31 December 2020: 5,279

There is no time limit in Irish law for the IPO to make a decision on an asylum application at first instance.<sup>61</sup> Under Section 39(5) IPA, if a recommendation cannot be made within six 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. Applicants can be called back for a subsequent interview in relation to their claim, occasionally a number of months after their initial s.35 interview was conducted.

Since the commencement of the IPA and the single procedure, reliable data on processing times has not been made available as the IPO continues to deal with pre-IPA transition cases in addition to increasing new arrivals. Generally, prioritised applications (see below) will receive a decision (known as a recommendation) within nine months, while cases that are not prioritised will likely be waiting 15 months for a recommendation on their application.<sup>62</sup> However, restrictions on the operation of the IPO as a consequence of Covid-19 have resulted in significant delays in the overall procedure. As of December 2020, individuals whose circumstances fell outside the prioritisation criteria were waiting approximately 18 months for their case to be processed, while those who successfully requested prioritisation were waiting approximately 14 months for a decision on their application.<sup>63</sup> As of December 2020, the number of pending cases awaiting determination by the International Protection Office was 5,279.<sup>64</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.

<sup>61</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>62</sup> Minister for Justice and Equality, Response to Parliamentary Question No 374, 5 March 2020, available at: <https://bit.ly/2vH7gef>.

<sup>63</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 33, 10 December 2020, available at: <https://bit.ly/3swoCmF>.

<sup>64</sup> Information provided by IPO, April 2021.



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 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;
- (h) 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;
- (i) whether the applicant has complied with the requirements of Section 27(1) IPA;
- (j) whether the applicant is a person in respect of whom the Child and Family Agency is providing care and protection;
- (k) 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 applicants from Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Georgia and South Africa) 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**. 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**). An IPO Customer Liaison Panel meeting was informed in 2019 that a shorter Questionnaire was planned for applicants from Safe Countries of Origin. The IPO is currently in the process of finalising a shorter questionnaire and it is expected that this will be rolled out over the coming months.

On 27 January 2017 UNHCR issued a statement in conjunction with the International Protection Office on the prioritisation of applications, which remains in effect as of 2020 as the IPO continues to deal with a backlog generated by the transition into the single procedure.<sup>65</sup> Under the IPA, the scheduling of interviews occurs under two processing streams, which 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>66</sup>

1. Stream one will comprise the majority of applications, which will be scheduled mainly on the basis of **oldest cases first**. This includes new applications made after the commencement of the IPA

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<sup>65</sup> IPO and UNHCR, *Prioritisation of applications for international protection under the International Protection Act 2015*, available at: <http://bit.ly/2ISEaOy>.

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

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 will also be processed on the basis of **oldest case first**. 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 medical condition will be prioritised.

### 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? ☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never
4. Are interviews conducted through video conferencing? ☐ Frequently ☒ Rarely ☐ Never
5. Can the asylum seeker request the interviewer and the interpreter to be of a specific gender? ☒ Yes ☐ No
  - If so, is this applied in practice, for interviews? ☒ Yes ☐ No

The IPA allows for a preliminary (non-mandatory) 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. If differences occur in the statements furnished by the applicant in the preliminary and substantive personal interviews, a negative credibility finding may be made in respect of the applicant's application.

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. Private practitioners who are funded by the Legal Aid Board to provide legal representation to applicants are not funded to attend the interview. The Irish Refugee Council's Independent Law Centre attends interviews with their clients. The vast majority of substantive personal interviews are conducted face to face at the IPO in Dublin, however the IPO is piloting video conference interviews at the current time; applicants are not obliged to conduct their interview in this manner and may seek to have a face-to-face interview scheduled instead if they so wish. A small number of face-to-face interviews were also held outside of Dublin in 2019, in **Tipperary Town**, under a pilot process, however this was discontinued due to difficulties in accessing public transport.

Following the implementation of measures to restrict the spread of Covid-19, the IPO began to pilot remote video conferencing interviews. 90 interviews were carried out remotely.<sup>67</sup> Applicants were required to attend a designated centre in Co. Cork in order to conduct their interview via secure web conferencing software, while interviewers attended at the IPO offices in Dublin. In the experience of the Irish Refugee Council, this process led to some difficulties with regard to legal representatives' attendance at client interviews. Attendance was usually facilitated remotely. Legal representatives were required to dial in to proceedings by telephone. This made it difficult to hear properly, while the reading back of interview transcripts was sometimes rushed. The IPO has plans to expand its programme of remote video interviews.

The system under the Refugee Act 1996 obliged 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, since the commencement of the IPA on 31 December 2016, 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>68</sup>

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

In the experience of the Irish Refugee Council, interviews are rarely dispensed with in practice, save for in exceptional circumstances. The Irish Refugee Council advocated for greater use of this power during the pandemic.

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.

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<sup>67</sup> Information provided by IPO, April 2021.

<sup>68</sup> Section 35(8) IPA.

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 of “interpreters who are able to ensure appropriate communication between the applicant and the person who conducts the interview.”<sup>69</sup> Whilst this is not laid down in legislation, in practice the applicant may request the IPO officer and/or interpreter be of a particular gender.

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.

A total of 1,116 personal interviews were conducted throughout 2020.<sup>70</sup>

## **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. 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 protection applicants 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. Under ordinary circumstances, where requested, interpreters are obliged to attend international protection interviews in person at the International Protection Office. However, following the outbreak of Covid-19 in Ireland, interpretation services have typically been provided to applicants on a remote basis whereby interpreters have been required to dial in by telephone to client interviews.

As it stands, there is no recognised qualifications framework or established standards, set out in legislation or elsewhere, on the recruitment of interpreters by public bodies, including the IPO. Most interpreters are sourced from a private company that has a contract to provide access to interpreters, with such contracts typically valid for between 2 and 4 years. The result is that quality of interpreting, in the experience of Irish Refugee Council, varies significantly, with anecdotal reports of interpreters interpreting in the 3rd person, having a standard of English which is lower than that of the applicant, or having insufficient or inappropriate vocabulary to deal with particular claims – e.g. claims related to sexual orientation or gender identity or religious conversion claims.

Since 2016, the Irish Refugee Council has rolled out an interpreter training programme for French and Arabic interpreters that focuses on promoting best practice interpreting techniques, interpreting practice, terminology used in the asylum process, and, ethics and a code of conduct.<sup>71</sup> The training also provides

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<sup>69</sup> Section 35(3) IPA.

<sup>70</sup> Information provided by IPO, April 2021.

<sup>71</sup> Irish Refugee Council, *Interpreter Training Programme*, available at: <https://bit.ly/2XLb9ZB>.

interpreters with practical exposure through role-playing, involvement in Irish Refugee Council casework and an overview of the asylum process. To-date, 41 people have been trained under the programme. Additionally, in 2020, 11 trained interpreters attended a focused training on how to work remotely hosted by the Irish Refugee Council. The Irish Refugee Council also delivered training to three organisations working in international protection on how to work effectively with interpreters.

## 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. The applicant is requested to sign each page to confirm that it is accurate or to flag any inaccuracies. In the event that typographical errors are present in the record, the applicant may amend the record and initial the change in the margin; for more substantial changes the page may be re-printed or a supplementary page may be printed. The interview is usually recorded via hand-typed transcription on a desktop. There is no system for independent recording of the interviews (interviews are not audio or video recorded), even where a legal representative is not present. A copy of the interview record is not given to the applicant or their legal representative until and unless the applicant receives a negative decision. If a negative decision is issued then the applicant and the legal representative automatically receive a copy of the interview record. 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"/> Some grounds <input type="checkbox"/> No
2. Average processing time for the appeal body to make a decision: Unavailable

#### 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>72</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, two 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.

<sup>72</sup> Section 41(2)(a) IPA; Section 3(c) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

Following the onset of the Covid-19 pandemic in March 2020, all appeals before the IPAT were suspended. Appeals recommenced for a short period in July 2020, however, in October 2020, following the reimplementation of restrictions, all scheduled appeals were postponed from 22 October until 10 December, in line with government guidelines. Restrictions were re-introduced in late December 2020 and with effect from 30 December 2020, all appeals were once again cancelled until further notice.<sup>73</sup>

The IPAT, as an essential service, continues to accept new appeals, correspondence and submissions. However, in line with Covid-19 public health advice, all correspondence and communication with the Tribunal should be made by email, where possible.<sup>74</sup>

The IPAT also recently announced that it is now able to conduct some appeal hearings remotely by way of audio-video link. The IPAT has indicated that it will identify those cases in which a remote hearing may be suitable and will be in direct contact with appellants and their legal representatives in due course.<sup>75</sup> Anecdotal evidence suggests that these hearings are taking place when English is used and an interpreter is not needed.

In 2018, the IPAT received a total of 2,127 appeals, an increase of 140% from 2017. 1,174 appeals were scheduled for hearing, an increase of 181% from 2017. 1,092 decisions were issued, an increase of 80% from 2017.<sup>76</sup> In 2019, the IPAT received a total of 2,064 appeals, almost the same number as in 2018. 2,633 appeals were scheduled for hearing, an increase of 124% from 2018. 1,944 decisions were issued, an increase of 78% from 2018.<sup>77</sup> Figures in IPAT's Annual Report for 2019 state that 1,585 appeal decisions were handed down in 2019, 482 of which granted the applicant a form of protection status whereas 1,133 of the 1,585 decisions denied the applicant protection.<sup>78</sup> In 2020, the IPAT received a total of 1,255 appeals. 1,418 appeals were scheduled for hearing, while 1,083 decisions were issued. Of these decisions, 289 granted the applicant some form of protection status, while 783 decisions denied the applicant protection.<sup>79</sup>

Where an oral hearing is held, these are conducted in a relatively 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, however, this rarely occurs in practice. Pursuant to section 42(8)(d) of the Act of 2015, and in line with the Chairperson's Guideline 2019/1 on Taking Evidence from Appellants and other Witnesses, the Tribunal may require all persons (over the age of 14) giving evidence before it to give that evidence on oath. Appellants and other witnesses whom the Tribunal requires to give evidence in this manner will be given the opportunity to affirm if they are a non-believer or if the taking of an oath is incompatible with the person's belief.<sup>80</sup>

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;

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<sup>73</sup> IPAT, *Covid-19 – Latest update*, 29 January 2020, available at: <https://bit.ly/3di1Ucy>.

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

<sup>75</sup> *Ibid.*

<sup>76</sup> IPAT, *Annual Report 2017*, available at: <https://bit.ly/2CAK0xP>, 30.

<sup>77</sup> IPAT, *Annual Report 2019*, available at: <https://bit.ly/2zRFNZp>, 33.

<sup>78</sup> *Ibid.*, 52.

<sup>79</sup> Statistics provided by the International Protection Appeals Tribunal, March 2021.

<sup>80</sup> IPAT Administrative Practice note, available at: <https://bit.ly/2ZTnFc3>.

- ❖ 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 2018, the average length of time taken by the IPAT for processing and issuing a decision on an international protection appeal was approximately 154 days.<sup>81</sup> The average processing time for appeals to the IPAT in 2019 is 23 weeks.<sup>82</sup> The IPAT have a target median processing time of 12 weeks for appeals at the beginning of 2020, however, this has been impacted as a result of the pandemic and resulting suspension of oral hearings before the Tribunal.<sup>83</sup> The median processing time for appeals in 2020 was, on average, 9 months.<sup>84</sup>

Under Section 49(7) IPA, where the Tribunal affirms a recommendation from the IPO that an applicant not be declared a refugee nor in need of subsidiary protection, the Minister may reassess the eligibility of the applicant to be granted permission to remain. For the purposes of such a review, the applicant may submit documentation or information to the IPO 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>85</sup> The Note also stated that all matters that might 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>86</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.

During 2018, 530 judicial review applications were submitted to the High Court on the "Asylum List". Despite efforts to reduce the number of judicial reviews submitted, figures for 2018 represent an increase from previous years.<sup>87</sup> Cases on the "Asylum List" also include judicial review of decisions in relation to other immigration matters such as EU treaty rights, naturalisation and family reunification. 130 cases were resolved by the High Court in 2018, 332 cases were settled out of court. With regard to 2019 figures, the latest available statistics demonstrate a 30% decrease in new asylum cases lodged, down from 530 cases in 2018 to 368 cases in 2019. Moreover, the High Court more than doubled the asylum cases it decided or resolved in court, with a total of 262 cases decided in court in 2019, while 135 cases were settled outside of court.<sup>88</sup> Data for 2020 was not available at the time of writing.

<sup>81</sup> *Ibid*, 44.

<sup>82</sup> Minister for Justice and Equality, Response to Parliamentary Question No 84, 27 June 2019, available at: <https://bit.ly/3atrRkf>.

<sup>83</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No. 33, 10 December 2020, available at: <https://bit.ly/3bDspZ4>.  
Minister for Justice Helen McEntee, Response to Parliamentary Question No 632, 27 January 2020, available at: <https://bit.ly/2NqoHlv>.

<sup>85</sup> Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.

<sup>86</sup> International Protection Appeals Tribunal Decision Archive, available at: <http://bit.ly/2B4bsRz>.

<sup>87</sup> Courts Service of Ireland, *Annual Report 2018*, available at: <https://bit.ly/2ZhZwu9>, 56.

<sup>88</sup> Courts Service of Ireland, *Annual Report 2019*, available at: <https://bit.ly/3hQ1vyc>, 55.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

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

The Legal Aid Board, an independent statutory body funded by the State, provides a dedicated service for international protection applicants. 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 protection applicants) 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 Legal Aid Board.

According to the latest available information, contained within the Legal Aid Board's Annual Report for 2019, the number of individuals seeking legal services from the Board for international protection applications in 2019 was 2,539, compared with 2079 in 2018. This was an increase of 22% on the previous year.<sup>89</sup> Data for 2020 has not been published.

Asylum applicants can register with the Legal Aid Board 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 Legal Aid Board that have dedicated international protection units, with law centres located in **Cork**, **Galway** and **Dublin** cities, including a specific 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>90</sup> The Irish Refugee Council, nevertheless, continues to experience individuals presenting at its drop-in services who are represented by the Legal Aid Board but do not receive substantive support in actually completing the Questionnaire. A Legal Aid Board caseworker will, however, review the Questionnaire once the applicant has attempted to complete it themselves.

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>91</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 lodge an application, assistance with the completion of the in-depth application questionnaire and drafting of a

<sup>89</sup> Legal Aid Board, *Annual Report 2019*, 8 October 2020, available at: <https://bit.ly/39cRIE6>.

<sup>90</sup> The best practice guidelines are available at: <https://bit.ly/2Xjl4Gz>.

<sup>91</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.



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>92</sup> The manual is geared towards promoting best practice towards practitioners working in the EU asylum context. The Law Centre (with a staff team of one managing solicitor, one trainee solicitor and one caseworker in 2020) assisted 145 new early legal advice clients throughout each stage of their international protection application. 80% of first instance decisions received by the Irish Refugee Council Law Centre in 2019 were positive. Data relating to ELA clients for 2020 was not available at the time of writing.

The Irish Refugee Council's advocacy and support services have remained open and available for the duration of the Covid-19 pandemic in order to provide advice, information and support to asylum seekers. Caseworkers are working remotely and are contactable by phone or email, with client consultations taking place on a largely remote basis, by audio-video link or telephone.

Free legal aid for appeals to the IPAT is available through the Legal Aid Board. 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 Legal Aid Board 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.

Since the enactment of the Reception Conditions Regulations, transposing the Reception Conditions Directive, the Legal Aid Board has responsibility for providing legal assistance to international protection applicants in matters pertaining to reception conditions (such as appeals on decisions made in relation to withdrawal or restriction of reception conditions, or refusal of a work permit, etc.)<sup>93</sup> The Legal Aid Board guidance states that it is generally open to solicitors to "provide legal advice in relation to a matter covered by the Regulations, and in line with the further guidance provided below in relation to specific matters. Unless an application is received from an applicant who is not an existing client of the Board, it is not to be regarded as a separate matter and should be dealt with as part of the international protection file."<sup>94</sup> No information is available about how this has worked in practice.

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<sup>92</sup> Irish Refugee Council Independent Law Centre, *A Manual on Providing Early Legal Advice for Persons Seeking Protection*, available at: <https://bit.ly/3gEzYie>.

<sup>93</sup> Regulation 6(8) Reception Conditions Regulations 2018.

<sup>94</sup> Legal Aid Board Circular on Legal Services European Communities (Reception Conditions) Regulations 2018, available at: <https://bit.ly/2NBxu7w>.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2020

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	<b>976</b>	<b>8</b>	<b>Total</b>	<b>405</b>	<b>11</b>
United Kingdom	206	7	Cyprus	-	1
France	43	1	Denmark	2	1
Other	727	-	France	15	1
			Greece	10	1
			Spain	1	1
			Norway	1	1
			The United Kingdom	358	5
			Other	18	-
<b>Take charge</b>	<b>227</b>		<b>Take charge</b>	<b>15</b>	
Austria	3		Germany	1	
Belgium	1		Greece	9	
Bulgaria	2		Italy	1	
Croatia	2		Spain	1	
Cyprus	2		The United Kingdom	3	
France	5				
Germany	1				
Greece	13				
Italy	19				
Latvia	1				
Poland	2				
Spain	8				
Switzerland	5				
The Netherlands	4				
The United Kingdom	159				
<b>Take back</b>	<b>749</b>		<b>Take back</b>	<b>390</b>	
Austria	23		Austria	1	
Belgium	37		Belgium	2	
Bulgaria	2		Denmark	2	
Croatia	2		France	15	
Cyprus	1		Germany	6	
Denmark	24		Greece	1	
Finland	6		Italy	2	
France	38		Norway	1	
Germany	135		Slovak Republic	2	



Greece	257		Sweden	2	
Hungary	1		Switzerland	1	
Italy	44		The United Kingdom	355	
Luxemburg	1				
Malta	9				
Norway	6				
Poland	1				
Romania	11				
Spain	11				
Sweden	61				
Switzerland	11				
The Netherlands	21				
The United Kingdom	47				

Source: IPO, February 2021

Outgoing Dublin requests by criterion: 2020		
Dublin III Regulation criterion	Requests sent	Requests accepted
<b>“Take charge”: Articles 8-15:</b>	227	-
Article 8 (minors)	-	-
Article 9 (family members granted protection)	-	-
Article 10 (family members pending determination)	-	-
Article 11 (family procedure)	14	-
Article 12 (visas and residence permits)	167	-
Article 13 (entry and/or remain)	20	-
Article 14 (visa free entry)	26	-
“Take charge”: Article 16	-	-
“Take charge” humanitarian clause: Article 17(2)	-	-
<b>“Take back”: Article 18</b>	749	-
Article 18 (1) (b)	748	-
Article 18 (1) (c)	-	-
Article 18 (1) (d)	1	-
Article 20(5)	-	-

Source: IPO, February 2021

Incoming Dublin requests by criterion: 2020		
Dublin III Regulation criterion	Requests received	Requests accepted
<b>“Take charge”: Articles 8-15</b>	15	-
Article 8 (minors)	8	-
Article 9 (family members granted protection)	1	-
Article 10 (family members pending determination)	1	-
Article 11 (family procedure)	2	-

Article 12 (visas and residence permits)	2	-
Article 13 (entry and/or remain)	-	-
Article 14 (visa free entry)	-	-
"Take charge": Article 16	-	-
"Take charge" humanitarian clause: Article 17(2)	1	-
<b>"Take back": Articles 18 and 20(5)</b>	390	-
Article 18 (1) (b)	383	-
Article 18 (1) (c)	-	-
Article 18 (1) (d)	7	-
Article 20(5)	-	-

Source: IPO, February 2021

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 Arrangements Unit of the Immigration Service Delivery is responsible for handling outgoing transfers under the Dublin Regulation.

The European Union (Dublin System) Regulations 2018 (S.I. No. 62 of 2018) were adopted in 2018.

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. Is the Dublin procedure applied by the authority responsible for examining asylum applications ☒ Yes ☐ No
2. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 1.056 years<sup>95</sup>

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 the 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.

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>96</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 be deemed to have failed to fulfil their obligation to cooperate with the application process.<sup>97</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.

<sup>95</sup> IPO, February 2021.

<sup>96</sup> Section 19(1) IPA.

<sup>97</sup> Section 19(4) IPA.

In relation to specific guarantees for children in the Dublin procedure, the 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.

Following the implementation of measures to restrict the spread of Covid-19, the International Protection Office cancelled all interviews in accordance with Article 5 of the Dublin Regulation in line with Government guidelines. The International Protection Appeals Tribunal suspended all Dublin Regulation Appeals in a similar manner. Ireland has nevertheless continued to request other responsible EU Member States to 'take charge' of any identified applicant. Other Member States who identify that Ireland is responsible for an applicant have, throughout the pandemic, continued to apply the Dublin process to Ireland.<sup>98</sup>

Transfers under the regulation continued, albeit at lower numbers. Statistics provided by the IPO indicate that a total of 8 individuals were transferred in 2020. These transfers occurred notwithstanding a stay being placed on the vast majority of deportations for the duration of the Covid-19 pandemic. The Government justified the continuation of transfers on the basis that no deportation order is made in respect of Dublin III cases and the individual concerned is not returned to their country of origin.<sup>99</sup> As of June 2020, the IPO had suspended the issuing of decisions pursuant to the Dublin process owing to Covid-19 restrictions.<sup>100</sup> Anecdotal evidence indicates that the IPO has resumed the issuing of such decisions.

### 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>101</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. Anecdotal evidence continues to suggest that Dublin procedure interviews are presented merely 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.

<sup>98</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary Question No 382, 3 June 2020, available at: <https://bit.ly/36eiiqr>.

<sup>99</sup> RTE News, 'Concerns over rise in deportations to UK ahead of Brexit', 18 December 2020, available at: <https://bit.ly/3nNoQlu>.

<sup>100</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary Question No 382, 3 June 2020, available at: <https://bit.ly/36eiiqr>.

<sup>101</sup> Regulation 4 European Union (Dublin System) Regulations 2018.

## 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?

❖ If yes, is it

❖ If yes, is it suspensive

☒ Yes

☒ Judicial

☒ Yes

☐ No

☐ Administrative

☐ No

The appeal against a transfer decision must be lodged within 10 working days and has suspensive effect.<sup>102</sup>

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

If the IPAT overturns the decision of the IPO, the applicant and their legal representative and the Commissioner and Minister are notified in writing. The IPAT may either affirm or set aside the transfer decision. When submitting a Dublin appeal to the IPAT, the person concerned can request that an oral hearing is conducted and the Tribunal may also hold an oral hearing even if the person concerned has not requested it if the IPAT is of the opinion that it is in the interests of justice to do so. No information is available on the current practice as the Irish system 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. There has been a long running issue over the remit of the IPAT's appeal and whether they can apply the sovereignty clause under Article 17 themselves. 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 included: 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. The CJEU delivered its ruling in January 2019 and stated that Member States are free to entrust to different authorities the task of applying the criteria defined by that Regulation relating to the determination of the Member State responsible and the task of applying the discretionary clause set out in that Regulation.<sup>103</sup> The Court of Appeal, considered this issue in the case *N.V.U & Ors -v- The Refugee Appeals Tribunal & Ors*<sup>104</sup>. Justice Baker stated, in a judgment delivered in June 2019, that she was not persuaded that the arguments made by the Irish Government that justify a departure from the plain meaning of the Irish Regulations of 2014, and that the jurisdiction to exercise the discretion to assume jurisdiction for which provision is made in article 17(1) is in a suitable case one that may be exercised by the determining body, now IPO and IPAT.

This decision was subsequently appealed by the State to the Irish Supreme Court. In a judgment delivered on 24 July 2020, Justice Charleton held that the discretionary power established pursuant to Article 17 had not been vested in the International Protection Office and in turn, the International Protection Appeals Tribunal, by virtue of Regulation 3(1) (a) of the EU (Dublin System) Regulations 2014. Consequently, it is

<sup>102</sup> Regulations 6 and 8 European Union (Dublin System) Regulations 2018.

<sup>103</sup> C-661/17, *M.A., S.A., and Z.A. v Ireland*, Judgment of 23 January 2019, available at: <https://bit.ly/2Rrhard>.

<sup>104</sup> *N.V.U & Ors -v- The Refugee Appeals Tribunal & Ors*, Judgment of 26 June 2019, available at: <https://bit.ly/3jQdQDC>.

now evident that the Minister for Justice retains sole discretion in considering the transfer of applications pursuant to Article 17 of the Dublin III Regulation.<sup>105</sup>

Following the ruling, the precise position regarding the procedure for making an appeal pursuant to Article 17 remains ambiguous. In this regard, the practice of the Irish Refugee Council Independent Law Centre has been to make ad-hoc submissions on behalf of clients directly to the Minister for Justice.

In January 2021, following engagement with the Department of Justice, the Dublin Transfer Unit has indicated in correspondence with the Irish Refugee Council that the Minister for Justice is currently in the process of establishing a procedure to deal with applications pursuant to Article 17.

In 2020, the IPAT issued 102 decisions under the Dublin III appeals procedure. Of these decisions, 18 appeals were granted, while 84 were refused.<sup>106</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 Legal Aid Board. Technically this is not completely free legal representation as there is a small amount (€10) to be paid (see section on [Regular Procedure: Legal Assistance](#)). The Legal Aid Board 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>107</sup> This assistance also applies to the appeal where legal representation is available.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

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

There is no blanket suspension of transfers to any Member State in either law or policy.

Transfers to **Greece** were suspended following the European Court of Human Rights' decision in *M.S.S. v. Belgium and Greece* in 2011.<sup>108</sup> 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

<sup>105</sup> *N.V.U & Ors -v- The Refugee Appeals Tribunal & Ors* [2020] IESC 46, available at: <https://bit.ly/3nJhCyZ>.

<sup>106</sup> Data provided by the International Protection Appeals Tribunal, March 2021.

<sup>107</sup> See further Legal Aid Board, *Best practice guidelines*, February 2017.

<sup>108</sup> *M.S.S. v. Belgium and Greece*, Application no. 30696/09, 21 January 2011, available at: <https://bit.ly/2OIGRG5>.

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>109</sup> Whether such transfers have occurred in practice since March 2017 is unknown.

In response to a request by the Irish Refugee Council, the IPO indicated that there have been 13 “take charge” requests and 257 “take back” to Greece in 2020. However, of the 8 transfers that took place in 2020, none were to Greece.<sup>110</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>111</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 three 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.

Section 21 IPA is amended by the enactment of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020. Section 119 of the Act of 2020 amends s. 21(2) IPA by the insertion of subsection (c) which states that an application for international protection may be determined

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<sup>109</sup> Response to Parliamentary Question 155, 28 February 2017, available at: <http://bit.ly/2DiG5YV>.

<sup>110</sup> *Ibid.*

<sup>111</sup> Information provided by IPO, August 2017.

inadmissible whereby the applicant arrives in the State from a safe third country that is regarded as a safe country for that person.<sup>112</sup> A “safe country” will be regarded as such whereby:

- a. The individual has a sufficient connection with the country concerned on the basis of which it is reasonable for them to return there;
- b. They will not be subjected to the death penalty, torture or inhuman or degrading treatment or punishment if returned to the country concerned;
- c. The applicant will be readmitted to the country concerned pursuant to the Dublin Regulation.<sup>113</sup>

According to s.119(d), in determining whether an individual has “sufficient connection with the country concerned, regard will be had for the period the individual has spent in the country, whether lawfully or unlawfully, any relationship between the individual and persons in the country concerned, including nationals and residents of that country and family members seeking to be recognised in that country as refugees, the presence in the country concerned of any family members, relatives or other family relations of the individual concerned and the nature and extent of any cultural connections between the individual and the country concerned.”<sup>114</sup>

Section 122 of the Act makes provision for s.72A IPA, permitting the Minister for Justice to designate a particular state as a safe third country whereby the state concerned meets certain conditions relating to safety and asylum practices.<sup>115</sup> The United Kingdom was recently designated a safe third country for the purposes of s.119.<sup>116</sup>

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. 18 applications were rendered inadmissible under the admissibility procedure in 2020.<sup>117</sup>

The Irish Refugee Council wrote to the IPO, IPAS and HSE in March 2021 stating that a person who has received a recommendation that their application for international protection be inadmissible continue to receive reception conditions as no final determination had been made.

### 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?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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  - ❖ If so, are questions limited to identity, nationality, travel route?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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  - ❖ If so, are interpreters available in practice, for interviews?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

<sup>112</sup> Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020, s.119, available at: <https://bit.ly/3o4SP8X>.

<sup>113</sup> *Ibid.*, s. 119(d).

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*, s.122.

<sup>116</sup> S.I. No. 725/2020 - International Protection Act 2015 (Safe Third Country) Order 2020, available at: <https://bit.ly/3nYIjPw>.

<sup>117</sup> Information provided by IPO, April 2021.



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 IPO 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?

- |                            |  |   |
|----------------------------|--|---|
| ❖ 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"/> Some grounds <input type="checkbox"/> 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 ten 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>118</sup> In 2019, the IPAT received 26 appeals against inadmissibility decisions. As of September 2020 the IPAT had received 6 appeals<sup>119</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.

The appeal procedure against inadmissibility decisions differs from the [Regular Procedure: Appeal](#) insofar as there is no option for an oral hearing.<sup>120</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

<sup>118</sup> Section 21(6) IPA; Section 3(a) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

<sup>119</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 720, 29 September 2020, available at: <https://bit.ly/3sVirZu>.

<sup>120</sup> Section 21(7) IPA.



All asylum applicants can register with the Legal Aid Board 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 Legal Aid Board 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 Legal Aid Board 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>121</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 in 2020. 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>122</sup>

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

The IPA does not provide for a border procedure. A person who is at the frontiers of the State and indicates that he or she needs asylum shall undergo a preliminary interview by an International Protection Officer or immigration officer under Section 13 IPA. They should then be given permission to enter and remain in the State as an applicant of international protection under Section 16 IPA and upon arrival at the IPO premises are granted a temporary residence certificate.

#### 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>123</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>124</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](#).

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<sup>121</sup> Legal Aid Board, *Best Practice Guidelines, Information Note for Private Practitioners*, February 2017, available at: <https://bit.ly/2ZVaxTW>.

<sup>122</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>123</sup> Section 43 IPA, citing Section 39(4) IPA.

<sup>124</sup> Section 32 IPA.

The existence of an internal protection alternative as a potential ground for accelerating appeals under Section 43 IPA raises serious concerns as if such a finding is made, it may significantly increase the number of persons who are subject to accelerated appeals.

There were 237 applications for international protection prioritised during 2020.<sup>125</sup>

## 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. This remained the case following the onset of Covid-19 and associated restrictions.

In March 2020, all substantive protection interviews at the IPO were postponed, including those under the accelerated procedure. Interviews recommenced for a short period in July 2020, however, in October 2020, following the reintroduction of Covid-19 restrictions, all scheduled protection interviews were cancelled from 22 October until 10 December, in line with government guidelines. Restrictions were re-implemented in late December 2020 and with effect from 30 December 2020, all substantive interviews were once again postponed until further notice.

In light of the outbreak of Covid-19, a small number of applicants for international protection were offered the possibility of conducting their substantive international protection interview remotely under a pilot process. Interviews took place via video-link, with the applicant attending from a remote location in Co. Cork and the interviewer attending at the IPO. In the experience of the Irish Refugee Council, this process led to some difficulties with regard to legal representatives' attendance at client interviews. Attendance was usually facilitated remotely by telephone. Legal representatives were required to attend proceedings remotely by dial in. This made it difficult to hear properly, while the reading back of interview transcripts was sometimes rushed. The IPO has plans to expand its programme of remote video interviews.

## 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 ☐ Some grounds ☐ 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.

<sup>125</sup>

Information provided by IPO, April 2021.

Under Section 43 IPA, applicants then have ten working days instead of 15 working days to make an appeal,<sup>126</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.

### 5.3. 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?
 

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

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

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

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

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. These practical obstacles subsisted throughout Covid-19.

## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Identification

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> For certain categories	<input type="checkbox"/> No
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  - ❖ 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

Prior to January 2021, there was no formal mechanism for the identification of vulnerable people, except for unaccompanied children under the IPA. The government had considered the development of a 'Vulnerability Assessment' for newly arrived protection applicants, 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>127</sup> In relation to the recommendations of the Working Group report on the Protection Process, the government's progress report referenced implementation of the

<sup>126</sup> Section 43(a) IPA; Section 3(d) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

<sup>127</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.

following recommendation in June 2016 by the Health Services Executive (HSE) and IPAS: 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>128</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>129</sup>

It should be noted that Regulation 8 of the Reception Conditions Regulations states that the Minister "shall" determine "within 30 working days" of an applicant expressing their desire to claim international protection, or "may at any stage" during the procedure assess whether an applicant is a vulnerable person with special reception needs and what the nature of those needs are.<sup>130</sup> The Irish Refugee Council, in its submission on the transposition of the recast Reception Conditions Directive, recommended that the State provide for an overlap between a mechanism identifying special reception needs with special procedural needs.<sup>131</sup> However, the regulations do not provide for any consideration of special needs throughout the asylum procedure and define someone in need of "special reception needs" as someone needing "special guarantees in order to benefit from his or her entitlements" under the Regulations only.

In July 2020, the Irish Refugee Council Independent Law Centre was granted leave to seek judicial review by the High Court so as to challenge the State's failure to carry out vulnerability in accordance with Ireland's obligations under the Reception Conditions Directive in respect of two individuals. These matters were subsequently settled and it was confirmed by the State that four individuals had undergone vulnerability assessments as part of a pilot program.

According to information received from the Department of Children, Equality, Disability, Integration and Youth Affairs in April 2021, the pilot program has now been extended to all new applicants for international protection. Over 100 applicants have now been assessed and vulnerabilities have been identified in approximately 60% of cases so far.<sup>132</sup> While the introduction of the programme is a welcome development, migrants' rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.<sup>133</sup>

## 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

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<sup>128</sup> Department of Justice and Equality, *Working Group Second Progress Table*, February 2017, available at: <http://bit.ly/2IZUvSM>.

<sup>129</sup> Nasc, *Nasc Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, available at: <https://bit.ly/3dm40FF>, 27.

<sup>130</sup> Regulation 8 Reception Conditions Regulations 2018.

<sup>131</sup> Irish Refugee Council, *Recommendations on the Transposition of the EU recast Reception Conditions Directive (2013/33/EU)*, March 2018, available at: <https://bit.ly/2Bbt43N>.

<sup>132</sup> Information obtained from Department of Children, Equality, Disability, Integration and Youth Affairs, April 2021.

<sup>133</sup> Irish Examiner, 'Nasc: State's Pilot Project on Vulnerability of Asylum Applicants is too Limited', 11th February 2021, available at: <https://bit.ly/3sfKjWo>.

existence.<sup>134</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>135</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.

The immigrant support organisation, Nasc, has previously highlighted the '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, 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 support and aftercare provided to separated children.'<sup>136</sup> Neither the IPO nor Tusla collect statistics on age assessments conducted in Ireland.<sup>137</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>138</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

<sup>134</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>135</sup> *Ibid*, 35.

<sup>136</sup> *Ibid*, 13.

<sup>137</sup> Information provided by Tusla, August 2017.

<sup>138</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>.

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 into 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 have regard to such individual circumstances 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>139</sup> Similar findings were made in a case involving a Bangladeshi national.<sup>140</sup>

Further, Section 35 IPA requires that persons conducting the personal interviews "are sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability." There is no publicly available policy reflecting this position and in the experience of the Irish Refugee Council, provisions are made for applicants with special needs on an *ad hoc* basis and usually subject to intervention from legal representatives or other support workers.

The IPO does not have specialised units or officers dealing with claims by vulnerable groups. 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>141</sup>

UNHCR conducts several general training sessions for new staff per year and as requested by the relevant authority. Throughout 2020, UNHCR carried out a number of seminars, training exercise and workshops. These included seminars given to the Legal Aid Board on Reception Conditions and the Dublin Regulation, as well as training with Irish immigration authorities and the Legal Aid Board on international protection procedures. UNHCR also held information sessions and lectures on topics such as the submission of international protection applications, information sessions for newly arrived asylum seekers and the role of the UNHCR in the international protection process. All training sessions were conducted remotely as a result of Covid-19 restrictions.<sup>142</sup>

Other NGOs, such as Spiritan Asylum Services Initiative (SPIRASI) also provide training on working with victims of torture, however such training is conducted on an *ad-hoc* basis upon request. In 2020, Spirasi conducted two training sessions, one session related to the new model for asylum accommodation, while

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<sup>139</sup> High Court, *E. D-N, L. D. S v Minister for Justice and Equality* [2013] IEHC 447, Judgment of 20 September 2013.

<sup>140</sup> High Court, *Barua v Minister for Justice and Equality* [2012] IEHC 456, Judgment of 9 November 2012.

<sup>141</sup> Information provided by IPO, August 2017.

<sup>142</sup> Information provided by UNHCR, March 2021.



the other related to resettlement support. Spirasi is also involved in training for the refugee resettlement programme, through which the majority of their training requests come through. All training during 2020 was carried out remotely..<sup>143</sup>

The Irish Refugee Council provides dedicated early legal advice to applicants who are deemed vulnerable or in particular need on a case by case basis and subject to organisational capacity at the time.

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>144</sup> Besides general training received by all IPO staff, there is no 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. As mentioned above, despite being Irish law since July 2018, there had been no vulnerability assessments as required by the reception conditions directive as of December 2020. However, at the end of January 2021, a pilot project to assess the vulnerability of asylum seekers was established at Baleskin reception centre in Dublin. Officials from the International Protection Accommodation Service (IPAS) are carrying out assessments with the assistance of a social worker from the IPO. In January 2021, the Minister for Children, Roderic O’ Gorman indicated that four assessments had taken place.

According to information received from the Department of Children, Equality, Disability, Integration and Youth Affairs in April 2021, the pilot program has now been extended to all new applicants for international protection. Over 100 applicants have now been assessed and vulnerabilities have been identified in approximately 60% of cases so far.<sup>145</sup> While the introduction of the programme is a welcome development, migrants’ rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.<sup>146</sup>

## 2.2. Prioritisation and exemption from special procedures

Accelerated procedures do not apply to unaccompanied children but their applications may be prioritised by the 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>147</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, which remains in effect as of January 2021.<sup>148</sup> Under this note, when considering whether to prioritise an application, the IPO may have regard to certain categories of vulnerable applicants with respect to: the age of the applicant (specifically unaccompanied children in the care of Tusla; applicants who applied as unaccompanied children, 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 IPO after the commencement date that evidence has been submitted, certified by a medical consultant, of an ongoing severe/life threatening

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<sup>143</sup> Information provided by SPIRASI, February 2021.

<sup>144</sup> Article 13(3)(a) recast Asylum Procedures Directive.

<sup>145</sup> Information obtained from Department of Children, Equality, Disability, Integration and Youth Affairs, April 2021.

<sup>146</sup> Irish Examiner, ‘Nasc: State’s Pilot Project on Vulnerability of Asylum Applicants is too Limited’, 11th February 2021, available at: <https://bit.ly/3sfKjWo>.

<sup>147</sup> Section 73(2)(i) IPA.

<sup>148</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>.

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?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> In some cases	<input type="checkbox"/> No
---	--	-----------------------------
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?
 

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> In some cases	<input type="checkbox"/> 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 is the duty of the applicant to cooperate in the investigation of their application and to furnish to the IPO 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 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 reports receive 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 a medico-legal report (MLR) can be a barrier to access.<sup>149</sup>

SPIRASI's services include the provision of MLR 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. SPIRASI puts the waiting time for appointments for reports at eight-ten months from the date of referral, however it is understood that applicants waiting for a report for an IPAT appeal hearing will be prioritised.<sup>150</sup> Following the onset of Covid-19, SPIRASI's service experienced a 35% decrease in medico-legal report production owing to public health restrictions.<sup>151</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 indicated at that time that due to the drain on resources in a climate of reduced funding, they were restricted in their capacity to provide the additional rehabilitative supports required by victims of torture.<sup>152</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-legal documentation of torture, ensure that all refugees who have been tortured have access to specialised rehabilitation services that are accessible country-wide and to support and train personnel

<sup>149</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>150</sup> *Ibid.*

<sup>151</sup> Information provided by Spirasi, March 2021.

<sup>152</sup> *Ibid.*, 15.



working with asylum-seekers with special needs.<sup>153</sup> SPIRASI's strategic plan for 2018-2020 notes that a major aim for the coming period will be to work with stakeholders to ensure wider access to rehabilitation services, in line with the recommendations of the UN Committee against Torture.<sup>154</sup> It is understood that SPIRASI benefitted from a significant tranche of funding under the second open call of the Asylum Migration and Integration Fund 2019.<sup>155</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>156</sup> Tusla then becomes 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 an 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 and such decisions appear to be made on a case by case basis. 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>157</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>153</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>154</sup> SPIRASI, *Strategic Plan 2018-2020*, 10.

2019 AMIF Open Call (AMIF), details of funded projects at: <https://bit.ly/2XjinVD>.

<sup>156</sup> International Protection Office, *Information Booklet for Applicants of International Protection*, January 2017, available at: <https://bit.ly/3jRnZ2P>, 29.

<sup>157</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. As of December 2020, 53 applications were made pursuant to s.22 IPA. The top five countries of origin from which subsequent applications were made were Pakistan, Georgia, Bangladesh, Brazil and Nigeria.<sup>158</sup> During 2019 there were approximately 31 applications to make a subsequent application. In 2018 there were 11 applications. 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 ten working days.<sup>159</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.

On 13 October 2020, the Supreme Court of Ireland handed down a judgment in the case of *Seredych v. The Minister for Justice* [2020] IESC 62. This case concerned the question of whether the Minister for Justice and Equality is obliged to revoke a deportation order or otherwise facilitate a person to enter the State, in circumstances where that person has been granted consent to make a subsequent application for international protection under section 22 of the International Protection Act 2015. Justice Baker, giving judgment for the Court, adopted the analysis of the Court of Appeal of England and Wales in *R (on Application of AB) v. The Secretary of State for the Home Department* [2018] EWCA Civ 383,<sup>160</sup> which indicated that there is nothing within the Procedures Directive (Directive 2013/32/EU) that obliges a

<sup>158</sup> Information provided by IPO, April 2021.

<sup>159</sup> Section 22(8) IPA; Section 3(b) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

<sup>160</sup> *R (on Application of AB) v. The Secretary of State for the Home Department* [2018] EWCA Civ 383, 6 March 2018, available at: <https://bit.ly/3u8W1Vc>.

Member State to readmit to its territory an applicant who had previously chosen to leave the State while their application remained pending.<sup>161</sup>

## 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.

In April 2018, the Minister for Justice commenced S.I. No. 121 of 2018, which updated the safe country of origin list to include **Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia, Georgia and South Africa**.<sup>162</sup> The United Kingdom was also recently designated a ‘safe third country’ pursuant to the International Protection Act 2015.<sup>163</sup>

The safe country of origin list continues to be applied in practice, namely in response to a significant increase in the numbers of applicants to Ireland from those countries since 2017. In 2019, Albania and Georgia were the top two countries of origin for international protection applicants in Ireland with 972 and

<sup>161</sup> *Seredych v. The Minister for Justice* [2020] IESC 62, available at: <https://bit.ly/3ssE96R>.

<sup>162</sup> S.I. No. 121 of 2018, International Protection Act 2015 (Safe Countries of Origin) Order 2018.

<sup>163</sup> S.I. No. 725/2020 - International Protection Act 2015 (Safe Third Country) Order 2020, available at: <https://bit.ly/3nYIJpW>.

631 applications respectively. According to the latest application figures, South Africa is amongst the top 5 countries of origin for international protection in Ireland, with 77 applications, accounting for 5.5% of the total applications, as of November 2020.<sup>164</sup>

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>165</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 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. There have been anecdotal reports that persons who have been deemed inadmissible by the IPO may have difficulty accessing legal representation from the Legal Aid Board, however the full impact of the inadmissibility provisions in practice in Ireland remains to be seen.

In July 2019, the Irish High Court referred three questions to the CJEU regarding the application of this concept in *M.S. (Afghanistan) v. The Minister for Justice and Equality*; *M.W. (Afghanistan) v. The Minister for Justice and Equality*; *G.S. (Georgia) v. The Minister for Justice and Equality*, following the Minister's refusal of the appellants' applications for international protection on the grounds that they had benefitted from subsidiary protection from another state.<sup>166</sup> Delivering judgment on the 10<sup>th</sup> of December 2020, the CJEU determined that Article 25(2) of the Procedures Directive 2005 must be interpreted as not precluding the enactment of legislation in a Member State which render inadmissible an application for international protection in circumstances whereby the applicant benefits from subsidiary protection in another Member State.<sup>167</sup>

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<sup>164</sup> IPO, *November Statistics*, November 2020, available at: <https://bit.ly/3sLrCM2>.

<sup>165</sup> Section 33 IPA.

<sup>166</sup> *M.S. (Afghanistan) v The Minister for Justice and Equality*; *M.W. (Afghanistan) v The Minister for Justice and Equality*; *G.S. (Georgia) v The Minister for Justice and Equality*; (Approved) [2019] IEHC 477, 2 July 2019, available at: <https://bit.ly/2N7aY9z>.

<sup>167</sup> Case C-616/19, *M.S., M.W. and G.S. v. Minister for Justice and Equality*, ECLI:EU:C: 2020:1010, available at: <https://bit.ly/3iBvHhc>.

## G. 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, section [Access to the territory and push backs](#) appears 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;
- 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>168</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

<sup>168</sup> IPO, *Publications*, available at: <http://bit.ly/2mWLkmK>.

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>169</sup> However, anecdotal evidence suggests that it is not always clear that the asylum seeker understands that they are being subject to the Dublin procedure. The onus is at all times placed on the asylum seeker to read and understand the content of the Dublin information leaflet, rather than ensuring that it is properly explained to the applicant by a caseworker or Authorised Officer.

## H. 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>170</sup> ☒ Yes ☐ No  
❖ If yes, specify which: Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Georgia, South Africa

Legislation in Ireland does not single out any particular nationality as manifestly well-founded in the context of the regular procedure. 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>171</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>172</sup> Prioritisation of protection applicants from these states continued throughout 2020.

Protection applicants who arrived through the EU relocation scheme in 2016 and 2017, predominantly Syrian nationals, had to complete the application questionnaire but were subject to an expedited procedure and usually received a decision within three months of arrival in the State. At the beginning of the relocation process some were subject to a personal interview but latterly they were not. By March 2018, the majority of Ireland's commitments under the EU relocation scheme had been fulfilled. Overall, 1,022 asylum seekers were successfully relocated in the state.<sup>173</sup>

<sup>169</sup> All information leaflets are available online at: <http://bit.ly/2IGDCL9>.

<sup>170</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>171</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>172</sup> *Ibid.*

<sup>173</sup> Department of Justice, *Ministers Flanagan and Stanton welcome final arrivals from Greece under EU relocation programme*, 23 March 2018, available at: <https://bit.ly/3u3RQK7>.



## Reception Conditions

### Short overview of the reception system

International protection applicants are offered accommodation by the Irish State in reception centres under a system known as 'Direct Provision.' The State directly provides accommodation and board, along with a weekly allowance for personal requisites (currently €38.80 for adults and €29.80 for children), a medical card and ancillary supports for individuals awaiting a decision on their application for international protection. The Direct Provision system is overseen by the International Protection Accommodation Service (IPAS), a subdivision of the Department of Justice and Equality.

Upon lodging an application for international protection, applicants are referred to IPAS and are initially accommodated at Baleskin Reception Centre near Dublin Airport for a number of weeks so as to facilitate a preliminary interview at the IPO, as well as health screening and registration for Community Welfare Service assistance.

Following the processing period, applicants are then dispersed to one of the 44 Direct Provision accommodation centres around the country. The majority of centres are privately owned and operated and the standards of accommodation and living conditions vary widely from centre to centre. Accommodation can broadly be categorised into three types; dormitory style accommodation, bedrooms with ensembles or access to a communal bathroom and self-contained units, generally allocated to families or those with particular reception needs. The majority of centres are mixed centres, accommodating both single people and families. According to latest available statistics, there are seven single male-only accommodation centres and one female-only reception centre.<sup>174</sup>

In September 2018, the Direct Provision estate reached capacity and consequently, no accommodation was available for newly arrived international protection applicants. Due to shortage of bedspace, a number of individuals were accommodated in temporary, emergency accommodation, including hotels, bed and breakfasts and holiday homes. This remained an ongoing issue throughout 2019 and 2020, with accommodation centres still at capacity. This is problematic as it means that applicants in emergency accommodation may not receive the same level of supports that are offered at Direct Provision accommodation centres. As of September 2020, approximately 1,382 individuals were resident in emergency accommodation.<sup>175</sup>

While there is no obligation on an asylum seeker to remain in Direct Provision during the status determination process, if they do opt to leave or stay elsewhere Direct Provision allowance payments are withdrawn. Applicants who opt to reside in Direct Provision centres are accommodated until such time as they are granted some form of status and are subsequently integrated into the community. However, in practice, a significant number of individuals who have been granted status have been unable to move out of Direct Provision owing to a lack of available and affordable housing. The housing crisis in Ireland continues to exacerbate the situation. As of September 2020, of the 7,097 individuals in the Direct Provision system, 810 had some form of status in the State.<sup>176</sup>

### The transposition of the Reception Conditions Directive

Until 2018, Ireland had 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

<sup>174</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 151, 17 October 2019, available at: <https://bit.ly/34Y0yO7>.

<sup>175</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>176</sup> *Ibid.*

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 protection applicants 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>177</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 eight 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 six-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>178</sup>

While the prohibition on seeking employment was struck down on 9 February 2018, opt into the Directive was only crystallised by the adoption of the European Communities (Reception Conditions) Regulations 2018 on 6 July 2018. Transposition was done by way of secondary legislation, a statutory instrument, enacted by the Minister for Justice and Equality

Although this has placed the reception system on a legislative footing for the first time, the practice which preceded the Regulations continues to govern the approach to reception for people seeking international protection. In July 2019, the Irish Refugee Council published a report analysing the transposition of the Directive one year later. Particular concerns were the absence of a vulnerability assessment and the rapid increase in the number of people dispersed to *ad hoc* emergency accommodation premises due to the lack of available bed spaces in Direct Provision accommodation.

As of 2020, the extent to which the provisions of the Regulations have been implemented in practice continues to vary. At the end of January 2021, a pilot programme for the conducting of vulnerability assessments was established at Baleskin reception centre in Dublin. Officials from the International Protection Accommodation Service (IPAS) are carrying out assessments with the assistance of a social worker from the IPO. In January 2021, the Minister for Children, Roderic O' Gorman indicated that four assessments had taken place.

According to information received from the Department of Children, Equality, Disability, Integration and Youth Affairs in April 2021, the pilot program has now been extended to all new applicants for international protection. Over 100 applicants have now been assessed and vulnerabilities have been identified in approximately 60% of cases so far.<sup>179</sup> While the introduction of the programme is a welcome development, migrants' rights organisations have expressed concern that the pilot project falls short of national standards and fails to include situations whereby individuals could be at risk of suicide, addiction or domestic violence.<sup>180</sup>

Capacity in Direct Provision also continued to be a significant issue throughout 2020, with approximately 1,382 asylum seekers housed in emergency accommodation as of September 2020.<sup>181</sup>

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<sup>177</sup> Alan Shatter, Department of Justice and Equality, written answer to Parliamentary Question of Mary Lou McDonald TD, 27 March 2013.

<sup>178</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>179</sup> Information obtained from Department of Children, Equality, Disability, Integration and Youth Affairs, April 2021.

<sup>180</sup> Irish Examiner, 'Nasc: State's Pilot Project on Vulnerability of Asylum Applicants is too Limited', 11th February 2021, available at: <https://bit.ly/3sfKjWo>.

<sup>181</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.



## The “McMahon Report” and Direct Provision reform

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>182</sup> Former Minister Fitzgerald in launching the report acknowledged that successful implementation of key recommendations is dependent on the early enactment of the IPA.<sup>183</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>184</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, the organisation Nasc the Migrant and Refugee Rights conducted an independent review of the implementation progress and published their findings in a working paper on the 18 December 2017.<sup>185</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>186</sup>

In an article published in June 2020, former members of the Working Group noted that many of the key recommendations of the report “have only been partially implemented: communal catering is still only available to half of residents and additional living space has not been widely provided for families and individuals.” It was further stated that “while the Government accepted the report, it never appointed an implementation body or adopted a clear implementation plan.” Overall, the implementation process was “uneven, delayed and at times only reluctantly undertaken.”<sup>187</sup>

In 2018, building on the Report on the Working Group to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, the Working Group on National Standards produced a draft document consisting of a set of proposed national standards for accommodation centres in Ireland. The National Standards aim to introduce further reforms of the Direct Provision system. The National Standards were subject to a public consultation process which closed on 25 September 2018.<sup>188</sup> The final draft of the Standards were published in August 2019.<sup>189</sup>

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<sup>182</sup> Department of Justice and Equality, *Chair’s remarks on the publication of the report to Government*, 30 June 2015, available at: <http://bit.ly/1MxniZe>.

<sup>183</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>184</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>185</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017.

<sup>186</sup> *Ibid*, 4.

<sup>187</sup> Irish Times, ‘Five years since McMahon report and 7,700 still in Direct Provision’, 30 June 2020, available at: <https://bit.ly/3dgtCGA>.

<sup>188</sup> Department of Equality and Justice, *Consultation on National Standards for accommodation offered to people in the protection process*, available at: <https://bit.ly/2DtyHcv>.

<sup>189</sup> National Standards for accommodation offered to people in the protection process, available at: <https://bit.ly/2u5cOy0>.

The National Standards are designed to constitute a set of standardised rules for every Direct Provision accommodation in Ireland. The draft National Standards cover ten themes including:

1. Governance, Accountability and Leadership
2. Responsive Workforce
3. Contingency Planning and Emergency Preparedness
4. Accommodation
5. Food, Catering and Cooking Facilities
6. Person Centred Care and Support
7. Individual, Family and Community Life
8. Safeguarding and Protection
9. Health, Wellbeing and Development
10. Identification, Assessment and Response to Special Needs

The National Standards are aimed at the private operators of Direct Provision centres. They are, however, distinct from the tendering process and contractual relationship between private actors and IPAS. Furthermore, the mechanism for assessing adherence to the National Standards is a self-auditing process. There is no provision for oversight of adherence by IPAS or any independent monitoring body. While an important next step to the reforms proposed by the McMahon report, compliance with the National Standards, as currently proposed, lacks any oversight or enforcement mechanism which may undermine their usefulness. While welcoming the introduction of a set of coherent accommodation standards, the Irish Refugee Council expressed concern at the lack of accountability mechanisms in its submission to the Standards Advisory Committee during the public consultation.<sup>190</sup>

The National Standards became legally binding and enforceable on 01 January 2021. The Department of Children, Equality, Disability and Integration and Youth are currently engaged in talks with the Department of Health and the Health Information and Quality Authority (HIQA) with regard to undertaking the role of monitoring the National Standards. It is hoped that monitoring will begin in the coming months, however, in the interim, accommodation centres continue to be subject to inspections by both IPAS and an independent inspectorate company.<sup>191</sup>

### **Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process**

In November 2019, the Government announced a new expert advisory group to look at a 'long term approach to how people seeking asylum are accommodated and supported'. The group, chaired by former European Commission secretary general Dr. Catherine Day, was tasked with making a series of recommendations to end the Direct Provision system and transform the international protection process.

Following an extensive review process, the group's report was published on 21 October 2020. Launching the report, the group's chair Dr. Catherine Day stated that a "whole-of-government approach" is required in order to successfully replace the system. She further added that "continued political oversight" was crucial in implementing the new system.<sup>192</sup>

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<sup>190</sup> Irish Refugee Council, *Submission on the Draft National Standards for Direct Provision Centres*, 3 October 2018, available at: <https://bit.ly/2MIXX7T>.

<sup>191</sup> Minister for Children, Equality, Disability, Integration and Youth Roderic O' Gorman, Parliamentary Question No 263, 264, 21 January 2021, available at: <https://bit.ly/2ZmglnS>.

<sup>192</sup> The Journal, 'Catherine Day: 'Continued political oversight' needed to end Direct Provision', 21 October 2020, available at: <https://bit.ly/3o2e76M>.

The Advisory Group was concerned with two primary issues - the length of time which asylum seekers spend in the system and the type of accommodation and support they receive while awaiting a final determination on their application for international protection.<sup>193</sup>

Amongst the most significant of the Advisory Group's recommendations is the abolition of the "congregated and segregated accommodation" of applicants for international protection by mid-2023.<sup>194</sup> Instead, applicants ought to be initially housed in a designated State-owned reception centre for a three-month period. An onsite multi-service centre should assist applicants in accessing the necessary services and entitlements, including legal aid and post-reception centre housing placement.<sup>195</sup> During this period, applicants should also be provided with a weekly cash allowance, a Temporary Residence Card, PPS number and access to ancillary supports such as a medical card, education and training.<sup>196</sup> Applicants should also receive medical and vulnerability assessments within 30 days of making their application for international protection.<sup>197</sup>

Following the initial 3-month reception period, applicants ought to be provided with own-door accommodation in a local community and be permitted to access a Housing Assistance Payment (HAP) equivalent. The Department of Housing, Local Government and Heritage would be responsible for securing housing placements. Social welfare allowance would be aligned with mainstream income supports and multi-service support would be provided with work placement, access to education and training, medical card and integration support for a period of up to 18 months following a positive decision.<sup>198</sup>

In the event that a negative determination is made and in circumstances whereby all avenues of appeal are exhausted, an applicant ought to be provided with own-door accommodation and housing allowance for a period of 3-6 months pending removal from the State. Social welfare allowance would be aligned with mainstream income supports for up to 6 months, while multi-service support would also continue during this period.<sup>199</sup>

The report also makes a number of recommendations that ought to be implemented in the short-term, until the new, permanent system enters into force. These include appointing the Health Information and Quality Authority (HIQA) as an independent inspectorate to examine conditions in Direct Provision centres and ensure that the National Standards are being adequately implemented.<sup>200</sup> Further immediate recommendations include facilitating access to driving licenses and bank accounts, as well as removing restrictions on the right to work.<sup>201</sup>

The report also makes significant recommendations regarding shorter processing times for applications for international protection. According to the Report, binding deadlines must apply for each stage of the international protection process. It is recommended that the IPO and IPAT should issue decisions within 6 months.<sup>202</sup> In order to clear the backlog of existing cases, the report recommends that a simplified approach ought to be taken whereby an individual has been in the protection process for over 2 years by the end of 2020. In such circumstances, the individual ought to be offered permission to remain for a five year period without prejudice to their pending application for international protection.<sup>203</sup>

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<sup>193</sup> Advisory Group on Direct Provision, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 5.

<sup>194</sup> *Ibid*, 8.

<sup>195</sup> *Ibid*, 12.

<sup>196</sup> *Ibid*, 61.

<sup>197</sup> *Ibid*.

<sup>198</sup> *Ibid*.

<sup>199</sup> *Ibid*.

<sup>200</sup> *Ibid*, 12.

<sup>201</sup> *Ibid*, 80.

<sup>202</sup> *Ibid*, 56.

<sup>203</sup> *Ibid*, 56.

The recommendations of the Advisory Group were assessed by relevant Government Minister and their departments and informed the development of the Government's White Paper on replacing the Direct Provision system. The White Paper was published on 26 February 2021.<sup>204</sup>

### **Government White Paper on Ending Direct Provision**

The Government's long-awaited White Paper on Ending Direct Provision was published on the 26 of February 2021. The paper establishes a variety of measures aimed at ending the system of Direct Provision and replacing it with a not-for-profit model. The paper broadly reflects the recommendations of the Advisory Group's report and sets out a roadmap towards establishing a new international protection accommodation policy, to be in place by 2024.<sup>205</sup>

The new model proposes a two-phased approach to accommodating applicants for international protection. In Phase One, it is proposed that the applicant will be accommodated in a designated Reception and Integration Centre for a period of four months. The focus during this phase will be on identifying the applicants particular needs and linking them with appropriate support services. Accommodation in Reception and Integration Centres will be own-door for families and own-room for single people, with specific accommodation tailored to individuals with identified vulnerabilities. Applicants are to be provided with comprehensive information about the International Protection process, including information regarding Legal Aid Board services, Health services, Education supports, Childcare and Employment activation. An intensive orientation and English language programme will also be provided. Vulnerability Assessments will be carried out in order to determine particular accommodation and support needs and applicants will be linked with appropriate services accordingly. Applicants will continue to receive a bespoke allowance while in the Reception and Integration Centre, similar to that currently provided. In total, six Reception and Integration Centres will be established and operated by the newly established International Protection Support Service.<sup>206</sup>

Under Phase Two, it is proposed that all accommodation provided will be own-door, self-contained houses or apartments for families, with single people housed in either own-door or own-room accommodation. Accommodation will be located in all counties and the location and number of applicants to be accommodated in each county will be determined according to a national settlement pattern. Different supports will apply to the applicant depending on the accommodation strand provided. For vulnerable persons, supports will be provided by not-for-profit organisations contracted and funded by the Department of Children, Equality and Disability, Integration and Youth to provide the service in a particular location. Whereby the applicant is not deemed vulnerable, resettlement workers, overseen by the Department of Children, Equality, Disability, Integration and Youth, will act at county level to link applicants with supports and services. Applicants and their families will have the right to access mainstream services, including education and health services. Access to further intensive English language supports will also be provided.<sup>207</sup>

The report has been widely welcomed by migrant rights groups in that it goes some way towards developing an all-government approach to ending the system of Direct Provision. However, a major weakness identified in the paper is that it fails to incorporate the Day Advisory Group recommendation in relation to offering permission to remain to people who are two or more years in the system. One of the issues associated with the current process is that the processing of applications takes too long, the result being that asylum seekers spend years waiting for a decision on their application, effectively putting their lives on hold. This ultimately causes considerable capacity issues within the system and, unless the

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<sup>204</sup> Department of Children, Equality, Disability, Integration and Youth, *White Paper on Ending Direct Provision*, 26 February 2021, available at: <https://bit.ly/3t2Xqv6>.

<sup>205</sup> Department of Children, Equality, Disability, Integration and Youth, *White Paper on Ending Direct Provision*, 26 February 2021, available at: <https://bit.ly/3t2Xqv6>.

<sup>206</sup> *Ibid*, 42.

<sup>207</sup> *Ibid*, 43.

current sizable backlog of cases is resolved, implementation of the Paper's key recommendations will be significantly hampered. The 2024 end-date for implementing the new system has also been widely criticised, with significant work towards establishing the new system not due to begin until 2022.

### **Joint Committee on Justice and Equality**

In December 2019, the Joint Committee on Justice and Equality of the Oireachtas published the 'Report on Direct Provision and the International Protection Application Process December 2019'.<sup>208</sup> This report called for a fundamental reform of the Direct Provision system and describes it as 'not fit for purpose'.

The members of the Committee found that 'shared, institutionalised living fails to fully respect the rights to privacy and human dignity of those placed in these centres. The issues pointed out in the report of the all-party group include:

- ❖ Inadequate support and services that do not cater to the needs of vulnerable individuals arriving in Ireland;
- ❖ Long delays in the single application process;
- ❖ Issues with accessing the labour market; and
- ❖ Issues relating to children in the Direct Provision system.<sup>209</sup>

The report made 43 conclusions and recommendations and followed a series of public hearings with stakeholder groups and the receipt of more than 140 written submissions and visits by the Committee to Direct Provision centres in Mosney and Monaghan. Amongst its recommendations there was the change to 'own door' accommodation units for individuals and families; leaving behind the current 'for profit' running of direct provision, and the involvement of approved housing bodies in the provision of accommodation and services.<sup>210</sup> The work of the Joint Committee ceased with the dissolution of the 32<sup>nd</sup> Dáil in January 2020. However, many of the findings made by the Committee subsequently informed the work of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process.

### **Committee for the Elimination of Racial Discrimination**

In 2019, the UN Committee for the Elimination of Racial Discrimination (CERD) in its Concluding observations on the combined fifth to ninth reports of Ireland expressed its concerns about Ireland's Direct Provision system, referring to its continuous failure to provide adequate accommodation for protection applicants and in particular regarding:

- (a) The lengthy stay in inadequate living conditions in Direct Provision centres and its significant impact on mental health and family life of protection applicants;
- (b) The operation of Direct Provision centres by private actors on a for-profit basis without proper regulation or accountability mechanisms;
- (c) The extensive use of emergency accommodation for lengthy periods due to the capacity limit of Direct Provision centres and the housing crisis, the substandard living conditions of emergency accommodation and the lack of necessary services and support provided therein;
- (d) The reported lack of transparency regarding the deaths of persons residing in these centres (art.5).<sup>211</sup>

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<sup>208</sup> Houses of the Oireachtas, Joint Committee on Justice and Equality report finds Direct Provision 'not fit for purpose' and calls for fundamental reform of 'flawed' international protection application process, 12 December 2019, available at: <https://bit.ly/2GdKzzW>.

<sup>209</sup> *Ibid.*

<sup>210</sup> *Ibid.*

<sup>211</sup> UN CERD, Concluding observations on the combined fifth to ninth reports of Ireland, 12 December 2019, CERD/C/IRL/CO/5-9, available at: <https://bit.ly/3dZHrpU>.

After expressing such concerns the CERD made the recommendation to Ireland to phase out the Direct Provision system and develop an alternative reception model, with a series of interim measures:

- (a) Improve living conditions in Direct Provision centres and reduce the length of stay in the centres;
- (b) Set up clear standards of reception conditions for Direct Provision centres; regulate and inspect the operation of Direct Provision centres; and hold those responsible accountable in case of breach of standards;
- (c) Halt the emergency accommodation as soon as possible and develop a contingency planning framework with a view to effectively responding to capacity pressures;
- (d) Ensure transparency regarding the deaths in Direct Provision centres and collect and publish data on the deaths in the centres.<sup>212</sup>

## 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>213</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?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Under the Reception Conditions Regulations, access to reception conditions is provided to a person who has given an indication of intention to seek asylum where he or she does not have sufficient means to have an adequate standard of living.<sup>214</sup> An asylum applicant is defined by the International Protection Act 2015 as a person who has made an application for international protection in accordance with section 15, or on whose behalf such an application has been made or is deemed to have been made. A recipient is a person who has indicated a wish to apply for international protection or someone who has lodged their claim, and who has not ceased to be a recipient. The Regulations do not apply to persons who fall outside of the scope of the EU Recast Reception Conditions Directive (e.g. people living in Direct Provision accommodation with status or people who have been issued deportation orders).

Following the onset of the Covid-19 pandemic, specific targeted measures were introduced for newly arrived asylum seekers. Upon arrival in the State, new applicants were screened on the basis of health questionnaires, subject to temperature checks and were required to self-report symptoms of Covid-19. Based on their personal situation and circumstances, applicants were then transferred to designated facilities for self-isolation.

Additionally, in the experience of the Irish Refugee Council, a number of clients experienced difficulty in accessing accommodation at the very early stages of the pandemic. The Irish Refugee Council Independent Law Centre assisted several individuals who had their material reception conditions withdrawn after being refused re-entry to Direct Provision accommodation centres. This occurred in circumstances where clients had been absent from their centre for more than one night, in order to visit

<sup>212</sup> *Ibid.*

<sup>213</sup> Note that there is no statutory basis for the Direct Provision system.

<sup>214</sup> Regulations 2 and 4(1) Reception Conditions Regulations 2018.



family or friends, or for the purposes of employment. In many cases, there was no written reason provided for the withdrawal and the possibility of withdrawal of accommodation on the basis of absences was not communicated widely prior to the policy being implemented by IPAS. Residents were told that in order to re-access accommodation, they would be required to make a formal request to IPAS.

Individuals were prevented from accessing emergency accommodation and owing to delays in re-accommodation, a number of clients became street homeless or were forced to stay in cars or with friends. Some clients had to wait up to 10 days prior to accommodation being restored and this only occurred after IRC entered direct written correspondence with IPAS, with intervention by IRC's CEO to senior IPAS staff. With advocacy and assistance from IRC, reception conditions were restored in the vast majority of cases.

### Provision of reception conditions at a designated place

The entitlement to Reception Conditions is expressly subject to two requirements:<sup>215</sup>

- ❖ Material reception conditions are made available only at a designated accommodation centre or a reception centre (which is an initial accommodation centre where protection applicants are first accommodated before another accommodation centre is designated). In effect, this guarantees that reception conditions are provided through the existing system of Direct Provision.
- ❖ The recipient complies with the house rules of the accommodation centre. The house rules are defined in the Regulations as rules made by the Minister for Justice under the Regulations. To date, house rules have not been made under the Regulations, although house rules made prior to the Regulations continue to be applied in Direct Provision centres. Since house rules made prior to the introduction of the Regulations are not house rules made under the Regulations, this raises a question about the legal relationship between the current house rules and the Regulations; in particular, enforceability of the current house rules for the purposes of, for example, withdrawing material reception conditions.

The Regulations provide that reception conditions are only available within the structure of the existing system known as Direct Provision.<sup>216</sup> This means that in order to receive material reception conditions, an asylum seeker must live in Direct Provision accommodation and must live in the particular accommodation centre designated by the authorities.<sup>217</sup> In designating an accommodation centre for recipients of reception conditions, the Regulations provide that a number of factors will be taken into account by the Minister (see [Freedom of Movement](#)). While the Regulations provide a new statutory basis for Direct Provision, in many respects, the transposition of the Reception Conditions Directive has not changed the existing structure of reception in Ireland.

Protection applicants are not obliged to use IPAS 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 material reception conditions or State social welfare supports, e.g. rent allowance, etc. Persons living outside Direct Provision may still be able to access a medical card in line with Regulation 18 of the Reception Conditions Regulations 2018 pertaining to the Right to Health.

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<sup>215</sup> Regulation 4(2) Reception Conditions Regulations 2018.

<sup>216</sup> The system of Direct Provision has been in place since 2000. The increase in the numbers applying for asylum in the 1990s prompted a decision by the then government to withdraw social welfare from protection applicants 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. It continues to be the system pursuant to which material reception conditions are provided under the Regulations. Prior to the introduction of the Regulations, Direct Provision had no statutory basis. The Reception and Integration Agency (RIA) (now IPAS) was set up as a division within the Department of Justice to manage Direct Provision. While the drafting of the Regulations refers to the "Minister", defined as the Minister for Justice and Equality, powers are exercised by RIA in practice. RIA has no statutory basis and the decision to establish it is not a matter of public record. Originally, it was intended that protection applicants would spend no more than six months living in Direct Provision.

<sup>217</sup> Regulation 7(1) Reception Conditions Regulations 2018.

Provision is made to exceptionally allow for a deviation from the prescribed form of reception under the Regulations in exceptional circumstances where: (a) a vulnerability assessment needs to be carried out to assess special reception needs; or (b) where the accommodation capacity is temporarily exhausted.<sup>218</sup> The Regulations require that an alternative method of accommodation must be for as short a period as possible and must meet the recipient's basic needs.<sup>219</sup>

On lodging an application for asylum with the IPO, the applicant is referred to IPAS and brought to a reception centre near Dublin Airport named **Balseskin**. As noted above, due to a lack of bed space in recent years, some people have been placed straight into emergency accommodation. This is problematic as it means a person may not receive the supports that are offered at 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 IPAS office within the IPO building. The person is accommodated in Balseskin reception centre in order to facilitate an interview with IPO, health screening and registration for Community Welfare Service assistance. In 2019, significant numbers of people were accommodated in emergency accommodation immediately after lodging an application for international protection. As of September 2020, approximately 1,382 individuals were resident in emergency accommodation.<sup>220</sup> Some people were placed in emergency accommodation immediately after applying for international protection.

After their initial IPO interview has taken place, the majority of asylum applicants are dispersed to Direct Provision centres in other parts of the country from **Balseskin**. To date, this practice has continued with the transition to the IPA and the introduction of the Regulations.

## 2.1. The assessment of resources

In practice, prior to receiving material reception conditions, protection applicants are asked to sign a declaration stating that they do not have sufficient independent means to maintain an adequate standard of living.

With the introduction of **Access to the Labour Market** for the first time under the Reception Conditions Regulations 2018, provision has been made for a reduction in the daily expenses allowance commensurate with income derived from employment. After an initial twelve-week period in employment, the relevant portion of a person's income will be assessed.<sup>221</sup> To calculate the relevant portion, the first €60 is disregarded. Schedule 2 of the Regulations set out in a table the contribution to the weekly accommodation cost that the recipient pays. Once the amount of the relevant portion is reached, it is deducted from the daily expenses allowance paid. If the amount of the relevant portion exceeds the amount of the daily expenses allowance, the daily expenses allowance is no longer paid.<sup>222</sup> It is unclear in practice whether this power has been implemented.

If an asylum seeker is in employment and their income exceeds a particular threshold, they are required to pay a contribution towards the material reception conditions received. The cost of accommodation services is stated in the Regulations as constituting €238 per week. Income up to €97 does not meet the threshold for the payment of a financial contribution. Income in excess of €97 attracts a liability which is scaled upwards as a percentage of the weekly cost of accommodation. For income of €600.01 or over, the contribution rises to 100% of the cost, meaning that €238 per week is payable. At the upper limit, this liability comprises €952 per month for bed and board in a shared room.<sup>223</sup>

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<sup>218</sup> Regulation 4(5) Reception Conditions Regulations 2018.

<sup>219</sup> Regulation 4(6) Reception Conditions Regulations 2018.

<sup>220</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>221</sup> Regulation 5(1) and Schedule 1 Reception Conditions Regulations 2018.

<sup>222</sup> Regulation 5(2) Reception Conditions Regulations 2018.

<sup>223</sup> Schedule 2 Reception Conditions Regulations 2018.



The Regulations empower the Minister to serve notice in writing of a requirement to refund all or part of the cost of material reception conditions, with the possibility of recovering the amount as a simple contract debt in any court of competent jurisdiction.<sup>224</sup> This will arise in circumstances where the Minister becomes aware that a person had the means to provide an adequate standard of living or concealed financial resources.<sup>225</sup>

## 2.2. Reception for other categories of persons

IPAS 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. Victims of trafficking who are not protection applicants are also accommodated during a 60-day reflection period.<sup>226</sup>

IPAS provides accommodation for applicants up to their return to their country of origin following a negative decision, however the increasing numbers of people remaining in Direct Provision after being granted status is causing significant strain on IPAS in the context of stretched capacity. IPAS continues to provide temporary accommodation for persons granted international protection or permission to remain in Ireland under Section 3 of the Immigration Act 1999. According to latest figures, approximately 810 people with status remain in Direct Provision accommodation as of September 2020.<sup>227</sup> In the experience of the Irish Refugee Council beneficiaries of international protection are finding it increasingly difficult to access the private rental market in the context of an ongoing housing and homelessness crisis (see [Content of Protection: Housing](#)).

## 2. Forms and levels of material reception conditions

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

Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2020 (in original currency and in €): €155.20 for adults and €119.20 for children

The Reception Conditions Regulations 2018 define “material reception conditions” as: (a) housing, food and associated in-kind benefits; (b) the daily expenses allowance; and (c) financial allowance for clothing.<sup>228</sup>

### 2.1. Daily expenses allowance

The Direct Provision allowance, referred to as the daily expenses allowance under the Reception Conditions Regulations, is a payment made to protection applicants for personal and incidental expenses. The rate of the payment remained static for a number of years and was consistently the subject of criticism, including by the McMahon Working Group. The criticism stated 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

<sup>224</sup> Regulation 5(4) Reception Conditions Regulations 2018.

<sup>225</sup> Regulation 5(3) and (6) Reception Conditions Regulations 2018.

<sup>226</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>227</sup> Minister for Justice Helen McEntee, Reply to parliamentary question no. 582, 15 September 2020, available at: <https://bit.ly/39EA5Yo>.

<sup>228</sup> Regulation 2 Reception Conditions Regulations 2018.

weekly allowance be increased for adults from €19.10 to €38.74 and increased from €9.60 to €29.80 for children.<sup>229</sup> In 2020, protection applicants receive a weekly allowance of €38.80 per adult and €29.80 per child. A group of organisations called for the daily expenses allowance to be increased during the pandemic. This request was refused.

## 2.2. Other financial support

Following the transposition of the recast Reception Conditions Directive and the decision of the Supreme Court in the *N.V.H.* case (see [Access to the Labour Market](#)), access to the labour market is granted for a six-month period (renewable) once an asylum seeker has been waiting over nine months for a first instance decision. The impact of this change is felt by newly-arrived protection applicants rather than those who have already received a first instance decision and are currently in the appeal process. For this category, who remain unable to access the labour market, their time living in Direct Provision is not considered residency for the purposes of accruing entitlements to social welfare assistance. As of July 2020, a total of 6,986 applications for access to the labour market were received by the Department of Justice. 5,109 permissions had been granted, of which 3,889 (76%) were granted to residents in Direct Provision. Employers reported hiring 2,539 applicants for international protection, 1,786 of whom were residents in Direct Provision.<sup>230</sup>

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 protection applicants do not have a right to reside in Ireland, they are 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.

The Working Group report noted that “apart from the weekly allowance, residents are not eligible to apply for other social protection supports with the exception of Exceptional Needs Payments (ENPs) and the Back to School Clothing and Footwear Allowance.”<sup>231</sup>

The Exceptional Needs Payment is a discretionary payment made by a Welfare Officer on receipt of an application for a one-off payment, rather than an ongoing liability. It is relied upon by protection applicants because it is an exception to the general rule regarding habitual residence. For example, it is often the only way to pay for transport costs. However, it is a highly discretionary payment with a limited appeals mechanism. In the experience of the Irish Refugee Council, there is anecdotal evidence that there can be wide differences in how the Exceptional Needs Payment is administered, depending on which centre the asylum seeker is living in.

At the onset of the Covid-19 pandemic, the Pandemic Unemployment Payment (PUP) was not made available to individuals who were employed and living in Direct Provision on the basis that the payment was tied to jobseekers’ allowance and constituted a form of social welfare payment for the purposes of s.15 of the Social Welfare and Pensions (No. 2) Act 2009. More than 40 organisations jointly wrote to the Minister for Social Protection requesting a €20.00 increase of the Daily Expense Allowance provided to international protection applicants living in Direct Provision. This request was refused on budgetary grounds.<sup>232</sup> However, in August 2020, following sustained advocacy from various migrant rights groups, PUP was extended to people living in Direct Provision as well as applicants for international protection

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<sup>229</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>230</sup> Advisory Group on Direct Provision, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 76.

<sup>231</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>232</sup> The Irish Times, ‘No temporary increase in weekly asylum payment during pandemic’, 29 May 2020, available at: <https://bit.ly/3beob8J>.

who live outside the Direct Provision system.<sup>233</sup> The payment is payable whereby an individual meets the conditions of the scheme: they must have been in employment prior to the 13 March, lost their employment owing to the pandemic and must not be in receipt of any income from their employer. The rate payable under PUP depends on the wage the individual was paid prior to losing their employment. Where an individual earned less than €200 per week, the rate payable is €203 per week. Where an individual earned between €200–€300 per week, the rate payable is €203 and where an individual earned over €300, the rate payable is €250.<sup>234</sup> The Pandemic Unemployment Payment is due to continue until April 2021, however, it was recently announced that the payment is likely to be extended for months to come.<sup>235</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?  
☒ Yes ☐ No
2. Does the legislation provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

The Reception Conditions Regulations provide that reception conditions can be reduced or withdrawn by the Minister of Justice in one of the following four situations, where the applicant:<sup>236</sup>

1. Has not cooperated with the protection application such that the failure to take a first instance decision can be attributable in whole or in part to the applicant. The Regulations detail that delay can be attributed to the applicant when he or she: fails to make reasonable efforts to establish identity; acts in some way which causes delay to processing of applications without reasonable excuse; or otherwise fails to comply with an obligation relating to the asylum application.<sup>237</sup>
2. Has not complied with some aspect of the asylum procedure. This ground is particularly vague as it refers to “an obligation under an enactment relating to the application” rather than any specific aspect of the IPA.<sup>238</sup> Hypothetically, this means that a failure to comply with any aspect of the application process – no matter how insignificant – could be a ground for reducing or withdrawing reception conditions, so long as the Minister is satisfied that the applicant has failed to provide a “reasonable excuse”.
3. Has seriously breached the house rules of the place of accommodation.
4. Has engaged in seriously violent behaviour. “Seriously violent behaviour” is not defined in the Regulations, which raises a question of when violent behaviour will reach the level of being sufficiently serious to warrant the reduction or withdrawal of reception conditions. It is therefore left to the Minister to determine when behaviour will meet the threshold of being “seriously violent”.

In addition to the Minister for Justice having power to reduce or withdraw reception conditions under the circumstances specified in the Regulations, the Minister for Employment Affairs and Social Protection is

<sup>233</sup> The Journal, ‘Direct provision residents will now be eligible for pandemic unemployment payment’, 6 August 2020, available at: <https://bit.ly/3u2kpaX>.

<sup>234</sup> Department of Social Protection, *Covid-19 Pandemic Unemployment Payment*, 16 June 2020, available at: <https://bit.ly/2Nv1CUS>.

<sup>235</sup> Irish Examiner, ‘PUP and Covid business supports to remain ‘for many months’, says Michael McGrath’, 15 February 2021, available at: <https://bit.ly/3dehx4V>.

<sup>236</sup> Regulation 6(1) Reception Conditions Regulations 2018.

<sup>237</sup> Regulation 27 Reception Conditions Regulations 2018.

<sup>238</sup> The corresponding EU law provision, Article 20(1)(b) recast Reception Conditions Directive, refers to non-compliance with reporting duties or information requests, or failure to appear for personal interviews.

also empowered to reduce or withdraw the daily expenses allowance provided to a recipient on the same grounds.<sup>239</sup>

Both Ministers, when making a decision to withdraw or reduce reception conditions, must have regard to the individual circumstances of the recipient and, in particular, whether they are a vulnerable person.<sup>240</sup>

The Ministers must also have regard to any explanation provided by the recipient for the conduct which has been deemed to ground the reduction or withdrawal of reception conditions.<sup>241</sup>

The Regulations also provide that a decision to reduce or withdraw material reception conditions shall only be taken in exceptional circumstances where no other action can be taken to address the conduct of the recipient.<sup>242</sup>

Where a decision is taken to reduce or withdraw reception conditions, the Minister nonetheless must ensure the person in question has access to health care and a dignified standard of living, where the person does not have means to provide for themselves.<sup>243</sup> Since it is a requirement of the Regulations that a person will only receive material reception conditions where they do not have sufficient means to otherwise provide an adequate standard of living, it is unclear what safeguarding a dignified standard of living would entail in practice, outside of the Direct Provision system. Arguably, every person receiving material reception conditions would, by definition, require further assistance from the Minister to ensure they are not left destitute. Furthermore, the use of “dignified” rather than “adequate” standard of living in the drafting of this provision raises a question of whether a different standard would be applied to assistance provided to a person for whom reception conditions have been reduced or withdrawn. Neither term is defined which leaves no guidance on what this would entail in practice.

Decisions reducing or withdrawing reception conditions can be challenged by means of review before the Minister for Justice within ten working days,<sup>244</sup> or the Minister for Employment Affairs in case of reduction or withdrawal of the Direct Provision allowance.<sup>245</sup> The decision of the review officer can then be challenged before the IPAT within ten working days.<sup>246</sup> The IPAT has 15 working days to decide on the appeal.<sup>247</sup>

In 2019, the Ombudsman received five complaints about warning letters sent by IPAS for continued breach of House Rules prior to involuntary removals from accommodation centres.<sup>248</sup> In 2020, the Ombudsman received one such complaint.<sup>249</sup> Although it was pointed out that these letters only referred to allegations of a breach and the residents concerned had the option to engage with IPAS before things progressed,<sup>250</sup> in the Irish Refugee Council’s casework there have been instances of people being notified of their removal from accommodation centres due to unjustified absences, without being given any chance to provide an explanation. In 2020, the IPAT issued four decisions relating to reception conditions, all of which were refused.<sup>251</sup>

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<sup>239</sup> Regulation 6(2) Reception Conditions Regulations 2018.

<sup>240</sup> Regulation 6(3)(a) Reception Conditions Regulations 2018.

<sup>241</sup> Regulation 6(3)(b) Reception Conditions Regulations 2018.

<sup>242</sup> Regulation 6(5) Reception Conditions Regulations 2018.

<sup>243</sup> Regulation 6(6) Reception Conditions Regulations 2018.

<sup>244</sup> Regulation 20(1)(d) Reception Conditions Regulations 2018.

<sup>245</sup> Regulation 20(2)(d) Reception Conditions Regulations 2018.

<sup>246</sup> Regulation 21(1) Reception Conditions Regulations 2018.

<sup>247</sup> Regulation 21(4)(a) Reception Conditions Regulations 2018.

<sup>248</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2019’, April 2019, available at: <https://bit.ly/2Xku2Dr>.

<sup>249</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2020’, March 2021, available at: <https://bit.ly/2PbgkSe>.

<sup>250</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2019’, April 2019, available at: <https://bit.ly/2Xku2Dr>.

<sup>251</sup> Data provided by the International Protection Appeals Tribunal, March 2021.

The Irish Refugee Council assisted several individuals who had their material reception conditions withdrawn after being refused re-entry to Direct Provision accommodation centres at the onset of the pandemic. This occurred in circumstances where clients had been absent from their centre for more than one night, in order to visit family or friends, or for the purposes of employment. In many cases, there was no written reasoning provided for the withdrawal and the possibility of withdrawal of accommodation on the basis of absences was not communicated widely prior to the policy being implemented by IPAS. Residents were told that in order to re-access accommodation, they would be required to make a formal request to IPAS.

Individuals were prevented from accessing emergency accommodation and owing to delays in re-accommodation, a number of clients became street homeless or were forced to stay in cars or with friends. Some clients had to wait up to 10 days prior to accommodation being restored and this only occurred after IRC entered direct correspondence with IPAS, with intervention by the CEO to senior IPAS staff. With advocacy and assistance from IRC, reception conditions were restored in the vast majority of cases.

#### 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

The policy of dispersal of protection applicants to Direct Provision centres around the country has persisted with the transposition of the recast Reception Conditions Directive. The Reception Conditions Regulations 2018 continue the previous practice whereby protection applicants are first accommodated in **Balseskin** Reception Centre, where they usually spend several weeks, before being dispersed to one of the other accommodation centres, usually outside of **Dublin**.

Overcrowding and a lack of space in the Direct Provision estate has led to the use of emergency accommodation. The Minister for Justice and Equality may, exceptionally provide the material reception conditions in a manner that is different to that provided for in these Regulations where (a) an assessment of a recipient's specific needs is required to be carried out, or (b) the accommodation capacity normally available is temporarily exhausted. Emergency accommodation can be hotels or Bed and Breakfasts. As of September 2020, approximately 1,382 individuals were resident in emergency accommodation, including hotels and guest houses.<sup>252</sup> The amount spent on hotel and guest house beds in emergency locations up to the end of November 2019 was €27.14m.<sup>253</sup> The amount spent on emergency accommodation up to the end of December 2020 was €59.7m paid to 32 providers.<sup>254</sup>

<sup>252</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>253</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 271, 10 December 2019, available at: <https://bit.ly/2RG2xAi>.

<sup>254</sup> Minister for Children, Equality, Disability, Integration and Youth Roderic O'Gorman, Response to Parliamentary question nos 469, 470, 2 February 2021, available at: <https://bit.ly/37rcwID>.

The exact location of emergency accommodation is not publicly available in order to protect the identity of international protection applicants.<sup>255</sup> Some emergency accommodation centres have been in place for more than 18 months.

In designating an accommodation centre for recipients of reception conditions, the Reception Conditions Regulations provide that a number of factors will be taken into account: (a) maintaining family unity; (b) gender and age-specific concerns; (c) the public interest; (d) public order; (e) the efficient processing and effective monitoring of the recipient's application for international protection.<sup>256</sup>

The special reception needs of an asylum seeker, identified following a vulnerability assessment, shall also be taken into account in designating an accommodation centre. The Regulations also provide that where a recipient is a minor, the need to accommodate the minor together with parents, unmarried siblings, or an adult acting *in loco parentis* will be considered, subject to consideration of the best interests of the minor in question. A further factor to be considered for minor recipients is whether the proposed accommodation centre is suitable to meet their needs.<sup>257</sup>

No definition of "the public interest" or "public order" is provided in the Regulations, making it difficult to determine how those factors may be adjudged in designating an accommodation centre.

An applicant does not have a choice regarding where they are sent. In practice, due to the ongoing shortage of spaces in the Direct Provision estate, requests for transfers to other accommodation centres are not being granted, except in a very limited number of exceptional circumstances; typically, where a vulnerability is identified. However, an applicant may be moved to a different accommodation centre where the Minister considers it necessary. The Ombudsman, in his report on Direct Provision for 2019 stated: I have not accepted refusal of transfer requests from people who wish to avail of educational opportunities that are not available from their assigned centre. In my view denying someone the opportunity to better themselves by availing of a place on a further education course is unreasonable.<sup>258</sup>

IPAS 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. In practice, an absence occurring over three consecutive nights leads to a warning letter from centre management that the applicant may lose their accommodation. In the current housing crisis and with the continuing lack of capacity in Direct Provision (see [Types of Accommodation](#)), this would place applicants at immediate risk of homelessness.

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.<sup>259</sup>

However, as of January 2021, the House Rules have not been revised in light of the introduction of the Reception Conditions Regulations and their legal status therefore remains unclear. The Regulations specifically define House Rules as "rules made by the Minister under Regulation 25". Regulation 25 empowers the Minister to make rules to be complied with by persons who are being accommodated in an accommodation centre or reception centre. Such rules may relate to the operation of the centre and the conduct of residents. Regulation 25(4) further states that the Minister shall make the house rules accessible in a variety of languages on the website of IPAS. This has not been done at the time of writing.

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<sup>255</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 290, 5 November 2019, available at: <https://bit.ly/38yWswf>.

<sup>256</sup> Regulation 7(2) Reception Conditions Regulations 2018.

<sup>257</sup> Regulation 7(3) Reception Conditions Regulations 2018.

<sup>258</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019, available at: <https://bit.ly/2Xku2Dr>.

<sup>259</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.



It is highly questionable whether the Minister could rely on the existing house rules which pre-date and were not made in accordance with Regulation 25 for the purposes of the Regulations.

#### 4.2. Restrictions on freedom of movement

Freedom of movement is not expressly restricted in law but the IPAS house rules require residents to seek permission if they are going to be away from their accommodation overnight.<sup>260</sup>

In practice, freedom of movement is restricted due to the very low level of financial support given to protection applicants 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>261</sup> The Irish Council for Civil Liberties has also argued that the conditions attached to Direct Provision accommodation amounts to *de facto* detention under the Optional Protocol to the UN Convention against Torture.<sup>262</sup> This same argument was made by The Global Detention Project in its submission to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in preparation for its visit to Ireland.<sup>263</sup>

Asylum seekers were subject to the same public health restrictions as Irish nationals throughout the Covid-19 pandemic, for example the right to exercise within a 5km radius of their accommodation and travel for essential purposes, for instance medical appointments, food and other necessities as established in Government Guidelines. However, particular issues of concern emerged at accommodation centres where outbreaks of coronavirus occurred. Residents reported that they were not permitted to leave their accommodation or were given a strong impression that they could not leave and were required to spend all day in their rooms, even in circumstances where they had tested negative for Covid-19. Moreover, all non-essential visits and activities, including transfers between centres, were cancelled to curb the spread of the virus. Additionally, a two-week quarantine period was imposed for individuals who had left and subsequently returned to their accommodation.

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<sup>260</sup> *Ibid.*

<sup>261</sup> Human Rights and Equality Commission, *Ireland and the OPCAT*, September 2017, available at: <http://bit.ly/2fEh5h6>, 32.

<sup>262</sup> Irish Council for Civil Liberties, 'Ratify OPCAT and allow inspection of direct provision centres: ICCL', 26 June 2018, available at: <https://bit.ly/2RLtN3k>.

<sup>263</sup> Global Detention Project, Submission to the European Committee for the Prevention of Torture (CPT): Ireland', 25 September 2019, available at: <https://bit.ly/368sFum>.



## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation<sup>264</sup>

1. Number of reception centres:<sup>265</sup> 44
2. Total number of places in the reception centres: 6,937
3. Number of emergency accommodation locations:<sup>266</sup> 36<sup>267</sup>
4. Total number of places in emergency accommodation: 2,059<sup>268</sup>
5. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
6. 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

Available accommodation within the Direct Provision estate has been decreasing since 2016, due to a number of factors, including the expiry of contracts between IPAS and accommodation providers and the ongoing housing crisis which is reducing available accommodation sites. During 2019, IPAS added 735 bed spaces to their portfolio, through an increase in the capacity of existing centres and with the opening of three new accommodation centres. IPAS also managed the closing of the Hatch Hall accommodation centre in Dublin, therefore the net increase in 2019 of bed spaces was 515 in total.<sup>269</sup> Despite this, the rise in the number of applicants led to 1,559 protection applicants being placed in temporary accommodation by the end of 2019. As of September 2020, approximately 1,382 individuals were resident in emergency accommodation.<sup>270</sup> The Minister of State at the Department of Justice and Equality with special responsibility for Equality, Immigration and Integration confirmed that accommodation in Direct Provision is prioritised for new arrivals, particularly families and other vulnerable people.<sup>271</sup> In the experience of the Irish Refugee Council in 2020, requests for re-entry into Direct Provision under the Regulations – by people who had not taken up an initial offer of accommodation or have since experienced a change in their circumstance – have been refused on the ground of a lack of accommodation or have been subject to considerable delays. These delays have been further exacerbated by the Covid-19 pandemic. In some cases, individuals were waiting up to ten days to re-access accommodation in circumstances where they were rendered homeless.

The personal circumstances of persons living outside Direct Provision are generally unknown and figures are not maintained by IPAS. 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, it is very difficult to access the Direct Provision system again, should their situation change.

<sup>264</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>265</sup> Both permanent and for first arrivals.

<sup>266</sup> Hotels and guesthouses.

<sup>267</sup> Advisory Group on Direct Provision, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 121.

<sup>268</sup> *Ibid.*

<sup>269</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019, available at: <https://bit.ly/2Xku2Dr>.

<sup>270</sup> Minister for Justice Helen McEntee, Response to Parliamentary question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>271</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 413, 6 November 2018, available at: <https://bit.ly/2TdyIH2>.

As of September 2020, there were 44 Direct Provision accommodation centres located nationwide.<sup>272</sup> There were a further 36 emergency accommodation locations such as in hotels and guest houses.<sup>273</sup> Approximately 6,911 people resided in Direct Provision and emergency accommodation.

IPAS ceased to publish data in 2018. The last statistics were contained in the RIA Monthly Report November 2018. The IPAS has yet to issue any official data in relation to the accommodation of international protection applicants since it was created in 2019 as a result of the division of RIA in two sections. Nevertheless, some statistics for 2020 were made available by the Minister for Justice in response to parliamentary questions. The capacity and occupancy of Direct Provisions centres in 2018, 2019 and 2020 were as follows:

Capacity and occupancy of Direct Provision centres						
	2018		2019		2020	
Centre	Capacity	Occupancy	Capacity <sup>274</sup>	Occupancy <sup>275</sup>	Capacity <sup>276</sup>	Occupancy <sup>277</sup>
<i>Reception centres</i>						
Balseskin	320	249	487	433	537	264
<i>Self-catering centres</i>						
Louth	74	60	74	71	81	78
<i>Accommodation centres (by county)</i>						
Clare	365	363	365	372	449	377
Cork	972	929	990	955	1036	890
Dublin	475	459	250	236	425	233
Galway	372	353	372	341	393	265
Kerry	490	458	490	461	521	424
Kildare	233	201	295	259	295	197
Laois	265	256	265	257	265	237
Limerick	203	198	203	200	181	154
Longford	80	74	80	79	80	65
Mayo	245	234	245	217	245	222
Meath	600	619	600	735	600	594
Monaghan	175	165	212	214	280	237
Sligo	218	212	218	199	218	177
Tipperary	161	147	161	152	273	207
Waterford	408	406	408	407	408	371

<sup>272</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

<sup>273</sup> Advisory Group on Direct Provision, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 119-121.

<sup>274</sup> The capacity as of 30th June 2019 is the most up-to-date info for the year 2019 at the time this report is published, Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 361, 11 July 2019, available at: <https://bit.ly/3bwKJjK>.

<sup>275</sup> The occupancy as of 13 October 2019 is the most up-to-date info for the year 2019 at the time this report is published, Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 151, 17 October 2019, available at: <https://bit.ly/34Y0yO7>.

<sup>276</sup> Advisory Group on Direct Provision, Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 119-121.

<sup>277</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15th September 2020, available at: <https://bit.ly/3ih594H>.

Westmeath	379	343	400	385	425	365
Wicklow					111	87
Wexford					114	85
<b>Total</b>	<b>6,025</b>	<b>5,726</b>	<b>6,115</b>	<b>5,973</b>	<b>6,937</b>	<b>5,529</b>

The 2020 figures provided above on capacity and occupancy were valid as of August 2020 and September 2020 respectively. Approximately 6,911 individuals resided in Direct Provision and emergency accommodation.

Of those centres in the IPAS portfolio, only three were built ("system built") for the express purpose of accommodating protection applicants. 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. IPAS is considering the option of moving towards a capital investment based approach in the provision of accommodation, that would involve building customised facilities.<sup>278</sup>

There are seven 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 44 out of 55 places.<sup>279</sup>

The **Balseskin** reception centre, with a capacity of 537 is designated as a reception centre where all newly arrived protection applicants are accommodated. The centre as of 15 September 2020 had an occupancy rate of 264 out of 537 places.<sup>280</sup>

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 IPAS. 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. As of October 2020, there were 26 private companies that have a contract for services with the Department of Justice for the provision of premises that meet required standards and support services for protection applicants. Of these companies, two have a contract to provide management, catering, housekeeping and general maintenance services in state owned accommodation centres.<sup>281</sup> It is the role of the Department of Justice to oversee the provision of these services, which has established a High Level Interdepartmental Group tasked with ensuring better coordination of provision of services and meeting needs in the short to medium term.<sup>282</sup> Moreover, the National Standards developed establish a minimum set of standards for reception centres to meet by January 2021 if they are to continue providing services.<sup>283</sup> The Department of Justice stated that to ensure compliance, an independent inspection mechanism will be established to monitor premises and services.<sup>284</sup> The National Standards became legally binding on 1 January 2021.<sup>285</sup> The Department of Children, Equality, Disability and Integration and Youth are currently engaged in talks with the Department of Health and the Health Information and Quality Authority (HIQA) with regard to undertaking the role of monitoring the National Standards. It is hoped that monitoring will begin in the coming months, however,

<sup>278</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019'.

<sup>279</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 151, 17 October 2019, available at: <https://bit.ly/34Y0yO7>.

<sup>280</sup> *Ibid.*

<sup>281</sup> Minister for Children, Equality, Disability, Integration and Youth Roderic O'Gorman, Response to Parliamentary question nos 469, 470, 2 February 2021, available at: <https://bit.ly/37rcwID>.

<sup>282</sup> *Ibid.*

<sup>283</sup> Houses of the Oireachtas and Joint Committee on Justice and Equality, Report on Direct Provision and the International Protection Application Process, December 2019, available at: <https://bit.ly/3cRtb29>.

<sup>284</sup> *Ibid.*

<sup>285</sup> Department of Justice and Equality, Spending Review on Direct Provision, 15 August 2019, available at: <https://bit.ly/3eVBtrx>.

in the interim, accommodation centres continue to be subject to inspections by both IPAS and an independent inspectorate company.<sup>286</sup>

IPAS retains overall responsibility for the accommodation of applicants for international protection in the direct provision system. The Minister for Justice and Equality has stated that residents are not ‘in the care’ of the State but rather the State has a ‘duty of care’ which it discharges via external contractors.<sup>287</sup>

## 1.2. Emergency Accommodation Beds

In September 2018, the Direct Provision estate reached capacity and no accommodation was available for newly arriving protection applicants, as the **Balseskin** centre had no available places. A precise figure is not available, but over the course of a single weekend, a minimum of 20 newly arrived protection applicants were not provided with any material receptions and were informed that no accommodation was available, rendering them homeless on arrival in Ireland.<sup>288</sup> After intensive representations and media attention on the issue, alternative accommodation was provided by IPAS on an emergency basis. This involved the contracting of accommodation in hotels and holiday homes to house protection applicants on a temporary basis pending IPAS contracting for more permanent accommodation centres.<sup>289</sup> These centres are known as “satellite centres”.

In 2020, this was still an ongoing issue, with accommodation centres still at capacity and protection applicants being placed by IPAS in emergency accommodation in hotels, guest houses and bed and breakfasts.

Although the Department of Justice has repeatedly stated that “every effort is being made to re-accommodate applicants in emergency locations to a dedicated accommodation centre as quickly as possible,”<sup>290</sup> it has been reported that people find themselves living in emergency accommodation for up to sixteen months.<sup>291</sup>

The efforts being made to source additional accommodation have proven to be insufficient to tackle this issue in 2020. As of September 2020, 1,382 protection applicants were residing in 36 emergency accommodation locations.<sup>292</sup> This is an increase of almost seven times the number of people in emergency accommodation since in 2018, when 202 persons were residing in five hotels. Moreover, following the onset of the Covid-19 pandemic, a number of new emergency accommodation centres were opened at extremely short notice in order to enable social distancing and avoid overcrowding. These included the contracting of an additional 650 beds at newly set up centres in Dublin, Galway and Cork, Galway.<sup>293</sup> Moreover, from 18 March 2020, approximately 100 asylum seekers were gradually moved from emergency centres in Dublin to the Skellig Star Hotel in Cahersiveen, Co. Kerry in order to reduce capacity in Direct Provision centres.<sup>294</sup> This centre subsequently closed and residents were moved out on a phased basis. It is understood that the last remaining residents were transferred from the centre in

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<sup>286</sup> Minister for Children, Equality, Disability, Integration and Youth Roderic O’ Gorman, Parliamentary Question No 263, 264, 21 January 2021, available at: <https://bit.ly/2ZmglnS>.

<sup>287</sup> Minister for Justice and Equality, Reply to Parliamentary Question No 77, 11 December 2012, available at: <https://bit.ly/3bHpFai>.

<sup>288</sup> Irish Refugee Council, ‘Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless’, 20 September 2018, available at: <https://bit.ly/2O37Dac>.

<sup>289</sup> Irish Times, ‘Hotels in the east being used as temporary direct provision centres’, 19 November 2018, available at: <https://bit.ly/2S4Pvyv>.

<sup>290</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 271, 10 December 2019, available at: <https://bit.ly/2xWmm0f>.

<sup>291</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2019’, April 2019.

<sup>292</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15 September 2020, available at: <https://bit.ly/3ih594H>.

<sup>293</sup> The Journal, ‘We’ve been firefighting’: Inside the State’s response to Covid-19 in Direct Provision’, 10 May 2020, available at: <https://bit.ly/3b9Okvt>.

<sup>294</sup> *Ibid.*

September 2020.<sup>295</sup> Additionally, two new centres were also opened to facilitate off-site self-isolation.<sup>296</sup> One centre is used to facilitate self-isolation where a resident tests positive for Covid-19, while the other is used to facilitate a mandatory 14-day quarantine period in circumstances where a resident has left their IPAS accommodation temporarily and subsequently seeks to return.<sup>297</sup>

The living conditions in these emergency accommodation locations are clearly unsuitable for the needs of protection applicants, and fail to fulfil IPAS's obligations under the EU recast Reception Conditions Directive.

No statistics were made publicly available by IPAS on the capacity and occupancy of emergency accommodation locations in 2019. The latest available data was contained in the RIA Monthly Report November 2018. However, figures released by the Minister for Justice indicate that as of September 2020, there were a total of 1,382 individuals resident in emergency accommodation.<sup>298</sup> The IPAS has yet to issue any official data in relation to the accommodation of international protection applicants since it was created in 2019 as a result of the division of RIA in two sections. When the Department of Justice has been asked to provide information on the location and number of emergency accommodation, they have refused to give any detailed information. The data proportioned has been limited arguing that "RIA has a legal duty to protect the identities of persons in the international protection process and must be mindful of the right to privacy of applicants when responding to specific queries."<sup>299</sup>

### 1.3. 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.<sup>300</sup> There are three EROC with a total capacity of 375 places. Statistics in relation to capacity at EROC in 2020 were not available at the time of writing, however, figures released by the Department of Justice indicate that as of October 2020, there were approximately 249 individuals resident in three EROC centres throughout the country.<sup>301</sup>

Capacity and occupancy of EROC						
	2018		2019		2020 <sup>302</sup>	
Centre	Capacity	Occupancy	Capacity	Occupancy	Capacity	Occupancy
Waterford (Clonea)	120	80	125	95	-	17
Roscommon (Ballaghadereen)	230	113	200	185	-	115
Meath (Mosney)	150	105	50	50	-	117
<b>Total</b>	<b>500</b>	<b>298</b>	<b>375</b>	<b>330</b>	<b>-</b>	<b>249</b>

<sup>295</sup> RTÉ News, 'Dept of Justice denies plans to reuse Skellig Star Hotel', 27 September 2020, available at: <https://bit.ly/2K8BZrL>.

<sup>296</sup> Minister for Children, Disability, Equality, Integration and Youth Roderic O'Gorman, Response to Parliamentary question No 596, 17 November 2020, available at: <https://bit.ly/2NbAf2n>.

<sup>297</sup> Minister for Children, Disability, Equality, Integration and Youth Roderic O'Gorman, Response to Parliamentary question No 182, 11 February 2021, available at: <https://bit.ly/3rQqF3l>.

<sup>298</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15 September 2020, available at: <https://bit.ly/3ih594H>.

<sup>299</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Questions Nos 802 and 803, 23 July 2019, available at: <https://bit.ly/2Y9x6TQ>.

<sup>300</sup> INIS, 'Ministers Flanagan and Stanton welcome Syrian refugee families to Ireland', 27 December 2018, available at: <https://bit.ly/2RLydaq>.

<sup>301</sup> Minister for Children and Youth Affairs Roderic O' Gorman, Reply to Parliamentary Question No 438, 20 October 2020, available at: <https://bit.ly/3ol0wrn>.

<sup>302</sup> *Ibid*,

Source: RIA, Statistics, November 2018, <https://bit.ly/3eKWYyVB>, Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 31, 20 November 2019, available at: <https://bit.ly/2Kun0Vz>, Minister for Children and Youth Affairs Roderic O' Gorman, Reply to Parliamentary Question No 438, 20 October 2020, available at: <https://bit.ly/3ol0wrn>.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

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

Direct Provision has been under intense scrutiny since its 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. The system of Direct Provision has been criticised by numerous prominent organisations including the Irish President, Michael D. Higgins, the Ombudsman for Children, the Irish Human Rights and Equality Commission, and the Special Rapporteur for Children, and UN Treaty Bodies such as the United Nations Committee on Economic, Social and Cultural Rights and the Committee for the Elimination of Racial Discrimination. Most importantly, people in the protection process themselves have also criticised conditions in Direct Provision. For example, Movement of Asylum Seekers Ireland (MASI) gave detailed criticism of conditions via social media and in their submission to the Joint Oireachtas Committee on Direct Provision.<sup>303</sup>

Since 2017, the Ombudsman has jurisdiction to hear complaints from residents of accommodation centres regarding the conditions of facilities amongst other matters.<sup>304</sup> The Ombudsman received a total of 61 complaints from residents in Direct Provision in 2020.<sup>305</sup> This compares with 168 complaints from residents in 2019.<sup>306</sup> However, the Ombudsman notes that the significant reduction in complaints is a direct consequence of his office's inability to visit centres as a result of Covid-19 travel restrictions.<sup>307</sup> 41 complaints were made against IPAS, 25 of which were related to transfers, 2 to accommodation, 1 to involuntary removal, 2 to food and 11 to other issues.<sup>308</sup> The Ombudsman has not provided a statistical breakdown of these complaints but provides a commentary. In appropriate cases, the Ombudsman's office engages with the relevant Government Department or agency to resolve the situation for the individual complainant concerned and in order to avoid any future similar issues arising.

The onset of the Covid-19 pandemic further highlighted the unsuitability of Direct Provision as a means of accommodating asylum seekers. As a congregated setting, individuals in Direct Provision share intimate spaces, including bathrooms, dining areas, communal living spaces and laundries. This means that social distancing has been near impossible at the majority of centres.

On 31 March 2020, the Department of Justice announced that an additional 650 beds had been procured in order to support the measures required for vulnerable residents in Direct Provision in the context of the Covid-19 crisis. These included the provision of off-site accommodation for self-isolation, as well as

<sup>303</sup> Movement of Asylum Seekers in Ireland (MASI), Submission to Justice & Equality Joint Committee, 27 May 2019, available at: <https://bit.ly/2VHPUI2>

<sup>304</sup> Ombudsman, 'The Ombudsman and direct provision', available at: <https://bit.ly/2LdNfI4>.

<sup>305</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2020', March 2021, available at: <https://bit.ly/2PbgkSe>.

<sup>306</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019, available at: <https://bit.ly/2Xku2Dr>.

<sup>307</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2020', March 2021, available at: <https://bit.ly/2PbgkSe>.

<sup>308</sup> Ibid.



increasing capacity so as to accommodate social distancing. However, according to the Irish Refugee Council's 'Powerless' report, which examines the experiences of Direct Provision residents during the pandemic, as of August 2020, 50% of survey respondents were unable to socially distance themselves from other residents. 42% stated that they were still sharing a room with a non-family member, while 46% shared a bathroom with a non-family member.<sup>309</sup> As of March 2021, the number of unrelated single residents assigned a shared room in IPAS accommodation was 1,892. This comprised of 1,171 residents in a room assigned to two people and 721 residents in a room assigned to 3 people.<sup>310</sup> This constitutes an increase of approximately 192 more people than the previous year, despite the onset of the pandemic. Whereby steps were taken to move residents out of Direct Provision so as to permit additional space to social distance, this was largely achieved without consulting residents, while notice provided was extremely short and residents were not informed as to whether the move would be temporary or permanent in nature.

Significant outbreaks of Covid-19 occurred at accommodation centres across the country throughout the pandemic. Particular issues of concern emerged in relation to the Skellig Star Hotel in Co. Kerry, where one of the first major outbreaks occurred in May 2020. Various issues had been reported prior to the hotels opening, including the rushed opening of the centre, repair issues, lack of running water and heating, and staff not being Garda vetted. Individuals were also moved at very short notice from Dublin and residents were initially sharing rooms with one another. During the outbreak, residents reported that they were unable to leave the hotel, or were given a strong impression that they could not leave their accommodation. Individuals, including children, were forced to spend all day in hotel rooms and reports suggested a lack of sanitation and deep cleaning of the property, even after 22 residents had tested positive.<sup>311</sup> Conditions at the centre prompted residents to go on hunger strike in July 2020, while the local community and various migrant rights organisations called for the hotel to be closed.<sup>312</sup> It was subsequently announced that the centre was to close and residents were to be moved out on a phased basis. It is understood that the last remaining residents were transferred from the centre in September 2020.<sup>313</sup>

In August 2020, several Direct Provision centres also reported outbreaks of Covid-19 linked to clusters at meat factories where a number of residents worked. The vast majority of residents were moved to designated facilities to self-isolate.<sup>314</sup> In late December 2020, a further significant outbreak was reported at Kinsale Road accommodation centre in Co. Cork. It is understood approximately 40 residents were removed from the centre in order to facilitate social distancing, while the remaining residents were told to remain in their rooms and isolate.<sup>315</sup>

The Irish Refugee Council also became aware of a number of reports of individuals being transferred from temporary accommodation to communal facilities. In one such instance, a resident and her two children were moved from their temporary accommodation in Dublin, to Cahersiveen, where communal facilities with other residents were shared. One child tested positive for Covid-19 and the family were moved to a self-isolation facility for 3 weeks. Fearing reinfection if they were returned to live in communal facilities, the family requested a transfer to a self-contained family unit. This request was initially refused and only

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<sup>309</sup> Irish Refugee Council, 'Powerless: Experiences of Direct Provision During the Covid-19 Pandemic', available at: <https://bit.ly/3pXOaGZ>.

<sup>310</sup> Information provided in correspondence from Minister Roderic O'Gorman to Catherine Connolly TD, further to Parliamentary Questions 602, 603, 612 and 613 of the 3rd of March 2021, available at: <https://bit.ly/3tEMioT>.

<sup>311</sup> Irish Examiner, 'Calls for direct provision centre in Cahersiveen to be closed', 11 May 2020, available at: <https://bit.ly/3i8Xbum>.

<sup>312</sup> Irish Times, 'Controversial Skellig Star direct provision centre in Kerry to close', 30 July 2020, available at: <https://bit.ly/38zS4QG>.

<sup>313</sup> RTÉ News, 'Dept of Justice denies plans to reuse Skellig Star Hotel', 27 September 2020, available at: <https://bit.ly/2K8BZrL>.

<sup>314</sup> RTÉ News, 'Concern over virus clusters at direct provision centres', 2 August 2020, available at: <https://bit.ly/39kJPag>.

<sup>315</sup> Irish Examiner, 'Residents moved from Cork direct provision centre following 'serious' Covid-19 outbreak', 25 December 2020, available at: <https://bit.ly/2MZNxP5>.



with sustained advocacy from IRC and other agencies was the decision reviewed and self-contained accommodation eventually offered.

As regards, hygiene and sanitary measures, all accommodation centres, including emergency accommodation centres were required to complete contingency planning for Covid-19 with a view to limiting the possible spread of disease throughout centres. Contingency plans were subject to review by IPAS and HSE Community Healthcare Organisations (CHOs). Public health information was distributed to residents through the circulation of notices in multiple languages. Each centre was also asked to generate a self-isolation capability for use by persons with a positive Covid-19 test result.<sup>316</sup> Moreover, in September 2020, it was announced that a comprehensive programme of Covid-19 testing was to be established across all Direct Provision and emergency accommodation centres. The testing programme followed numerous outbreaks of Covid-19 within Direct Provision centres throughout the country over the course of the pandemic.<sup>317</sup>

Additionally, the HSE established a temporary accommodation scheme for healthcare workers at the outset of the pandemic. Under the scheme, healthcare workers or individuals providing home support who are resident in Direct Provision were entitled to apply for temporary accommodation in certain defined circumstances.<sup>318</sup> As of May 2020, 40 residents had been granted alternative accommodation under the HSE-provided scheme, while approximately 15 were forced to stop working owing to childcare issues. In the experience of the Irish Refugee Council, while there have been some problems with the scheme, particularly around availability of facilities, the vast majority of residents seeking access to the scheme have been accommodated.

## 2.1. Overcrowding and overall conditions

IPAS 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 Ombudsman in its third commentary on Direct Provision, published in April 2020, expressed his concern over the use of this benchmark in the National Standards for accommodation centres.<sup>319</sup> In line with the Housing Act 1966, Indicator 4.2.2 of the National Standards provides that “A minimum space of 4.65 for each resident per bedroom is provided.”<sup>320</sup> This deviates from the recommendation of the dimensions of a minimum of 7.1m<sup>2</sup> for single bedrooms and 11.4 for double bedrooms as set out in the McMahon report.<sup>321</sup>

When questioned by the Ombudsman about this, the Department of Justice has argued that “increasing bedroom space per person would either reduce the amount of space available for communal areas in centres or reduce the number of people that could be accommodated in each new centre. This in turn would reduce the number that could be moved out of emergency settings.”<sup>322</sup> Accommodation centres

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<sup>316</sup> Health Service Executive, *New Measures to Protect Direct Provision Residents during Covid-19*, 23 April 2020, available at: <https://bit.ly/3sifNwm>.

<sup>317</sup> Department of Justice, Joint Statement from the Department of Justice and Equality and the HSE on Covid testing in Direct Provision Centres, 11 September 2020, available at: <https://bit.ly/2Ke74KI>.

<sup>318</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland – updated February 5 2021*, available at: <https://bit.ly/35hNTa8>.

<sup>319</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2019’, April 2019.

<sup>320</sup> Department of Justice and Equality, *Final National Standards*, 15 August 2019, available at: <https://bit.ly/3cLWi6M>, Standard 4.2.

<sup>321</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 4.55, 163.

<sup>322</sup> Ombudsman, ‘The Ombudsman & Direct Provision: Update for 2019’, April 2019.

are currently at capacity and there are 1,382 individuals resident in emergency accommodation<sup>323</sup> where rooms are frequently shared by three or more people.<sup>324</sup> There have been media reports of eight to ten people sharing one bedroom.<sup>325</sup> The Department of Justice has committed to move towards a maximum of three unrelated people sharing a room.<sup>326</sup>

The onset of Covid-19 further highlighted the issue of overcrowding in Direct Provision, with significant outbreaks of the virus occurring at Direct Provision Centres across the country. As a congregated setting, individuals in Direct Provision share intimate spaces, including bathrooms, dining areas, communal living spaces and laundries, thus making social distancing near impossible. Moreover, at the onset of the pandemic, the vast majority of accommodation centres were at capacity, with media reports indicating that in some centres, up to six unrelated adults were sharing rooms.<sup>327</sup>

On 31 March 2020, the Department of Justice announced that an additional 650 beds had been procedure in order to support the measures required for vulnerable residents in Direct Provision in the context of the Covid-19 crisis. These included the provision of off-site accommodation for self-isolation, as well as increasing capacity so as to accommodate social distancing. However, according to the Irish Refugee Council's 'Powerless' report, which examines the experiences of Direct Provision residents during the pandemic, as of August 2020, 50% of survey respondents were unable to socially distance themselves from other residents. 42% stated that they were still sharing a room with a non-family member, while 46% shared a bathroom with a non-family member.<sup>328</sup>

As of March 2021, the number of unrelated single residents assigned a shared room in IPAS accommodation was 1,892 (an increase from 1,700 in April 2020). This comprised of 1,171 residents in a room assigned to two people and 721 residents in a room assigned to 3 people.<sup>329</sup> Whereby steps were taken to move residents out of Direct Provision so as to permit additional space to social distance, this was largely achieved without consulting residents, while notice provided was extremely short and residents were not informed as to whether the move would be temporary or permanent in nature.

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

In approximately half of Direct Provision Centres, residents receive all meals and are not permitted to cook for themselves.<sup>330</sup> In relation to food, the McMahon Working Group recommended that IPAS should: (a) 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; and (b) include an obligation in new contracts to consult with residents when planning the 28 day menu cycle.<sup>331</sup>

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<sup>323</sup> Minister for Justice Helen McEntee, Response to Parliamentary Question No 582, 15 September 2020, available at: <https://bit.ly/3ih594H>.

<sup>324</sup> Ibid.

<sup>325</sup> Independent.ie, 'Eight or ten people staying in one bedroom', 6 October 2019, available at: <https://bit.ly/3aKrZMu>.

<sup>326</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019.

<sup>327</sup> Irish Times, 'Coronavirus: Outbreaks in Direct Provision could be 'devastating'', 10 March 2020, available at: <https://bit.ly/2N4skEa>.

<sup>328</sup> Irish Refugee Council, *Powerless: Experiences of Direct Provision During the Covid-19 Pandemic*, available at: <https://bit.ly/3pXOaGZ>.

<sup>329</sup> Information provided in correspondence from Minister Roderic O'Gorman to Catherine Connolly TD, further to Parliamentary Questions 602, 603, 612 and 613 of the 3rd of March 2021, available at: <https://bit.ly/3tEMioT>.

<sup>330</sup> Advisory Group on Direct Provision, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 118.

<sup>331</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 4.102, 174.

The final National Standards presented in August 2019 include a theme on food in order to improve the quality, diversity and cultural appropriateness of food provided in accommodation centres including the following:

- ❖ Food preparation and dining facilities meet the needs of residents, support family life and are appropriately equipped and maintained;<sup>332</sup>
- ❖ The service provider commits to meeting the catering needs and autonomy of residents which includes access to a varied diet that respects their cultural, religious, dietary, nutritional and medical requirements.<sup>333</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 had "some form of personal catering", ranging from 'fully fitted kitchens ... for reheating food and preparing breakfast to communal cooking stations.'<sup>334</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." By the end of 2019, over half of all residents in direct provision centres have access to cooking facilities, self-cooking and residents' shops have been established at 18 centres, compared to eight at the end of 2018.<sup>335</sup> This increase is due to IPAS implementation of changes in its approach to contracting. Unless centres comply fully with the McMahon recommendations to provide self-cooking facilities and residents' shops, no contracts for permanent centres will be awarded, or existing contracts renewed.<sup>336</sup>

As the rolling out of IPAS' contract programme is on a regional basis, centres in some regions are getting cooking facilities before those in other places.<sup>337</sup> The Department of Justice stated in August 2019 that "[t]he aim is to have all residents in commercial centres benefitting from independent living (cooking facilities and onsite food hall) by the middle of next year through the ongoing regional procurement process for accommodation centres."<sup>338</sup> In respect of the seven state-owned accommodation centres, as of July 2019, independent living had already been introduced in Athlone and the Department of Justice had initiated discussions with the Office of Public Works regarding the implementation of independent living in the six remaining state-owned accommodation centres.<sup>339</sup> As of October 2020, approximately 52.1% (4,901 of 9,404) of contracted beds in Direct Provision accommodation centres have access to independent living facilities. In respect of the seven state-owned accommodation centres, Athlone remains the only centre in which independent living facilities have been implemented.<sup>340</sup>

During 2019, the Ombudsman received six complaints concerning food, down from nine in 2018.<sup>341</sup> This reduction was attributed to the establishment of self-cooking and residents' shops at ten centres in 2019. The lack of communication and engagement of centre's management with residents was identified as the

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<sup>332</sup> Department of Justice and Equality, Final National Standards, 15 August 2019, available at: <https://bit.ly/3cLWi6M>, Standard 5.1.

<sup>333</sup> *Ibid*, Standard 5.2.

<sup>334</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>335</sup> Department of Justice and Equality, Spending Review on Direct Provision, 15 August 2019, available at: <https://bit.ly/3eVBtrx>.

<sup>336</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019.

<sup>337</sup> *Ibid*.

<sup>338</sup> Department of Justice and Equality, Spending Review on Direct Provision, 15 August 2019, available at: <https://bit.ly/3eVBtrx>.

<sup>339</sup> Minister for Justice and Equality, Reply to Parliamentary Question No 921, 23 July 2019, available at: <https://bit.ly/2Vlpq9C>.

<sup>340</sup> Advisory Group on Direct Provision, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 118.

<sup>341</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019.

cause of most complaints presented regarding food in Direct Provision centres.<sup>342</sup> The Ombudsman received two complaints relating to food in 2020.<sup>343</sup>

All contractors of accommodation centres have the contractual obligation to provide residents with culturally appropriate food options.<sup>344</sup> The menus prepared have to meet the reasonable dietary needs of the different ethnic groups of residents and the reasonable prescribed dietary needs of any person accommodated at the centre.<sup>345</sup> It is also a contractual obligation to provide a 28-day menu and to consult residents on it.<sup>346</sup> In addition to this, a vegetarian option must be included in menus and all food products provided must have a traceability system that complies with food safety requirements.<sup>347</sup> IPAS'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>348</sup> However, complaints about the quality and presentation of food persist across centres.<sup>349</sup>

In February 2021, approximately 100 residents at Ashbourne House accommodation centre in Co. Cork went on hunger strike in a protest action over the provision of food materials at the centre. It is understood that the centre has a small kitchen area where residents are permitted to cook for themselves, however, management have repeatedly turned down requests by residents for food items they could prepare themselves. The protest began following an unsuccessful meeting with centre management, with residents having subsequently written to the Minister for Children, Equality, Disability, Integration and Youth, Roderic O' Gorman.<sup>350</sup>

### 2.3. 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 effectively unfit for its intended purpose, combined with an asylum 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>351</sup>

A shortage of staff at both the IPO and the IPAT appears to be undermining the reduction in delays which the single procedure under the IPA should have introduced. Resourcing issues and the decision to refer each application under the Refugee Act 1996 back for reconsideration under the single procedure has meant that delays have not been reduced and are, in fact, increasing.

Research has demonstrated that even where applicants are eventually granted status, they face a number of difficulties transitioning out of Direct Provision and into independent living due to the length of time they

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<sup>342</sup> *Ibid.*

<sup>343</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2020', March 2021, available at: <https://bit.ly/2PbgkSe>.

<sup>344</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 970, 23 July 2019, available at: <https://bit.ly/35fUMaO>.

<sup>345</sup> *Ibid.*

<sup>346</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 970, 23 July 2019.

<sup>347</sup> *Ibid.*

<sup>348</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

<sup>349</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019, available at: <https://bit.ly/3stSjEp>.

<sup>350</sup> Irish Examiner, 'Residents at Cork Direct Provision centre refuse meals in protest at standards', 17 February 2021, available at: <https://bit.ly/2ZqHICx>.

<sup>351</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>.

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>352</sup>

As of the October 2020, the following periods of stay in Direct Provision have been reported by the Minister for Justice:

Average stay in Direct Provision		
	2020 <sup>353</sup>	
Number of Months	Total	Percentage
0 to 5	333	5%
6 to 11	1,135	16%
1 + Years	2,406	34%
2 + Years	1,377	20%
3 + Years	724	10%
4 + Years	502	7%
5 + Years	317	5%
6 + Years	106	2%
7 + Years	114	2%
Total	7,014	-

## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- 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? 6 months
- Does the law allow access to employment only following a labour market test? ☐ Yes ☒ No
- Does the law only allow asylum seekers to work in specific sectors? ☒ Yes ☐ No  
❖ If yes, specify which sectors: all except Civil Service, Defence, Garda Síochána etc.
- Does the law limit asylum seekers' employment to a maximum working time? ☐ Yes ☒ No  
❖ If yes, specify the number of days per year
- Are there restrictions to accessing employment in practice? ☒ Yes ☐ No

In July 2018, Ireland transposed the recast Reception Conditions Directive following a decision of the Supreme Court in *N.V.H. v Minister for Justice and Equality* in which the Court held that an absolute ban on employment was a breach of the right to dignity under the Irish Constitution. With the legislative ban

<sup>352</sup> Dr. Muireann Ní Raghallaigh, Maeve Foreman and Maggie Feeley, 'Transition: From Direct Provision to life in the Community', June 2016.

<sup>353</sup> Minister for Justice Helen McEntee, Reply to Parliamentary Question No 372, 13 October 2020, available at: <https://bit.ly/3nTOpBr>.



on employment struck down as unconstitutional, the main objection to transposition of the Directive was removed.

The Reception Conditions Regulations permits a person who has been waiting more than nine months for a first instance decision to apply for labour market access.<sup>354</sup> In 2019, the Irish High Court referred to the CJEU a preliminary ruling on a number of questions, with the aim of clarifying the right to access the labour market for international protection applicants in the Dublin procedure, at the time of writing the CJEU has yet to reach a ruling on the matter.<sup>355</sup>

Labour market access consists of permission to be self-employed or to be employed in most sectors of the economy, with an absolute ban on employment in public bodies, such as the Civil Service, Local Authorities, or companies/entities majority owned by the Government or established by way of legislation.<sup>356</sup>

Permission to access the labour market was previously for a six-month, renewable period<sup>357</sup>, however in January 2021, this was extended to 12 months.<sup>358</sup> As a result of the Covid-19 pandemic, applicants whose work permits were due to expire between 21 January 2021 and 20 April 2021 will have their permission extended automatically. This applies whereby an applicant has not yet received a final decision on their international protection claim. This also applies whereby an applicant holds a current, valid permission or a permission that has already been extended under the previous notices issued.<sup>359</sup>

In practice applications are accepted once a person has been waiting for five months for a first instance decision in order to prevent delays once the six-month period has elapsed.

Once a person has been granted permission prior to receiving a first instance decision, that permission lasts throughout any subsequent appeal process. However, if a person has already received a first instance decision, they will not be able to access the labour market no matter how long they may be waiting for a resolution to an appeal. This means that, despite the right to work constituting a significant positive development for newly-arrived protection applicants, those who had been in Ireland the longest and who had already received a first instance decision did not benefit from this change.<sup>360</sup>

On 21 October 2020, the government announced revised arrangements for access to the labour market, including a reduction in the waiting period from nine months to six months from the date of first application for international protection.<sup>361</sup> Further changes include an increase in the validity period of permission to access the labour market from 6 months to 12 months and expanding access to include applicants who received a first instance recommendation prior to the European Communities (Reception Conditions) Regulations 2018 coming into force, provided they meet the criteria established in the Regulations.<sup>362</sup> These changes came into effect from 26 January 2021.<sup>363</sup>

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<sup>354</sup> Regulation 11(3) Reception Conditions Regulations 2018.

<sup>355</sup> CJEU, Reference for a preliminary ruling from High Court (Ireland) made on 23 April 2019 — KS, MHK v The International Protection Appeals Tribunal, the Minister for Justice and Equality, Ireland and the Attorney General(Case C-322/19), available at: <https://bit.ly/2Th7P6Z>.

<sup>356</sup> Regulation 11(9)(a) and Schedule 6 Reception Conditions Regulations 2018.

<sup>357</sup> Regulation 11(5) Reception Conditions Regulations 2018.

<sup>358</sup> Department of Justice, 'Minister McEntee announces reduced 6 month waiting period for international protection applicants to access work' 28 January 2021, available at: <https://bit.ly/3pGZ6lz>.

<sup>359</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland –Updated January 15 2021*, available at: <https://bit.ly/35hNTa8>.

<sup>360</sup> Movement of Asylum Seekers in Ireland (MASI), Submission to Justice & Equality Joint Committee, 27 May 2019, available at: <https://bit.ly/2VHPUI2>.

<sup>361</sup> Department of Justice, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, 21 October 2020, available at: <https://bit.ly/3qh0v9C>.

<sup>362</sup> Irish Legal News, 'Restrictions on asylum seekers access to work to be eased', 22 October 2020, available at: <https://bit.ly/39u6t00>.

<sup>363</sup> Department of Justice, 'Minister McEntee announces reduced 6 month waiting period for international protection applicants to access work' 28 January 2021, available at: <https://bit.ly/3pGZ6lz>.

Additionally, on 14 January 2021, in a judgment delivered in the case of *K.S. & Ors v. The International Protection Appeals Tribunal & Ors*, the Court of Justice of the European Union determined that Article 15 of Directive 2013/33 (Reception Conditions Directive) must be interpreted as precluding national legislation whereby such legislation excludes an applicant for international protection from accessing the labour market on the basis that the applicant has been subject to a transfer decision under the Dublin III Regulation.<sup>364</sup> Following the ruling, persons subject to a Dublin transfer have the right to enter the labour market in Ireland whereby no decision on their substantive protection claim has issued within six months and the individual is not responsible for the delay in progressing their transfer. Taking legal action to challenge the transfer will not be regarded as a delay attributable to the applicant in the circumstances.<sup>365</sup> Approximately 223 judicial review cases, involving 281 persons, were stayed pending the decision.<sup>366</sup>

There are a number of conditions applying to permission to access the labour market with a criminal sanction applying in the event of a breach. An applicant may not employ any person or enter a partnership with another person. An applicant may not be employed or seek to be employed or enter a contract for services with any of the prohibited bodies.<sup>367</sup> An applicant must also inform the Minister of their income and must inform the Minister if they become self-employed or if there is any change to their self-employment.<sup>368</sup>

In addition, employers must inform the Minister within 21 days of employing an asylum seeker in possession of labour market permission and must inform the Minister within 21 days of that employment ceasing.<sup>369</sup> The employer must also maintain records of the particulars of employment including copies of the person's permission to work, the duration of employment, and remuneration paid. Employers must keep these records for three years from the date on which the applicant ceases to be an employee and must provide a copy of these records within ten working days. These additional obligations on employers, which do not apply to other employees, are administratively onerous and may make it less attractive to employ a person seeking asylum. Indeed, the Irish Refugee Council has received reports of employers not recognising the official documents granting permission to work and not employing protection applicants on this basis. This has been echoed by media reporting on the topic in July 2019.<sup>370</sup> It is an offence under the Regulations to fail to comply with these requirements, with an employer potentially subject to a fine of €5,000 and/or a prison term of 12 months.<sup>371</sup>

An applicant who breaches the Regulations on access to the labour market is guilty of a criminal offence which carries a fine of €1,000 and/or a prison term of one month.<sup>372</sup> This would also affect their asylum application.

In practice, protection applicants face significant barriers accessing bank accounts due to difficulties in producing satisfactory identity documents for the purposes of anti-money laundering requirements. This situation continued in 2020. However, in April 2021, the Irish Human Rights and Equality Commission announced that following formal engagement with Bank of Ireland, the Bank had agreed to accept State-issued identity documentation, therefore enabling asylum seekers to open a bank account. The

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<sup>364</sup> Case C-322/19 and C-385/19, *K.S. and Ors v. The International Protection Appeals Tribunal and Ors*, ECLI:EU:C: 2021:11, available at: <https://bit.ly/2NndwQL>.

<sup>365</sup> *Ibid.*

<sup>366</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary Question No 382, 3 June 2020, available at: <https://bit.ly/36eiiqr>.

<sup>367</sup> Regulation 11(9)(a) and (10) Reception Conditions Regulations 2018.

<sup>368</sup> Regulation 11(9)(b) and (c) Reception Conditions Regulations 2018.

<sup>369</sup> Regulation 14 Reception Conditions Regulations 2018.

<sup>370</sup> Dublin Inquirer, 'People Seeking Asylum Say They're Funnelled Into Low-Paid Temp Work, Unable to Use Their Skills', 3 July 2019, available at: <https://bit.ly/2WaV1Qm>.

<sup>371</sup> Regulation 15(2) Reception Conditions Regulations 2018.

<sup>372</sup> Regulation 15(1) Reception Conditions Regulations 2018.



Commission used its statutory powers through a formal process known as an Equality Review. It is hoped that all banks in Ireland will now follow suit in light of this welcome development.<sup>373</sup>

People in the asylum process also face difficulties in accessing a driver licence. In January 2020, the Workplace Relations Commission found that denying the applicant the means to learn how to drive and therefore earn a living was "indirect discrimination".<sup>374</sup> In this case, the individual's application for a learner driver licence was refused after he provided his asylum seeker's Temporary Residence Certificate, his public services card, a copy of his passport and his permission from the Minister for Justice to access the labour market. The State appealed the decision of the Workplace Relations Commission and on appeal, the applicant, whose circumstances had changed, sought only to uphold the award of compensation. The appeal was resolved on the basis that the appeal would be allowed but the RSA would make a payment of €4,000 to the applicant.<sup>375</sup>

Subsequently in July 2020, the Dublin Circuit Court overturned a separate Workplace Relations Commission declaration that the refusal to issue driving licences to asylum seekers was discriminatory. This case concerned an applicant who held a full driving licence in her country of origin. She requested a learner's permit so that she could learn to drive in Ireland with a view to accessing better employment and childcare facilities. Justice O' Connor concluded that, on the basis that the respondent was in the State for the purposes of making an application for asylum, the status of her residence meant that she did not enjoy the same rights as an Irish citizen. Moreover, he did not accept that the state had discriminated against the respondent on account of her race in refusing to provide her with a licence.<sup>376</sup>

On 21 October 2020, the Department of Justice announced that legislation would be brought forward by the Minister for Transport prior to year-end in order to ensure access for asylum seekers to driving licences.<sup>377</sup> In February 2021, the Minister of State at the Department of Transport confirmed that officials in the Department of Transport and the Road Safety Authority are working in close collaboration with various stakeholders to ensure the provision of drivers licences to asylum seekers. However, a definitive date for the implementation of legislation was not provided.<sup>378</sup>

The Temporary Residence Certificate provided to people seeking asylum is the only official document given to people before they receive their status and this is specifically stated as *not* constituting an identity document and, therefore, cannot be relied upon. Employers typically will only pay salary into bank accounts for tax compliance reasons. The same difficulty makes it impossible for protection applicants to obtain a driving licence which inhibits the access to employment, particularly where people live in remote rural areas.

As of July 2020, a total of 6,986 applications for access to the labour market were received by the Department of Justice. 5,109 permissions had been granted, of which 3,889 (76%) were granted to residents in Direct Provision. Employers reported employing 2,539 applicants for international protection, of whom 1,786 were residents in Direct Provision.<sup>379</sup>

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<sup>373</sup> Irish Human Rights and Equality Commission, 'Access to Bank Accounts Confirmed for Asylum Seekers', 11 April 2021, available at: <https://bit.ly/3so8Xo5>.

<sup>374</sup> ADJ-00017832 Correction Order issued pursuant to Section 29 of the Equal Status Act 2000 (as amended), available at: <https://bit.ly/3dwAVXS>.

<sup>375</sup> Irish Human Rights and Equality Commission, 'Court Rules that RSA Regulations Block All Asylum Seekers from Getting Driving Licence', 30 July 2020, available at: <https://bit.ly/3nESyJx>.

<sup>376</sup> *Road Safety Authority v. A.B* [2020] IECC 3, available at: <https://bit.ly/3nGr9XJ>.

<sup>377</sup> Irish Human Rights and Equality Commission, 'Legislation Promised on Driving Licences Fundamental to Access to Employment for Asylum Seekers', 21 October 2020, available at: <https://bit.ly/39v3zrB>.

<sup>378</sup> Minister of State at the Department of Transport Hildegard Naughton, Response to Parliamentary Question No 103, 10 February 2021, available at: <https://bit.ly/3u6PpXa>.

<sup>379</sup> Advisory Group on Direct Provision, *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, 21 October 2020, available at: <https://bit.ly/3qgSmC3>, 76.

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

Asylum-seeking children can attend local national primary and secondary schools on the same basis as Irish children. This has been made an express right under the Reception Conditions Regulations.<sup>380</sup>

The Irish Refugee Council and other organisations raised concern about access to education for children living in emergency accommodation. In November 2019, the Newstalk radio station reported that up to 30 children living in emergency Direct Provision accommodation have not been attending school. The station reported that there were over 100 people living in emergency direct provision at The M Hotel in Carrickmacross, Co Monaghan. Over 20 of them are children of all ages - and for the past two months, none of these children have been attending school.<sup>381</sup> The Irish Refugee Council, in their report 'Reception Conditions Directive: One Year On report' called on the Minister for Education to ensure children in emergency centres are enrolled in school, and it said the use of Bed and Breakfasts and hotels to accommodate protection applicants should be phased out as soon as possible.

When asked, in December 2019, about the issue of children in emergency accommodation not receiving education, the Minister for Education stated that children of international protection applicants are required to receive an education within a three month period following their arrival in this State, allowing for school holiday period, and that the Department of Education has seconded an official to the Department of Justice and Equality to deal with any queries that schools who are enrolling children from accommodation centres may have.<sup>382</sup>

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>383</sup>

Following the onset of Covid-19, particular issues of concern were raised with regard to access to education for children living in Direct Provision. Following the closure of primary and secondary schools in line with public health advice, the vast majority of schools in the state moved to remote learning through a variety of online resources. Residents reported that a lack of access to laptops and internet connectivity presented a significant difficulty for their children in accessing remote education.<sup>384</sup> In addition, it should be noted that school is often regarded by many children resident in Direct Provision as a welcome reprieve from the confines of living within the system. With the indefinite closure of schools as a result of the Covid-19 pandemic, many children have reported feeling a loss of their sense of normality and interaction that comes with the ability to attending school.<sup>385</sup>

<sup>380</sup> Regulation 17 Reception Conditions Regulations 2018.

<sup>381</sup> Newstalk, Up to 30 asylum seeking children receiving no education at centre in Carrickmacross, available at: <https://bit.ly/2TR1qk4>.

<sup>382</sup> KiildareStreet, 3 December 2019, available at: <https://bit.ly/3cokVGa>.

<sup>383</sup> Separated Children's Services, *Youth and Education Services*.

<sup>384</sup> Irish Refugee Council, *Powerless: Experiences of Direct Provision During the Covid-19 Pandemic*, available at: <https://bit.ly/3pXOaGZ>, 47-48.

<sup>385</sup> *Ibid.*

Vocational training is now available to protection applicants who have successfully received permission to access the labour market. Such an applicant may access vocational training on the same basis as an Irish citizen.

There is no automatic access to third level education in Universities and Colleges, or to non-vocational further education courses such as post-leaving certificate courses. Protection applicants can access third level education and non-vocational further education if they can cover the costs of the fees, get the fees waived or access private grants or scholarships.

In order to ameliorate the hardship associated with the high fees which place third level education beyond the reach of many young people in the Direct Provision system, a pilot support scheme was introduced in September 2015, following the publication of the Working Group Report on the Protection Process. The scheme provided support in line with the Student Grant Scheme to eligible school leavers who were in the international protection system (other than those at the deportation order stage) and who were either: asylum applicants; subsidiary protection applicants; or leave to remain applicants. The eligibility requirements were stringent and meant that the vast majority of students did not satisfy the conditions set by the Department of Education. As a result, uptake had been very low, despite clear interest in further and higher education.<sup>386</sup> Concerns were raised that the pilot scheme was so restrictive in nature that it may be very difficult to access.<sup>387</sup> Most notably, in this respect, was the requirement that the applicant must have spent five years in the Irish education system. The Irish Refugee Council recommended that the criteria be amended to reduce the five-year requirement.<sup>388</sup> The Irish Human Rights and Equality Commission (IHREC) also recommended that the pilot support scheme for free fees be altered to remove the criterion of five years as this presents for many an insurmountable barrier to accessing affordable third-level education.<sup>389</sup> For the academic year 2019-2020, the scheme continued.

On 10 August 2020, the Department of Further and Higher Education announced significant changes to the student support scheme for asylum seekers. Prospective applicants are no longer required to have completed the Leaving Certificate examination or have attended an Irish school for three years. Applicants are required to have been accepted on an approved third level course, to have been in the protection process for a combined period of three years and to have been resident in the State for a combined period of three years as of 31 August 2020.<sup>390</sup>

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. This makes accessing third level education prohibitive for the majority of protection applicants.

A number of Irish Universities have taken steps to improve access for protection applicants. A total of seven out of the eight Irish universities offered full-time scholarships. Eight of the 11 institutes of technology also offer scholarships or access support.<sup>391</sup> The Irish Refugee Council's Education Fund, using donations from members of the public, makes grants to support access to higher education. In the academic year 2020-2021 the Fund gave grants to 60 students.

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<sup>386</sup> Irish Times, 'Asylum seekers to receive student grants for first time', 28 August 2015 available at: <http://bit.ly/1P1vfpC>.

<sup>387</sup> See e.g. Subpri.me, *Access to Education and the McMahon report*, available at: <http://bit.ly/1ipZjNo>.

<sup>388</sup> RTE, 'Third level access scheme for asylum seekers extended', 7 September 2018, available at: <https://bit.ly/2CJpRpc>.

<sup>389</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>390</sup> Department of Further and Higher Education, *Student Grant Scheme for Asylum Seekers*, 10 August 2020, available at: <https://bit.ly/3sIF5u>.

<sup>391</sup> Irish Refugee Council, *The Education System in Ireland: A guide for people seeking asylum, those with refugee status, subsidiary protection or permission to remain*.

As regards access to education and vocational training for adults, for protection applicants 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>392</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?  
☒ Yes ☐ No

Access to health care is free for protection applicants living in Direct Provision and is expressly provided for in the Reception Conditions Regulations.<sup>393</sup> The Minister for Health is required to ensure that a recipient has access to emergency health care, treatment for serious illnesses and mental disorders, other health care for maintaining their health, and mental health care assessed as necessary for vulnerable persons.

In practice, a recipient of material reception conditions must apply for a medical card which allows them to attend a local doctor or general practitioner who are located in or attend the Direct Provision accommodation centres. A person with a medical card is entitled to prescribed drugs and medicines and protection applicants living in Direct Provision are exempt from paying the prescription charges levied on medical-card holders.<sup>394</sup> In 2019, the Ombudsman received 12 complaints against the HSE regarding medical cards. There have been issues in the access to medical cards for applicants who have not been screened at Baleskin reception centre.<sup>395</sup> In addition to this, there have been delays in getting Personal Public Services Number for international protection applicants, which are needed to apply for medical cards, mostly due to their initial placement in emergency accommodation.<sup>396</sup> Only one medical sector-related complaint was recorded for 2020. This related to a resident's difficulty in accessing mental health services and getting information on a stay in hospital.<sup>397</sup>

IPAS's website states that "Health screening is made available in our reception centres to all protection applicants 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

<sup>392</sup> For further information see European Commission, ICF study, *Labour market integration of asylum seekers and refugees*, Ireland, April 2016;

See also Irish Refugee Council, *Education in Ireland: A guide for protection applicants those with refugee status, subsidiary protection or permission to remain*, 28 October 2020, available at: <https://bit.ly/3qqssw3>.

<sup>393</sup> Regulation 18 Reception Conditions Regulations 2018.

<sup>394</sup> Citizens Information, 'Prescription Charges for Medical Card Holders', 10 October 2018, available at: <https://bit.ly/2DHShIW>.

<sup>395</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2019', April 2019.

<sup>396</sup> *Ibid.*

<sup>397</sup> Ombudsman, 'The Ombudsman & Direct Provision: Update for 2020', March 2021, available at: <https://bit.ly/2PbgkSe>.

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>398</sup>

Following the onset of Covid-19, specific targeted measures were adopted for newly-arrived asylum seekers. Upon arrival, new applicants were screened on the basis of health questionnaires, subject to temperature checks and were required to self-report symptoms of Covid-19. Based on their personal situation and circumstances, applicants were then transferred to designated facilities for self-isolation. The Health Service Executive (HSE) also identified priority groups for testing, among whom were staff and residents of Direct Provision centres.<sup>399</sup> Healthcare workers, or persons providing home support who live in Direct Provision, were also eligible to apply for alternative temporary accommodation during the pandemic under a scheme established by the HSE.<sup>400</sup> Additionally, two new centres were opened to facilitate off-site self-isolation of residents in Direct Provision.<sup>401</sup> One centre is used to facilitate self-isolation where a resident tests positive for Covid-19, while the other is used to facilitate a mandatory 14-day quarantine period in circumstances where a resident has left their IPAS accommodation temporarily and subsequently seeks to return.<sup>402</sup>

Specialised treatment for trauma and victims of torture is available through an NGO called **SPIRASI** which is a humanitarian, intercultural, non-governmental organisation that works with protection applicants, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. SPIRASI staff have access to certain accommodation centres e.g. **Balseskin** reception centre in Dublin and can help to identify victims of torture. However, 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 2018, the constitutional provision which constituted a prohibition on abortion in Ireland was removed by way of referendum. This meant that access to abortion was made available in Ireland up to twelve weeks’ gestation from January 2019. The previous ban on access to abortion was a particular difficulty for protection applicants who had to apply for travel documents in order to travel to another jurisdiction such as the United Kingdom. This led to enormous emotional distress, delay, and uncertainty for the women affected. Access to abortion is provided by General Practitioners in the first place, with hospital referrals after nine weeks gestation. If the woman has reached the twelve week point, abortion will only be available in exceptional circumstances, including where there is a risk to the life or a risk of serious harm to the health of the woman, or a fatal foetal abnormality. A protection applicant who has reached twelve weeks of pregnancy and does not meet one of the exceptional circumstances noted above, may still have to travel outside of Ireland for a termination.

## 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

Regulation 2(5) of the Reception Conditions Regulations defines a vulnerable person as “a person who is a minor, an unaccompanied minor, a person with a disability, an elderly person, a pregnant woman, a single parent of a minor, a victim of human trafficking, a person with a serious illness, a person with a

<sup>398</sup> RIA, *Medical*, available at: <http://bit.ly/2matETK>.

<sup>399</sup> Irish Examiner, ‘HSE: Direct provision centres receiving priority testing’, 12 May 2020, available at: <https://bit.ly/2BrIRwE>.

<sup>400</sup> Health Service Executive, ‘Temporary accommodation for healthcare workers during COVID-19’, available at: <https://bit.ly/2Y36MsX>.

<sup>401</sup> Minister for Children, Disability, Equality, Integration and Youth Roderic O’Gorman, Response to Parliamentary question No 596, 17 November 2020, available at: <https://bit.ly/2NbAf2n>.

<sup>402</sup> Minister for Children, Disability, Equality, Integration and Youth Roderic O’Gorman, Response to Parliamentary question No 182, 11 February 2021, available at: <https://bit.ly/3rQqF3l>.



mental disorder, and a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence.”

Under the Reception Conditions Regulations, a vulnerability assessment must take place within 30 working days of a person communicating their intention to seek asylum.<sup>403</sup> However, the form of the assessment is not prescribed in the Regulations and a vulnerability assessment had still not been introduced as of the end of 2020, despite a commitment made by the Government in October 2020 that a formal system of vulnerability assessment would be implemented by year-end.

At the end of January 2021, a pilot programme for the conducting of vulnerability assessments was introduced. Assessments are carried out by the International Protection Accommodation Service in conjunction with a social worker from the International Protection Office.<sup>404</sup> As of the beginning of February 2021, the pilot had been extended to all new applicants for international protection. Over 100 applicants have now been assessed and vulnerabilities have been identified in approximately 60% of cases so far.<sup>405</sup>

While an optional health screening is provided at **Balseskin**, this is only a preliminary health screening and does not constitute a vulnerability assessment. The Regulations also provide for a further assessment to take place at any stage during the asylum process where the Minister considers it necessary to do so in order to ascertain whether the recipient has special reception needs.<sup>406</sup> A formal process for ongoing assessment of vulnerabilities and special reception needs has not been introduced by year-end,, although practitioners in the area have begun to make representations in reliance on this aspect of the Regulations.

The onset of Covid-19 has also highlighted the lack of information held by the Government in relation to applicant's vulnerabilities and health issues. When the need to move people out of Direct Provision became apparent at the height of the pandemic, the Department of Justice and Equality lacked adequate data in which it could rely upon to identify residents with particular health conditions or vulnerabilities. In the experience of the Irish Refugee Council, in some cases, centre managers were asked to identify residents with specific health vulnerabilities and many residents reported discomfort at the prospect of having to share their sensitive medical history with a third party.

## 1. Reception of unaccompanied children

Regulation 9 of the Reception Conditions Regulations provides that in all matters pertaining to the reception of children, “the best interests of the child shall be a primary consideration.” For the purposes of assessing a minor’s best interests with respect to reception conditions, the Minister shall have regard to:

- Family unity;
- The minor’s well-being and social development, taking into account the minor’s background;
- Safety and security considerations, in particular where there is a possibility of the minor being a victim of human trafficking;
- The views of the minor in accordance with his or her age and maturity.

With respect to unaccompanied children, specifically, Regulation 10 states that the provisions of the Regulations shall apply to unaccompanied children who have made an application for international protection and designates Tusla as the minor’s representative in all matters pertaining to his or her reception entitlements. Unaccompanied minors are not accommodated in Direct Provision and are either reunited with family or taken into care.<sup>407</sup>

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<sup>403</sup> Regulation 8(1)(a) Reception Conditions Regulations.

<sup>404</sup> Irish Examiner, ‘State’s pilot project on vulnerability of asylum seekers is too limited’, 12 February 2021, available at: <https://bit.ly/3jH32ro>.

<sup>405</sup> Information provided by the Department of Children, Equality, Disability, Integration and Youth, April 2021.

<sup>406</sup> Regulation 8(1)(b) Reception Conditions Regulations.

<sup>407</sup> Samantha Arnold and Muireann Ní Raghallaigh, ‘Unaccompanied minors in Ireland: Current Law, Policy and Practice’ (2017) 15:1, Social Work and Society, available at: <https://bit.ly/2Ex2fWX>.

## 2. Reception of families with children

In addition to regard for the best interests of the child under Regulation 9, Regulation 10 of the Reception Conditions Regulations sets out the standards pertaining to the designation of accommodation, which includes provisions relevant to children and families with children. The Minister shall take account of *inter alia* family unity (where family members of the recipient are recipients and are present in the territory of the State) and gender and age specific concerns.

In particular, when designating accommodation to children, the Minister shall have regard to (a) the need to lodge a child with his or her parents, unmarried minor siblings or an adult responsible for him or her (provided it is in their best interests), and (b) the need for the accommodation centre to be suitable to meet all of the child's needs.

There are five centres which accommodate families with children; two which accommodate families and single females. Families are otherwise accommodated with the general population. Children are accommodated together with their families in Direct Provision accommodation centres. In his 2019 report to Parliament, the Special Rapporteur on Child Protection, Professor Geoffrey Shannon, criticised the Direct Provision, stating "As noted in numerous other Rapporteur reports, the system of Direct Provision for asylum seekers in Ireland should be abolished."<sup>408</sup>

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

Victims of torture have access to dedicated support service of NGOs, such as SPIRASI but this is curtailed by the practice of accommodating such applicants in isolated accommodation centres and limited funding for organisations, such as SPIRASI, which provide dedicated support.

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

### 1. Provision of information on reception

The Reception Conditions Regulations provide that the Minister must, within 15 working days from the date on which a person indicates their intention to seek asylum, in writing (in a language they understand) inform them of the material reception conditions to which they are entitled under the Regulations and the contact details of relevant organisations who may offer support.<sup>409</sup>

In the experience of the Irish Refugee Council, newly arriving protection applicants are not being provided with information regarding material reception conditions or the contact details of organisations which can offer support for accessing those entitlements.

With the current crisis in accommodation for protection applicants, new short-term arrangements have been established as the usual initial reception centre at **Balseskin** has been full (see [Types of Accommodation](#)). One of the many problems which this has created is the absence of information and a clear line of communication regarding the international protection process and entitlements around reception conditions. The Irish Refugee Council and other organisations like Movement of Asylum Seekers Ireland and Jesuit Refugee Service Ireland conducted outreach to emergency centres in 2019 in an effort to provide applicants with key information. In the experience of the Irish Refugee Council, many applicants are unaware of the process for seeking international protection, their entitlements, their obligations, their rights etc. which is creating additional stresses for people in this situation.

<sup>408</sup> Professor Geoffrey Shannon, *Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, September 2019, available at: <https://bit.ly/2AyNV0H>, 81.

<sup>409</sup> Regulation 3 Reception Conditions Regulations 2018.



Information is provided by the IPAS on rights and obligations in reception and accommodation through the House Rules and Procedures, which are available in each centre (but which are not “House Rules” as defined in the Regulations). These rules are available in 10 different languages, aside from English, on the RIA’s website (now IPAS which is pending a website update).<sup>410</sup> The House Rules and Procedures document was updated in January 2019, in accordance with Regulation 25 of the European Communities (Reception Conditions) Regulations 2018.

According to the IPAS annual report 2017, RIA has established information clinics on a bi-annual basis (at least) to provide information on a one-to-one basis and also review the operation of the Direct Provision centre.<sup>411</sup>

It is regrettable that no annual report for 2018, 2019 or 2020 has been published. Indeed, no monthly reports have been published since November 2018, which means that information is in very short supply at a time when the reception process in Ireland is under serious strain. This makes it exceptionally difficult for external actors to maintain adequate oversight of the system.

At the outset of the Covid-19 pandemic, public health information was distributed to residents through the circulation of notices in multiple languages. However, as previously noted, when steps were taken to move people out of Direct Provision at the height of the pandemic so as to permit residents additional space to social distance, this was largely achieved without consulting residents, while notice provided was extremely short and residents were not informed as to whether the move would be temporary or permanent in nature.

## 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

With the introduction of the Reception Conditions Regulations, there is now an express right of access to accommodation centres, subject to limitations. The Regulations provide access to a list of people and organisations including family members, legal advisors, UNHCR and other relevant NGOs. This access is specifically granted “in order to assist the recipient”.<sup>412</sup> This list does not include, for example, friends of applicants or journalists.

The right of access for the people and organisations listed is stated to be limited only to the extent necessary to ensure the security of the accommodation centre and its residents.<sup>413</sup>

The right of access to accommodation centres for guests was the subject of litigation in the case of *C.A. and T.A.*<sup>414</sup> In that case, the Court held 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>415</sup>

It remains the case in practice that access is granted on a discretionary basis with permission being subject to approval from IPAS or the centre management. Residents may invite guests into the centres, but they are confined to the communal areas. According to the House Rules and Procedures for Reception

<sup>410</sup> RIA, *Reception and Accommodation Centres House Rules and Procedures revised January 2019*, available at: <https://bit.ly/2AgDIFT>.

<sup>411</sup> Department of Justice and Equality, *RIA Annual Report 2016*, available at: <http://bit.ly/2E8mkRy>, 42.

<sup>412</sup> Regulation 7(6)(b) Reception Conditions Regulations 2018.

<sup>413</sup> Regulation 7(7) Reception Conditions Regulations 2018.

<sup>414</sup> *C.A. & Anor v. Minister for Justice and Equality and Ors* [2014] IEHC 532, 14 November 2014, available at: <https://bit.ly/3u69tsM>.

<sup>415</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: <https://bit.ly/3dINrCL>.

and Accommodation Centres, visiting is generally allowed between 10am and 10pm (8pm for children unless they are with a parent / guardian). The centre manager may restrict the number of visitors at any one time if s/he believes there might be a health and safety risk. The centre manager may also refuse entry or ask visitors to leave if s/he has reason to believe they may cause a threat to residents or centre property. In this case, the centre manager will notify IPAS the reasons for such a refusal.<sup>416</sup>

In general, access depends on the relationship between the person seeking access and IPAS 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 anecdotal examples some election candidates for local elections were also refused entry to accommodation centres as well as a parish priest in another incident. In November 2019, a candidate in a bi-election for the Irish parliament visited a Direct Provision centre to directly meet with protection applicants after claiming children as young as three could have been influenced or manipulated by ISIS before arriving in Ireland. The comments, and the subsequent visit, were widely criticised.<sup>417</sup> The Working Group report recommended that IPAS ensure in Direct Provision centres that rooms without CCTV are available for receiving visitors, social workers, legal representatives and other advocates.<sup>418</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 IPAS failed to respond to Nasc's request for information.<sup>419</sup>

Throughout the Covid-19 pandemic and associated restrictions all visits to Direct Provision centres and temporary accommodation centres were suspended, except in circumstances whereby the visit was deemed to be for an essential purpose.

## G. Differential treatment of specific nationalities in reception

In the Direct Provision system, there is no differential treatment of different nationalities that has been noted to date. There have been comparisons drawn between Direct Provision and EROC, the latter of which tends to have a wider array of orientation and integration supports to assist relocated and resettled refugees – who are predominantly **Syrian**. Most recently, in December 2020, plans announced for the transfer of 86 Syrian refugees to the Ballaghaderreen Emergency Reception and Orientation centre (EROC) in Co. Roscommon under the Irish Refugee Protection Programme.<sup>420</sup>

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<sup>416</sup> House Rules and Procedures For Reception and Accommodation Centres, January 2019.

<sup>417</sup> Irish Examiner, Verona Murphy won't be axed from FG ticket as party disassociate themselves from comments, 20 November 2019, available at: <https://bit.ly/2RIG6KR>.

<sup>418</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>419</sup> Nasc, *Working Paper on the Implementation of the Working Group Recommendations*, December 2017. 48.

<sup>420</sup> RTÉ, 'Call for liaison with HSE ahead of refugees' arrival', 2 December 2020, available at: <https://bit.ly/37fxuE7>

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of asylum seekers detained in 2020:	Not available
2. Number of asylum seekers in detention at the end of 2020:	Not available
3. Number of detention centres:	Not available
4. Total capacity of detention centres:	Not available

It should be noted that, in general, Ireland places very few protection applicants or migrants in immigration detention and data for the numbers of people detained who subsequently apply for international protection are not collated.

Protection applicants and immigrants who may be detained generally fall in to six categories:

- ❖ Non-nationals who arrive in Ireland and are refused “leave to land” (see [Access to the Territory](#));
- ❖ Protection applicants who are deemed to engage one of the categories of Section 20(1) IPA (see [Grounds for Detention](#));
- ❖ Protection applicants 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 2018 there were 414 committals in respect of immigration issues involving 406 detainees compared to 418 committals involving 396 detainees in 2017.<sup>421</sup> There is no available data for 2020. However, according to the International Protection Office, 37 applications for international protection were made from persons in detention in 2020. The reason for the applicant’s detention is not known.<sup>422</sup>

Furthermore, there are no specially designated detention centres for protection applicants and irregular migrants. Protection applicants are detained within the general prison population, at a Garda Síochána (police) station or another designated place of detention. Places of detention are set out in S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016, which was amended by the Reception Conditions Regulations 2018 to designate places of detention as “Every Garda Síochána Station [and] Cloverhill Prison.” There is no reference in legislation to the detention facility envisaged for **Dublin Airport** and as far as the authors are aware it has not opened yet.

<sup>421</sup> Irish Prison Service, *Annual Report 2018*, available at: <https://bit.ly/36jyeVu>, 25.

<sup>422</sup> Information provided by the International Protection Office, April 2021.

## B. Legal framework for detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

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

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

#### 1.1. Detention under the International Protection Act 2015

Section 20 IPA provides that protection applicants 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.

These grounds have remained intact despite the adoption of the Reception Conditions Regulations 2018. Some of the provisions of Section 20 IPA – namely detention based on the commission of a serious non-political crime, the intention to leave the State and unlawfully enter another, acting in a manner undermining the asylum system, or destroying identity or travel documents – are not in conformity with the exhaustive grounds set out in Article 8(3) of the recast Reception Conditions Directive.

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 seek legal assistance and legal representation;
- ❖ Are entitled to be informed of his or her entitlement to said legal assistance and representation, and his or her right to make a complaint under Article 40.4.2 of the Constitution and the procedures for doing so;
- ❖ Are entitled to be given a copy of the warrant under which he or she is being detained;
- ❖ 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 the planned establishment of a dedicated detention facility at Dublin Airport could lead to increased detention in practice, however this facility has not yet opened.<sup>423</sup>

## 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>424</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

<sup>423</sup> The Irish Times, 'Dedicated immigration facility still not operational', 11 August 2020, available at: <https://bit.ly/3spUCJ6>.

<sup>424</sup> Section 78(11) IPA.

Síochána determines that there is a “significant risk of absconding”.<sup>425</sup> The criteria for determining such a risk have not been spelt out in legislation.

## 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, as of January 2021, there are no known cases of this being applied in practice.

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 Garda Síochána.<sup>426</sup>

A member of the Garda Síochána may arrest without warrant and detain, in a place of detention, a person who in their opinion has failed to comply with the Court’s reporting conditions under Section 20(9) IPA. In such a case the applicant shall be brought before the District Court again and if the judge feels grounds for detention apply under subsection (9) or (3) above then they may commit the applicant for further periods (each period being a period not exceeding 21 days) pending the determination of the person’s application for international protection under Section 20(12) 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 whether other vulnerable applicants have been detained in practice, 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

<sup>425</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

<sup>426</sup> Section 20(5) IPA.



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.

Regulation 19(9) of the Reception Conditions Regulations sets out standards for the detention of vulnerable persons: “Where a detained applicant is a vulnerable person, the Minister shall ensure, taking into account the person’s particular situation, including his or her health, that—

- (a) the person is monitored regularly, and
- (b) he or she is provided with adequate support.”

There is no known case of this provision having been applied as of January 2021.

#### 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 |

There is no maximum duration for detention set out in the IPA and the Reception Conditions Regulations 2018 fail to include the provision that an applicant “shall be detained for as short a period as possible” in line with Article 9 of the recast Reception Conditions Directive. However, detention under the Dublin Regulation shall not exceed seven days.<sup>427</sup>

Data is not available on how long protection applicants 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.

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.

### 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)? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure?   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Places of detention are set out in S.I. 666/2016 – International Protection Act 2015 (Places of Detention) Regulations 2016, which was amended by the Reception Conditions Regulations 2018 to designate places of detention as “Every Garda Síochána Station [and] Cloverhill Prison.”

Prior to the Regulations, women were generally detained at the **Dóchas Centre** in Dublin which has a capacity of 105 places. Men were generally detained at **Cloverhill Prison** in west Dublin which has a capacity of 431. Following the introduction of the Regulations, the Dóchas Centre was not listed as a place of detention and it is therefore unclear where female detainees are to be held in practice. However,

<sup>427</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

according to reports from various observers, the Dóchas Centre remains the primary detention facility for holding female detainees.<sup>428</sup>

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>429</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 ten months before becoming operational.<sup>430</sup> As mentioned in [Access to the Territory](#), that facility is still not operational as of January 2021, despite the Minister for Justice indicating that it would be operational by the end of 2018.

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>431</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.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

As mentioned in [Place of Detention](#), the Reception Conditions Regulations amend the places an asylum seeker can be detained to include any police station and **Cloverhill Prison**. Whether this means that female detainees will now no longer be detained in a female-only prison is unknown.

Regulation 19 of the Reception Conditions Regulations sets out detention conditions in that detained applicants shall: (a) be kept separately from any prisoner detained in the place of detention; (b) be kept separately from other third country nationals who are not applicants and who are detained in the place of detention; and (c) have access to open air spaces.

With respect to vulnerable applicants who are detained, Regulation 19(9), provides that the Minister shall ensure that the person is monitored regularly and that he or she is provided with adequate support, taking into account the person's individual situation, including their health.

<sup>428</sup> Global Detention Project, *Ireland Immigration Detention Profile*, August 2019, available at: <https://bit.ly/3nQ55tP>.

<sup>429</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>430</sup> Irish Times, 'Work on Dublin Airport immigration detention centre to begin', 28 July 2017, available at: <http://bit.ly/2r8zKKE>.

<sup>431</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.

Under Regulation 19(6), all applicants are entitled to information on (a) the rules applicable to the place of detention and (b) that person's rights and obligations while detained, in a language they can understand, which should include their entitlement to legal representation.

In late November 2020, the European Committee for the Prevention of Torture released its 7<sup>th</sup> periodic visit report on Ireland. In the report, the Committee reiterated its long-standing call for Irish authorities to suspend the use of prisons for immigration detention, noting 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>432</sup> The Committee reported that it had met with several immigration detainees who detailed the harassment and abuse they had received from other prisoners. It noted, for example, a case whereby a "middle-aged diminutive foreign national was placed in a cell with two young remand prisoners who allegedly attempted to rape him as well as physically aggressed and verbally intimidated him."<sup>433</sup>

Particular issues of concern also emerged regarding the spread of Covid-19 in prisons that are used to hold immigration detainees. In this regard, a number of measures were implemented in prisons in an attempt to combat the spread of Covid-19. At the onset of the pandemic, the Minister for Justice granted temporary release to a number of low risk prisoners in order to reduce occupancy and enable greater social distancing throughout the prison system. Information leaflets and newsletters are regularly handed out to prisoners and staff in order to raise awareness of the particular risks posed by Covid-19 in a custodial environment and to provide updates on the measures being taken by the service to keep prisoners and staff safe.<sup>434</sup> The Irish Prison Service has also implemented Covid-19 screening measures at all prisons and any prisoner who experiences symptoms of Covid-19 is immediately assessed by prison healthcare staff, isolated and tested where necessary. The Irish Prison Service has opened a specific unit at Cloverhill Prison to allow for the isolation of confirmed Covid-19 cases among the prison population. This unit is used to accommodate symptomatic prisoners until such a time as they are cleared from isolation through the Covid-19 testing process.<sup>435</sup>

As of January 2021, the total number of prisoners tested positive for Covid-19 since March 2020 was 51.<sup>436</sup> In **Cloverhill Prison**, a number of inmates and staff are known to have contracted the virus, while five prisoners in the **Midlands Prison** were also reported to have tested positive as of October 2020. Both the Cloverhill and Midlands prisons are used to confine migrants and asylum seekers.

### 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

Regulation 19(4) of the Reception Conditions Regulations states that a detained applicant "shall be entitled to communicate with and receive visits from, in conditions that respect privacy – (a) representatives of the UNHCR, (b) [...]family members, legal representatives and representative of relevant, non-governmental organisations."

<sup>432</sup> European Committee for the Prevention of Torture, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 23 September to 4 October 2019, 24 November 2020*, available at: <https://bit.ly/3p2o2La>, 17.

<sup>433</sup> *Ibid*, 17.

<sup>434</sup> Department of Justice, *Information regarding the Justice Sector COVID-19 plans*, 13 November 2020, available at: <https://bit.ly/3aoww9r>.

<sup>435</sup> *Ibid*.

<sup>436</sup> Irish Prison Service, *Confirmed Cases of Covid 19 in Irish Prisons*, 21 January 2021, available at: <https://bit.ly/3arJKDg>.

Limitation on the above is permitted in circumstances where such restriction is deemed “necessary to ensure the good governance of, or safe or secure custody in, the place of detention.”

## 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 Legal Aid Board provides representation for those 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

Regulation 19 of the Reception Conditions Regulations 2018 provides that a detained applicant has access to representatives of the UNHCR, as well as “family members, legal representatives and representatives of relevant, non-governmental organisations.” A consultation with a representative may take place in the sight but out of the hearing of a member of the Garda Síochána.

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.

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. Such 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 Legal Aid Board can provide legal assistance to protection applicants who are detained. No NGO provides routine legal assistance to detained protection applicants, however the Irish Refugee Council Law Centre, as well as private practitioners working in asylum law, may provide such support.

#### **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>437</sup> For **refugees** this grants permanent residency and an Irish Residence Permit (formerly the 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 three 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 five years from the date they were granted subsidiary protection.

For renewal of their residence card, refugees do not require a letter from the ISD. However, subsidiary protection beneficiaries do require a letter from ISD to receive a further three years of stay in Ireland. No further information was available on any difficulties related to this process. In 2016, the Department of Justice introduced a new online booking system to address the long queues that migrants living in Dublin faced outside the ISD office at Burgh Quay to register for or renew their residence card. However, issues are still being reported using the online booking system, although a set of software fixes were introduced in September 2018 to prevent the booking of block appointments with internet bots. The Department of Justice announced in 2018 that there would be a tender to replace this system but by the end of 2019 it stated that the tender wouldn't be advertised until the New Year.

In June 2020, an online immigration permission renewal system was launched. The system was initially made available to students living and studying in Dublin and has subsequently been extended to all applicants living in the Dublin area. Under the new online system, applicants must complete their renewal form online, upload copies of supporting documents and pay the applicable fee.<sup>438</sup> It should be noted that applicants living outside of Dublin must still appear in person at their local Garda station in order to renew their immigration status, while first-time registrations must also be done in person, regardless of where the applicant lives.

A revised online appointment booking system was established in December 2020 for applicants living outside of Dublin.<sup>439</sup> However, following the implementation of further restrictions to curb the spread of Covid-19, refugee and subsidiary protection beneficiaries, whose permission to reside in the State was due to expire between 21 January 2021 and 20 April 2021, received automatic renewal of their permission to reside in the State on the same basis as the existing permission and with the same conditions attached.

<sup>440</sup> This was the sixth extension of immigration permissions implemented since the outset of the pandemic in March 2020.

<sup>437</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>438</sup> Irish Times, 'Wait for immigration renewals drops to 2-3 weeks – Minister for Justice', 2 December 2020, available at: <https://bit.ly/2NdAgmu>.

<sup>439</sup> *Ibid.*

<sup>440</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland - updated 5 February 2021*, available at: <https://bit.ly/35hNTa8>.



## 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>441</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 three months of the birth taking place.<sup>442</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>443</sup>

For a marriage to be considered legal in Ireland, the relevant Registrar's Office must be notified, in person, at least three 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 a work permit, work authorisation or working visa conditions. Applications for long-term residency do not apply for persons granted refugee status or granted permission to remain on humanitarian grounds. It also does not apply for people who entered the State under a family reunification scheme.<sup>444</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 2020:                 | 4,326 <sup>445</sup> |

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 ISD. This amended form was introduced in

<sup>441</sup> Civil Registration Service, information available at: <https://bit.ly/2usn7M7>.

<sup>442</sup> *Ibid.*

<sup>443</sup> Civil Registration Service, *Translated Information*: <https://bit.ly/2pLwGkr>.

<sup>444</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>445</sup> Minister for Justice Helen McEntee, Response to Parliamentary question No 721, 13 January 2021, available at: <https://bit.ly/3dtk6jx>.

This figure relates to grants of citizenship generally. Information regarding the number of citizenship grants to beneficiaries of international protection was not published at the time of writing.

September 2016 and now applicants must submit their original passports with their application for naturalisation.<sup>446</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 10,158 people – including 3,136 children – were granted Irish citizenship in 2018.<sup>447</sup> Of these, 51 people previously held refugee status.<sup>448</sup> Whilst exact figures for Irish citizenship grants are not available for 2019, at the end of August 2019, 30 people with refugee status became naturalised.<sup>449</sup> Further statistics were not released by INIS in 2020.

According to research published by the European Migration Network in August 2020, Ireland has more favourable conditions for acquiring citizenship by naturalisation than many other EU Member States. However, long processing delays and lack of clarity regarding eligibility conditions have been raised as issues of significant concern by NGOs and in parliamentary debate.<sup>450</sup>

Moreover, the onset of the Covid-19 pandemic and associated restrictions has resulted in significant disruption to the delivery of services by the Citizenship Division of the Immigration Service Delivery. As of December 2020, the processing time for standard naturalisation applications was approximately 12 months.<sup>451</sup> On 18 January 2021, it was announced that the obligation to attend citizenship ceremonies would be temporarily replaced during COVID-19, with an alternative requirement for citizenship applicants to sign an affidavit declaring loyalty to the State. Upon the return of a fully completed declaration, the Department of Justice will issue a certificate of naturalisation. It is anticipated that this system will remain in place until at least the end of May 2021.<sup>452</sup>

## 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? ☐ Yes ☒ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☒ Yes ☐ With difficulty ☐ No

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

The 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:

<sup>446</sup> The application form is available at: <https://bit.ly/2Blhnrx>.

<sup>447</sup> INIS, 'Minister Flanagan announces that over 10,000 people were granted Irish citizenship in 2018, 1 January 2019, available at: <https://bit.ly/2sIOq14>.

<sup>448</sup> Minister of Justice and Equality, Reply to Parliamentary Question No 131, 18 September 2019, available at: <https://bit.ly/3cGdN8G>.

<sup>449</sup> Ibid.

<sup>450</sup> European Migration Network, *Pathways to citizenship through naturalisation in Ireland*, 7 December 2020, available at: <https://bit.ly/3oJ7Puc>.

<sup>451</sup> Minister for Justice Helen McEntee, Reply to Parliamentary Question No. 58, 10 December 2020, available at: <https://bit.ly/3sDIK7e>.

<sup>452</sup> Department of Justice, 'Minister McEntee opens temporary process for granting citizenship during Covid-19', 18th January 2021, available at: <https://bit.ly/2XOi7x5>.

- ❖ 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 2018 or 2019. According to statistics released by the Department of Justice, there have been no decisions relating to cessation of refugee or subsidiary protection status in 2020.<sup>453</sup>

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. There is no information on withdrawal or revocation of protection status to date and it would appear to be a rare occurrence in the Irish context.

<sup>453</sup> Minister for Justice Helen McEntee, Reply to Parliamentary Question No. 693, 3 March 2021, available at: <https://bit.ly/3t25jB1>

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

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

#### 1.1. Family reunification under the International Protection Act 2015

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.

The 12-month time limit for family reunification was the subject of a challenge of constitutionality before the Supreme Court in the case of *A v. Minister for Justice & Equality & Ors, S v. Minister for Justice & Equality & Ors and I v. Minister for Justice & Equality & Ors*. [2020] IESC 20. The case concerned an applicant who became estranged from her family in 2011 and travelled to Ireland as an unaccompanied minor. She subsequently applied for, and was granted, international protection in 2014. After resuming phone contact with her family in 2018, she applied for family reunification with her parents and sister but the applicant was refused on the basis that it was not brought within the 12-month time frame specified by s.56(8). In a judgment delivered on 8 December 2020, Justice Dunne determined that the 12-month time limit established pursuant to s.56(8) of the 2015 Act was not unconstitutional nor was it incompatible with the ECHR. The Court noted in its decision that it remained open to the applicant to apply under the 2016 Family Reunification Policy Document, whereby the Minister for Justice can exercise her discretion to grant family reunification on humanitarian grounds.<sup>454</sup>

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 Unit 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

<sup>454</sup> *A v. Minister for Justice & Equality & Ors, S v. Minister for Justice & Equality & Ors and I v. Minister for Justice & Equality & Ors*. [2020] IESC 20, available at: <https://bit.ly/3oHD5JW>.

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>455</sup> The bill would amend the IPA 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. The bill went before the Seanad in November 2018 where it was passed by 29 votes to 17.<sup>456</sup> The bill proceeded to the Dáil and was considered by the Oireachtas Justice and Equality Committee. The Committee called on the Government to support legislation which would give refugee families the chance to apply for their loved ones to join them in Ireland and that a 'money message' be granted and that the bill proceed to Dáil committee stage. This 'money message' was denied. The bill has now lapsed with the dissolution of the Dáil. The Irish Refugee Council and other organisations advocated for it to be placed back on the Dáil order paper. On 9 December 2020, it was announced that the Bill would be restored for further debate before the Dáil.

Following the onset of Covid-19 and associated restrictions, applicants experienced significant delays in the processing of applications for family reunification. DNA testing was suspended, which has further delayed a number of cases, and there has been no indication of a recommencement date.

## 1.2. The Irish Humanitarian Admission Programme (IHAP)

On 14 November 2017, the government announced the introduction of a Family Reunification Humanitarian Admission Programme (FRHAP), which was later renamed the Irish Humanitarian Admission Programme (IHAP).<sup>457</sup> 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.

UNHCR's Information Note on the IHAP sets out more information on the rationale behind the scheme:

"The IHAP is additional and complimentary to existing rights and entitlements to family reunification under Irish law. The programme will provide an opportunity to Irish citizens and persons with Convention refugee status, subsidiary protection status, and programme refugee status, who have immediate eligible family members from the top 10 major source countries of refugees, to propose to the Minister for these family members to join them in Ireland.

Up to 530 persons will be given the opportunity to join immediate family members in Ireland under the programme."<sup>458</sup>

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<sup>455</sup> Irish Times, 'Senators seek expanded family reunification rights for refugees', 19 July 2017, available at: <http://bit.ly/2tM049C>.

<sup>456</sup> Oxfam Ireland et al., 'Refugee family reunification bill progresses to the Dáil', 5 December 2018, available at: <https://bit.ly/2ZTj89B>; See also Oireachtas, *International Protection (Family Reunification) (Amendment) Bill 2017*, available at: <https://bit.ly/2TeGzUN>.

<sup>457</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>.

<sup>458</sup> UNHCR, *FAQ: What is the Humanitarian Admissions Programme 2 (IHAP)*, 2018, available at: <https://bit.ly/2TeH4OF>.

The ISD website sets out the eligibility criteria.<sup>459</sup> On the one hand, proposed beneficiaries of the programme must be nationals of one of ten countries: **Syria, Afghanistan, South Sudan, Somalia, Sudan, DRC, Central African Republic, Myanmar, Eritrea or Burundi.**

In addition, proposed beneficiaries must be eligible family members i.e. one of the following:

- Unmarried adult child without dependants;
- Unmarried minor child who is not eligible for family reunification under IPA;
- Parent who is not eligible for family reunification under IPA;
- Grandparent;
- Related unmarried minor child without parents for whom the sponsor has parental responsibility e.g. orphaned niece, nephew, sibling;
- Vulnerable close family member who has no spouse / partner or other close relative to support them;
- Spouse or civil partner as recognised under Irish law who is not eligible for family reunification under IPA, or *de facto* spouse.

The programme also takes into account a sponsor's existing living arrangements and their capacity to accommodate family members under the scheme.

The first open calls for proposals ran from 14 May to 30 June 2018. A larger number of applications than were anticipated were received, however, just 80 applications were granted.<sup>460</sup> A second call for proposals was opened on 20 December 2018 and ran until 8 February 2019. At the date of completion of this report, not all decisions under the second round of the IHAP scheme had issued, despite the scheme having closed in February 2019. The Department of Justice was aiming to finalise all IHAP 2 decisions by the end of 2020. Some decisions were issued in late December 2020 and early January 2021, however a small number of decisions remain outstanding. There is no appeal mechanism against a negative IHAP decision though there is anecdotal evidence that some negative decisions have been overturned following an administrative review.

### 1.3. Community Sponsorship Ireland (CSI)

In 2018, Community Sponsorship Ireland (CSI) was established as a complementary refugee resettlement stream to the traditional state-centred model. CSI has been developed in cooperation with the Government of Ireland, Refugees and Citizenship Canada (IRCC), and civil society organisations such as: UNHCR, the Irish Red Cross, NASC, Irish Refugee Council and Amnesty International Ireland. This programme gives private citizens and community-based organisations an opportunity to directly support a refugee family newly arrived to Ireland.

Through CSI, sponsoring communities support integration into Irish society of refugee families by providing a home and offering opportunities to connect with the local services they need, such as English language tuition, employment, and education pathways.

A pilot CSI programme commenced in December 2018 has now concluded. During this pilot phase, 5 refugee families (17 persons) were warmly welcomed by host community groups in counties Cork, Waterford and Meath. A further family is to be received by a host community in Dublin in December. After this successful pilot scheme an evaluation review was undertaken to inform the development of a scaled-

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<sup>459</sup> INIS, *Irish Refugee Protection Programme Humanitarian Admission Programme 2 (IHAP)*, available at: <https://bit.ly/2wEuoJJ>.

<sup>460</sup> Irish Times, 'Refugee reunification scheme re-opens with second call for applicants', 21 December 2018, available at: <https://bit.ly/2RJY3vp>.



up national programme. On the 15 November 2019, Minister of State, David Stanton, officially launched the Community Sponsorship Ireland Scheme.<sup>461</sup>

One family arrived in Ireland under the Community Sponsorship in late December 2020. A further two families are due to arrive in Ireland in the coming weeks. The Irish Refugee Council also supported one Community Sponsorship Group who facilitated the resettlement of one family in Ireland in 2019.

## 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.

Beneficiaries of international protection were subject to the same public health measures as Irish nationals throughout the Covid-19 pandemic. For example, as of March 2021, this included a limit on exercise within a 5km radius of one's home and travel for essential purposes only, such as medical appointments, food and other necessities as established in Government Guidelines.

### 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 ISD 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>462</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>461</sup> Department of Justice and Equality, 'Minister Stanton Officially Launches Refugee Community Sponsorship Ireland', 15 November 2019, available at: <https://bit.ly/3f4FgCR>.

<sup>462</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, submit four passport-sized photographs, 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>463</sup>

According to the ISD, the validity of travel documents for a holder of a "1951 Convention Travel Document" (person with **refugee status**) is ten years, in line with the validity of Irish passports.<sup>464</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 three years from when status is granted under Section 23 of the European Union (Subsidiary Protection) Regulations 2013.<sup>465</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>466</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>467</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>468</sup> Holders of Irish refugee and subsidiary protection documents do not require a re-entry permit upon return to Ireland.<sup>469</sup>

Following the onset of the Covid-19 pandemic, the government advised against all travel outside of Ireland for non-essential purposes. In February 2021, following a significant increase in the rate of Covid-19 infection in Ireland, new restrictions targeting non-essential travel overseas were announced by Government. These included fines for those leaving the country for non-essential purposes, as well as mandatory hotel quarantine on arrival from certain destinations. Legislation enforcing these restrictions was due to be introduced by mid-February 2021.<sup>470</sup>

Following the announcement of further restrictions on travel, the Irish Refugee Council wrote to the Minister for Justice, Helen McEntee and the Minister for Health, Stephen Donnelly, outlining the importance of ensuring continued access to the protection process and raising issues with regard to mandatory hotel quarantine. It was emphasised that access to the protection process at Irish airports should not be affected or curtailed by any of the changes made as a result of banning non-essential travel. Moreover, particular concern was raised in relation to the cost of mandatory quarantine for individuals arriving under family reunification procedures of the International Protection Act 2015 or to seek international protection under the Act. It was requested that both categories of individuals be considered

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<sup>463</sup> Department of Justice and Equality, *Travel Document Application Form*, available at: <https://bit.ly/2MgK7DY>; INIS, *Travel Document Photo Requirements*, available at: <https://bit.ly/2pNZUhK>; INIS, *Travel Document Information Note*, available at: <https://bit.ly/2lb8miT>.

<sup>464</sup> *Ibid.*

<sup>465</sup> Regulation 23 European Union (Subsidiary Protection) Regulations 2013.

<sup>466</sup> Information provided by INIS, March 2018.

<sup>467</sup> Information provided by INIS, March 2018.

<sup>468</sup> Citizens Information, *Travel documents for people with refugee or subsidiary protection status*, available at: <https://bit.ly/2GjMhIN>.

<sup>469</sup> INIS, *Travel Document Information Note*, available at: <https://bit.ly/2lb8miT>.

<sup>470</sup> Irish Times, 'Covid-19: New restrictions to target foreign travel', 10 February 2021, available at: <https://bit.ly/3qsoJ16>.

in the bracket of travellers who cannot afford hotel quarantine costs. In addition, it was noted that individuals seeking protection may require particular services, including medical assistance and legal advice and that special supports were likely to be needed for asylum seekers in circumstances where they were required to isolate for 14-days alone in a hotel room.<sup>471</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 15 September 2020: | 810         |

As mentioned above, it should be noted that the definition of “recipient” for the purposes of benefiting from entitlements under the Reception Conditions Regulations 2018 does not cover beneficiaries of international protection, or those on deportation orders.

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 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>472</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>473</sup> Discrimination and racism is also reported in the rental market.<sup>474</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 September 2020 there were 810 persons with some form of protection status residing in Direct Provision.<sup>475</sup>

<sup>471</sup> Irish Refugee Council, Letter to Government on access to protection process and hotel quarantining recommendations, 12 February 2021, available at: <https://bit.ly/2OCOAoO>.

<sup>472</sup> Response to Parliamentary Question by Minister for State David Stanton, 26 January 2017, available at: <http://bit.ly/2lBeDgu>.

<sup>473</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: <https://bit.ly/2AlwPTX>.

<sup>474</sup> The Journal, “‘Ignored at viewings because they’re black or Asian’: Dozens of asylum seekers facing homelessness”, 24 February 2019, available at: <https://bit.ly/2H4SBwo>;

See also: Dublin Inquirer, ‘Some ex-asylum seekers say they’re stuck In Direct Provision because Dublin landlords won’t accept them’, 30 September 2020, available at: <https://bit.ly/3jW2JZX>.

<sup>475</sup> Minister for Justice Helen McEntee, Reply to parliamentary question no. 582, 15 September 2020, available at: <https://bit.ly/39EA5Yo>.

In September 2017, RIA (now IPAS) 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>476</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>477</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>478</sup>

Due to the ongoing housing crisis in Ireland, as well as already over-subscribed homelessness centres, emergency accommodation and support, there is a real risk that without transitional support, forcing people to leave Direct Provision could result in long term homelessness and/or destitution.

This issue is still ongoing at the time of writing and while IPAS have not issued any additional notices requesting that people vacate their Direct Provision centre, the Irish Refugee Council has encountered both categories of affected persons through its Direct Service provision who face difficulty accessing Direct Provision accommodation. They 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 IPAS and other relevant agencies.

The Department of Justice has a specific team who work in collaboration with DePaul Ireland, the Jesuit Refugee Service, the Peter McVerry Trust, officials in the Department of Housing, Planning and Local Government, and the City and County Managers Association to collectively support residents with status or permission to remain to access housing options. By the end of 2019, a total of 732 people transitioned out of accommodation centres, of which 500 did with the assistance of the services and support mentioned above.<sup>479</sup>

In April 2019 the Department of Housing, Planning and Local Government released a document titled: Social Housing and HAP Supports Available to Assist Households In Direct Provision Who Have Been Granted “Leave To Remain” And Are Eligible For Social Housing. The paper confirms that people leaving Direct Provision are entitled to ‘Homeless Housing Assistance Payment’ which gives additional supports such as access to a deposit, advance rent and a discretionary 20% addition to the existing HAP rent. The Department also released, in partnership with the City and County Managers Association and IPAS, a document titled ‘Information paper on supporting people with status/leave to remain’ which contained information on how people will receive assistance to leave Direct Provision.<sup>480</sup>

In the experience of the Irish Refugee Council, the Covid-19 pandemic and associated restrictions resulted in significant obstacles to securing housing for beneficiaries of international protection.

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<sup>476</sup> Irish Times, ‘Asylum seekers facing deportation given a month to leave hostels’, 20 September 2017, available at: <http://bit.ly/2CpLN6Q>.

<sup>477</sup> Nasc, ‘Nasc Condemns Proposed Eviction of Asylum Seekers from Direct Provision’, 20 September 2017, available at: <https://bit.ly/2TQJtRR>.

<sup>478</sup> Minister of State at the Department of Justice and Equality David Stanton, Response to Parliamentary Question No 182, 25 October 2017, available at: <http://bit.ly/2Bk1M5B>.

<sup>479</sup> Minister of State at the Department of Justice and Equality, David Stanton, Reply to Parliamentary Question No 278, 3 December 2019, available at: <https://bit.ly/3bTO7pi>.

<sup>480</sup> These documents are not currently available online.

Restrictions on the operation of local authorities and administrative bodies have resulted in delays in the processing of social housing applicants and entry on to housing lists. This in turn impedes individuals' ability to access Housing Assistant Payment (HAP) and ultimately, secure housing. Caseworkers have noted, however, that the pandemic has positively impacted the availability of housing for beneficiaries of international protection in that a decrease in demand for rental property has opened up the market significantly for HAP tenants.

## 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 support 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>481</sup> Information barriers can make it difficult for beneficiaries to navigate the system to access employment support and the support available varies from region to region.

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. EPIC was launched in 2014, since then this initiative has helped over 3,000 people from 101 nationalities. Over 68% of the people involved in the programme have found jobs or entered training or are volunteering. The programme is part supported by the Department of Justice and Equality and the European Social Fund (ESF) as part of the Programme for Employability, Inclusion and Learning (PEIL) 2014-2020. 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>482</sup> The Irish Refugee Council also has employment programmes for women in the protection process and refugees.

The onset of the Covid-19 pandemic resulted in significant loss of employment across a wide variety of sectors. According to research published by the Economic and Social Research Institute, migrant workers are over-represented in sectors severely affected by Covid-19 closures, including accommodation and food provision.<sup>483</sup> For those who lost their job as a result of Covid-19, a social welfare payment known as Pandemic Unemployment Payment, was made available. Under s. 53(b) IPA, beneficiaries of international protection are entitled to access this payment on the same basis as Irish citizens.

### 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>484</sup> However, 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

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<sup>481</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>482</sup> Available at: <http://bit.ly/2lbKT90>.

<sup>483</sup> ESRI, *Covid-19 and non-Irish nationals in Ireland*, 15 December 2020, available at: <https://bit.ly/37IFnlf>.

<sup>484</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.



not being recognised, not being eligible for grants, not understanding admission procedures and having missed deadlines for college applications.<sup>485</sup>

Some organisations have stepped in to support student access to third-level education. For example, in the Irish Refugee Council a volunteer administers donations made by the public to help with education access. The funds are then spent on course fees, books, transport and other related expenses.<sup>486</sup> Some Universities have also assisted protection applicants such as the National University of Ireland, Galway (NUIG) which announced in June 2016 that it will provide four scholarships for protection applicants or refugees, subsidiary protection beneficiaries or those persons with permission to remain in Ireland.<sup>487</sup> In 2019, NUIG became a University of Sanctuary due to its further commitment.<sup>488</sup> In December 2016 Dublin City University (DCU) was also designated as a University of Sanctuary due to its commitment to welcome protection applicants and refugees into the university community. DCU has offered fifteen academic scholarships available at either undergraduate or postgraduate level. It also has established a number of other welcoming initiatives such as a Langua-Culture Space initiative where DCU students teach beginners level English to protection applicants 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 protection applicants and refugees. At the time of publishing this report, DCU, University Limerick, UCC, UCD, NUI Galway and Maynooth University have received the University of Sanctuary Award, and Athlone IT is the first College of Sanctuary in Ireland.<sup>489</sup>

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.

## 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](#).

International protection applicants living in Direct Provision who are recognised as refugees or granted alternative status, are not entitled to full social welfare payments while they remain in Direct Provision. Taking into consideration the difficulties they encounter accessing the housing market, being entitled to

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<sup>485</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>486</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>487</sup> NUIG, Inclusive Centenaries Scholarship Scheme, Announcement, 17 June 2016.

<sup>488</sup> University Times, 'NUI Galway becomes a University of Sanctuary', 19 September 2019, available at: <https://bit.ly/3aMdR5v>.

<sup>489</sup> Places of Sanctuary Ireland, Universities and Colleges of Sanctuary, available at: <https://bit.ly/3aMiexi>.



full payment would enable them to better plan for transition to other accommodation.<sup>490</sup> As of September 2020 there were 810 persons with some form of protection status residing in Direct Provision.<sup>491</sup>

For those who lost their job as a result of Covid-19, a social welfare payment known as Pandemic Unemployment Payment, was made available. Under s. 53(b) IPA, beneficiaries of international protection are entitled to access this payment on the same basis as Irish citizens. In order to access the payment, an individual must have been in employment prior to the 13 March, lost their employment owing to the pandemic and are not in receipt of any income from their employer. The rate payable under PUP depends on the wage the individual was paid prior to losing their employment. Whereby an individual earned less than €200 per week, the rate payable is €203 per week. Whereby an individual earned between €200-€300 per week, the rate payable is €203 and whereby an individual earned over €300, the rate payable is €250.<sup>492</sup>

## 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 protection applicants is also on the same basis as Irish citizens and they are 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 services operating out of St. Brendan's Hospital in Dublin. However, a report by the Royal College of Physicians of Ireland in December 2019 noted problems as regards access to health by way of a number of cultural and financial barriers such as language, transport and medication costs.<sup>493</sup> Furthermore, the report highlighted that primary care providers have raised concerns over services receiving little attention and no additional resources and being expected to absorb large numbers of migrants.

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 94% of international protection applicants have experienced traumatic events prior to arriving in Ireland, with 32-53% reporting torture. This is on par with international studies which estimate a torture prevalence of 30-84% among protection applicants. Despite this, SPIRASI, Ireland's national treatment centre for survivors of torture, reports that only 6% of all protection applicants are referred for treatment.

Beneficiaries of International protection are included within national measures to stop the spread of Covid-19 and are, therefore, entitled to access to Covid-19 tests and vaccinations on the same basis as Irish nationals. The rollout of Covid-19 vaccines in Ireland is currently underway, with individuals who are most at risk from Covid-19 vaccinated first. This includes those over 65 living in long-term care facilities, frontline healthcare workers and those over aged 85 and older living in the community.<sup>494</sup>

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<sup>490</sup> Citizens Information Board, Submissions to the Joint Oireachtas Committee on Justice and Equality for the Review of Direct Provision and the International Protection Application Process, May 2019, available at: <https://bit.ly/2VP3rhe>.

<sup>491</sup> Minister for Justice Helen McEntee, Reply to parliamentary question no. 582, 15 September 2020, available at: <https://bit.ly/39EA5Yo>.

<sup>492</sup> Department of Social Protection, *Covid-19 Pandemic Unemployment Payment*, 16 June 2020, available at: <https://bit.ly/2Nv1CUS>.

<sup>493</sup> Royal College of Physicians, Faculty of Paediatrics, *Children in direct provision, A position paper*, December 2019, available at: <https://bit.ly/3d42HL0>.

<sup>494</sup> HSE, 'Rollout of Covid-19 vaccinations in Ireland', 16 February 2021, available at: <https://bit.ly/37mk7ll>.

## ANNEX I - Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Ireland has not opted into the recast Qualification Directive or the recast Asylum Procedures Directive.

Directive	Provision	Domestic law provision	Non-transposition or incorrect transposition
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive			
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation			

## ANNEX 2 – Covid-19 related measures

### Covid-19 related measures:

Due to the outbreak of Covid-19 in Ireland, temporary measures were introduced which have directly or indirectly impacted persons in the international protection process. This box outlines some of the key measures that were applied as of 31 December 2020:

- ❖ **Number of persons claiming protection in Ireland:** There has been a significant decline in the number of protection applications during the pandemic, with a decrease of approximately 67.3% in the numbers claiming protection in 2020 (1,566 as of December 2020)<sup>495</sup> compared with the previous year (4,781).
- ❖ **Access to the international protection procedure:** The International Protection Office (IPO) continues to accept new applications for international protection and is providing a limited registration service to new applicants.<sup>496</sup>
- ❖ **Examination of applications for international protection:** With effect from 30 December 2020, all substantive interviews at the IPO were postponed until further notice following the introduction of increased restrictions in response to Covid-19. The IPO has written to applicants to inform them of the situation. Anecdotal evidence suggests that whilst interviews are suspended, recommendations are being issued from the IPO, *albeit* with significant delays. All scheduled hearings at the International Protection Appeals Tribunal (IPAT) were suspended in a similar manner. However, the Tribunal continues to accept and process appeals.

Owing to the pandemic and associated restrictions, as of June 2020, the IPO had suspended the issuing of any decisions pursuant to the Dublin process. Anecdotal evidence indicates that the IPO has resumed the issuing of decisions, albeit with significant delays.

- ❖ **Dublin III and Covid-19:** Following the implementation of measures to restrict the spread of Covid-19, the International Protection Office cancelled all interviews in accordance with Article 5 of the Dublin Regulation in line with Government guidelines. The International Protection Appeals Tribunal suspended all Dublin Regulation Appeals in a similar manner. Ireland has nevertheless continued to request other responsible EU Member States to 'take charge' of any identified applicant. Other Member States who identify that Ireland is responsible for an applicant have, throughout the pandemic, continued to apply the Dublin process to Ireland.<sup>497</sup>

Transfers under the regulation continued, albeit at lower numbers. These transfers occurred notwithstanding a stay being placed on the vast majority of deportations for the duration of the Covid-19 pandemic. The Government justified the continuation of transfers on the basis that no deportation order

<sup>495</sup> IPO, *December Statistics*, available at: <https://bit.ly/3sGviOS>.

<sup>496</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland – Updated 5 February 2021*, <https://bit.ly/2MtYCUZ>.

<sup>497</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary Question No 382, 3 June 2020, available at: <https://bit.ly/36eiiqr>.

is made in respect of Dublin III cases and the individual concerned is not returned to their country of origin.<sup>498</sup> As of June 2020, the IPO had suspended the issuing of decisions pursuant to the Dublin process owing to Covid-19 restrictions.<sup>499</sup> Anecdotal evidence indicates that the IPO has resumed the issuing of decisions, albeit with significant delays.

- ❖ **Decentralised international protection interviews and interviews via video-link:** In light of the outbreak of Covid-19, a small number of applicants for international protection were offered the possibility of conducting their substantive international protection interview under a pilot process, via video-link from a remote location in Co. Cork. Approximately 90 interviews were conducted remotely.<sup>500</sup> Following the resumption of face-to-face interviews in July, legal representatives and interpreters were required to attend interviews remotely via dial-in.

The International Protection Appeals Tribunal recently announced that it is now in a position to conduct some appeal hearings remotely by way of audio-video link. The Tribunal has indicated that it will identify those cases in which a remote hearing may be suitable and will be in direct contact with appellants and their legal representatives in due course.

- ❖ **Reception conditions:** On 31 March 2020, the Irish government announced that it had procured an additional 650 beds to support the measures required for vulnerable residents in light of the Covid-19 crisis. These included the provision of off-site accommodation for self-isolation.<sup>501</sup> However, according to research conducted by the Irish Refugee Council, as of August 2020, 42% of the 391 Direct Provision residents surveyed reported that they continued to share a bedroom with a non-family member, while 46% reported that they continued to share a bathroom with a non-family member.<sup>502</sup> As of March 2021, the number of unrelated single residents assigned a shared room in IPAS accommodation was 1,892. This comprised of 1,171 residents in a room assigned to two people and 721 residents in a room assigned to 3 people.<sup>503</sup> This is contrary to advice given by the Chief Medical Officer that non-family members should not share intimate living spaces. The Irish Refugee Council remains concerned that as Direct Provision is a congregated setting, social or physical distancing has not been possible in many locations.

Significant outbreaks of Covid-19 have occurred at accommodation centres across the country throughout the duration of the pandemic. Particular issues of concern emerged in relation to the Skellig Star Hotel in Co. Kerry, where one of the first outbreaks occurred in May 2020. Various issues had been reported prior to the hotels opening, including the rushed opening of the centre, repair issues, lack of running water and heating and staff not Garda vetted. Individuals were also moved at very short notice from Dublin and residents were initially sharing rooms with one another. During the outbreak, residents reported that they were unable to leave the hotel or were given a strong impression that they could not leave their accommodation.

<sup>498</sup> RTÉ News, 'Concerns over rise in deportations to UK ahead of Brexit', 18 December 2020, available at: <https://bit.ly/3nNoQlu>.

<sup>499</sup> Minister for Justice and Equality Charles Flanagan, Response to Parliamentary Question No 382, 3 June 2020, available at: <https://bit.ly/36eiiqr>.

<sup>500</sup> Information provided by IPO, April 2021.

<sup>501</sup> Department of Justice and Equality, Ministers Flanagan and Stanton announce significant increase in Direct Provision accommodation as part of emergency response to COVID-19 pandemic, 31 March 2020 available at: <https://bit.ly/38rEajD>.

<sup>502</sup> Irish Refugee Council, *Powerless: Experiences of Direct Provision During the Covid-19 Pandemic*, 10 August 2020, available at: <https://bit.ly/3pXOaGZ>.

<sup>503</sup> Information provided in correspondence from Minister Roderic O'Gorman to Catherine Connolly TD, further to Parliamentary Questions 602, 603, 612 and 613 of the 3rd of March 2021, available at: <https://bit.ly/3tEMioT>.

Individuals, including children, were forced to spend all day in hotel rooms and reports suggested a lack of sanitation and deep cleaning of the property, even after 22 residents had tested positive.<sup>504</sup> Conditions at the centre prompted residents to go on hunger strike in July 2020, while the local community and various migrant rights organisations called for the hotel to be closed.<sup>505</sup> It was subsequently announced that the centre was to close and residents were to be moved out on a phased basis. It is understood that the last remaining residents were transferred from the centre in September 2020.<sup>506</sup>

In August 2020, several Direct Provision centres reported outbreaks of Covid-19 linked to clusters at meat factories where a number of residents worked. The vast majority of residents were moved to designated facilities to self-isolate.<sup>507</sup> In late December 2020, a further outbreak was reported at Kinsale Road accommodation centre in Co. Cork. It is understood approximately 40 residents were removed from the centre in order to facilitate social distancing, while the remaining residents were told to remain in their rooms and isolate.<sup>508</sup>

The Health Service Executive (HSE) has identified priority groups for testing, among whom are staff and residents of Direct Provision centres.<sup>509</sup> Healthcare workers, or persons providing home support who live in Direct Provision, are eligible to apply for alternative temporary accommodation during the pandemic under a scheme established by the HSE.<sup>510</sup>

During the initial onset of the Covid-19 pandemic, the Pandemic Unemployment Payment (PUP) was not made available to individuals who were working and living in Direct Provision on the basis that the payment was tied to jobseekers' allowance and constituted a form of social welfare payment for the purposes of s.15 of the Social Welfare and Pensions (No. 2) Act 2009. More than 40 organisations jointly wrote to the Minister for Social Protection requesting a 20,000 increase of the Daily Expense Allowance provided to international protection applicants living in Direct Provision. This request was refused on budgetary grounds.<sup>511</sup> However, in August 2020, following sustained advocacy from various migrant rights groups, PUP was extended to people living in Direct Provision as well as applicants for international protection who live outside the Direct Provision system.<sup>512</sup> The payment is payable whereby an individual meets the conditions of the scheme: they must have been in employment prior to the 13 March, lost their employment owing to the pandemic and are not in receipt of any income from their employer.

❖ **International Protection Applicants with work permits:** As a result of the Covid-19 pandemic, applicants whose work permits were due to expire between the 21<sup>st</sup> of January 2021 and 20<sup>th</sup> April 2021 will have their permission extended automatically. This applies whereby an applicant has not yet

<sup>504</sup> Irish Examiner, 'Calls for direct provision centre in Cahersiveen to be closed', 11 May 2020, available at: <https://bit.ly/3i8Xbum>.

<sup>505</sup> Irish Times, 'Controversial Skellig Star direct provision centre in Kerry to close', 30 July 2020, available at: <https://bit.ly/38zS4QG>.

<sup>506</sup> RTÉ News, 'Dept of Justice denies plans to reuse Skellig Star Hotel', 27 September 2020, available at: <https://bit.ly/2K8BZrL>.

<sup>507</sup> RTÉ News, 'Concern over virus clusters at direct provision centres', 2 August 2020, available at: <https://bit.ly/39kJPag>.

<sup>508</sup> Irish Examiner, 'Residents moved from Cork direct provision centre following 'serious' Covid-19 outbreak, 25 December 2020, available at: <https://bit.ly/2MZNxP5>.

<sup>509</sup> Irish Examiner, 'HSE: Direct provision centres receiving priority testing', 12 May 2020, available at: <https://bit.ly/2BrlRwE>.

<sup>510</sup> Health Service Executive, 'Temporary accommodation for healthcare workers during COVID-19', available at: <https://bit.ly/2Y36MsX>.

<sup>511</sup> The Irish Times, 'No temporary increase in weekly asylum payment during pandemic', 29 May 2020, available at: <https://bit.ly/371QJzq>.

<sup>512</sup> The Journal, 'Direct Provision residents will now be eligible for Pandemic Unemployment Payment', 6 August 2020, available at: <https://bit.ly/35ynZPm>.

received a final decision on their international protection claim. This also applies whereby an applicant holds a current, valid permission or a permission that has already been extended under the previous notices issued.<sup>513</sup>

- ❖ **Special Committee on Covid-19 Response:** The Irish parliament created a special committee on Covid-19. One of the topics it considered was congregated settings. On 26 May 2020 the committee heard from officials of the Department of Justice and Equality and the Health Service Executive.<sup>514</sup> The Irish Refugee Council, Movement of Asylum Seekers Ireland and other organisations made submissions to the committee.<sup>515</sup> On 6 October 2020, the Oireachtas Special Committee on Covid-19 Response published its final report, highlighting areas requiring ongoing oversight and accountability, including Direct Provision. The Report highlighted the need for a stronger regulatory framework, as well as a rapid and robust test and trace system for individuals living in Direct Provision. Arising out of its consideration of the topic, the Committee also referred a number of issues to the Joint Committee on Children, Disability, Equality and Integration the following matters for further examination, including need for the Department to review the practice of accommodating people seeking international protection in direct provision centres, hotels and B&Bs, the need for better data sharing between Departments so that adequate services can be provided to residents and the need to ensure that staff working in direct provision services receive appropriate training, including in infection control measures.<sup>516</sup>

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<sup>513</sup> UNHCR, *Information on Covid-19 for Refugees and Asylum-Seekers in Ireland – updated 5 February 2021*, available at: <https://bit.ly/35hNTa8>.

<sup>514</sup> Special Committee on Covid-19 Response debate, 26 May 2020, available at: <https://bit.ly/2z6HmSO>.

<sup>515</sup> Irish Refugee Council, Submission to the Oireachtas Covid-19 response committee, 26 May 2020, available at: <https://bit.ly/2XwRfCA>.

<sup>516</sup> Special Committee on Covid-19 Response, *Final Report*, October 2020, available at: <https://bit.ly/2M5BO16>.