



The Reception Conditions Directive: One Year On

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ACRONYMS

APD: Asylum Procedures Directive

DEA: Daily Expenses Allowance

DP: Direct Provision

IPAT: International Protection Appeals Tribunal

IPO: International Protection Office

RCD: Reception Conditions Directive

RIA: Reception and Integration Agency

TRC: Temporary Residence Certificate

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¹ Tomartrust.org

ONE YEAR OF THE RECEPTION CONDITIONS DIRECTIVE:

4,139	Approximate number of people who have claimed protection since 1 July 2018
6,108	Number of people in Direct Provision as of June 2019
0	Number of people assessed as being vulnerable and requiring special reception needs
196	Number of people in emergency accommodation as of November 2018
936	Number of people in emergency accommodation as of July 2019
3,993	Number of applications for permission to work
2,713	Number of grants of permission to work
1,160	Number of refusals of permission to work
1,229	Number of employer returns confirming that a person is working
35	Appeals received by the IPAT of a decision of the review officer under the Regulations
22	IPAT decisions of the review officer affirmed
4	IPAT decision of the review officer set aside
15 months	Current median waiting time for first instance recommendations to be issued by the IPO

SECTION ONE: INTRODUCTION

In 2017, the Supreme Court in *NHV v Minister for Justice and Equality*² found that Ireland was in breach of the constitutional rights of a man who had spent nine years in Direct Provision (DP), during which time he was prohibited from accessing the labour market under Section 9 (4) (b) of the Refugee Act 1996. The prohibition was absolute, the penalty for breach being a fine or imprisonment.

In *NHV*, the Supreme Court found that this absolute ban breached the man's personal rights under Article 40.3 of the Constitution. Rather than immediately striking down Section 9 (4) (b), the Supreme Court opted to suspend its declaration to give the State time to put in place a legislative response within the terms of its judgment. The State's response was to introduce a temporary scheme of access to employment and self-employment. This was so restrictive in practice that no employment permits were issued.³ The State also indicated its intention to transpose the Reception Conditions Directive (recast)⁴ (the "RCD") which included an effective right of access to the labour market.

Alongside labour market access, the RCD sets down minimal standards for a suite of material reception conditions. The RCD introduces a range of new measures which differ from the current

² *NHV v Minister for Justice and Equality* [2017] IESC 35

³ Written Answers, 1 May 2018, Department of Business, Enterprise and Innovation, available here: <https://www.oireachtas.ie/en/debates/question/2018-05-01/205/?highlight%5B0%5D=205&highlight%5B1%5D=donnchadh>

⁴ 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, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>

methods and practices followed by the State. Many of the guarantees contained within the RCD are not currently in place.

The procedures in the RCD, if implemented fully, would improve the reception conditions for people seeking asylum. These include a minimum threshold of a dignified standard of living for all recipients of reception conditions in Ireland. The RCD commits to an ongoing vulnerability assessment which would ensure the special reception needs of people applying for international protection are identified and acted on. The provision of adequate information would remove the bewildering sense of uncertainty which causes people significant distress, particularly when they first arrive in Ireland. An appeals process and the opportunity for a review of certain decisions would introduce fair procedures and give people the opportunity to engage with decision-makers and speak to their situation.

The RCD provides a framework for a system which should function in an orderly, transparent, and predictable manner. Despite the opportunity presented by transposition of the RCD, a year on from the date of coming into force, this change has not occurred in practice. This means that the State is not living up to its legal obligations in many respects.

This paper outlines the experience of the Irish Refugee Council (the “IRC”), helping people in the asylum process in the 12 months since the coming into force of the European Communities (Reception Conditions) Regulations 2018⁵ (the “Regulations”). The paper is informed by the issues emerging from our direct work

⁵ European Communities (Reception Conditions) Regulations 2018, available here: <http://www.irishstatutebook.ie/eli/2018/si/230/made/en/print>

with people in the asylum process, delivered via our Drop-in Centre, outreach services and Independent Law Centre. The paper also contains Case Studies which are histories of people we have assisted. The paper also contains recommendations for improvements in service delivery and the vindication of rights for people applying for international protection.

The paper is further to the commitment contained in the IRC's strategic plan that the organisation monitors the implementation of the RCD and ensure that it is implemented as fully as possible. The paper does not include reference to other policies of the IRC, including our long term aim of ending Direct Provision and developing an alternative approach to accommodation for people seeking asylum in Ireland. See our submission to the Joint Oireachtas Committee on Justice and Equality⁶ and our Irish Times op-ed⁷ for further information.

⁶ <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>

⁷ What are the alternatives to our broken direct provision system?, 12 February 2019, available here: <https://www.irishtimes.com/opinion/what-are-the-alternatives-to-our-broken-direct-provision-system-1.3790078?mode=sample&auth-failed=1&pw-origin=https%3A%2F%2Fwww.irishtimes.com%2Fopinion%2Fwhat-are-the-alternatives-to-our-broken-direct-provision-system-1.3790078>

SECTION TWO: A YEAR IN REVIEW

The first 12 months of the Regulations has coincided with an emergency in the accommodation system for people applying for international protection. While the number of people arriving in Ireland has risen,⁸ this rise is not without precedent and is within a range which could reasonably be expected by the State in estimating accommodation needs in the international protection sphere.

The State has been aware of the declining capacity within DP for some time. The Reception and Integration Agency (RIA) has followed a policy of maintaining a 10% buffer in the amount of accommodation available to allow it to easily respond to a sudden surge of demand for beds.⁹ This 10% buffer was breached in April 2017 and continued to decline thereafter.

A rise in the number of applications for international protection has coincided with a decline in capacity within the DP system. The housing crisis has also meant that people who have received status to remain in Ireland are constrained in their ability to leave DP due to the lack of available social housing and rental accommodation on the private rental market. Procedural issues also contribute to this. There are delays of up to a year in the Ministerial Decisions Unit (MDU) in approving the recommendation of the International Protection Office (IPO) that a person is a refugee. There are also difficulties in obtaining an

⁸ In 2017 there were 2,366 applications for protection; in 2018 there were 3,350 applications; in 2019, if the monthly totals for January – April are projected to the end of the year, 4,363 applications. These figures exclude relocated applications.

⁹ Reception and Integration Monthly Report October 2018, page 9, available here: <http://www.ria.gov.ie/en/RIA/October%202018%20monthly%20report%20updated%20.pdf/Files/October%202018%20monthly%20report%20updated%20.pdf>

appointment at the Garda National Immigration Bureau (GNIB) to receive the Residency Permit. Without a declaration from the MDU or Residency Permit, people with status cannot begin the process of moving out of DP. At the time of writing, the number of people who have status but cannot leave DP is approximately 780.¹⁰

One of the consequences of this is the reduction of bed vacancies in DP. In early September 2018, shortly after the transposition of the RCD, media reports warned of the possibility that people seeking asylum would be left homeless on arrival.¹¹ Shortly afterwards, over the course of a single weekend, a number of people (at least 20 known to the IRC) were informed by the Reception and Integration Agency (RIA), when claiming asylum at the International Protection Office, that they would not be accommodated. They were told to check in again in a few days when a bed might be free. After considerable advocacy efforts¹² and media attention, Regulation 4 (5)¹³ came into effect with the State seeking emergency accommodation for applicants for international protection outside of the usual DP system.

As of July 2019, RIA is accommodating 936 people in 28 emergency accommodation across the country,¹⁴ a sharp increase from 196 people in November 2018. People newly arriving in

¹⁰ Minister David Stanton TD, 'This Week', RTÉ Radio, 7 July 2019

¹¹ <https://www.independent.ie/irish-news/asylum-seekers-homeless-37307790.html>

¹² Press Release, Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless, 20 September 2018, available here: <https://www.irishrefugeecouncil.ie/news/irish-refugee-council-calls-for-government-to-urgently-address-issue-of-people-seeking-asylum-being-made-homeless/6697>

¹³ Regulation 4 (5): The Minister may, exceptionally and subject to paragraph (6), provide the material reception conditions in a manner that is different to that provided for in these Regulations where—(a) an assessment of a recipient's specific needs is required to be carried out, or (b) the accommodation capacity normally available is temporarily exhausted.

¹⁴

Ireland are now likely to be accommodated in emergency accommodation comprising hotels, B&Bs and guesthouses. This is done on the basis of short term contracts for beds, often at short notice and at the market price. The Deputy Secretary General of the Department of Justice and Equality informed the Joint Oireachtas Committee on Justice, Defence and Equality in June 2019 that the State is paying the “nightly cost of beds in those hotels” at rack rate, creating an “extraordinary cost pressure within the budget for direct provision”. The budget for DP in 2019 is €70 million but it is likely to be more than €100 million.¹⁵

In the experience of the IRC, people living in emergency accommodation have faced particular challenges. These include: a lack of basic information, no access to medical services, PPS numbers, or the Daily Expenses Allowance (DEA).¹⁶ People have also been moved at short notice to allow hotels to be used for other purposes, such as weddings.¹⁷

For people accommodated in hotel rooms, access to other basic material reception conditions is a significant challenge. Our Drop-In Centre is receiving ongoing reports of shortcomings in the delivery of material reception conditions by people living in emergency accommodation outside of the main DP system. These reports are very concerning; While the provision of

¹⁵ Joint Oireachtas Committee on Justice, Defence, and Equality, Wednesday 19 June 2019, Hearing on Direct Provision and the International Protection Application Process, available here:

<https://www.kildarestreet.com/committees/?id=2019-06-19a.1013&s=%22emergency%22+AND+%22asylum%22#g1115>

¹⁶ The “daily expenses allowance” is defined by Regulation 2 of the Regulations as the part of the material reception conditions that constitutes a weekly payment made, under a scheme administered by the Minister for Employment Affairs and Social Protection, to a recipient in order for the recipient to meet incidental, personal expenses. The Daily Expenses Allowance (formerly called a Direct Provision Allowance) weekly rate is €29.80 for children and €38.80 for adults (from week beginning 25 March 2019).

¹⁷ *Ibid*

accommodation is absolutely fundamental, so too is access to health care and the DEA, at a bare minimum. Reliance on individual reporting and representations as a means of addressing shortcomings as they arise places the onus on the individual applicant to speak up and seek help. Particularly where people are vulnerable and may not have the information or the capacity to engage fully, there is a substantial risk that serious rights breaches will go undiscovered.

Another issue the IRC has encountered is that people who had previously voluntarily left DP accommodation due to the availability of alternate accommodation, or those who could rely on alternative accommodation which has now fallen through, are struggling to re-access DP when their circumstances change. This is despite their legal entitlement under Regulation 4 to material reception conditions which must be provided to everyone who does “not have sufficient means to have an adequate standard of living”.

Civil society acts as a vital bridge between people in the asylum process and the State but does not have the resources or capacity to fill the holes in the State’s legal obligations. The Regulations provide a roadmap to better communication and clarity around rights and entitlements; however, practice shows that it is not being implemented.

It is a highly distressing experience to seek international protection in a new country where your rights are limited. The burden must not fall on the person who is in a highly precarious situation to ascertain what their entitlements are and to seek to receive those entitlements. The burden in law is on the State; this must be reflected in practice.

SECTION THREE: IMPLEMENTATION

The RCD sets a basic floor for the treatment of asylum seekers in EU member states. However, based on the experience of the IRC, there are a number of ways in which Ireland may be breaching the requirements of the Directive. This section considers some of the key parts of the Regulations and the extent to which they have been implemented.

A. Receiving Basic Information (Regulation 3)

In the experience of the IRC, applicants for international protection are not receiving information on their reception entitlements on arrival. The RCD envisages that applicants receive information on their entitlements within 15 working day after making an application for international protection. This is to ensure that they are aware of their rights and how to ensure they receive them.

For new arrivals, it can take a significant amount of time to develop an awareness of support services and legal entitlements. People who have never before been to Ireland will not have support networks, making the initial arrival a very isolating and confusing experience, especially where people may not have English language skills.

B. Provision of material reception conditions (Regulation 4)

The Regulations define material reception conditions as housing, food and associated benefits provided in kind, the DEA, and clothing.

In the experience of the IRC, the DP system has not been adequately updated to reflect the changes flowing from the Regulations. For people living in emergency centres, the existing infrastructure for receiving these entitlements is not present. Since the coming in to force of the Regulations in July 2018, many people have not been receiving their entitlements or are not receiving them within a reasonable timeframe. As detailed in section G. below, due to people not having their asylum claims registered properly at the IPO, people have not been able to apply for the DEA or a medical card. It has been reported to the IRC that some people living in emergency accommodation have struggled to access regular meals and food.

C. Evictions and the Risk of Destitution (Regulation 6)

Reception conditions may be withdrawn under Regulation 6(1) on a number of grounds including where the applicant has committed a “serious breach of the house rules”. In our experience, the most common way in which this arises is where a person is absent from their DP centre.

Rule 2.13 of the House Rules places the following restrictions on residents:

“If you are away for more than three nights without explanation, the centre manager will write to you asking for the reason. If you stay away from your accommodation without any explanation,

this will be taken as indicating that you no longer require accommodation.”¹⁸

In practice, this means that a person can be removed from a DP centre for being frequently absent for a number of nights in a row. The distances between DP centres and facilities such as universities and employment opportunities mean that many people struggle to commute, rely on friends or even sleep rough in order to attend classes or work.

Dignified Standard of Living

In the exercise of his discretion under Regulation 6(1), the Minister is restricted by Regulation 6(6) which requires that he ensures a recipient continues to have access to health care and a dignified standard of living.

The term “dignified standard of living” is undefined in both the Regulations and the RCD, although the Court of Justice of the European Union (CJEU) has offered some guidance in case C-79/13 *Saciri*.¹⁹ The CJEU held that Member States must ensure an applicant’s subsistence, pay due regard to vulnerability, and ensure the best interests of children, even where material reception conditions are reduced or withdrawn. Article 1 of the EU Charter on Fundamental Rights also applies, guaranteeing protection of a person’s human dignity.

In this legal context, withdrawing accommodation in circumstances where it would place a person in a situation of

¹⁸ House Rules and Procedures for Reception and Accommodation Centres, Revised January 2019 <http://www.ria.gov.ie/en/RIA/House%20Rules%20revised%20January%202019.pdf/Files/House%20Rules%20revised%20January%202019.pdf>

¹⁹ CJEU, Case C-79/13 *Saciri v Federaal agentschap voor de opvang van asielzoekers*, Judgment of 27 February 2014. See European Database of Asylum Law (EDAL) summary at: <https://bit.ly/2KPFbXy>.

destitution would constitute a breach of the Regulations and EU law. Accordingly, it is imperative that a formal assessment of whether an applicant would be left destitute in the event of eviction takes place *prior* to any decision to withdraw accommodation.

In the experience of the IRC, this is not happening. Furthermore, people in this situation have not been informed of their right to a review and appeal of a decision to withdraw accommodation. This is hugely problematic as, in the absence of information regarding their rights, people are not able to challenge decisions which lead to seriously adverse consequences and may place them at risk of destitution.

Vagueness and the Rule of Law

Reception conditions may also be withdrawn under Regulation 6(1) on a number of other grounds including where the recipient has engaged in seriously violent behaviour. The term “seriously violent behaviour” is not defined in the Irish legislation or in the RCD, which raises the question of what behaviour will rise to the level of being “seriously violent”.

In circumstances where a person faces very serious penalties (potential homelessness with no entitlement to social welfare supports outside the ambit of the Regulations), the vagueness of this undefined term raises serious constitutional questions.²⁰

As presently drafted, the Minister has discretion over what will constitute seriously violent behaviour. No guidance is provided in advance about the kind of behaviour which will and which will not

²⁰ See discussion in: Doyle, *Administrative Action, the Rule of Law and Unconstitutional Vagueness*, Cahillane, Gallen and Hickey (eds), *Judges, Politics and the Irish Constitution* (MUP, 2016)

lead to eviction. The European Council of Refugees and Exiles (ECRE) has raised concerns over the arbitrary application of this sanction in other EU member states.²¹ For example, concerns have been raised about “an overly broad use of withdrawal provisions” in Italy.²² The Association for Juridical Studies on Immigration has argued that the vagueness of the law “has allowed Prefectures to misuse the provision by withdrawing reception conditions on ill-founded grounds.”²³

As currently drafted, the Irish provision leaves open the possibility of arbitrariness and legal uncertainty, undermining basic rule of law principles and creating the possibility for serious breaches of human rights.²⁴ It is important that this is urgently remedied.

D. Vulnerability Assessment (Regulation 8)

Many people seeking international protection are vulnerable due to their circumstances, suffering either physical or mental illness, or requiring psycho-social supports. People with these vulnerabilities often struggle to access services. Their vulnerabilities can be seriously exacerbated by a failure to consider their circumstances when accommodating them. For example, a person suffering from PTSD may need a room on their own located close to counselling services. The College of Psychiatrists of Ireland has noted that “insecure or unsuitable

²¹ ECRE, *Withdrawal of reception conditions of asylum seekers An appropriate, effective or legal sanction?*, July 2018, available here:

http://www.asylumineurope.org/sites/default/files/aida_brief_withdrawalconditions.pdf

²² *Ibid* at page 11

²³ *Ibid* at page 11

²⁴ *Dokie -v- Director of Public Prosecutions*, [2011] IEHC 110

residency and associated fears of refoulement can contribute and aggravate any mental illness among this vulnerable group”.²⁵

The Regulations define a vulnerable person broadly as including the following:

“a minor, an unaccompanied minor, a person with a disability, an elderly person, a pregnant woman, a single parent of a minor, a victim of human trafficking, a person with a serious illness, a person with a mental disorder, and a person who has been subjected to torture, rape or other form of serious psychological, physical or sexual violence.”²⁶

No person has been identified as vulnerable through a formal vulnerability assessment, as required by the RCD and the Regulations. Minister David Stanton TD said in July 2019 that: “The Reception and Integration Agency (RIA) is not privy to all information held by other agencies or Departments in relation to applicants of international protection. The individual professionals communicate with RIA (within the bounds of patient confidentiality) if a particular need is identified that will affect the person’s accommodation requirements. *As a result, it is not possible to provide data on the number of persons found to have special reception needs.*”²⁷ (Emphasis added)

²⁵ The Mental Health Service Requirements in Ireland for Asylum Seekers, Refugees and Migrants from Conflict Zones, Position Paper, March 2017, available here: <https://www.irishpsychiatry.ie/wp-content/uploads/2016/10/Mental-Health-Service-requirements-for-asylum-seekers-refugees-and-immigrants-150517-1.pdf>

²⁶ Regulation 2(5) of the Reception Conditions Regulations

²⁷ Written answers, 2 July 2019, Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2019-07-02a.763&s=%22David+Stanton%22+AND+%22special+reception+needs%22#g765.r>

The IRC, and other organisations, are gravely concerned at the fact that no vulnerability assessment process has been created.²⁸ An assessment that a person is vulnerable is crucial to accessing other provisions of the Regulations. A determination that a person is vulnerable will influence:

- Regulation 6 (3) (a): whether it is appropriate to reduce the weekly allowance;
- Regulation 7 (4): which accommodation centre is designated to the applicant;
- Regulation 18 (d): access to mental health care;
- Regulation 19 (9) (a) and (b): if the person is detained, the frequency with which they are monitored and supported while in detention.

The vulnerability assessment is designed to identify these needs so that they can be considered when decisions are taken regarding where a person should be accommodated. It should take place within 30 days of a person's arrival and a mechanism for identification should continue throughout the international protection process. It should not depend on vulnerabilities presenting when a person is accessing other services. At present, this is not happening. The IRC believe this is a clear breach of EU and Irish law.

In the experience of the IRC, it can take several detailed letters to obtain engagement on the accommodation needs of a vulnerable person. Even then, no formal vulnerability assessment exists and there is no framework in place to sufficiently identify needs.

²⁸ <https://www.irishrefugeecouncil.ie/news/refugee-organisations-highlight-absence-of-vulnerability-assessment-in-irish-asylum-procedure/7094>

It takes enormous resources to make ongoing representations on behalf of a vulnerable person seeking to have their accommodation needs properly met. In the meantime, the vulnerable person may be continually exposed to a seriously distressing situation which exacerbates their condition.

The vulnerability assessment is designed to avoid re-traumatising people by identifying their needs from the beginning of the application process and ensuring they are accommodated accordingly. It would also reduce inefficiencies if RIA could consider these special needs initially, reducing long delays and logistical difficulties locating available beds after the fact when a vulnerability becomes acutely obvious.

E. Labour Market Access Permission (Regulation 11)

Access to the labour market for people in the asylum process is positive. It provides dignity, autonomy, and the ability to maintain and develop employment skills.

Since the Regulations came into effect:

- 3,993 applications have been made for permission to work;
- 2,665 applications have been granted;
- 1,160 applications have been refused;
- Therefore approximately 66% of applications for permission to work have been successful;
- 1,299 employers returns (as per Regulation 14 (3)) have been received by the Department of Justice confirming that a person is working;²⁹

²⁹ Written answers, Tuesday, 2 July 2019, Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2019-07-02a.783>

- approximately 48% of people who received permission to work have worked at some point (although the duration of that work is unknown and they could have worked anything from one day to an ongoing full time position);
- approximately 30% of the adult population of DP (4329 as of May 2019)³⁰ have been in employment at some point (presuming that a person has made no more than one application).

While the total figure of people receiving permission to access the labour market is significant, it masks many difficulties which people are experiencing in accessing employment.

These difficulties, as recounted to the IRC by people we work with, include the inability to access bank accounts and driving licences; remote locations of DP centres making it difficult to gain employment in the locality; and a lack of awareness on the part of employers regarding the right to work for people seeking asylum. The temporary nature of the permission can also act as a deterrent for employers.

The RCD guarantees the right of *effective* access to employment.³¹ This means that Ireland has an enduring obligation to identify and remove barriers which are preventing access to employment. For example, a potential barrier to effective employment is the fact that labour market access permission is renewable every six months. From the experience of people the IRC have worked with, this can act as a serious deterrent for employers who want

³⁰ Written answers Tuesday, 25 June 2019 Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2019-06-25a.585>

³¹ Article 15(2) of the Reception Conditions Directive

to employ people on a longer term basis and who may also think that a full Stamp 4 is necessary to work.

Related to permission to work is the ongoing long waiting times for first instance decisions. The median waiting time for a first instance decision from the International Protection Office is 15 months.³² A person is eligible to work having waited nine months. This means that many people who have claimed asylum and who know they will be waiting longer nine months for a decision on their claim, still have to wait for this period of time before applying for permission to work.

F. Right to Education (Regulation 17)

Regulation 17 guarantees children the right of access to education on the same terms as an Irish citizen. Regulation 17 also states that the Minister for Education is required to provide “such support services and language supports as are necessary to facilitate the recipient’s access to, and participation in, education at primary and post-primary education”.³³ The term “support services” is defined broadly by Section 2 the Education Act 1998.³⁴ It is unclear if and how the Department of Education has delivered such support services to date, either in the context of emergency centres or the wider DP system.

³² Written answers, Thursday, 27 June 2019, Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2019-06-27a.205>

³³ Regulation 17 of the Reception Conditions Regulations 2018

³⁴ (a) assessment of students; (b) psychological services; (c) guidance and counselling services; (d) technical aid and equipment, including means of access to schools, adaptations to buildings to facilitate access and transport, for students with special needs and their families; (e) provision for students learning through Irish sign language or other sign language, including interpreting services; (f) speech therapy services; (g) provision for early childhood, primary, post-primary, adult or continuing education to students with special needs otherwise than in schools or centres for education; (h) teacher welfare services; (i) transport services; (j) library and media services; (k) school maintenance services; (l) examinations provided for in Part VIII ; (m) curriculum support and staff advisory services, and (n) such other services as are specified by this Act or considered appropriate by the Minister (available here: <http://www.irishstatutebook.ie/eli/1998/act/51/section/2/enacted/en/html>)

Regulation 9 states that in the application of these Regulations to minors, the best interests of the child shall be a primary consideration.

Children living in DP are for various reasons restricted in their ability to access education. The Joint Committee on Education and Skills' Report on Education Inequality and Disadvantage and Barriers to Education, published in May 2019, found that people in the asylum process lack access to an array of opportunities and outcomes in an educational context that are freely available to those from more affluent communities.³⁵ Therefore, as guaranteed by the Regulations, additional support services may be required to ensure parity with Irish citizen children.

As of April 2019, approximately 86 children are living in emergency accommodation.³⁶ This number is likely to have increased, given the general rise in the number of people in emergency accommodation. Children living in emergency accommodation have not been able to access education, or have struggled to do so, for a variety of reasons, including the temporary nature of the accommodation and the difficulties this causes in securing a school place.

According to the Department of Justice and Equality, families with children are being prioritised when a place becomes available in a permanent DP centre due to the unsuitability of emergency

³⁵ Joint Committee on Education and Skills Report on Education inequality & disadvantage and Barriers to Education May 2019, available here, https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_education_and_skills/reports/2019/2019-06-05_report-on-education-inequality-disadvantage-and-barriers-to-education_en.pdf

³⁶ The Journal, 'He has no one to talk to': Concerns raised around potential lack of schooling for 86 children of asylum seekers, 5 May 2019, <https://www.thejournal.ie/emergency-accommodation-direct-provision-education-2-4614264-May2019/>

accommodation for children, as well as the difficulty in placing them in schools.³⁷

The RCD states that access to education shall not be postponed for longer than three months.³⁸ Regardless of this, the rights of the child continue to apply during this three month period and must be addressed urgently. With the use of emergency accommodation continuing and with no end in sight, it is vital that the State ensures that the education of children is not disrupted. The current solution, whereby families are prioritised and moved into permanent DP centres first, depends on sufficient space becoming available. A proactive solution must be put in place to ensure that children continue to receive an education in Ireland and the best interests of the child are considered at all times, in accordance with Regulation 9.

G. Right to Health (Regulation 18)

Regulation 18 requires the Minister for Health to ensure that a person has access to a broad range of healthcare including emergency care, treatment for serious illnesses and mental disorders, such other care as is necessary to maintain their health, and appropriate mental health care for those identified as vulnerable. The difference between mental health care and mental disorders is unclear from the text of the Regulations.

Ordinarily, people are offered a basic medical screening at the Baleskin reception centre. However, difficulties with accommodation at Baleskin for much of the past year meant that

³⁷ See

https://data.oireachtas.ie/ie/oireachtas/debateRecord/joint_committee_on_justice_and_equality/2019-06-19/debate/mul@/main.pdf

³⁸ Article 14(2) of the Reception Conditions Directive

many people were not receiving this medical screening before being placed in emergency accommodation around Ireland.

In order to address the lack of health services for people living in emergency accommodation SafetyNet,³⁹ an organisation which offers mobile health screening services to people who are homeless, was contracted to provide a basic medical screening to people seeking asylum who had not received a medical screening on arrival.

While the involvement of SafetyNet has improved the situation, it can only be a temporary solution. A basic health screening is only a means of identifying, for example, people with serious illnesses requiring immediate attention, people in need of a prescription, or people with acute mental health needs. It is not a substitute for ongoing GP care and other medical services. The service is only available at particular times, days, and locations. Accessing out-of-hours services, for example, remains a significant challenge.

People living in DP are eligible for a medical card; however, they must apply to receive the card. They also have to be in receipt of the temporary residence certificate (TRC) and a PPS number in order to apply.⁴⁰ People newly arrived in Ireland are not always aware of this. Due to language difficulties and similar issues, people may require assistance to make an application.

A critical problem that emerged at the end of 2018 was that some people were receiving an initial interview at the IPO in accordance with Section 15 of the International Protection Act 2015,

³⁹ <https://www.primarycaresafetynet.ie/>

⁴⁰ Written answers, Tuesday, 2 July 2019, Department of Health, Medical Card Eligibility, available here: <https://www.kildarestreet.com/wrans/?id=2019-07-02a.922>

immediately upon claiming asylum. This meant that people were not being issued with a TRC, as required by Section 17 of the International Protection 2015. The effect of this was that they could not apply for a PPS number, the DEA, and a medical card. The IRC raised these issues directly with the IPO in November 2018. Unfortunately, delays in the issuing of the TRC have emerged again in recent months and, in the experience of our Drop-In Centre some people are waiting up to 2 months, or more, for a TRC.

People in this situation are caught in a vicious cycle. They need to travel in order to receive a TRC, apply for a PPS number, and then apply for the DEA but they do not have the funds to do so. It can be very difficult to access these essential documents without assistance.

The shortage of GP services in areas where people are being temporarily accommodated contributes to problems accessing medical cards. If a person is refused by three GPs in their area, the HSE will assign a doctor for them. Again, this is something that people will not know if they are not offered some assistance or intervention.

A further grave concern is that, without a formal vulnerability assessment in place, people are not being identified as vulnerable and are therefore not accessing mental healthcare. In 2017, the College of Psychiatrists of Ireland has called for the particular needs of people seeking international protection to be recognised and appropriately funded.⁴¹ Their position paper states that “[p]sychological assessment at point of arrival should be carried

⁴¹ <https://www.irishpsychiatry.ie/wp-content/uploads/2016/10/Mental-Health-Service-requirements-for-asylum-seekers-refugees-and-immigrants-150517-1.pdf>

out, appropriate treatment given and relevant information communicated to mental health services subsequently involved in a timely manner.”⁴² A vulnerability assessment under Regulation 8 would encompass such an assessment.

H. Reviews, Appeals, and Fair Procedures (Regulation 20 and 21)

Regulation 20 stipulates that a review procedure should be followed where decisions are made in respect of the following decisions:

- that a person is not entitled to receive relevant reception conditions;
- that a person must make a contribution to the costs of reception conditions;
- that a person must refund the cost of providing reception conditions;
- that reception conditions will be reduced or withdrawn from a person;
- that a person be refused a grant or renewal of permission to access the labour market;
- that permission to access the labour market is withdrawn.

In our experience, people are not aware of the review procedure and are not being properly informed that there is a right to review and appeal of certain decisions under that the RCD which has suspensive effect. The suspensive nature of the process is important as it allows people the opportunity to make their case in a situation where a decision has been taken to withdraw accommodation, reduce their DEA, or refuse permission to work.

⁴² *Ibid* at page 6

The review procedure was also hampered at the commencement of the Regulations because the IPAT was deeming appeals inadmissible due to the absence of a formal review process in RIA and related issues around the proper designation of a review officer. An appeal to IPAT made by the IRC was deemed inadmissible because the decision of RIA was not formally made by a designated review officer.

The underuse of the review process is reflected in the fact that there have been only 35 appeals received by the IPAT against decisions of a review officer appointed by the Minister for Justice and Equality. 22 decisions of the review officer were affirmed and 4 decisions of the review officer set aside by IPAT, i.e. 15% of appeals were successful.⁴³

The opportunity to review or appeal an adverse decision of this kind is a basic requirement of the constitutional right to fair procedures. However, people must be informed of their right to a review if that right is to be anything other than illusory. When informing a person of a decision to which a right of review attaches, RIA must inform the person of their right to a review and provide them with information regarding the correct manner in which the review should be submitted.

The Legal Aid Board has indicated that there is no additional funding available to solicitors to represent their clients in the context of a review of a decision under the Regulations.⁴⁴ This may account for the underuse of the appeals procedure. Importantly, Article 26 (2) of the RCD requires that Member

⁴³ Written answers, Tuesday, 2 July 2019, Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2019-07-02a.763>

⁴⁴ Legal Aid Board, Circular on Legal Services, July 2017 – Tenth Edition, Amendment 2/2018, 5 September 2018

States ensure free legal assistance and representation is made available on request, insofar as such aid is necessary to ensure effective access to justice. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

I. Scope of the Directive

In addition to those defined as recipients in the Regulations, the IRC submit that accommodation should be provided where needed to other categories of people. This includes people whose case has been deemed inadmissible under Section 21 of the International Protection Act 2015. The inadmissibility process takes time and involves an appeal to the IPAT. In the experience of the IRC, people are not being accommodated by RIA during that time, leaving them at risk of homelessness. The IRC also recommends that people who have been declared refugees, in need of subsidiary protection, or given permission to remain are permitted to stay, as well as people who are subject to a deportation order. This would be consistent with the historical practice of accommodating people in these situations. Frances Fitzgerald, when Minister for Justice and Equality stated that, DP, in addition to people seeking asylum, accommodates “failed protection applicants who are the subject of a Deportation Order”.⁴⁵

⁴⁵ Written answers Wednesday, 6 July 2016, Department of Justice and Equality, available here: <https://www.kildarestreet.com/wrans/?id=2016-07-06a.115>

Furthermore, the RCD is a floor, not a ceiling in terms of rights: Recital 28 and Article 4 of the RCD states that Member States can adopt more favourable provisions than those in the Directive.⁴⁶

Furthermore, the IRC submits that the State has a duty to accommodate people in these precarious situations and derogation of that duty could breach Article 3 of the European Convention on Human Rights as per the UK's House of Lords in the case of *R. (Adam and Limbuela) v. Secretary of State for the Home Department*.⁴⁷ In that case, the court held that a failure by the state to provide social support which then exposes an individual to a real risk of becoming destitute will in certain circumstances constitute 'inhuman and degrading treatment', and therefore will be contrary to Article 3 of the ECHR. The IRC has made representations to this effect to the Department of Justice and Equality.

⁴⁶ Recital 28: Member States should have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

Article 4: 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.

⁴⁷ Judgment and case history available here: <https://www.asylumlawdatabase.eu/en/case-law/uk-house-lords-3-november-2005-adam-r-application-secretary-state-home-department-2005-ukhl>

SECTION THREE: CASE STUDIES

The following case studies are anonymised histories of people the IRC have assisted in the last 12 months. Names have been changed and some identifying details removed to protect the identity of the person. The case studies reflect a moment in time over the last 12 months. Circumstances may have changed, and the situation of the person remedied, since the case study was written.

Case Study One: Emergency Accommodation

“Aadab arrived in Ireland with her child. Upon lodging her application for international protection, she indicated that she required DP accommodation as she had no means to provide for her daughter and herself. However, due to DP being at full capacity, she was accommodated in a hotel outside of Dublin on a “temporary” basis, where a small number of other people in the asylum process were also being accommodated. The hotel also serves the general public, however, asylum seekers are separated from the public and their meals are provided in a separate part of the hotel. Almost three months later, Aadab had not received any contact from the RIA about her family’s transfer to a permanent DP centre. In the meantime, neither she nor her daughter had the opportunity to avail of a medical screening or a medical card. Aadab had not been receiving the DEA, meaning that she had been without money to purchase basic supplies for her and her daughter for over two months. Aadab is most concerned about the fact that her child has been out of school since they left their country of origin and they have been provided with no information about the child’s entitlements to access school.”

IRC Commentary: Provision of Information

Regulation 3 of the Regulations entitles a person to information about their entitlements within 15 days of seeking asylum, in writing and in a language they can reasonably understand. They should also receive the contact details for relevant organisations that might be able to offer appropriate supports.

The experience of first arriving in Ireland is bewildering for people. Without support networks and information channels, it can be very difficult to know what your rights and obligations are.

The RCD makes the giving of information by the State a fundamental obligation to ensure that people know what they are entitled to and can pursue those entitlements.

In the experience of the IRC, information about reception conditions is not being given to people when they seek asylum. This is particularly problematic for people in emergency accommodation because they are also isolated from the rest of the community of people seeking international protection.

In the absence of information from the State and due to language and other barriers, people seeking asylum often rely on other people in the asylum process to explain what they can expect and how they can access their entitlements.

Living in emergency accommodation places people at an additional remove and adds to the sense of confusion and distress. They require additional supports to ensure they don't fall through the cracks and fail to access key supports like medical care and the DEA.

IRC Commentary: Other Reception Entitlements

Regulation 4 of the Regulations 2018 places an obligation on the State to provide reception conditions to all applicants who seek international protection.

Reception conditions are broader than just bed and board in DP – they include, *inter alia*, the DEA; a medical card; labour market access; the right to education; and the right to health. Everyone seeking international protection must be accommodated, either in designated accommodation or, in exceptional circumstances, in an emergency accommodation setting for as brief a time as possible. Such accommodation must meet the recipient's needs and must take account of any specific vulnerability which the person may have.

Providing emergency accommodation in the form of a hotel room removes the immediate crisis of a new applicant for international protection being left homeless; however, there needs to be immediate and ongoing follow-up from RIA to ensure that other reception conditions are provided. They must also be provided with all other material reception conditions *from the date of their application*.

Outside the ordinary structure of DP, it is nearly impossible for people to access basic needs without assistance. These basic needs include a PPS number for receipt of the DEA, a medical card and, in some cases, even a temporary residence card.

In some cases, people have contacted the IRC seeking help with accessing a medical card or GP services. Other people have contacted us who have not had any money since arriving in Ireland and had no awareness of how they would apply for a DEA.

In addition, the lack of communication and dialogue with people in these emergency situations perpetuates feelings of isolation, confusion and distress.

Case Study Two: Vulnerability Assessment

“The Okafor family has been living in Ireland for many years while they await a decision on their application for international protection. They have a minor child who has been diagnosed with a medical condition and underwent a serious medical procedure in Ireland. To ensure the child’s recovery from the procedure and to facilitate the full development of her communications skills, she requires a quiet environment in which to work with a tutor and a specialist therapist. However, in her current accommodation centre, she is unable to focus due to the noise and crowded common areas in the centre. Her legal representatives have made a number of requests to RIA for transfer to another DP centre which would be more suited to her particular medical needs. These requests were supported by letters from the child’s medical and social support teams. However, the requests were not met. After Ireland’s adoption of the RCD, the family contacted RIA again, this time requesting a vulnerability assessment under the regulations, in order to identify and address the child’s special reception needs.”

IRC Commentary: Vulnerability Assessment

Regulation 8 requires the Minister for Justice to assess whether a recipient has special reception needs within 30 working days of a person indicating their intention to seek asylum.

This requirement ensures that people who have particular needs or vulnerabilities can be identified quickly and properly

accommodated. For example, a child with a medical condition may need to be accommodated within reasonable distance from medical services and an appropriate school which is able to provide the education they need, in light of their particular needs.

A failure to identify this need from the beginning of the process creates ongoing hardships for the family and denies the child their right to, for example, a meaningful education.

Regulation 9 also places an obligation on the Minister to consider the best interests of the child. At the very least, this must ensure that vulnerable children can access appropriate services. In the absence of a vulnerability assessment, there is no mechanism to identify children and vulnerable adults with special reception needs. The failure to establish a vulnerability assessment leaves Ireland in breach of European law and the IRC, and other organisations, have called for the vulnerability assessment to be introduced urgently.⁴⁸

Case Study Three: Emergency Accommodation

“Rashid is a very vulnerable and traumatised young man. Shortly after applying for international protection, Rashid was offered emergency accommodation in a hotel in a remote location. After three or four months he was transferred to an unknown location for a week and from there to a guest house. He was also transferred at some point for one week to another hotel. As a result, Rashid has now spent over seven months in emergency accommodation and has been moved back and forth between locations at short notice.

⁴⁸ <https://www.irishrefugeecouncil.ie/news/refugee-organisations-highlight-absence-of-vulnerability-assessment-in-irish-asylum-procedure/7094>

Rashid has found the temporary nature and the regular upheaval very unsettling. He has not been able to establish friendships or embark on activities such as English classes. He reports that he spends his time only eating or sleeping. The communal spaces in the guest house are small. He says there are only a few other asylum seekers staying at present so opportunities for social engagement are limited. For these reasons, Rashid says he feels very low, totally isolated and extremely lonely. The lack of supports in his locality has also negatively impacted on his mental health and wellbeing.

The lack of laundry facilities in the guest house poses a particular problem. Rashid has to wash his clothes by hand in the bathroom and, along with two other roommates; he has to dry the clothes by hanging them around the bedroom.

Rashid struggled to receive a medical card and the information or assistance necessary to apply for one. He tells us that when he gets sick, his only option is to take paracetamol. On one occasion, when he was very unwell he attended Accident and Emergency at a local hospital however following this visit he was issued with an invoice which he cannot afford to pay. He informs us that on another occasion he hurt himself during a fall but was unable to attend a doctor due to the potential cost implication.

Rashid has not received information on his other reception entitlements. For example, he was not aware that he could request reimbursement of his travel expenses for attending legal or medical appointments. He did not know that he could apply for Emergency Needs Payments to buy clothing. He arrived in Ireland

without a phone or a change of clothes and has relied on charity in this regard. He has not been informed of the Community Welfare Officer in the local social welfare office and has not had this basic support.”

IRC Commentary: Use of emergency accommodation for as a short a period as possible

The use of emergency accommodation is of particular concern. The RCD allows for member states to depart from the usual system of providing reception conditions “for a reasonable period which shall be as short as possible” when “housing capacities normally available are temporarily exhausted”.⁴⁹ As such, the RCD allows the use of emergency accommodation for the shortest possible period of time in circumstances like the exhaustion of DP accommodation.

Reliance on emergency accommodation is hugely problematic as it creates significant gaps in service delivery, considerable personal hardship, further isolates a vulnerable group, reduces their visibility, and makes it harder to identify where supports are most needed.

The use of emergency accommodation is growing, with the number of people living in accommodation increasing, and with no end in sight to State reliance on this expensive and unsuitable method of accommodation.

⁴⁹ Article 18 (9)(b) of the Reception Conditions Directive

Capacity in DP has been declining since April 2017 when it first breached the 90% capacity point.⁵⁰ RIA’s policy is to “maintain a 10% “cushion” between maximum capacity and actual occupancy, as a contingency to cope with unexpected spikes in numbers of asylum seekers coming in to the accommodation system, to allow for temporary or permanent closures of individual centres, and to help RIA to react to medical emergencies causing restrictions to some of our capacity.”⁵¹

The derogation under the RCD specifies that exceptional measures must be for a reasonable period and for as short a time as possible. September 2019 will mark a year of emergency accommodation. It is incumbent on the State to urgently ensure that the capacity issue is addressed and that the use of emergency accommodation ends.

More broadly, policymakers must adopt a proactive new approach to ensure a sustainable, rights-focused alternative method of accommodation is introduced in the medium to long-term. A model that at the very least does not leave the State overly dependent on private actors in meeting a public international law obligation.⁵²

⁵⁰ Reception and Integration Monthly Report October 2018, page 9, available here: <http://www.ria.gov.ie/en/RIA/October%202018%20monthly%20report%20updated%20.pdf/Files/October%202018%20monthly%20report%20updated%20.pdf>

⁵¹ *Ibid*

⁵² <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>

SECTION FOUR: THE FUTURE OF THE RCD - REFORMS AT EU LEVEL AND BREXIT

When considering Ireland's implementation of the RCD, it is important to also consider the future direction of EU law and policy and how this may impact on Ireland's approach to the reception of people seeking asylum.

Reform of the Common European Asylum System ("CEAS") is ongoing at EU level. While Ireland has typically chosen to follow the UK's lead and opt into European legislation in a piecemeal way, the UK's impending exit from the EU may require a shift in approach from Ireland.

The CEAS is designed to harmonise law and practice across the EU and create a standard set of rules focused on basic procedural fairness across the EU, as well as to avoid a race to the bottom between member states in terms of reception entitlements provided to applicants for international protection.

It includes the following legislation:

- Reception Conditions Directive
- Asylum Procedures Directive
- Qualification Directive
- Dublin Regulation
- EURODAC Regulation

In 2016, following an increase in arrivals seeking asylum in the EU, the EU Commission made a number of proposals for

reform of the CEAS, including the Reception Conditions Directive.⁵³

While welcoming some of the reform proposals, the Irish Refugee and Migrant Coalition has said that “[i]f passed in their current form, the proposals would:

- deflect protection responsibilities to countries outside the EU 22;
- place undue pressure on countries on the periphery of Europe to process and host the majority of arrivals on behalf of the EU,
- ensure asylum seekers and refugees’ compliance through sanctions and the removal of rights.”⁵⁴

While the negotiation process for changes to the RCD is, in the view of the IRC, overly-focused on the perceived need to control secondary movements by people, reform of CEAS does offer an important opportunity to improve the reception system throughout the EU.

The European Parliament, in its report on the European Commission’s proposed reforms, recommended a number of key amendments to the RCD. The report calls for measures which aim to “increase the applicant’s self-reliance and

⁵³ Proposal for a Directive Of The European Parliament And Of The Council laying down standards for the reception of applicants for international protection (recast), available here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

⁵⁴ Irish Refugee and Migrant Coalition, “Pathways to Protection and Inclusion Ireland’s role in global refugee protection and migration movements” October 2017, page 6, available here: http://www.irmcoalition.com/uploads/1/0/6/9/106994057/imrc_pathways_to_protection_and_inclusion_website.pdf

chances of integration in the host society”.⁵⁵ The report also argues that “the provision of high quality reception conditions, at the same level throughout the EU will be the most important factor in preventing secondary movements”.⁵⁶

Alongside this, the report highlights the importance of “access to language courses and the labour market from day one of the application to increase the applicant’s self-reliance and chances of integration in the host society.”⁵⁷ This echoes the position of the IRC, drawing on the successful experience in Scotland that integration must begin from day one.⁵⁸

Furthermore, the report calls for an obligation on Member States “to find appropriate housing from the outset to avoid applicants being rehoused in multiple reception centres and temporary accommodation”.⁵⁹ Again, this recognises the fundamental rights at stake, as well as the need to actively promote the integration of people seeking asylum in the EU.

While negotiations are continuing and the pace of the reform of CEAS has slowed of late, there is a consensus that reform of asylum law at EU level is needed to ensure that the system is fit for purpose and operating both efficiently and fairly.

⁵⁵ http://www.europarl.europa.eu/doceo/document/A-8-2017-0186_EN.html

⁵⁶ *Ibid*

⁵⁷ *Ibid*

⁵⁸ <https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2019/04/new-scots-refugee-integration-strategy-year-one-progress-report/documents/new-scots-refugee-integration-strategy-2018-2022-year-one-progress-report/new-scots-refugee-integration-strategy-2018-2022-year-one-progress-report/govscot%3Adocument/new-scots-refugee-integration-strategy-2018-2022-year-one-progress-report.pdf>

⁵⁹ http://www.europarl.europa.eu/doceo/document/A-8-2017-0186_EN.html

In the meantime, we recommend that Ireland opt-in to the recast Asylum Procedures Directive (“APD”).⁶⁰ Article 31 of the APD requires member states to conduct the first instance asylum procedure within six months. Article 24 of the APD states that member states shall assess whether the applicant is in need of special procedural guarantees. If special procedural guarantees are required, an applicant should be provided with adequate support, including sufficient time, to ensure effective access to procedures and for presenting the elements needed to substantiate their application for international protection. The APD itself also suggests that this assessment can be integrated into the vulnerability assessment under the RCD. It is essential that both assessments are in place to complement each other.

With the exit of the United Kingdom imminent, Ireland will need to consider whether or not it will align more closely with the CEAS. In particular, the operation of the Dublin Regulation⁶¹ and returns to the United Kingdom under the Dublin system will be impacted by Brexit.⁶² It remains to be seen how the United Kingdom will approach the Dublin system after Brexit.

In the event of a no-deal Brexit, people in the Dublin system waiting to be transferred to the UK could face additional

⁶⁰ 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), available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=en>

⁶¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>

⁶² [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608836/IPOL_STU\(2018\)608836_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/608836/IPOL_STU(2018)608836_EN.pdf)

delays due to the inevitable legal uncertainty. In such a scenario, the IRC would call on Ireland to exercise its discretion under Article 17 of the Dublin Regulation to claim jurisdiction of an asylum claim for which the State might not otherwise be responsible under that Directive.⁶³ This would ensure that nobody is left in legal limbo as a result of the decision of the UK to exit the EU.

⁶³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0604&from=EN>

SECTION FIVE: RECOMMENDATIONS

Implementation of the Regulations:

- As required by law, the Regulations, in particular the issues identified in this paper, should be implemented without delay.

Ending of Emergency accommodation:

- Emergency accommodation should be phased out as soon as possible. In the meantime, people living in emergency accommodation must be given access to material reception conditions including healthcare, food and the DEA.
- As a matter of urgency, all children should be removed from emergency accommodation. In the meantime, the Minister for Education should act urgently to ensure their education needs are met.
- People in emergency accommodation should be given a point of contact within RIA who they can contact in the event of any failures relating to the provision of material reception conditions. They should also be given contact details for NGO and other services which can assist them.
- Regular inspections of emergency accommodation must take place, with issues arising being immediately addressed. Inspections of permanent DP centres and RIA operations by an independent agency should also take place to ensure systemic issues are highlighted and addressed.

- A regular “check in” communication, prompted by RIA, with people in emergency accommodation must take place.

Information:

- The provision of information to all recipients must be provided when a person makes an application at the IPO. This must include, not only basic information about their entitlements (medical cards; the availability of a medical screening; DEA; Exceptional Needs Payment etc.), but also information about what to expect while living in Ireland and in DP accommodation.

Immediate issuing of the Temporary Residence Certificate by the International Protection Office:

- It is essential that the IPO issues a TRC without delay when a person claims asylum. The TRC permits a person to apply for a PPS number, a medical card, and the DEA.

Legal aid for reception appeals:

- Legal aid, additional to that provided for advice on the asylum application, should be given to solicitors of the Legal Aid Board or the Private Practitioners Scheme.

Vulnerability assessment (Department of Justice and Equality, Department of Health and Health Service Executive):

- As required by law, all people seeking asylum in Ireland must receive a vulnerability assessment within 30 days of seeking asylum. The results must be considered when designating accommodation.
- In order to ensure that vulnerable people are identified and supported while living in DP and emergency accommodation, social workers and outreach medical teams must regularly visit places where people are living, as well as ensuring a clear procedure and line of communication in the event of an emergency.
- Where a serious mental health issue arises, there must be a clear pathway for alerting appropriate authorities *before* the situation becomes acute. A clear protocol should be in place and should be communicated to all management and residents so that people experiencing serious mental health difficulties can be identified and provided with appropriate care.
- In the event of a serious incident or a death in DP, it is important that a review is carried out to identify any shortcomings which have arisen, so they can be addressed. It is also important that family, friends, and residents are fully informed of the circumstances and provided with appropriate supports. The situation must be treated as one requiring respect, openness and transparency.

Increased interdepartmental cooperation:

- A permanent inter-departmental taskforce must be established to oversee the implementation of the Regulations and to ensure the State lives up to its

obligations under the RCD. A task force existed during the drafting of the Regulations but it is unclear if this still exists.

- The Department of Justice and Equality, Department of Employment Affairs and Social Protection, Department of Health and Health Service Executive and Department of Education are subject to obligations under the Regulations. Each department should be part of this taskforce, with an understanding of the need to work together coherently and in coordination.
- A forum which includes civil society and people living in DP should inform the work of the taskforce.

EU Policy:

- Greater engagement at EU-level on reform of the Reception Conditions Directive and the Common European Asylum System should take place.
- Ireland should opt-in to the revised Asylum Procedures Directive and introduce special procedures for people who need additional supports when applying for international protection due to their age, disability, or illness.

ANNEX ONE: RECOMMENDATIONS TO THE JUSTICE COMMITTEE CONSULTATION ON DIRECT PROVISION

The following is a summary of recommendations and ideas for improving the Irish protection system submitted to the Joint Oireachtas Committee on Justice and Equality, May 2019.⁶⁴

1. Implement the vulnerability assessment required by the Reception Conditions Directive and the Reception Conditions Regulations 2018. This will help ensure reception needs are met and providers of accommodation and other services have information about people's reception needs.
2. Reduce delays by increasing staffing and training in the International Protection Office. Refugee status determination is a critically important function of a modern state and resources and support should reflect this.
3. Opt in to the revised Asylum Procedures Directive which includes the obligation to conclude the initial protection procedure within six months of the lodging of the application.
4. Respect and implement existing law. Several provisions (right to health, education, information) of the European Communities (Reception Conditions) Regulations 2018 have, in certain cases, not been implemented.
5. Introduce a system of training and regulation for interpreters. Poor interpretation undermines the process.

⁶⁴ <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/06/Irish-Refugee-Council-Submission-to-Joint-Oireachtas-Committee-on-Justice-and-Equality.pdf>

6. Increase the provision of early legal advice, all protection applicants should receive at least 10 hours of assistance in preparing their application. This is widely recognised as improving the protection process.
7. Introduce child benefit for people in the asylum process, free travel pass to allow people to travel to appointments in Dublin (rather than the ad hoc discretionary system) and monitor the DEA.
8. Shift the accommodation of people seeking protection away from the Department of Justice. Move it to the Department of Housing with a ring-fenced budget or create a new entity.
9. Embed human rights obligations in contracts with accommodation providers using Section 42 of the Irish Human Rights and Equality Commission Act 2014.
10. Own-door accommodation, within communities, with the option of self-catering should be mandatory going forward.
11. A matrix should be developed that considers issues like local services and accessibility to Dublin to test whether a particular area is appropriate. Local communities can provide a welcome but many existing centres are remote and isolated.
12. Implement the National Standards for protection accommodation and mandate an independent enforcement and inspectorate body.
13. Move to non-profit delivery of accommodation by involving Approved Housing Bodies. To do this, amend the procurement process to allow for smaller clusters of accommodation (currently a provider must provide for 50 or more people which perpetuates congregated living).

Give providers a longer lead in time to provide accommodation. Allow for conversion and capital costs to be included in bids and give longer contracts to increase certainty.

14. The State should build accommodation. This will save money in the long term and maintain greater control over capacity.
15. Broaden the right to work. Only 14% of the adult population of Direct Provision is working. Work reduces dependency.
16. Change the Migrant Integration Strategy to include people seeking protection. The 'New Scots' strategy from Scotland is a template for this approach.
17. Streamline the process of leaving Direct Provision by: reducing delays of the Ministerial Decision Unit in giving declarations of refugee status; create a process for Direct Provision to be given as a reference address; grant full welfare allowance on recommendation of refugee status; extend Homeless HAP and consider a temporary extension of priority categories on social housing lists.
18. Enact the International Protection (Family Reunification) (Amendment) Bill 2017.
19. End the practice of moving aged-out unaccompanied minors into Direct Provision on reaching eighteen
20. Conduct an annual, independent, review of the protection process which includes consultation with people in the process, supporting organisations and lawyers practicing in this area.
21. End forced deportations. Returns should be based on: fair and consistent protection procedures that properly assess whether a person is entitled to international

protection; fair, voluntary, humane return procedures, and fair and transparent relations with third countries based on international human rights law and standards including post return monitoring.

22. Ratify the UN Optional Protocol to the Convention Against Torture, (OPCAT) and create a national preventative mechanism.
23. Allow for independent and open investigation by an independent inspectorate of deaths in protection accommodation to identify facts and circumstances and to identify any shortcomings or failings which may have occurred.
24. Inter departmental and cross departmental approaches to protection should improve. The International Protection Office (IPO), the International Protection Appeals Tribunal (IPAT), the Legal Aid Board (LAB), the Reception and Integration Agency (RIA), the Ministerial Decisions Unit (MDU) of the Irish Naturalisation and Immigration Service (INIS), An Garda Síochána (AGS) and Coroner's Service are all under the aegis of the Department of Justice and Equality but they could work in a more cohesive way to the benefit of people in the system and also their own missions.

ANNEX TWO: COMPARATOR – DEVIATIONS BETWEEN PRACTICE – REGULATIONS - DIRECTIVE

Reception Conditions Directive (recast)	Reception Conditions Regulations	Practice between July 2018-2019
<p>Article 5 - Information</p> <p>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.</p> <p>Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide</p>	<p>Regulation 3 - Provision of information to recipient</p> <p>The Minister shall, within 15 working days from the date on which a recipient gives an indication referred to in paragraph (a), (b) or (c) of section 13(1) of the Act of 2015, inform the recipient in writing, in a language that he or she understands or may reasonably be supposed to understand, of—</p> <p>(a) the material reception conditions to which he or she is entitled under these Regulations,</p>	<p>No or insufficient information being provided to either new or existing applicants regarding their entitlements or any contact details re relevant organisations.</p>

<p>specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.</p> <p>Member States shall ensure that the information referred to in paragraph 1 is in writing and, in a language that the applicant understands or is reasonably supposed to understand. Where appropriate, this information may also be supplied orally.</p>	<p>and (b) the contact details of any organisations or groups of persons that, in the opinion of the Minister, may be able to help or inform recipients in relation to the material reception conditions to which they are entitled under these Regulations.</p>	
<p>Article 17 – General rules on material reception conditions and health care</p> <p>Member States shall ensure that material reception conditions are available to applicants when they make their application for</p>	<p>Regulation 4 - Provision of material reception conditions</p> <p>(1) A recipient shall, subject to these Regulations, be entitled to receive the material reception conditions where he or she does not have sufficient means to have</p>	<p>The “emergency provisions” of Regulation 4(5) are now relied upon.</p> <p>Due to a lack of capacity in Direct Provision, emergency accommodation is being sourced for new arrivals. This consists of</p>

<p>international protection.</p> <p>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.</p> <p>Member States shall ensure that that standard of living is met in the specific situation of vulnerable persons, in accordance with Article 21, as well as in relation to the situation of persons who are in detention.</p> <p>Member States may make the provision of all or some of the material reception conditions and health care subject to the condition</p>	<p>an adequate standard of living.</p> <p>...</p> <p>(5) The Minister may, exceptionally and subject to paragraph (6), provide the material reception conditions in a manner that is different to that provided for in these Regulations where—</p> <p>(a) an assessment of a recipient’s specific needs is required to be carried out,</p> <p>or (b) the accommodation capacity normally available is temporarily exhausted.</p> <p>(6) The provision of the material reception conditions authorised by paragraph (5) shall—</p>	<p>approximately 29 hotels, B&Bs and guest houses in 11 counties.</p> <p>Failures have emerged in ensuring that applicants are provided with other reception entitlements, including the DEA and medical card. The existing infrastructure for reception conditions centres on DP centres. People accommodated outside of such centres are not receiving the full suite of entitlements in a reasonable timeframe.</p> <p>Both the Regulations and RCD stipulate that emergency accommodation must be used for as short a time as possible and must meet the recipient’s basic needs.</p>
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<p>that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.</p> <p>Article 18 - Modalities for material reception conditions</p> <p>9. In duly justified cases, Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:</p> <p>(a) an assessment of the specific needs of the applicant is required, in accordance with Article 22;</p> <p>(b) housing capacities normally available are temporarily</p>	<p>(a) be for as short a period as possible, and</p> <p>(b) meet the recipient's basic needs</p>	
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<p>exhausted.</p> <p>Such different conditions shall in any event cover basic needs.</p>		
<p>Article 21</p> <p>Member States shall take into account the specific situation of 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, in the national law implementing this Directive.</p>	<p>Regulation 8 – Vulnerable Persons</p> <p>The Minister—</p> <p>(a) shall within 30 working days of the recipient giving an indication referred to in paragraph (a), (b) or (c) of section 13(1) of the Act of 2015, and 14</p> <p>(b) may at any stage after the expiry of the period referred to in subparagraph (a), where he or she considers it necessary to do so, assess—</p> <p>whether a recipient is a recipient with special reception needs, and</p>	<p>No vulnerability assessment is in place.</p> <p>Any assessment that has been conducted is ad hoc. These tend to be medical assessments or psychological assessments but are not tailored specifically with the requirements of the Regulations or the Directive in mind. This means that they are not addressing people’s psycho-social needs, nor are they definitively considering the special reception needs of the vulnerable person, as the law envisions.</p> <p>Vulnerability assessments are also</p>

<p>Article 22</p> <p>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</p>	<p>if so, the nature of his or her special reception needs</p>	<p>envisioned as an ongoing process. This is so that people who might develop a vulnerability requiring special accommodations during the asylum process, or someone whose vulnerabilities were not initially identified, can also be assessed and their special needs accommodated. This is not currently taking place.</p>
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<p>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.</p>		
<p>Article 14 Schooling and education of minors</p> <p>1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres.</p>	<p>Right to Education</p> <p>17. (1) A recipient who is a minor shall have access to primary and post-primary education in the like manner and to the like extent in all respects as a minor who is an Irish citizen.</p> <p>(2) The Minister for Education and Skills shall ensure that a recipient to whom paragraph (1) applies is provided with such support services and language supports as are</p>	<p>Children living in DP are for various reasons restricted in their ability to access education.</p> <p>Children in the asylum process lack access to an array of opportunities and outcomes in an educational context that are freely available to those from more affluent communities. Additional support services may be required to ensure parity with Irish citizen children.</p> <p>Children living in emergency</p>

<p>The Member State concerned may stipulate that such access must be confined to the State education system.</p> <p>Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.</p> <p>2. Access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor.</p> <p>Preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and</p>	<p>necessary to facilitate the recipient's access to, and participation in, the education referred to in that paragraph.</p> <p>(3) In this Regulation, "support services" has the meaning it has in the Education Act 1998 .</p>	<p>accommodation have not been able to access education, or have struggled to do so, for a variety of reasons, including the temporary nature of the accommodation and the difficulties this causes in securing a school place.</p>
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<p>participation in the education system as set out in paragraph 1.</p> <p>3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice.</p>		
<p>Article 19 - Health care</p> <p>1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders.</p> <p>2. Member States shall provide necessary medical or other</p>	<p>Regulation 18 – Right to Health Care</p> <p>The Minister for Health shall ensure that a recipient has access to—</p> <p>(a) emergency health care,</p> <p>(b) such health care as is necessary for the treatment of serious illnesses and mental disorders,</p>	<p>At the end of 2018 some people were not subject to an interview according to Section 15 of the International Protection Act 2015 at the IPO immediately upon claiming asylum and were therefore not issued with a temporary residence card. The effect of this is that they cannot apply for a PPS number and thereby receive a medical card.</p>

<p>assistance to applicants who have special reception needs, including appropriate mental health care where needed.</p>	<p>(c) such other health care as is necessary to maintain his or her health, and</p> <p>(d) where the recipient is vulnerable, such mental health care as is appropriate, having regard to his or her special reception needs.</p>	<p>People provided with emergency accommodation outside of DP centres are often very delayed or are not receiving a medical card at all, despite their entitlement to it.</p> <p>People who are trying to re-enter DP and are being refused accommodation are not receiving their medical card, despite their entitlement to it.</p> <p>Difficulties registering with GPs are also contributing to difficulties in accessing health care. Delays in registering for a PPS number are contributing to this situation. Follow-on GP care after a hospital visit is not in place. People are being referred to hospital A&E departments for relatively routine illnesses.</p>
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<p>N/A</p>	<p>Regulation 27 – Attribution of delay in making of first instance decision</p> <p>The matters to which the Minister may have regard in considering, for the purposes of Regulation 6(1)(a), paragraph (4)(b), (8)(a) or (13)(c) of Regulation 11 or Regulation 12(1)(a), whether the fact that a first instance decision has not been made in respect of the applicant’s protection application can be attributed, or attributed in part, to the applicant include whether the applicant has failed, or is failing, to comply with his or her obligations in respect of his or her protection</p>	<p>The current reception system for applicants risks creating delays in the determination of their application for international protection; for example, where a person is of no fixed abode, it may be difficult for them to receive important communications regarding their application or accommodation.</p> <p>We are concerned that the problems around accommodation of applicants and the precariousness of their living conditions may affect their asylum application – either by creating</p>

	<p>application, including by—</p> <p>(i) failing to make reasonable efforts to establish his or her identity,</p> <p>(ii) without reasonable excuse, acting in such a way as to delay the processing of his or her application, or</p> <p>(iii) otherwise failing to comply with an obligation under an enactment relating to the application.</p>	<p>further delays, creating communications failures, or otherwise making it very difficult for an applicant to fully engage with the asylum procedure.</p> <p>It is absolutely imperative that no such delay, caused by the current chaos, is attributed to the applicant in a manner which prejudices their application for asylum in any way.</p>
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