

# Country Report: Ireland



2018  
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.

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 Reception and Integration Agency (RIA), 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 2018, unless otherwise stated.

## The Asylum Information Database (AIDA)

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



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



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## Glossary & List of Abbreviations

|                       |  |
|-----------------------|--|
| <b>Garda Síochána</b> | Irish Police Force   |
| <b>CJEU</b>           | Court of Justice of the European Union                                   |
| <b>CPT</b>            | European Committee for the Prevention of Torture                         |
| <b>DP</b>             | Direct Provision – System for the material reception of asylum seekers   |
| <b>ECHR</b>           | European Convention on Human Rights                                      |
| <b>ECtHR</b>          | European Court of Human Rights   |
| <b>ELA</b>            | Early Legal Advice   |
| <b>EMN</b>            | European Migration Network   |
| <b>EROC</b>           | Emergency Reception and Orientation Centre                               |
| <b>ESRI</b>           | Economic and Social Research Institute                                   |
| <b>FLAC</b>           | Free Legal Advice Centres  |
| <b>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>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>JRS</b>            | Jesuit Refugee Service   |
| <b>OPMI</b>           | Office for the Promotion of Migrant Integration                          |
| <b>ORAC</b>           | Office of the Refugee Applications Commissioner                          |
| <b>PILA</b>           | Public Interest Law Alliance, a project of FLAC                          |
| <b>RAT</b>            | Refugee Appeals Tribunal   |
| <b>RCNI</b>           | Rape Crisis Network Ireland  |
| <b>RIA</b>            | Reception and Integration Agency   |
| <b>RLS</b>            | Refugee Legal Service  |
| <b>SHAP</b>           | Syrian Humanitarian Admission Programme                                  |
| <b>SI</b>             | Statutory Instrument   |
| <b>SPIRASI</b>        | NGO specialising in assessing and treating trauma and victims of torture |
| <b>TD</b>             | Teachta Dála (Irish equivalent term for Member of Parliament)            |

**TUSLA**  
**UNHCR**

Irish Child and Family Agency  
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>

### Applications and granting of protection status at first instance: 2018

|              | Applicants in 2018 | Pending at end 2018 | Refugee status | Subsidiary protection | Rejection | Refugee rate | Subs. Prot. rate | Rejection rate |
|--------------|--------------------|---------------------|----------------|-----------------------|-----------|--------------|------------------|----------------|
| <b>Total</b> | 3,673              | 5,660               | 683            | 200                   | 2,090     | 23%          | 6.73%            | 70.3%          |

Breakdown by countries of origin of the total numbers

|          |     |     |     |   |     |       |       |       |
|----------|-----|-----|-----|---|-----|-------|-------|-------|
| Albania  | 459 | 649 | 1   | 3 | 374 | 0.03% | 0.1%  | 99%   |
| Georgia  | 450 | 519 | 5   | 0 | 242 | 3%    | 0%    | 97%   |
| Syria    | 333 | 66  | 389 | 1 | 4   | 99%   | 0.25% | 1.75% |
| Zimbabwe | 282 | 540 | 23  | 7 | 131 | 14%   | 4%    | 82%   |
| Nigeria  | 251 | 409 | 9   | 1 | 170 | 5%    | 0.6%  | 94.4% |

Source: IPO, February 2019. Subsidiary protection grants include 4 old subsidiary protection “legacy” decisions.

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



**Gender/age breakdown of the total number of applicants: 2018**

|                                   | Number | Percentage |
|-----------------------------------|--------|------------|
| <b>Total number of applicants</b> | 3,673  | 100.0%     |
| Men                               | 1,902  | 51.8%      |
| Women                             | 914    | 24.9%      |
| Children                          | 840    | 22.8%      |
| Unaccompanied children            | :      | :          |

Source: IPO, February 2019.

**Comparison between first instance and appeal decision rates: 2018**

Statistics on appeals are not available.

## Overview of the legal framework

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

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

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

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

| Title (EN)  | Web Link  |
|---|---|
| S.I. No 409 of 2017 European Union (Subsidiary Protection) Regulations 2017                                 | <a href="http://bit.ly/2E7pPbd">http://bit.ly/2E7pPbd</a>   |
| S.I. No 116 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/2QZQ4VI">https://bit.ly/2QZQ4VI</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 **March 2018**.

### *Asylum procedure*

- ❖ **Length of procedures:** The International Protection Office continues to deal with cases lodged prior to the International Protection Act 2015 commencement, in addition to steadily increasing new arrivals. According to most recent official data, due to the transitional case backlog, persons who made an application after January 2017 and whose cases fall outside of the prioritisation criteria will likely be waiting at least 18-20 months before they receive a date for their substantive interview. However, in the experience of the Irish Refugee Council's casework, applicants who successfully request prioritisation have been granted an interview within two to six months.

### *Reception conditions*

- ❖ **Transposition of recast Reception Conditions Directive:** Ireland transposed the recast Reception Conditions Directive into Irish law through the enactment of the European Communities (Reception Conditions) Regulations 2018. 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. That being said, the Regulations do provide for a number of legislative guarantees that did not previously exist in the Irish reception context, such as vulnerability assessments; appeals related to reception conditions; provisions for withdrawal and restriction of reception conditions; and provisions on detention conditions. The extent to which these provisions are being effectively implemented as of early 2019 appears to be limited in the experience of Irish Refugee Council casework.
- ❖ **National Standards on Direct Provision:** Building on the Report on the Working Group to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers ("McMahon Report"), 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.
- ❖ **Reception capacity:** In 2018, the Direct Provision estate reached capacity and no accommodation was available for newly arriving asylum seekers. Over the course of a single weekend in September 2018, a minimum of 20 newly arrived asylum seekers were not provided with any material reception and were informed that no accommodation was available, rendering them homeless on arrival in Ireland. After intensive representations and media attention on the issue, alternative accommodation was provided by the Reception and Integration Agency on an emergency basis. This involved the contracting of accommodation in hotels and holiday homes to house asylum seekers on a temporary basis pending contracting for more permanent accommodation centres. These centres are known as "satellite centres".

### *Content of international protection*

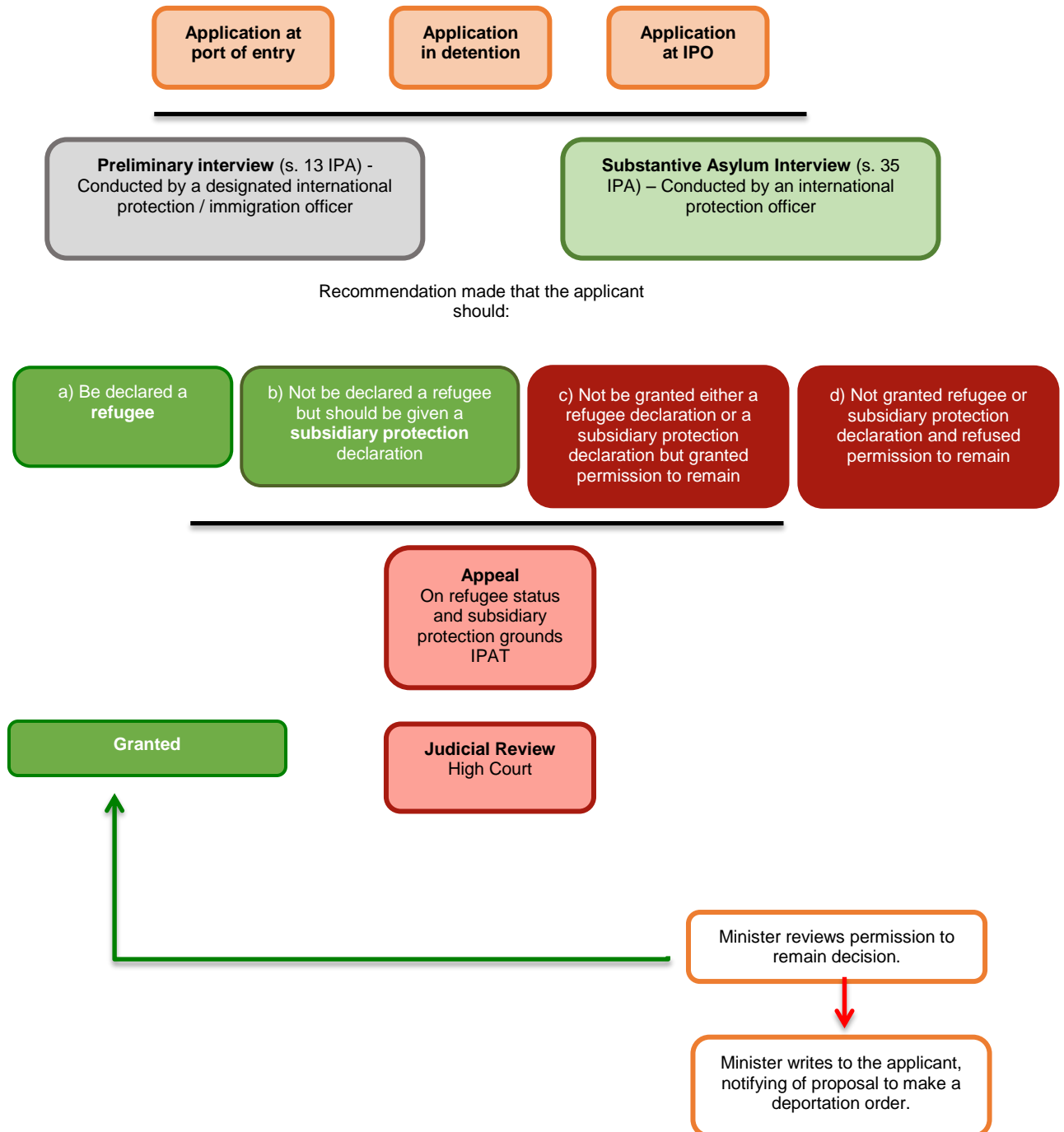
- ❖ **Family reunification:** The Family Reunification Humanitarian Admission Programme (FRHAP) has been renamed to the International Humanitarian Admission Programme (IHAP). The first open calls for proposals ran from 14 May to 30 June 2018. A larger number of applications than were anticipated was received, however, just 80 applications were granted. A second call for

proposals for reunification under IHAP was opened on 20 December 2018 and is envisaged to run until 8 February 2019.

# Asylum procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

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

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

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

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

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

| Name in English                       | Number of staff | Ministry responsible  | Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority? |
|---------------------------------------|-----------------|-----------------------|--|
| International Protection Office (IPO) | 140             | Department of Justice | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |

## 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>2</sup> Almost two years on from the commencement of the act, the IPO is still dealing with significant backlog of transitional cases in addition to a steadily increasing number of new arrivals. The result is that there remains substantial delay in the processing of cases and new arrivals can expect to receive a date for the first instance substantive interview within 18 to 20 months.<sup>3</sup>

<sup>2</sup> International Protection Act 2015 (Commencement) (No. 3) Order 2016.

<sup>3</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 531, 12 June 2018, available at: <https://bit.ly/2T6aLkL>.

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

## Application

Upon lodging an application for international protection, the applicant first fills out an application form and is given a short interview conducted either by an international protection officer, or an immigration official – depending on where the application is lodged. Under Section 21 IPA an application for international protection may be found inadmissible and a recommendation shall be made to the Minister by an international protection officer to this effect. Inadmissibility decisions are made on the grounds that another Member State has granted refugee status or subsidiary protection status to the person, or a country other than a Member State is considered to be a “first country of asylum” for the person.<sup>4</sup> A person has the right to an appeal to the International Protection Appeals Tribunal (IPAT) regarding an inadmissibility decision.

Upon presenting at the IPO, the applicant is given a more in-depth application form ‘Application for International Protection Questionnaire’ which must be completed and returned by a specified time and date. Applicants are also provided with a detailed information booklet explaining key terms and process associated with the international protection status determination process in Ireland.<sup>5</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>6</sup> In this respect, the information booklet contains information on the services of the State-funded Refugee Legal Service, operating out of the Legal Aid Board, who can provide legal advice on the international protection process. However, the extent to which the Legal Aid Board is able to assist with completion of application questionnaires is unclear. To date, the Irish Refugee Council’s Information and Referral Service and Law Centre has assisted with the completion of up to 140 application questionnaires (involving appointments of 3-5 hours, depending on the case) since the rollout of the new 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>7</sup> During the initial appointment at the IPO, an applicant’s fingerprints are taken and are entered in to the Eurodac database. The applicant is also advised that they may obtain legal assistance from the Refugee Legal Service. As per the regular procedure, the applicant is issued a Temporary Residence Certificate and referred to the Reception and Integration Agency (RIA) for accommodation if they have no other means of accommodating themselves, at which point the applicant will be taken to a RIA reception centre in Dublin and later dispersed elsewhere to other Direct Provision centres in

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<sup>4</sup> A first country of asylum is defined under Section 21(15) IPA.

<sup>5</sup> IPO, *Information Booklet for Applicants for International Protection*, January 2017, available at: <http://bit.ly/2D9Jqdl>.

<sup>6</sup> *Ibid*, para. 3.7.2.

<sup>7</sup> S.I. No. 62 of 2018 European Union (Dublin System) Regulations 2018.



Ireland. 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>8</sup>

### 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 to receive a date for their substantive interview is estimated at between 18-20 months, due to the backlog of cases before the IPO and the need for increased staffing to meet the demands of the transition to the single procedure and a steady increase in the number of new arrivals throughout 2018.<sup>9</sup>

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

- ❖ If a positive recommendation is made with regards to refugee status, the applicant is notified and the recommendation is submitted to the Minister for Justice, who makes a declaration of refugee status.
- ❖ If a positive recommendation is made with regards to subsidiary protection, the 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 for refugee status.
- ❖ If the recommendation is negative, the applicant is provided with the reasons for such a decision. The implications of a negative recommendation depend on the nature of the recommendation. The applicant will be advised of their right to appeal any negative decision before the International Protection Appeals Tribunal (IPAT) and their right to seek legal advice if they 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 leave 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 the papers unless a member of the Tribunal finds it in the interests of justice to hold such an oral hearing nevertheless. Free legal

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<sup>8</sup> Regulation 4 European Union (Dublin System) Regulations 2018.

<sup>9</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 531, 12 June 2018, available at: <https://bit.ly/2T6aLkL>.

representation can be obtained through the Refugee Legal Service. The deadline for submitting an appeal will be prescribed by the Minister in consultation with the Chairperson of the IPAT.<sup>10</sup>

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

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 opportunity to put forward any preliminary grounds for permission to remain in a dedicated section of the application questionnaire. The applicant has the right to submit any information relating to their permission to remain (or consideration for international protection more generally) at any point after the submission of their questionnaire. There is no oral hearing with regards to permission to remain at the interview stage at first instance but it is important that the applicant includes all relevant information in writing concerning their grounds for being granted permission to remain. It is important to note that if an applicant is refused permission to remain they do not have a right to an appeal on this decision.

An applicant may seek to have a refugee or subsidiary protection recommendation of the IPO or a decision of the IPAT judicially reviewed by the High Court under Irish administrative law, for example where there has been an error of law in the determination process. It is expected that an applicant will exhaust all available remedies before applying for judicial review and therefore most judicial reviews are of appeal recommendations, rather than first instance decisions. Applicants must be granted permission (known as leave) to apply for judicial review before proceeding to a full judicial review hearing. 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. The High Court is continuing to operationalize measures to reduce the backlogs in the 'Asylum List' and its latest annual report notes an increase in the length of time taken to process pending judicial reviews.<sup>11</sup> However, the latest available statistics show a consistent increase in the number of incoming judicial reviews, from 164 in 2015, to 497 in 2017, with no visible change in the rate at which cases are resolved.<sup>12</sup>

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<sup>10</sup> Section 77 IPA.

<sup>11</sup> Courts Services Ireland, *Annual Report 2017*, 13.

<sup>12</sup> Courts Services Ireland, *Statistics 2008 – 2017*, available at: <https://bit.ly/2AU72QL>.

## B. Access to the procedure and registration

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

#### Indicators: Access to the Territory

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

There have been no official reports of push backs of asylum seekers or *refoulement* at the frontiers of the State. A person who arrives in Ireland seeking entry may be refused leave to land and due to the lack of independent oversight and transparency at airports or ports of entry, it is unclear whether or not a person refused leave to land had protection grounds or had intended to apply for asylum. There is no access for independent authorities or NGOs at air or land borders in order to monitor the situation. Anecdotal evidence received by the Irish Refugee Council Independent Law Centre suggests that some people may be refused leave to land and to enter Ireland even when they have grounds for protection. The Irish Refugee Council's services have witnessed a number of cases throughout 2018 of applicants describing that they had only been permitted entry for the purposes of seeking asylum subject to rigorous examination by the border authorities.

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 2017, INIS noted that 3,746 people were refused entry to the State at the border but gives no further information with respect to countries of origin or grounds for refusal of entry.<sup>13</sup>

Data obtained through Freedom of Information requests indicate that 3,558 persons were refused entry at **Dublin Airport** from January to early December 2018; therefore figures do not capture numbers refused entry at other ports of entry, such as the border with the North of Ireland or sea ports.<sup>14</sup> The nationalities of persons refused entry include 59 Afghans, 35 Congolese (DRC), 14 Eritrean, 74 Iraqi, 20 Libyan, 55 Nigerian, 64 "Stateless" persons and 93 Syrians.

In its review before the UN Committee against Torture in July 2017, the Irish State was asked for detailed information on the numbers of persons denied leave to land, disaggregated by country of origin and who were not allowed to enter the country as asylum seekers. The State did not provide these figures in its response, prompting the Committee in its Concluding Observations to call on the Irish government to ensure that all persons refused leave to land are guaranteed access to legal advice before any return is effected and that the State provides data on refusals of leave to land in its next periodic report.<sup>15</sup> Minister for Justice Charlie Flanagan has indicated that disaggregated data on refusals of leave to land would be presented in the State's next periodic report to the Committee, which is due to be submitted in August 2021.<sup>16</sup>

Section 78 IPA amends Section 5 of the Immigration Act 2004 in a way which allows for people to be detained for short periods of time in facilities at ports of entry and/or airports instead of being placed in custody in police stations (see [Detention of Asylum Seekers](#)). The Department of Justice and Equality have been working on plans to establish a dedicated immigration facility at **Dublin Airport** since 2015.<sup>17</sup> At time of writing, however, the facility remains unopened. Recent reports note that a contract for

<sup>13</sup> INIS, *Immigration in Ireland – Annual Review 2017*, May 2018, available at: <https://bit.ly/2S0hVK0>, 20.

<sup>14</sup> The Journal, 'Over 3,500 people refused entry to Ireland last year including 487 Albanians and 459 Brazilians', 27 December 2018, available at: <https://bit.ly/2AZE3KL>.

<sup>15</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>16</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 341, 27 February 2018, available at: <https://bit.ly/2UaCnoL>.

<sup>17</sup> Minister for Justice and Equality Frances Fitzgerald, Response to Parliamentary Question No 69, 7 July 2016, available at: <http://bit.ly/2IJmNTb>.

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, canteen and other support space” and “detention cells and other essential support space.”<sup>18</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>19</sup> However, as of February 2019, the facility is not operational.

## 2. Registration of the asylum application

### Indicators: Registration

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

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.

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

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

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

### 2.1. Preliminary interview

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

<sup>18</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>19</sup> Minister for Justice and Equality Charlie Flanagan, Response to Parliamentary Question No 545, 12 June 2018, available at: <https://bit.ly/2Wav0Q7>.

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

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

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

## 2.2. Application for International Protection Questionnaire

At the end of the preliminary interview the applicant is given detailed information on the asylum process. This information is available in 18 languages.<sup>20</sup> The applicant is given an in-depth questionnaire, the Application for International Protection Questionnaire, in their preferred language, which must be completed and returned within 20 working days. In response to expressions of concern from civil society, NGOs and legal advocates regarding the 20-day 'deadline', the Department of Justice has indicated that this is not a statutory deadline but an indicative, administrative timeframe in which applicants should aim to have their questionnaire returned to the IPO. As such, the Department has made clear that there are no negative consequences if questionnaires are not returned within the timeframe.<sup>21</sup> As such, applicants may submit the completed questionnaire beyond the 20 working days. As a precautionary measure, the Irish Refugee Council recommends that applicants indicate in writing to the IPO if they require more than 20 working days to submit the questionnaire.

As part of the new consolidated asylum process under the IPA, all of the details relevant to a claim for international protection (refugee status, subsidiary protection and permission to remain), including details relevant to the right to enter and reside for family members, are compiled within this single, detailed questionnaire. In the previous system, applicants would have made separate applications for refugee status, subsidiary protection and leave to remain respectively, and all details related to family reunification would be collected in an application subsequent to being granted refugee or subsidiary protection status. As such, the questionnaire plays a crucial role in the status determination process and section 1 of the introductory preamble to the questionnaire recommends that the applicant "seek legal advice" to assist with completing the questionnaire.<sup>22</sup> Contact details for the Legal Aid Board, who assist applicants for international protection, and other relevant statutory bodies and international organisations are included in an annex to the Information Booklet for Applicants for International Protection, which applicants receive at the same time as the questionnaire. The questionnaire usually has to be completed and returned to the IPO within 20 working days, although the IPO has clarified that this is an administrative deadline and that flexibility may be given to applicants requiring more time.<sup>23</sup> If

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<sup>20</sup> The Information Booklet for International Protection is available in 18 languages: <http://bit.ly/2lOwxfr>.

<sup>21</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>22</sup> Application for International Protection Questionnaire, draft document received from ORAC by the Irish Refugee Council in November 2016.

<sup>23</sup> IPO, 'Clarification regarding the deadline for the return of the Application for International Protection Questionnaire (IPO 2)', available at: <http://bit.ly/2mlf2QD>.

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 within their country of origin; their fears if returned; whether or not the applicant or their dependents have been "sought, interrogated, arrested, detained or imprisoned by the state authorities in any country"; any affiliation to religious, political or other organisations and any military/paramilitary activity.

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

**Part 9** deals with permission to remain; in the event that the applicant should be refused both refugee status and subsidiary protection, the minister will take into account the person's personal circumstances in order to determine whether he or she may be permitted leave to remain 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 5-day period to provide a further submission on permission to remain after the IPAT decision.



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

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

Upon registering their claim, the applicant is issued a Temporary Residence Certificate which comes in the form of a plastic card and referred to the Reception and Integration Agency (RIA). If the applicant requires accommodation, he or she will be taken to **Balseskin** Reception Centre in Dublin (near Dublin airport). Upon arrival at Balseskin, the applicant is entitled to avail 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 made to that location.

On the coming into force of the IPA, *all* applicants in the system (including those who had previously lodged applications and were awaiting a decision following their substantive interview before ORAC) were issued with the new questionnaire. The fact that some people who had already completed a questionnaire and been interviewed under the old system were being expected to recomplete a more detailed questionnaire and attend the IPO for a subsequent interview caused a great deal of confusion amongst applicants, particularly in relation to the workability of the ‘20 day deadline’.<sup>24</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>25</sup>

The Irish Refugee Council’s Law Centre and Information and Referral Service have assisted with approximately 140 questionnaires since the coming into force of the IPA.<sup>26</sup> People are directed to the Refugee Legal Service 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 Refugee Legal Service and been told to complete the questionnaire by themselves due to a general lack of capacity within the Legal Aid Board. A number of other issues arising in connection with the questionnaire include (on the basis of Irish Refugee Council casework): translation errors in a number of the non-English questionnaires; persons with special needs being provided with the questionnaire but provided with no assistance completing it (i.e. illiterate applicants being provided with the questionnaire despite being unable to read it); people receiving questionnaires in English where there exists no version in their preferred language.

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<sup>24</sup> Irish Times, ‘Questionnaires cause “distress” for people in direct provision’, 20 February 2017, available at: <http://bit.ly/2D6CKsn>.

<sup>25</sup> IPO, ‘Clarification re: deadline for the return of the Application for International Protection Questionnaire (IPO 2)’, Available at: <http://bit.ly/2mlf2QD>.

<sup>26</sup> Information provided by the Irish Refugee Council’s Drop-in Centre database, January 2019.

## C. Procedures

### 1. Regular procedure

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

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | None  |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2018:  | 5,660   |

There is no time limit in Irish law for the IPO to make a decision on an asylum application at first instance.<sup>27</sup> Under Section 39(5) IPA, if a recommendation cannot be made within 6 months of the date of the application for a declaration, the IPO may, upon request from the applicant, provide information on the estimated time within which a recommendation may be made. However, there are no express consequences for failing to decide the application within a given time period.

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 steadily increasing new arrivals. According to most recent official data, due to the transitional case backlog, persons who made an application after January 2017 and whose cases fall outside of the prioritisation criteria will likely be waiting at least 18-20 months before they receive a date for their substantive interview.<sup>28</sup> However, in the experience of the Irish Refugee Council's casework, applicants who successfully request prioritisation have been granted an interview within two to six months.

#### 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>27</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>28</sup> Irish Refugee Council, 'Refugee decision making waiting times at crisis point', 13 December 2017, available at: <http://bit.ly/2nZr2Nm>.



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;
- (g) whether the applicant, without reasonable cause, has made an application following the notification of a proposal under Section 3(3)(a) of the Immigration Act 1999;
- (h) whether the applicant has complied with the requirements of Section 27(1) IPA;
- (i) whether the applicant is a person in respect of whom the Child and Family Agency is providing care and protection;
- (j) whether the applicant has, without reasonable cause, failed to comply with the requirements of paragraphs (a), (c) or (d) of Section 16(3) IPA which refers to reporting obligations.

Applications from certain nationalities can be prioritised, which leads to a quicker determination of the application and the curtailment of appeal rights. Other nationalities (currently 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**).

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 2018 as the IPO continues to deal with a backlog generated by the transition into the single procedure.<sup>29</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>30</sup>

1. Stream one will comprise the majority of applications, which will be scheduled on the mainly on the basis of **oldest cases first**. This includes new applications made after the commencement of the IPA as well as those cases that were under processing prior to the new procedures coming into force. Within this stream, cases will be scheduled according to the following stages and order of priority:

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<sup>29</sup> IPO and UNHCR, *Prioritisation of applications for international protection under the International Protection Act 2015*, available at: <http://bit.ly/2ISEaOy>.

<sup>30</sup> *Ibid.*

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

### 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

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

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

The system under the Refugee Act 1996 obligated the ORAC to conduct separate interviews for each application being submitted, i.e. refugee status or subsidiary protection. This led to systematic delays whereby, if a person goes through the refugee application process (including an interview) and is

ultimately denied status, that person must begin the process anew and attend another interview if he or she wants to apply for subsidiary protection. However, since the commencement of the IPA on 31<sup>st</sup> 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>31</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.

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

International Protection Officers are required to “be sufficiently competent to take account of the personal or general circumstance surrounding the application, including the applicant’s cultural origin or vulnerability” and must provide the services of “interpreters who are able to ensure appropriate communication between the applicant and the person who conducts the interview.”<sup>32</sup>

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

## **Interpretation**

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

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<sup>31</sup> Section 35(8) IPA.

<sup>32</sup> Section 35(3) IPA.

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.

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 private companies. The result is that quality of interpreting, in the experience of Irish Refugee Council practitioners, varies significantly. 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>33</sup> The training also provides interpreters with practical exposure through role-playing, involvement in Irish Refugee Council casework and an overview of the asylum process.

## Transcript

Typically, the officer conducting the interview makes a record of the information given and that information is read back to the applicant periodically during the interview or at the end of the interview and are requested to sign each page to confirm that it is accurate or to flag any inaccuracies. The interview is usually recorded via hand-typed transcription on a desktop. There is no system for independent recording of the interviews (interviews are not audio or video recorded), even where a legal representative is not present. A copy of the interview record is not given to the applicant or their legal representative until and unless the applicant receives a negative decision. In some cases, a subsequent interview is required, for example if there are further questions that need to be asked or if the authorised officer has done further research. Interviews may on occasion be adjourned in the event that there is a problem with interpretation or illness.

### 1.4. Appeal

#### Indicators: Regular Procedure: Appeal

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

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

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

Decisions of the IPO may be challenged before the International Protection Appeals Tribunal (IPAT) within 15 working days of receiving a negative decision.<sup>34</sup> The IPAT is the second-instance decision making body for the Irish asylum process. The IPAT is a quasi-judicial body and, according to the IPA, it shall be independent in the performance of its functions. Under Section 41 IPA, the IPAT may hear appeals against recommendations that an applicant not be given a refugee declaration, or recommendations that an applicant should be given neither a refugee declaration nor a subsidiary protection declaration. The IPA also hears appeals regarding Dublin III Regulation transfers and on paper, inadmissibility appeals. Applications to the IPAT must be made in writing, within a given time-frame, including the grounds of appeal and whether or not the applicant wishes to have an oral hearing.

Section 61(4) IPA states that members of the IPAT shall be appointed by the Minister. They work and are paid on a per case basis. The IPAT consists of a Chairperson, 2 deputy chairpersons, and such

<sup>33</sup> Irish Refugee Council, *Interpreter Training Programme*, available at: <https://bit.ly/2AXGmOB>.

<sup>34</sup> Section 41(2)(a) IPA; Section 3(c) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

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

According to latest available data, in 2017, the IPAT received a total of 887 appeals and during that period 609 appeals were scheduled for hearing, with a total of 606 decisions issued.<sup>35</sup> The highest proportion of appeals, by country of origin, were received from Pakistani, Nigerian and Zimbabwean nationals in 2017.

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

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

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

- ❖ Notice of Appeal submitted by the applicant or their legal representative;
- ❖ All material furnished to the Tribunal by the Minister that is relevant to the case;
- ❖ 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 2017, the average length of time taken by the IPAT for processing and issuing a decision on an international protection appeal was approximately 125 days.<sup>36</sup>

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

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>37</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>38</sup>

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<sup>35</sup> IPAT, *Annual Report 2017*, available at: <https://bit.ly/2CAK0xP>, 30.

<sup>36</sup> *Ibid*, 44.

<sup>37</sup> Guidance Note No: 2014/1, Access to Previous Decisions of the Tribunal, 11 March 2014.

<sup>38</sup> International Protection Appeals Tribunal Decision Archive, available at: <http://bit.ly/2B4bsRz>.

### 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 2017, 497 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 2017 represent an increase on the 458 applications submitted in 2016.<sup>39</sup> Cases on the "Asylum List" also include judicial review of decision in relation to other immigration matters such as EU treaty rights, naturalisation and family reunification. 189 cases were resolved by the High Court in 2017, orders were made in a total of 980 cases and 143 cases were settled out of court.

During 2017, the Court of Appeal received 32 new cases from the 'asylum list', on top of the 21 cases carried across from the previous year.<sup>40</sup>

### 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 asylum seekers) are generally eligible for legal services at the minimum income contribution, but may apply to have some of the contribution waived, at the discretion of the Legal Aid Board. Strictly speaking, there is a small fee to be paid of €10 for legal advice and €40 for representation, but this is invariably waived by the RLS.

According to the latest available information in the Legal Aid Board's Annual Report for 2017, 1,358 persons presented to the Legal Aid board for assistance with "asylum and related matters."<sup>41</sup>

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

<sup>39</sup> Courts Service of Ireland, *Annual Report 2017*, available at: <https://bit.ly/2FI8skU>, 54.

<sup>40</sup> *Ibid.*

<sup>41</sup> Legal Aid Board, *Annual Report 2017*, available at: <https://bit.ly/2WisKXg>, 17.



guidelines under the new procedure.<sup>42</sup> The Irish Refugee Council has noted, however, that an increasing number of individuals presenting at its drop-in services who are represented by the Legal Aid Board do not receive substantive support in actually completing the questionnaire but it is reviewed by a Legal Aid Board caseworker 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>43</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 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>44</sup> The manual is geared towards promoting best practice towards practitioners working in the EU asylum context. According to the Irish Refugee Council's latest Impact Report for 2017, the Law Centre (with a staff team of one senior solicitor, one legal officer and a caseworker in 2017) assisted 31 new clients, who were assisted throughout every stage of their protection application. 80% of decisions received by the Irish Refugee Council Law Centre in 2017 were positive.<sup>45</sup>

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.

It should be noted that with 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>46</sup>

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2018

| Outgoing procedure |          |           | Incoming procedure |          |           |
|--------------------|----------|-----------|--------------------|----------|-----------|
|                    | Requests | Transfers |                    | Requests | Transfers |
| <b>Total</b>       | 780      | 22        | <b>Total</b>       | 311      | 34        |

Source: IPO; Department of Justice, Repatriation Division.

<sup>42</sup> The best practice guidelines are available at: <http://bit.ly/2moPO3D>.

<sup>43</sup> For further information, see The Researcher, 'Early Recognition of People in Need of International Protection: The Irish Refugee Council Independent Law Centre's Early Legal Advice and Representation Project', October 2013.

<sup>44</sup> Irish Refugee Council Independent Law Centre, *A Manual on Providing Early Legal Advice for Persons Seeking Protection*, available at: <http://bit.ly/1OCmkdJ>.

<sup>45</sup> Irish Refugee Council, *2017 Impact Report*, available at: <https://bit.ly/2TVxwI2>.

<sup>46</sup> Regulation 6(8) Reception Conditions Regulations 2018.

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 Irish Naturalisation and Immigration Service 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.

### Application of the Dublin criteria

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

With the commencement of the International Protection Act on 31 December 2016, there was no statutory instrument in place giving effect to the Dublin Regulation until March 2018. It is unknown how Dublin criteria have been applied in practice, or whether there is any deviation from practice under the old system.

## 2.2. Procedure

### Indicators: Dublin: Procedure

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

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

Section 19 IPA sets out the procedure for members of the Garda Síochána or immigration officers to take fingerprints for the purposes of (a) establishing the identity of a person for any purpose concerned with the implementation of the IPA, and (b) checking whether the person has previously lodged an application for international protection in another Member State.<sup>47</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>48</sup> The IPA does not legislatively provide for the use of force to take fingerprints, however, as not volunteering to provide fingerprints is viewed as a failure to make reasonable efforts to establish one's identity (in line with Section 20(1) IPA setting out grounds for detention), applicants who refuse to be fingerprinted may be detained.

In relation to specific guarantees for children in the Dublin procedure, IPO is required under Regulation 3(b) of the European Union (Dublin System) Regulations 2018 to consult with Tusla, the Irish Child and Family Agency, on the best interests of the child particularly with respect to the child's well-being and

<sup>47</sup> Section 19(1) IPA.

<sup>48</sup> Section 19(4) IPA.



social development and the views of the child. No information is available on the practice under the new single procedure.

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

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

At any time during the initial asylum process the IPO may determine that a person is subject to the Dublin III Regulation and hold a personal interview where necessary to conduct the Dublin procedure.<sup>49</sup>

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

### 2.4. Appeal

#### Indicators: Dublin: Appeal

☐ Same as regular procedure

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

The appeal against a transfer decision must be lodged within 10 working days and has suspensive effect.<sup>50</sup>

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

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

<sup>49</sup> Regulation 4 European Union (Dublin System) Regulations 2018.

<sup>50</sup> Regulations 6 and 8 European Union (Dublin System) Regulations 2018.

There is no onward appeal of an IPAT decision on the Dublin Regulation, however, judicial review of the decision could be sought. At the moment there are some pending cases before the High Court (unreported) regarding the remit of the IPAT's appeal and whether they can apply the sovereignty clause under Article 17 themselves. These cases are pending at time of writing, however, in November 2017, the High Court referred a number of questions to the Court of Justice of the European Union (CJEU) on the application of the Dublin Regulation including on the issue of application of Article 17. Some of the questions referred include: whether the words "determining member state" in the Dublin III Regulation includes a state exercising an Article 17 function and whether the functions of a member state under Article 6 (best interests of the child) include the discretion under Article 17 not to transfer.<sup>51</sup> The CJEU delivered its ruling in January 2019.

According to latest available figures, the IPAT received only 1 appeal under the Dublin Regulation in January 2017. However, this low figure is likely due to the lack of a statutory instrument to give effect to the Dublin Regulation following the transition to the International Protection Act. However, following the enactment of the European Union (Dublin System) Regulations 2018, it is expected that the number of Dublin appeals will be significantly higher in 2018 and 2019 figures.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

☐ Same as regular procedure

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

An applicant who is subject to the Dublin Regulation may access legal information through the Refugee Legal Service (RLS). Technically this is not completely free legal representation as there is a small amount of 10 € to be paid (see section on [Regular Procedure: Legal Assistance](#)). The RLS has also issued guidance on the role of Private Practitioners on their panel as regards legal advice which shows that it also applies in the context of the Dublin procedure.<sup>52</sup>

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

<sup>51</sup> CJEU, Case C-661/17 *M.A.*, Reference of 27 November 2017. Irish Times, 'High Court asks European Court of Justice to Clarify EU Law amid Brexit Concerns', 23 November 2017, available at: <http://bit.ly/2mCGk6M>.

<sup>52</sup> See further Legal Aid Board, *Best practice guidelines*, February 2017, available at: <http://bit.ly/2moPO3D>.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☐ Yes ☒ No

❖ If yes, to which country or countries?

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

In response to a Parliamentary Question from February 2017 enquiring whether the Department of Justice was intending to implement the 2016 European Commission proposal that States gradually resume transfers to Greece, previous Minister for Justice Frances Fitzgerald stated that "No transfers of unaccompanied minors are foreseen for the time being. The resumption of transfers is not to be applied retroactively and will only apply to applicants who have entered Greece irregularly from 15 March 2017 onwards or for whom Greece is responsible from this date under the Dublin Regulation criteria."<sup>53</sup> Whether such transfers have occurred in practice since March 2017 is unknown at time of writing.

## 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>54</sup>

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

## 3. Admissibility procedure

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

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

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

<sup>53</sup> Response to Parliamentary Question 155, 28 February 2017, available at: <http://bit.ly/2DiG5YV>.

<sup>54</sup> Information provided by IPO, August 2017.

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

### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

☒ Same as regular procedure

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

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

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

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

Where an inadmissibility recommendation is made, the applicant may make an appeal against that decision within a timeframe designated by the Minister. The time limit for appealing inadmissibility decisions has been set at 10 working days according to International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017 (S.I. No. 116/2017), prescribing specific time periods for different classes of appeal.<sup>55</sup>

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

<sup>55</sup> Section 21(6) IPA; Section 3(a) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.

The appeal procedure against inadmissibility decisions differs from the [Regular Procedure: Appeal](#) insofar as there is no option for an oral hearing.<sup>56</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?
 

|                              |   |                             |
|------------------------------|---|-----------------------------|
| <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> 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?
 

|   |  |                             |
|---|--|-----------------------------|
| <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|---|--|-----------------------------|

  - ❖ Does free legal assistance cover
 

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

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

However, if the inadmissibility procedure happens prior to being provided with a Questionnaire or at the frontiers of the State it is likely that the applicant will not know how to avail themselves of legal advice so in practice may not receive assistance in an admissibility procedure. Furthermore the guidance issued by the 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>57</sup> The lack of transparency with respect to the information and legal assistance provided to persons refused access to the international protection procedure, particularly at the frontiers of the state who are refused 'leave to land', remains an ongoing concern. The Concluding Observations of the UN Committee against Torture specifically called on the Irish State to ensure that all persons refused 'leave to land' are provided with legal advice informing them of their right to seek international protection, in a language they can understand.<sup>58</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.

<sup>56</sup> Section 21(7) IPA.

<sup>57</sup> Legal Aid Board, *Best Practice Guidelines, Information Note for Private Practitioners*, February 2017, available at: <http://bit.ly/2moPO3D>.

<sup>58</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).

## 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>59</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>60</sup> is not in need of international protection;
- ❖ Failed to make an application as soon as reasonably practicable, without reasonable cause;
- ❖ Comes from a [Safe Country of Origin](#).

The existence of an internal protection alternative as a ground for accelerating appeals under Section 43 IPA raises serious concerns and continues to be a common feature of the decision making process.

### 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

☐ Yes ☒ No

☒ Yes ☐ No

  - ❖ If so, are questions limited to nationality, identity, travel route?
  - ❖ If so, are interpreters available in practice, for interviews?
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

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

### 5.3. Appeal

#### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

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

☒ Yes ☐ No

☒ Judicial ☐ Administrative

☒ Yes ☐ No

  - ❖ If yes, is it
  - ❖ If yes, is it suspensive

<sup>59</sup> Section 43 IPA, citing Section 39(4) IPA.

<sup>60</sup> Section 32 IPA.

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

Under Section 43 IPA, applicants then have 10 working days instead of 15 working days to make an appeal,<sup>61</sup> which shall be determined without an oral hearing, unless the Tribunal considers it necessary in the interests of justice to have such a hearing. The appeal is suspensive.

#### 5.4. Legal assistance

##### Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

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

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

### D. Guarantees for vulnerable groups

#### 1. Identification

##### Indicators: Identification

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

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

#### 1.1. Screening of vulnerability

There is no formal mechanism for the identification of vulnerable people, except for unaccompanied children under the IPA. The government has considered the development of a ‘Vulnerability Assessment’ for newly arrived asylum seekers, in order to implement the recommendations of the June 2015 Working Group Report on improvements to the protection process prior to the reform brought

<sup>61</sup> Section 43(a) IPA; Section 3(d) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.



about by the IPA.<sup>62</sup> Further, the IPO does not collate or publish disaggregated statistics on the number of asylum seekers belonging to vulnerable groups, nor has there been a commitment or concrete plan to date to establish a formal vulnerability identification mechanism in the context of the asylum procedures.<sup>63</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>64</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>65</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.

As it stands, while the Regulations prescribe the Minister for Justice, the Minister for Health and the Health Service Executive as responsible for conducting vulnerability assessments in the reception context, in practice it is not clear which authority has responsibility. In the experience of Irish Refugee Council casework, as of February 2019, there is no systematic assessment – as envisaged in the Regulations – being carried out.

## 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 existence.<sup>66</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>67</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.

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<sup>62</sup> Report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Third and final progress report on the implementation of the Report’s recommendations*, June 2017, available at: <http://bit.ly/2w12bLC>, 12.

<sup>63</sup> UN Committee against Torture, *Concluding observations on the second periodic report of Ireland*, 11 August 2017, available at: <http://bit.ly/2hPIVem>, para 12(b) to that effect.

<sup>64</sup> Regulation 8 Reception Conditions Regulations 2018.

<sup>65</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/2w1J74h>.

<sup>66</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>67</sup> *Ibid*, 35.



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

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

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

It should be noted that in relation to the recommendations of the Working Group report on the Protection System, the government's progress report references implementation of the following recommendation in June 2016 by the HSE and RIA and yet no further information is provided as to how it is implemented in practice: The establishment of formal mechanisms of referral in the case of disclosed or diagnosed vulnerabilities to ensure that such persons are provided with appropriate information, health or psychological services and procedural supports.<sup>68</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>69</sup> In relation to age assessment procedures specifically, Nasc found the government's report of recommendations that such procedures are clarified to be 'implemented', in fact only 'partially implemented.' The organisation highlighted, among a number of issues, 'considerable concerns about Tusla's age assessment procedures, or more specifically when their age assessment procedures are not being called upon, as we are aware of cases where age disputed minors end up in direct provision centres, with no access to appeal the initial age assessment, which is usually conducted at the frontiers of the state, and therefore unable to access the supports and aftercare provided to separated children.'<sup>70</sup>

Neither the IPO nor Tusla collect statistics on age assessments conducted in Ireland.<sup>71</sup>

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<sup>68</sup> Department of Justice and Equality, *Working Group Second Progress Table*, February 2017, available at: <http://bit.ly/2IZUvSM>.

<sup>69</sup> Nasc, *Nasc Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, available at: <http://bit.ly/2EOi8Wz>, 27.

<sup>70</sup> *Ibid*, 13.

<sup>71</sup> Information provided by Tusla, August 2017.

## 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>72</sup> Unaccompanied children, elderly, severely ill

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

### 2.1. Adequate support during the interview

Section 28(4)(c) IPA states that the protection decision-maker shall take in to account, *inter alia*, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts, to which the applicant has been or could be exposed, would amount to persecution or serious harm. The High Court has indicated that a decision maker's failure 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>73</sup> Similar findings were made in a case involving a Bangladeshi national.<sup>74</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>75</sup>

<sup>72</sup> The IPO has produced a prioritisation note which sets out prioritisation criteria such as age, health and country of origin, available at: <https://bit.ly/2m1Plbi>.

<sup>73</sup> High Court, *E. D-N, L. D. S v Minister for Justice and Equality* [2013] IEHC 447, Judgment of 20 September 2013.

<sup>74</sup> High Court, *Barua v Minister for Justice and Equality* [2012] IEHC 456, Judgment of 9 November 2012.

<sup>75</sup> Information provided by IPO, August 2017.

UNHCR conducts several general training sessions for new staff per year and as requested by the relevant authority. Throughout 2017 and 2018, UNHCR has delivered training to agencies that work with international protection applicants, for example the Border Management Unit and the Legal Aid Board, as well as multi-agency training on child protection which included participants from Tusla, the Legal Aid Board, the IPO and IPAT staff, among others. The subjects covered in the training are identified by the needs of the specific authorities. Training covers the international protection determination procedure (refugee definition, subsidiary protection, credibility assessment etc.), child protection training (best interests assessment, child-specific protection determination procedures, child-specific procedural safeguards etc.) and training on particular topics such as asylum claims related to sexual orientation and/or gender identity.<sup>76</sup>

Other NGOs, such as SPIRASI also provide training on working with victims of torture, however such training is conducted on an *ad-hoc* basis upon request. SPIRASI have indicated to the state that they would be open to providing training for the early identification of victims of torture but such a facility does not exist at present.<sup>77</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>78</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.

## 2.2. Prioritisation and exemption from special procedures

Accelerated procedures are not applied to unaccompanied children but their applications may be prioritised by IPO. Section 73 IPA grants the Minister power to 'accord priority to any application' or request the International Protection Appeals Tribunal Chairperson to prioritise any appeal, having regard to *inter alia* 'whether the applicant is a person in respect of whom the Child and Family Agency is providing care and protection.'<sup>79</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 February 2019.<sup>80</sup> Under this note, when considering whether to prioritise an application, the IPO may have regard to certain categories of vulnerable applicant with respect to: the age of the applicant (specifically unaccompanied 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 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.

<sup>76</sup> Information provided by UNHCR, January 2018.

<sup>77</sup> Information provided by SPIRASI, August 2017.

<sup>78</sup> Article 13(3)(a) recast Asylum Procedures Directive.

<sup>79</sup> Section 73(2)(i) IPA.

<sup>80</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>.

### 3. Use of medical reports

#### Indicators: Use of Medical Reports

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

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

It is the duty of the applicant to cooperate in the investigation of their application and to furnish to the International Protection Office any relevant information. Applicants may approach an NGO called SPIRASI, which specialises in assessing and treating trauma and survivors of torture, to obtain a medical report. The approach is made through their solicitor. If an asylum seeker is represented by the Refugee Legal Service (part of the Legal Aid Board) then the medico-legal report will be paid for through legal aid. If the request is made by a private practitioner, the report must be paid for privately. SPIRASI has always heavily subsidised the preparation of these reports, receiving a fee of €492 per report from the State through the Legal Aid Board's Refugee Legal Service while the cost to produce each report is €1,190. For clients who have private legal representation the cost of an MLR can be a barrier to access.<sup>81</sup>

SPIRASI's services include the provision of medico-legal reports to the protection process, multidisciplinary assessments of survivors of torture, therapeutic interventions, psycho-social support, outreach and early identification, language and vocational training and training to third parties on survivors of torture. Due to reduced funding in 2016, SPIRASI was forced to halt the production of MLRs between August 2016 and January 2017, which led to long delays for applicants in obtaining a report and created a significant backlog in cases for the organisation itself. With the assistance of additional funding from the Asylum Migration and Integration Fund and the UN Voluntary Fund for Victims of Torture, SPIRASI has been able to resume producing medico-legal reports and SPIRASI puts the waiting time for appointments for reports at 8-10 months from the date of referral.<sup>82</sup> In their 2017 submission to the UN Committee against Torture, SPIRASI expressed concern at victims of torture not being able to access reports to support their asylum application in advance of a first-instance decision in the envisaged shorter process under the single application procedure. Additionally, SPIRASI have indicated that due to the drain on resources in a climate of reduced funding, they are restricted in their capacity to provide the additional rehabilitative supports required by victims of torture.<sup>83</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 specialized rehabilitation services that are accessible country-wide and to support and train personnel

<sup>81</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>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*, 15.

working with asylum-seekers with special needs.<sup>84</sup> While the state has not committed any additional resources to expand services assisting victims of torture, SPIRASI's strategic plan for 2018-2020 notes that a major aim for 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>85</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>86</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>87</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>84</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>85</sup> SPIRASI, *Strategic Plan 2018-2020*, 10.

<sup>86</sup> Emma Quinn, Corona Joyce, Egle Gusciute, European Migration Network, *Policies and Practices on Unaccompanied Minors in Ireland*, November 2014.

<sup>87</sup> Irish Refugee Council, *Submission to the UN Committee against Torture on its Review of Ireland's National Report*, June 2017, available at: <http://bit.ly/2w2dzU6>, 11.

## E. Subsequent applications

### Indicators: Subsequent Applications

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

Section 22 IPA sets out that a person who wishes to make a subsequent asylum application must apply to the Minister for permission to apply again. The application must set out the grounds of the application and why the person is seeking to re-enter the asylum process including a written statement of the reasons why the person concerned considers that the consent of the Minister should be given. The application is made in writing and there is no oral interview. The Minister shall consent to a subsequent application being made when new elements or findings have arisen or have been presented by the person concerned, which makes it significantly more likely that the person will qualify for international protection, and the person was incapable of presenting those elements or findings for the purposes of their previous application for a declaration and if the person was an applicant whose previous application was withdrawn or deemed withdrawn through no fault of their own and therefore they are incapable of pursuing their previous application. If the Minister refuses to consent to a subsequent application in a written decision the applicant can submit an appeal to the IPAT within 10 working days.<sup>88</sup> The Tribunal shall make its decision without an oral hearing.

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

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

<sup>88</sup> Section 22(8) IPA; Section 3(b) International Protection Act 2015 (Procedures and Periods for Appeals) Regulations 2017.



## F. The safe country concepts

### Indicators: Safe Country Concepts

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

### 1. Safe country of origin

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

The Minister may amend or revoke any such order and shall review on a regular basis the situation of any country designated under Section 72.

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>89</sup> This is being applied in practice, namely in response to a significant increase in the numbers of applicants to Ireland from those countries since 2017. According to latest application figures, Albania and Georgia were the top two countries of origin for international protection applicants in Ireland in 2018.

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>90</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.

<sup>89</sup> S.I. No. 121 of 2018, International Protection Act 2015 (Safe Countries of Origin) Order 2018.

<sup>90</sup> Section 33 IPA.

## 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. It remains to be seen how this concept will be applied in practice.

## 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, see to earlier sections which appear to indicate that people may sometimes be refused leave to land though they may have protection needs.

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

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

- a) the procedures to be observed in the investigation of the application;
- b) the entitlement to consult a solicitor;
- 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>91</sup>

All applicants are given recently issued information leaflets from IPO and the European Commission entitled 'Information about the Dublin Regulation for applicants for international protection pursuant to Article 4 of Regulation (EU) No 604/2013' which is a guide to the Dublin process in general. A separate information leaflet is also provided to persons who are subject to the Dublin procedure which provides more detailed information, which is entitled 'I'm in the Dublin procedure – what does this mean? Information for applicants for international protection found in a Dublin procedure, pursuant to Article 4 of Regulation (EU) No. 604/2013'. A separate information leaflet aimed specifically at unaccompanied children is also available, entitled 'Children asking for international protection, information for unaccompanied children who are applying for international protection pursuant to Article 4 of Regulation (EU) No 604/2013'.<sup>92</sup>

## 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>93</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>94</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>95</sup>

Asylum seekers who arrived through the EU relocation scheme, predominantly Syrian nationals, had to complete the application questionnaire and submit to a personal interview like spontaneous applicants, but were subject to an expedited procedure and usually receive a decision with 3 months of arrival in the State.

<sup>91</sup> IPO, *Publications*, available at: <http://bit.ly/2mWLkmK>.

<sup>92</sup> All information leaflets are available online at: <http://bit.ly/2IGDCL9>.

<sup>93</sup> Whether under the "safe country of origin" concept or otherwise.

<sup>94</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>95</sup> *Ibid.*

### 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 applicant, Member States shall decide the conditions for granting access to the labour market for the applicant. The Minister stated that ‘this is contrary to the existing statutory position in Ireland which provides that an asylum seeker shall not seek or enter employment. Extending the right to work to asylum seekers would almost certainly have a profoundly negative impact on application numbers, as was experienced in the aftermath of the July 1999 decision to do so.’<sup>96</sup>

However, the Supreme Court in its judgment in *N.V.H. v. Minister for Justice and Equality*, which dealt with the situation of an asylum seeker who had been living in Direct Provision for 8 years with no access to employment, declared that the indefinite prohibition on employment for people in the asylum process was unconstitutional. The Court provided the State with a 6-month period within which to review the ban on employment (see [Access to the Labour Market](#)) and to make proposals for providing effective access to the labour market for people in the asylum process. In its response, the Government announced on 22 November 2017 that it would opt in to the recast Reception Conditions Directive.<sup>97</sup>

While the prohibition on seeking employment was struck down on 9 February 2018, opt in to 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 enacted by the Minister for Justice.

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 practice, there has been little substantive change since the introduction of the Regulations. A prolonged teething period means that, by the end of December 2018, many of these changes have yet to be introduced.

The lack of available bed spaces in Direct Provision accommodation appears to have placed significant strain on the Reception and Integration Agency (RIA). This may account for the extended teething period since the introduction of the Regulations and the lack of progress on full implementation of the changes contained therein.

### 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>98</sup> Former

<sup>96</sup> Alan Shatter, Department of Justice and Equality, written answer to the Parliamentary question of Mary Lou McDonald TD, 27 March 2013.

<sup>97</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>98</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>.

Minister Fitzgerald in launching the report acknowledged that successful implementation of key recommendations is dependent on the early enactment of the IPA.<sup>99</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>100</sup> On releasing the report, Minister for Justice Charlie Flanagan stated that “133 recommendations have been reported as fully implemented and a further 36 are in progress or partially implemented. This represents 98% full or partial implementation.” However, Nasc conducted an independent review of the implementation progress and published their findings in a working paper on the 18 December 2017.<sup>101</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>102</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>103</sup>

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 RIA. Furthermore, the mechanism for assessing adherence to the National Standards is a self-auditing process. There is no provision for oversight of adherence by RIA 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

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<sup>99</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>100</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>101</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, available at: <http://bit.ly/2Donjfx>.

<sup>102</sup> *Ibid*, 4.

<sup>103</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>.

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>104</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>105</sup>

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

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>106</sup>

#### 1.1. Provision of reception conditions at a designated place

The entitlement to Reception Conditions is expressly subject to two requirements:<sup>107</sup>

- ❖ Material reception conditions are made available only at a designated accommodation centre or a reception centre (which is an initial accommodation centre where asylum seekers 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>108</sup> This means that in order to receive material reception conditions,

<sup>104</sup> Irish Refugee Council, *Submission on the Draft National Standards for Direct Provision Centres*, 3 October 2018, available at: <https://bit.ly/2yuZvWP>.

<sup>105</sup> Note that there is no statutory basis for the Direct Provision system.

<sup>106</sup> Regulations 2 and 4(1) Reception Conditions Regulations 2018.

<sup>107</sup> Regulation 4(2) Reception Conditions Regulations 2018.

<sup>108</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 asylum seekers and to provide for their basic needs directly through a largely cash-less system. This became known as Direct Provision, which is the system of accommodation for persons in the international protection application process in Ireland today. 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) was set up as a division within the Department of Justice to manage Direct Provision. RIA continues to exercise this role under the Regulations. 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

an asylum seeker must live in Direct Provision accommodation and must live in the particular accommodation centre designated by the authorities.<sup>109</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.

Asylum seekers are not obliged to use RIA accommodation and may source their own accommodation or stay with relatives or friends. However, to do so means that the individual is not entitled to material reception conditions or State social welfare supports, e.g. medical card, rent allowance, etc. Since the introduction of the Regulations, asylum seekers are required to sign a declaration stating that they do not have sufficient independent means to have an adequate standard of living.

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>110</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>111</sup>

In practice, on lodging an application for asylum with the IPO, the applicant is referred to RIA and brought to a reception centre near Dublin Airport named **Balseskin**. After a person has applied for asylum they will be issued with a Temporary Residence Certificate, in the form of a plastic card, which sets out the person's personal details and contains their photograph. When the Temporary Residence Certificate has been received they will be referred to the RIA office within the IPO building. The person is accommodated in **Balseskin** reception centre in order to facilitate an interview with IPO, health screening and registration for Community Welfare Service assistance.

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.

## 1.2. The assessment of resources

In practice, prior to receiving material reception conditions, asylum seekers 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>112</sup> To calculate the relevant portion, the first €60 is disregarded. Thereafter, the relevant portion is assessed as 60% of the amount of the weekly income (minus the €60 deduction). Once the amount of the relevant portion is arrived at, 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>113</sup>

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matter of public record. Originally, it was intended that asylum seekers would spend no more than 6 months living in Direct Provision.

<sup>109</sup> Regulation 7(1) Reception Conditions Regulations 2018.

<sup>110</sup> Regulation 4(5) Reception Conditions Regulations 2018.

<sup>111</sup> Regulation 4(6) Reception Conditions Regulations 2018.

<sup>112</sup> Regulation 5(1) and Schedule 1 Reception Conditions Regulations 2018.

<sup>113</sup> Regulation 5(2) Reception Conditions Regulations 2018.

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>114</sup>

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>115</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>116</sup>

### 1.3. Reception for other categories of persons

RIA also provides overnight accommodation to citizens of certain EU States who are destitute and who have expressed a wish to return to their own country. Victims of trafficking who are not asylum seekers are also accommodated during a 60 day reflection period.<sup>117</sup>

RIA 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 RIA in the context of stretched capacity. RIA 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, over 700 people with status remain in Direct Provision accommodation as of January 2019. In the experience of the Irish Refugee Council's integration support caseworkers, 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

1. Amount of the monthly financial allowance/vouchers granted to asylum seekers as of 31 December 2018 (in original currency and in €): €86.40 per month for adults and children (this is due to increase to €155.20 for adults and €119.20 in March 2019).

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>118</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 asylum seekers for personal and incidental expenses.

<sup>114</sup> Schedule 2 Reception Conditions Regulations 2018.

<sup>115</sup> Regulation 5(4) Reception Conditions Regulations 2018.

<sup>116</sup> Regulation 5(3) and (6) Reception Conditions Regulations 2018.

<sup>117</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>118</sup> Regulation 2 Reception Conditions Regulations 2018.



Currently, asylum seekers receive a weekly allowance of €21.60 per adult and €21.60 per child. 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 weekly allowance be increased for adults from €19.10 to €38.74 and increased from €9.60 to €29.80 for children.<sup>119</sup>

On 8 October 2018, the Minister for Finance, Paschal Donohue, announced an increase in the Direct Provision allowance in Budget 2019. This increase amounted to €38.80 for adults and €29.80 for children.<sup>120</sup> This increase is in line with the recommendation contained in the McMahon Report. The increase is due to come into effect the week beginning 25 March 2019.

## 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 will be granted for a six-month period (renewable) once an asylum seeker has been waiting over 9 months for a first instance decision. The impact of this change will be felt by newly-arrived asylum seekers rather than those who had 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.

Section 15 of the Social Welfare and Pensions (No. 2) Act 2009 states that an individual who does not have a “right to reside” in the State shall not be regarded as being habitually resident in the State. As asylum seekers do not have a right to reside in Ireland, they are 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>121</sup>

The Exceptional Needs Payment is a discretionary payment made by a Welfare Officer on receipt of an application for a once-off payment, rather than an ongoing liability. It is relied upon by asylum seekers 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.

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<sup>119</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>120</sup> Irish Refugee Council, ‘Increase in Direct Provision allowance’, 9 October 2018, available at: <https://bit.ly/2yr57R9>.

<sup>121</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.

### 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>122</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>123</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>124</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 also empowered to reduce or withdraw the daily expenses allowance provided to a recipient on the same grounds.<sup>125</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>126</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>127</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>128</sup>

<sup>122</sup> Regulation 6(1) Reception Conditions Regulations 2018.

<sup>123</sup> Regulation 27 Reception Conditions Regulations 2018.

<sup>124</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.

<sup>125</sup> Regulation 6(2) Reception Conditions Regulations 2018.

<sup>126</sup> Regulation 6(3)(a) Reception Conditions Regulations 2018.

<sup>127</sup> Regulation 6(3)(b) Reception Conditions Regulations 2018.



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 standards of living, where the person does not have means to provide for themselves.<sup>129</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 10 working days,<sup>130</sup> or the Minister for Employment Affairs in case of reduction or withdrawal of the Direct Provision allowance.<sup>131</sup>

The decision of the review officer can then be challenged before the IPAT within 10 working days.<sup>132</sup> The IPAT has 15 working days to decide on the appeal.<sup>133</sup>

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

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

##### 4.1. Dispersal across Direct Provision centres

The policy of dispersal of asylum seekers 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 asylum seekers 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 satellite centres which are temporary emergency accommodation centres where asylum seekers are housed pending onward dispersal. This is an entirely *ad hoc* and informal arrangement with no publicly available information regarding their use or their location. According to public reports, the arrangements are intended to be for a maximum of six months. However, this is likely to be extended if tenders for Direct Provision accommodation are not successfully secured.<sup>134</sup>

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)

<sup>128</sup> Regulation 6(5) Reception Conditions Regulations 2018.

<sup>129</sup> Regulation 6(6) Reception Conditions Regulations 2018.

<sup>130</sup> Regulation 20(1)(d) Reception Conditions Regulations 2018.

<sup>131</sup> Regulation 20(2)(d) Reception Conditions Regulations 2018.

<sup>132</sup> Regulation 21(1) Reception Conditions Regulations 2018.

<sup>133</sup> Regulation 21(4)(a) Reception Conditions Regulations 2018.

<sup>134</sup> Irish Times, ‘Five direct provision centres oversubscribed with others almost full’, 3 December 2018, available at: <https://bit.ly/2FDEO0f>.

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>135</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>136</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 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.

RIA may reallocate a room if it is left unused for any period of time without letting the centre manager know in advance, or if a resident is consistently absent from the centre. 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 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>137</sup>

However, the House Rules have not been revised in light of the introduction of the Reception Conditions Regulations and their legal status is therefore 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 on the website of RIA. This has not been done at the time of writing. 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 RIA house rules require residents to seek permission if they are going to be away from their accommodation overnight.<sup>138</sup>

In practice, freedom of movement is restricted due to the very low level of financial support given to asylum seekers which means that, unless transport to and from a centre is free and at a suitable time, it is often too costly to travel. The Irish Human Rights and Equality Commission has described the

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<sup>135</sup> Regulation 7(2) Reception Conditions Regulations 2018.

<sup>136</sup> Regulation 7(3) Reception Conditions Regulations 2018.

<sup>137</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

<sup>138</sup> *Ibid.*

conditions in some Direct Provision as amounting to deprivation of liberty due to the extent of those restrictions.<sup>139</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>140</sup>

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres:<sup>141</sup> 38
2. Total number of places in the reception centres: 6,209
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:  
☒ Reception centre ☒ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

#### 1.1. Direct Provision centres

Available accommodation within the Direct Provision estate has been decreasing since 2016, due to a confluence of factors, including the expiry of contracts between RIA and accommodation providers and the ongoing housing crisis which is reducing available accommodation sites. This has led to a chronic shortage of accommodation for people who have received international protection status, particularly in **Dublin**. The effect is that an increasing number of people are unable to move out of Direct Provision and acquire alternative accommodation on receipt of refugee, subsidiary protection or leave to remain status (see [Content of Protection: Housing](#)). This reduces the available accommodation within Direct Provision at a time when asylum applications have increased.

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>142</sup> In the experience of the Irish Refugee Council in 2018, 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. The personal circumstances of persons living outside Direct Provision are generally unknown and figures are not maintained by RIA. 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.

As of the end of October 2018 there were approximately 5,928 persons registered as living in Direct Provision. At the end of the year, the RIA accommodation portfolio was comprised of a total of 38 centres throughout 17 counties, with a contracted capacity of 6,209 places. These centres were: 1

<sup>139</sup> Human Rights and Equality Commission, *Ireland and the OPCAT*, September 2017, available at: <http://bit.ly/2fEh5h6>, 32.

<sup>140</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>141</sup> Both permanent and for first arrivals.

<sup>142</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>.

Reception Centre, located in **Dublin**, 35 Accommodation Centres across different counties, and 1 Self Catering Centre located in **Louth**.<sup>143</sup>

| Capacity and occupancy of Direct Provision centres: October 2018 |              |                          |
|--|--------------|--------------------------|
| Centre   | Capacity     | Occupancy at 28 Oct 2018 |
| <i>Reception centres</i>   |              |                          |
| Balseskin  | 320          | 306                      |
| <i>Self-catering centres</i>                                     |              |                          |
| Louth  | 74           | 58                       |
| <i>Accommodation centres (by county)</i>                         |              |                          |
| Clare  | 365          | 366                      |
| Cork   | 972          | 912                      |
| Dublin   | 475          | 470                      |
| Galway   | 372          | 356                      |
| Kerry  | 392          | 367                      |
| Kildare  | 233          | 214                      |
| Laois  | 265          | 260                      |
| Limerick   | 203          | 199                      |
| Longford   | 80           | 76                       |
| Mayo   | 245          | 230                      |
| Meath  | 600          | 622                      |
| Monaghan   | 175          | 171                      |
| Sligo  | 218          | 215                      |
| Tipperary  | 161          | 149                      |
| Waterford  | 408          | 410                      |
| Westmeath  | 379          | 353                      |
| <b>Total</b>   | <b>5,937</b> | <b>5,734</b>             |

Source: RIA, Statistics, October 2018: <https://bit.ly/2FRopEC>.

At the end of January 2019, the number of persons in Direct Provision was 6,355.<sup>144</sup>

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

There are 7 single male only accommodation centres. There is one female-only reception centre in Killarney, **Kerry** named Park Lodge. The centre has an occupancy rate of 45 out of 55 places.<sup>145</sup>

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

Seven centres are state-owned: Knockalisheen, **Clare**; Kinsale Road, **Cork**; Atlas House Killarney, Atlas House Tralee, Johnston Marina and Park Lodge, **Kerry**; and Athlone, **Westmeath**. All reception

<sup>143</sup> RIA, *Statistics*, October 2018.

<sup>144</sup> RTE, ‘Numbers in direct provision above Government’s contracted capacity’, 24 January 2019, available at: <https://bit.ly/2FVe0sa>.

<sup>145</sup> RIA, *Statistics*, October 2018.

centres are operated by private external service providers who have a contract with RIA. Seven centres are owned by the Irish State with the remainder privately owned. Executive responsibility for the day-to-day management of reception centres lies with the private agencies, which provide services such as accommodation, catering, housekeeping etc.

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

## 1.2. Emergency Accommodation Beds

In September 2018, the Direct Provision estate reached capacity and no accommodation was available for newly arriving asylum seekers, 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 asylum seekers were not provided with any material receptions and were informed that no accommodation was available, rendering them homeless on arrival in Ireland.<sup>146</sup> After intensive representations and media attention on the issue, alternative accommodation was provided by RIA on an emergency basis. This involved the contracting of accommodation in hotels and holiday homes to house asylum seekers on a temporary basis pending RIA contracting for more permanent accommodation centres.<sup>147</sup> These centres are known as "satellite centres".

According to RIA statistics as of October 2018, emergency accommodation was available in five hotels:

| Capacity and occupancy of Emergency Accommodation Beds: October 2018 |            |                          |
|--|------------|--------------------------|
| Centre   | Capacity   | Occupancy at 28 Oct 2018 |
| Cavan (Dun Na Ri House Hotel)  | 30         | 30                       |
| Monaghan (Westernra Hotel)   | 8          | 8                        |
| Monaghan (Lisanisk House Hotel)                                      | 15         | 15                       |
| Monaghan (Treacy's Hotel)  | 52         | 52                       |
| Wicklow (The Grand Hotel)  | 9          | 9                        |
| <b>Total</b>   | <b>114</b> | <b>114</b>               |

Source: RIA, Statistics, October 2018: <https://bit.ly/2FRopEC>.

<sup>146</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>147</sup> Irish Times, 'Hotels in the east being used as temporary direct provision centres', 19 November 2018, available at: <https://bit.ly/2S4Pvyv>.

### 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>148</sup> There are three EROC with a total capacity of 500 places:

| Capacity and occupancy of EROC: October 2018 |            |                          |
|--|------------|--------------------------|
| Centre                                       | Capacity   | Occupancy at 28 Oct 2018 |
| Waterford (Clonea)                           | 120        | 105                      |
| Roscommon (Ballaghadereen)                   | 230        | 152                      |
| Meath (Mosney)                               | 150        | 118                      |
| <b>Total</b>                                 | <b>500</b> | <b>375</b>               |

Source: RIA, Statistics, October 2018: <https://bit.ly/2FRopEC>.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☒ Yes ☐ No
2. What is the average length of stay of asylum seekers in the reception centres?<sup>149</sup> 23 months
3. Are unaccompanied children ever accommodated with adults in practice? ☐ Yes ☒ No

Direct Provision has been under intense scrutiny since inception in 2000 for the conditions imposed on residents, exacerbated by the fact that systemic delays in the asylum procedure result in people spending far longer in Direct Provision than was originally intended by the State. The system of Direct Provision has been criticised by numerous prominent people 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.

Since 2017, the Ombudsman has jurisdiction to hear complaints from residents of accommodation centres regarding the conditions of facilities amongst other matters.<sup>150</sup> The Ombudsman received an average of 12.5 complaints each month in 2018, amounting to a total of 150 complaints relating to Direct Provision.<sup>151</sup> 97 complaints on Direct Provision between April and December 2017, of which 12 related to accommodation, 8 to food, 3 to the state of facilities and 4 to the conduct of staff.<sup>152</sup> The Ombudsman has not provided a statistical breakdown of these complaints but provides a commentary

### 2.1. Overcrowding and overall conditions

RIA states that all accommodation centres operate in compliance with relevant legislation, specifically the Housing Act 1966 which refers to a definition of overcrowding, in essence the Act provides that there must be no less than 400 cubic feet (about 11m<sup>3</sup>) per person in each room and that a house shall

<sup>148</sup> INIS, 'Ministers Flanagan and Stanton welcome Syrian refugee families to Ireland', 27 December 2018, available at: <https://bit.ly/2RLydaq>.

<sup>149</sup> Minister of State at the Department of Justice and Equality David Stanton, Response to Parliamentary Question No 288, 19 February 2019, available at: <https://bit.ly/2H9gldk>.

<sup>150</sup> Ombudsman, 'The Ombudsman and direct provision', available at: <https://bit.ly/2LdNf14>.

<sup>151</sup> The Times, 'More asylum seekers take problems to ombudsman', 11 January 2019, available at: <https://bit.ly/2RGitW5>.

<sup>152</sup> See e.g. Ombudsman, *The Ombudsman & Direct Provision – the story so far*, January 2018, available at: <http://bit.ly/2FXmJWX>, 19.



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.

With the Direct Provision estate reaching capacity in 2018, the Irish Refugee Council has received reports of overcrowding within accommodation centres. Media reports in December 2018 have confirmed that at least five centres are oversubscribed beyond contracted capacity.<sup>153</sup> Overcrowding has been identified by residents as an ongoing problem with reception facilities over a number of years.<sup>154</sup> It is frequently cited in reports on conditions in centres and continues to be a significant concern in circumstances where an applicant can share a single room with several other people. If introduced, the draft National Standards would require 4.65m<sup>2</sup> for each resident per bedroom, with additional space for persons with disabilities (see the introduction to [Reception Conditions](#)).

There has been wide news coverage of poor conditions in some Direct Provision centres and the impact that quality of living there can have on residents. In March 2018, there were reports of rat infestation in one Direct Provision centre.<sup>155</sup> In November 2018, it was widely reported that a mother had been denied food for her child who had been sick, with the management of the accommodation centre subsequently issuing an apology.<sup>156</sup>

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

At all centres apart from 1 self-catering accommodation facility, residents receive all meals. In relation to food, the McMahon Working Group recommended that RIA 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>157</sup>

The draft National Standards presented in September 2018 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>158</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>159</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>160</sup> The report also indicated that work was ongoing to commence pilots for fully independent living, that

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<sup>153</sup> Irish Times, 'Five direct provision centres oversubscribed with others almost full', 3 December 2018, available at: <https://bit.ly/2FDEO0f>.

<sup>154</sup> Irish Times, 'Children in direct provision complain about food, overcrowding', 1 August 2017, available at: <https://bit.ly/2FKJ4uO>.

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

<sup>156</sup> Irish Times, 'Mother in direct provision denied food at night for sick child', 2 November 2018, available at: <https://bit.ly/2CDK9k3>.

<sup>157</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.

<sup>158</sup> Department of Justice and Equality, *Draft National Standards for Direct Provision Centres*, September 2018, available at: <https://bit.ly/2NbEZPG>, Standard 5.1.

<sup>159</sup> *Ibid*, Standard 5.2.

<sup>160</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.

would “include home cooking within the family accommodation units in some instances and access to communal cooking stations for residents in others.” In their review of the implementation progress released in December 2017, Nasc stated that on receipt of information from RIA, it appeared that personal catering facilities had only been established in centres for family centres and family units, and that none of these facilities had been provided to centres housing single adults.<sup>161</sup> RIA had failed to respond to their request for a timeframe in which the additional facilities would be established. Accordingly, Nasc deemed that this recommendation is “not being progressed.”

Many of the complaints to the Ombudsman made by residents of accommodation centres relate to both the quality, preparation and presentation of food. Issues arise frequently over the specific dietary needs of residents, requests for more food, restrictions around the opening hours of canteens and an absence of self-cooking facilities at many centres.<sup>162</sup>

While RIA is currently in the process of providing cooking facilities for residents at a number of centres, this was a commitment first made following the publication of the MacMahon Report in 2015. A period of three years has passed since the publication of the Working Group Report, with implementation of the recommendation on self-catering facilities a markedly slow process. The Working Group recommended that all families should have access to cooking facilities, either through access to a communal kitchen or as part of a self-contained family-accommodation unit. According to the Nasc review of the Government’s implementation of the Working Group’s recommendations carried out in December 2017, this recommendation is implemented, albeit gradually and with some concerns as to quality, in 15 of 33 Direct Provision centres.<sup>163</sup>

RIA’s House Rules and Procedures document states that, where possible and practical, an accommodation centre will cater for ‘ethnic food preferences’ and the centre will provide tea and coffee making facilities, and drinking water, outside normal meal times.<sup>164</sup> However, complaints about the quality and presentation of food persist across centres.

### 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 effective 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>165</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 DP and into independent living due to the length of time they have spent out of the workforce, with limited opportunity for personal or professional development. This,

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<sup>161</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, 45.

<sup>162</sup> Ombudsman, *The Ombudsman & Direct Provision – the story so far*, January 2018, available at: <http://bit.ly/2FXmJWX>.

<sup>163</sup> Nasc, *Working Paper on the Progress of Implementation of the McMahon Report*, December 2017, 41.

<sup>164</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1eiZdFd>.

<sup>165</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>.



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>166</sup>

As of the end 2018, the following periods of stay in Direct Provision have been reported by RIA:

| Average stay in Direct Provision: 31 December 2018 |                   |            |
|--|-------------------|------------|
| Period   | Number of persons | Percentage |
| Less than 6 months                                 | 1,400             | 22.9%      |
| Over 6 months                                      | 964               | 15.8%      |
| Over 1 year  | 1,355             | 22.3%      |
| Over 2 years                                       | 868               | 14.2%      |
| Over 3 years                                       | 864               | 14.2%      |
| Over 4 years                                       | 289               | 4.7%       |
| Over 5 years                                       | 146               | 2.4%       |
| Over 6 years                                       | 65                | 1.1%       |
| Over 7 years                                       | 142               | 2.3%       |

Source: Minister of State at the Department of Justice and Equality, Reply to Parliamentary Question No 288, 19 February 2019.

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

The Reception Conditions Regulations permit a person who has been waiting more than 9 months for a first instance decision to apply for labour market access.<sup>167</sup> Labour market access consists of

<sup>166</sup> Dr. Muireann Ní Raghallaigh, Maeve Foreman and Maggie Feeley, 'Transition: From Direct Provision to life in the Community', June 2016, available at: <http://bit.ly/2lBtlnP>.

<sup>167</sup> Regulation 11(3) Reception Conditions Regulations 2018.

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>168</sup>

Permission to access the labour market is for a 6-month, renewable period.<sup>169</sup> In practice, applications are accepted once a person has been waiting for 8 months for a first instance decision in order to prevent delays once the 9-month period has elapsed.<sup>170</sup>

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 asylum seekers, those who have been in Ireland the longest and who have already received a first instance decision will not benefit from this change.

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>171</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>172</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>173</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 3 years from the date on which the applicant ceases to be an employee and must provide a copy of these records within 10 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 numerous reports of employers not recognising the official documents granting permission to work and not employing asylum seekers on this basis. This has been echoed by media reporting on the topic in September 2018.<sup>174</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>175</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>176</sup> This would also affect their asylum application.

In practice, asylum seekers face significant barriers accessing bank accounts due to difficulties in producing satisfactory identity documents for the purposes of anti-money laundering requirements. 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 asylum seekers to

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<sup>168</sup> Regulation 11(9)(a) and Schedule 6 Reception Conditions Regulations 2018.

<sup>169</sup> Regulation 11(5) Reception Conditions Regulations 2018.

<sup>170</sup> This is permitted by Regulation 11(6) Reception Conditions Regulations 2018.

<sup>171</sup> Regulation 11(9)(a) and (10) Reception Conditions Regulations 2018.

<sup>172</sup> Regulation 11(9)(b) and (c) Reception Conditions Regulations 2018.

<sup>173</sup> Regulation 14 Reception Conditions Regulations 2018.

<sup>174</sup> Irish Times, 'Employer doubts preventing asylum seekers from entering workforce', 17 September 2018, available at: <https://bit.ly/2S4H8D0>.

<sup>175</sup> Regulation 15(2) Reception Conditions Regulations 2018.

<sup>176</sup> Regulation 15(1) Reception Conditions Regulations 2018.

obtain a driving licence which inhibits the access to employment, particularly where people live in remote rural areas.

## 2. Access to education

### Indicators: Access to Education

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

Asylum-seeking children can attend local national primary and secondary schools on the same basis as Irish children. This has been made an express right under the Reception Conditions Regulations.<sup>177</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>178</sup>

Vocational training is now available to asylum seekers 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. Asylum seekers 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. 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 asylum seekers.

In 2018, a number of Irish Universities have taken steps to improve access for asylum seekers. For example, a total of 31 full-time scholarships were available in Irish universities, with an additional 6 available in institutes of technology, along with a variety of other access routes and online courses available.<sup>179</sup>

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. The eligibility requirements are stringent and mean that the vast majority of students do not satisfy the conditions set by the Department of Education. As a result, uptake has been very low, despite clear interest in further and higher education.<sup>180</sup> There are concerns that the pilot scheme is so restrictive in nature that it may be very difficult to access.<sup>181</sup>

<sup>177</sup> Regulation 17 Reception Conditions Regulations 2018.

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

<sup>179</sup> Irish Refugee Council, *Further Education: Scholarships – Grants – Useful websites – Free online courses*, June 2018, available at: <https://bit.ly/2AXGP3i>.

<sup>180</sup> Irish Times, 'Asylum seekers to receive student grants for first time', 28 August 2015 available at: <http://bit.ly/1P1vfpC>.

<sup>181</sup> See e.g. Subpri.me, *Access to Education and the McMahon report*, available at: <http://bit.ly/1ipZjNo>.

The Irish Refugee Council has recommended that the criteria be amended to reduce the five-year requirement.<sup>182</sup> The Irish Human Rights and Equality Commission (IHREC) recommended that the pilot support scheme for free fees be altered to remove the criterion of having spent five years in the Irish education system as this presents for many an insurmountable barrier to accessing affordable third-level education.<sup>183</sup> Unfortunately the criteria remain unchanged despite ongoing efforts at engagement on the issue.

## 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 asylum seekers living in Direct Provision and is expressly provided for in the Reception Conditions Regulations.<sup>184</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 asylum seekers living in Direct Provision are exempt from paying the prescription charges levied on medical-card holders.<sup>185</sup>

RIA's website states that "Health Screening is made available in our Reception Centre to all asylum seekers on a voluntary and strictly confidential basis. Screening covers Hepatitis, TB, HIV, immunisation status and any other ailments or conditions that the medical officers feel require further investigation and/or treatment. Screening staff also check the vaccination needs of the resident and their family. Arrangements are in place in various parts of the country to offer this service to those who did not avail of it in Dublin. The outcome of any medical tests undergone by an asylum seeker will not affect their application for a declaration as a refugee in any way."<sup>186</sup>

Specialised treatment for trauma and victims of torture is available through an NGO called **SPIRASI** which is a humanitarian, intercultural, non-governmental organisation that works with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. SPIRASI staff has access to certain accommodation centres e.g. **Balseskin** reception centre in Dublin and can help to identify victims of torture. No formal arrangements or agreements exist to deal with torture survivors in a way that is different to someone who has not experienced torture.

<sup>182</sup> RTE, 'Third level access scheme for asylum seekers extended', 7 September 2018, available at: <https://bit.ly/2CJpRpc>.

<sup>183</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>184</sup> Regulation 18 Reception Conditions Regulations 2018.

<sup>185</sup> Citizens Information, 'Prescription Charges for Medical Card Holders', 10 October 2018, available at: <https://bit.ly/2DHShIW>.

<sup>186</sup> RIA, *Medical*, available at: <http://bit.ly/2matETK>.

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 will be available in Ireland up to twelve weeks' gestation from January 2019. The previous ban on access to abortion was a particular difficulty for asylum seekers 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 will be by way of services offered 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.

## 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 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>187</sup> However, the form of the assessment is not prescribed in the Regulations and a vulnerability assessment has not been introduced as of the end of 2018. While the Regulations designate the Minister for Justice, the Minister for Health and the Health Service Executive as responsible for the performance of the special reception needs assessment, it is not clear which bodies or agencies are responsible in practice. In the Irish Refugee Council's experience to date, vulnerability assessment does not appear to be conducted on a systematic basis as required under the regulations.

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>188</sup> A formal process for ongoing assessment of vulnerabilities and special reception needs has not been introduced by end December 2018, although practitioners in the area have begun to make representations in reliance on this aspect of the Regulations.

### 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.

<sup>187</sup> Regulation 8(1)(a) Reception Conditions Regulations.

<sup>188</sup> Regulation 8(1)(b) Reception Conditions Regulations.

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>189</sup>

## 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 female. Families are otherwise accommodated with the general population. Children are accommodated together with their families in Direct Provision accommodation centres. In his 2018 report to Parliament, the Special Rapporteur on Child Protection, Professor Geoffrey Shannon, criticised the accommodation of children in Direct Provision, saying it is "in direct conflict with their right to an adequate standard of living, as I have emphasised in several previous reports. Direct provision accommodation has been shown to be detrimental to children's well-being and development."<sup>190</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) 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>191</sup>

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

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<sup>189</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>.

<sup>190</sup> Professor Geoffrey Shannon, *Eleventh Report of the Special Rapporteur on Child Protection: A Report Submitted to the Oireachtas*, December 2018, available at: <https://bit.ly/2BRzF0U>, 46.

<sup>191</sup> Regulation 3 Reception Conditions Regulations 2018.



With the current crisis in accommodation for asylum seekers, 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 has conducted outreach to some “satellite centres” in 2018 in an effort to provide applicants with key information. In our experience, 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.

While the introduction Reception Conditions Regulations in Ireland has been a positive development, the fact that many provisions have not been implemented in practice is cause for serious concern.

The practice around the provision of information continues as it did prior to the introduction of the Regulations. Information is provided by the RIA 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 11 other languages on the RIA website. Revised House Rules and Procedures were published in 2015 and are still awaiting translation to some of the main languages.<sup>192</sup> As of 31 December 2018, this remains the case and the RIA website states: “The updated House Rules & Procedure document has been sent for translation into the 11 other languages previously published. When these are returned those versions will be published on this website.” This has not changed for a number of years, despite the introduction of the Regulations.

According to the RIA annual report 2016, RIA has established information clinics on a bi-annual basis to provide information on a one to one basis and also review the operation of the Direct Provision centre.<sup>193</sup>

It is regrettable that no annual report for 2017 has been published. Indeed, no monthly reports have been published since October 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.

## 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 centre, subject to limitations. The Regulations provide access to a list of people and organisations including family members, legal advisers, UNHCR and other relevant NGOs. This access is specifically granted “in order to assist the recipient”.<sup>194</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>195</sup>

<sup>192</sup> RIA, *House Rules and Procedures*, available at: <http://bit.ly/1MxvvMV>, Paragraph 2.14.

<sup>193</sup> Department of Justice and Equality, *RIA Annual Report 2016*, available at: <http://bit.ly/2E8mkRy>, 42.

<sup>194</sup> Regulation 7(6)(b) Reception Conditions Regulations 2018.

<sup>195</sup> Regulation 7(7) Reception Conditions Regulations 2018.



The right of access to accommodation centres for guests was the subject of litigation in the case of *C.A. and T.A.* 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>196</sup>

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

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

The Working Group report recommended that RIA ensure in Direct Provision centres that rooms without CCTV are available for receiving visitors, social workers, legal representatives and other advocates.<sup>197</sup> According to Nasc's review of the Government's progress reports on implementation of the Working Group recommendations, implementation of this recommendation could not be verified. No detailed information in relation to this information had been provided in any of the Government's three progress reports and RIA failed to respond to Nasc's request for information.<sup>198</sup>

## 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**.

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<sup>196</sup> See e.g. PILA, Guest article by Colin Lenihan – 'High Court finds some Direct Provision house rules unlawful and in breach of ECHR', November 2014, available at: <http://bit.ly/1HgZqWK>.

<sup>197</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>198</sup> Nasc, *Working Paper on the Implementation of the Working Group Recommendations*, December 2017. 48.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

|  |               |
|--|---------------|
| 1. Total number of asylum seekers detained in 2018: <sup>199</sup> | Not available |
| 2. Number of asylum seekers in detention at the end of 2018:       | Not available |
| 3. Number of detention centres:                                    | 1             |
| 4. Total capacity of detention centres:                            | 105           |

It should be noted that, in general, Ireland places very few asylum seekers or migrants in immigration detention and data for the numbers of people detained who subsequently apply for international protection are not collated.

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

According to the latest data from the Irish Prison Service, in 2017 there were 418 committals in respect of immigration issues involving 396 detainees. This represents a slight decrease on the previous year (421 committals involving 408 detainees).<sup>200</sup>

Furthermore, there are no specially designated detention centres for asylum seekers and irregular migrants. Asylum seekers are detained within the general prison population, at a Garda Síochána (police) station or another designated place of detention. 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 (yet) in legislation to the detention facility envisaged for **Dublin Airport**.

<sup>199</sup> Including *both* applicants detained in the course of the asylum procedure and persons lodging an application from detention.

<sup>200</sup> Irish Prison Service, *Annual Report 2017*, available at: <https://bit.ly/2CGtJYf>, 27.

## B. Legal framework for detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

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

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

#### 1.1. Detention under the International Protection Act 2015

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

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

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 have notification of his or her detention, the place of detention and every change of such place sent to the High Commissioner;
- ❖ Are entitled to leave the state at any time during the period of their detention and if they indicate a desire to do so, they shall be brought before a court as soon as practicable. The court may make such orders as may be necessary for their removal;
- ❖ Are entitled to the assistance of an interpreter for the purposes of consulting with a solicitor.

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

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

## **1.2. Detention for the purpose of removal**

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

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

Section 5(6) of the 1999 Act prohibits detention for any single period of more than eight weeks and multiple detentions for periods of less than eight weeks where the total period exceeds eight weeks. Section 5 Immigration Act 1999 has been amended under Section 78 IPA so that such persons in the category above may be arrested without warrant. Another new ground under Section 5 is that a person may now be arrested without warrant if they have failed to leave the State within the time specified in a deportation order. Section 78(3) also enables persons to be detained at airport and ports of entry for periods not exceeding 12 hours.

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

It should be noted that under the amendments to Section 5 under Section 78 IPA an immigration officer or member of Garda Síochána may enter (if necessary, by use of reasonable force) and search any premises (including a dwelling) where a person is or where the immigration officer or the member, with reasonable cause, suspects that person to be, and where the premises is a dwelling, the immigration officer or the member shall not, unless acting with the consent of an occupier of the dwelling or other person who appears to the immigration officer or the member to be in charge of the dwelling, enter that dwelling unless (a) the person ordinarily resides at that dwelling or (b) he or she believes on reasonable grounds that the person is within the dwelling.<sup>201</sup>

## **1.3. Detention under the Dublin Regulation**

The European Union (Dublin System) Regulations 2018 provide the possibility to detain an asylum seeker for the purpose of carrying out a Dublin transfer where an immigration officer or member of Garda Síochána determines that there is a “significant risk of absconding”.<sup>202</sup> The criteria for determining such a risk have not been spelt out in legislation.

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<sup>201</sup> Section 78(11) IPA.

<sup>202</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

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

There are no formal alternatives to detention. Section 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, 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 Gardai Síochána.<sup>203</sup>

A member of the Gardai Síochána may arrest without warrant and detain, in a place of detention, a person who in their opinion has failed to comply with the Court's reporting conditions under Section 20(9) IPA. In such a case the applicant shall be brought before the District Court again and if the judge feels grounds for detention apply under subsection (9) or (3) above then they may commit the applicant for further periods (each period being a period not exceeding 21 days) pending the determination of the person's application for international protection under Section 20(12) 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?  
☐ Frequently ☐ Rarely ☒ Never
- ❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☐ No
2. Are asylum seeking children in families detained in practice?  
☐ Frequently ☐ Rarely ☒ Never

The 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 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.

<sup>203</sup> Section 20(5) IPA.

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 to date.

#### 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 7 days.<sup>204</sup>

Data is not available on how long asylum seekers are detained but it is generally considered to be a short period of time pre-removal. The Irish Prison Service data does not break down between detention on other immigration grounds and detention as an asylum seeker.

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 **Dochas 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. However, the Dochas Centre is not currently listed as a place of detention under the new legislation, so it is unknown where female detainees will be held in practice.

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

<sup>204</sup> Regulation 10(4) European Union (Dublin System) Regulations 2018.

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>205</sup> In response, the Irish government stated that they planned to establish a specific immigration detention centre at **Dublin Airport** in 2016. In response to an Irish Times report on the detention of a Brazilian woman at Dochas Women's Prison in July 2017, a Department of Justice Spokesperson stated that work on the dedicated facility was expected to begin on site at Dublin Airport in September 2017 with an estimated timeframe of 10 months before becoming operational.<sup>206</sup> As mentioned in [Access to the Territory](#), that facility is still not operational as of February 2019, despite the Minister for Justice indicating that it would be operational by year end 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>207</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.

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.

<sup>205</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>206</sup> Irish Times, 'Work on Dublin Airport immigration detention centre to begin', 28 July 2017, available at: <http://bit.ly/2r8zKKE>.

<sup>207</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.



### 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.”

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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> 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? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Do asylum seekers have effective access to free legal assistance in practice?         | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |

Regulation 19 of the Reception Conditions Regulations 2018 provides that a detained applicant have 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 asylum seekers who are detained. No NGO provides routine legal assistance to detained asylum seekers, 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>208</sup> For **refugees** this grants permanent residency and a Garda National Immigration Bureau (GNIB) card is issued firstly for one year and then renewed for three years renewable. Refugees are able to apply for naturalisation after 3 years from the date of their asylum application (see [Naturalisation](#)).

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

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

#### 2. Civil registration

The Civil Registration Service, operating under the Health Service Executive, maintains all records of births, deaths and marriages in the State.<sup>209</sup>

With respect to registration of births it is legally required in Ireland that all births that take place on the territory of the State are registered with the local Registrar's Office within 3 months of the birth taking place.<sup>210</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>211</sup>

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

#### 3. Long-term residence

Ireland has not opted into the Long-Term Residents Directive. Under the Irish national system, long-term residency can be granted with a Stamp 4 permission to remain which is valid for five years. This

<sup>208</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>209</sup> Civil Registration Service, information available at: <https://bit.ly/2usn7M7>.

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

<sup>211</sup> Civil Registration Service, *Translated Information*: <https://bit.ly/2pLwGkr>.

applies to persons who have been legally resident in the State for a minimum of five years on work permit, work authorisation or working visa conditions. Applications for long-term residency do not apply for persons granted refugee status or granted permission to remain on humanitarian grounds. It also does not apply for people who entered the State under a family reunification scheme.<sup>212</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 2018:                 | 10,158  |

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

People with **refugee status** can apply for naturalisation after three years' residence in the State from the date they arrived in the country not from the date when they were granted refugee status. For other non-EEA nationals, the residence required is five years. To apply for citizenship a form entitled 'Form 8' must be completed by the person concerned and submitted to INIS. This amended form was introduced in September 2016 and now applicants must submit their original passports with their application for naturalisation.<sup>213</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>214</sup> It is unclear how many previously held refugee status or were beneficiaries of subsidiary protection.

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

##### Indicators: Cessation

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

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

<sup>212</sup> INIS, *Permission, stamps & conditions*, available at: <http://bit.ly/2lcU71L>.

<sup>213</sup> The application form is available at: <http://bit.ly/2kotiX7>.

<sup>214</sup> INIS, 'Minister Flanagan announces that over 10,000 people were granted Irish citizenship in 2018, 1 January 2019, available at: <https://bit.ly/2slOq14>.

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

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

Cessation of **subsidiary protection** occurs when the circumstances which led to a person's eligibility for subsidiary protection have ceased to exist or have changed to such a degree that international protection is no longer required. An exception to this is if there are compelling reasons arising out of past persecution for refusing to avail of protection in the applicant's country of nationality. No information is available on the amount of decisions relating to cessation in 2018.

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.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

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

#### 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.

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

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

In July 2017, a group of Senators presented the International Protection Act (Family Reunification Amendment) Bill 2017 to the Government. The content of the bill seeks to reinstate the dependency provision contained in the Refugee Act 1996.<sup>215</sup> The bill went before the Seanad in November 2018 where it was passed by 29 votes to 17.<sup>216</sup> The bill will proceed to the Dáil and, if passed, will amend the IPA with a view to enabling a wider range of family members to apply for family reunification, including

<sup>215</sup> Irish Times, 'Senators seek expanded family reunification rights for refugees', 19 July 2017, available at: <http://bit.ly/2tM049C>.

<sup>216</sup> Oxfam Ireland et al., 'Refugee family reunification bill progresses to the Dáil', 5 December 2018, available at: <https://bit.ly/2SJPsVG>; See also Oireachtas, *International Protection (Family Reunification) (Amendment) Bill 2017*, available at: <https://bit.ly/2TeGzUN>.

grandparents, siblings, children (over the age of 18), grandchildren, where dependency can be demonstrated.

## 1.2. The International 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 to the International Humanitarian Admission Programme (IHAP).<sup>217</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>218</sup>

The INIS website sets out the eligibility criteria.<sup>219</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 was received, however, just 80 applications were granted.<sup>220</sup> A second call for proposals was opened on 20 December 2018 and is envisaged to run until 8 February 2019.

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<sup>217</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>218</sup> UNHCR, *FAQ: What is the Humanitarian Admissions Programme 2 (IHAP)*, 2018, available at: <https://bit.ly/2TeH4OF>.

<sup>219</sup> INIS, *Irish Refugee Protection Programme Humanitarian Admission Programme 2 (IHAP)*, available at: <https://bit.ly/2wEuoJJ>.

<sup>220</sup> Irish Times, 'Refugee reunification scheme re-opens with second call for applicants', 21 December 2018, available at: <https://bit.ly/2RJY3vp>.



## 2. Status and rights of family members

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

## C. Movement and mobility

### 1. Freedom of movement

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

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

### 2. Travel documents

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

Both refugees and beneficiaries of subsidiary protection in Ireland are entitled to apply for travel documents, which is done by application form to the INIS Travel Document Section. The application requirements differ slightly between the two categories of applicant, in that the applications of subsidiary protection beneficiaries are subject to the Minister's satisfaction that the applicant is "unable to obtain a travel document from the relevant authority of the country of his or her nationality or, as the case may be, former habitual residence."<sup>221</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 to prove that they are unable to obtain a travel document from another relevant authority before they are issued with an Irish travel document.

Beyond that, the travel document application process for both refugees and beneficiaries of subsidiary protection is uniform. Applicants are required to fill out an application form,<sup>222</sup> submit four passport-sized photographs,<sup>223</sup> a copy of documentation from the Department of Justice issuing permission to remain in the state, a copy of the applicant's Garda Naturalisation and Immigration Bureau registration card, and an €80 application fee.<sup>224</sup>

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<sup>221</sup> Regulation 24(2) European Union (Subsidiary Protection) Regulations 2013.

<sup>222</sup> Department of Justice and Equality, *Travel Document Application Form*, available at: <https://bit.ly/2ldmmZj>.

<sup>223</sup> INIS, *Travel Document Photo Requirements*, available at: <https://bit.ly/2pNZUhK>.

<sup>224</sup> INIS, *Travel Document Information Note*, available at: <https://bit.ly/2lb8miT>.

According to the INIS, the validity of travel documents for a holder of a “1951 Convention Travel Document” (person with **refugee status**) is 10 years, in line with the validity of Irish passports.<sup>225</sup>

Travel Documents granted on foot of **subsidiary protection** are issued for the duration of their permission to remain. This is generally for a period of 3 years from when status is granted under Section 23 of the European Union (Subsidiary Protection) Regulations 2013.<sup>226</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>227</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>228</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>229</sup> Holders of Irish refugee and subsidiary protection documents do not require a re-entry permit upon return to Ireland.<sup>230</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 17 January 2019: | 700         |

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>231</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

<sup>225</sup> *Ibid.*

<sup>226</sup> Regulation 23 European Union (Subsidiary Protection) Regulations 2013.

<sup>227</sup> Information provided by INIS, March 2018.

<sup>228</sup> Information provided by INIS, March 2018.

<sup>229</sup> Citizens Information, *Travel documents for people with refugee or subsidiary protection status*, available at: <https://bit.ly/2GjMhIN>.

<sup>230</sup> INIS, Travel Document Information Note, available at: <https://bit.ly/2lb8miT>.

<sup>231</sup> Response to Parliamentary Question by Minister for State David Stanton, 26 January 2017, available at: <http://bit.ly/2lBeDgu>.

Ireland, where waiting lists for social housing are long and rental costs exceed the amounts paid in rent supplements.<sup>232</sup> Discrimination is also reported in the rental market.<sup>233</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 17 January 2019, there were 700 persons with some form of protection status residing in Direct Provision.<sup>234</sup>

In September 2017, RIA issued letters to cohorts of (predominantly single male) refugees living in Direct Provision who had received final decisions on their case (both those with positive decision on refugee status and subsidiary protection and those with a deportation order) but had not been able to source alternative accommodation, stating that RIA had ‘no role in the provision of accommodation to persons once a decision has been made on their application’ and asking them to vacate the centres within a month.<sup>235</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>236</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>237</sup>

Due to the ongoing housing crisis in Ireland, as well as already over-subscribed homelessness centres, emergency accommodation and supports, there is a real risk that without transitional support, 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 RIA 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 RIA and other relevant agencies.

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.

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<sup>232</sup> For further information see Irish Research Council in partnership with the Irish Refugee Council, *Transition from Direct Provision to life in the community*, June 2016, available at: <http://bit.ly/2lBtlnP>.

<sup>233</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>.

<sup>234</sup> Minister for Justice and Equality, Charlie Flanagan, ‘Statement: Irish Nationality and Citizenship (Restoration of Birthright Citizenship) Bill 2017: Second Stage [Private Members]’, 17 January 2019, available at: <https://bit.ly/2B0BpV2>.

<sup>235</sup> Irish Times, ‘Asylum seekers facing deportation given a month to leave hostels’, 20 September 2017, available at: <http://bit.ly/2CpLN6Q>.

<sup>236</sup> Nasc, ‘Nasc Condemns Proposed Eviction of Asylum Seekers from Direct Provision’, 20 September 2017, available at: <http://bit.ly/2EOV6CF>.

<sup>237</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>.

## E. Employment and education

### 1. Access to the labour market

According to Section 53(a) IPA, beneficiaries of international protection are entitled to seek and enter employment, to engage in any business, trade or profession and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen. There are few schemes specifically devised and tailored for beneficiaries of international protection to access employment within the Department of Social Protection but they can avail of the supports provided to Irish citizens. The ESRI have reported that refugees in Ireland can face many challenges in navigating the system of mainstream service provision.<sup>238</sup> Information barriers can make it difficult for beneficiaries to navigate the system to access employment supports and the support available varies from region to region. A 2014 UNHCR report on integration in Ireland noted barriers such as language barriers, literacy problems, lack of recognition of foreign qualifications and lack of understanding of the work environment in Ireland.<sup>239</sup>

An example of the tailored schemes available is Employment for People from Immigrant Communities (EPIC) which is a project run by the Business Community of Ireland and is a labour market programme aimed at assisting migrants including beneficiaries of international protection to enter the labour market. As regards recognition of qualifications the Irish National Academic Recognition Information Centre (NARIC Ireland) facilitates the recognition of foreign qualifications in Ireland by advising clients on how these qualifications compare to the Irish qualifications on the National Framework of Qualifications.<sup>240</sup>

### 2. Access to education

People who have been granted refugee or subsidiary protection status have the right to access education and training in a similar manner to Irish citizens.<sup>241</sup> Child asylum seekers can access primary and second-level education. Under the Education (Welfare) Act 2000 education in Ireland is compulsory for all children from the age 6 to 16 years old. The education is provided through the regular school system and parents of children living in Direct Provision centres can apply for financial assistance towards the purchase of school uniforms under the Back to School Clothing and Footwear Allowance Scheme from their local community welfare officer. There is no automatic access to third level education for asylum seekers in Ireland. Some schemes have been introduced by way of the government and individual university initiatives.

Some organisations have stepped in to support student access to third-level education. For example, in the Irish Refugee Council a volunteer administers donations made by the public to help with education access. The funds are then spent on course fees, books, transport and other related expenses.<sup>242</sup> Some Universities have also assisted asylum seekers such as the National University of Ireland, Galway (NUIG) which announced in June 2016 that it will provide four scholarships for asylum seekers or refugees, subsidiary protection beneficiaries or those persons with permission to remain in Ireland.<sup>243</sup> In December 2016 Dublin City University (DCU) was also designated as a University of Sanctuary due to its commitment to welcome asylum seekers and refugees into the university community. DCU has offered fifteen academic scholarships available at either undergraduate or postgraduate level. It also has established a number of other welcoming initiatives such as a Langua-Culture Space initiative

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<sup>238</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>239</sup> UNHCR, *Towards a New Beginning, Refugee Integration in Ireland*, May 2014.

<sup>240</sup> Available at: <http://bit.ly/2lbKT90>.

<sup>241</sup> Department of Justice and Equality, *Your Guide to Living Independently*, An information booklet for people who have been granted refugee or subsidiary protection status or permission to remain, 2016.

<sup>242</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>243</sup> NUIG, *Inclusive Centenaries Scholarship Scheme*, Announcement, 17 June 2016.

where DCU students teach beginners level English to asylum seekers and refugees. In 2017, the University of Limerick and in 2018, University College Cork, became designated Universities of Sanctuary, respectively – granting scholarship access to a limited number of asylum seekers and refugees.

As regards preparatory courses to access school, the Refugee Access Programme is part of the City of Dublin ETB's Separated Children Service which prepares newly arrived separated children seeking asylum and other young people from refugee backgrounds for mainstream school and life in Ireland. The programme is from 12-20 weeks.

As regards access to education and vocational training for adults, for asylum seekers English language programmes are available but access often depends on the location of the Direct Provision centre. There are local based initiatives such as the SOLAS Orientation and Learning for Asylum Seekers programme in Galway and Mayo, the CREW project in **Carlow** and the Refugee Access Programme in **Dublin**.<sup>244</sup> Reports show that people transition from Direct Provision having been granted an international protection status often face practical barriers to further education such as their English competency not being at the required level, previous qualifications not being recognised, not being eligible for grants, not understanding admission procedures and having missed deadlines for college applications.<sup>245</sup>

## F. Social welfare

Section 53(b) IPA states that a beneficiary of international protection “shall be entitled... to receive, upon and subject to the same conditions applicable to Irish citizens, the same medical care and the same social welfare benefits as those to which Irish citizens are entitled.”

As such, there are a broad range of social welfare entitlements to which a beneficiary of international protection may avail, including: access to jobseeker's allowance, for those who are unemployed but actively seeking work; access to disability allowance for those unable to provide for themselves due to disability or illness; access to the one-parent family payment for single parents, and access to child benefit for parents/guardians. Application for various grants is carried out at the individual's local office of the [Department of Employment Affairs and Social Protection](#).

## G. Health care

Beneficiaries of international protection are entitled to the same medical care as Irish citizens in accordance with Section 53(b) IPA. Access to health care for asylum seekers is also on the same basis as Irish citizens and they eligible for medical cards subject to a means test and can register with local GPs. They have access to the Public Health Nursing System as well as dedicated asylum seeker psychological service operating out of St. Brendan's Hospital in Dublin. However, a report by the Royal College of Physicians of Ireland in June 2016 noted problems as regards access to health by way of a number of linguistic, cultural and financial barriers such as inconsistent availability of interpreters and translation services across the health service.<sup>246</sup> Furthermore, the report highlighted that where asylum seekers are moved from one Direct Provision or EROC centre to another, continuity of care with existing healthcare providers may be disrupted or lost.

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<sup>244</sup> For further information see European Commission, ICF study, *Labour market integration of asylum seekers and refugees*, Ireland, April 2016.

<sup>245</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>246</sup> Royal College of Physicians, Faculty of Public Health Medicine, *Migrant Health- the Health of Asylum Seekers, Refugees and Relocated Individuals, A position paper*, June 2016.

Specialised treatment for torture survivors is mainly provided by SPIRASI which receives some funding from the Health Service Executive. However, its resources are limited and therefore the need for such specialised services outweighs the resources and capacity available though it is difficult to find quantifiable data on this. The Royal College of Physicians of Ireland reported “While voluntary organisations such as SPIRASI may provide these services in urban centres, there is no access to many others. Mainstream mental health services, already overburdened and under-resourced in caring for the general population, may not have the cultural or linguistic expertise to effectively deal with the mental health problems experienced by refugees and asylum seekers, and do not have adequate resources to liaise with the agencies responsible for asylum seekers.”

## 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  | Deadline for transposition | Date of transposition | Official title of corresponding act   | Web Link  |
|--|----------------------------|-----------------------|---|---|
| <b>Directive 2013/33/EU</b><br>Recast Reception Conditions Directive | 20 July 2015               | 6 July 2018           | European Communities (Reception Conditions) Regulations 2018, S.I. No 230 of 2018 | <a href="https://bit.ly/2KW1T09">https://bit.ly/2KW1T09</a> |