

THE INTERNATIONAL PROTECTION BILL 2015

INTRODUCTION TO THE RECOMMENDATIONS OF THE IRISH REFUGEE COUNCIL

In announcing the International Protection Bill on 19th November 2015, the Minister for Justice, Frances Fitzgerald TD, said:

“The Bill now provides us with the legislative means to reform the current multi-layered and sequential system”.

“The introduction of the single procedure, together with other reforms in the proposed International Protection Bill, will allow us to efficiently grant international protection to those who are entitled to it. At the same time, it will identify, at a much earlier stage, persons who have no entitlement to stay in the State and who can safely return to their country of origin.”

The publication of the Bill was accompanied by the Minister’s statement with an indication that:

The Bill is intended to achieve the desired balance in treating asylum seekers with humanity and respect while ensuring more efficient immigration procedures and safeguards.

The principal aim of the Bill is to introduce a ‘single procedure’ in which applications for refugee status (UN Convention on Refugees) and for subsidiary protection (under the Qualification Directive of the Common European Asylum System) will be considered in one protection application which, if refused, will proceed by way of one appeal to the International Protection Appeal Tribunal (IPAT). In addition, rather than a third separate application for leave to remain (which currently exists under the Immigration Act 1999), the Bill provides for consideration of any additional issues which will be considered by the Minister if both applications for protection are refused.

The single application procedure will lead to quicker decisions and therefore less time spent waiting for a final decision on an application. The Irish Refugee Council welcomes not only the introduction of a single protection procedure but also the desire of the government that this should be on the statute book by the end of 2015. The legislation is well overdue. In the context of the biggest refugee crisis since the Second World War, with numbers seeking asylum in Ireland increasing and Ireland committed to taking part in the relocation of asylum seekers from Italy and Greece, it is essential that the single protection procedure is in place as soon as possible. But it is also vital that the correct decisions are made so that Ireland does not refuse permission to stay to someone who needs international protection and that it properly takes into account other reasons for applying to remain in the country which are in line with Ireland’s

human rights obligations. Otherwise we risk not only failing to abide by our international obligations and returning people to persecution or serious harm, but also leaving people with no choice but to use the higher courts to challenge decisions made without full and proper consideration of their claims.

In the view of the Irish Refugee Council, the International Protection Bill as published by the Government does not have the right balance between the need to protect the individual from enforcement measures and the right of the state to determine who enters and remains in the country. The document titled *'Irish Refugee Council Recommendations on the International Protection Bill 2015'* draws attention to a number of more detailed concerns and why and how these can be remedied. With a few exceptions (such as the need to introduce some form of legislative framework for 'reception conditions'), the changes can be made easily if the political will is there.

There is no indication that the Minister for Justice has had regard to the submissions made in response to the publication of General Scheme of the Bill published by the Justice Committee¹ or to the recommendations of the Government's own Working Group on the Protection Process, whose report was published on 30 June 2015.²

The remainder of this introduction outlines the significance of the introduction of the single procedure and the main concerns of the Irish Refugee Council about the proposed changes, including the omission of fundamental issues which are a central part of an international protection system such as reception conditions.

Transfer of powers to the Department of Justice

In order to give effect to a single procedure, leading to the granting of refugee status, subsidiary protection, leave to remain or refusal and deportation, the independent Office of the Refugee Applications Commissioner (ORAC) is abolished by the Act and all powers transferred to the Department of Justice. At the time of the introduction of the Refugee Act 1996, all parties were in agreement that the body with responsibility for examining refugee claims should be independent of the body responsible for the enforcement of immigration controls. That independence has gone in the Bill, making it essential that those powers are properly open to independent scrutiny and appeal.

¹ <http://www.oireachtas.ie/parliament/media/committees/justice/Interim-Report--Appendices---Int-Protection.pdf>

² <http://www.justice.ie/en/JELR/Pages/PR15000389>

The Department will be responsible for determining an application for protection and, if refused, an application to remain in the state. If permission to remain is not granted, the Department is also responsible for removal of the person from the state on foot of a Deportation Order. To assist in carrying out deportations, the Bill contains the power of the Gardaí to enter a person's home to carry out the deportation, a process deemed unlawful by a High Court judge.³

The single protection procedure brings Ireland into line with every other EU state and is a positive move but only if the way in which that application is determined is in accordance with international law and contains the necessary checks and balances to ensure that the applicant is protected from the arbitrary use of power by the Department of Justice. At the moment, the Bill, due to a lack of clarity regarding its provisions, the inclusion of measures which undermine fair and transparent procedures or due to the absence of legislative provisions, does not have the correct balance but instead gives too much power to the Department of Justice.

In addition, in proposing to streamline procedures, the final stage before deportation is unnecessarily curtailed and could lead to a breach of Ireland's human rights obligations. If a person is refused refugee status and subsidiary protection, both by the Department of Justice and on appeal to the IPAT, the Bill indicates that the Minister will consider whether there are any barriers to removal based solely on information submitted at the time of the protection application and relating only to private or family life, not to any other human rights obligations. In addition, there is no right of appeal against refusal of leave to remain.

The major concerns of the IRC

The document titled, '*Irish Refugee Council Recommendations on the International Protection Bill 2015*', recommendations outline a number of concerns of which the main concerns are: the failure to embed the principle of the best interests of the child and the associated weaknesses which will potentially expose children to harm; the lack of protection in the single application procedure against error and omissions and therefore the risk that wrong decisions will be made without adequate checks and balances and a right of redress; the lack of respect for the rights of refugees to obtain family reunification, vital if refugees are to be able to re-establish themselves in Ireland and settle into their new communities. With the proposed transfer of responsibilities from an independent body, the Office of the Refugee Applications Commissioner, to the Department of Justice, it is also essential that there is some form of independent monitoring and oversight to ensure that there is a correct balance between the protection of the rights of refugees and the right of the state to determine entry and residence in the country.

³ Omar v Governor of Cloverhill Prison [2013] IEHC 579
<http://www.courts.ie/Judgments.nsf/0/85557EDDE570D1E180257C460059EE0E>

We would draw attention to the issues raised in the attached document which require serious consideration and attention before the Bill is finalised and enacted:

1. The absence of any reference to the reception of people seeking international protection
2. The lack of clarity around the training and powers of an immigration officer “at the frontiers” to conduct an interview and lack of independent oversight
3. The lack of any reference to the identification of vulnerable persons who may need greater assistance and care throughout the application process and in the reception system
4. The lack of any gender-sensitive procedures and the absence of a particular reference to ‘domestic violence’ as an act of persecution
5. The absence of any independent oversight of the Department of Justice in the carrying out of its obligations and duties
6. The very limited reference to the best interests of the child and, even when mentioned, the lack of the right of the child/young person to be heard for example in relation to the carrying out of a medical assessment to determine age
7. The lack of a definition of an unaccompanied minor/separated child and the lack of protection in the measures for consideration of whether a child is in the care of a parent or caregiver.
8. The inability of a child/young person to apply for international protection other than through an adult
9. The lack of independent legal advice for an unaccompanied child
10. The inclusion of unaccompanied children in procedures which can lead to their application being deemed “inadmissible” and the wide terms in which “inadmissibility” is drafted.
11. The omission of membership of a trade union in the refugee definition relating to ‘membership of a particular social group’
12. The absence of a definition of ‘statelessness’ and attendant measures to protect
13. The complete prohibition on employment at any time during the determination process
14. Extension of the powers of detention which could be used solely on the basis that someone has applied for international protection
15. Lack of safeguards in the power to determine that an application is ‘inadmissible’
16. The inclusion of a power to conduct a medical examination without the consent of the applicant
17. The inclusion of ‘internal relocation’ as a factor considered to undermine the legitimacy of an application for protection

18. The scope of the behaviour which can lead to an accelerated appeal against refusal
19. The power of the Minister to determine procedures for the IPAT, an independent body which reviews the Minister's decision, making interference by the Minister a contradiction to that independence
20. The absence of a system to prioritise applications from people with a *prima facie* need for protection and for children
21. Limitations on the ability to appeal to the High Court from a decision of the Minister to revoke international protection
22. The limited definition of 'family' for refugee family reunification, the inclusion of a time limit for the making of a reunification application and the absence of a right of appeal to an independent body against refusal
23. The extension of the power to detain and to enter premises to effect deportation.

All of the above are elaborated upon in the document titled '*Irish Refugee Council Recommendations on the International Protection Bill 2015*' with reasons why they are of concern to the IRC and how they should be remedied.

The concerns outlined in this statement and the attached document are not intended to be exhaustive but indicate the major concerns of the IRC after consideration of the Bill as published on 19th November 2015. They should be read alongside the issues raised in our submissions relating to the General Scheme of the Bill in May 2015.⁴

IRC

27th November 2015

⁴ <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/IRC-Executive-Summary-General-Scheme-of-the-International-Protection-Bill-2015.pdf> and http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/IRCs-Comments-on-General-Scheme-of-International-Protection-Bill.final_.pdf