



## POLICY PAPER:

# THE RIGHT TO WORK FOR INTERNATIONAL PROTECTION APPLICANTS

JULY 2017

*“Staying in Direct Provision and not being allowed to work had a huge impact on my life. Even now, after being out of Direct Provision for a year, I feel like the ghost of not being allowed to work is still entangling my life. Whenever I apply for a job, the response I get is ‘we are looking for someone who has at least 3 years experience’. Where do I get the experience if I haven't been allowed to work for all the years I've been in Ireland?”<sup>1</sup>*

### 1. EXECUTIVE SUMMARY:

On 30 May 2017 the Supreme Court in [N.v.H -v- Minister for Justice & Equality and ors](#) [2017] IESC 35 (30 May 2017) considered the indefinite prohibition on the right of a person to work while in the asylum process, contained in the Refugee Act 1996 (and replicated in the International Protection Act 2015). The applicant had spent more than eight years in the asylum procedure and had experienced depression and frustration due to not being able to work. The Supreme Court held that work is connected to the dignity and freedom of individuals and that the complete ban was not justified and contrary to the constitutional right to seek employment. The Court's final order is postponed for six months to allow the Government to respond. This policy paper sets out a number of recommendations to inform their response.

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<sup>1</sup> A refugee commenting on the importance of being able to work

In summary the Irish Refugee Council (IRC) recommends:

- Applicants who have not received a first instance recommendation within six months of the date of their application to the International Protection Office (IPO) be given the right to work.
- Applicants to whom the transitional [provisions](#) of the International Protection Act 2015 apply, many of whom will have already waited for a total of six months for a final first instance decision under the single procedure, should also be given the right to work.
- Permission to work should automatically commence upon the passing of six months, and not be subject to a further application process.
- No restrictions or conditions should be placed on which professions or labour market sectors a person eligible applicant can pursue.
- No reductions be made to a person's Direct Provision allowance on account of being given permission to work.

## **2. TIME FRAME FOR ACCESSING THE LABOUR MARKET:**

The IRC recommends that the right to work should be granted to international protection applicants **if no decision on their application has been made within six months** of the date of the application to the IPO (or the Office of the Refugee Applications Commissioner (ORAC) if the application was made prior to 31 December 2016). Permission should automatically commence at six months and not be subject to a further application process which could delay access to the right. In addition once permission is granted it should continue to apply throughout the asylum procedure including the appeal process.

The majority of people in Direct Provision have already spent a considerable amount of time in the asylum process (on [average](#) 29 months). Many have been caught by the transitional provisions of the International Protection Act 2015 and will have already waited six months for a final decision under the 'single procedure' either from ORAC or

the IPO. As such, it is essential that permission to work should also be granted to people in this situation.

Six months is recommended for several reasons. It is the same period, as provided by [Section 39 \(5\)](#) of the International Protection Act 2015, from when a person may request information from the IPO as to when a recommendation will be made on her application. This suggests that the Oireachtas considers six months to be a reasonable period within which a person can expect an application to receive a recommendation from the IPO.

UNHCR also [recommends](#) that a person be able to access the labour market no later than six months from when they lodged their application for protection.<sup>2</sup>

The period is the same as the timescale for granting the right to work as stated in Article 15 of the European Commission proposal for a further 2016 [recast Reception Conditions Directive](#). It is also in line with the requirement, contained in Article 31 (3) of the 2013 [recast Asylum Procedures Directive](#), that consideration of an application is concluded within six months of it being lodged.<sup>3</sup>

Ireland is one of only two Member States of the EU who currently do not provide the right to work to protection applicants. The Government now has the opportunity to align our practice with other Member States as a member of the Common European Asylum System. Of note is that several Member States provide protection applicants access to the labour market at less than the nine months required by the 2013 [recast Reception Conditions Directive](#): Greece (0 months), Sweden (0 months), Italy (2 months), Austria (3 months), Germany (3 months), Belgium (4 months), Spain, Netherlands, Poland (6 months).<sup>45</sup> In summary, ensuring access to the labour market at six months is a

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<sup>2</sup> UNHCR, Note on the Integration of Refugees in the European Union, May 2007

<sup>3</sup> It should be noted that Ireland has not opted into the recast Asylum Procedures Directive and is currently subjecting the recast proposal for the Reception Conditions Directive to scrutiny reservations during the negotiations of that proposal.

<sup>4</sup> Asylum Information Database (AIDA) Reception Conditions [comparator](#)

<sup>5</sup> It is important to note that Article 15 of the 2013 [recast Reception Conditions Directive](#) requires Member States to ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged

reasonable and proportionate measure to protect a person's constitutional right to employment.

The IRC also recommend that **no conditions or restrictions should be attached to the right to work such as restricting it to particular professions or sectors or that people cannot be self-employed**. To do so may undermine the essence of the constitutional right itself meaning that it becomes illusory rather than effective in practice.

The Supreme Court held that the right to work goes to the core of human personality and is connected to the dignity and freedom of the individual as protected by the Constitution. The IRC submit that the judgment can therefore only be fully respected by ensuring full access to the labour market for protection applicants rather than placing a temporal limit on the asylum procedure itself.

A temporal limit is also unrealistic due to the current delays in first instance decision making in Ireland, caused by inter alia, the transitional provisions in the International Protection Act 2015. The IRC understand that, as of June 2017, a person who has made an application for protection, and does not fall in to one of the IPO's prioritisation categories, **will not be interviewed for approximately 18 months**.

The IRC recommends implementing the required changes by deleting the current text of [Section 16 \(3\) \(b\)](#) of the International Protection Act 2015 and, in its place, setting out the circumstances in which an applicant has the right to work. In addition, [Section 2\(10\)](#) of the Employments Permit Act of 2003 should be amended to include protection applicants as a category of persons who can work.

### **3. BENEFITS TO PROTECTION APPLICANTS AND IRELAND:**

The right to work for protection applicants can prevent economic and social exclusion, de-skilling and aid people's integration in Ireland. Prolonged absences from employment can create dependency and makes it more difficult to access the labour market once a

person has been recognised as a refugee or subsidiary protection beneficiary.<sup>6</sup> Therefore, providing the right to work also assists the long term integration and employment prospects of refugees and subsidiary protection beneficiaries.

In addition, there are mental health benefits in accessing the labour market. As noted by Justice O'Donnell in the Supreme Court's judgment, the prohibition on working can damage an individual's self-worth and sense of themselves.<sup>7</sup> Justice O'Donnell placed emphasis on the fact that the applicant's affidavit referenced depression, frustration and lack of self-belief as a consequence of not being able to work.

A common theme raised by residents of Direct Provision who were consulted as part of the 'McMahon Working Group' process was *"the desire to be allowed to work, to provide for themselves and their families, and not to be viewed as welfare dependent."*<sup>8</sup> Many reported being frustrated by the enforced dependency in the current Direct Provision system.

UNHCR have noted that a lack of employment opportunities and dependency on external support can feed feelings of insecurity and lack of confidence and motivation. The Health Service Executive (HSE) has reported the harmful impact of denying employment on the mental health of people in Direct Provision and their [study](#) demonstrated the negative effect on the psychological well-being of applicants.<sup>9</sup>

Studies also show that accessing the labour market during an asylum procedure is not only beneficial to protection applicants but also for the host society. UNHCR has [noted](#) that employment is a key driver to integration.<sup>10</sup> It can also have wider economic benefits such as increasing [taxation](#) revenue, increased consumer spending and fill gaps in the labour market.

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<sup>6</sup> European Council on Refugees and Exiles, [The Right To Work For Beneficiaries Of International Protection](#), December 2016

<sup>7</sup> Paragraph 20

<sup>8</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, Chapter 2.

<sup>9</sup> The mental health promotion needs of asylum seekers and refugees: a qualitative study in direct provision centres and private accommodation in Galway City / Regine Stewart, Galway City Development Board, Health Service, May 2006

<sup>10</sup> UNHCR, Note on the Integration of Refugees in the European Union, May 2007

#### **4. COMMON TRAVEL AREA, BREXIT AND THE ‘PULL FACTOR’:**

Recent Ministerial [responses](#)<sup>11</sup> and ‘[sources](#)’<sup>12</sup> within the Department of Justice and Equality, when responding to the Supreme Court judgment, have made reference, without specifically stating the areas of concern, to the wider implications of the judgment in relation to the operation of the Common Travel Area and Brexit negotiations.

In the IRC’s view, providing a right to work for protection applicants will not affect either. The United Kingdom already provides for a right to work to persons in the asylum process. In addition, the Irish State has various legislative instruments at its disposal to control the movement of persons within the Common Travel Area including the Dublin Regulation, inadmissibility procedures and leave to land provisions within the International Protection Act 2015.

Another reason frequently raised for having an employment prohibition is that this will act as a ‘pull factor’ which will encourage more people to come to Ireland to seek protection. Various qualitative and quantitative [research studies](#) clearly show no long-term correlation between labour market access and destination choice for international protection applicants. As Ireland is already significantly out of step with other Member States of the EU, it is misleading to state that providing a right to work to protection applicants will lead to an increase in protection applications.

#### **5. IMPACT OF THE RIGHT TO WORK ON A PERSON’S DIRECT PROVISION ALLOWANCE:**

The IRC recommend that there a person’s Direct Provision allowance not be changed on account of being given the right to work. Employment during probationary periods can be precarious; people may work part-time and on the minimum wage. The approach

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<sup>11</sup> Topical Issues Debate, [Response by David Stanton TD, Minister of State on behalf of the Tánaiste, Frances Fitzgerald TD](#), 31 May 2017

<sup>12</sup> Irish Times, Ruling on asylum-seeker work to have big impact on Brexit talks, 31 May 2017

should also be aware of the difficulties people have when [transitioning](#) from Direct Provision to independent living.<sup>13</sup>

It is important to note that there are already approximately 400 people in Direct Provision who, as refugees or beneficiaries of subsidiary protection, have the right to work but cannot leave Direct Provision because of the wider housing crisis afflicting Irish society. This indicates that being able to enter the labour market does not necessarily mean a person is able to leave Direct Provision, either in the short or medium term.

## **6. [ENSURING AN EFFECTIVE RIGHT:](#)**

Granting access to the labour market for protection applicants requires legislative change but, in order to make the right real, practical and effective, positive support measures should also be put in place such as access to language classes and recognition of foreign academic qualifications and skills.

Of note is that the Irish Human Rights and Equality Commission, when commenting on the Supreme Court judgment, [recommends](#) that Direct Provision residents receive education and training in preparation for seeking employment. The Irish Congress of Trade Unions also [recommend](#) in the context of the judgment that applicants be eligible to attend ETB courses and English language classes to prepare for the job market.

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<sup>13</sup> Transition from Direct Provision to life in the community, Dr. Muireann Ní Raghallaigh and Maeve Foreman, June 2016