



**Recommendations on the  
Transposition of the EU recast  
Reception Conditions Directive  
(2013/33/EU)**

**March 2018**

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### Acknowledgements

This report was written by Luke Hamilton, Legal Officer with the Irish Refugee Council's Independent Law Centre. The IRC wishes to express thanks to: Caoimhe Sheridan (Irish Refugee and Migrant Coalition); Dr. Ciara Smyth (School of Law, NUI Galway); Minos Mouzourakis and Kris Pollet (ECRE) for their helpful comments on initial versions of the document.

## 1. Introduction

The Irish Refugee Council (IRC) has long advocated for reception conditions for people seeking international protection that uphold their fundamental right to dignity, autonomy and an adequate standard of living.<sup>1</sup> The Irish government's decision to opt-in to the recast EU Reception Conditions Directive 2013/32/EU<sup>2</sup> (the Directive, hereafter) is a welcome development. Opt-in will put accommodation and reception conditions for asylum seekers on a legislative footing for the first time. The decision to opt-in to the Directive followed the Irish Supreme Court's judgement in the *NHV* case, which ruled that the existing prohibition on seeking employment is unconstitutional against the backdrop of the indefinite length of time people have been forced to spend in the Irish system.<sup>3</sup> The Directive sets out a legislative framework for ensuring effective access to employment for asylum seekers, however, it also governs many other key areas of the asylum process pertaining to reception conditions for asylum seekers. As such, opting-in to the Directive represents a real opportunity to address some of the most problematic issues in the Irish reception system.

The Directive was conceived with the aim of ensuring a harmonised and dignified standard of living for asylum seekers as one of the core tenets of the development of a Common European Asylum System.<sup>4</sup> In the Irish context, it introduces a number of new legal obligations on the State. It also provides additional detail for some aspects of the Irish asylum system already governed by the International Protection Act 2015 (IPA, hereafter).<sup>5</sup> In addition to access to the labour market, the Directive sets out, inter alia:

- the application of key principles such as the best interests of the child and human dignity to all considerations concerning reception of asylum seekers;
- the requirement for an appeals mechanism for decisions relating to the reduction or withdrawal of reception conditions;
- a legislative framework for detention of asylum seekers;

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<sup>1</sup> See e.g. Irish Refugee Council, *The Reception and Housing of Asylum Seekers and Refugees in Ireland*, Submission to the Housing and Homelessness Committee, 2016; Irish Refugee Council, *Direct Provison: Framing an alternative reception system for people seeking asylum*, 2013; Irish Refugee Council, *State Sanctioned Child Poverty and Exclusion - The case of children in state accommodation for asylum seekers*, 2012.

<sup>2</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L180/96.

<sup>3</sup> *N.H.V -v- Minister for Justice & Equality and ors*, [2017] IESC 35.

<sup>4</sup> Tampere European Council, *Presidency Conclusions*, 15 and 16 October 1999, para 14.

<sup>5</sup> International Protection Act (2015).

- the obligation to assess and take account of the special reception needs of vulnerable persons;
- the modalities for reduction and withdrawal of reception conditions.

The Directive also has the potential to greatly improve standards for people who are awaiting a decision on their application for international protection. However, EU directives leave Member States with the freedom to devise their own laws on how to implement them.<sup>6</sup> Therefore, States are left with a margin of discretion on how they choose to transpose the Reception Conditions Directive into their respective domestic asylum systems. This has prompted scrutiny of its effectiveness in achieving its stated aims of both a harmonised EU asylum system and ensuring a dignified standard of living for applicants.<sup>7</sup> The extent to which the positive elements of the Directive can be harnessed in the Irish context will depend on the State's willingness to take an approach to transposition and implementation that is centred on human dignity and international human rights obligations. At time of writing, a European Commission Proposal for a second recast of the Directive is undergoing negotiation. This proposal seeks to address acknowledged flaws in the 2013 Directive to which Ireland is currently in the process of opting into.<sup>8</sup>

This report provides analysis of key elements of the Directive situates them in the Irish context and presents recommendations for transposition in line with international standards. This document has two purposes: **Firstly**, it offers guidance to the Irish State, setting out what a human rights-oriented approach to transposition of the Directive should look like in line with Ireland's international human rights obligations. **Secondly**, it serves to inform stakeholders and the general public of the full scope of the Directive and the opportunities it poses for enhancing protection of people seeking international protection in Ireland.

The layout of the document involves quoting the relevant Article from the Directive, followed by commentary and then a recommendation on how it should be transposed.

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<sup>6</sup> As opposed to Regulations, which are directly binding on Member States and are applied uniformly across the EU, see: [https://europa.eu/european-union/eu-law/legal-acts\\_en](https://europa.eu/european-union/eu-law/legal-acts_en)

<sup>7</sup> See e.g. European Migration Network, *The Organisation of Reception Facilities for Asylum Seekers in different Member States*, 2014.

<sup>8</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465, 13 July 2016.

## 2. Definitions and Scope of the Directive

### Article 2 (c) – Definition of Family

‘family members’: means, in so far as the family already existed in the country of origin, the following members of the applicant’s family who are present in the same Member State in relation to the application for international protection: ...

### Comments

Article 2(c) sets out the definition of family member for the purposes of ensuring that the family unit is preserved with respect to allocation of accommodation and access to reception conditions. For the purposes of dispersal to accommodation centres throughout Ireland, it is key that a flexible interpretation of this provision is taken to ensure that all families are housed together in Reception and Integration Agency (RIA, hereafter) centres with adequate space, access to facilities and due consideration given to the best interests of children, in line with obligations to maintain family unity as held in Article 8 of the European Convention on Human Rights (ECHR, hereafter)<sup>9</sup> and Article 7 of the EU Charter of Fundamental Rights (the Charter, hereafter).<sup>10</sup>

The definition extends to family “in so far as the family already existed in the country of origin,” which excludes families that were formed after flight from the country of origin and during transit. In practice, if transposed restrictively, this may lead to families that were formed during the journey to Ireland, or in refugee camps in third countries, being separated in accommodation upon arrival in Ireland. Recital 22 of the Directive reminds States that they must take account of “the particular circumstances of any applicant who is dependent on family members or other close relatives,” in line with the principle of family unity and the best interests of the child. It should be noted that the Commission’s 2016 recast proposals have broadened the definition of family member to include where “family existed before arriving in the territory of the Member States.”<sup>11</sup> With a view to promoting EU harmonisation, the Irish State should adopt this definition in transposition.

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<sup>9</sup> European Convention on Human Rights.

<sup>10</sup> Council of the European Union, *Charter of Fundamental Rights of the European Union* (2007/C 303/01), 14 December 2007, C 303/1.

<sup>11</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465, 13 July 2016, Art. 2(3).

In particular, in the Irish context, same sex couples and other dependent family members, who are not explicitly mentioned in the family definition, are sometimes housed in Direct Provision centres separate to partners and family members. Requests for transfer to a different centre in order to be with family members or loved ones are dealt with on an ad hoc basis, usually decided on the basis of capacity, rather than the reception needs of the individual.

#### **The Irish Refugee Council Recommends that the State:**

- **adopts a more favourable definition of family member by omitting the ‘in so far as’ caveat in transposition, or adopting the European Commission’s broader proposal;**
- **ensure the principles of family unity and the best interests of the child are of paramount consideration in all decisions taken in relation to allocation of reception conditions, and an inclusive approach to Article 2(c) is taken to ensure that partners and loved ones are accommodated together and in facilities suited to their specific needs, in line with Article 7(1) and Article 12 of the Directive (Families).**

#### **Article 2 (k) - Definition of ‘applicant with special reception needs’**

**‘applicant with special reception needs’ means a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to benefit from the rights and comply with the obligations provided for in this Directive**

#### **Comments**

Legislative recognition of vulnerable persons with special reception needs is a welcome and long overdue addition to the Irish asylum system. However, there is limited guidance within the Directive itself as to how vulnerable persons should be identified in practice (particularly with respect to those who fall outside the non-exhaustive list of ‘vulnerable persons’ contained in Article 21 of the Directive). This leaves the State with a wide margin of discretion to decide who can be considered vulnerable for the purposes of the Directive and how they should be identified. This ambiguity has led to widespread disparity in implementation across the EU, with Member States adopting different

categories of vulnerable applicant (some more inclusive than others),<sup>12</sup> prompting a review of the approach to applicants with special reception needs in the European Commission’s 2016 proposal for a second recast of the Directive.<sup>13</sup>

Any list-based categorisation of vulnerable applicants (as held in Article 21 of the Directive) incorporated into Irish law must be non-exhaustive. In order for special reception guarantees for vulnerable persons to be effective, transposition must include detailed guidance, for the authorities responsible for assessment of special reception needs, as to how vulnerability should be identified (see Section 6 for more detail on assessment of special reception needs).

### The Irish Refugee Council Recommends that:

- **the State adopts an inclusive definition of ‘applicant with special reception needs’, along the lines of the non-exhaustive list contained in Article 21 of the Directive, or Sec. 58(1) of the IPA;**
- **transposition should include provision of detailed guidance as to the methods by which vulnerability should be identified (see section 6).**

### Article 3 – Scope of the Directive

1. This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law.

### Comments

Article 3 makes clear that the Directive applies to applicants “at the border, in the territorial waters or in the transit zones of a Member State.” Research<sup>14</sup> of practice in other EU Member States has

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<sup>12</sup> ECRE, Asylum Information Database Comparative Report, *‘The Concept of Vulnerability in Asylum Procedures’*, 31 August 2017.

<sup>13</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465, 13 July 2016, Explanatory Memorandum.

<sup>14</sup> See e.g. Asylum Information Database, Access to Reception Conditions - <http://www.asylumineurope.org/comparator/reception>

highlighted concerns about asylum seekers facing difficulty accessing national asylum procedures, and thus being excluded from the scope of the Directive by virtue of the proviso that it only applies to people “who make an application for international protection on the territory” in Article 3, due to a fictitious conception of border locations or transit zones as being outside the national territory.

Some persons who arrive at the border may not have the capacity (due to lack of language skills, trauma or other special needs) to explicitly present their wish to apply for protection and thus benefit from the rights under the Directive.<sup>15</sup> The IRC is concerned at reports of persons being refused leave to land at the Irish border – some of whom may have had a prima facie claim for protection due to the situation in their country of origin or other grounds for making an application.<sup>16</sup> It is important that transposition of the Directive, in line with the State’s *non-refoulement* obligations, ensures that all persons refused leave to land or detained at the frontiers of the State have access to legal advice and information on their entitlements in a language they can understand. This is particularly relevant in light of ongoing plans to establish a dedicated immigration-detention facility at Dublin airport,<sup>17</sup> which may lead to an increase in detention for immigration-related reasons. Due regard should also be had for recommendations from international bodies calling for Irish practice in relation to leave to land to be fully transparent and subject to procedural safeguards.<sup>18</sup> The State must consider any person’s expression of their wish to seek protection to an immigration officer as an application ‘being made,’ whether this is done verbally, in writing or by other means.<sup>19</sup>

In addition, the IRC is closely monitoring the situation of people living in DP, who have a deportation orders that the State has been unable to effect (given the countries of origin of some applicants, for example), and who have been issued with notices by RIA to leave their accommodation centre.<sup>20</sup> Notwithstanding the fact that the scope of the Directive extends only to those “allowed to remain on the territory as applicants,” given the acute vulnerability of persons on deportation orders (due to

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<sup>15</sup> ECRE, Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, p. 9.

<sup>16</sup> Parliamentary Question response by Minister Frances Fitzgerald, 100 of 31 January 2017, available at: <http://bit.ly/2kQ9gBt>.

<sup>17</sup> Parliamentary Question response by Minister Frances Fitzgerald 69 of 7 July 2016, available at: <http://bit.ly/2IJmNTb>.

<sup>18</sup> UN Committee against Torture, Concluding Observations on the Second Periodic Report of Ireland, August 2017, Para. 12; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014, Council of Europe, 17 November 2015.

<sup>19</sup> ECRE, Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, p. 10; See also for clarification on this point: European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, COM(2016) 476, 13 July 2016, Art. 25.

<sup>20</sup> The Irish Times, ‘Department denies issuing eviction letters to asylum seekers’, 22 September 2017.



their being unable to access social welfare and therefore long-term homelessness services and other safeguards that persons with residency permissions would ordinarily be able to access), the State should extend the scope of the Directive to persons who are unable to leave DP for reasons outside of their control. This approach would be in line with Article 1 of the Charter (respect for human dignity) and in keeping with the overall spirit of the Directive to ensure all persons seeking asylum “a dignified standard of living.”<sup>21</sup>

#### **The Irish Refugee Council recommends that the State:**

- **ensures that the national instrument transposing the Directive extends to transit zones by providing that all persons who are refused leave to land, or detained at the border, are provided with legal advice and information on their rights and entitlements in a language they can understand as soon as is practical after arrival;**
- **ensures that transposition of the Directive extends to persons who are no longer ‘applicants’ but are otherwise, through no fault of their own, unable to leave reception centres.**

#### **Article 4 - More favourable provisions**

**Member States may introduce or retain more favourable provisions in the field of reception conditions for applicants and other close relatives of the applicant who are present in the same Member State when they are dependent on him or her, or for humanitarian reasons, insofar as these provisions are compatible with this Directive.**

#### **Comments**

In transposing the Directive, Article 4 allows Member States the freedom to retain or incorporate into their national asylum system more favourable standards than those contained in the text of the Directive. Ireland should be lauded for some existing practice that can already be considered more favourable than the provisions of the Directive (e.g. the prohibition on detention of children – see section 9) and such practice should be retained. However, considering that the 2013 Directive is somewhat outdated in the context of ongoing negotiations at the EU level to further recast the

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<sup>21</sup> Recast Reception Conditions Directive (2013), Recital 11.

instruments of the CEAS and the fact that there exists a substantial body of commentary and jurisprudence on more problematic areas of the 2013 Directive, Article 4 should be interpreted in a generous fashion so as to ensure transposition is up to date with developments in international human rights and refugee law.

Of particular relevance, are recitals 9 and 10 of the Directive, which call on States to ensure that transposition is in line with principles of family unity and the best interests of the child, and compliant with key international instruments, including the Charter, the 1951 Refugee Convention and the relevant international human rights treaties to which Ireland is party – in particular the International Covenant on Economic, Social and Cultural Rights.

#### **The Irish Refugee Council recommends that the State:**

- **retains more favourable existing standards and applies Article 4 of the Directive generously and in the humanitarian spirit with which it is intended, so that transposition ensures effective access to the rights and safeguards to which applicants for international protection are entitled.**

### **3. Provision of information, documentation and access to key supports**

#### **Article 5 - Information**

- 1. Member States shall inform applicants, within a reasonable time not exceeding 15 days after they have lodged their application for international protection, of at least any established benefits and of the obligations with which they must comply relating to reception conditions**

#### **Comments**

In order to have effective access to their entitlements and to fully understand their obligations under the Directive, asylum seekers must be provided with information, in a language they can understand, as soon as possible after making an application for international protection (Article 5(2)). Such information should also be provided in a way that takes account of the individual situations of applicants, such as vulnerable persons or minors, who may need additional assistance understanding

and accessing information in line with Chapter IV of the Directive ('Provisions for Vulnerable Persons). Authorities may also provide information 'orally', which is important for applicants who may be illiterate.

Article 5(1) obliges states to ensure that applicants are provided information as to the range of organisations or groups which provide specific supports such as legal assistance and assisting with access to reception conditions. From our own experience and other research, it is not clear what information, if any, people are being provided with on their rights and entitlements regarding their reception conditions and information on arrival.<sup>22</sup> People in the Irish asylum system have demonstrated limited knowledge of key functions of the system such as complaints procedures and information about NGOs and bodies that provide critical supports such as legal advice and psycho-social support. Further, applicants have indicated that access to information is difficult or even impossible in some instances after dispersal to DP centres throughout the country takes place, particularly where the centre is in an isolated geographical location and/or individuals have poor English or limited literacy.<sup>23</sup>

Under the current system, people are provided with basic information in the information booklet that accompanies the Application for International Protection Questionnaire upon lodging their application, as provided in Section 18 IPA.<sup>24</sup> This does not, however, cover a person's full entitlements regarding reception conditions under the Directive and provides no information on access to support once a person has been dispersed to their accommodation centre. Direct Provision residents are also provided with a copy of the Reception and Integration Agency House Rules & Procedures, setting out the obligations of residents and centre management, as well as safety procedures.<sup>25</sup>

### **The Irish Refugee Council recommends that the State:**

- **ensure that applicants are provided with information on reception conditions and associated entitlements, in a language they can understand and a format which conveys the information in an understandable way;**

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<sup>22</sup> With respect to access to information at the border, see also.: Irish Refugee Council, Media Statement: Refusals of leave to land are alarming, says Irish Refugee Council (21 January 2016) available at: <http://bit.ly/1PPivhu>; Parliamentary Question, Tánaiste and Minister for Justice and Equality Francis Fitzgerald response to Parliamentary Question, (31st January 2017) available at: <http://bit.ly/2kQ9qBt>

<sup>23</sup> Most recently, the IRC has been conducting in-depth research on reception conditions and findings from intensive focus group sessions with different groups of Direct Provision residents that took place throughout February 2018 indicate that access to information generally is an issue. (Publication forthcoming mid-2018.)

<sup>24</sup> Irish Naturalisation and Immigration Service, International Protection Office, 'Information Booklet for Applicants for International Protection'. Available at: <http://www.ipo.gov.ie/en/IPO/InfoBookletNew.pdf/Files/InfoBookletNew.pdf>  
<sup>25</sup> Reception and Integration Agency, House Rules & Procedures (Revised 2017), Available at: <http://bit.ly/2HRu37w>

- facilitate access to information at all stages of the process – particularly for those living in more isolated or rural reception centres, through regular information outreach sessions, providing unhindered access to public transport for the purposes of accessing external supports and ensuring that NGOs which provide critical services are fully resourced to access reception centres.

#### Article 7 – Residence and Freedom of movement

1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.
2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.
3. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national law.

#### Comments

With the exception of certain circumstances set out in Article 7 (2) and (3), applicants have the right to move freely within the territory of the State. However, reports<sup>26</sup> indicate that the current arrangements in Ireland with respect to dispersal of asylum seekers to DP centres render some

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<sup>26</sup> Irish Human Rights and Equality Commission, *Ireland and the Optional Protocol to the Convention against Torture*, p. 32. Available at: <http://bit.ly/2fEh5h6>; 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, p. 52 (Working Group Report, hereafter);

people incapable of accessing certain key supports due to the isolated location of some centres and lack of public transport. Applicants have expressed difficulty attending medical appointments or accessing legal and psychosocial support, or have simply been confined to centres due to being unable to afford bus fare under their weekly direct provision allowance.<sup>27</sup> Most Direct Provision centres have a bus service that facilitates access to and from the nearest urban centre, at least once a day however these are in many cases infrequent. Residents may request a travel allowance from their local Community Welfare Officer, however the criteria for granting such requests are unclear and requests have been refused where the reason for travel has not been deemed necessary. The locations of some DP centres, combined with restricted access to public transport and funds for travel, are therefore inconsistent with the obligation under Article 7 to ensure that the applicant's place of residence "shall allow sufficient scope for guaranteeing access to all benefits under this directive." Due regard must also be had to Article 26 of the Refugee Convention which enshrines the right to freedom of movement for refugees and asylum seekers.<sup>28</sup>

#### **The Irish Refugee Council recommends that the State:**

- **in keeping with previous recommendations of the government's own Working Group on Direct Provision, ensure freedom of movement to and from reception centres by facilitating access to regular public transport and removing obstacles to access such as financial restrictions, limited bus/transport schedules or the centre's geographical location;**
- **take due account of the special reception needs of vulnerable persons, to ensure that they are not accommodated in centres that render it difficult or impossible for them to access key support services.**

## **4. Detention**

Ireland detains very few applicants for international protection in practice. According to the Irish Prison Service's 2016 annual report, 408 persons were detained for immigration-related reasons.<sup>29</sup> The IRC commends the State for the low numbers of persons detained, particularly compared to

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<sup>27</sup> Working Group Report, p. 90.

<sup>28</sup> 1951 Convention Relation to the Status of Refugees, Article 26.

<sup>29</sup> Irish Prison Service, Annual Report 2016, p. 25.

other Member States, for example the United Kingdom which detained 28,900 people in 2016.<sup>30</sup> The IRC believe that people seeking international protection should never be detained. Even where such practice is limited, the legal framework for detention in the international protection context must be in line with Ireland’s international human rights obligations.<sup>31</sup>

The Irish State has announced the ongoing development of an immigration-detention facility at Dublin Airport,<sup>32</sup> following international scrutiny of its practice of detaining persons for immigration-related reasons in prisons together with remand and convicted prisoners.<sup>33</sup> Furthermore, the State has been criticised for a general lack of transparency around detention of asylum applicants and leave to land at the Irish frontiers.<sup>34</sup> While commending the State’s lack of recourse to detention of asylum applicants to date, the IRC encourages the State to uphold good practice in this area by ensuring that transposition of the Directive reflects the general principle that asylum seekers not be detained, except under extremely limited circumstances, and only where ‘less coercive alternative measure cannot be applied effectively.’<sup>35</sup>

## Article 8 - Grounds for Detention

### Article 8 (2)

**“When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.”**

Article 8(2) of the Directive reflects the exceptional nature of detention in the context of international protection, requiring States to detain only “when it proves necessary”, “on the basis of an individual assessment of each case” and only when “other less coercive alternative measures” are

<sup>30</sup> The Migration Observatory, *Immigration Detention in the UK*, May 2017. Available at:

<http://www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>

<sup>31</sup> Irish Refugee Council, *Submission to the UN Committee against Torture on the Examination of Ireland’s National Report*, June 2017, p.4. Available at: <http://bit.ly/2w2dzU6>

<sup>32</sup> Parliamentary Question response by Minister Frances Fitzgerald 69 of 7 July 2016, available at: <http://bit.ly/2IJmNTb>.

<sup>33</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014*, Council of Europe, 17 November 2015.

<sup>34</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12; Irish Human Rights and Equality Commission, *Ireland and the Convention against Torture -Submission to the United Nations Committee against Torture on Ireland’s second periodic report*, July 2017.

<sup>35</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012.

necessary. This provides several layers of protection to applicants that are not contained in existing Irish asylum law. Section 20 of the IPA, which governs detention, does not provide for a necessity test on the basis of an individual assessment. As such, transposition of the Directive will require the obligation on the relevant authority to determine necessity<sup>36</sup> of detention on the basis of a careful examination of the asylum seeker's individual circumstances. This would also be in line with the Concluding Observations of the UN Committee against Torture in its review of Ireland in July 2017, which recommended that the State should "enshrine in its legislation the principle that detention of asylum-seekers should be used as a measure of last resort, for as short a period as possible and in facilities appropriate for their status."<sup>37</sup>

Sec. 20(3)(b) of the IPA provides for consideration of some alternatives to detention, however, these can only be applied after the individual has been detained and brought before a judge of the District Court, who then considers alternatives. This is contrary to Article 8(2) of the Directive, which only allows for detention *after* alternatives have been considered and cannot be effectively applied.

#### **The Irish Refugee Council recommends that the State:**

- **sets out in law a clear obligation on the detaining authorities to ensure that detention is used as a measure of last resort, when it is determined to be necessary in the light of the asylum seeker's individual circumstances;**
- **Ensure that less coercive alternatives to detention are accessible in practice by ensuring in law that they are considered *before* detention occurs, as called for in Article 8(4) of the Directive. Guidance may be taken from the International Detention Coalition<sup>38</sup> and the Odysseus Network,<sup>39</sup> who have set out extensive guidance on alternatives to detention.**

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<sup>36</sup> UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, Guideline 4.2.

<sup>37</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12(a).

<sup>38</sup> International Detention Coalition, *There Are Alternatives*, A handbook for preventing unnecessary detention <https://idcoalition.org/publication/there-are-alternatives-revised-edition/>

<sup>39</sup> Odysseus Network, *Alternatives to Immigration and Asylum Detention in the EU – Time for Implementation*, <http://odysseus-network.eu/wp-content/uploads/2015/02/FINAL-REPORT-Alternatives-to-detention-in-the-EU.pdf>

## Article 8(3) Grounds for Detention

### 3. An applicant may be detained only:

- (a) in order to determine or verify his or her identity or nationality;
- (b) in order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
- (c) in order to decide, in the context of a procedure, on the applicant's right to enter the territory;
- (d) when he or she is detained subject to a return procedure under [the Returns Directive];
- (e) when protection of national security or public order so requires;
- (f) in accordance with Article 28 of [the Dublin Regulation].

In addition to procedural safeguards, Article 8 of the Directive also contains an exhaustive list of six grounds under which detention may be permitted. However, UNHCR and ECRE have expressed concern that the ambiguous formulation of the text leaves broad discretion on Member States to apply detention arbitrarily<sup>40</sup> and has led to widely divergent implementation of the Directive in Member States' legislative frameworks and detention practice.<sup>41</sup>

The list of grounds contained in the Directive is more extensive than those currently set out in Section 20 of the IPA. As such, the IPA actually presents a narrower and more favourable framework for detention of asylum seekers more closely in line with the principle that persons seeking international protection should not be detained unless absolutely necessary. In transposing the Directive, the Irish State should exercise its discretion to retain its more favourable existing

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<sup>40</sup> See e.g. UNHCR, Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast); ECRE, Information Note - Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

<sup>41</sup> ECRE, Asylum Information Database, *'The detention of asylum seekers in Europe - Constructed on shaky ground?'*, June 2017.



standards, as permitted by Article 4 of the Directive, while also bolstering these by introducing robust procedural safeguards as set out in Articles 8(2) and 9 of the Directive.

The State should also take this opportunity to further clarify existing grounds for detention in the IPA. Section 20(1)(c), for example, allows for detention where an asylum seeker has not made “reasonable attempts to establish his or her identity.” Considering that many asylum seekers arrive at the frontiers of the state with no identification documentation, or on false travel documents, without any clarification of what “reasonable attempts” means in practice, this provision risks being applied arbitrarily.

Similarly, Section 20(1)(f) permits detention where the applicant “without reasonable excuse—(i) has destroyed his or her identity or travel document, or (ii) is or has been in possession of a forged, altered or substituted identity document.” In the IRC’s experience, many applicants arrive on the territory of the State either accompanied by an agent who forces or directs them to destroy their travel document before arrival at the border, or are forced by a smuggler to hand over their original documents before fleeing, in exchange for ‘forged’ or ‘substitute’ documents. The extent to which applicants are able to provide a “reasonable excuse” for their lack of original documents would depend on the level of legal assistance applicants are provided at the border, which is unknown. Making it an offence to use such documents would unreasonably penalize persons who have no choice but to rely upon smugglers or traffickers to escape persecution, contrary to the State’s obligations under Article 31 of the 1951 Refugee Convention.<sup>42</sup>

Finally, the State is encouraged to restrict the unnecessarily broad power, given to immigration officers and Gardaí by Article 20 (1) of the IPA, to detain “without warrant” and where they “suspect, with reasonable cause” that an applicant meets the detention grounds. What exactly constitutes “reasonable cause” in the international protection context is not clear under the IPA, which may lead to arbitrary detention in practice. Such broad power, without the legislative safeguard of a requirement of necessity, an individual assessment, or consideration of detention alternatives, flies in the face of the principle of detention being used as a last resort.

### **The Irish Refugee Council recommends that the State:**

- **does not transpose the grounds for detention held in Article 8(3) of the Directive, instead exercising its discretion under Article 4 to retain the more favourable standards already in place;**

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<sup>42</sup> Convention Relating to the Status of Refugees, 28 July 1951. (Refugee Convention, hereafter)

- **should take this opportunity to clarify existing grounds for detention and reduce the unnecessarily broad powers to immigration officers and Gardaí, so as to ensure that detention, if it occurs, is not arbitrary.**

#### **Article 9 – Guarantees for detainees**

- 1. An applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable.**

Article 9 of the Directive does not set out a maximum duration for detention of asylum seekers, however detention can only take place for “as short a period as possible.” Further, Recital 16 of the Directive emphasises the principle of “due diligence”, holding that “detention shall not exceed the time reasonably needed to complete the relevant procedures (for assessing the grounds for detention).” This is in line with ECtHR jurisprudence on the permissible length of time for detention to be lawful.<sup>43</sup>

The IPA does not contain a statutory time limit on the length of time a person can be detained for. Section 20(12) IPA allows for a judge to commit a person to detention for a period not exceeding 21 days. The manner in which Section 20 is currently formulated appears to allow for indefinite detention in renewable periods. A maximum total limit on detention must be established in law as a safeguard against such arbitrariness, in line with UNHCR’s detention guidelines, which specifically states that “indefinite detention is arbitrary and maximum limits on detention should be established in law.”<sup>44</sup>

#### **The IRC recommends that the State:**

- **insert a maximum duration for which a person can be detained into legislation transposing the Directive and ensure that alternatives to detention are considered each time the lawfulness of detention is reviewed.**

<sup>43</sup> ECtHR, *Saadi v. United Kingdom*, Application No. 13229/03ECtHR, 29 Jan 2008, par. 74.

<sup>44</sup> UNHCR Guidelines on Detention, Guideline 8, Para. 48(iii).

## Article 10 – Conditions of Detention

1. Detention of applicants shall take place, as a rule, in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners and the detention conditions provided for in this Directive shall apply.

As far as possible, detained applicants shall be kept separately from other third-country nationals who have not lodged an application for international protection. When applicants cannot be detained separately from other third-country nationals, the Member State concerned shall ensure that the detention conditions provided for in this Directive are applied.

As a baseline, conditions of detention must ensure treatment in line with respect for the dignity of the person.<sup>45</sup> Article 10 of the Directive provides that persons seeking international protection may be detained in a prison only when a Member State “cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation.” In line with recommendations from the Irish Human Rights and Equality Commission,<sup>46</sup> the European Committee for the Prevention of Torture<sup>47</sup> and the UN Committee against Torture,<sup>48</sup> Ireland has recently announced the development of an immigration detention facility. Once this facility becomes operational, the State should have no reason “to resort to prison accommodation.” Any dedicated facility should be subject to independent oversight and staffed by adequately trained personnel who are sensitive to the needs of asylum seekers.

With respect to the living standards required in detention facilities, Article 17(2) of the Directive obliges Member States to ensure adequate standard of living for applicants “in relation to the

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<sup>45</sup> Recast Reception Conditions Directive (2013), Recital 18.

<sup>46</sup> Irish Human Rights and Equality Commission, *Ireland and the Convention against Torture -Submission to the United Nations Committee against Torture on Ireland’s second periodic report*, July 2017.

<sup>47</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014*, Council of Europe, 17 November 2015.

<sup>48</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12.

situation of persons who are in detention.” UNHCR’s Detention Guidelines,<sup>49</sup> which elaborate on the minimum guarantees that should be made available to detainees, such as access to medical treatment should be considered. Further, the European Committee for the Prevention of Torture<sup>50</sup> and jurisprudence of the ECtHR sets out standards in relation to overcrowding, access to open air, quality of food and bedding, and ability to exercise.<sup>51</sup> Furthermore, Articles 10(3) and 10(4) oblige the State to facilitate access to places of detention for UNHCR, NGOs and legal representatives. In the context of the current dearth of information and disaggregated data with respect to detention of asylum seekers in Ireland (and immigration-related detention more generally), these provisions are particularly important to ensure that applicants have access to information on their rights and entitlements. In particular, the IRC draws the State’s attention to the recent Concluding Observations of the UN Committee against Torture which ask the State to “ensure that persons detained for immigration purposes are informed about their situation in a language they can understand and have effective access to legal advice and to the process of application for international protection.”<sup>52</sup>

#### **The Irish Refugee Council recommends that the State:**

- **ensure that in the event an asylum seeker is detained, that this does not take place in a prison and only occurs after the necessary procedural safeguards have been applied, including consideration of alternatives to detention;**
- **ensure that any specialised immigration detention facility is subject to monitoring by an independent oversight body to ensure that detention practice complies with international human rights standards and, where detention occurs at the border, that asylum seekers have access to the international protection procedure in line with Art. 18 of the EU Charter. Guidance can be taken from the existing Inspectorate of Prisons and the State should move to ratify the Optional Protocol to the Convention against Torture (signed by**

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<sup>49</sup> UNHCR Guidelines on Detention, Guideline 8.

<sup>50</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *CPT Standards*, 2011, p. 65.

<sup>51</sup> See e.g. ECtHR, *Aden Ahmed v Malta*, Application No 55352/12, Judgement of 23 July 2013, par. 87; ECtHR, *Ananyev v Russia*, Application No 42525/07, Judgement of 10 January 2012, par. 149; ECtHR, *Modarca v Moldova*, Application No 14437/05, Judgement of 10 May 2007, par. 68.

<sup>52</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12(d).

State in 2007), which would establish a domestic and international oversight system for places of detention.<sup>53</sup>

- ensure that family members, legal representatives and NGOs have access to applicants in places of detention, in line with Article 10 (4).

#### Art. 11 – Detention of Vulnerable Persons with Special Needs

1. The health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities. Where vulnerable persons are detained, Member States shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.

Article 11 of the Directive sets out the minimum standards and procedural safeguards to be applied when detaining vulnerable asylum seekers. There is widespread evidence of the harmful effect of detention on the health and mental wellbeing of asylum seekers.<sup>54</sup> ECRE and UNHCR have held that vulnerable applicants should not be detained at all either in principle or by way of a legislative prohibition in national asylum law.<sup>55</sup>

The IPA already contains more favourable provisions by way of an absolute prohibition of the detention of minors in Section 20(6), and no reference at all to detention of vulnerable applicants. The IRC praises the State's principled stance on the prohibition of detention of minors (one of the few EU Member States to enshrine this prohibition in national legislation), and urges the State to retain this safeguard in the transposition of the Directive. The State should build on this good practice by taking the opportunity to extend the prohibition on detention to other vulnerable

<sup>53</sup> Irish Human Rights and Equality Commission, *'Ireland and the Optional Protocol to the Convention against Torture,'* 2017.

<sup>54</sup> See e.g. International Detention Coalition, *'LGBTI Persons in Immigration Detention – Position Paper,'* 2016; Storm T, Engberg M. *'The impact of immigration detention on the mental health of torture survivors is poorly documented--a systematic review,'* Dan Med J. 2013 Nov;60(11); International Detention Coalition, *'Captured Childhood – Introducing a new model to ensure the rights and liberty of refugee, asylum seeker and irregular migrant children affected by immigration detention,'* 2012; Katy Robjant, Rita Hassan, Cornelius Katona, *'Mental health implications of detaining asylum seekers: systematic review,'* The British Journal of Psychiatry Apr 2009, 194 (4) 306-312.

<sup>55</sup> UNHCR, Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), p. 29; ECRE, Information Note - Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), p. 26.

persons, in line with the associated obligation to take into account the special reception needs of vulnerable persons at Article 21 of the Directive.

The State is reminded that Recital 14 of the Directive states that “reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs.” On the basis of international guidance, under no circumstances could detention of vulnerable applicants be considered to “meet their special reception needs” and would be contrary to the humanitarian objective of the Directive.

**The Irish Refugee Council recommends that the State:**

- **maintains its good practice in relation to the existing prohibition on the detention of minors and takes the opportunity to expand on this good practice by providing in transposition a legislative prohibition on the detention of all vulnerable applicants.**

## **5. Access to the Labour Market**

### **Article 15 Access to Employment**

**1. Member States shall 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 if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant.**

**2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market.**

Access to employment for people in the asylum process is widely acknowledged as critical to preventing social exclusion, promoting self-reliance and autonomy among asylum seekers, and

ensuring their capacity to contribute to their host community.<sup>56</sup> Early and effective access to the labour market also brings tangible benefits to the State, by reducing the dependency of applicants on State-provided support during the process, increasing tax revenue, and facilitating speedy integration and transition into society once international protection status is granted.<sup>57</sup> Fundamentally, access to the labour market is a key component of a “dignified standard of living,” which underpins the purpose of the Directive (Recital 11).

Recital 23 of the Directive explicitly links access to the labour market with the need to promote the “self-sufficiency” of applicants. The Irish Supreme Court in the *NHV* judgement held that work is connected to the dignity and freedom of individuals and that the complete ban on seeking employment for asylum seekers is contrary to the constitutional right to seek employment.<sup>58</sup> The Court drew an explicit link between the applicant’s inability to access employment to his complete loss of autonomy and self-worth. For the State to do justice to the Court’s decision, Article 15 of the Directive must be interpreted by the State in the context of ensuring the basic human dignity of people in the asylum process.

Furthermore, provision of access to the labour market must also bear in mind the States’ duty to ensure that applicants have “effective” access to the labour market. The CJEU has defined effectiveness as meaning that that restrictions may not render practically impossible or excessively difficult access to rights contained in EU law, any restriction must not be arbitrary and must be proportionate to the aim of that restriction.<sup>59</sup> Therefore, restrictions imposed on access to employment must be in line with a legitimate aim proportionate to the interference with the right to work. The State wishes to impose restrictions on access to employment to mitigate a potential “pull-factor” that would see a significant increase in the numbers who come to Ireland to seek asylum. While the Supreme Court considered the legitimacy of the pull-factor argument for restricting access to employment,<sup>60</sup> the State’s argument is not, it is submitted, based on fact-based analysis. There has been no research conducted on the validity of the pull-factor argument in the Irish context and research that has been conducted in similar jurisdictions has questioned its significance.<sup>61</sup> Therefore,

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<sup>56</sup> European Parliament, ‘Labour Market Integration of Refugees, Strategies and Good Practices’, 2016, p. 11.

<sup>57</sup> See e.g. M. Marbach, J. Hainmueller, D. Hangartner, ‘The Long-Term Impact of Employment Bans on the Economic Integration of Refugees’, *Stanford-Zurich Immigration Policy Lab Working Paper No. 17-03*, 29 November 2017.

<sup>58</sup> *N.H.V -v- Minister for Justice & Equality and ors*, [2017] IESC 35, para. 15.

<sup>59</sup> See e.g. Opinion of Advocate General Trstenjak delivered on 22 September 2011, in Case C-11/10 *N. S. v Secretary of State for the Home Department*; CJEU C-246/09 *Bulicke* [2010] ECR I-0000, paragraph 25; CJEU C-2/06 *Kempton* [2008] ECR I-411, paragraph 57; CJEU Joined Cases C-222/05 to C-225/05 *Van der Weerd and Others* [2007] ECR I-4233, paragraph 28; and CJEU C-432/05 *Unibet* [2007] ECR I-2271, paragraph 43.

<sup>60</sup> *N.H.V -v- Minister for Justice & Equality and ors*, para. 18.

<sup>61</sup> University of Warwick, ‘Access to the labour market as a ‘pull factor’ for asylum seekers: What the research shows’, Policy Briefing, March 2016.

the IRC is adamant that introducing restrictions on this basis could have serious implications for the well-being of people and is unacceptable.

For access to employment to be considered 'effective', the IRC has long held that the right to work must be as unrestrictive as possible: it should be immediately available to persons who have not received a first-instance decision within 6 months of making an application and with no restrictions as to the professions a person can pursue.<sup>62</sup> Considering the difficulties faced by asylum seekers in other EU Member States in accessing employment,<sup>63</sup> even where that right exists in legislation, the Irish State must take practical measures to ensure that asylum seekers are able to benefit from the right to work in practice, in order for it to be considered effective. The State should consider initiatives such as opportunities for upskilling and vocational training (taking account of asylum seekers' existing skills and qualifications), and addressing discrimination and marginalisation by including asylum seekers in national integration strategies.

#### **The Irish Refugee Council recommends that the State:**

- **ensure effective access to the labour market for asylum seekers by making it immediately available after 6 months without a first instance decision, and not subject to job sector restrictions and minimum salary requirements;**
- **take positive action to assist asylum seekers accessing the labour market, by *inter alia* introducing opportunities to develop vocational skills, recognising existing skills and qualifications, and addressing barriers to the labour market such as discrimination.**

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<sup>62</sup> Irish Refugee Council, Policy Paper: The Right to Work for International Protection Applicants, July 2017. Available at: <http://bit.ly/2sid4E2>

<sup>63</sup> European Commission, *Challenges faced by asylum seekers and refugees in successfully integrating into the labour market*, May 2016.



## 6. Material Reception Conditions

### Article 17 – General Rules

**(2) Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.**

Material reception conditions refer to basic entitlements that are crucial to ensure the applicant's subsistence such as housing, food and clothing.<sup>64</sup> The Directive allows for material reception conditions to be provided by the State in kind, as financial allowances or in vouchers, or a combination of the three. Irrespective of the nature of provision, material reception conditions must ensure an "adequate standard of living, which guarantees their subsistence and protects their physical and mental health." Such provision must take due regard of the special needs of vulnerable persons *vis a vis* Article 21 of the Directive.

The obligation to provide an "adequate standard of living" to asylum seekers must be interpreted in line with relevant international standards and the jurisprudence of the regional Courts. For example, Article 31 of the European Social Charter, which sets out the right to housing;<sup>65</sup> Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which provides that every person has the right to "an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions."<sup>66</sup> The Commissioner for Human Rights of the Council of Europe, in his recommendations on implementation of the right to housing, provided that "the requirement of dignity in housing means that even temporary shelters must fulfil the demands for safety, health and hygiene, including basic amenities, i.e. clean water, sufficient lighting and heating."<sup>67</sup> The Court of Justice of the European Union (CJEU) in the *Saciri* judgement stated that, in circumstances where financial assistance was provided in lieu of accommodation, that assistance must "be sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their

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<sup>64</sup> RCD Art. 2(g)

<sup>65</sup> Article 31, European Social Charter (Revised), Strasbourg, 3.V.1996.

<sup>66</sup> Article 11, International Covenant on Economic Social and Cultural Rights.

<sup>67</sup> Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing, 30 June 2009, Doc CommDH (2009), p. 13.

subsistence”, including by enabling them to be able to afford private rented accommodation that takes account of the need to maintain family unity, where necessary.<sup>68</sup> Therefore, under circumstances where the State is unable to provide housing for an applicant due to issues outside of their control (for example, due to State reception facilities being at full capacity), the State must provide financial support sufficient to allow the applicant to access private rented accommodation. The Court also reiterated that the needs of vulnerable persons and the best interests of the child must be taken into account.<sup>69</sup> Article 1 of the EU Charter has been interpreted as precluding Member States from depriving asylum seekers of the standards held in the Directive.<sup>70</sup> Furthermore, the ECtHR, noting the status of asylum seekers as a ‘member of a particularly underprivileged and vulnerable population group in need of special protection’, has ruled that States which are bound under the Directive have an obligation not to place an asylum seeker who is wholly dependent on the State in a position where they face absolute destitution and homelessness, which would be in violation of Article 3 ECHR and Article 4 of the Charter.

Research on living conditions for asylum seekers in Ireland has highlighted serious concerns about the adequacy of Direct Provision accommodation, with respect to issues such as overcrowding, hygiene and quality of food provided.<sup>71</sup> The problems are especially acute for vulnerable groups such as children,<sup>72</sup> victims of sexual and gender-based violence,<sup>73</sup> and victims of torture.<sup>74</sup> These issues are further exacerbated by the lack of any common standards informing the management of Direct Provision centres, the lack of publicly available RIA policy (with respect to procedures such as transfers, for example) and the lack of any independent oversight mechanism. In order for Ireland to meet the requirements as set out under the Directive, a fundamental rethink of the approach to management of asylum seeker reception in Ireland needs to occur – shifting the focus away from the current business model, to one with fundamental principles of human rights and dignity at its core.

### **The Irish Refugee Council recommends that the State:**

- **sets out in legislation the obligation to provide an “adequate standard of living” in line with Article 1 of the EU Charter and relevant international guidelines. Specific guidance**

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<sup>68</sup> CJEU - C-79/13, *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others*, 27 February 2014, para. 42.

<sup>69</sup> *Saciri and Others*, para. 41.

<sup>70</sup> *Saciri and Others*, para. 35.

<sup>71</sup> Working Group Report, p 159.

<sup>72</sup> Department of Children and Youth Affairs, ‘*Report of DCYA consultations with children and young people living in Direct Provision*’, 2017.

<sup>73</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, p. 192.

<sup>74</sup> SPIRASI, ‘*Submission to the UN Committee against Torture in advance of their review of Ireland*’, June 2017.

can be taken from existing recommendations such as those contained in the final report of the Government's own Working Group on the Protection Process and Direct Provision;<sup>75</sup>

- ensure an adequate standard of living in practice by introducing national standards for reception conditions for asylum seekers, and establishing an oversight procedure that is conducted by a fully independent body.

#### **Article 18 – Modalities for material reception conditions**

**(1) Where housing is provided in kind, it should take one or a combination of the following forms:**

- a. Premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones;**
- b. Accommodation centres which guarantee an adequate standard of living;**
- c. Private houses, flats, hotels or other premises adapted for housing applicants.**

**(4) Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres referred to in paragraph 1(a) and (b).**

Article 18(1) sets out the forms accommodation must take where it is provided by the State in kind. In order for reception centres to meet the required standards, they must ensure the protection and capacity for rehabilitation of the applicant. Article 18(4) places the obligation on Member States to take appropriate measures to prevent assault and gender-based violence and harassment. RIA published a policy document on domestic, sexual and gender-based harassment and violence in 2014, and indicated that a staff training programme and resident awareness-raising campaign would

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<sup>75</sup> See e.g.: Working Group Report, para. 4.58.

follow.<sup>76</sup> However, the extent to which these guidelines have been implemented and suggested programmes of action followed up on is unknown.<sup>77</sup>

The IRC and others have frequently called for a revision of the physical structure of Direct Provision centres and the general lack of standards informing the establishment of reception centres to ensure that facilities meet the needs of persons in the asylum process.<sup>78</sup> At a minimum, families should be accommodated in private units, suitable for children, and single applicants should be accommodated in single rooms. At time of writing this report, the IRC is currently in the process of conducting research that will set out a vision of what adequate reception facilities in the Irish context should be. The findings from this research will take account of the experiences of both DP residents and housing providers with experience working with other vulnerable groups in Irish society, and also examples of best practice from other EU Member States.

With respect to Article 18(4), procedures must be in place (including appropriate training for staff) to deal with complaints of sexual harassment and other mistreatment. IRC research and anecdotal information received via our direct support services suggest that, more often than not, complaints of harassment are not taken seriously. Single women and LGBT persons, in particular, have indicated that they feel particularly unsafe in some DP centres.<sup>79</sup>

#### **The Irish Refugee Council recommends that the State:**

- **ensure that all reception centres are guided by standardised policy (if not a legislative provision) setting out clear procedures for identifying and responding to allegations of harassment and abuse.**

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<sup>76</sup> RIA Policy Document on Sexual & Gender Based Violence (with Agreed Report), <http://bit.ly/2omfa5P>

<sup>77</sup> Irish Human Rights and Equality Commission, Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women - Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports, January 2017. p. 177. Available at: <http://bit.ly/2lAMB4T>

<sup>78</sup> See e.g. Irish Refugee Council, Direct Provision: Framing an alternative for people seeking international protection, 2013; The Working Group Report, pp. 162-177.

<sup>79</sup> Most recently, as revealed during ongoing IRC research on reception conditions, which involved a number of intensive focus groups with Direct Provision residents in February 2018. See also, IHREC Submission to CEDAW, p. 191; Luke Hamilton, 'Elaborating on the challenges facing LGBT asylum seekers: Asylum procedures and reception conditions in Ireland' Working Paper for COC Netherlands Out & Proud Conference 5-6 October 2017.

## Article 18 (7)

**Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality rules provided for in national law in relation to any information they obtain in the course of their work.**

### Comments

Mandatory training for all staff working in reception centres is crucial to ensure effective access for asylum seekers to the rights and entitlements of the Directive. In line with the requirement to identify and address special reception needs of vulnerable persons under the Directive, UNHCR recommend that staff are specifically trained to prevent and respond to sexual and gender-based violence and female genital mutilation, to carry out best interests assessments for children and to respond to the specific needs of LGBT residents, as well as general training in cultural orientation, conflict resolution and community empowerment.<sup>80</sup>

In the Irish context, there is no obligation (legislative or otherwise) on staff in Direct Provision centres to have completed any training or meet a certain standard of competency in respect of their duties to people seeking international protection. This is an issue that has been consistently raised by civil society and the Government's own Working Group on the Protection Process.<sup>81</sup> IRC research conducted in January and February 2018 with residents of a number of DP centres throughout the country has indicated that instances of inappropriate staff behaviour, including bullying, derogatory comments, as well as reports that complaints are not effectively responded to. These issues mirror issues that have been highlighted in previous research, such as those raised in the Working Group Report. This is compounded by the lack of common standards across the national Direct Provision estate which should inform the hiring process for reception centre staff.

### The Irish Refugee Council Recommends that the State:

- **transposes this provision directly into national legislation and is implemented in practice through mandatory hiring and training requirements on reception centre staff, in line with**

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<sup>80</sup> UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June laying down standards for the reception of applicants for international protection (recast), p. 44. Available at:

<http://www.refworld.org/docid/5541d4f24.html>

<sup>81</sup> Working Group Report, p. 240.

**specific areas of concern that have been identified – particularly in relation to the needs of vulnerable groups.**

#### **Article 18(8)**

**Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.**

Article 18(8) allows States to incorporate residents of reception facilities themselves in the governance of reception centres and ensures their involvement in decisions that may have a significant effect on their quality of life while awaiting a decision on their application. Given that loss of autonomy is a the key criticism of DP, the State should take advantage of this provision and restore a degree of self-sufficiency by facilitating residents' involvement in the running of reception conditions/facilities, either by establishing a committee of resident representatives or ensuring an open line of communication between the residents and RIA.

#### **The Irish Refugee Council Recommends that the State:**

- **restore some autonomy to applicants by providing them with opportunities to input into their reception situation, either by establishing a committee of resident representatives or ensuring an open line of communication between the residents and RIA.**

## Article 20 Reduction or withdrawal of material reception conditions

Member States may reduce or, in exceptional and duly justified cases, withdraw material reception conditions...

### Comments

Article 20 sets out the grounds under which material reception conditions may be reduced or withdrawn entirely. The text of the article states that national authorities “**may** reduce...or withdraw material reception conditions” [emphasis added]. Therefore, States are not obliged to incorporate a legislative provision on the reduction or withdrawal of reception conditions in their national legislation, meaning that transposition of such provisions is optional to the State. Where States do allow for the possibility to completely withdraw material reception conditions in national systems, this must be accompanied by a rigorous assessment of the “particular situation of the person concerned, especially with regard to persons covered by Article 21, taking into account the principle of proportionality.”<sup>82</sup> Reasons for a decision to reduce or withdraw reception conditions must be provided to the applicant, as well as the modalities for appealing such decisions. Even where reception conditions have been withdrawn entirely, Member States must “under all circumstances ensure access to health care in accordance with Article 19 and [...] ensure a dignified standard of living for all applicants.”<sup>83</sup> Therefore, even where a final decision has been taken to withdraw access to reception conditions for an applicant, the final result cannot be that the applicant is rendered destitute and without subsistence. This has been reiterated by the CJEU with respect to Member States’ obligations under Article 1 of the Charter, for example in the cases of *Saciri* and *Cimade and GISTI*.<sup>84</sup>

The IRC frequently receives reports of persons being refused admittance to RIA accommodation. This is particularly the case where a person has left their DP centre (either with or without the management’s permission) and has been refused readmission where their private accommodation arrangement no longer exists or where the person applied for protection, was living outside of DP but is now seeking to enter it due to not having an alternative option. While Article 20(1)(a) permits in “exceptional and duly justified cases, withdrawal” of material reception conditions where the applicant “abandons the place of residence determined by the competent authority without

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<sup>82</sup> Recast Reception Conditions Directive (2013), Article 20(5).

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

<sup>84</sup> CJEU, Case C-179/11 *Cimade and GISTI v Ministre de l’Intérieur*, Judgment of 19 September 2012, par. 56.

informing it or, if requested, without permission”, such a decision must be taken on the basis of an in-depth individual assessment and reasons for that decision must be provided to the applicant. In the IRC’s experience, people who have left Direct Provision and subsequently sought re-entry are being refused without an evaluation of their specific circumstances and without reasons for such decisions being provided to them. The response of RIA has been a bald statement about a lack of capacity within the DP estate. This has led to the IRC having to negotiate with RIA on applicants’ behalves, which has resulted in some people being re-accommodated on an ad hoc basis and others being refused and having to resort to local homelessness services. This current practice would constitute a clear violation of Article 20 unless safeguards against the withdrawal of reception conditions are established in legislation. Safeguards (such as the requirement that decisions to withdraw reception conditions are made only after an individual assessment, after reasons have been provided for that decision and subject to an appeal procedure) should take into account the principle of proportionality and access to healthcare (Article 19 of the Directive) and the obligation to ensure a dignified standard of living for all applicants

#### **The Irish Refugee Council Recommends that the State:**

- **do not allow for complete withdrawal of reception conditions in national legislation;**
- **where any reduction in reception conditions are foreseen, that the form and level of reception conditions following reduction are defined clearly in legislation and such decisions are only taken on the basis of an individual assessment with due regard to proportionality, recalling the imperative to ensure a “dignified standard of living” under all circumstances in line with Article 1 of the EU Charter.**

## **7. Special Reception Needs of Vulnerable Persons**

Articles 21 – 25, together with Recital 14, of the Directive recognise that in order for all applicants to have effective access to an adequate standard of living, certain categories of applicant may be required to have special reception needs met in order to benefit from their entitlements under the Directive. Article 21 sets out a non-exhaustive list of potentially vulnerable persons “such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of



psychological, physical or sexual violence, such as victims of female genital mutilation.”<sup>85</sup> UNHCR encourages Member States to take advantage of the non-exhaustive nature of the list and to expand upon it when transposing the Directive in their national legislation, so as to include other potentially vulnerable groups such as “LGBTI persons and persons with a hearing or visual impairment or applicants who are illiterate, dyslectic or mentally challenged.”<sup>86</sup> This can be done either by expanding the list in national legislation and/or by espousing an inclusive approach to vulnerability identification, as described below. Guidance can also be taken from other Member States which have included an expanded list of categories of vulnerable persons in their national legislation transposing the Directive.<sup>87</sup>

### **Article 22(1) Assessment of the special reception needs of vulnerable persons**

In order to effectively implement Article 21, Member States shall assess whether the applicant is an applicant with special reception needs. Member States shall also indicate the nature of such needs.

That assessment shall be initiated within a reasonable period of time after an application for international protection is made and may be integrated into existing national procedures. Member States shall ensure that those special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to applicants with special reception needs in accordance with this Directive takes into account their special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

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<sup>85</sup> RCD, Art. 21

<sup>86</sup> UNHCR Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June laying down standards for the reception of applicants for international protection (recast), p. 51. Available at: <http://www.refworld.org/docid/5541d4f24.html>

<sup>87</sup> ECRE, Asylum Information Database Comparative Report, ‘The Concept of Vulnerability in Asylum Procedures’, 31 August 2017.

## Comments

Article 22 entails a number of important obligations that Member States must take account of in the transposition of the Directive with respect to ensuring an adequate standard of living for vulnerable persons and to give effect to Article 21 of the Directive. Member States are required to “assess whether an applicant is an applicant with special reception needs.” This assessment must be conducted as soon as possible after an application is made with a view to ensuring that people are immediately housed in reception facilities suited to their specific needs. Identification of vulnerability can take account of an individual’s self-identification of vulnerability, in line with the principle of the right to be heard in EU law. However, given the proactive wording of the text of the Directive, the Member State cannot rely solely on the applicant’s self-identification of vulnerability to satisfy its obligations.<sup>88</sup> Unfortunately, the Directive does not give any guidance as to the format or method of the identification procedure, which is left to the discretion of Member States and has resulted in wide disparity in practice across the EU since the Directive came into force.<sup>89</sup> Nonetheless, it is clear from the text that identification of vulnerability must occur as part of an initial assessment and continue throughout the asylum process, and authorities cannot rely solely on an applicant’s self-identification as a vulnerable person.

Notably the European Commission’s proposal for a recast Reception Conditions Directive (2016) addresses the gap in guidance for authorities by including concrete steps that a Member State should take in order to facilitate identification of vulnerability.<sup>90</sup> These include training for international protection officers; the requirement to include all information pertaining to special needs on the applicant’s file; the need to refer to medical experts where the person is a victim of torture or violence, and guidance on tailoring reception conditions to the needs of the individual. While Ireland will not be legally bound by the iteration of the Directive when and if it is passed in to law, these provisions usefully inform the State how to appropriately apply Art. 22 of the 2013 recast and these steps should be incorporated into transposition to ensure a consistent approach to vulnerability identification.

Furthermore, while a person’s special reception needs are distinct from special needs that must be taken account of in the context of asylum procedures, any formalised vulnerability assessment that takes place when a person makes an application for asylum must also take account of special

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<sup>88</sup> ECRE, Information Note on Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), December 2014, p. 34.

<sup>89</sup> ECRE, Asylum Information Database Comparative Report, *‘The Concept of Vulnerability in Asylum Procedures’*, 31 August 2017.

<sup>90</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*, COM(2016) 465, 13 July 2016, Article 21(2).

procedural needs. An integrated mechanism, that considers both reception and procedural needs, would avoid duplicating complex administrative procedures and reduce the stress on the applicant, reflecting the recommendations of organisations such as ECRE and UNHCR.<sup>91</sup> Guidance can be taken from Article 24 of the recast Asylum Procedures Directive, which sets out guarantees for applicants with special procedural needs (notwithstanding the fact that Ireland has not opted in to the recast version of that Directive).<sup>92</sup> Irrespective of whether such assessments are integrated or separate, special needs identification mechanisms must be able to take account of special reception and procedural needs where they arise **throughout** the process, and not just at the beginning.

Ireland currently has no formal procedure for screening for vulnerability, either in legislation or practice, at any stage of the asylum procedure. Vulnerable applicants are only given explicit consideration under Section 58 of the IPA, which applies *after* international protection status is granted. The State should recall the Concluding Observations of the UN Committee against Torture in its review of Ireland in July 2017, which urge the State to take a holistic approach to vulnerability identification and “establish a formalised vulnerability screening mechanism for torture victims and other persons with special needs, provide them with care and protection to avoid re-traumatisation, including during international protection procedures”.<sup>93</sup> The State should take this opportunity to address a major gap in the Irish asylum system by setting out in legislation clear guidelines for identification of special reception and procedural needs.

#### **The Irish Refugee Council recommends that the State:**

- **provide for the identification of both special reception and procedural needs in national legislation in line with the requirement to ensure that such assessment occurs as soon as possible after application (or at time of application) and also allows for identification of special needs where they arise later in the asylum process;**
- **set out clear guidance as to how special reception and procedural needs should be identified as part of a formal mechanism. The State can look to examples of good practice**

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<sup>91</sup> UNHCR, *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, p. 53; ECRE, *Information Note - Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, p. 34.

<sup>92</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L 180/60, Article 24.

<sup>93</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12(b).

in this regard from other Member States which have established multi-disciplinary formal vulnerability identification mechanisms, such as the Netherlands and Sweden.<sup>94</sup>

### Article 23 (1) Minors

The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

### Comments

Article 23 incorporates the best interests of the child as a guiding principle for the implementation of the Directive and in all decisions taken with respect to the reception of minors in national asylum systems. In the Irish context, the IPA contains limited reference to the best interests of the child with respect to specific procedures and in relation to the section on content of protection granted to child beneficiaries.<sup>95</sup>

Given the extent of criticism of Direct Provision in relation to children in particular, together with Ireland's international obligations under the Convention on the Rights of the Child, the requirement to transpose the best interests principle into all considerations pertaining to reception conditions for children is a welcome development. By incorporating a standalone provision establishing the best interests of the child as a guiding principle of the IPA, the State would comply with Art. 23 of the RCD and also meet the requirement set out in Art. 6 of the recast Asylum Procedures Directive, which states that the "best interests of the child shall be a primary consideration" in asylum procedures.

Furthermore, existing research demonstrates that the current system of Direct Provision is not "adequate for the minor's physical, mental, spiritual, moral and social development."<sup>96</sup> In order for transposition to be compliant with Article 23, the existing framework of reception of children will need to be fundamentally reassessed. Preliminary guidance can be taken from the

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<sup>94</sup> See generally: ECRE, *The concept of vulnerability in European asylum procedures*, 2017, p. 23, available at: <http://bit.ly/2f9gOmN>

<sup>95</sup> International Protection Act (2015), Sec. 24(6); Sec. 25(6); Sec. 36; Sec. 58(2).

<sup>96</sup> See e.g.: Irish Refugee Council, *State Sanctioned Child Poverty and Exclusion - The case of children in state accommodation for asylum seekers*, 2012; Department of Children and Youth Affairs, *Report of DCYA consultations with children and young people living in Direct Provision*, 2017.

recommendations of the Government's Working Group Report with respect to accommodation of child asylum seekers.<sup>97</sup>

### The Irish Refugee Council recommends that the State:

- incorporate the best interests of the child principle into national legislation in such a way that children's best interests are given primary consideration in all elements of the asylum process pertaining to children.
- ensure that physical accommodation space and supports are adequate to ensure children's physical, mental, spiritual, moral and social development. In considering what this means in practice, the State should have recourse to existing recommendations, such as those in the Working Group Report.

#### Article 25 Victims of torture and violence

1. Member States shall ensure that persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care.

### Comments

Providing rehabilitation for asylum seekers who are also victims of torture is key to ensuring they can engage with the international protection process and is required under international human rights law, such as in Article 14 of the UN Convention against Torture.<sup>98</sup>

In Ireland, organisations that provide key supports to victims of torture, such as Spirasi, have emphasised that the standard of living in many Direct Provision centres, conflated with endemic delays in case processing times has a profoundly negative impact on people suffering from the effects of torture.<sup>99</sup> This problem is further compounded by resource constraints on outreach capacity for NGOs and also by the difficulty accessing key supports for residents of more isolated

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<sup>97</sup> Working Group Report, para. 4.75.

<sup>98</sup> UN Convention against Torture, Art. 14.

<sup>99</sup> SPIRASI, 'Submission to the UN Committee against Torture in advance of their review of Ireland', June 2017.

Direct Provision centres.<sup>100</sup> In implementing this provision, the State is asked to recall the Concluding Observations of the UN Committee against Torture in its review of Ireland in July 2017, in line with previous recommendations in relation to identification of victims of torture and other persons with special needs, which call on the State to:

“provide adequate funding to ensure that all persons undergoing the single procedure under the International Protection Act have timely access to medico-legal documentation of torture, ensure that all refugees who have been tortured have access to specialised rehabilitation services that are accessible country-wide and to support and train personnel working with asylum seekers with special needs”.<sup>101</sup>

#### **The Irish Refugee Council recommends that the State:**

- **ensure that organisations and specialists which provide tailored support to victims of torture and applicants with special needs are adequately resourced and trained, and that victims of torture and applicants with special needs are housed in reception facilities that facilitate rehabilitation.**

#### **Article 26 Appeals**

- 1. Member States shall ensure that decisions relating to the granting, withdrawal or reduction of benefits under this Directive or decisions taken under Article 7 which affect applicants individually may be the subject of an appeal within the procedures laid down in national law. At least in the last instance the possibility of an appeal or a review, in fact and in law, before a judicial authority shall be granted.**

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<sup>100</sup> Working Group Report, p. 52.

<sup>101</sup> UN Committee against Torture, *Concluding Observations on the Second Periodic Report of Ireland*, August 2017, Para. 12 (c).

## 8. Reception Conditions Appeals and Oversight

### Comments

Considering the severe implications of withdrawal of reception conditions on the wellbeing of applicants, Article 26 of the Directive provides detailed rules by which asylum seekers may challenge decisions relating to the granting, withdrawal or reduction of reception conditions.

Currently persons who are evicted from or refused entry to Direct Provision centres have no recourse to appeal such a decision. Considering reports that the IRC has received of persons being issued with notices asking them to leave DP centres (with immediate effect or at very short notice),<sup>102</sup> or being refused re-entry to centres in circumstances where they left, or where they are seeking to enter DP, the State is reminded that under the Directive, such withdrawal of accommodation is only permissible on the basis of an individual assessment of each case and where the person has been issued with the reasons for such decision in writing. This notice should indicate the modalities for accessing an appeals procedure, in line with Article 17 of the Directive.

Where availing of an appeal in the context of the Directive, applicants must have access to free legal advice in line with Article 26(2), in a language they can understand. Article 26 also contains provision for restriction of access to legal aid in the context of appeals, such as where access may be provisional on the merits of the case. Such restriction must comply with Art. 47 of the EU Charter (Right to an effective remedy) and CJEU case law, which bases the legitimacy of such restrictions on the nature of the right in question; the complexity of the law in question, and the capacity of the individual to represent themselves.<sup>103</sup> Organisations such as ECRE and UNHCR have highlighted that asylum seekers, in view of their disadvantaged procedural position and the requirement to ensure a “dignified standard of living” for applicants at all times, should not have access to legal advice restricted on the basis of a merits test.<sup>104</sup>

### The Irish Refugee Council recommends that the State:

- **provide in legislation access to an independent judicial appeals procedure for all decisions taken by authorities in relation to applicants’ reception conditions, as well as free legal advice for the purposes of such appeals.**

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<sup>102</sup> Information obtained on the basis of the IRC’s direct support work with clients through the Drop-in Centre.

<sup>103</sup> CJEU, Case C-279/09 *DEB v. Germany*, Judgement of 22 October, par. 61.

<sup>104</sup> UNHCR, *Annotated Comments to Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, p. 58; ECRE, *Information Note - Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*, p. 37.

## Article 28 Guidance, monitoring and control system

1. Member States shall, with due respect to their constitutional structure, put in place relevant mechanisms in order to ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.
2. Member States shall submit relevant information to the Commission in the form set out in Annex I, by 20 July 2016 at the latest.

### Comments

One of the more prevalent criticisms of the current system of Direct Provision is the lack of recourse to an independent oversight body, as well as a lack of clarity around formal complaints procedures.<sup>105</sup>

Article 28 of the Directive calls on the State to establish “appropriate guidance, monitoring and control of the level reception conditions.” The current system of annual inspections carried out by RIA is carried out in the framework of contractual obligations on the private contractors running each centre, which do not refer to key standards required for compliance with the Directive.<sup>106</sup> For example, RIA inspections do not take account of key qualitative areas such as the training of staff and centre management; the provision of facilities for children; ensuring that residents (including children) are heard; or the treatment of vulnerable residents. Nor can such inspections be considered independent given RIA is an agency of the Department of Justice. Recent IRC consultations with Direct Provision residents have demonstrated that applicants have no opportunity to engage with the RIA evaluation procedure, and in some instances applicants have alleged that they were ushered out of the centre or into their rooms on days when RIA inspections were taking place. In the spirit of full transparency, any evaluation of the reception system should be independent, based on common standards and take account of the experiences of residents themselves in accordance with the EU principle of the right to be heard.

We remind the Government of existing recommendations which have called for the government to assign oversight and monitoring duties to a body independent of the government,<sup>107</sup> and the Irish Human Rights and Equality Commission consideration of Direct Provision as coming under the remit

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<sup>105</sup> Working Group Report, p. 197.

<sup>106</sup> Ibid.

<sup>107</sup> Working Group Report, p. 199



of the Optional Protocol to the Committee against Torture<sup>108</sup> (which calls on States parties to ‘set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment’). Therefore it is imperative that the State grants monitoring duties to an independent body, whose mandate covers the core provisions of the Directive, as well as broader international human rights standards.

**The IRC recommends that the State:**

- **establish or designate an independent body for the purposes of monitoring reception centres and ensuring that management upholds standards set out in the Directive and in international human rights obligations, and ensures the right of residents to be heard in any evaluation of their reception situation.**

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<sup>108</sup> Irish Human Rights and Equality Commission, *‘Ireland and the Optional Protocol to the Convention against Torture,’* p. 32. Available at: <http://bit.ly/2fEh5h6>.