

## BACKGROUND NOTE ON IRISH ASYLUM POLICY

*This background note is for information and guidance only. It does not purport to give a legal interpretation of the Refugee Act 1996 or any other legislation pertaining to Asylum or Immigration in Ireland.*

The Government's policy on asylum is influenced by a number of key factors including:

- Meeting the State's international obligations to refugees under the 1951 Geneva Convention and its related 1967 Protocol.
- Tackling abuse of the asylum process by persons who are seeking to enter the State through the asylum process for purposes other than seeking protection from refugee related persecution.
- Processing asylum applications speedily and within a six month timeframe. Those applications prioritised under the Refugee Act, 1996 are dealt with even more speedily. The backlog of asylum applications at first instance has been effectively eliminated.
- Continued utilisation of the public resources allocated to the area in an effective and efficient manner.
- The provision of social support to asylum seekers solely within the State's direct provision and dispersal arrangements. Full social security allowances (including rent supplements) are not provided to asylum seekers in the State. Child benefit for asylum seekers is also no longer paid. Asylum seekers do not have access to the labour market while their applications are being processed.

### Asylum Applications from Nationals of other EU Member States

Subject to EU law, asylum applications are **not** accepted in Ireland from nationals of other Member States of the European Union including the recent Accession States, Romania and Bulgaria.

This arises from the application of the *EU Treaty Protocol on Asylum for Nationals of Member States of the European Union* which, given the level of protection of fundamental rights and freedoms by the Member States, provides that any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in very exceptional circumstances.

The application of this Protocol means that nationals of EU Member States **will not** be allowed to enter the asylum process and **will not** be provided with accommodation by the Reception and Integration Agency.

**The Office of the Refugee Applications Commissioner (which is the first instance decision making body in the Irish Asylum System) will not accept asylum applications from any national of an EU Member State.**

## **The Refugee Act, 1996 (as amended) – Application to Nationals of Non-EU States**

The Immigration Act, 2003 came into operation on 15 September, 2003, which made extensive amendments to the Refugee Act, 1996. These changes affect the manner in which applications for refugee status in the State are dealt with by the Refugee Applications Commissioner at first instance and by the Refugee Appeals Tribunal at appeal.

Key changes introduced to the Refugee Act, 1996 include the following:

### ➤ **Designating States as safe countries of origin:**

The Minister for Justice, Equality and Law Reform has the power to designate countries as "safe countries of origin" for the purpose of considering asylum applications from nationals of those States. In deciding whether to make such a designation, the Minister must consult with the Minister for Foreign Affairs and must have regard to whether a country is party to various important international human rights instruments (including the European Convention on Human Rights), whether it has a democratic political system and an independent judiciary, and whether it is governed by the rule of law.

Non-EU States designated as safe countries of origin are Croatia and South Africa.

From 15 September 2003, applicants for asylum who are nationals of a designated country continue to have a merits consideration of their applications, but it will be for each applicant to rebut the presumption that they are not in need of refugee protection. Appeals in such cases will be dealt with by the Refugee Appeals Tribunal on the basis of papers alone rather than an oral hearing.

### ➤ **Prioritisation of certain categories of applications by Minister:**

The Minister may direct the Refugee Applications Commissioner and the Refugee Appeals Tribunal to give priority to certain classes of applications. Current prioritised applications include those from designated **safe countries of origin** and also applications from **Nigerian nationals**.

Applications from prioritised countries are processed under new accelerated arrangements with effect from 25 January 2005 (see below for further details).

### ➤ **Duty to co-operate, withdrawal and deemed withdrawn cases:**

The Refugee Act, 1996 spells out the clear statutory duty on every asylum applicant to pursue their asylum applications actively and to cooperate at all times with the processing agencies. An applicant who fails to offer full co-operation runs the strong risk that the application will be rejected under the new, more efficient, mechanisms for disposing of applications that are withdrawn or are not actively pursued.

➤ **Credibility of applicants:**

The Refugee Act 1996 lists a range of factors the Refugee Applications Commissioner and the Refugee Appeals Tribunal must consider when assessing the credibility of the applicant; a vital component of every asylum claim. These include such factors as: no reasonable explanation for a lack of identity documents or for having forged documents; giving vague, incomplete or obviously false information on how the applicant got to Ireland; and, where an application is made other than directly upon arrival in the State, having no reasonable excuse for the delay in making the application.

➤ **Fingerprinting:**

There are revised provisions allowing for the fingerprinting of all applicants, with special safeguards applying to applicants under 14 years of age.

➤ **Social Welfare Provisions:**

Under the Social Welfare (Miscellaneous Provisions) Act, 2003 asylum seekers in the State are no longer entitled to receive a rent supplement. Their needs are met through the State's direct provision accommodation and dispersal arrangements. Furthermore, since 1 May 2004, a habitual residence condition has been required to be fulfilled by asylum applicants, regardless of their nationality, in order to qualify for the payment of various social benefits.

➤ **Revised arrangements for dealing with asylum applications which could be the responsibility of another EU State or Norway or Iceland:**

EU Council Regulation 343/2003 (known informally as the "Dublin II" Regulation), like the Dublin Convention which it replaces, sets out the rules for deciding which State is to be responsible for examining an asylum application lodged by a third country national in one of the participating States. The Regulation, as well as covering the Member States of the European Union, covers Norway and Iceland. National law provides that where the asylum application should be dealt with in another participating State, the transfer of the applicant in such cases from Ireland is done by a simple transfer order rather than by the present mechanism of a deportation order. While there will still continue to be a right of appeal, the transfer order is immediately effective on the making of the first instance decision and any appeal can be made from abroad.

## Expedited Processing Arrangements for Prioritised Asylum Applications

From 25 January 2005, arrangements were introduced for the speedier processing of prioritised asylum applications from nationals of **Nigeria, Croatia and South Africa**.

The arrangements for processing prioritised asylum applications include:

- Faster processing at first instance in the Office of the Refugee Applications Commissioner (ORAC). In most cases Applicants are scheduled for an interview within 9-12 days of making their application. Applications from prioritised countries are finalised in 18 working days.
- Faster appeal determinations with processing times reduced in the Refugee Appeals Tribunal (RAT). Prioritised asylum applications are processed within 15 working days.
- Full access to legal services will continue to be provided within the accelerated process by the Refugee Legal Service.
- Failure to comply with the residency and daily reporting requirements which are imposed on applicants at the time of application may result in the imposition of specific penalties set out in statute.
- Non-cooperation with the investigation of an asylum application will continue to have the potential to result in a refusal of the application for refugee status.
- The arrangements include the operation of dedicated accommodation centres for applicants covered by the expedited arrangements. Persons to whom the new arrangements apply have statutory obligations imposed on them to reside and report to immigration officers in both the asylum and deportation processes. For persons in the deportation process, failure to comply with these obligations is an arrestable offence.
- These arrangements facilitate the speedier processing and effecting of deportation orders, for example, such failed asylum applicants will be more readily available to the Immigration authorities / Garda National Immigration Bureau while travel arrangements are being made for their return to their countries of origin.
- The choice of availing of the option of voluntary return provided by the Department of Justice, Equality and Law Reform and the International Organization for Migration (IOM), an independent and international organisation, as an alternative prior to the issuing of deportation orders will always be available.

## New Legislation

### Immigration, Residence and Protection Bill

On the 6 September 2006 An Tánaiste and Minister for Justice, Equality and Law Reform, Mr Michael McDowell TD, announced that the Government approved the drafting of a new Immigration, Residence and Protection Bill.

The Bill will provide the State with tools to manage migration effectively. It will set out, in a single code, comprehensive statutory procedures for the application of stated policies to the various stages of the immigration process: visas, entry to the State, protection, residence permits and their terms and conditions, and the process of removal where that is necessary.

In the area of protection, the main elements of the Bill include:

#### ➤ **The introduction of a single investigation process**

The Scheme introduces a single procedure wherein a protection applicant will be required to set out all of the grounds (including protection grounds under the Geneva Convention and COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) on which he or she wishes to remain in the State. Those grounds will be investigated by the Minister and the outcome of the investigation could be that the person is

- allowed to remain in the State on refugee grounds or subsidiary protection grounds and is granted a protection residence permit,
- allowed to remain in the State on other discretionary grounds and is granted a residence permit on that basis, or
- not allowed to remain in the State and is thus required to leave or be removed.

#### ➤ **New Protection Framework**

This new integrated process will result in the functions currently carried out by the Office of the Refugee Applications Commissioner (ORAC) being subsumed into the Irish Naturalisation and Immigration Service (INIS). The legislation will maintain the current independent appeal process for asylum claimants with the establishment of the Protection Review Tribunal which will replace the Refugee Appeals Tribunal.

This new body will have an expanded remit to consider, in addition to appeals against decisions not to grant refugee status, appeals against decisions not to grant subsidiary protection as defined in COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

➤ **Replacement of Deportation process by automatic removal**

Under the proposed legislation, any foreign nationals who are unlawfully in the State will be obliged to remove themselves, and where they fail to do so will be liable to be removed summarily, and detained if necessary to ensure removal.

The Immigration, Residence and Protection Bill is at present with the Office of the Parliamentary Counsel to the Government for drafting and is expected to be published shortly.

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