

IRISH REFUGEE COUNCIL

COMMENTS ON THE GENERAL SCHEME OF THE INTERNATIONAL PROTECTION BILL

Executive Summary



May 2015

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The Irish Refugee Council (IRC) welcomes the opportunity to provide comments on the General Scheme of the International Protection Bill and calls upon the Committee on Justice, Defence and Equality to review the Bill with the aim of creating a fair, efficient and protection sensitive asylum procedure which reflects the right to asylum as guaranteed under Article 18 of the Charter of Fundamental Rights.

The IRC welcomes the long overdue establishment of a single protection. However, such a procedure will not solve all the issues in the current system. In particular, it is vital that: firstly, that the independent Office of the Refugee Applications Commissioner is maintained and not subsumed into the Department of Justice; secondly, that the single protection procedure provides for proper consideration and support of issues that give rise to Ireland's obligations under other conventions such as the European Convention on Human Rights, with a right of appeal against refusal to the Protection Review Tribunal; thirdly, that the Bill also provides a legal framework for reception conditions which are an inherent part of any protection procedure.

The IRC's submission focuses on five main areas of concern, a general overview of which is provided below:

a) The creation of a fair and accessible protection procedure

The IRC welcomes the proposal to establish a single procedure which will bring Ireland into line with other EU countries. However, such a procedure will not solve all the issues in the current system unless it contains the necessary checks and balances to ensure the support of the person applying for protection as they go through the process, including in the reception facilities provided. Training, resources and capacity will also be essential in creating a fair and accessible asylum procedure.

The absence of independence of protection decisions from an enforcement body, the lack of an adequate 'leave to remain' procedure, including appeals, should protection claims fail and the absence of any reference to reception conditions means that Ireland will still not have a protection system that is on a par with other EU countries and with best practice. It will, in short, be an opportunity lost given the substantial reform of the protection process envisaged in this Bill, the first such review for twenty years.

The IRC is also concerned by the paucity of provisions on the training, qualifications, skills and knowledge of personnel involved in the determination procedure, including immigration officers who may encounter applicants seeking international protection at points of entry. Without the

requisite training it is unclear how such personnel can effectively identify the protection needs of persons seeking asylum in Ireland.

In addition, the International Protection Bill introduces the possibility of an application being found inadmissible on the grounds that there is deemed to be a first country of asylum. Reference to the enjoyment of 'sufficient protection in that country' is unclear and vague as to how such a determination is made and what information is relied upon by the determining authority. Given the serious implications for denying a person the right to access a protection procedure on such grounds, the IRC recommends the deletion of inadmissible applications in the Bill.

In terms of procedural safeguards within the protection procedure, the IRC also recommends the audio recording of personal interviews and access to the personal interview record directly after the interview in order to quickly resolve any disputes as to the content of such records. The IRC also recalls the importance of maintaining the primacy of the 1951 Refugee Convention within a single procedure and ensuring that protection needs are first addressed with respect to refugee status before addressing any subsidiary protection concerns.

b) Addressing the needs of vulnerable persons

The IRC notes with concern the fact that the Bill fails to include any provisions on the identification and assessment of vulnerable persons within the protection procedure. The Bill only recognises the specific needs of vulnerable persons in relation to the content of their protection status once granted thereby failing such persons when they need assistance most i.e. during the protection procedure when they are more vulnerable by the uncertainty of the process and their security in the country. This lack of provision to meet the needs of such persons is deeply concerning to the IRC given the consequences of an incorrect determination of protection needs. The IRC recommends the inclusion of a provision on the early identification and assessment of vulnerable persons during the protection procedure.

The IRC also recommends the inclusion of the best interests of the child principle for all actions and decisions taken on behalf of children in the protection procedure. Such an approach would be in line with international best practice and the obligations of the state under the UN Convention on the Rights of the Child. With respect to separated children, the IRC is alarmed that the Bill contains a provision for the conduct of an age assessment by medical means and recommends instead that a social age-assessment is undertaken by an inter-disciplinary body consisting of persons not involved with the child's care or protection needs.

c) Appeals and Remedies

The IRC welcomes the establishment of an independent Protection Appeals Tribunal which is inquisitorial in nature. However, the IRC remains concerned that as long as the Minister for Justice and Equality plays a role in the appointment of Tribunal members and in the absence of clear procedures for hearings, there will be a lack of impartiality and independence in practice. Furthermore, the IRC recommends the introduction of the possibility to appeal a decision to refuse permission to remain whenever human rights concerns arise which fall outside the scope of refugee status and subsidiary protection.

d) Family Reunification

The Bill limits family reunification rights and is a significant step backwards from the previous Refugee Act 1996 in terms of the content of rights granted to family members and the time limits within which applications for family reunification should be applied for. The IRC recommends that family members of those with refugee status or subsidiary protection should be given the same residency rights as their sponsor, including length of residence. In addition, the requirement to submit an application for family reunification within 12 months of receiving a protection status fails to take into account the reality of many families fleeing persecution where many members may be missing and tracing may need to be conducted. Such tracing activities may take much longer than 12 months in practice.

e) Operational and Other Measures

The IRC calls for the inclusion of a legal framework within the Bill for reception conditions and facilities. Given that this is the most significant reform of asylum law in Ireland since 1996, Ireland should take the opportunity to address the issues surrounding reception facilities given the inherent problems in the Direct Provision system.

The IRC regrets that the Bill foresees the abolishment of the Office of the Refugee Applications Commissioner (ORAC) so that its functions are subsumed within the Department of Justice and Equality. Given the Minister for Justice and Equality's role in border and immigration control, the independence of ORAC in the exercise of its functions should not be lost in the single protection procedure. This Bill also presents a unique opportunity to establish an Independent Refugee

Advisory Board and to introduce provisions for early legal advice and quality assurance mechanisms inbuilt in the protection procedure itself. The proposal of an independent inspectorate could also be explored in terms of improving the quality of decision-making within the single protection procedure.