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Explanatory Memorandum](#)

AN BILLE UM INIMIRCE, CÓNAÍ AGUS COSAINT 2007
IMMIGRATION, RESIDENCE AND PROTECTION BILL 2007

Mar a tionscnaíodh
As initiated

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ACTS REFERRED TO

Aliens Act 1935	1935, No. 14
Child Care Act 1991	1991, No. 17
Civil Legal Aid Act 1995	1995, No. 32
Civil Service Regulation Act 1956	1956, No. 46
Companies Acts 1963 to 2001	
Criminal Justice (Legal Aid) Act 1962	1962, No. 12
Criminal Justice (Terrorist Offences) Act 2005	2005, No. 2
Criminal Justice (United Nations Convention against Torture) Act 2000	2000, No. 11
Data Protection Act 1988	1988, No. 25
Diplomatic Relations and Immunities Act 1967	1967, No. 8
Diplomatic Relations and Immunities Acts 1967 to 2006	
European Parliament Elections Act 1997	
1997, No. 2	
Employment Permits Acts 2003 and 2006	
European Arrest Warrant Act 2003	2003, No. 45
European Communities Acts 1972 to 2006	
European Parliament Elections Act 1997	1997, no.2
Extradition Acts 1965 to 2001	
Illegal Immigrants (Trafficking) Act 2000	2000, No. 29
Immigration Act 1999	1999, No. 22
Immigration Act 2003	2003, No. 26
Immigration Act 2004	2004, No. 1
Local Government Act 2001	2001, No. 37
Petty Sessions (Ireland) Act 1851	14 & 15 Vic., c. 93
Public Offices Fees Act 1879	1879, c. 58
Public Service Management (Recruitment and Appointment) Act 2004	2004, No. 33
Refugee Act 1996	1996, No. 17
Road Traffic Act 1961	1961, No. 24
Road Transport Act 1932	1932, No. 2
Social Welfare (Consolidation) Act 2005	2005, No. 26



AN BILLE UM INIMIRCE, CÓNAÍ AGUS COSAINT 2007
IMMIGRATION, RESIDENCE AND PROTECTION BILL 2007

BILL

entitled

5 AN ACT TO RESTATE AND MODIFY CERTAIN ASPECTS
OF THE LAW RELATING TO THE ENTRY INTO PRES-
ENCE IN AND REMOVAL FROM THE STATE OF CER-
TAIN FOREIGN NATIONALS AND OTHERS, INCLUD-
10 ING FOREIGN NATIONALS IN NEED OF PROTECTION
FROM THE RISK OF SERIOUS HARM OR PER-
SECUTION ELSEWHERE AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

15 **PRELIMINARY**

1.—Nothing in this Act shall be taken to affect the executive Saver for inherent
power of the State, exercised by the Government, to make policy executive power.
regarding immigration to the State and decisions about whether a
foreign national or a foreign national of any class determined under
20 that power—

(a) may enter,

(b) may be present in,

(c) is to leave,

the State.

25 **2.—(1)** This Act may be cited as the Immigration, Residence and Citation and
Protection Act 2007. commencement.

(2) This Act comes into operation on such day or days as the
Minister may, by order or orders, appoint either generally or with
reference to a particular purpose or provision and different days may
30 be appointed for different purposes and different provisions.

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Interpretation.

4.—In this Act—

“authorised officer” means a person appointed under *section 89* to perform the functions conferred by or under this Act on authorised officers; 5

“biometric information” means information about the distinctive physical characteristics of an individual including—

(a) measurements or other assessments of those characteristics, and 10

(b) information about those characteristics held in automated form,

and references to the provision by a person of biometric information mean its provision in a way that enables the identity of the person to be investigated; 15

“carrier”—

(a) in relation to a vehicle other than a ship, means the operator of the vehicle,

(b) in relation to a ship, means its master, and 20

(c) in a case where the responsibility for unloading the vehicle or attending to the disembarkation of its passengers or otherwise receiving it on its arrival in the State has been delegated by its operator to another person, includes both that operator and the other person, 25

and, for the purposes of this definition, “operator” means any person who owns, part-owns or charters the vehicle or who has the management and control of the business in where the vehicle is used;

“dwelling place” means the place in which a foreign national usually lives when in the State; 30

“discontinue” means, in relation to an act by the Minister, either—

(a) his or her revocation of an entry permit or residence permit, or

(b) his or her refusal to renew an entry permit or residence permit which has expired, 35

and “discontinuance” shall be construed accordingly;

“embarking” includes departure by any form of conveyance and departure over a land frontier;

“foreign national” means a person who is neither—

(a) an Irish citizen, nor 40

(b) a person who has established a right to enter and be present in the State under the European Communities (Freedom of Movement of Persons) (No. 2) Regulations 2006 (S.I. 656 of 2006);

- “Geneva Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951, and includes the Protocol relating to the Status of Refugees done at New York on 31 January 1967;
- 5 “High Commissioner” means the United Nations High Commissioner for Refugees and includes the Representative for Ireland of the High Commissioner;
- “immigration officer” means an immigration officer appointed or deemed to be appointed under *section 89*;
- 10 “immigration registration district” means a district designated in regulations within which an immigration registration officer is to perform the functions conferred on immigration registration officers by this Act in an immigration registration district;
- “immigration registration officer” means an immigration registration
15 officer appointed or deemed to be appointed under *section 89*;
- “information” includes—
- (a) information in the form of a document (or any other thing) or in any other form, and
 - (b) personal information, including biometric information;
- 20 “landing” includes arrival or entry by any form of conveyance and includes entry over a land frontier, and references to landing include references to attempting to land;
- “member of a crew” means any person employed in the working or service of a ship, train or aircraft;
- 25 “Minister” means the Minister for Justice, Equality and Law Reform;
- “passenger” means any person, other than a member of a crew, travelling or seeking to travel on board a ship, railway train, aircraft or passenger road vehicle;
- “passenger road vehicle” means a vehicle employed on a passenger
30 road service which is licensed under the Road Transport Act 1932;
- “port” includes any place whether on a land or sea frontier where a person lands in or embarks from the State and includes an airport;
- “prescribed” means prescribed by regulations made by the Minister and, in relation to any provision thereof for the fixing or payment of
35 fees or other amounts of money, means prescribed by regulations made by the Minister with the consent of the Minister for Finance;
- “probationary long-term residence permit” means a long-term residence permit issued under *section 34(4)(a)*;
- “protection applicant” means a person who has applied for protection
40 in the State and whose application has not been—
- (a) determined,
 - (b) withdrawn or deemed to be withdrawn, or
 - (c) transferred to another country for consideration;
- “Tribunal” means the Protection Review Tribunal established by
45 *section 75*;

“vehicle” includes any ship, boat, railway train, aircraft or mechanically propelled vehicle within the meaning of the Road Traffic Act 1961.

PART 2

GENERAL

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Foreign nationals
lawfully and
unlawfully present.

5.—(1) The presence in the State of a foreign national is lawful if, and only if, it is in accordance with permission given or deemed to be given to him or her, in accordance with this Act, to be present in the State.

(2) The entry into the State of a foreign national is lawful if, and only if, it is in accordance with permission given or deemed to be given to him or her, in accordance with this Act, to enter the State. 10

(3) A foreign national who enters the State unlawfully, or whose presence in the State is unlawful, is guilty of an offence.

(4) A foreign national whose presence in the State is unlawful— 15

(a) shall leave the State, and

(b) may be removed or caused to be removed from the State in accordance with the provisions of this Act.

(5) A foreign national need not be given notice of a proposal to remove him or her from the State under *subsection (4)(b)*. 20

(6) A foreign national may be arrested, or arrested and detained, for the purpose of securing his or her removal under *subsection (4)(b)*.

(7) Force, not exceeding the minimum necessary, may be used to secure the removal of the foreign national under *subsection (4)(b)*. 25

(8) In determining any question relating to the entry into, presence in or removal from the State of a foreign national, other than the question whether he or she is entitled to protection in the State within the meaning of this Act, he or she shall not be entitled to derive any benefit from any period of unlawful presence in the State. 30

(9) A foreign national at a frontier of the State who has been refused permission to enter or to be present in the State—

(a) may not enter the State or, if he or she has entered it, shall leave it, and

(b) may be removed from the State. 35

(10) *Subsections (5) to (8)* apply to a removal under *subsection (9)(b)* as they apply to a removal under *subsection (4)(b)*.

(11) If, in any proceedings of whatever nature—

(a) a question arises as to whether, for the purposes of a provision of this Act, a person is— 40

(i) a foreign national,

- (ii) a foreign national of a particular nationality,
- (iii) a foreign national of a particular class, or
- (iv) a foreign national of a nationality, class of nationality or other class specified in an order or regulations made under this Act or in an immigration policy statement, and

(b) the resolution of that question in a particular way will favour or tend to favour the lawfulness of the person's presence in or, as the case may be, entry into the State,

10 then the onus of proving the facts which will or might so resolve that question shall lie on that person.

6.—(1) The following persons have, by virtue of this subsection, permission to be present in the State:

Persons having permission to be in the State by operation of this section.

(a) a person who is, in the State, entitled to privileges and immunities—

(i) by virtue of section 5 or 6 of the Diplomatic Relations and Immunities Act 1967, or

(ii) under or by virtue of an Act of the Oireachtas or an instrument made under such an Act,

(b) a national of the United Kingdom of Great Britain and Northern Ireland who has travelled directly from Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

(2) The Minister may, by order, provide that—

(a) such persons, or

(b) persons within such class or classes of person,

as are specified in the order are to be regarded as having permission to be present in the State.

(3) Nothing in this Act affects—

(a) any obligation of the State under the treaties governing the European Communities (within the meaning of the European Communities Acts 1972 to 2006),

(b) any obligation of the State under an act adopted by an institution of those Communities, or

(c) the European Communities (Free Movement of Persons) (No. 2) Regulations 2006.

7.—(1) Every person (except an Irish citizen) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality to the satisfaction of an immigration officer.

Requirement for passport etc.

(2) *Subsection (1)* does not apply to a person who has permission to be in the State under *section 6(1)(b)*.

(3) Every person (including an Irish citizen) landing in or embarking from the State shall—

(a) furnish to an immigration officer such information in such manner as the immigration officer may reasonably require for the purposes of the performance of his or her functions, and 5

(b) comply with such reasonable instructions as an immigration officer may give for those purposes. 10

(4) A person who contravenes this section shall be guilty of an offence.

Non-entitlement to services of foreign nationals unlawfully present.

8.—(1) A foreign national whose presence in the State is unlawful shall not—

(a) subject to *subsection (2)*, be entitled to any benefits or services provided by a Minister of the Government, a local authority (within the meaning of *section 2(1)* of the Local Government Act 2001), the Health Service Executive or the holder of any office or a body established— 15

(i) by or under any enactment (other than the Companies Acts 1963 to 2001), or 20

(ii) under the Companies Acts 1963 to 2001 in pursuance of powers conferred by or under any other enactment,

and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government or a subsidiary of any such body, or 25

(b) seek or enter employment or engage in other economic activity in the State. 30

(2) *Subsection (1)(a)* does not apply in relation to—

(a) the provision of—

(i) essential medical treatment,

(ii) medical or other services necessary for the protection of public health, 35

(iii) education services to a person who is under the age of 16 years, or

(iv) legal aid under the Criminal Justice (Legal Aid) Act 1962, or, in any proceedings relating to the foreign national's removal from the State, legal advice or legal aid under the Civil Legal Aid Act 1995, 40

where the foreign national does not have sufficient resources to pay for that treatment or those services or,

as the case may be, the legal representation or assistance provided,

(b) the provision of a payment under section 201 and 202 of the Social Welfare (Consolidation) Act 2005, or

(c) the provision of such other benefits or services (however described) as are prescribed, being benefits or services that, in the opinion of the Minister—

(i) are of a humanitarian nature,

(ii) are provided for the purpose of dealing with or alleviating emergencies, or

(iii) are provided by way of assistance towards the voluntary repatriation of foreign nationals.

(3) Before prescribing any benefits or services under *subsection (2)(c)*, the Minister shall consult the Minister for Social and Family Affairs.

(4) The provision of anything mentioned in *subsection (2)* to a foreign national shall not, of itself, render his or her presence in the State lawful.

9.—(1) Where the Government, in exercise of the executive power to make policy regarding immigration to the State, makes any policy that consists of or includes any of the matters set out in *subsection (2)*, the Minister, as soon as practicable after it has been made shall—

Immigration policy statements.

(a) lay a statement of that policy (an “immigration policy statement”) before the Houses of the Oireachtas, and

(b) cause notice of the making of the immigration policy statement to be published in *Iris Oifigiúil*.

(2) The matters referred to in *subsection (1)* are:

(a) the criteria to be applied or guidelines followed when visa or pre-entry applications from foreign nationals or foreign nationals of any specified class are being determined;

(b) the criteria to be applied or guidelines followed when determining whether to give permission to enter the State to foreign nationals of any specified class;

(c) the period for which any such permission is to last;

(d) the conditions which are to attach to any such permission (which may include conditions relating to entitlement to any benefits or services of the kind mentioned in *paragraph (a)* of *subsection (1)* of *section 8* or to seek to enter employment or to carry on any economic activity in the State;

(e) the criteria to be applied or guidelines followed when applications from foreign nationals of a specified class for residence permits or renewals of residence permits are being determined;

- (f) the conditions which may be attached to such permits (which may include conditions relating to entitlement to any benefits or services of the kind mentioned in *paragraph (a) of subsection (1) of section 8* or to seek to enter employment or to carry on any economic activity in the State; 5
- (g) the criteria to be applied in determining a review of a decision made under this Act;
- (h) the classification of foreign nationals for the purposes of this Act (whether by reference to their nationality, occupation, purpose in entering and being present in the State, family circumstances, age, health, educational, professional, vocational or other qualifications or experience or any other characteristic or any combination of them); 10
- (i) the modification or revocation of an immigration policy statement; 15
- (j) the period of operation of the policy (however stated or calculated).

(3) Nothing in *subsections (1) and (2)* affects the executive power of the Government to determine their policy on immigration to the State or, otherwise than in accordance with those subsections, to make or publish statements of that policy. 20

(4) A document purporting to be a copy of an immigration policy statement and certified as such by or on behalf of the Minister shall, unless the contrary of either is shown, be received in evidence and deemed to be an immigration policy statement without proof. 25

Decisions to be consistent with immigration policy statements.

10.—(1) Every decision under this Act, being a decision to which policy set out in an immigration policy statement is relevant, shall be made in accordance with that policy.

(2) *Subsection (1)* does not, however, extend to— 30

- (a) a decision made by the Government themselves or the Minister himself or herself, or
- (b) a decision made on grounds which consist of or include public security, public health or public policy ("*ordre public*"). 35

(3) Nothing in this Act obliges the Government or the Minister to make any decision themselves or, as the case may be, himself or herself.

(4) References in this section to—

- (a) the making of decisions by the Government themselves are references to the making of collective decisions personally by the members of the Government appointed under the Constitution, and 40
- (b) the making of decisions by the Minister himself or herself are references to decisions made personally by the Minister, 45

as distinct from decisions made on behalf of the Government or the Minister or by virtue of any enactment or rule of law which attributes to the Government or a Minister decisions made by public servants or officials.

5

PART 3

VISAS

11.—(1) An Irish visa (in this Act referred to as a “visa”) is a ^{Visas.} certificate stating that the foreign national identified in it is permitted by the Government, to be present at a frontier of the State for the purpose of seeking permission to enter the State—

10

- (a) within such period,
- (b) for such purpose, and
- (c) on such or so many occasions,

as are specified in the certificate.

15 (2) A visa is valid only if—

- (a) it is affixed to a passport or other travel document and that passport or document—

- (i) identifies the foreign national to whom it relates and states his or her nationality, and

20 (ii) was issued by or on behalf of an authority recognised for the purposes of this section by the Government and, if it has been renewed, was renewed by such an authority, or

- (b) it complies with regulations made by the Minister.

25 (3) In addition to the information set out in *subsection (1)* a visa may contain such other information as respects the foreign national to whom the visa relates, including biometric and any other information the Minister considers appropriate.

30 (4) A visa does not, of itself, entitle the foreign national to whom it relates to enter or be present in the State except to the extent provided by *subsection (1)*.

35 (5) Nothing in this Act affects the discretion of the Government or the Minister in deciding whether to grant or revoke a visa, to make it subject to any condition or to revoke any condition to which it is subject.

12.—(1) An Irish transit visa (in this Act referred to as “transit ^{Transit visas.} visa”) is a certificate stating that the foreign national identified in it is permitted by the Government to arrive at a port in the State for the purpose of passing through the port in order to travel to another state.

40

(2) *Subsections (2), (3) and (5) of section 11* apply in respect of a transit visa as they apply in respect of a visa.

(3) A transit visa does not, of itself, entitle the foreign national to whom it relates to enter or be present in the State, except to the extent provided by *subsection (1)*.

(4) *Sections 13 to 19* apply in respect of a transit visa as they apply in respect of a visa and, in that application, the reference in *section 13(1)* to being present at the frontier of the State for the purpose set out in *section 11* shall be construed as a reference to arriving at a port in the State for the purposes set out in *subsection (1)*, and the reference in *section 13* to a “visa-exempt foreign national” shall be construed as a reference to “transit visa exempt foreign national”.

Designation of
individuals as visa-
exempt.

13.—(1) This section applies where the Government designate a foreign national or a class or classes of foreign national as exempt from the need to have a visa in order to be permitted to be present at the frontiers of the State for the purpose set out in *section 11(1)* and who is therefore treated as permitted to be there for that purpose.

(2) A foreign national who is so designated or is in a class so designated is, in this Act, referred to as a “visa-exempt foreign national”.

(3) The power of designation referred to in *subsection (1)* may be exercised by the Minister by order.

(4) The power of designation referred to in *subsection (1)* may be exercised by reference to any factors the Government consider appropriate including—

- (a) nationality,
- (b) age,
- (c) purpose of entry to and presence in the State,
- (d) duration of that presence,
- (e) occupation,
- (f) diplomatic status,
- (g) immigration status (whether in the State or another state),
- (h) any combination of the factors by reference to which that power may be exercised.

(5) It is not an objection to the exercise of the power of designation referred to in *subsection (1)* that the same person may, in some circumstances, be a visa-exempt foreign national and, in others, not be.

Application for
visa: fees etc.

14.—(1) In the exercise of the Government’s power to issue visas—

- (a) the Minister may receive and consider applications for visas (“visa applications”), and
- (b) the Minister may prescribe—
 - (i) forms in which visa applications are to be made, and

- (ii) fees which are to be paid at the same time as they are made.

5 (2) In the exercise of the Government's power to issue visas, the Minister may prescribe circumstances in which a visa application is to be accompanied by—

- (a) a deposit or bond, or
- (b) a guarantee given to the Minister by a guarantor in respect of a deposit or bond.

10 (3) A deposit is a sum of money paid to the Minister of such amount as is fixed by the Minister in respect of the visa application that the deposit accompanies.

(4) A bond is a contract for the payment to the Minister of such amount as is fixed by the Minister in respect of the visa application that the bond accompanies.

15 (5) A guarantee is an undertaking that if the applicant—

- (a) is permitted to enter and be present in the State, and
- (b) does not comply with a condition under which the permission to enter and be present in the State is given,

20 then the deposit will be forfeited to the Minister or, as the case may be, the bond will be implemented so that the sum of money fixed in relation to it will be paid to the Minister.

(6) A guarantor must be resident in the State and be—

- (a) an Irish citizen, or
- (b) if not an Irish citizen—

25 (i) the holder of a long-term residence permit, or

(ii) a person who has been a citizen of a Member State (or States) for at least 5 years,

and has resided in the State for at least 5 years.

30 (7) The Minister is not obliged to determine a visa application which is—

- (a) not in the prescribed form,
- (b) not accompanied by the prescribed fee,
- (c) not accompanied by an appropriate travel document, or
- 35 (d) made in circumstances prescribed under *subsection (2)* and is not accompanied by the deposit, bond or guarantee referred to in that subsection.

(8) The Minister may waive all or any part of a sum to be forfeited or paid under *subsection (5)* or refund all or any part of a sum so forfeited or paid.

40 (9) The Minister may refund a deposit if satisfied that the applicant to whom the deposit relates will not enter the State or, having

entered the State, has left and the circumstances set out in *subsection (5)(b)* have not occurred.

(10) The different provision which may be made in the prescription of fees under *subsection (1)(b)(ii)* (as read with *section 101(4)*) may include the prescription of different fees for visas of different classes and those visas may be classified for that purpose by any factors or combination of factors the Minister thinks fit including— 5

- (a) the reason for entering or being present in the State,
- (b) the number of entries into the State,
- (c) nationality of the applicant, 10
- (d) the place where the application for the visa is made,
- (e) the method of application for the visa,
- (f) whether the applicant has or has previously had permission to enter and be present in the State,
- (g) circumstances of priority or urgency, 15
- (h) the likely effect a particular fee, if prescribed, will have on demand for a visa among persons of a particular class,
- (i) the likelihood, in the opinion of the Minister, that an individual or individuals would not comply with the conditions of permission to enter and be present in the State. 20

Determination of
visa applications.

15.—(1) It is for the applicant for a visa (the “visa applicant”) to establish to the satisfaction of the Minister that the visa applicant should be granted a visa.

(2) Where, under *section 14*, the Minister is not obliged to, and decides not to, determine a visa application, the Minister— 25

- (a) shall inform the visa applicant accordingly,
- (b) need not refund any fee which accompanied the application,

and no application for a visa review under *section 18* shall be entertained. 30

(3) The Minister may, before determining a visa application, make or cause to be made such inquiries as he or she considers appropriate.

(4) *Subsection (3)* implies no obligation to make any inquiry but this subsection is without prejudice to any obligation deriving from an immigration policy statement. 35

(5) There are included in the matters to which the Minister is to have regard when determining a visa application—

- (a) whether the applicant has met any liability for costs under *section 55*, and 40

(b) any other information the Minister considers relevant even though not provided by the applicant in, or in connection with, the application.

5 (6) The information referred to in *subsection (5)(b)* extends to any information available to the Government or any other information holder in the State, and nothing in this Act prevents the Government or that other information holder from making that information available to the Minister for the purposes of that provision.

10 (7) Nothing in this section implies any obligation on the Minister to grant a visa.

(8) The Minister shall refuse to grant a visa application if he or she considers its refusal to be justified.

15 (9) The following are examples of reasons why the Minister may consider a refusal justified: that in his or her opinion—

(a) the purpose stated in the application for which entry to and presence in the State is sought is not true;

20 (b) presence in the State is sought for a finite time and the applicant's connections with his or her place of residence or country of nationality are not sufficient to satisfy the Minister that the applicant will leave the State at the end of that time;

25 (c) the applicant would be unlikely to be able in the State to support himself or herself and any accompanying dependants;

(d) any information provided by the applicant, with or in connection with the application is false, misleading or internally inconsistent;

30 (e) the applicant has not complied with an obligation imposed on him or her by or under this Act to provide information in, or in connection with, the visa application;

(f) any—

35 (i) conduct of the applicant or any member of his or her family in connection with immigration (whether or not to the State), or

(ii) criminal conduct (whether or not in the State) of the applicant or any member of his or her family,

40 that indicates that the applicant or any member of his or her family is unlikely to comply with a condition of permission to enter and be present in the State;

(g) a deposit, bond or guarantee required under *section 14* in connection with the application has not been provided;

45 (h) the applicant's entry into or presence in the State would be a risk to public security, public health or public policy ("*ordre public*");

(i) the applicant's presence in the State would result in a disproportionate expenditure of public resources;

(j) the applicant—

(i) intends to travel (whether immediately or not) to Great Britain, Northern Ireland, the Channel Islands or the Isle of Man, and

(ii) would not qualify for admission to that place if he or she arrived from a place other than the State. 5

Refusal of visa application.

16.—(1) Where the Minister refuses a visa application, he or she shall give notice to the applicant of the refusal and the reason for it.

(2) The requirement in *subsection (1)* shall, without prejudice to other means of meeting it, be met by the placing of the notice on the internet in a way that— 10

(a) makes it accessible only to the visa applicant or his or her representative, or

(b) ensures that only the visa applicant or his or her representative can ascertain (whether or not by means of other information separately supplied to him or her) the identity of the visa applicant to whom the notice relates. 15

(3) *Subsection (1)* does not oblige the Minister to disclose information the disclosure of which, in his or her opinion, would be prejudicial to public security or public policy (“*ordre public*”). 20

(4) The Minister may not, without the consent referred to in *subsection (5)*, disclose under *subsection (1)* any information supplied to him or her by or on behalf of the government of another state in accordance with an express or implied undertaking given to that government that the information is to be kept confidential. 25

(5) The consent mentioned in *subsection (4)* is that of the state which supplied the information.

(6) The Minister, in giving notice under *subsection (1)*, shall inform the applicant whether a review is available under *section 18* and, where it is, how it may be sought. 30

Revocation of visas.

17.—(1) The Minister may revoke a visa if he or she considers its revocation to be justified.

(2) The following are examples of reasons why the Minister may consider a revocation justified: that in the opinion of the Minister—

(a) the visa was granted on the basis of information (including information about the purpose of entry or presence) which was false, incomplete or otherwise misleading; 35

(b) the presence in the State or arrival at its frontiers of the holder of the visa would not be conducive to the public good; 40

(c) circumstances existing at the time when the visa was granted have changed and the nature of the change is such that, had the new circumstances existed at that time, the visa would not have been granted;

(d) the visa was granted in error. 45

- (3) (a) Where the Minister revokes a visa, he or she shall take all reasonable steps to inform the holder as soon as possible.
- 5 (b) Within 10 working days of being informed that his or her visa has been revoked, the holder of the revoked visa may apply to the Minister for the reason or reasons for the revocation.
- 10 (c) On receipt of an application under *paragraph (b)* the Minister shall cause notice of the reason or reasons referred to in that paragraph to be given to the holder as soon as possible.
- (d) the requirement in *paragraph (c)* shall, without prejudice to other means of meeting it, be met by the placing of the notice on the internet in a way that—
- 15 (i) makes it accessible only to the visa applicant or his or her representative, or
- (ii) ensures that only the visa applicant or his or her representative can ascertain (whether or not by means of other information separately supplied) the identity of the visa applicant to whom the notice relates.
- 20 (e) *Subsections (3) to (5) of section 16* shall apply in relation to the disclosure of information under this section as they apply to the disclosure of information under that section.
- (4) This section does not apply—
- (a) to a visa, or
- 25 (b) in respect of the holder of a visa,
- if the holder of the visa is also the holder of a renewable residence permit.

18.—(1) On an application which complies with *subsection (2)* (a “visa review application”), the Minister shall arrange for the review of the refusal of a visa application (a “visa refusal”) or the revocation of a visa (a “visa revocation”).

- (2) A visa review application complies with this subsection if—
- (a) it is made by or on behalf of the person whose application for a visa was refused or whose visa was revoked,
- 35 (b) it is made within 21 days of the notification referred to in *section 16(1)*, or as the case may be, *section 17(3)(c)*,
- (c) it is made to the Minister,
- (d) where a form of visa review application has been prescribed, it is in the prescribed form,
- 40 (e) where a fee for a visa review under this section has been prescribed, it is accompanied by the prescribed fee, and

- (f) it includes or is accompanied by a statement of the grounds upon which the review is sought and such information and documentary evidence as the applicant proposes to use in support of the application.

(3) *Subsection (1)* does not extend to— 5

- (a) a visa refusal or visa revocation to which *section 15(9)(a)* or (b) or, as the case may be, *section 17(2)(a)* applies, or
- (b) a visa refusal or visa revocation decided by the Minister personally.

(4) A review under this section shall be carried out by an officer of the Minister (the “visa review officer”)— 10

- (a) other than the person who made the decision, and
- (b) of a grade senior to that person.

(5) *Subsection (4)(b)* does not apply if its application would be impracticable. 15

(6) The visa review officer may, before reaching a decision on a review under this section, make or cause to be made such inquiries as he or she considers appropriate.

(7) *Subsection (6)* implies no obligation to make any inquiry, but this subsection is without prejudice to any obligation deriving from an immigration policy statement. 20

(8) There is included in the matters to which the visa review officer is to have regard when reaching a decision on a review under this section any information the officer considers relevant even though not provided by the applicant in, or in connection with, the application for the review. 25

(9) The information referred to in *subsection (8)* extends to any information available to the Government or any other information holder in the State; and nothing in this Act prevents the Government or the other information holder from making that information available to the visa review officer for the purposes of that provision. 30

Determination of
visa review
application.

19.—(1) A visa review officer shall, on carrying out a review under *section 18*, either—

- (a) confirm the visa refusal or visa revocation, or
- (b) set it aside. 35

(2) A confirmation under *subsection (1)(a)* may be on the same grounds as the visa refusal or visa revocation or on other grounds (or partly on the same ground, and partly on other grounds) and, where it is (or is partly) on other grounds, those other grounds shall be substituted for or added to the grounds of the visa refusal or visa revocation. 40

(3) Where under *subsection (1)(a)*, the visa review officer confirms a visa refusal or visa revocation, the Minister shall give notice to the applicant of the confirmation and the reasons for it.

(4) The requirement in *subsection (3)* shall, without prejudice to other means of meeting it, be met by the placing of the notice on the internet in a way that—

(a) makes it accessible only to the visa applicant or his or her representative, or

(b) ensures that only the visa applicant or his or her representative can ascertain (whether or not by means of other information separately supplied) the identity of the visa applicant to whom the notice relates.

(5) *Subsections (3) to (5) of section 16* apply in relation to the disclosure or non-disclosure of information under *subsection (3)* of this section as they apply to the disclosure and non-disclosure of information under that section.

(6) Where under *subsection (1)(b)*, the review officer sets aside a visa refusal or visa revocation, the Minister shall cause a visa to be affixed to the passport or other travel document of the applicant.

(7) This section is without prejudice to the Government's inherent power to grant or refuse a visa application or to revoke a visa.

20.—(1) The Minister may make arrangements with the Minister for Foreign Affairs under which the Minister's functions in relation to the consideration and determination of visa applications and reviews under *section 18* (or some of them) may be carried out also by the Minister for Foreign Affairs.

Delegation of visa functions.

(2) Where, under those arrangements, the Minister for Foreign Affairs is carrying out these functions, references to the Minister in these sections shall be read, so far as they relate to those functions, as references to the Minister for Foreign Affairs.

(3) The Minister may, by order, provide that other persons may, under prescribed circumstances, also carry out such of the Minister's functions in relation to the consideration and determination of visa applications as are prescribed.

(4) Those circumstances may be prescribed by reference to—

(a) any factor or factors set out in *section 14(11)*,

(b) in the case of visa review applications, the reasons for refusing them, or

(c) any combination of any such factor, factors and reasons.

PART 4

ENTRY INTO STATE

21.—(1) A person (other than an Irish citizen) coming from outside the State by air or sea shall not, without the consent of the Minister, enter or attempt to enter the State elsewhere than at an approved port.

Entry into State to be by way of approved ports.

(2) A person who contravenes *subsection (1)* commits an offence.

- (3) (a) The Minister may give directions regarding the means of seeking consent for the purposes of *subsection (1)*.
- (b) Directions under *paragraph (a)* may—
- (i) require that consent be sought by way of a written application, 5
 - (ii) require that an application for consent shall include information in such form and regarding such matters as the Minister may specify in the directions,
 - (iii) require the provision of such undertakings as may be so specified, 10
 - (iv) relate to an individual application or to applications generally or to applications of such class or classes as may be so specified, or
 - (v) require that an application for consent shall be accompanied by the prescribed fee. 15
- (c) The Minister may direct that the information and undertaking referred to in *paragraph (b)* be provided and the fee there referred to be paid before the arrival of the applicant concerned in the State.
- (d) Consent for the purposes of *subsection (1)* may be given 20 subject to such conditions as the Minister may direct, including conditions requiring the foreign national to whom the consent is given to—
- (i) present himself or herself to an immigration officer on arrival in the State, and 25
 - (ii) provide such information to the immigration officer as the immigration officer may require for the purposes of this Act.
- (e) Consent for the purposes of *subsection (1)* may be given in respect of one or more persons. 30
- (f) The Minister may prescribe the fees referred to in *paragraph (b)(v)* and different fees may be prescribed for different classes of applications.
- (g) Consent for the purposes of *subsection (1)* may provide that *section 22(1)* shall not apply to the person to whom 35 the consent is given.
- (4) *Subsection (1)* shall not apply to—
- (a) an officer or member of the crew of an aircraft or vessel,
 - (b) a person who enters or attempts to enter the State elsewhere than at an approved port as a result of an emergency affecting an aircraft or vessel, a medical or other emergency, or circumstances beyond the person's control, 40
 - (c) a national of the United Kingdom of Great Britain and Northern Ireland who has travelled directly from Great Britain, Northern Ireland, the Channel Islands or the Isle 45 of Man.

(5) A person who commits an offence under *subsection (2)* shall be regarded as having been refused permission to enter and be present in the State.

5 (6) An approved port is a place that is prescribed as an approved port.

(7) The Minister may, by order, designate a place as an approved port and the designation of a place as an approved port may be subject to such conditions as set out in the order.

10 (8) The conditions referred to in *subsection (7)* may include conditions—

15 (a) obliging the person having the management and control of the approved port to provide, free of charge, such accommodation and other facilities as the Minister may require for the purpose of carrying out immigration functions at the approved port,

(b) obliging that person to maintain that accommodation and other facilities so that they are compatible with the efficient carrying on of those functions.

20 (9) Before arriving at a condition under *subsection (7)*, the Minister shall consult the person referred to in *subsection (8)*.

(10) A person who operates a port or other place that is not an approved port and—

(a) represents it to be an approved port,

25 (b) knowingly facilitates the entry into the State of another person at that port or other place so that the other person thereby commits an offence under *subsection (2)*, or

(c) knowing that another person has committed an offence under that subsection at that port or other place, fails to report the circumstances to an immigration officer,

30 commits an offence.

22.—(1) A person (other than an Irish citizen) coming from outside the State, on arrival at the frontiers of the State, shall as soon as practicable—

Arrival of foreign national: presentation and examination.

35 (a) present himself or herself to an immigration officer or an immigration registration officer, and

(b) apply for permission to enter and be present in the State.

(2) A person who contravenes *subsection (1)* commits an offence.

(3) *Subsection (1)* shall not apply to—

40 (a) a national of the United Kingdom of Great Britain and Northern Ireland who has travelled directly from Great Britain, Northern Ireland, the Channel Islands or the Isle of Man,

- (b) a person to whom the Minister has given consent for the purposes of *subsection (1)* of *section 21* with a provision under *subsection (3)(g)* of that section.
- (4) A person coming from outside the State who arrives at any place in the State shall be taken to have arrived at a frontier of the State. 5
- (5) For the purposes of *subsection (1)*, a person shall be taken to have presented himself or herself if he or she—
- (a) reports in person to an immigration officer or an immigration registration officer, 10
 - (b) produces to that officer a valid passport or other travel document—
 - (i) issued by or on behalf of an authority recognised by the Government, and
 - (ii) establishing the identity and nationality of the person, and 15
 - (c) provides to that officer such information as the officer requires for the purposes of carrying out his or her functions in relation to the person.
- (6) An immigration officer or an immigration registration officer may exercise the following powers in relation to a person (other than an Irish citizen) arriving at a frontier of the State whether or not the person has presented himself or herself as mentioned in *subsections (1)* and *(5)*: 20
- (a) to examine the person for the purpose of determining whether he or she should be given permission to enter and be present in the State; and 25
 - (b) without prejudice to that generality—
 - (i) to conduct that examination so as to establish or seek to establish any facts relevant to the determination of whether the person should be given permission to enter and be present in the State, 30
 - (ii) to require the person to state whether he or she has with him or her any documents or articles which are relevant to the carrying out of immigration functions, 35
 - (iii) to require the person to produce any such documents or articles to the officer,
 - (iv) to search the person and anything he or she has with him or her for any such documents or articles,
 - (v) to examine, and to detain for the purposes of examination, any such documents or articles, 40
 - (vi) to require the person to provide biometric data for examination and comparison then or for retention for later examination and comparison or both,

- (vii) where the officer has reasonable cause to believe that the person has any of the diseases, illnesses or conditions set out in *subsection (11)(b)*, to require the person to undergo a medical examination by a registered medical practitioner.

5

(7) The facts referred to in *subsection (6)(b)(i)* include—

(a) the identity, nationality and country of origin of the person,

10

(b) the means of transport and route by which he or she travelled to the State,

(c) facts relevant to his or her application to enter and be present in the State,

(d) the purpose of his or her entry into and presence in the State,

15

(e) the intended duration of that presence,

(f) his or her intended place of residence in the State,

(g) any personal relationship between him or her and any person in the State,

20

(h) any personal relationship between him or her and any person who has travelled, or ostensibly travelled, to the State with him or her,

(i) his or her income, earning capacity and other financial or economic resources,

25

(j) the financial needs and responsibilities which he or she has, will have or is likely to have,

(k) whether he or she is likely to comply with any proposed conditions of permission to enter into and be present in the State,

(l) any entitlements he or she has to enter the State—

30

(i) under the treaties governing the European Communities within the meaning of the European Communities Acts 1972 to 2006,

(ii) as a national of a member state of the EEA or of the Swiss Confederation, or

35

(iii) as a dependent relative of such a national.

(8) (a) Where, in the course of an examination under this section, a foreign national indicates that he or she has made or wishes to make an application for protection in the State, the immigration officer or immigration registration officer shall, where necessary and possible in a language that the person understands, inform him or her of the procedures for making such an application and that he or she is entitled to consult a solicitor and the High Commissioner.

40

(b) A foreign national who indicates that he or she has made or wishes to make an application for protection in the State shall, subject to *section 25(1)(g)(ii)*, be given permission to enter and be present in the State.

(c) Notwithstanding *paragraph (b)*, the provisions of *subsections (5) to (7) and (9)* shall apply to a foreign national who, under that paragraph, is given permission to enter and be present in the State. 5

(9) Where a foreign national has given an indication referred to in *subsection (8)*, an examination under this section shall, where necessary and possible, be conducted with the assistance of an interpreter. 10

(10) A record of an examination to which *subsection (9)* refers shall be kept by the officer or member conducting it and a copy of the record shall be furnished to the foreign national and to the Minister. 15

(11) (a) In this section “document” includes—

(i) any written matter,

(ii) any photograph,

(iii) any currency notes or counterfeit currency notes, 20

(iv) any information in non-legible form that is capable of being converted into legible form,

(v) any audio or video recording.

(b) The diseases, illnesses and conditions referred to in *subsection (6)(b)(vii)* are— 25

(i) diseases subject to the International Health Regulations for the time being adopted by the World Health Assembly of the World Health Organisation, and

(ii) other infectious or contagious parasitic diseases in respect of which special provisions are in operation to prevent the spread of such diseases from abroad. 30

Arrival of person
under 18.

23.—(1) Where (whether or not in the performance of his or her functions under *section 22*) it appears to an immigration officer or an immigration registration officer that a foreign national under the age of 18 years who has arrived at a frontier of the State— 35

(a) is not accompanied by a person of or over that age who is taking responsibility for the foreign national, the officer shall, as soon as practicable, notify the Health Service Executive of that fact, 40

(b) is accompanied by such a person, the officer may require that person to verify that he or she is taking that responsibility.

(2) If, in consequence of a requirement imposed under *subsection (1)(b)*, it no longer appears to the officer that the person there 45

referred to is taking responsibility for the foreign national, the officer shall notify the Health Service Executive of that fact.

5 (3) *Subsections (1) and (2)* apply also in relation to a foreign national under the age of 18 years who, having arrived at a frontier of the State, has entered it but in respect of whom the Health Service Executive was not notified under either of those subsections.

10 (4) It shall be presumed, until the contrary is shown, that a foreign national in respect of whom the Health Service Executive has been notified under *subsection (1) or (2)* is a child in need of care and protection, and the Child Care Act 1991 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply accordingly.

15 (5) *Subsection (4)* is without prejudice to the application to any particular foreign national under the age of 18 years of any enactment other than those mentioned in that subsection.

20 (6) Where it appears to the Health Service Executive, on the basis of information available to it, that an application for protection should be made by or on behalf of a foreign national in respect of whom it has been notified under *subsection (1), (2) or (3), paragraph (c) of section 58(4)* shall apply.

(7) If and for so long as it appears to an immigration officer or immigration registration officer that a foreign national is 18 years of age or over, the provisions of this Part shall apply to the foreign national as if he or she were 18 years of age or over.

25 **24.—**(1) The power of the Government to permit or refuse to permit a person to enter the State may be exercised by an immigration officer. Permission to enter the State.

(2) An immigration officer shall permit a foreign national who has made an application for protection to enter the State.

30 (3) *Subsection (2)* does not extend to a person who is subject to an exclusion order under *section 96*.

(4) A person who is subject to an exclusion order under *section 96* is not entitled to make an application for protection without the consent of the Minister.

35 (5) Where an immigration officer, under *subsection (1)*, permits a foreign national who is not the holder of a residence permit to enter the State, the officer shall issue an entry permit to the foreign national.

40 (6) Where an immigration officer, under *subsection (2)*, permits a foreign national to enter the State, the officer shall—

(a) if it is practicable to do so, issue a protection temporary residence permit to the foreign national,

(b) if it is not practicable to issue that permit to the foreign national, comply with *subsection (7)*.

45 (7) An immigration officer complies with this subsection by—

(a) detaining the foreign national referred to in *subsection (6)(b)*, or

- (b) requiring him or her to remain in a place specified by the officer,

so as to facilitate the issuing by the Minister to the foreign national of a protection temporary residence permit.

(8) In exercising the power referred to in *subsection (1)* in relation to a foreign national, an immigration officer shall have regard to all the circumstances relating to the foreign national so far as known to the officer, including—

- (a) those ascertained under *section 22*, and

- (b) any information relevant to those circumstances supplied to the officer by the Minister and obtained by the Minister from the government of another state.

Grounds for refusal to permit entry into State.

25.—(1) An immigration officer may exercise the power referred to in *section 24(1)* to refuse to permit a foreign national to enter and be present in the State if and only if the officer is satisfied—

- (a) that the foreign national is not and is not likely to be in a position to support himself or herself and any accompanying dependants without recourse to public funds,
- (b) that he or she intends to take up employment in the State, but is not in possession of a valid employment permit within the meaning of the Employment Permits Acts 2003 and 2006, and is not otherwise exempt from the requirement, under those Acts, to possess such a permit,
- (c) that he or she suffers from one of the diseases, illnesses or conditions set out in *section 22(11)(b)* or has refused to undergo a medical examination required under that section,
- (d) that he or she has failed to co-operate with an immigration officer or immigration registration officer in an examination conducted under *section 22*,
- (e) that he or she has been convicted (whether in the State or elsewhere) of an offence punishable under the law of the place of conviction by imprisonment for a period of one year or by a more severe penalty,
- (f) that he or she, not being a visa-exempt foreign national under *section 13*, does not have an Irish visa,
- (g) that he or she is the subject of—
 - (i) a removal from the State within the meaning of *section 51*, the period referred to in *section 51(9)* not having expired,
 - (ii) an exclusion order within the meaning of *section 96*,
 - (iii) a removal order issued by a Member State,
 - (iv) a determination by the Minister that it is conducive to the public good that the foreign national remain outside the State, or

(v) a determination by the Minister made under *section 87* that the applicant should be transferred,

(h) that the foreign national is not in possession of a valid passport or other travel document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality,

(i) that he or she—

(i) intends to travel (whether immediately or not) to Great Britain, Northern Ireland, the Channel Islands or the Isle of Man, and

(ii) would not qualify for admission to that place if he or she arrived there from a place other than the State,

(j) that he or she, having arrived in the State in the course of employment as an officer or member of a crew of an aircraft or vessel, has remained in the State without the permission of an immigration officer after the departure of the aircraft or vessel in which he or she arrived,

(k) that his or her entry into, or presence in, the State could pose a threat to public security or be contrary to public policy (“*ordre public*”),

(l) that there is reason to believe that he or she intends to enter the State for purposes other than those expressed by him or her,

(m) that he or she has failed to discharge a liability for costs under *section 55*,

(n) that permitting him or her to enter and be present in the State would be contrary to a relevant immigration policy statement.

(2) An immigration officer who under *subsection (1)* refuses to permit a foreign national to enter and be present in the State shall as soon as practicable inform the foreign national in writing of the grounds for the refusal.

26.—(1) Where a vehicle arrives at the frontiers of the State from a place other than Great Britain, Northern Ireland, the Channel Islands or the Isle of Man, the carrier shall ensure— Duties of carriers.

(a) that all persons (other than Irish citizens) on board the vehicle who are seeking to enter the State or to pass through a port in the State in order to travel to another state—

(i) do so at an approved port or elsewhere with the consent of the Minister under *section 21*, and

(ii) disembark there in compliance with any directions given by an immigration officer,

(b) that all persons on board the vehicle who are seeking to enter the State present themselves to an immigration officer, in a manner specified by the immigration officer, for examination, and

- (c) that each person (other than an Irish citizen) on board the vehicle who is seeking to enter the State or to pass through a port in the State in order to travel to another state has with him or her a valid passport or other equivalent document which establishes his or her identity and nationality and, if required by law, a valid Irish visa or, as the case may be, a valid Irish transit visa. 5
- (2) A person who contravenes *subsection (1)* commits an offence and, where a contravention relates to more than one person on board the vehicle, the contravention constitutes, as respects each person, a separate offence. 10
- (3) Subject to *subsection (4)*, where a vehicle arrives in the State from a place outside the State, the carrier shall, if so required by an immigration officer—
- (a) provide him or her with a list specifying the name and nationality of each person carried on board the vehicle and in such form, and containing such other information relating to the identity of the person, as may be prescribed, 15
- (b) provide him or her with details of the members of the crew of the vehicle, 20
- (c) provide him or her with copies of such documents, including passports or other travel documents relating to any person carried on board the vehicle, as may be prescribed, 25
- (d) provide him or her with such other information as may be prescribed,
- (e) detain on board any foreign national coming in the vehicle from a place outside the State until the foreign national is examined by an immigration officer, and 30
- (f) detain on board any foreign national referred to in *paragraph (e)*, whether officer, member of crew or passenger, whose application for permission to enter the State has been refused by an immigration officer.
- (4) If so required by an immigration officer, the carrier shall provide the list, details, copies and information set out in *subsection (3)(a) to (d)* before the departure of the vehicle from the port of proximate departure to Ireland. 35
- (5) A person who contravenes *subsection (3)* or *(4)* commits an offence. 40
- (6) It is a defence for a person charged with an offence under a provision of this section to show that he or she took all such steps as were reasonably open to him or her to ensure compliance with the provision.
- (7) It is a defence for a person charged with an offence consisting of a contravention of *subsection (1)(c)* to show— 45
- (a) that the person referred to in *subsection (1)(c)* had with him or her the passport or other document before embarking on the vehicle, or

(b) that the person charged with the offence did not know and had no reasonable grounds for suspecting that the passport or other document was invalid.

5 (8) A person guilty of an offence under this section is liable on summary conviction to a fine of €3,000.

(9) The Minister may from time to time draw up and publish guidelines concerning the steps that might be taken by carriers to facilitate compliance by them with the provisions of this section.

10 (10) In a prosecution for an offence under this section, it shall be presumed, until the contrary is shown by the accused person, that a payment pursuant to a notice under *section 27* accompanied by the notice has not been made.

(11) A person detained under *subsection (3)(e)* or *(f)* is in lawful custody.

15 **27.—**(1) Where an immigration officer has reasonable grounds for believing that an offence under *section 26* is being or has been committed by a person, he or she shall serve, or cause to be served, personally or by post, on the person a notice in the prescribed form stating—

Fixed penalties for offences under *section 26*.

20 (a) that the person is alleged to have committed the offence,

(b) that the person may, during the period of 28 days beginning on the date of the notice, make to a member of the Garda Síochána or an authorised person at a Garda Síochána station or at another place specified in the notice a payment of €1,500 accompanied by the notice,

25 (c) that a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is being made during that period, no prosecution in respect of the alleged offence will be instituted.

30 (2) Where a notice is served under *subsection (1)*—

(a) a person to whom the notice applies may, during the period specified in the notice, make to a member of the Garda Síochána or an authorised person at a Garda Síochána station or at another place specified in the notice the payment specified in the notice, accompanied by the notice,

35 (b) the member or the authorised person may receive the payment and issue a receipt for it and the money so received shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Finance directs and no payment so received shall in any circumstances be recoverable by the person who made it,

40 (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In this section, “authorised person” means a person appointed by the Minister to be an authorised person for the purposes of this section.

PART 5

ENTRY AND RESIDENCE PERMITS

5

Residence permits. **28.**—(1) A foreign national may be permitted to be present and reside in the State by the issue to him or her by the Minister of a residence permit.

(2) The Minister may issue different residence permits in such different circumstances and by reference to such different classes of case as may be set out in an immigration policy statement. 10

(3) The Minister may attach conditions to a residence permit either at the time of its issue or later and may, at any time, modify those conditions; and different conditions may be attached to different residence permits. 15

(4) A residence permit issued under this section shall contain:

(a) the name, date of birth and nationality of the person to whom it is issued (the “holder”);

(b) a photograph of the holder;

(c) a statement of the period for which it is valid; 20

(d) such biometric information relating to the holder as may be prescribed;

(e) a statement of the class of residence permit to which it belongs;

(f) such other information as may be prescribed. 25

(5) The permission given to a foreign national under this section is subject to—

(a) the provisions of this Act and regulations made under it and immigration policy statements,

(b) such conditions as are attached to the residence permit. 30

(6) The conditions referred to in *subsections (3) and (5)* may include conditions relating to—

(a) the duration of the permission,

(b) its renewability,

(c) the entitlement of the holder to access to publicly funded services, 35

(d) the entitlement of the holder to be employed or to engage in other economic activity in the State, and

(e) the entitlement of the holder to family reunification.

(7) A permission under this section does not, of itself, entitle the holder—

(a) to enter (or re-enter) the State, or

(b) to present himself or herself at a frontier of the State and seek permission to enter it.

(8) A residence permit is not a travel document.

(9) A residence permit, although issued, remains the property of the Minister.

29.—(1) An entry permit issued under *section 24(5)* shall— Entry permits.

(a) narrate that the person to whom it is issued (the “holder”) has the permission to be present in the State referred to in *section 24(5)* and whether the holder is eligible to apply for a residence permit,

(b) be endorsed on the holder’s passport or equivalent travel document, and

(c) otherwise contain such information and be in such form as may be prescribed.

(2) Where a foreign national’s permission to enter the State under *section 24* is subject to conditions, those conditions shall be set out or referred to in the entry permit issued to the foreign national.

(3) The duration of an entry permit shall not exceed 90 days.

(4) The conditions referred to in *subsection (2)* shall be in accordance with anything stated in an immigration policy statement about those conditions.

30.—(1) Where a residence permit is expressed to be non-renewable— Renewal of residence permit.

(a) the Minister is not obliged to consider any application for its renewal, and

(b) no appeal lies from his or her refusal to consider the application or to renew the permit.

(2) Where an entry permit contains no statement that the holder is eligible to apply for a residence permit—

(a) the Minister is not obliged to consider the application, and

(b) no appeal lies from his or her refusal to consider the application or refusal of the application.

(3) *Subsections (5) to (9)* apply to entry permits and residence permits other than those to which *subsections (1) and (2)* relate.

(4) An application for a residence permit by the holder of an entry permit which contains a statement that the holder is eligible to apply for a residence permit shall be treated, for the purpose of *subsections (5) to (9)* as an application for the renewal of a residence

permit, and the relevant entry permit shall be treated for those purposes as a residence permit.

(5) If an application to renew a residence permit is made not later than 21 days before it expires, and otherwise complies with *subsection (8)*, the Minister shall, subject to *section 40(1)*, renew it. 5

(6) The Minister is not obliged to consider an application to renew a residence permit made otherwise than in accordance with *subsection (5)* but shall have regard to any reason given or known to him or her why the application was not made in accordance with that subsection. 10

(7) If the holder of a residence permit has not, before the expiry of the period of 3 months after the expiry of the permit, applied for its renewal—

(a) nothing in *sections 40 to 42* shall apply in relation to the permit or its holder, 15

(b) the permit shall be treated as not renewable, and

(c) the holder of the permit shall have, as at the expiry of that period, no permission to be in the State.

(8) An application for the renewal of a residence permit complies with this subsection if— 20

(a) it is made by the applicant in person to the immigration registration officer for the place where the applicant usually lives when in the State.

(b) it is accompanied by—

(i) the applicant's current residence permit (or, if the applicant's residence permit has expired, that permit, or, if more than one have expired, the last of them to have expired), 25

(ii) a valid passport or other equivalent travel document, issued by or on behalf of an authority recognised by the Government, which establishes the applicant's identity and nationality, 30

(iii) sufficient evidence that the applicant continues to satisfy the stated purpose of his or her residence in the State and any conditions to which the expiring (or expired) permit was subject, and 35

(iv) such further information as the officer may require to maintain the accuracy of the Register of Foreign Nationals.

(9) A residence permit renewed under this section shall be subject to such conditions, and shall be valid for such period, as the Minister decides. 40

Replacement of residence permit.

31.—(1) The Minister may, on an application which complies with *subsection (2)*, replace a residence permit.

(2) An application complies with this subsection if— 45

- (a) it is made by the applicant in person to the immigration registration officer for the place where the applicant is normally resident,
- 5 (b) it is made before the expiry of the residence permit to be replaced,
- (c) that permit has been lost or destroyed or has been damaged or otherwise affected so as to be illegible,
- (d) it is accompanied by the prescribed fee,
- 10 (e) in the case of a damaged permit, it is accompanied by the damaged permit,
- (f) it is accompanied by a valid passport or equivalent travel document, issued by or on behalf of an authority recognised by the Government, together with such further information as the immigration registration officer requires in order to establish the applicant's identity and nationality,
- 15 (g) in the case of a permit which has been lost or destroyed, it is accompanied by sufficient evidence to establish that the permit has been lost or destroyed,
- 20 (h) it is accompanied by such further information as the officer may require to maintain the accuracy of the Register of Foreign Nationals.

(3) A replacement residence permit issued under *subsection (1)* is valid for the unexpired period of the permit which it replaces.

25 **32.—(1)** The Minister may, on an application which complies with *subsection (2)*, modify the conditions to which the applicant's residence permit is subject. Modification of conditions of residence permit.

(2) An application complies with this subsection if—

- 30 (a) it is made by the applicant in person to the immigration registration officer for the place where the applicant is normally resident,
- (b) it is accompanied by—
- (i) the prescribed fee,
- (ii) the residence permit,
- 35 (iii) a valid passport or equivalent travel document issued by or on behalf of an authority recognised by the Government, which establishes the applicant's identity and nationality,
- 40 (iv) a sufficient explanation of the circumstances giving rise to the application,
- (v) sufficient information to enable the Minister to determine whether the modification applied for would comply with any relevant immigration policy statement,

- (vi) such information as may be required by the officer to enable him or her to consider the matters set out in *section 33* and to maintain the accuracy of the Register of Foreign Nationals.

(3) A residence permit which is subject to conditions which have been modified under this section shall be valid for such period as the Minister determines when modifying the conditions. 5

(4) If, while an application under *subsection (1)* is being considered, the residence permit expires, nothing in or done under *section 30* or *31* shall be taken as affecting the decision to be taken under this section. 10

Residence permit:
factors to be
considered.

33.—When determining an application for the issue or renewal of a residence permit, other than a protection residence permit, the Minister shall have regard to all of the circumstances of the foreign national concerned known to the Minister or represented to the Minister by him or her and, in particular, but without prejudice to the generality of the foregoing, to the following matters: 15

- (a) relevant immigration policy statements,
- (b) the stated purpose of the proposed entry to or stay in the State, 20
- (c) the intended duration of the stay in the State,
- (d) any personal relationships the foreign national has with persons in the State and the nationality and immigration status of such persons,
- (e) his or her income, earning capacity and other financial resources, 25
- (f) the financial needs, obligations and responsibilities which he or she has or is likely to have in the foreseeable future,
- (g) whether he or she is likely to comply with any proposed conditions, including conditions as to duration of stay and engagement in employment, business or profession in the State, 30
- (h) any entitlements of the foreign national to be present in the State as a national of a Member State of the EEA or of the Swiss Confederation, or as a dependent relative of such a national, 35
- (i) any conduct of the applicant or any member of his or her family in connection with immigration (whether or not to the State),
- (j) any criminal conduct (whether or not in the State) of the applicant or any member of his or her family, or 40
- (k) whether the applicant's presence in the State would be a risk to public security, public health or public policy ("*ordre public*").

Long-term
residence permit.

34.—(1) (a) Subject to *subsection (5)*, the Minister may issue a long-term residence permit to a foreign national who meets 45

the standard eligibility requirements set out in *subsection (2)* or the eligibility requirements set out in a relevant immigration policy statement where the latter are more favourable.

- 5 (b) A long-term residence permit issued under *paragraph (a)* shall, subject to *sections 40* and *96*, be valid for a period of 5 years and shall be renewable on conditions.
- (c) The validity of the long-term residence permit issued under *paragraph (a)* shall not be affected by absence from the State of the holder for a continuous period of less than one year.
- 10
- (2) (a) The standard eligibility requirements referred to in *subsection (1)* are:
- 15 (i) subject to *paragraph (b)*, that the person has been lawfully present in the State for periods totalling at least 5 out of the 6 years prior to the time of application for a long-term residence permit;
- (ii) that the person is of good character;
- 20 (iii) such other requirements as may be prescribed including but not limited to requirements that the person—
- (I) is fully in compliance with his or her obligations in relation to the payment or remittance of any taxes, interest or penalties required to be paid or remitted by law, and the delivery of any returns required to be delivered by law,
- 25 (II) can demonstrate a reasonable competence for communicating in the Irish or English language,
- (III) has satisfied the Minister that he or she made reasonable efforts to integrate into Irish society, and
- 30 (IV) has, during his or her presence in the State, been supporting himself or herself and any dependants without recourse to such publicly funded services as are prescribed.
- 35 (b) A period of residence in the State shall not be reckonable for the purposes of *paragraph (a)(i)* if—
- (i) it is in accordance with a residence permit or other permission given to a foreign national for the purpose of enabling him or her to engage in a course of education or study in the State,
- 40 (ii) it consists of a period during which the foreign national concerned was the holder of a protection temporary residence permit under *section 35*,
- (iii) it consists of a period during which the foreign national concerned was entitled in the State to privileges and immunities under the Diplomatic Relations and Immunities Acts 1967 to 2006, or
- 45

- (iv) the foreign national concerned was granted permission to enter the State solely on temporary grounds, such as for the purpose of cross-border provision of services, or where the relevant residence permit was non-renewable or otherwise formally limited. 5
- (3) (a) Where a long-term residence permit is issued to a person who meets the standard eligibility requirements, the following provisions shall apply to that person for so long as the residence permit remains in force: 10
 - (i) the person shall be entitled, subject to *section 40(1)* and (2)—
 - (I) to reside in the State, and
 - (II) subject to *paragraph (b)*, to the same rights of travel in or to or from the State as those to which Irish citizens are entitled, 15
 - (ii) the person shall be entitled to seek and enter employment, to engage in economic activity and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen, 20
 - (iii) the person and his or her dependants shall be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled. 25
- (b) *Paragraph (a)(i)(II)* shall not exempt the person, when travelling in or to or from the State, from a requirement to provide an immigration officer with any information which that officer may reasonably require for the purposes of his or her functions. 30
- (4) (a) The Minister may, under this subsection, issue a long-term residence permit to a person who does not meet the requirement specified in *subsection (2)(a)(i)* and a permit so issued is, in this Act, referred to as a “probationary long-term residence permit”. 35
- (b) The following conditions shall apply for 2 years following the issue of a probationary long-term residence permit, or such lesser period as the Minister may specify:
 - (i) the person shall be entitled, subject to *section 40*— 40
 - (I) to reside in the State, and
 - (II) to the same rights of travel in or to or from the State as those to which Irish citizens are entitled;
 - (ii) the person and his or her dependants shall be entitled to seek and enter employment and engage in economic activity in the State in the like manner and to the like extent in all respects as an Irish citizen; 45

- 5 (iii) subject to *subsection (5)*, the person and his or her dependants shall not be entitled to receive services provided wholly or partly out of public funds or social welfare benefits except to such extent as may be set out in a relevant immigration policy statement;
- 10 (iv) the person and his or her dependants shall have access to education and training in the State to such extent as may be set out in a relevant immigration policy statement.
- 15 (c) Following the expiry of the period referred to in *paragraph (b)*, the provisions of *paragraphs (a) to (c) of subsection (1)* shall apply to a person referred to in *paragraph (a)* unless the Minister, on being satisfied that the person does not meet the standard eligibility requirement as to good character referred to in *subsection (2)(a)(ii)*, otherwise directs.
- (5) *Subsection (4)(b)(iii)* does not apply in relation to the provision of anything mentioned in *section 8(2)*.
- 20 **35.—**(1) (a) The Minister shall issue or cause to be issued to a foreign national to whom permission has been given to enter or remain present in the State for the purpose of an application for protection a protection temporary residence permit. Protection temporary residence permit.
- 25 (b) A protection temporary residence permit shall contain:
- (i) the name, date of birth and nationality of the holder, so far as they are known or can be established;
- (ii) a photograph of the holder;
- 30 (iii) such biometric information relating to the holder as may be prescribed; and
- (iv) such other information as may be prescribed.
- (2) A protection temporary residence permit shall be valid until whichever of the following first occurs:
- 35 (a) the date on which the holder's protection application is transferred under *section 87*;
- (b) the date on which the holder's application or appeal is withdrawn or deemed to be withdrawn under *section 65* or *section 81*, as the case may be;
- 40 (c) where the Minister has refused to issue a residence permit to the applicant on foot of the application, the later of the following two dates:
- (i) where the applicant has appealed under *section 79* against the Minister's decision to refuse, the date on which notice is sent that the appeal has been determined;
- 45

(ii) where the applicant has not so appealed, the latest date for making such appeal specified in the notice of the Minister's decision to refuse;

(d) where the Minister has decided to issue a residence permit to the applicant (whether as a refugee or as a person eligible for subsidiary protection or on other grounds), the date on which that residence permit is issued. 5

(3) The conditions of a protection temporary residence permit are as follows:

(a) the holder shall not leave or attempt to leave the State without the consent of the Minister; 10

(b) the holder shall not seek or enter employment or engage in economic activity during the period before the final determination of his or her application for protection;

(c) the holder shall inform the Minister of his or her address and of any change of address as soon as possible; 15

(d) the holder shall comply with such requirements as may be notified to him under *subsection (4)*.

(4) An immigration officer or an authorised person may, by notice in writing, require the holder of a protection temporary residence permit to comply with either or both of the following conditions: 20

(a) that he or she reside or remain in a particular district or place in the State; or

(b) that he or she report at specified intervals to an immigration officer or person or persons authorised by the Minister or member of the Garda Síochána specified in the notice or to the immigration registration officer of the immigration registration district in which he or she is resident; 25

and the holder shall comply with the requirement. 30

(5) Upon application to the Minister by the holder of a protection residence permit who is subject to a condition under *subsection (4)*, the Minister may, as he or she thinks fit, direct the immigration officer or the authorised person who imposed the condition to withdraw the condition or to amend it in a specified manner. 35

(6) A holder of a protection temporary residence permit who contravenes *subsection (3)* or *(4)* shall be guilty of an offence.

(7) A protection temporary residence permit shall remain the property of the Minister.

(8) A protection temporary residence permit is not an identity document. 40

Arrest and
detention of
protection
applicants in certain
circumstances.

36.—(1) Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that a protection applicant—

(a) poses a threat to public security or public order in the State, 45

(b) has committed a serious non-political crime outside the State,

(c) has not made reasonable efforts to establish his or her true identity,

5 (d) intends to avoid removal from the State in the event of his or her application being transferred under *section 87*,

(e) intends to leave the State and without lawful authority enter another state,

10 (f) without reasonable cause has destroyed his or her identity or travel documents or is or has been in possession of forged, altered or substituted identity documents,

15 (g) (i) immediately before the making of the application, was a person (other than a person at a frontier of the State) who was being removed from the State pursuant to *section 51*, or

(ii) has made the application under *section 84*,

and has made the application for the purpose of delaying his or her removal from the State,

20 he or she may arrest that person and detain him or her in a prescribed place (referred to in this section as “a place of detention”).

(2) The Minister shall make regulations providing for the treatment of persons detained pursuant to this section.

25 (3) (a) A person detained pursuant to *subsection (1)* shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained.

(b) Where a person is brought before a judge of the District Court pursuant to *paragraph (a)*, the judge may—

30 (i) subject to *paragraph (c)*, and if satisfied that one or more of the paragraphs of *subsection (1)* applies in relation to the person, commit the person concerned to a place of detention for a period not exceeding 21 days from the time of his or her detention, or

35 (ii) without prejudice to *paragraph (c)*, release the person and the judge may make such release subject to conditions; and those conditions may include conditions requiring the foreign national to—

(I) reside or remain in a district or place specified in the conditions;

40 (II) report to a Garda Síochána station or immigration officer so specified at intervals so specified;

(III) surrender any passport or travel document he or she holds;

45 (IV) undertake a bond or secure a surety or guarantee for the performance of the conditions of release.

- (c) If, at any time during the detention of a person pursuant to this section, an immigration officer or a member of the Garda Síochána is of opinion that none of the paragraphs of *subsection (1)* applies in relation to the person, the person shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district where the person is being detained and if the judge is satisfied that none of the paragraphs of *subsection (1)* applies in relation to the person, the judge shall release the person. 5 10
- (d) Where a person is released from a place of detention subject to one or more of the conditions referred to in *subsection (3)(b)(ii)*, a judge of the District Court assigned to the District Court district in which the person resides may, on the application of the person, an immigration officer or a member of the Garda Síochána, if the judge considers it appropriate to do so, vary, revoke or add a condition. 15
- (4) (a) *Subsection (1)* shall not apply to a person who is under the age of 18 years. 20
- (b) If and for so long as the immigration officer or, as the case may be, the member of the Garda Síochána concerned has reasonable grounds for believing that the person is not under the age of 18 years, the provisions of *subsection (1)* shall apply as if he or she had attained the age of 18 years. 25
- (c) Where an unmarried child under the age of 18 years is in the custody of any person (whether a parent or a person acting in *loco parentis* or any other person) and such person is detained pursuant to the provisions of this section, the immigration officer or the member of the Garda Síochána concerned shall, without delay, notify the Health Service Executive of the detention and of the circumstances thereof. 30
- (5) (a) A member of the Garda Síochána may arrest without warrant and detain a person who, in the member's opinion, has failed to comply with a condition imposed by the District Court under *subsection (3)* in a place of detention. 35
- (b) A person detained under *paragraph (a)* shall be brought as soon as practicable before a judge of the District Court assigned to the District Court district in which the person is being detained; and *subsection (3)* shall apply to such person detained under *paragraph (a)* as it applies to a person detained pursuant to *subsection (1)* with any necessary modifications. 40 45
- (c) If a judge of the District Court is satisfied in relation to a person brought before him or her pursuant to *paragraph (b)* that the person has complied with the condition concerned, the judge shall order the release of the person.
- (6) (a) Where a judge of the District Court commits a person to a place of detention under *subsection (3)(b)* or (5), a judge of the District Court assigned to the District Court district in which the person is being detained may, if satisfied that one or more of the paragraphs of *subsection (1)* applies in relation to the person, commit him or her for 50 55

further periods (each period being a period not exceeding 21 days) pending the determination of the person's application for protection.

5 (b) If at any time during the detention of a person pursuant to this section the person indicates a desire to leave the State, he or she shall, as soon as practicable, be brought before a judge of the District Court assigned to the District Court district in which the person is being detained and the judge shall, if he or she is satisfied that the person
10 does not wish to proceed with his or her application for protection and wishes to leave the State, order the Minister to arrange for the removal of the person from the State and may include in the order such ancillary or consequential provisions as he or she may determine and the
15 person concerned shall be deemed to have withdrawn his or her application for protection.

(7) (a) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall, without delay, inform a person detained pursuant to *subsection (1) or (5)(a)* or cause him or her to be informed, where
20 possible in a language that the person understands—

(i) that he or she is being detained pursuant to this section,

25 (ii) that he or she shall, as soon as practicable, be brought before a court which shall determine whether or not he or she should be committed to a place of detention or released pending a determination of his or her application for protection,

(iii) that he or she is entitled to consult a solicitor,

30 (iv) that he or she is entitled to have notification of his or her detention, the place of detention concerned and every change of such place sent to the High Commissioner and to another person reasonably named by him or her,

35 (v) that he or she is entitled to leave the State in accordance with the provisions of this paragraph at any time during the period of his or her detention and if he or she indicates a desire to do so, he or she shall, as soon as practicable, be brought before a court and
40 the court may make such orders as may be necessary for his or her removal from the State, and

(vi) that he or she is entitled to the assistance of an interpreter for the purpose of consultation with a solicitor pursuant to *subparagraph (iii)* and for the purpose of any appearance before a court pursuant to
45 this section.

(b) The immigration officer or, as the case may be, the member of the Garda Síochána concerned shall also explain to a person detained pursuant to *subsection (1) or (5)(a)*, where possible in a language that the person understands, that, if he or she does not wish to exercise a right specified in *paragraph (a)* immediately, he or she will not be precluded thereby from doing so later.

- (c) The immigration officer or, as the case may be, the member of the Garda Síochána shall notify the Minister and, if the person detained has appealed under *section 79*, the Tribunal of the detention or release of a person pursuant to the provisions of this section. 5

(8) In this section “substituted identity document” means an identity document that does not relate to the person who is or has been in possession of the document and which the person in possession of the document has used or intends to use for the purposes of establishing his or her identity. 10

Priority to be given to detained protection applicants.

37.—The Minister or, as the case may be, the Tribunal shall ensure that the application for protection of a person detained under *section 36(1)* or *(5)(a)* shall be dealt with as soon as practicable and, if necessary, before any other application for protection of a person not so detained. 15

Protection residence permit.

38.—(1) A protection residence permit shall contain—

- (a) the name, date of birth and nationality of the holder, so far as they are known or can be established,
- (b) a photograph of the holder,
- (c) a statement of the period of validity of the permit, 20
- (d) such biometric information relating to the holder as may be prescribed, and
- (e) such other information as may be prescribed.

(2) (a) Subject to *section 43*, a protection residence permit—

- (i) shall be valid for three years, and 25
- (ii) shall, unless compelling reasons of national security or public policy (“*ordre public*”) otherwise require, be renewed.
- (b) The holder of a protection residence permit who satisfies the standard eligibility requirements set out in *section 34(2)* may apply to the Minister for a long-term residence permit. 30

(3) The following provisions shall apply to a person to whom a protection residence permit is granted under *section 74* for so long as the protection residence permit remains in force: 35

- (a) the person shall be entitled, subject to *section 40* and *section 48*—
 - (i) to reside in the State, and
 - (ii) to the same rights of travel in or to or from the State (other than to his or her country of origin or former habitual residence) as those to which Irish citizens are entitled; 40

- (b) the person shall be entitled to seek and enter employment, to engage in economic activity and to have access to education and training in the State in the like manner and to the like extent in all respects as an Irish citizen;
- 5 (c) the person shall be entitled to receive, upon and subject to the terms and conditions applicable to Irish citizens, the same medical care and services and the same social welfare benefits as those to which Irish citizens are entitled.
- 10 (4) In the application of *subsection (3)*, *section 48* and *section 49*, due regard shall be had to the specific situation of vulnerable persons such as minors (whether or not unaccompanied), disabled persons, elderly persons, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other
- 15 serious forms of psychological, physical or sexual violence.

39.—(1) The Minister shall cause to be set up and maintained— Register of Foreign Nationals.

- (a) a register of foreign nationals to whom residence permits have been issued (in this Act referred to as the “Register of Foreign Nationals”), and
- 20 (b) a register of foreign nationals to whom only protection temporary residence permits have been issued (in this Act referred to as the “Register of Protection Applicants”).

(2) The Register of Foreign Nationals shall contain, in respect of

25 each foreign national registered in it the following:

- (a) name and sex;
- (b) nationality, how and when it was acquired and any previous nationality;
- (c) date and place of birth;
- 30 (d) profession or occupation and where this is carried on;
- (e) date, place and mode of arrival in the State;
- (f) address of dwelling place in the State;
- (g) address of last dwelling place outside the State;
- (h) a photograph sufficient to identify the foreign national;
- 35 (i) particulars of the passport or other document establishing nationality and identity;
- (j) signature and fingerprints and such biometric data as may be prescribed;
- 40 (k) such personal details as may be prescribed of any dependants of the foreign national, whether or not such dependants are resident in the State;
- (l) any further information relating to the foreign national that the Minister may prescribe.

(3) A foreign national present in the State (whether or not one to whom a residence permit has been issued) shall—

- (a) on being so required by the Minister or any immigration registration officer, or
- (b) whenever a matter arises or event occurs which affects or might affect the accuracy of the Register of Foreign Nationals so far as relating to the foreign national, 5

provide the Minister or immigration registration officer with such information (which may include biometric information) as the Minister or, as the case may be, that officer, considers necessary to enable the creation of an accurate entry relating to the foreign national in the Register or to maintain the accuracy of the Register. 10

(4) The Register of Protection Applicants shall contain in respect of each protection applicant registered in it the following:

- (a) name and sex; 15
- (b) claimed nationality or country of origin;
- (c) date and place of birth;
- (d) date, place and mode of arrival in the State;
- (e) address of dwelling place in the State;
- (f) address of last dwelling place outside the State; 20
- (g) a photograph sufficient to identify the foreign national;
- (h) particulars of the passport or other document establishing nationality and identity;
- (i) signature and fingerprints and such biometric data as may be prescribed; 25
- (j) whether the applicant is an unaccompanied minor;
- (k) such details as may be prescribed of any dependents of the foreign national, including any dependent children born while the applicant is present in the State;
- (l) any other information which the Minister may prescribe. 30

(5) A protection applicant shall—

- (a) on being so required by the Minister, or
- (b) wherever a matter arises or event occurs which affects or might affect the accuracy of the Register of Protection Applicants so far as relating to the applicant concerned, 35

provide the Minister with such information (which may include biometric information) as the Minister considers necessary to enable the creation of an accurate entry relating to the protection applicant in the Register or to maintain the accuracy of the Register.

(6) A foreign national or, as the case may be, a protection applicant who contravenes *subsection (3)* or *(5)* commits an offence. 40

40.—(1) The Minister may discontinue an entry permit, a non-renewable residence permit, a renewable residence permit or a long-term residence permit issued under *section 34(4)* if satisfied that—

Discontinuance of entry or residence permit.

- 5 (a) the permit holder has contravened a restriction or condition imposed on him or her in respect of his or her entry or presence in the State,
- (b) the permit holder has served or is serving a term of imprisonment imposed in the State,
- 10 (c) a court in the State before which the permit holder was indicted for or charged with any offence has recommended his or her removal from the State,
- (d) there are reasonable grounds for regarding the permit holder as a danger to the security of the State,
- 15 (e) the presence in the State of the permit holder would not, in the opinion of the Minister, be conducive to the common good,
- (f) the permit holder obtained his or her permit on the basis of information or documentation which was false or misleading,
- 20 (g) the permit was issued in error,
- (h) in relation to an entry permit, a non-renewable residence permit or a renewable residence permit, the circumstances existing at the time the permit was granted, including any immigration policy statement in being at
25 that time, have changed and the nature of the change is such that, had the new circumstances existed at the time, the permit would not have been granted, or
- (i) there are other reasons which justify the discontinuance of the permit.

30 (2) The Minister may discontinue a long-term residence permit, other than long-term residence permit issued under *section 34(4)* if, but only if—

- 35 (a) the permit holder obtained his or her permit on the basis of information or documentation which was false or misleading,
- (b) the permit holder has been out of the State for 12 consecutive months,
- (c) an expulsion order is made where the permit holder constitutes an actual and serious threat to public security or
40 public policy (“*ordre public*”), or
- (d) the permit holder, having been by a final judgment convicted of a particularly serious crime, constitutes a danger to the community of the State.

45 (3) The Minister shall discontinue a protection residence permit where he or she is satisfied that—

(a) the permit holder has, in accordance with *section 72*, ceased to be a refugee or a person eligible for subsidiary protection,

(b) the permit holder should have been excluded from protection under *section 63*, or 5

(c) misrepresentation or omission of facts, whether or not including the use of false documents, by the permit holder was decisive for the granting of protection.

(4) The Minister may discontinue a protection residence permit issued to a person determined to be a refugee where— 10

(a) there are reasonable grounds for regarding him or her as a danger to the security of the State, or

(b) he or she, having been by a final judgement convicted of a particularly serious crime, constitutes a danger to the community of the State. 15

(5) The Minister shall not discontinue a protection residence permit issued to a person determined to be a refugee on the grounds specified in *section 72(1)(e)* or *(f)* where the Minister is satisfied that the permit holder is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality or for refusing to return to the country of his or her former habitual residence, as the case may be. 20

(6) This section shall not apply to a protection temporary residence permit issued under *section 74*. 25

Procedure for
discontinuance of
entry permit or
non-renewable
residence permit.

41.—(1) Where the Minister decides to discontinue an entry permit or a non-renewable residence permit pursuant to *section 40(1)*, he or she shall notify the permit holder, where necessary and possible in a language that the permit holder understands, of his or her decision. 30

(2) A notification under *subsection (1)* shall include—

(a) a statement of the reasons for the decision to discontinue the permit, and

(b) if the Minister decides to make an expulsion order in conjunction with the discontinuance of the permit— 35

(i) a statement of that decision and of the reason for it, and

(ii) if the expulsion order provides for the exclusion of the permit holder (whether for a specified or indefinite period), the duration of the exclusion period (the “exclusion duration”). 40

(3) Unless a Court shall otherwise direct, the Minister is not obliged to consider any request for a review of his or her decision to discontinue a permit under this section.

42.—(1) Where the Minister proposes to discontinue—

Procedure for
discontinuance of a
renewable residence
permit, a long-term
residence permit
issued under *section*
34(4) or a long-term
residence permit.

(a) pursuant to *section 40(1)*, a renewable residence permit or
a long-term residence permit issued under *section 34(4)*,
or

5 (b) pursuant to *section 40(2)*, a long-term residence permit,

he or she shall—

(i) notify the permit holder in writing of his or her proposal,
and

10 (ii) where necessary and possible, give the permit holder a
copy of the notification in a language that he or she
understands.

(2) A notification of a proposal of the Minister under *subsection*
(1) shall include—

(a) a statement of the reasons for the proposal, and

15 (b) if the Minister proposes to make an expulsion order in
conjunction with the proposed discontinuance—

(i) a statement of the proposal and of the reasons for it;

20 (ii) if the expulsion order is to provide for the exclusion
of the permit holder (whether for a specified or
indefinite period), the proposed duration of the
exclusion period (“proposed exclusion duration”),
and

25 (c) a statement that if no representations are made by the per-
mit holder within 15 working days, the permit shall be
discontinued from the date specified in the notice.

(3) The permit holder may make representations in the prescribed
manner to the Minister within 15 working days of the sending to him
or her of the notification.

(4) If no such representations are duly received—

30 (a) the permit shall be deemed to be discontinued, and

(b) the Minister may proceed to make any expulsion order
mentioned in *subsection (2)(b)*.

35 (5) If the permit holder leaves the State before the Minister
implements a proposal under *subsection (1)* and provides the Mini-
ster with verifiable evidence of his or her leaving the State—

(a) the Minister may discontinue the residence permit, but

(b) either, as the Minister considers appropriate in the circum-
stances of the case—

(i) the Minister shall make no expulsion order, or

40 (ii) the duration of the expulsion order made will be no
longer than a period (in this section the “reduced
exclusion duration”) specified in the notification
made under *subsection (1)*, being a period shorter

than the proposed exclusion duration included in the notification.

(6) If the permit holder, within 15 working days of the sending to him or her of the notification, agrees to the discontinuance of the residence permit and the making of the order, the Minister shall thereupon, subject to *section 51*, arrange for the removal of the person from the State as soon as practicable. 5

(7) (a) In determining whether to discontinue a residence permit in accordance with this section whether or not along with making an expulsion order, the Minister shall have regard to all representations duly made to him or her and in doing so shall, subject to *paragraph (b)*, have regard to the following matters: 10

(i) humanitarian considerations;

(ii) the common good; and 15

(iii) considerations of public security and public policy (“*ordre public*”).

(b) Where the residence permit is a long-term residence permit or a long-term residence permit issued under *section 34(4)*, the Minister shall, in addition to the matters set out in *paragraph (a)*, have regard to: 20

(i) the age of the person;

(ii) the duration of residence in the State of the person;

(iii) the family and domestic circumstances of the person;

(iv) the nature of the person’s connection with the State, if any; 25

(v) the employment (including self-employment) record of the person;

(vi) the employment (including self-employment) prospects of the person; 30

(vii) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions).

(8) The Minister is not obliged to consider any representations not duly made under *subsection (3)*. 35

(9) A person present in the State whose residence permit is the subject of a proposal mentioned in *subsection (1)* shall, if present in the State, be lawfully present in the State until whichever of the following dates is later:

(a) the date on which the period within which representations under *subsection (3)* may be made expires, 40

(b) if representations under *subsection (3)* are duly made, the date of the notification under *subsection (10)*,

although the residence permit has earlier expired.

(10) The Minister, having considered the matters set out in *subsection (7)*, shall notify the holder of a residence permit, in writing, of his or her decision as to whether the residence permit is to be discontinued.

5 (11) Where necessary and possible, the Minister shall also provide the person notified under *subsection (10)* with a copy of the notification written in a language that he or she understands.

(12) A decision to discontinue a residence permit has effect as from the date when the notification of the decision was received or
10 deemed to have been received under *section 102*.

(13) Where, however—

(a) the permit holder has held a residence permit or permits for a continuous period of at least 5 years, and

15 (b) the notification under *subsection (10)* is to the effect that the Minister intends to discontinue the permit,

the decision has effect on the expiry of a period of 3 months after the date referred to in *subsection (12)*.

(14) *Subsection (13)* does not apply in a case where—

20 (a) the Minister is of the opinion that it would be prejudicial to public security or public policy (“*ordre public*”) that the person notified should remain in the State during the period of 3 months referred to in that subsection, and

(b) a statement to that effect by the Minister is included in or with the notification.

25 (15) Any reference in this section to the disclosure of information by the Minister is subject to *subsections (3) and (4) of section 106*.

43.—(1) Where the Minister proposes to discontinue a protection residence permit pursuant to *subsections (3) or (4) of section 40* he or she shall—

Procedure for discontinuance of a protection residence permit.

30 (a) (i) notify the permit holder in writing of his or her proposal, and

(ii) where necessary and possible, give the permit holder a copy of the notification in a language that he or she understands,

35 and

(b) send a copy of the notification to the permit holder’s solicitor (if known) and to the High Commissioner.

(2) The notification under *paragraph (a) of subsection (1)* shall include a statement of the effect of *subsection (6)*.

40 (3) *Subsections (2) to (6) of section 42* shall apply in respect of a proposal to discontinue a protection residence permit and of the notification referred to in *subsection (1)* and, in that application, “notification”, “residence permit” and “permit holder” shall be construed accordingly.

(4) In determining whether to discontinue a protection residence permit under this section (whether or not along with making an expulsion order or granting any other kind of residence permit), the Minister shall have regard to all representations duly made to him or her and in doing so shall have regard to the matters listed in paragraphs (a) to (b) of subsection (7) of section 42. 5

(5) The Minister shall notify the applicant in writing, where necessary and possible in a language that he or she understands—

(a) of the Minister's decision as to whether the protection residence permit is to be discontinued, and 10

(b) if the permit is to be discontinued, the reasons for that decision.

(6) Where the Minister decides to discontinue a protection residence permit, the permit holder may, within 15 working days after the date when the notification of the decision was sent, appeal to the High Court against the decision. 15

(7) On hearing an appeal under subsection (6), the High Court may, as it thinks proper—

(a) confirm the decision appealed against, or

(b) direct the Minister to continue the protection residence permit. 20

(8) A decision to discontinue a protection residence permit has effect:

(a) where no appeal to the High Court is brought against the decision of the Minister, from the date when the period for making such an appeal expires; or 25

(b) where an appeal to the High Court is brought against the decision of the Minister, from the date of the final determination or, as the case may be, the withdrawal of that appeal. 30

(9) A person shall not be required to leave the State before the expiry of 15 working days from the date of notice of a proposal under subsection (1) and, if an appeal to the High Court is brought against the decision of the Minister, before the final determination or, as the case may be, the withdrawal of that appeal. 35

(10) Subsection (9) is subject to any entitlement of the person to remain in the State under any other residence permit granted to him or her.

Expulsion orders.

44.—(1) The Minister may, when discontinuing an entry permit or residence permit under section 40 or on the expiry of a protection temporary residence permit, make an order (under this section an “expulsion order”) requiring the person whose entry permit or residence permit has been discontinued or has expired to leave the State and to remain outside it for such period (the “exclusion duration”) as is specified in the expulsion order. 40 45

(2) An expulsion order shall be in prescribed form.

(3) An exclusion duration shall have a definite beginning but may otherwise be indefinite.

(4) Where the Minister has,

(a) pursuant to *section 41(2)*, notified the holder of an entry permit or a non-renewable residence permit of his or her decision to make an expulsion order, or

(b) pursuant to *section 42(2)* or *section 43*, notified the holder of a residence permit of his proposal to make an expulsion order,

10 the exclusion duration specified in the expulsion order made by the Minister shall not exceed the exclusion duration or the proposed exclusion duration specified in such notification.

15 (5) Nothing in *subsection (4)* shall affect the Minister's discretion to make either no expulsion order or an expulsion order of reduced exclusion duration where the circumstances mentioned in *section 42(5)* apply.

(6) The reference in *subsection (5)* to *section 42(5)* includes a reference to *section 42(5)* as applied by *section 43(3)*.

20 **45.—(1)** In prescribing different fees under *section 101* for the Fees. purposes of this Part, the Minister may do so by reference to different classes of application under this Part; and the factors by reference to which applications may be classified include—

(a) the purposes and durations of applicants' entry to and presence in the State,

25 (b) whether applications are for the issue of a residence permit (as distinct from its renewal, its replacement or the change of its class or kind),

(c) the need for urgency in dealing with applications,

(d) the timeliness of applications.

30 (2) The Minister need not consider an application under this Part if the fee prescribed in relation to it is not paid in time.

(3) The Minister or any other person to whom a prescribed fee is payable may, if the fee (or any part of it) is not paid, recover it as a simple contract debt.

35 (4) The Public Offices Fees Act 1879 does not apply as respects a prescribed fee.

(5) The Minister may prescribe circumstances in which the prescribed fees specified in the regulations under this subsection shall not be payable or may be waived; and those circumstances may
40 include those where the application—

(a) is for protection or is made by a person who has been granted protection,

(b) is made by a person under the age of 18 years.

46.—(1) In this section, “a programme refugee” means a person to whom permission to enter and remain in the State as part of a group of persons for—

- (a) temporary protection other than temporary protection provided for in *section 47*, or 5
- (b) resettlement,

has been given by the Government and whose name is entered in a register established and maintained by the Minister (whether or not such person is a refugee within the meaning of the definition of “refugee” in *section 56*). 10

(2) A programme refugee shall be given a protection residence permit.

(3) Subject to *subsection (4)*, the Minister may, on an application in writing and on payment to the Minister of such fee (if any) as may be prescribed with the consent of the Minister for Finance, issue to 15 a programme refugee a travel document identifying its holder as a programme refugee.

(4) The Minister may, in the interest of national security or public policy (“*ordre public*”), refuse to issue a travel document.

(5) A travel document shall be in the prescribed form. 20

(6) A person who applies to the Minister for a travel document under this section shall furnish to the Minister such information (if any) as the Minister may reasonably require for the purpose of his or her functions under this section.

(7) The Minister may, after consultation with the Minister for 25 Foreign Affairs, enter into agreements with the High Commissioner for the reception and resettlement in the State of refugees.

47.—(1) In this section—

“temporary protection” means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of 30 displaced foreign nationals who are unable to return to their country of origin, immediate and temporary protection, and

“Council Directive” means Council Directive 2001/55/EC¹ of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promot- 35 ing a balance of efforts between Member States in receiving such persons and bearing the consequences thereof and any other Directive amending or replacing it.

(2) Subject to *subsection (3)*, this section applies to a foreign national to whom, following a Council Decision under Article 5 of 40 the Council Directive establishing the existence of a mass influx of displaced persons, permission to enter and remain in the State for temporary protection as part of a group of persons has been given by the Government and whose personal data (such as name, nationality, date and place of birth, marital status, family 45 relationship) is entered in a register established and maintained by the Minister.

¹ OJ No. L212 of 7.8.2001

(3) The Minister may exclude a foreign national from temporary protection if:

(a) there are serious reasons for considering that—

(i) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes, or

(ii) he or she has been guilty of acts contrary to the purposes and principles of the United Nations,

(b) there are reasonable grounds for regarding him or her as a danger to the security of the State, or

(c) having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the State.

(4) (a) The Minister may exclude a foreign national from temporary protection if there are serious reasons for considering that he or she has committed a serious non-political crime outside the State prior to his or her admission to the State as a person enjoying temporary protection.

(b) In the application of *paragraph (a)* the Minister shall weigh the severity of the expected persecution against the nature of the criminal offence of which the foreign national concerned is suspected.

(c) This section applies both to the participants in and the persons who have instigated or otherwise are instigators of a crime mentioned in *paragraph (a)*.

(d) For the purposes of this section, “serious non-political crime” includes particularly cruel actions, even if committed with an allegedly political objective.

(5) The Minister shall issue to a foreign national to whom *subsection (2)* applies—

(a) if required, a visa or transit visa free of charge,

(b) a residence permit, and

(c) information, in a language likely to be understood by him or her, setting out the provisions of this section relating to temporary protection in the State.

(6) (a) Subject to *paragraph (b)*, a residence permit issued under *subsection (5)*—

(i) shall be valid for one year, and

(ii) may be renewed for a maximum period of a further year.

(b) A residence permit issued under *subsection (5)* may be discontinued—

(i) upon the expiry of the period referred to in *paragraph (a)*,

- (ii) immediately following a decision by the Council under the Council Directive that the requirement for temporary protection has ended,
 - (iii) upon the transfer of residence of the holder to another Member State, or 5
 - (iv) where the Minister decides that the holder should have been excluded from temporary protection under *subsection (3)* or *(4)*.
- (c) *Sections 40* and *42* shall not apply to a decision to revoke a residence permit under this section. 10
- (7) Where, during the validity of a residence permit issued under *subsection (5)*, a foreign national to whom *subsection (2)* applies seeks to enter or has entered without authorisation another Member State, the Minister shall, in co-operation with the competent authority of that Member State, make arrangements for the return of the 15 person to the State.
- (8) Without prejudice to *subsection (6)*, a foreign national to whom *subsection (2)* applies shall be entitled to the same rights and privileges as if he or she held a protection residence permit.
- (9) The Minister shall co-operate with the competent authorities 20 of a Member State in relation to—
 - (a) the transfer to a Member State of a foreign national to whom *subsection (2)* applies,
 - (b) the transfer to the State of a foreign national to whom *subsection (2)* applies, and 25
 - (c) the reunification, either in the State or in a Member State, of family members of a foreign national to whom *subsection (2)* applies.
- (10) The Minister may prescribe documentation for the purpose of enabling and facilitating transfers and reunifications of the kinds 30 mentioned in *subsection (9)*.
- (11) For the purposes of *subsection (9)*, the Minister may provide, insofar as it is available, to a Member State:
 - (a) personal data on the foreign national concerned (name, nationality, date and place of birth, marital status, 35 family relationship);
 - (b) identity documents and travel documents of the foreign national concerned;
 - (c) documents concerning evidence of family ties (marriage certificate, birth certificate, certificate of adoption); 40
 - (d) other information essential to establish the foreign national's identity or family relationship;
 - (e) residence permits, visas or residence permit refusal decisions issued to the foreign national concerned by the Minister, and documents forming the basis of those 45 decisions;

(f) residence permit and visa applications lodged by the foreign national concerned and pending in the State, and the stage reached in the processing of these;

(g) any corrected information which becomes available.

5 **48.**—(1) The Minister shall, on written application by a person who has been granted a protection residence permit, and on payment of the prescribed fee, issue to that person a travel document identifying its holder as that person. Travel document.

(2) The Minister need not, however, issue a travel document if—

10 (a) the Minister has required the applicant to provide such information as the Minister reasonably requires for the purposes of his or her functions under this section and the applicant has not done so, or

15 (b) the Minister considers that to issue it would not be in the interests of public health, public security or public policy (“*ordre public*”).

(3) A travel document shall be in the prescribed form.

20 **49.**—(1) Subject to *section 40(3)* and (4), a holder of a protection residence permit (in this section the “applicant”) may apply to the Minister for permission to be granted to a member of his or her family to enter and to reside in the State. Member of family of a holder of a protection residence permit.

(2) The Minister shall notify the High Commissioner of the making of an application under *subsection (1)*.

25 (3) The Minister shall investigate, or cause to be investigated, an application under *subsection (1)* to determine the relationship between the applicant and the person the subject of the application and the domestic circumstances of the person.

30 (4) (a) Subject to *subsection (6)*, if the Minister is satisfied that the person the subject of the application is a member of the family of the applicant, the Minister shall grant permission in writing to the person to enter and reside in the State and the person shall be entitled to the rights and privileges specified in *section 38* for such period as the applicant is entitled to remain in the State.

35 (b) In *paragraph (a)*, “member of the family”, in relation to an applicant, means—

(i) in case the applicant is married, his or her spouse (provided that the marriage is subsisting on the date of the application pursuant to *subsection (1)*),

40 (ii) in case the applicant is, on the date of the application pursuant to *subsection (1)*, under the age of 18 years and is not married, his or her parents, or

45 (iii) a child of the applicant who, on the date of the application pursuant to *subsection (1)*, is under the age of 18 years and is not married.

(5) (a) The Minister may grant permission to a dependent member of the family of an applicant to enter and reside in the State and issue a residence permit to him or her and such member shall be entitled to the rights and privileges specified in *section 38* for such period as the applicant is entitled to remain in the State. 5

(b) In *paragraph (a)*, “dependent member of the family”, in relation to an applicant, means any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the applicant who is dependent on the applicant or is suffering from a mental or physical incapacity to such extent that it is not reasonable for him or her to maintain himself or herself fully. 10

(6) The Minister may—

(a) refuse to grant permission to enter and reside in the State to a person referred to in *subsection (4)* or (5), or 15

(b) discontinue any residence permit granted to such a person, in the interest of public security, public policy (“*ordre public*”), or where the person would be or is, under *section 63*, excluded from being a refugee or a person eligible for subsidiary protection. 20

(7) The Minister may, on application in writing in that behalf and on payment to the Minister of such fee (if any) as may be prescribed, issue to a person in respect of whom a permission granted under *subsection (4)* or (5) is in force a travel document identifying the holder thereof as such a person. 25

PART 6

REMOVAL FROM THE STATE

Meaning of
refoulement.

50.—(1) In this Part, “refoulement” means the sending of a foreign national from the State to a territory where—

(a) in the opinion of the Minister, the life or freedom of the foreign national will be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion, as these terms are construed under *section 62*, 30

(b) the Minister has substantial grounds for believing that the foreign national will face a real risk of suffering serious harm, or 35

(c) the Minister has substantial grounds for believing that the foreign national will be in danger of being subjected to torture or inhuman or degrading treatment or punishment. 40

(2) Where—

(a) the territory to which a foreign national is sent is his or her destination of choice, or

(b) he or she acquiesces in being sent to that territory, 45

it shall be presumed that his or her being sent there is not a refoulement.

(3) Sending a foreign national to a safe country shall be presumed not to be a refoulement.

5 (4) The presumptions created by *subsections* (2) and (3) are rebuttable.

10 (5) (a) Where a foreign national has made an application for protection which is founded on an expression of his or her fear relating to a particular territory (in this section the “territory of destination”), it shall not be a refoulement to send that foreign national to that territory of destination where—

15 (i) the foreign national’s application for protection has been refused or withdrawn, or deemed to be withdrawn,

(ii) the foreign national is the holder of a protection residence permit which has expired and has not been renewed,

20 (iii) the foreign national was the holder of a protection residence permit which has been discontinued for a reason, or reasons which include a reason, which would, under *section* 63, exclude him or her from being a refugee or a person eligible for subsidiary protection,

25 (iv) the foreign national has ceased to be a refugee or a person eligible for subsidiary protection under *section* 72, or

30 (v) the foreign national is the holder of a protection temporary residence permit which has ceased to be valid.

35 (b) A representation made by or on behalf of a foreign national to whom *paragraph* (a) applies that sending him or her to a territory of destination is a refoulement shall be treated, for the purposes of *section* 84, as a subsequent application for protection.

(6) Nothing in this Act prevents the extradition of a foreign national under the Extradition Acts 1965 to 2001 or the European Arrest Warrant Act 2003 as amended by the Criminal Justice (Terrorist Offences) Act 2005.

40 (7) In this section—

“territory” includes the frontier of a territory,

“freedom” includes freedom from the likelihood of serious assault, including serious assault of a sexual nature,

45 “torture” has the same meaning as in the Criminal Justice (United Nations Convention against Torture) Act 2000,

“safe country” has the same meaning as in *section* 87,

“serious harm” has the same meaning as in *section* 56(1).

51.—(1) Where it appears to an immigration officer or a member of the Garda Síochána that a foreign national is unlawfully present in the State or at a frontier of the State, the officer or member may remove the foreign national from the State.

(2) *Subsection (1)* is without prejudice to the power under *section 5(4)(b)* to remove or cause to be removed from the State a foreign national whose presence in the State is unlawful. 5

(3) A foreign national who is removed under *subsection (1)* or *section 5(4)(b)* shall be sent to whichever of the following states the officer or member removing him or her considers appropriate— 10

- (a) the state where he or she last embarked for the State, if that can be ascertained,
- (b) where he or she was refused permission to enter the State at a port for the purpose of passing through the port in order to travel to another state, and either— 15
 - (i) the carrier who would have taken him or her to that other state has refused to do so, or
 - (ii) the government of that other state has refused him or her entry into that state and, in consequence, he or she remains in the State or has been returned to 20 the State,

the state where he or she last embarked for the State for the purpose referred to in this paragraph,

- (c) the state or territory, the government or other authorities of which issued any passport or other travel document 25 held by him or her,
- (d) the state or territory of which it appears to the officer or member that he or she is a national, or
- (e) any state to which he or she will, in the opinion of the officer or member, be permitted to enter. 30

(4) A foreign national being removed under this section shall not, however, be sent to a destination if doing so would be a *refoulement*.

(5) A foreign national being removed under this section—

- (a) shall, for the purposes of facilitating his or her removal, co-operate in any way necessary and comply with any 35 directions given to him or her to enable an immigration officer or member of the Garda Síochána to obtain a travel document, ticket for travel or other document required for the purpose of the removal and, in particular, shall comply with any request by the officer or 40 member to sign, or affix his or her fingerprints or other biometric data to, or include them in, any document required for that purpose,
- (b) shall not behave in a manner likely to endanger the safety of himself or herself or others in the course of his or her 45 being removed from the State.

(6) A person shall not, by act or omission, obstruct or hinder an immigration officer or a member of the Garda Síochána engaged in the removal of a foreign national under this section.

5 (7) A parent or guardian of, or other person having charge of or responsibility for a person who is under the age of 18 years and who is being removed from the State under *subsection (1)* (the “minor”) shall, for the purposes of facilitating the removal of the minor—

10 (a) on request by an immigration officer or member of the Garda Síochána, use his or her best endeavours to bring the minor to or secure the attendance of the minor at such place as is specified in the request,

15 (b) co-operate in any way necessary and comply with any directions given to him or her to enable such an officer or member to obtain a travel document, ticket for travel or other documents required for the purpose of the removal of the minor and, in particular, comply with any request by the officer or member to sign any document or have it signed by the minor or to have the minor’s fingerprints or other biometric data affixed to or included in the document.

(8) (a) A person who contravenes *subsection (5), (6) or (7)* commits an offence.

25 (b) An immigration officer or a member of the Garda Síochána may arrest without warrant any person whom he or she suspects of having committed an offence under this section.

30 (9) Without prejudice to *sections 22(8)(b), 44 or 96*, a foreign national removed under this section shall be ineligible for permission to enter the State for a period of 6 months beginning with the date of his or her removal.

35 (10) The Minister may, however, on application by the foreign national referred to in *subsection (9)*, direct that all, or such part as is specified in the direction, of the period of 6 months referred to in that subsection shall be disregarded for the purposes of an application by the foreign national for permission to enter the State.

52.—(1) An immigration officer or member of the Garda Síochána may, for the purposes of removing a foreign national from the State under *section 51*, arrest the foreign national.

Arrest and detention of foreign national for the purpose of removal from the State.

40 (2) A foreign national arrested under *subsection (1)* may, under the warrant of an immigration officer or member of the Garda Síochána, be detained—

(a) in a prescribed place, being a prison or other place of lawful detention in the charge of a Governor, an immigration officer or member of the Garda Síochána, and

45 (b) in the custody there of the Governor, officer or member in charge.

(3) The officer or member under whose warrant a foreign national is detained under *subsection (2)* shall, as soon as practicable—

- (a) where the foreign national is detained in a Garda Síochána station, inform the member in charge of the station,
- (b) in any other case inform the Governor, or the immigration officer in charge,

of the arrest; and that information shall authorise the continued detention of the foreign national. 5

(4) A foreign national detained under *subsection (2)* or *(3)* may, on the direction of an immigration officer or a member of the Garda Síochána, be moved from the prescribed place where the foreign national is— 10

- (a) to another prescribed place of the kind referred to in *subsection (2)*, or
- (b) for the purposes of, or a purpose connected with, his or her removal from the State under *section 51*, to any other place, 15

without interrupting the custody in which he or she is being kept or otherwise affecting its lawfulness.

(5) A foreign national arrested and detained under this section may, subject to *subsection (11)*, be detained only until such time (being as soon as practicable) as he or she is removed from the State in accordance with this section, but in any event may not be detained for a period, in relation to any one removal or attempted removal, exceeding 8 weeks in aggregate. 20

(6) The following shall be left out of account in calculating any period for the purposes of *subsection (5)*: 25

- (a) any period during which the foreign national is in custody pending a criminal trial or is serving a sentence of imprisonment;
- (b) any period during which he or she is on board a vehicle having been placed there under *section 54*; 30
- (c) any period of delay in his or her removal which is directly attributable to his or her breach of *section 51(5)*, *(6)* or *(7)*;
- (d) if the foreign national has taken or is otherwise party to proceedings in respect of his or her removal, the period between their institution and their final determination; 35
- (e) if the foreign national is required to act as a witness in any proceedings, the period in which his or her presence in the State is required for that purpose.

(7) (a) Proceedings shall not, for the purposes of *subsection (6)(d)*, be taken to be finally determined until the time within which an appeal from those proceedings or, as the case may be, a further appeal, may be instituted has expired and no appeal or further appeal has been instituted. 40 45

(b) Proceedings for the purposes of *subsection (6)(d)* may be taken to be finally determined where the foreign national has left the State prior to their determination.

5 (8) Where a foreign national detained under this section is a party to any proceedings the High Court may, on application to it and on being satisfied that it is, for the purposes of those proceedings, in the interests of justice that the foreign national continue to be present in the State, order the release from detention of the foreign national.

(9) In making an order under *subsection (8)*, the High Court may make the release ordered subject to conditions; and those conditions may include conditions requiring the foreign national to—

- 10 (a) reside or remain in a district or place specified in the order,
- (b) report to a Garda Síochána station or an immigration officer so specified at intervals so specified,
- (c) surrender any passport or travel document he or she holds,
- (d) enter into a bond,
- 15 (e) secure a surety or guarantee by a third party.

(10) In considering whether to make an order under *subsection (8)* and whether and how to exercise the power to impose conditions under *subsection (9)*, the High Court shall have regard to whether the foreign national would, if released, be likely to contravene *section 5(4)(a)* or attempt to avoid removal from the State under *section 51*.

20

(11) In any criminal proceedings brought against a foreign national detained under *subsection (2)* or *(3)*, the Director of Public Prosecutions shall, as soon as practicable, inform the court that the accused is a foreign national so detained; and the court shall, in considering whether to grant bail to the accused, have regard to that information.

25

(12) A foreign national arrested under *subsection (1)* may, instead of being detained under this section (but without prejudice to the power to detain under it) be required, by written direction given to him or her by the immigration officer or member of the Garda Síochána making the arrest, to comply with any one or more of the following conditions:

30

- (a) that the foreign national reside or remain in a district or place specified in the direction;
- 35 (b) that he or she report to a Garda Síochána station or an immigration officer specified in the direction at intervals so specified;
- (c) that he or she surrender any passport or travel document he or she holds;
- 40 (d) that he or she enter into a bond;
- (e) that he or she secure a surety or guarantee by a third party.

(13) The matter of whether or not a requirement under *subsection (12)* was imposed on a foreign national shall not bear on any question about the lawfulness of his or her detention under *subsection (2)* or *(3)*.

45

(14) Nothing in this Act confers an entitlement on a foreign national arrested under *subsection (1)* to be subjected to one of the

procedures set out in *subsection (2)* and in *subsection (12)* rather than the other.

(15) A foreign national who does not comply with a condition imposed under *subsection (12)* or *section 53(4)* may be arrested and detained and, for those purposes, *subsections (1) to (4)* shall apply notwithstanding *subsection (1)* of *section 53* in relation to that arrest and detention. 5

(16) Compliance with the obligation to leave the State under *section 5(4)(a)* does not constitute a contravention of a condition imposed under this section. 10

(17) Where it appears to the Minister that a foreign national who is to be or is being removed under this section has no passport or travel document, the Minister may issue a *laissez-passer* to the foreign national.

(18) The Minister shall make regulations providing for the treatment of foreign nationals detained under this section. 15

Persons under 18 years of age.

53.—(1) *Subsections (2) to (4)* of *section 52* do not apply to a foreign national who is under 18 years of age.

(2) If, however, and for so long as an immigration officer or member of the Garda Síochána who has the custody of a foreign national believes and has reasonable grounds for believing that the foreign national is 18 years of age or over, *subsections (2) to (4)* of *section 52* shall apply to the foreign national. 20

(3) An immigration officer or member of the Garda Síochána who detains in custody any foreign national who has in his or her parental custody or is otherwise responsible for looking after a person under the age of 18 years shall, as soon as practicable, inform the Health Service Executive of that fact and such other circumstances as are relevant. 25

(4) An immigration officer or member of the Garda Síochána may, by written direction given to a foreign national under the age of 18 years, require that foreign national to comply with any of the conditions set out in *paragraphs (a) to (c)* of *section 52(12)*. 30

Responsibilities of carriers in relation to removal of foreign nationals from the State.

54.—(1) An immigration officer or member of the Garda Síochána may place a detained foreign national on a vehicle that is about to leave the State; and a foreign national so placed shall continue to be in lawful custody until the vehicle leaves the State. 35

(2) The master of a vehicle that is about to leave the State shall, if so directed by an immigration officer or member of the Garda Síochána, receive a detained foreign national (and any dependants of the foreign national) on board the vehicle and afford him or her (and them) proper accommodation and maintenance during the journey to be taken by him or her (or them). 40

(3) The Minister shall pay the reasonable expenses incurred in complying with a direction under *subsection (2)*. 45

(4) A direction under *subsection (2)* may be given only at a reasonable time before the departure of the vehicle referred to in that subsection.

5 (5) Where a detained foreign national arrived in the State by means of a vehicle the master or person in charge of the vehicle shall, if so directed in writing by the officer or member, remove the foreign national without delay from the State to whichever of the states referred to in *section 51(3)* the officer or member considers appropriate.

10 (6) A direction under *subsection (5)* may require the person to whom it is given to remove the foreign national referred to in it or require the carrier to arrange for the removal of the foreign national by another carrier.

15 (7) If a person fails to comply with a direction under *subsection (5)* or to implement an arrangement under *subsection (6)*, the officer or member who gave the direction (including the direction under which the arrangement was made or should have been made) may arrange for the removal of the foreign national referred to in the direction.

(8) The costs incurred under *subsection (7)* shall be recoverable as a simple contract debt by the Minister from the person to whom the direction was given.

20 (9) A person who fails to comply with a direction under *subsection (5)* (including one given by virtue of *subsection (6)*) commits an offence.

25 (10) A member of the Garda Síochána may arrest without warrant any person whom he or she suspects of having committed an offence under *subsection (9)*.

30 (11) Amounts may, for the purposes of *subsection (3)*, be prescribed in relation to the receiving, accommodation and maintenance of a foreign national under *subsection (2)* and any amount so prescribed shall be taken, for the purposes of *subsection (3)*, as a reasonable expense.

(12) In this section a “detained foreign national” is a foreign national detained under *section 52*.

35 **55.—**(1) The Minister may require a foreign national removed from the State under this Part to pay him or her the reasonable expenses incurred in the foreign national’s detention, removal and maintenance while being detained and removed. Liability for costs of removal.

(2) *Subsection (1)* does not apply in respect of a foreign national who is under the age of 18 years (a “minor”); the Minister may, however, require a person who—

40 (a) has or has had charge or responsibility of the minor and

(b) is removed from the State along with the minor,

to pay him or her the reasonable expenses incurred in that minor’s detention or removal and maintenance while being detained and removed.

45 (3) Where more than one person is subject to a liability under *subsection (2)*, the liability shall be joint and several.

(4) Maximum amounts may be prescribed in respect of different kinds of circumstances giving rise to expenses payable under *subsections (1) and (2)*.

(5) In prescribing maximum amounts under *subsection (4)*, the Minister shall have regard to the actual costs usually incurred in the circumstances to which those amounts relate. 5

(6) Without prejudice to the generality of *subsection (4)*, the different kinds of expenses for which maximum amounts may be prescribed under that subsection may include the following:

(a) the costs over a particular period of time of detaining a foreign national in accordance with *section 52(2)* and maintaining him or her there while in such detention; 10

(b) the costs of moving a foreign national in accordance with *section 52(4)(a) and (b)* including the costs of maintaining him or her while in custody during the move; 15

(c) the costs of removing a foreign national from the State to another state in accordance with *section 51*, including the costs of maintaining him or her while in custody until he or she leaves the State.

(7) The Minister shall notify a foreign national in writing of the amount of expenses to be paid by the foreign national under this section; but want of notification under this subsection does not affect the obligation under *subsection (1)* to pay those expenses. 20

(8) (a) Any costs, or any part thereof, incurred by the Minister under *subsection (1)*, may be recovered from the foreign national concerned as a simple contract debt in any court of competent jurisdiction. 25

(b) The relevant period of limitation under the Statutes of Limitation in relation to a debt referred to in *paragraph (a)* shall not begin to run until the Minister becomes aware of the return to and presence in the State of the foreign national. 30

(9) In *subsection (1)*, “reasonable expenses” includes unrecovered costs awarded by a court to the Minister in proceedings in respect of the lawfulness of the detention and removal from the State of the foreign national. 35

PART 7

PROTECTION

Definitions.

56.—(1) In this Part—

“person eligible for subsidiary protection” means a person— 40

(a) who is not a national of a Member State,

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his

or her country of origin, or, in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country, construed in accordance with *section 64*, and

(d) to whom *section 63* does not apply;

“refugee” means a person—

(a) who, without prejudice to the Protocol on Asylum for nationals of a Member State, is not a national of a Member State,

(b) who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion—

(i) is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, construed in accordance with *section 64*,

(ii) if a stateless person, is outside of the country of his or her former habitual residence and is unable or, owing to such fear, unwilling to return to it, and

(c) to whom *section 63* does not apply;

“serious harm” means—

(a) death penalty or execution,

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or

(c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in a situation of international or internal armed conflict;

“act of persecution” shall be construed in accordance with *section 61*;

“membership of a particular social group” shall include membership of a Trade Union;

“sexual orientation” does not include orientation towards the commission of acts considered to be criminal in the State.

57.—(1) A foreign national is entitled to protection in the State if he or she— Entitlement to protection in the State.

(a) is a refugee, or

(b) not being a refugee, is a person eligible for subsidiary protection,

and in this Act “protection” shall be construed accordingly.

(2) A person who seeks any form of protection in the State shall be deemed to have sought protection in the State as a refugee.

58.—(1) (a) A foreign national, whether lawfully or unlawfully in the State, may apply to the Minister for protection in the State.

(b) A foreign national who applies for protection under *paragraph (a)* shall be interviewed by an authorised officer or an immigration officer at such times as may be specified by the officer and the foreign national shall make himself or herself available for such interview at the times so specified. 5

(2) An interview under *subsection (1)(b)* shall, in relation to the person the subject of the interview, seek to establish *inter alia*— 10

(a) whether the person wishes to make an application for protection and, if he or she does so wish, the general grounds upon which the application is based,

(b) the identity of the person, 15

(c) the nationality and country of origin of the person,

(d) the mode of transport used, the route travelled by the person to the State and details of any person who assisted the person in travelling to the State,

(e) the reason why the person came to the State, and 20

(f) the legal basis for the entry into or presence in the State of the person.

(3) An interview under *subsection (1)(b)* shall, where necessary and possible, be conducted with the assistance of an interpreter and a record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and, if the interview was conducted by an immigration officer who is not an officer of the Minister, to the Minister. 25

(4) (a) Where it appears to the officer that the foreign national referred to in *subsection (1)(a)* is under the age of 18 years, the officer shall, as soon as practicable, so inform the Health Service Executive; and thereupon the provisions of the Child Care Act 1991 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply in relation to that foreign national. 30 35

(b) (i) Where a foreign national to whom *paragraph (a)* applies is accompanied by an adult, the officer concerned, where he or she considers it appropriate to do so, may require that accompanying adult to verify that he or she is taking parental responsibility for the foreign national concerned. 40

(ii) The officer, where he or she is not satisfied that the adult referred to in *subparagraph (i)* is taking parental responsibility for the foreign national, shall so inform the Health Service Executive and thereupon the provisions of the Child Care Act 1991 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply in relation to the foreign national. 45

- 5 (c) (i) Where it appears to the Health Service Executive, on the basis of information available to it, that an application for protection should be made by or on behalf of the foreign national referred to in *paragraph (a)* or *(b)(ii)*, or in *subsection (6)* of *section 23*, it shall arrange for the appointment of an employee of the Health Service Executive or such other person as it may determine to make such an application on behalf of the foreign national.
- 10 (ii) An application for protection shall not be made pursuant to *subparagraph (i)* by the Health Service Executive unless it is satisfied that it is in the best interest of the foreign national concerned that such an application should be made.
- 15 (iii) Any costs incurred by a person appointed under *subparagraph (i)* other than any legal costs arising from an application for protection shall be paid by the Health Service Executive.
- 20 (5) The officer referred to in *subsection (1)(b)* shall inform the foreign national concerned that he or she is entitled to consult a solicitor and the High Commissioner.
- 25 (6) (a) Subject to *paragraph (b)*, a foreign national making an application for protection under *subsection (1)* shall state whether the application is also being made on behalf of his or her dependants.
- (b) In the absence of a statement under *paragraph (a)*, the application shall be deemed to be made on behalf of all the dependants of the foreign national concerned.
- 30 (c) Where dependants included in an application for protection are over 18 years of age they shall provide written consent to the application being made on their behalf.
- (d) A dependant to whom *paragraph (c)* applies who does not consent to an application being made on his or her behalf may make an application on his or her own behalf.
- 35 (7) An application for protection under *subsection (1)* shall be made in the prescribed form and presented by the applicant in person and shall include all details of the grounds on which—
- (a) protection is being claimed, and
- 40 (b) in the event of protection not being granted, the applicant should be allowed to remain in the State.
- 45 (8) (a) The Minister shall notify the High Commissioner in writing of the making of an application for protection and the notice shall include the name of the applicant and the name of his or her country of origin and such other information as the Minister may determine.
- (b) The Minister shall furnish a copy of the record of any interview under *subsection (1)(b)* to the High Commissioner whenever so requested by him or her in writing.

(9) The Minister, as soon as possible after receipt by him or her of an application for protection, shall give or cause to be given to the applicant a statement in writing specifying, where possible in a language that he or she understands—

- (a) the procedures to be observed in the investigation of applications for protection under this Part, 5
- (b) the entitlement of the applicant to consult a solicitor and, where necessary and practicable, to be provided with an interpreter,
- (c) the entitlement of the applicant to communicate with the High Commissioner, 10
- (d) the entitlement of the applicant to make written submissions to the Minister,
- (e) the duty of the applicant to co-operate with the Minister and to furnish information relevant to his or her application for protection and to all other aspects of his or her request to be given a residence permit, 15
- (f) the obligation of the applicant to comply with conditions imposed under *section 35* and the possible consequences of non-compliance with those conditions including— 20
 - (i) the possibility that his or her application for protection may be deemed to be withdrawn,
 - (ii) the possibility that Minister may refuse to grant the applicant protection in the State, with the consequence that the protection applicant will then be unlawfully in the State, 25
 - (iii) the requirement, under *section 5* of this Act, that a person whose presence in the State is unlawful leave the State and the possibility that such a person may be removed or caused to be removed from the State, 30
- (g) the possible consequences of the failure of the applicant to attend an interview under *section 59*.

Minister's
investigation of
protection
applications.

59.—(1) The Minister shall investigate each protection application for the purpose of determining whether—

- (a) the protection applicant is entitled to a protection residence permit, or 35
- (b) notwithstanding that the protection applicant is not so entitled, he or she should be given a residence permit other than a protection residence permit.

(2) As part of an investigation under *subsection (1)*, the Minister shall cause the protection applicant concerned to be interviewed. 40

(3) An interviewer may, where he or she considers it necessary to do so, interview any dependents of the protection applicant concerned.

- (4) (a) An interview under *subsection (2)* or *(3)* shall, where necessary and possible, be conducted with the assistance 45

of an interpreter who is able to ensure appropriate communication between the applicant and the interviewer.

- 5 (b) The requirement at *paragraph (a)* shall be deemed to have been complied with if interpretation is provided in a language which the applicant can reasonably be expected to understand and in which he or she is able to communicate.
- (5) (a) An interview under *subsection (2)* or *(3)* shall take place:
- 10 (i) without the presence of other members of the family unless the interviewer considers it necessary for an appropriate examination to have other family members present;
- (ii) under conditions which ensure appropriate confidentiality.
- 15 (b) The High Commissioner may, whenever he or she so requests, be present at an interview under *subsection (2)* or *(3)*.
- (c) The Minister may prescribe the conditions governing the presence of third parties at an interview under *subsection (2)* or *(3)*.
- 20 (6) (a) An interview under *subsection (2)* or *(3)* may be dispensed with where the Minister is of the opinion that—
- 25 (i) based on the available evidence, the applicant is a refugee or a person eligible for subsidiary protection; or
- (ii) based on a medical or psychological certificate provided by or on behalf of the applicant, the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control.
- 30 (b) The application of *paragraph (a)* shall not of itself operate to—
- (i) prevent information relating to the applicant's protection claim from being submitted to the Minister by or on behalf of the applicant,
- 35 (ii) prevent the Minister from making a final determination in respect of the application, or
- (iii) adversely affect the final determination of the protection application.
- 40 (7) (a) The protection applicant, the High Commissioner or any other person concerned may make representations in writing to the Minister in relation to any matter relevant to an investigation by him or her under this section and the Minister shall take account of any such representations made before or during an interview under *subsection (2)* or *(3)*.
- 45 (b) *Paragraph (a)* shall not be construed as preventing the Minister from taking into account any representations made following an interview under *subsection (2)* or *(3)*

provided that such representations are made prior to the determination referred to in *section 70(1)*.

(8) (a) The Minister may, for the purposes of his or her functions under this Part, by notice in writing, request any Minister or such other person as may be specified in the notice to make such inquiries and to furnish to him or her such information in his or her possession or control as he or she may reasonably require within such period as shall be specified in the notice. 5

(b) For the purpose of his or her functions under this Part, the Minister is not fixed with knowledge of any information in the hands of another information holder (within the meaning of *section 92*) except to the extent that such information has been furnished to him or her either under *paragraph (a)* or by the applicant to whom the information relates. 10 15

(c) *Paragraph (b)* does not limit the use by the Minister of information within his or her knowledge relating to an applicant whether or not it has been furnished to him or her under *paragraph (a)* or by the applicant to whom the information relates. 20

(9) Nothing in the Data Protection Act 1988 shall be construed as prohibiting a person or body from giving to the Minister, on request by him or her, such information as is in the person's possession or control relating to the application. 25

(10) The procedures to be followed in investigations under this section may be prescribed and different procedures may be prescribed for different classes of applications.

(11) Following the conclusion of an investigation under this section, the Minister shall cause a report to be prepared in writing, which shall contain the matters mentioned in *section 70(1)*. 30

Assessment of facts
and circumstances.

60.—(1) The following matters, in so far as they are known, shall be taken into account by the Minister or, as the case may be, the Tribunal for the purposes of determining an application for protection or an appeal under *section 79*: 35

(a) all relevant facts as they relate to the country of origin at the time of making a determination in respect of the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether he or she has been or may be subject to persecution or serious harm; 40

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm; 45

(d) whether the applicant's activities since leaving his or her country of origin were engaged in for the sole or main 50

purpose of creating the necessary conditions for applying for protection so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

5 (e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

10 (2) (a) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall, subject to *paragraph (b)*, be regarded as a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm.

15 (b) *Paragraph (a)* shall not apply where there are good reasons to consider that such persecution or serious harm will not be repeated.

(3) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the protection applicant left his or her country of origin.

20 (4) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the protection applicant since he or she left his or her country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held by the protection applicant in the country of origin.

30 (5) The Minister or Tribunal may determine that an applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm.

35 (6) In examining whether a part of the country of origin accords with *subsection (5)*, the Minister or Tribunal shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

(7) Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the Minister or Tribunal is satisfied that—

40 (a) the applicant has made a genuine effort to substantiate his or her application,

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,

45 (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,

(d) the applicant has applied for protection at the earliest possible time, except where an applicant demonstrates good reason for not having done so, and

- (e) the general credibility of the applicant has been established.

Acts of persecution.

61.—(1) Acts are not acts of persecution for the purposes of this Part unless they are:

- (a) sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- (b) an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in *paragraph (a)*.

(2) The following are examples of acts which may amount to acts of persecution for the purposes of this Part:

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative police, or judicial measures, or a combination of these measures, that are in themselves discriminatory or which are implemented in a discriminatory manner;
- (c) prosecution or punishment that is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts of a kind referred to in *section 63(2) or (5)*;
- (f) acts of a gender-specific or child-specific nature.

(3) There must be a connection between the reasons for persecution, as construed under *section 62*, and the acts of persecution as construed under this section.

Reasons for persecution.

62.—(1) The Minister or, as the case may be, the Tribunal, shall take the following into account when assessing whether the persecution on which the applicant has based his or her application for protection was, or is for reasons of race, religion, nationality, membership of a particular social group or political opinion:

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or

forms of personal or communal conduct based on or mandated by any religious belief;

(c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;

(d) (i) a group shall be considered to form a particular social group where in particular—

(I) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or

(II) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society,

(ii) a particular social group may include a group based on a common characteristic of sexual orientation, depending on the circumstances in the country of origin,

(iii) gender-related aspects may be taken into account in assessing whether an applicant is a member of a social group based on sexual orientation without by themselves creating a presumption for the applicability of this Part;

(e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the protection applicant.

(2) In the assessment of whether an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by an actor of persecution.

(3) In this Part, “actors of persecution or serious harm” include—

(a) a state,

(b) parties or organisations controlling a state or a substantial part of the territory of that state, and

(c) non-state actors, if it can be demonstrated that the actors mentioned in *paragraphs (a) and (b)*, including international organisations, are unable or unwilling to provide protection against persecution or serious harm.

63.—(1) A person is excluded from being a refugee where he or she is— Exclusion from protection.

- (a) receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance (subject to *subsection (6)*), or
 - (b) recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.
- (2) A person is excluded from being a refugee where there are serious reasons for considering that he or she—
 - (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,
 - (b) has committed a serious non-political crime outside the State prior to the issue of a protection residence permit, or
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.
- (3) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—
 - (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
 - (b) has committed a serious crime;
 - (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or
 - (d) constitutes a danger to the community or to the security of the State.
- (4) A person may be excluded from being eligible for subsidiary protection if he or she has, prior to his or her admission to the State, committed one or more crimes, outside the scope of *subsection (3)*, which would be punishable by imprisonment had they been committed in the State, and left his or her country of origin solely in order to avoid sanctions resulting from these crimes.
- (5) A person who has instigated or otherwise participated in the commission of an act or crime mentioned in *subsection (2)* or *(3)* is excluded from being a refugee or, as the case may be, a person eligible for subsidiary protection.
- (6) *Subsection (1)(a)* shall not apply where the protection or assistance referred to in that subsection has ceased for any reason, without the position of persons who had been receiving that protection or assistance being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

(7) For the purposes of *subsection (2)(b)*, “serious non-political crime” can include particularly cruel actions, even if committed with an allegedly political objective.

5 **64.—**(1) For the purposes of this Part, protection against per- Protection against
secution or serious harm shall be regarded as being generally pro- persecution or
vided where reasonable steps are taken by a state or parties or organ- serious harm.
isations, including international organisations, controlling a state or
a substantial part of the territory of a state to prevent the persecution
or suffering of serious harm, *inter alia*, by operating an effective legal
10 system for the detection, prosecution and punishment of acts consti-
tuting persecution or serious harm, where the applicant has access to
such protection.

15 (2) For the purposes of assessing whether an international organ-
isation controls a state or a substantial part of the territory of a state
and provides protection against persecution or serious harm, the
Minister or Tribunal shall take into account any guidance which may
be provided in relevant acts of the Council of the European Union.

20 **65.—**(1) An applicant for protection may withdraw his or her Withdrawal of
application by sending notice of withdrawal to the Minister. protection
application.

20 (2) Where an applicant for protection does not attend for inter-
view under *section 59* on the date and at the time fixed for the inter-
view then, unless the applicant, not later than 3 working days from
that date, furnishes the Minister with an explanation for the non-
attendance which in the opinion of the Minister is reasonable in the
25 circumstances, his or her protection application shall be deemed to
be withdrawn.

(3) Where—

30 (a) it appears to the Minister that an applicant for protection
is failing in his or her duty to co-operate with the Minister
or to furnish information relevant to his or her appli-
cation, or

(b) the Minister is of the opinion that the applicant for protec-
tion is in breach of *section 35(3)(a), (c) or (d) or (4)*,

35 the Minister shall send to the protection applicant a notice in writing
inviting the protection applicant to indicate in writing within 10
working days of the sending of the notice whether he or she wishes
to continue with his or her protection application; and, if a protection
applicant does not furnish an indication within the time specified
in the notice, his or her protection application shall be deemed to
40 be withdrawn.

(4) Where an application for protection is withdrawn or deemed
to be withdrawn pursuant to *subsection (1), (2) or (3)*, then—

(a) any investigation of the protection application shall be
terminated,

45 (b) the report referred to in *section 70* shall state that the
application has been withdrawn or deemed to be with-
drawn, as the case may be, and shall include a determi-
nation that the applicant concerned is not entitled to pro-
tection in the State, and

- (c) no appeal under *section 79* shall lie against a determination under *paragraph (b)*.

Burden of proof.

66.—(1) (a) Subject to *section 60(7)*, at all times during the consideration of a protection application, including an appeal under *section 79* it shall be for a protection applicant to establish that he or she is entitled to protection in the State. 5

(b) The Minister shall, in co-operation with the applicant, assess the relevant elements of the protection application and all other aspects of the claim to remain in the State. 10

(c) The Tribunal shall, for the purpose of an appeal, in co-operation with the applicant, assess the relevant elements of the protection application.

(2) Where it appears to the Minister that a protection application should be transferred to a Member State under *section 87* it shall be for the protection applicant to establish that his or her protection application should be considered in the State. 15

(3) Where, at any time during the investigation of an application for protection by the Minister under *section 59*, it appears to him or her that the protection applicant— 20

(a) is a national of, or has a right of residence in, a country standing designated by order under *section 87* as a safe country of origin, or

(b) had lodged a prior application for protection in another state party to the Geneva Convention, 25

(c) has been recognised as a refugee under the Geneva Convention by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking protection in the State does not relate to a fear of persecution or serious harm in that state, or 30

(d) has been recognised as a person eligible for subsidiary protection in accordance with Council Directive 2004/83/EC² or any other instrument replacing or amending that Directive, by a Member State and whose reason for leaving or not returning to that Member State and for seeking protection in the State does not relate to a fear of persecution or serious harm in that Member State, 35

then the applicant shall be presumed not to be in need of protection in the State unless he or she shows reasonable grounds for the contention that he or she is in entitled to such protection. 40

Credibility.

67.—(1) The Minister or the Tribunal, as appropriate, shall assess the credibility of a protection applicant for the purposes of:

(a) the investigation of his or her protection application;

(b) the determination of an appeal in respect of his or her protection application; and 45

²OJ No. L304/12 of 30.9.2004

(c) the consideration of whether the protection applicant should be allowed to remain in the State on other grounds.

5 (2) The following are examples of the matters to which the Minister or the Tribunal, as appropriate, may have regard for the purposes of *subsection (1)*—

(a) whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of any such document,

10 (b) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has provided a reasonable explanation for so doing,

15 (c) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence,

20 (d) where the protection application was made other than at a frontier of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim protection immediately on arriving at a frontier of the State unless the application is grounded on events which have taken place since his or her arrival in the State,

(e) whether the applicant has provided a full and true explanation of how he or she travelled to or arrived in the State,

30 (f) whether the application does not show grounds for the contention that the applicant is in need of protection,

35 (g) whether the applicant has made false or misleading representations in relation to his or her application including by withholding relevant information or documents with respect to his or her identity or nationality that could have a negative impact on the decision,

(h) whether the applicant has made inconsistent, contradictory, improbable or insufficient representations,

40 (i) whether the applicant, without reasonable cause, having withdrawn his or her application and not having been refused protection under *section 70*, has made a subsequent application for protection,

45 (j) whether the applicant, without reasonable cause, has made the protection application following receipt of a notification of a decision or proposal to discontinue his or her entry or residence permit under *section 40* or any other notification to the effect that his or her presence in the State is unlawful, or following the commencement of arrangements for his or her removal under this Act,

50 (k) whether the applicant has, without reasonable cause, failed to comply with the requirements of *section 35(3)(a), (c) or (d)* or (4),

- (l) whether the applicant has complied with the requirements of *section 68*, and
 - (m) whether, in the case of an application to which *section 79* applies, the applicant has furnished information in relation to the application which he or she could reasonably have furnished during the investigation of the application by the Minister but did not so furnish. 5
- (3) The Minister or the Tribunal, as appropriate, may have regard to such other matters as may seem reasonable for the purposes of *subsection (1)*. 10

Duty to co-operate.

68.—(1) It shall be the duty of an applicant to co-operate in—

- (a) the investigation of his or her protection application,
 - (b) the determination of an appeal in respect of his or her protection application, and
 - (c) the consideration of whether he or she should be allowed to remain in the State on other grounds. 15
- (2) (a) (i) In complying with *subsection (1)*, an applicant shall furnish to the Minister or the Tribunal, as the case may be, as soon as reasonably practicable, all information in his or her possession, control or procurement in order to substantiate his or her protection application. 20
- (ii) Where the protection application referred to in *subparagraph (i)* includes any relative or dependant of the applicant, *subparagraph (i)* shall apply in respect of each relative or dependant concerned. 25
- (b) Without limiting *paragraph (a)*, the information referred to in that paragraph includes information on the country of origin, biometric data and all statements made by the applicant and all documentation at the applicant's disposal regarding his or her— 30
- (i) age,
 - (ii) background (including that of relevant relatives),
 - (iii) identity,
 - (iv) nationality or nationalities, 35
 - (v) country or countries and place or places of previous residence,
 - (vi) previous protection applications,
 - (vii) travel routes and details of persons who assisted the applicant in travelling to the State, 40
 - (viii) identity and travel documents, and
 - (ix) reasons for applying for protection or for otherwise wishing to remain in the State.

69.—(1) The Minister may, subject to the need for fairness and efficiency in dealing with applications for protection under this Act, where he or she considers it necessary or expedient to do so, give a direction in writing to the Tribunal to accord priority to such application or applications as is or are specified in the direction.

Prioritisation of applications.

(2) In specifying an application or applications which is or are to be accorded priority the Minister shall have regard to one or more of the following—

- (a) the grounds of an application under section 58 or otherwise;
- (b) the country of origin or habitual residence of an applicant;
- (c) any family relationship between applicants;
- (d) the age of an applicant and, in particular, of a person under the age of 18 years in respect of whom an application is made;
- (e) the dates on which an application was made;
- (f) considerations of public security or public policy (“*ordre public*”);
- (g) the likelihood that an application is well-founded;
- (h) whether there are special circumstances regarding the welfare of an applicant or the welfare of family members of an applicant;
- (i) whether an application does not show on its face grounds for the contention that the applicant is in need of protection;
- (j) whether an applicant has made false or misleading representations in relation to his or her application, including by withholding relevant information or documents with respect to his or her identity or nationality that could have a negative impact on the decision;
- (k) whether an applicant has made inconsistent, contradictory, improbable or insufficient representations;
- (l) whether an applicant has not complied with his or her duty to co-operate in the investigation of his or her application under section 68 or section 95;
- (m) whether an applicant had, or could have, lodged a prior application for protection in another country, including a country with which the State has entered an agreement under section 87;
- (n) whether an application under section 58 was made at the earliest opportunity after the applicant’s arrival in the State;
- (o) whether an applicant is a national of or has a right of residence in a country of origin designated as safe under section 87;

(p) whether an applicant is a person to whom *section 63* applies;

(q) whether an applicant had previously made an application for protection in the State which contained different personal data.

5

(3) The Tribunal shall comply with a direction given to it under *subsection (1)*.

(4) The Minister may by a direction revoke or alter a direction given by him or her under *subsection (1)*.

Determination and
report of
investigation of
protection
application.

70.—(1) The report prepared under *section 59(11)* shall refer to the matters raised by the protection applicant in relation to his or her application and in any interview under that section and to such other matters as the Minister considers appropriate and shall set out the findings of the Minister together with his or her determination in relation to the protection application.

10

15

(2) The determination referred to in *subsection (1)* shall be that the applicant, along with as the case may be, his or her dependants on whose behalf the application was made or deemed to have been made:

(a) is entitled to protection in the State as a refugee and will be granted a protection residence permit on that basis,

20

(b) is not entitled to protection in the State as a refugee but is entitled to protection in the State as a person eligible for subsidiary protection and will be granted a protection residence permit on that basis,

25

(c) is not entitled to protection in the State but will be granted a residence permit, other than a protection residence permit, subject to such conditions the Minister may deem fit, or

(d) is not entitled to protection in the State and will not be granted a residence permit.

30

(3) Where a report under *subsection (1)* includes the determination set out in *paragraph (d)* of *subsection (2)* the findings of the Minister in that report may include one or more of the following:

(a) that the application showed either no basis or a minimal basis for the contention that the applicant is in need of protection in the State;

35

(b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;

40

(c) that the applicant, without reasonable cause, failed to provide identification documents or provided false identification documents;

45

(d) that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State;

(e) that the application was made pursuant to *section 84*;

(f) that the applicant had lodged a prior application for protection in another Member State or state party to the Geneva Convention (whether or not that application had been determined, granted or rejected);

(g) that the applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by order under *section 87*.

(4) (a) Where a determination under *subsection (1)* cannot be made within six months of the date of application then the Minister shall, upon request from the protection applicant, provide the applicant with information on the estimated time-frame in which a determination may be made.

(b) The provision under *paragraph (a)* by the Minister of an estimated time-frame in which a determination may be made shall not of itself oblige the Minister to make a determination within that time-frame.

71.—(1) The Minister shall notify the applicant, his or her solicitor (if known) and, whenever so requested by him or her, the High Commissioner, of his or her determination of the protection application under *section 70(1)*.

Notification of determination of protection application at first instance.

(2) A notification under *subsection (1)* shall be accompanied by—

(a) a notice of the Minister's determination in respect of the protection application and the reasons for that determination,

(b) a copy of the report under *section 59(11)*, and

(c) subject to *subsections (3) and (4)*,

(i) copies of any reports, documents or representations in writing submitted to the Minister under *section 59* and not already available to the applicant or his or her legal advisor, and

(ii) an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Minister in the course of an investigation by him or her under that section.

(3) The Minister may withhold any information in his or her possession or control in the interest of public security or public policy ("*ordre public*").

(4) Where information has been supplied to the Minister, a Department of State or another branch or office of the public service by or on behalf of the government of another state in accordance with an undertaking (express or implied) that the information or its existence, would be kept confidential, the information or its existence shall not, without the consent of the other state be produced or further disclosed otherwise than in accordance with the undertaking.

(5) The notification under *subsection (1)* of a determination under *section 70(2), (b), (c) or (d)* shall inform the applicant of the procedures set out in *section 79*.

(6) Where a report under *section 59(11)* includes:

(a) a determination that the applicant is not entitled to protection in the State and will not be granted a residence permit, and 5

(b) any of the findings in *section 70(3)*,

then, subject to *subsection (8)*, the notification under *subsection (1)* shall, notwithstanding *subsection (5)*, include a statement that the applicant may, within 10 working days from the sending of the notification, appeal to the Tribunal under *section 79* and that any such appeal will be determined without an oral hearing. 10

(7) The Minister may investigate under *section 59* such classes of applications as he or she considers appropriate in accordance with the procedures referred to in *subsection (8)*. 15

(8) Where a report under *section 59(11)* in respect of an application referred to in *subsection (6)* includes—

(a) a determination that the applicant is not entitled to protection in the State and will not be granted a residence permit, and 20

(b) any of the findings in *section 70(3)*,

then, subject to *subsection (9)*, the notification under *subsection (1)* shall, notwithstanding *subsection (5)*, state that the applicant may, within 4 working days from the sending of the notification, appeal to the Tribunal under *section 79* and that any such appeal will be determined without an oral hearing. 25

(9) (a) Where an application is to be investigated in accordance with the procedures referred to in *subsection (8)*, the Minister shall notify the applicant accordingly in writing and shall send a copy of the notice to his or her solicitor (if known) and, if so requested by the High Commissioner, to him or her. 30

(b) *Subsection (8)* shall not apply to such an application unless the applicant concerned and his or her solicitor (if known) have been notified in accordance with *paragraph (a)*. 35

Cessation of
protection status.

72.—(1) A person shall cease to be a refugee if he or she—

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality, 40

(b) having lost his or her nationality, has voluntarily re-acquired it,

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality,

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,

5 (e) subject to *subsection (2)*, can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality, or

10 (f) subject to *subsection (2)*, being a stateless person he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(2) In determining whether *subsection (1)(e)* or *(f)* applies, the
15 Minister shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person's fear of persecution can no longer be regarded as well-founded.

(3) A person shall cease to be eligible for subsidiary protection when—

20 (a) the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required, and

(b) the change of circumstances is of such a significant and
25 non-temporary nature that the person no longer faces a real risk of serious harm.

73.—(1) The Minister shall not make a determination referred to in *section 70(2)(c)* in relation to a foreign national the lawfulness of whose presence in the State arises only out of a protection temporary residence permit unless in the Minister's opinion there are exceptionally serious reasons for permitting the foreign national to remain in the State.

Criteria for non-protection aspects of protection application.

(2) In determining whether exceptionally serious reasons exist in a particular case—

35 (a) the Minister shall consider whether the presence of the applicant in the State would give the applicant an unfair advantage compared to a person not present in the State but in otherwise similar circumstances, and

(b) the Minister shall not be obliged to take into account factors in the case that do not relate to reasons for the applicant's departure from his or her country of origin or, as the case may be, of habitual residence or that have arisen since that departure.

74.—(1) Where—

(a) The Minister determines, under *section 70*, or

45 (b) the Tribunal recommends, under *section 80(2)*, that a protection applicant should be declared to be a refugee or entitled to protection in the State as a person eligible for

Protection residence permit: further provisions.

subsidiary protection, the Minister shall as soon as possible thereafter issue a protection residence permit to him or her, or cause it to be issued.

(2) The Minister may refuse to grant a protection residence permit to a protection applicant to whom *subsection (1)* applies where— 5

- (a) there are reasonable grounds for regarding the applicant as a danger to the security of the State, or
- (b) the applicant, having been by a final judgment convicted of a particularly serious crime, constitutes a danger to the community of the State. 10

(3) The Minister shall not grant a protection residence permit to a protection applicant where—

- (a) following a determination under *section 70* or *section 80(2)*, the applicant is found not to be a refugee or, as the case may be, a person eligible for subsidiary protection in the State, 15
 - (b) the application is withdrawn or deemed to be withdrawn under *section 65*;
 - (c) an appeal under *section 79* is withdrawn or deemed to be withdrawn under *section 81*. 20
- (4) (a) The Minister shall send a notice in writing of the granting of or, as the case may be, the refusal to grant a protection residence permit to a protection applicant.
- (b) The Minister shall notify the High Commissioner of the granting of or, as the case may be, the refusal to grant a protection residence permit to a protection applicant under *subsection (1), (2) or (3)*. 25
 - (c) Where the Minister has determined that a protection residence permit shall not be granted to a protection applicant, the notice referred to in *paragraph (a)* shall inform the applicant that his or her temporary protection residence permit has expired and that he or she— 30
 - (i) is for all purposes unlawfully in the State,
 - (ii) is under an obligation to remove himself or herself from the State, and 35
 - (iii) is liable to be removed without notice, if necessary against his or her will, from the State and to be detained for the purpose of securing his or her removal.

Protection Review
Tribunal.

75.—(1) On the establishment day there shall stand established a Tribunal to be known as the Protection Review Tribunal which shall perform the functions conferred on it by or under this Act. 40

(2) The functions of the Tribunal shall be to determine appeals as set out in this Part.

(3) (a) Subject to *paragraph (b)*, the Tribunal shall be— 45

(i) inquisitorial in nature, and

(ii) independent in the performance of its functions.

(b) This Part shall not be construed as prejudicing the generality of any other provision of these sections (including any provision of any regulation under these sections).

(4) The Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.

(5) Members of the staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Act 1956.

76.—(1) The Tribunal shall consist of the following members:

Membership of the
Tribunal.

(a) a chairperson; and

(b) such number of members, appointed either in a whole-time or a part-time capacity, as the Minister, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal,

each of whom shall have had before his or her appointment either—

(i) in relation to the chairperson, not less than 5 years experience as a practising barrister or practising solicitor; or

(ii) in relation to members other than the chairperson, not less than 5 years' relevant experience.

(2) For the purposes of *subsection (1)*, “relevant experience” shall mean experience as a practising barrister or practising solicitor or such experience of protection matters as may for the purpose be prescribed, or a combination of these.

(3) (a) A person being appointed to be a member of the Tribunal in a part-time capacity shall be appointed by the Minister.

(b) A person shall not be appointed to be the chairperson of the Tribunal, or a member of the Tribunal, in a whole-time capacity, unless the Commission for Public Service Appointments, within the meaning of the Public Service Management (Recruitment and Appointment) Act 2004, after holding a competition under section 47 of that Act, have selected him or her for appointment to the position.

(c) *Paragraph (b)* shall not apply to the reappointment of a member in accordance with *subsection (5)*, for a second or subsequent term.

(4) Each member of the Tribunal shall hold office under a contract of service in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances and expenses and superannuation) as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(5) The term of office of the members of the Tribunal shall be as follows:

(a) the term of office of the chairperson shall be 5 years and a chairperson may be reappointed to the office for a second or subsequent term not exceeding 5 years; 5

(b) the term of office of a member appointed in a whole-time capacity shall be 3 years or such longer duration not exceeding 5 years as may be prescribed and such a member may be reappointed to the office for a second or subsequent term not exceeding 3 years or such longer duration not exceeding 5 years as may be prescribed; 10

(c) the term of office of a member appointed in a part-time capacity shall be 3 years and such a member may be reappointed to the office for a second or subsequent term not exceeding 3 years. 15

(6) A member of the Tribunal may resign his or her membership by letter addressed to the Minister and the resignation shall take effect from the date specified in the letter.

(7) Where a member of the Tribunal is—

(a) nominated as a member of Seanad Éireann, 20

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament, 25

(d) elected or co-opted as a member of a local authority,

(e) appointed to judicial office, or

(f) appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

(8) Without prejudice to the generality of *subsection (7)*, that subsection shall be construed as prohibiting the reckoning of a period therein mentioned as service with the Tribunal for the purposes of any superannuation benefits payable under this Act or otherwise. 30

(9) A member who is for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein, 35

(b) a member of the European Parliament, or

(c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under *paragraph (a)* or *(c)* or is such a member under *paragraph (b)*, be disqualified from being a member of the Tribunal. 40

(10) In this subsection “local authority” means a local authority for the purposes of the Local Government Act 2001.

(11) A member of the Tribunal may be removed from office by the Minister for stated reasons.

5 (12) (a) If a member appointed in a part-time capacity dies, resigns, becomes disqualified, is removed from office or is for any reason temporarily unable continue to perform his or her functions, the Minister may, subject to this Act, appoint another person to be a member of the Tribunal in a part-time capacity to fill the casual vacancy so occasioned.

10 (b) If a member appointed in a whole-time capacity—
(i) dies, resigns, becomes disqualified or is removed from office, or
(ii) is for any reason temporarily unable to perform his or her functions,

15 the Minister may appoint a person to be a member in a whole-time or part-time capacity until an appointment is made under *subsection (3)(b)*, and the person so appointed may perform all the functions conferred on such a member by this Act.

20 **77.—**(1) The chairperson shall ensure that the business of the Tribunal is managed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice. Chairperson of the Tribunal.

25 (2) The chairperson may, having regard to the need to observe fair procedures, establish rules and procedures for the conduct of oral appeals under this Part and shall make copies of those rules and procedures available to members of the Tribunal, to the Minister, to the High Commissioner and to persons likely to be affected by them.

30 (3) The chairperson may from time to time issue guidelines or guidance notes generally on the practical application and operation of the provisions, or any particular provisions, of this Part and on developments in the law relating to protection.

35 (4) The chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient discharge of the business of the Tribunal, assign classes of business to each member having regard to the following matters:

- (a) the grounds of the appeals set out in the notices of appeal;
- (b) the country of origin of applicants;
- (c) any family relationship between applicants;
- 40 (d) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made;
- (e) the provisions of this Act pursuant to which the appeals are made.

45 (5) The chairperson shall—

- (a) assign to each member the business to be transacted by him or her,
 - (b) re-assign business from one member to a different member if, in the opinion of the chairperson, such reassignment is warranted— 5
 - (i) by the inability or unwillingness of the member to which the business was originally assigned to transact that business, or
 - (ii) in the interest of the fair and efficient discharge of the business of the Tribunal, 10
 - (c) require a member to prepare a report of his or her determination of each appeal within a period specified in the guidelines referred to at *subsection (3)*,
 - (d) require a member to prepare a report on any aspect of the transaction of the business assigned to the member. 15
- (6) The chairperson may from time to time convene a meeting with a member or members of the Tribunal for the purpose of discussing matters relating to the discharge of the business of the Tribunal, including, in particular, such matters as the avoidance of undue divergences in the exercise by the members of their functions 20 under these sections.
- (7) The chairperson shall convene a meeting of the members of the Tribunal at least once a year to review the work of the Tribunal and, where necessary, to make provision for training programmes for members of the Tribunal. 25
- (8) Where it appears to the chairperson that a decision made by a member of the Tribunal but not yet issued (in this subsection a “draft decision”) may contain an error of law or of fact, he or she may request the member to review the draft decision and the member so requested shall review the draft decision and make such 30 amendments as that member considers necessary and the decision following such review and such amendments as have been made by that member shall be the final decision of the member.
- (9) (a) The chairperson may, on notice to the applicant, refer any final decision in relation to an appeal under this Act for 35 the direction of the High Court where he or she considers that the decision was erroneous by reason of some mistake having been made in relation to the law.
 - (b) The High Court shall determine an application under *paragraph (a)* by giving such directions and making such 40 orders as it considers appropriate.
- (10) The chairperson may delegate to a member of his or her staff his or her functions of—
- (a) assigning to each member the business to be transacted by him or her, and 45
 - (b) receiving reports under *section 78(2)(d)* from members.
- (11) The chairperson shall, not later than 3 months after the end of each year, submit a report in writing to the Minister of his or her activities during that year; and, not later than 1 month after such

submission, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

5 (12) (a) The chairperson may, if he or she considers it appropriate to do so, make a report in writing to the Minister in relation to any function performed by him or her under this Part or any matter relating to the operation of this Part.

10 (b) The chairperson shall, if so required by the Minister, provide him or her with a report in writing in relation to any function performed by the chairperson under this Part or any matter relating to the operation of this Part.

15 (13) Where the chairperson is for any reason temporarily unable to act as the chairperson, or the office of the chairperson is vacant, the Minister shall appoint a person to be the chairperson for the duration of the inability or until an appointment is made under *subsection (3)(b) of section 76*, as appropriate, and the person so appointed may perform all the functions conferred on the chairperson by this Act.

20 (14) The chairperson may resign from the office of the chairperson by letter addressed to the Minister and the resignation shall take effect from the date specified in the letter.

(15) Where the chairperson is determining an appeal under these sections, the provisions of these sections shall apply to the chairperson as if he or she were a member of the Tribunal.

25 (16) The Tribunal shall be named as applicant, respondent, plaintiff or defendant, as appropriate, in any proceedings relating to any aspect of the transaction of the business of the Tribunal and the chairperson shall be responsible for the conduct of the Tribunal's functions in relation to such proceedings.

30 **78.—**(1) (a) A member of the Tribunal shall on behalf of the Tribunal transact the business assigned to him or her by the chairperson. Role of members of Tribunal.

(b) In this Part, “business” means the determination of appeals under this Part.

35 (2) A member shall, in the performance of his or her functions under this Part—

(a) ensure that the business assigned to him or her is managed efficiently and is disposed of as expeditiously as may be consistent with fairness and natural justice,

40 (b) conduct oral hearings in accordance with such rules and procedures as are established or adopted by the chairperson under *section 77(2)*,

(c) have regard to any guidelines or guidance notes issued by the chairperson under *section 77(3)*,

45 (d) prepare the report mentioned in *subsection (5)(c) or (d) of section 77* and provide this to the chairperson when requested to do so,

- (e) attend any meetings convened by the chairperson under *section 77(6)* or (7), unless it is impracticable to do so.

Appeal to Tribunal. **79.**—(1) A protection applicant may appeal in the prescribed manner against a determination of the Minister, made under *section 70*, that the applicant— 5

- (a) is not entitled to protection in the State as a refugee but is entitled to protection in the State as a person eligible for subsidiary protection, or

- (b) is not entitled to protection in the State.

(2) An appeal under *subsection (1)(a)* shall be brought by notice 10 in writing—

- (a) within 15 working days of the notification referred to in *section 71(1)* or, as the case may be, within the period specified in *section 71(6)* or *section 71(8)*, as appropriate, and 15

- (b) specifying the grounds of appeal and, except in a case to which *section 71(6)* or *71(8)*, applies, indicating whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal.

- (c) The Tribunal shall ensure that an appeal to which *section 71(6)* or *71(8)* applies shall be dealt with as soon as may be and, if necessary, before any other appeal. 20

(3) The Tribunal shall notify the Minister and the High Commissioner of the making of the appeal.

(4) The Minister shall furnish the Tribunal with copies of the 25 documents and information referred to in *section 71(2)* and of the notification referred to in that section.

- (5) (a) Where the Minister has withheld information from an applicant pursuant to *section 71(3)* he or she may also withhold such information from the Tribunal for the 30 reasons stated in that section.

- (b) Where the Minister furnishes the Tribunal with information which has been withheld from the applicant in accordance with *section 71(3)*, the Tribunal shall not disclose that information to the applicant. 35

- (c) Where the Minister furnishes the Tribunal with information to which *section 71(4)* relates, the Tribunal shall not disclose that information, other than in accordance with that subsection.

(6) The Tribunal may, for the purposes of its functions under 40 these sections, request the Minister to make such further inquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may reasonably be specified by the Tribunal.

(7) The Minister shall furnish the Tribunal with observations in 45 writing concerning any matter arising on the grounds of appeal

whenever so requested by the Tribunal and a copy of such observations shall be furnished to the applicant concerned and his or her solicitor (if known).

- 5 **80.—**(1) (a) The Tribunal shall furnish the applicant concerned and his or her solicitor (if known) and the High Commissioner whenever so requested by him or her with copies of any reports, observations, or representations in writing or any other document, furnished to the Tribunal by the Minister, copies of which have not been previously
10 furnished to the applicant or, as the case may be, the High Commissioner.
- (b) Notwithstanding *paragraph (a)* country of origin information on which the Tribunal member intends to rely in the making of a decision shall be made available to the
15 applicant except for such information as is publicly available or of a general nature.
- (2) (a) The Tribunal may—
- (i) affirm a determination of the Minister, or
- 20 (ii) set aside a determination of the Minister and recommend that the applicant should be declared to be a refugee or, as the case may be, a person entitled to protection in the State as a person eligible for subsidiary protection.
- 25 (b) The Tribunal shall affirm a determination of the Minister unless it is satisfied, having considered the matters referred to in *section 83*, that the applicant is a refugee or, as the case may be, a person entitled to protection in the State as a person eligible for subsidiary protection.
- 30 (c) A decision of the Tribunal under *paragraph (a)* and the reasons therefor shall be communicated by the Tribunal to—
- (i) the applicant concerned and his or her solicitor (if known), and
- (ii) the Minister.
- 35 (d) A decision of the Tribunal under *paragraph (a)* shall be communicated to the High Commissioner.
- (e) A decision of the Tribunal shall become final once it has been communicated to the applicant or his or her solicitor under *paragraph (c)(i)*.

Appeal to Tribunal:
further provisions.

- 40 **81.—**(1) Where an applicant fails, without reasonable cause, to attend an oral hearing under *section 82*, then unless the applicant, not later than 3 working days from the date fixed for the oral hearing, furnishes the Tribunal with an explanation for not attending the hearing which the Tribunal considers reasonable in the circum-
45 stances, his or her appeal shall be deemed to be withdrawn.

Withdrawal of
appeal.

(2) Where—

- (a) it appears to the Tribunal that an applicant is failing in his or her duty to co-operate with the Minister or to furnish information relevant to his or her appeal, or
- (b) the Minister notifies the Tribunal that he or she is of opinion that the applicant is in breach of *section 35(3)(a)*, (c) or (d) or (4),

the Tribunal shall send to the applicant a notice in writing inviting the applicant to indicate in writing (within 10 working days of the sending of the notice) whether he or she wishes to continue with his or her appeal; and, if an applicant does not furnish an indication within the time specified in the notice, his or her appeal shall be deemed to be withdrawn.

- (3) (a) An applicant may withdraw his or her appeal to the Tribunal by sending notice of withdrawal to the Tribunal and the Tribunal shall, as soon as may be, notify the Minister of the withdrawal.
- (b) Where an appeal is deemed to be withdrawn pursuant to *subsection (1)* or (2) the Tribunal shall, as soon as may be, notify the applicant, his or her solicitor (if known) and the Minister of the withdrawal.

Oral hearings.

- 82.—**(1) (a) (i) Except where otherwise provided in *section 71(6)* and *71(8)* the Tribunal shall, where appropriate, hold an oral hearing for the purposes of an appeal under this Act.
- (ii) An oral hearing shall, subject to *subparagraph (iii)*, be held in private.
 - (iii) The High Commissioner may be present at an oral hearing for the purpose of observing the proceedings.
- (b) For the purposes of an oral hearing, the Tribunal may—
- (i) direct in writing any person, except the Minister or an officer of the Minister, whose evidence is required by the Tribunal to attend before the Tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or control specified in the direction,
 - (ii) direct any such person to produce any specified document or thing in his or her possession or control,
 - (iii) give any other directions for the purpose of an appeal that appear to the Tribunal reasonable and just.
- (c) *Subparagraphs (i) and (ii) of paragraph (b)* shall not apply to a document or thing relating to information as respects which the Minister or the Minister for Foreign Affairs, as the case may be, directs (which he or she is hereby empowered to do) that the information be withheld in the interest of public security or public policy (“*ordre public*”).

(d) The Tribunal shall enable the applicant and an officer of the Minister to be present at and participate in the hearing and present their case to the Tribunal in person or through a legal representative or other person.

5 (e) The Tribunal shall, where necessary and possible, procure the attendance of an interpreter to assist at the hearing.

(f) An oral hearing under this section may be dispensed with where the Tribunal is of the opinion, based on a medical or psychological certificate provided by or on behalf of the applicant, that the applicant is unfit or unable to participate in the hearing.

10 (g) The application of *paragraph (f)* shall not of itself operate—

15 (i) to prevent information relating to the applicant's protection claim from being submitted to the Tribunal by or on behalf of the applicant,

(ii) prevent the Tribunal from making a final determination in respect of the appeal, or

(iii) adversely affect the final determination of the appeal.

20 (2) Subject to *section 79(5)*, a witness whose evidence has been or is to be given before the Tribunal shall be entitled to the same privileges and immunities as a witness in a court.

(3) The Tribunal, where it considers it appropriate to do so in the interest of the fair and efficient discharge of its business, may decide to hold—

(a) a single oral hearing in respect of more than one appeal, or

(b) separate oral hearings in respect of each of a number of applicants, notwithstanding that the applicants are members of the same family or that the applications are otherwise related.

83.—Before deciding an appeal under this Part, the Tribunal shall consider the following: Consideration of appeal by Tribunal.

(a) the relevant notice under *section 79(2)*;

35 (b) all material provided to the Tribunal by the Minister under *section 79(4)*;

(c) the determination of the Minister under *section 70*;

(d) any observations made to the Tribunal by the Minister or the High Commissioner; and

40 (e) the evidence adduced and any representations made at an oral hearing, if any.

84.—(1) A person who has applied for protection in the State may not, without the consent of the Minister, make a further application for protection in the State where— Subsequent applications for protection.

- (a) his or her protection application has been withdrawn or deemed to be withdrawn under this Act,
- (b) following a determination of his or her protection application, the Minister has decided that he or she should not be granted a protection residence permit, 5
- (c) an appeal made by the applicant concerned against a determination by the Minister in relation to his or her protection application has been withdrawn or deemed to be withdrawn under this Act,
- (d) the Tribunal under *section 80(2)*, has affirmed a determination of the Minister that he or she should not be granted a protection residence permit, or 10
- (e) a protection residence permit issued to the person has been discontinued under this Act.

(2) Before making a decision as to whether he or she will consent 15
or refuse to consent to the making of a further application for protection in the State under *subsection (1)*, the Minister shall require the applicant to—

- (a) outline in the prescribed manner the reasons why he or she considers that the Minister should consent to a further 20
application being made,
- (b) where the previous application or appeal was withdrawn or deemed to be withdrawn, provide an explanation of the circumstances giving rise to the withdrawal or deemed withdrawal of the application or appeal, 25
- (c) provide all relevant information being relied upon by the applicant to demonstrate that he or she is entitled to protection in the State, and
- (d) draw attention to any new circumstances which have arisen since the withdrawal or deemed withdrawal 30
referred to in *subsection (1)(a)* or (c), the determination referred to in *subsection (1)(b)*, the affirmation referred to in *subsection (1)(d)* or the discontinuation referred to in *subsection (1)(e)*.

(3) *Section 99(11)* applies to an application made under this 35
section.

(4) The Minister shall consent to a further application for protection being made where he or she is satisfied that the applicant has submitted new information which significantly adds to the likelihood that the applicant will qualify for protection in the State and which 40
could not reasonably have been provided earlier.

(5) The Minister shall notify the applicant of his or decision to consent or, as the case may be, not to consent to a further application being made under this section and the reasons for that decision.

Protection of
identity of
applicants.

85.—(1) The Minister and the Tribunal and their respective 45
officers shall take all practicable steps to ensure that the identity of applicants is kept confidential.

(2) No matter likely to lead members of the public to identify a person as an applicant under this Act shall, without the consent of that person, be published in a written publication available to the public or be broadcast.

5 (3) If any matter is published or broadcast in contravention of *subsection (2)*, the following persons, namely—

(a) in the case of a publication in a newspaper or periodical, any proprietor, an editor and any publisher of the newspaper or periodical,

10 (b) in the case of any other publication, the person who publishes it, and

(c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper,

15

shall be guilty of an offence.

(4) Where a person is charged with an offence under *subsection (3)* it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in *subsection (2)*.

20

(5) In this section—

“broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

25

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

30

86.—(1) A protection applicant may, but only at the time of making an appeal under *section 79*, apply in the prescribed manner to the chairperson of the Tribunal to make available to him or her any decision of the Tribunal which is legally relevant to his or her appeal.

35

Access to Tribunal decisions.

(2) Where the chairperson is satisfied that—

(a) the application complies with regulations under *subsection (8)*,

40

(b) the request is reasonable, and

(c) there exists a decision which is relevant to the applicant’s appeal,

then he or she shall, subject to *subsection (3)* and in accordance with regulations under *subsection (8)*, make such decision available to the applicant.

45

(3) Where, in relation to a request under *subsection (1)*, there is more than one decision of the Tribunal that is of legal relevance set out in that subsection, and the chairperson is of opinion that—

- (a) the requirements of fairness would be sufficiently served by making available a representative sample of such decisions in lieu of providing all such decisions, or 5
- (b) a representative sample of such decisions sufficient to meet the requirements of fairness has already been published under *subsection (5)*,

the making available of such representative sample shall be sufficient to comply with the requirements of this section. 10

(4) The chairperson may refuse a request where he or she is satisfied that the request is frivolous or vexatious.

(5) The chairperson may at his or her discretion, where he or she considers that a decision of the Tribunal is of legal importance, publish such decision in such manner as he or she considers reasonable. 15

(6) A decision made available or published under this section shall exclude any matters which would tend to identify a person as an applicant for protection under this Act or otherwise breach the requirement of *section 85* that the identity of applicants be kept confidential. 20

(7) An applicant's legal representative shall—

- (a) bring to the attention of the Tribunal any decisions of which the representative is aware which may tend not to support the appeal, and 25
- (b) distinguish such decisions from the decisions being relied upon in support of the appeal.

(8) The Minister may by regulation provide for any matters relating to the making available or publication of decisions under this section that he or she considers appropriate, including— 30

- (a) the details which are to be submitted with an application under *subsection (1)* to allow the chairperson to—
 - (i) establish to his or her satisfaction that the request is reasonable, and
 - (ii) determine what decision, if any, is legally relevant to the appeal, 35
- (b) the provision by the applicant or his or her legal representative or researcher of an undertaking to the effect that any decision made available under this section—
 - (i) will be used only for *bona fide* legal research in connection with the applicant's appeal under this Act, and 40
 - (ii) will not be published,
- (c) the manner in which a decision is to be made available or published under this section, 45

- 5 (d) the conditions under which any decision made available,
under *subsection (2)*, to an organisation providing legal
representation for the purposes of an appeal under this
Act may be made available to other legal representatives
or researchers of that organisation for the purposes of
an appeal under this Act, including the provision by that
organisation of an undertaking that—
- 10 (i) the decision will be used only for *bona fide* legal
research in connection with an appeal under this Act
in respect of which the legal representatives or
researchers concerned are acting,
- (ii) the decision will not be made available to legal rep-
resentatives or researchers who are not part of or
engaged by that organisation, and
- 15 (iii) the decision will not be published,
- (e) rules governing the—
- (i) making available of,
- (ii) publication of, and
- (iii) method of access to,
- 20 decisions of the Tribunal under this section, and
- (f) the keeping of records of decisions made available to any
person or published under this section.

(9) Where Regulations made under *subsection (8)* provide for an
undertaking or condition of the kind referred to in *paragraphs (b)*
25 or *(d)* of that subsection, it shall be an offence to fail to comply with
such an undertaking or condition.

- 87.—(1) (a) The Minister may, after consultation with the Minister Safe countries.
for Foreign Affairs, by order designate a country or part
of a country as a safe country of origin where, on the
30 basis of the legal situation, the application of the law
within a democratic system and the general political cir-
cumstances, it can be shown that, in the country or part
of the country concerned, there is generally and consist-
ently no persecution, construed in accordance with
35 *sections 61* and *62*, no torture or inhuman or degrading
treatment or punishment and no threat by reason of
indiscriminate violence in situations of international or
internal armed conflict.
- (b) In deciding whether to make an order under *paragraph*
40 *(a)*, the Minister shall have regard to the following
matters:
- (i) whether the country is a party to and generally com-
plies with obligations under the Convention Against
Torture, the International Covenant on Civil and
45 Political Rights, and, where appropriate, the Euro-
pean Convention on Human Rights;
- (ii) whether the country has a democratic political system
and an independent judiciary;

(iii) whether the country respects the principle of non-refoulement according to the Geneva Convention;

(iv) whether the country is governed by the rule of law.

(c) The determination as to whether an order under *paragraph (a)* should be made in relation to a particular country or part of a particular country shall be based on, *inter alia*, available information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations. 5

(d) The Minister shall notify the European Commission of the making, amendment or revocation of an order under *paragraph (a)*. 10

(2) In this section:

“the Convention against Torture” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution 39/46 of the General Assembly of the United Nations on 10 December 1984; 15

“the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950; 20

“the International Covenant on Civil and Political Rights” means the International Covenant on Civil and Political Rights adopted by Resolution 2200A (XXI) of the General Assembly of the United Nations on 16 December 1966.

(3) (a) The Minister may make such orders as appear to him or her to be necessary or expedient for the purpose of giving effect to— 25

(i) Council Regulation (EC) No. 343/2003³ or any Regulation amending or replacing that Regulation,

(ii) any agreement of the kind referred to in *subsection (4)*. 30

(b) Without prejudice to the generality of *paragraph (a)*, an order under this subsection may—

(i) specify the circumstances and procedure by reference to which an application for protection— 35

(I) shall be examined in the State,

(II) shall be transferred for examination in accordance with Council Regulation (EC) No. 343/2003 or any Regulation amending or replacing that Regulation or to a safe third country in accordance with any agreement of the kind referred to in *subsection (4)*, or 40

(III) shall be accepted for examination in the State pursuant to a request made by a Member State, in accordance with Council Regulation (EC) No. 343/2003 or any Regulation amending or 45

³OJ No. L50/1 of 25.02.2003.

replacing that Regulation, in which the application for protection was lodged or pursuant to an agreement to which *subsection (4)* refers,

5 (ii) provide for an appeal against a determination to transfer an application for protection to a Member State or a safe third country and for the procedure in relation to such an appeal,

10 (iii) provide, where the order specifies that the making of an appeal shall not suspend the transfer of the application or of the applicant to the safe third country, that such transfer is without prejudice to the appeal decision,

15 (iv) require that an application for protection shall not be investigated by the Minister until it has been decided whether a Member State is responsible for examining the application or whether the application should be transferred to a safe third country,

20 (v) require that an application for protection which is being investigated by the Minister shall be transferred to a Member State or a safe third country, as the case may be, for examination,

25 (vi) provide that, where an application has been transferred to a Member State for examination or to a safe third country, the person concerned shall go to that Member State or to that safe third country,

(vii) provide for the investigation of an application for protection by the Minister notwithstanding that a Member State or a safe third country has responsibility for examining the application,

30 (viii) specify the measures to be taken for the purpose of the removal of a person whose application has been transferred to a Member State or a safe third country from the State to that Member State or safe third country including, where necessary, the temporary detention or restraint of the person, and

35 (ix) provide for the temporary detention (for a period not exceeding 48 hours) until a decision on the matters referred to in *subparagraph (i)* has been made, of a person who, having arrived in the State directly from a Member State or a safe third country, makes an application for protection.

40 (4) (a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country as a safe third country (referred to in this section as “a safe third country”).

45 (b) In deciding whether to make an order under *paragraph (a)*, the Minister shall have regard to the following matters:

50 (i) whether the country is party to and complies generally with its obligations under the Geneva Convention, the Convention against Torture and the International Covenant on Civil and Political Rights;

(ii) whether the country has a democratic political system and an independent judiciary;

(iii) whether the country is governed by the rule of law;

and that country and the State are parties to an agreement which contains provisions providing for— 5

(I) the prompt transfer to that country of a protection application made in the State by a person who has arrived from that country, and

(II) the prompt transfer to the State of a protection application made in that country by a person who has arrived in that country from the State. 10

(5) An order under this section may make provision for such consequential, incidental, ancillary and supplementary matters as the Minister considers necessary or expedient.

(6) Where a protection application has been transferred to a Member State pursuant to Council Regulation (EC) No. 343/2003 or any Regulation amending or replacing that Regulation, or to a safe third country for examination, the application shall be deemed to be withdrawn. 15

(7) The Minister may communicate to a safe third country such information relating to a protection application or to the person making such application (including personal information) as may be necessary for giving effect to an agreement to which *subsection (4)* refers; but information concerning the grounds on which a particular application for protection is based or the grounds on which a decision concerning such an application is based shall not be communicated under this section without the prior consent of the person the subject of the application. 20 25

(8) In this section, “Member State” means—

(a) a Member State of the European Communities, and 30

(b) the Republic of Iceland and the Kingdom of Norway.

PART 8

FURTHER PROVISIONS

Prohibition of false information etc.

88.—(1) A person who for any purpose under this Act—

(a) (i) makes a statement, or 35

(ii) provides a document or information,

which he or she knows, or ought to know, to be false or misleading in a material particular to any person exercising a function or complying with a requirement under this Act, 40

(b) with intent to deceive, destroys or conceals—

(i) his or her identity document, or

(ii) an identity document relating to a foreign national,

(c) (i) forges,

(ii) fraudulently alters, or

(iii) assists in or procures the forging or fraudulent altering of,

an identity document which is used or is intended to be used for any purpose under this Act,

(d) sells, supplies, or has in his or her possession for the purpose of selling or supplying,

(i) a forged or fraudulently altered identity document, or

(ii) an identity document of another person, with or without the consent of that person,

which is used or is intended to be used for any purpose under this Act, or

(e) facilitates the unlawful use by another person of his or her identity document for any purpose under this Act,

commits an offence.

(2) A member of the Garda Síochána may—

(a) arrest without warrant a person whom he or she reasonably suspects of committing or having committed an offence under this section, and

(b) seize any document referred to in *subsection (1)*, which he or she reasonably suspects has been used, or is intended to be used, for any purpose under this Act.

(3) In this section “identity document” includes a passport, visa, transit visa, national identity card, entry permit, residence permit, driving licence, birth certificate, marriage certificate or other document establishing or contributing to the establishing of a person’s nationality or identity issued or purporting to be issued by or on behalf of a local or the national authority of a state, including the State, or by an organ or agency of the United Nations.

89.—(1) The Minister may appoint such and so many persons as he or she considers appropriate to perform the functions conferred on immigration officers by or under this Act (or such of those functions as may be specified in the appointment) and every person so appointed shall hold office on such terms and conditions as are determined by the Minister at the time of the appointment.

Appointment of officers.

(2) The Minister may appoint such and so many persons as he or she considers appropriate to perform the functions, or such of these functions as may be specified in the appointment, conferred on—

(a) authorised officers,

(b) immigration registration officers,

by or under this Act and every person so appointed shall hold office on such terms and conditions as are determined by the Minister at the time of the appointment.

(3) The terms and conditions referred to in *subsection (1)* or *(2)* may include terms and conditions as to the period for which a person appointed under one of those subsections will hold office. 5

(4) The Minister may amend or revoke an appointment made under this section.

Appointment of
medical inspectors.

90.—(1) The Minister may, with the consent of the Minister for Health and Children, appoint such and so many registered medical practitioners (referred to in this Act as “medical inspectors”) as he or she considers appropriate to perform the functions conferred on medical inspectors by or under this Act and every person so appointed shall hold office on such terms and conditions as are, with that consent, determined by the Minister at the time of the appointment. 10 15

(2) The terms and conditions referred to in *subsection (1)* may include terms and conditions as to the period for which a person appointed under that subsection will hold office.

(3) A medical inspector appointed under this section shall have the following powers— 20

- (a) to stop, enter and board any vehicle in the State,
- (b) to detain and examine any person arriving at or leaving any port in the State who is reasonably believed by the inspector to be a foreign national, and 25
- (c) to require any such person to produce his or her passport or other equivalent identity document,

and such other powers and duties as are conferred upon him or her by or under this Act.

(4) The Minister may amend or revoke an appointment made under this section. 30

Powers of
immigration
officers.

91.—(1) An immigration officer may—

- (a) for the purposes of performing any of his or her functions in relation to immigration, enter or be present in any place in the State which he or she reasonably suspects to be in use as a port, 35
- (b) at any port or other place in the State, stop, enter and board any ship, railway train, road vehicle, aircraft or other means of carriage which the officer reasonably suspects is being used for the conveyance of persons into or out of the State, 40
- (c) at any port in the State, detain and examine a person arriving at or leaving the State whom the officer reasonably suspects to be a foreign national,
- (d) exercise the other powers conferred on him or her by or under this Act or otherwise. 45

(2) Where, on information on oath of an immigration officer who is a member of the Garda Síochána not below the rank of sergeant, a judge of the District Court is satisfied that—

5 (a) it is necessary for the purposes of the enforcement of this Act that a place specified in the information be searched by immigration officers or members of the Garda Síochána or both, or

10 (b) there are reasonable grounds for suspecting that evidence of or relating to an offence under this Act is to be found at a place so specified,

the judge may issue a warrant for the search of the place and any persons found there.

15 (3) A warrant issued under this section is authority for each immigration officer or member of the Garda Síochána named in it, alone or together and, if necessary, accompanied by other persons to—

(a) enter, within 7 days from the issue of the warrant and, if necessary, by reasonable force, the place specified in the warrant,

(b) search that place and any persons found there, and

20 (c) seize anything found there or in the possession of any person found there which an immigration officer or member of the Garda Síochána named in the warrant reasonably believes to be evidence of or relating to an offence under this Act.

25 (4) An immigration officer or member of the Garda Síochána acting under the authority referred to in *subsection (3)* may—

(a) require any person found at the place referred to in that subsection to give the officer or member the person's name and address, and

30 (b) arrest without warrant any person who—

(i) obstructs or hinders the officer or member or any person accompanying the officer or member under that subsection,

(ii) attempts to do so,

35 (iii) fails to comply with a requirement under *paragraph (a)*, or

(iv) in response to a requirement under *paragraph (a)*, gives a name or address that the officer reasonably believes is false or misleading.

40 (5) A person who—

(a) obstructs or hinders an immigration officer or member of the Garda Síochána acting under the authority referred to in *subsection (3)*,

(b) attempts to do so,

(c) fails to comply with a requirement under *subsection (4)(a)*, or

(d) in response to such a requirement, gives a false or misleading name or address,

commits an offence.

5

(6) In this section, “place” includes any land, dwelling, building or part of a building, any vehicle and any structure or container used or intended for use for the carriage of persons or goods.

Exchange of
information.

92.—(1) Notwithstanding any enactment (other than this section) or rule of law, an information holder shall, on the request of another information holder, give that other information holder such relevant information as is in the information holder’s possession, control or procurement.

10

(2) In *subsection (1)*, “relevant information” is information—

(a) about one or more foreign nationals, and

15

(b) relating to the operation and administration of the law about the entry into, presence in and removal from the State of that or those foreign nationals.

(3) Notwithstanding any enactment (other than this section) or rule of law, an information holder shall give the Minister such relevant information as is in the information holder’s possession, control or procurement.

20

(4) In *subsection (3)*, “relevant information” is information—

(a) about one or more foreign nationals, and

(b) that appears to the information holder to relate to public security or have adverse implications for public health or public policy (“*ordre public*”).

25

(5) This section applies also in relation to information that came into the possession, control or procurement of the person possessing or controlling or able to procure it before the commencement of this section.

30

(6) If an information holder (other than the Minister) or a member of the Garda Síochána becomes aware of or obtains information concerning the possible commission of an offence under this Act, he or she shall give that information to the Minister.

35

(7) An information holder shall, on the request of the Minister for Social and Family Affairs made for the purposes of the Social Welfare Acts, give that Minister such relevant information as is in the information holder’s possession, control or procurement.

(8) In *subsection (6)*, “relevant information” is such information about one or more foreign nationals or foreign nationals generally as is sought in the request referred to in that subsection.

40

(9) The Minister or a member of the Garda Síochána may, notwithstanding anything in *subsections (1) to (7)*, withhold information if doing so is in the interests of public security or public policy (“*ordre public*”) or where the giving of the information would be

45

likely to prejudice the prevention, detection or investigation of offences or the apprehension or prosecution of offenders.

(10) In this section:

“foreign national” means a person who is not an Irish citizen;

5 “information holder” means a Minister of the Government, the Revenue Commissioners, a local authority within the meaning of section 2 of the Local Government Act 2001, the Health Service Executive, the Garda Síochána or the holder of any office or body established—

10 (a) by or under enactment other than the Companies Acts 1963 to 2001, or

(b) under those Acts in pursuance of powers conferred by or under any other enactment,

15 and financed wholly or partly by means of money provided or loans made or guaranteed by any Minister or the issue of shares held by or on behalf of a Minister of the Government; or a subsidiary of any such body.

93.—(1) A foreign national aged 18 years or over who—

Restrictions on
change of name.

20 (a) uses or assumes or purports or continues to use or assume a name other than that by which he or she was ordinarily known immediately before reaching the age of 18 years, or

(b) changes the name in which he or she was issued with a residence permit under this Act,

25 commits an offence.

(2) *Subsection (1)* does not extend to—

(a) a change of name on marriage, or

(b) a change of name authorised by a licence under this section.

30 (3) A foreign national who, either alone or in partnership, engages in economic activity under a name other than that under which it was carried on when he or she began to carry it on commits an offence.

35 (4) A person may be convicted of an offence under *subsection (3)* notwithstanding that the date on which he or she began to carry on a trade, business or profession under a particular name occurred before the commencement of this section.

(5) *Subsection (3)* does not extend to—

40 (a) a change in the name of a trade, business or profession carried on in partnership where—

(i) the name is, or is substantially, a combination of the names of the partners or some of them, and

(ii) the change is a consequence of a change in the membership of the partnership and substantially corresponds to that change,

(b) a change of name authorised by a licence under this section. 5

(6) The Minister may, on an application in prescribed form made to him or her by a foreign national and accompanied by the prescribed fee, issue a licence authorising the foreign national—

(a) to use or assume or to continue to use or assume a name other than that by which he or she was ordinarily known immediately before reaching the age of 18 years, 10

(b) to change the name in which he or she was issued with a residence permit under this Act,

(c) to carry on, either alone or in partnership, any economic activity under a name other than that under which it was carried on when he or she began to carry it on. 15

(7) A licence may be issued under *subsection (6)(c)* notwithstanding that the date on which the licensee began to carry on the trade, business or profession referred to in that provision was before the commencement of this section. 20

(8) A licence issued under this section—

(a) shall have effect from the date specified in it for the purposes of this paragraph, and

(b) shall have effect subject to such conditions as may be specified in it. 25

(9) The fee accompanying an application for a licence under this section which is refused is not repayable.

(10) The Minister is not obliged to review a decision to refuse an application for a licence under this section.

(11) The Minister may revoke a licence issued under this section and is not obliged to review his or her decision to do so. 30

(12) As soon as practicable after the issue or revocation of a licence under this section, the Minister shall publish in *Iris Oifigiúil* notice of that issue or revocation together with such particulars as he or she thinks appropriate for the purpose of identifying the person and any trade, business or profession referred to in the licence issued or revoked. 35

(13) In this section, “foreign national” means a person who is not an Irish citizen.

Marriage of foreign
nationals.

94.—(1) The marriage of a foreign national and an Irish citizen does not, of itself, confer a right on the foreign national to enter or be present in the State. 40

(2) A marriage purportedly contracted in the State between two persons one or each of whom is a foreign national is invalid in law unless the foreign national or, as the case may be, each of them— 45

- (a) has, not later than 3 months before the date of solemnisation of the marriage, given notification in the prescribed form to the Minister of the intention to marry, and
- 5 (b) is at the time of the marriage, the holder of an entry permit issued for the purpose of the intended marriage or a residence permit (other than a protection temporary residence permit or a non-renewable residence permit).
- (3) The Minister may, on an application in prescribed form made to him or her by each of the parties to a proposed marriage and
10 accompanied by the prescribed fee, grant exemption from *subsection (2)(b)* to the foreign national or, as the case may be, each of the foreign nationals who is a party to the proposed marriage.
- (4) The Minister may refuse an application under *subsection (3)* where he or she is satisfied that to grant it—
- 15 (a) would be inconsistent with a relevant immigration policy statement,
- (b) would adversely affect the implementation of an earlier decision under this Act relating to one or both of the parties to the proposed marriage,
- 20 (c) would create a factor bearing on a decision yet to be taken under this Act relating to one or both of those parties, or
- (d) would not be in the interests of public security or public policy (“*ordre public*”).
- (5) A person to whom application is made in relation to the solemnisation of a proposed marriage between parties one or each of
25 whom is a foreign national shall require the production by that, or as the case may be, each party of evidence of—
- (a) notification by him or her or them in accordance with *subsection (2)(a)*, and
- 30 (b) possession by him or her or them of an entry or residence permit in accordance with *subsection (2)(b)* or exemption granted to him or her or them under *subsection (3)*.
- (6) The person referred to in *subsection (5)* shall, if the party or each party on whom that person has imposed a requirement under
35 that subsection does not comply with it—
- (a) refuse the application referred to in that subsection, and
- (b) immediately inform the Minister of that refusal and the reasons for it.
- (7) A person who knowingly—
- 40 (a) solemnises or permits the solemnisation of a form of marriage which is, under this section, not a valid marriage,
- (b) is a party to such a form of marriage, or
- (c) facilitates such a form of marriage,
- commits an offence.

95.—(1) A foreign national who, on being required by an authorised officer, an immigration officer, an immigration registration officer or a member of the Garda Síochána to provide him or her with biometric information in accordance with this section, does not do so, commits an offence.

5

(2) The biometric information referred to in *subsection (1)* is such biometric information relating to the foreign national as is specified in the requirement, being biometric information of or within such kinds as are prescribed.

(3) A requirement under *subsection (1)* shall be imposed on a foreign national who is under the age of 14 years only—

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(a) in the presence of—

(i) a parent of or person who is acting in *loco parentis* to the foreign national, or

(ii) a person appointed in respect of the foreign national under *section 23* or *58*, and

15

(b) with the approval of—

(i) in the case of a requirement imposed by an authorised officer or an immigration officer who is not a member of the Garda Síochána, the Minister or a person designated for the purpose by the Minister,

20

(ii) in the case of a member of the Garda Síochána, a chief superintendent or a person designated for the purpose by a chief superintendent.

(4) If and for so long as it appears to an authorised officer, an immigration officer or a member of the Garda Síochána who is imposing or has imposed a requirement under *subsection (1)* on a foreign national that the foreign national is not under the age of 14 years, this section shall apply to the foreign national as if he or she were not under that age.

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(5) A foreign national who, on being required to provide biometric information in accordance with this section, does not do so or provides it in a way in which it is false or misleading—

(a) shall, where he or she is a protection applicant, be deemed not to have made the reasonable efforts to establish his or her identity referred to in *section 35* and to have failed to comply with *section 68*,

35

(b) shall, in the case of a holder of an entry or residence permit, be deemed to have failed to comply with the conditions of his or her permit.

40

(6) The Minister shall maintain or cause to be maintained, for the purposes of storage and comparison, a record of biometric information provided under requirements imposed under *subsection (1)*.

(7) Biometric information provided under a requirement imposed under *subsection (1)* shall (if not earlier destroyed) be destroyed and the record of it kept under *subsection (6)* deleted if the foreign national to whom it relates becomes an Irish citizen.

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(8) The destruction and deletion required by *subsection (7)* shall take place not later than one month after the granting of the certificate or the acknowledgement of the declaration by which the foreign national referred to in *subsection (7)* became an Irish citizen.

5 **96.—**(1) The Minister may, if he or she considers it necessary in the interest of public security or public policy (“*ordre public*”), by order (referred to in this Act as an “exclusion order”) exclude a foreign national specified in the order from the State. Exclusion orders.

10 (2) A foreign national who enters or is present in the State in contravention of an exclusion order commits an offence.

(3) In this section, “foreign national” means a person who is not an Irish citizen.

15 **97.—**(1) This section applies to a person who is—
 (a) the person in charge of a vehicle bringing passengers into the State, or
 (b) the keeper of premises to which *section 98* applies. Display of notices in passenger transport and certain premises.

(2) A person to whom this section applies who does not display the statutory notice in the vehicle premises by reference to which this section applies to him or her commits an offence.

20 (3) In *subsection (2)*, the “statutory notice” is a notice—
 (a) stating the effect of such of the provisions of this Act or of such orders or regulations made under it and such directions under or about those provisions given by the Minister as the Minister may specify, and
25 (b) given in such manner as he or she may specify.

30 **98.—**(1) The keeper of premises to which this section applies shall maintain in the premises a register in the prescribed form of all foreign nationals enrolled in, attending at or staying in the premises. Registers of foreign nationals in certain premises.

(2) The keeper of premises to which this section applies, on being so required by an immigration officer, shall produce the register maintained by that keeper to the immigration officer.

35 (3) If the keeper of premises to which this section applies reasonably believes that he or she has evidence of the commission of an offence under *section 88*, he or she shall immediately provide that evidence to the Garda Síochána.

(4) A foreign national shall provide the keeper of premises to which this section applies such information as is required to enable the keeper to fulfil his or her duty under this section.

40 (5) The Minister may make regulations in relation to the following matters:

- (a) the maintenance of the register;
- (b) the furnishing and gathering of information required for the making of entries in the register;

(c) the period for which the register is to be maintained and retained;

(d) the specification of which of the provisions of the regulations are to be penal provisions for the purposes of *subsection (7)*.

5

(6) A keeper of premises to which this section applies who contravenes *subsection (1)*, *(2)* or *(3)* commits an offence.

(7) A foreign national to whom *subsection (4)* applies who is in breach of the duty set out in that subsection commits an offence.

(8) A person who contravenes a provision of regulations made under *subsection (5)* that is specified under *paragraph (d)* of that subsection as a penal provision commits an offence.

10

(9) This section applies to—

(a) a hotel or other place in which lodging or sleeping accommodation is provided on a commercial basis, and

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(b) premises in which there is a prescribed business or educational establishment or one of a prescribed class of business or educational establishment is being carried on.

(10) In this section, “keeper” means—

(a) in relation to a premises described in *subsection (9)(a)*, its manager, and

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(b) in relation to a premises described in *subsection (9)(b)*, the proprietor of the business or the person in charge of the educational establishment.

Judicial review:
special provisions.

99.—(1) The validity of—

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(a) an act, decision (including one not to revoke an order relating to an individual or not to vary a decision) or determination under this Act, or

(b) a decision under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006),

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shall not, in any legal proceedings, be questioned otherwise than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts 1986 (in this section referred to as the “Order”).

35

(2) An application by a person for leave to apply for judicial review under the Order in respect of any of the acts, decisions or determinations referred to in *subsection (1)* shall—

(a) be made within the period of 14 days beginning on the date on which the person was notified of the act, decision or determination, and

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(b) be made by motion on notice (grounded in the manner specified in the Order in respect of an *ex parte* motion for leave) to the Minister and any other person specified for that purpose by order of the High Court,

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and such leave shall not be granted unless the High Court is satisfied that there are substantial grounds for contending that the act, decision, or determination is invalid or ought to be quashed.

5 (3) The High Court may not extend the period referred to in *subsection (2)(a)* unless satisfied either—

(a) that each of the following conditions is fulfilled:

(i) the applicant—

10 (I) did not become aware until after that period's expiration of the material facts on which the grounds for his or her application are based, or

15 (II) became aware of those facts before that period's expiration but only after such number of days of that period had elapsed as would have made it not reasonably practicable for the applicant to have made his or her application for leave before that period's expiration;

20 (ii) the applicant, with reasonable diligence, could not have become aware of those facts until after the expiration of that period, or, as the case may be, that number of days had elapsed;

(iii) his or her application for leave was made as soon as was reasonably practicable after the applicant became aware of those facts,

or

25 (b) that there are other exceptional circumstances relating to the applicant and under which, through no fault of the applicant, his or her application could not be made within the period referred to in *subsection (2)(a)*.

(4) The determination of the High Court—

30 (a) of an application for leave to apply for judicial review under the Order in respect of any of the acts, decisions or determinations referred to in *subsection (1)*,

(b) of an application for such judicial review, or

35 (c) whether to extend, under *subsection (3)*, the time for making an application,

shall, subject to *subsection (5)*, be final.

40 (5) An appeal shall lie from a determination of the High Court of the kind referred to in *subsection (4)*, but only with the leave of the High Court, which leave shall be granted only where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

45 (6) *Subsection (4)* shall not apply to a determination of the High Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

(7) Subject to *subsection (8)*, where, in the opinion of the Court, the grounds put forward for contending that an act, decision or determination referred to in *subsection (1)* is invalid or ought to be quashed are frivolous or vexatious, the Court may, by its order, so declare and shall direct by whom and in what proportion the costs are to be borne and paid. 5

(8) Where the Court forms an opinion of the kind referred to in *subsection (7)*, it may direct that the costs, or a part of the costs, of the proceedings shall be borne by the legal representative of the applicant. 10

(9) An application by a foreign national for leave to apply for judicial review against a transfer under *section 87*, for an extension of time under *subsection (3)*, or a removal of the foreign national from the State shall not of itself suspend or prevent his or her transfer or, as the case may be, removal from the State. 15

(10) Without limiting the Court's powers generally, the Court may, however, suspend the transfer or removal referred to in *subsection (9)* for such period as it is satisfied is necessary for the foreign national to give instructions to his or her legal representative in relation to the application where it is satisfied that the giving of such instructions would otherwise be impossible. 20

(11) Where it is proposed to remove a person from the State following the rejection of his or her application for protection, that person may not challenge (whether by way of judicial review or otherwise) his or her removal from the State solely on the basis of the existence of information that was not available to the Minister or, as the case may be, the Tribunal before the rejection or deemed rejection of the application. 25

(12) The High Court shall give such priority as it reasonably can, having regard to all the circumstances, to the disposal of proceedings of the kind referred to in this section. 30

(13) The Superior Courts Rules Committee may make rules to facilitate the giving of effect to *subsection (12)*.

Penalties and offences.

100.—(1) A person guilty of a first offence under *section 5* is liable, on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 12 months or both. 35

(2) Where a person has been convicted of a first offence under *section 5* and, following such conviction, fails to leave the State, in continuing breach of that section, he or she shall be liable, on summary conviction, to a fine not exceeding €500 for each day on which he or she remains in the State, in breach of *section 5*. 40

(3) A person guilty of any other offence under this Act (except *section 26*) is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 12 months or both, 45

(b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 5 years or both.

5 (4) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person who is a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

10 (5) Where the affairs of a body corporate are managed by its members, *subsection (4)* shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

15 (6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within 2 years after the date alleged to be the date on which the offence was committed and, in the case of a continuing offence, on the last date on which that offence was committed.

20 **101.**—(1) The Minister may, by regulations—

Orders and regulations.

(a) provide for any matter referred to in this Act as prescribed,

(b) provide for the purposes of giving full effect to this Act.

25 (2) The Minister may, with the consent of the Minister for Finance, prescribe fees for the purposes of this Act.

(3) Regulations under this Act may contain such incidental, supplementary and consequential provision as appears to the Minister to be necessary or expedient for the purposes of the regulations.

30 (4) Regulations may provide differently for different cases or circumstances.

35 (5) Every order (other than an order relating to an individual) or regulation made by the Minister under this Act shall be laid before both Houses of the Oireachtas as soon as practicable after it is made, and, if a resolution annulling the order or regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the order or regulation is laid before it, the order or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

40 **102.**—(1) Where a notice is required or authorised by or under this Act to be given to a person, it shall be addressed to him or her and shall be served on or given to him or her in one of the following ways:

Service of notices.

(a) where it is addressed to him or her by name, by delivering it to him or her;

45 (b) by sending it by post in a prepaid registered letter, or by any prescribed form of recorded delivery service, addressed to him or her—

- (i) at the address most recently provided by him or her to the Minister or for inclusion on the Register of Foreign Nationals or the Register of Protection Applicants, as the case may be, pursuant to this Act,
- (ii) where he or she has, for the purposes, appointed a legal representative the business address of the legal representative, or
- (iii) in a case in which an address for service has been furnished, at that address.

(2) Where a notice under this Act has been sent to a person in accordance with *paragraph (b) of subsection (1)*, the notice shall be deemed to have been duly given to the person on the third working day after the day on which it was so sent.

Delegation of Ministerial functions.

103.—(1) The Minister may delegate—

- (a) to another Minister, or
- (b) by order, to any other person,

any of the Minister's functions under this Act.

(2) *Subsection (1)* does not extend to those of the Minister's functions under this Act that are expressed in the Act to be exercisable personally by the Minister.

(3) The Minister may make a delegation under *subsection (1)* subject to such limitations and conditions as the Minister considers appropriate.

(4) Anything done under a delegation under *subsection (1)* shall be regarded as done by the Minister.

(5) The Minister may vary or revoke a delegation under *subsection (1)*.

Repeals and transitional provisions.

104.—(1) The—

- (a) Aliens Act 1935,
- (b) Refugee Act 1996,
- (c) Immigration Act 1999,
- (d) Immigration Act 2003,
- (e) Immigration Act 2004, and
- (f) section 5 of the Illegal Immigrants (Trafficking) Act 2000,

are repealed.

(2) Where, before the coming into operation of this section, a person—

- (a) had applied for a declaration under section 8 of the Refugee Act 1996, and

(b) had been interviewed under section 11 of that Act,

then, notwithstanding the coming into operation of any other provision of this Act, that Act (and not this Act) shall apply for all purposes of disposing of the application.

5 (3) A person who, before the coming into operation of this Act, was declared by the Minister to be or was otherwise recognised by him or her as a refugee shall be treated for the purposes of this Act as one in respect of whom a protection residence permit has been given under this Act.

10 (4) Where, before the coming into operation of this section, a person—

(a) had applied for a declaration under section 8 of the Refugee Act 1996, but

(b) had not been interviewed under section 11 of that Act,

15 the provisions of this Act shall apply to the application as if it were an application for protection and the Minister shall give or cause to be given to the person before he or she is so interviewed a statement in writing explaining the effect of this Act in relation to how applications for protection in the State are dealt with.

20 (5) A deportation order made under section 3 of the Immigration Act 1999 shall, notwithstanding the coming into force of this section, continue to have effect; and the Immigration Act 1999 shall continue to apply for all the purposes of that order.

25 (6) A person who was appointed by the Minister before the date of coming into operation of this Act to be an immigration officer and was acting as such immediately before that date shall, for all purposes connected with the performance of his or her functions as an immigration officer, be deemed to have been appointed under this Act as an immigration officer.

30 (7) Any reference in an Act passed or statutory instrument made before the date of coming into operation of this Act to an immigration officer shall, on and after that date, be construed so far as relating to anything done then by or in respect of the officer, as a reference to an immigration officer appointed under this Act.

35 **105.**—(1) Every foreign national present in the State shall produce on demand, unless he or she gives a satisfactory explanation of the circumstances which prevent him or her from so doing—

Production of
passports etc.

40 (a) a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality, or

(b) where he or she is the holder of a permit under *Part 5*, that permit.

45 (2) A foreign national who contravenes this section shall be guilty of an offence.

(3) In this section “on demand” means on demand made at any time by any immigration officer or a member of the Garda Síochána.

106.—(1) The Minister may, notwithstanding any enactment (other than this section) or rule of law—

- (a) provide information (including biometric information) about a foreign national to and receive such information from another state, and 5

- (b) make arrangements with other states for those purposes.

(2) The Minister shall not, for the purposes of examining an application for protection in the State—

- (a) directly disclose information about an applicant for such protection, (including the fact that such an application 10 has been made), to any alleged actor of persecution or serious harm (within the meanings given by *section 62*) to which the application relates, or

- (b) seek any such information about such an applicant from such an actor in a way which— 15

- (i) would directly inform the actor of the fact that such an application had been made by the applicant, or

- (ii) be likely to jeopardise the safety of the applicant or his or her dependants or the liberty or security of other members of his or her family who are in his or 20 her country of origin.

(3) The Minister shall not disclose information if to do so would not be in the interests of public security or public policy (“*ordre public*”).

(4) Where information has been supplied to the Minister by or on 25 behalf of the government of another state in accordance with an undertaking (express or implied) that the information will be kept confidential, the information shall not, except with the consent of that government, be dealt with otherwise than in accordance with the undertaking. 30



AN BILLE UM INMIRCE, CÓNAÍ AGUS COSAINT 2007
IMMIGRATION, RESIDENCE AND PROTECTION BILL 2007

EXPLANATORY AND FINANCIAL MEMORANDUM

General

This Bill sets out a legislative framework for the management of inward migration to Ireland. It lays down a number of important principles governing the presence in the State of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave. It sets out statutory processes for applying for a visa, for entry to the State, for residence in the State and for being required, when necessary, to leave.

The responsibilities of the State, as executive functions vested in the Government, to operate immigration controls in the interest of the common good have been set out in a passage from the judgment of Gannon J. in *Osheku v. Ireland* ([1986] IR 733 at 746) as follows:

The control of aliens which is the purpose of the Aliens Act, 1935, is an aspect of the common good related to the definition, recognition, and the protection of the boundaries of the State. That it is in the interests of the common good of a State that it should have control of the entry of aliens, their departure, and their activities and duration of stay within the State is and has been recognised universally and from earliest times. There are fundamental rights of the State itself as well as fundamental rights of the individual citizens, and the protection of the former may involve restrictions in circumstances of necessity on the latter. The integrity of the State constituted as it is of the collective body of its citizens within the national territory must be defended and vindicated by the organs of the State and by the citizens so that there may be true social order within the territory and concord maintained with other nations in accordance with the objectives declared in the preamble to the Constitution.

This passage has been quoted with approval by the Supreme Court in a line of cases, including *Article 26 Referral of the Illegal Immigrants (Trafficking) Bill 1999* ([2000] 2 IR 360), *FP v. Minister for Justice* ([2002] 1 IR 164) and *AO and DL v. Minister for Justice, Equality and Law Reform* ([2003] 1 IR 1).

The executive power and responsibility of the Government to make immigration policies as they consider suitable to the conditions of the day is at present supplemented by a variety of statutory provisions designed to facilitate the implementation of those policies. Those statutory provisions include the Aliens Act 1935, the Immigration Act 1999, the Immigration Act 2003 and the Immigration Act 2004, which this Bill will repeal and replace.

This Bill is similarly designed to supplement the Government's executive responsibility for making policies to manage migration to the State with a statutory framework to facilitate the promulgation of the Government's immigration policies and their day-to-day

implementation. In doing so, the Bill is intended not to fetter or supplant that executive responsibility.

Another important principle underlying the provisions of the Bill is the clarifying provision of *section 5* regarding the lawfulness and unlawfulness of presence in the State of foreign nationals. In particular, the element of that provision requiring a foreign national who is unlawfully present in the State to remove himself or herself is a fundamental principle that dictates the content of many subsequent provisions of the Bill.

Provisions of the Bill set out statutory procedures to be followed in dealing with applications for visas (new to statute), entry into the State (based on present law), residence permits while in the State (largely new) and removal from the State (based to some extent on present law, but with some significant innovations). The operation of these provisions by officers of the Minister for Justice, Equality and Law Reform or others must be in accordance with relevant published immigration policy statements. Respect is paid to the residual personal discretion of the Minister to make different decisions in particular cases.

The Bill integrates the processes for dealing with claims for protection in the State (at present covered by the Refugee Act 1996 and the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)) and all other aspects of the desire of a protection claimant to remain in the State (at present dealt with under the Immigration Act 1999) into a unified process at the end of which each claimant has a complete answer to the question whether he or she will be permitted to remain in the State. In consequence, the Bill repeals the Refugee Act and the Regulations, and subsumes into the Minister's functions those at present carried out by the Refugee Applications Commissioner in relation to asylum applications. The Bill also transposes into national law Council Directive 2005/85/EC of 1 December 2005¹ on minimum standards on procedures in Member States for granting and withdrawing refugee status ("Procedures Directive").

Of special note is the provision in statute for foreign nationals to obtain long-term residence permits, giving to the holders rights in the State similar in most respects to those of Irish citizens.

The Bill also makes some general provisions in relation to the powers of immigration officers, exchange of information, notification requirements for marriages of foreign nationals and special provisions on judicial review based on the present provisions of section 5 of the Illegal Immigrants (Trafficking) Act 2000.

PART 1

PRELIMINARY

Part 1 (sections 1 to 4) of the Bill deals with preliminary matters such as the saver for the inherent executive power of the State, citation and commencement and interpretation.

Section 1 provides that nothing in the Act shall be taken to affect the executive power of the State, exercised by the Government, to make overall policy decisions in relation to immigration and decisions about whether a foreign national or a foreign national of any class may enter, be present in or be required to leave the State.

¹OJ L326 of 13 December 2005.

Sections 2 and 3 are standard provisions dealing with citation and commencement of the Act and expenses.

Section 4 sets out the interpretation of the primary terms referred to throughout the Bill.

PART 2

GENERAL

Part 2 (sections 5 to 10) of the Bill sets out general provisions dealing with: lawful and unlawful presence in the State; the requirement to possess travel documents; the restricted entitlement to State services of foreign nationals unlawfully present in the State and immigration policy statements.

Section 5 provides that the presence in, or entry into, the State of a foreign national is lawful only if it is in accordance with a permission given or deemed to be given to him or her, in accordance with the Act. This section is based on section 5 of the Immigration Act 2004. A foreign national who enters the State unlawfully or whose presence in the State is unlawful commits an offence and is, by *subsection (4)*, under an obligation to leave the State and may be removed, if necessary following arrest and detention, for that purpose. A foreign national who commits an offence under this section is liable to the penalty provisions set out in *section 98(1) and (2)*. By *subsection (11)*, based on section 2(3) of the Immigration Act 2004, it is for a foreign national to establish, in any proceedings, his or her status in the State.

Section 6 has the same effect as section 2 of the Immigration Act 2004. It sets out the classes of persons who are deemed to have permission to be present in the State. It enables the Minister to specify by order classes of persons who are to be regarded as having permission to be present in the State. In addition, the section contains a saver for any EU-related obligations of the State affecting immigration matters.

Section 7 is based on section 11 of the Immigration Act 2004 and sets out the requirement for every person (other than a British or Irish citizen travelling within the Common Travel Area) to be in possession of a valid passport or other equivalent document establishing his or her identity and nationality when landing in the State. The section also obliges a person landing in or embarking from the State to provide an immigration officer with any necessary information for the purposes of the performance of his or her functions. Failure to do so is an offence that attracts the penalties set out in *section 98*.

By *section 8* a foreign national whose presence in the State is unlawful will, as a general rule, not be entitled to enter into employment, engage in other economic activity or avail of any state-funded benefits or services (*subsection (1)*). *Subsection (2)* sets out exceptions to this general rule. Certain essential services, including medical services, will continue to be provided. In addition, *subsection (3)* enables the Minister, having consulted with the Minister for Social and Family Affairs, to prescribe the extent to which any additional emergency provision is to be made available. However, any benefit or service provided to an unlawfully present foreign national will not, of itself, render his or her presence lawful.

Section 9 acknowledges the inherent executive power of the Government to make policy regarding immigration to the State. The

section makes provision for promulgation of immigration policy statements made by Government that deal with a wide range of matters (*subsection (2)*). *Subsection (3)* is a saver for the executive power of the Government to determine policy on immigration to the State or, otherwise than in accordance with *subsections (1)* and *(2)*, to make or publish statements of that policy.

Section 10 provides that every decision taken under the Act, other than a decision made by the Government or the Minister for Justice, Equality and Law Reform or a decision made on grounds relating to public security, public order or public health, is to be made in accordance with any relevant immigration policy statement.

PART 3

VISAS

Part 3 (sections 11 to 20) provides a statutory framework for issuing and revocation of visas.

Section 11 provides a definition (*subsection (1)*) and clarity as to the validity (*subsection (2)*) of a visa. *Subsection (3)* provides that a visa may contain any information which the Minister may determine appropriate including biometric information. A visa does not of itself entitle the foreign national to whom it relates to enter or be present in the State (*subsection (4)*). The Government and the Minister have discretion, in deciding whether to grant or revoke a visa, to make it subject to any condition or to revoke any condition to which it is subject (*subsection (5)*).

Section 12 provides a definition of a transit visa which permits the holder to arrive at a port in the State for the purpose of passing through the port in order to travel to another state. The provisions applicable to visas at *section 11* also apply to a transit visa.

Section 13 contains provisions whereby the Minister may designate a foreign national as exempted from the need to have a visa. A foreign national may be a visa-exempt foreign national in some circumstances and, in other circumstances, be required to possess a visa (*subsection (5)*).

Section 14 sets out the application process for a visa. The Minister is not obliged to consider an application which is not in the prescribed form or accompanied by the appropriate travel document (*subsection (7)*). Under *subsection (2)* the Minister may prescribe circumstances in which a deposit or bond and a guarantee is to accompany a visa application. The Minister is not obliged to determine a visa application that should be but is not accompanied by a deposit or bond and guarantee (*subsection (7)*). The Minister can, in certain circumstances, waive all or part of a sum forfeited (*subsection (8)*) or refund a deposit (*subsection (9)*). *Subsection (10)* makes provision for the prescription of different fees for different classes of visa and visas may be classified for that purpose by any factors or combination of factors which the Minister considers appropriate.

Section 15 deals with the determination by the Minister of visa applications. The Minister is under no obligation to issue a visa (*subsection (7)*). It is for the visa applicant to establish to the satisfaction of the Minister that he or she should be granted a visa (*subsection (1)*). The Minister may make appropriate inquiries before determining an application (*subsections (3)* and *(4)*). *Subsections (5)* and *(6)* set out some of the matters that the Minister may have regard to in determining an application. *Subsections (8)* and *(9)*

enable the Minister to refuse a visa application and set out examples of the grounds on which the Minister may consider a refusal justified.

Section 16 deals with refusal of a visa application. Where the Minister refuses a visa application, he or she must notify (the possibility of notification via the internet (*subsection (2)* is envisaged) the applicant of the refusal, the reason for the refusal (*subsection (1)*) and inform the applicant whether a review is available and, if so, how it may be sought (*subsection (6)*). The Minister is not obliged to disclose confidential information without consent of the provider of that information (*subsection (4)*) or other information if, in his or her opinion, to do so would be prejudicial to public security or public policy (“*ordre public*”) (*subsection (3)*).

Section 17 deals with revocation of a visa. Under (*subsection (1)*) the Minister may revoke a visa if he or she considers its revocation to be justified. *Subsection (2)* contains examples of reasons why the Minister may consider a revocation justified. The notification and non-disclosure requirements at *section 16* apply in respect of a revocation of a visa. By *subsection (4)*, the section doesn’t apply where the visa holder is also the holder of a renewable residence permit.

Sections 18 and 19 deal with the process for seeking and obtaining a review of a decision refuse or to revoke a visa.

Section 20 makes provision for the delegation of visa functions by the Minister.

PART 4

ENTRY INTO THE STATE

Part 4 of the Bill deals with entry into the State and sets out the responsibilities of foreign nationals and carriers in this regard.

Section 21 is based, to a large extent, on section 6 of the Immigration Act 2004 and provides (*subsection (1)*) that a foreign national may only enter the state via an approved port (for immigration purposes). Failure to comply with this requirement, other than with the consent of the Minister (*subsection (3)* sets out the process for obtaining this consent), constitutes an offence(*subsection (2)*). Designation as an approved port may be subject to conditions (*subsections (6), (7) and (8)*). *Subsection (4)* lists the exemptions from the requirement at (*subsection (1)*). *Subsection (10)* creates an offence of unlawfully operating a port as an approved port.

Section 22, which is based on section 4 of the Immigration Act 2004, sets out the obligations for certain foreign nationals to present to immigration staff and to apply for permission to enter the State (*subsections (1), (3) and (5)*) and creates an offence for failure to do so (*subsection (2)*). It also specifies the powers vested in immigration staff in determining whether a person should be given permission to enter and be present in the State and the sort of information that would be pertinent in making that decision (*subsections (6) and (7)*). It also sets out what the staff member should do where the foreign national makes an application for protection (*subsections (8), (9) and (10)*).

Section 23 deals with the procedures to be followed where the foreign national is under 18 years of age and the interactions with the Health Service Executive that should take place. This provision is based on section 8(5) of the Refugee Act 1996.

Section 24 provides that the power to permit or refuse permission to enter the State shall be exercised by an immigration officer. The provision is based on section 4 of the Immigration Act 2004. By *subsection (5)*, an immigration officer will give a foreign national who is permitted to enter the State an entry permit. By *subsection (6)*, a foreign national who has made an application for protection, other than a foreign national who is the subject of an exclusion order, will be permitted to enter the State and be issued with a protection temporary residence permit. Where it is not possible to issue a protection temporary residence permit to the foreign national concerned, the immigration officer will, under *subsection (7)*, detain the foreign national or require him or her to reside in a specified place until the permit can be issued.

Section 25, based on section 4(3) of the Immigration Act 2004, sets out the grounds on which an immigration officer can refuse entry to the State.

Sections 26 and 27 restate sections 2 and 3 of the Immigration Act 2003 without changes of substance. They detail the responsibilities of carriers (persons in charge of a vehicle or form of transport or responsible for the carriage of passengers) in ensuring that all foreign nationals enter the State at an approved port and present to immigration officers. Carriers will also be required to ensure that those persons on board the vehicle have valid passports. They will further be required to provide such details as may be prescribed of all persons on board.

Section 27 provides for the service of notice and payment of fixed penalties for offences committed under *section 26*.

PART 5

ENTRY AND RESIDENCE PERMITS

Part 5 (sections 28 to 49) of the Bill provides for a system of residence permits which will form the basis for lawful residence in the State. A residence permit will be evidence of the immigration status of the holder in the State.

Sections 28 and 29 set out the provisions relating to residence and entry permits respectively and the conditions which may attach to such permits.

Section 30 deals with the renewal of residence permits. By *subsection (1)* the Minister is not obliged to consider any application for renewal of a residence permit that is expressed to be not renewable and no appeal lies from his or her refusal to either consider such an application or to renew the permit. *Subsection (2)* makes similar provision where the Minister refuses to consider an application for a residence permit from the holder of an entry permit which contains no statement that the holder is eligible to apply for a residence permit. *Subsections (3) to (9)* set out the process for consideration of an application for renewal of a residence permit.

Section 31 contains provisions for the replacement of a residence permit.

Section 32 contains provisions for the modification of conditions applicable to a residence permit.

Section 33 sets out the matters which the Minister must have

regard to when determining an application for the issue or renewal of a residence permit.

Section 34 contains provision for the issue of a long-term residence permit to a foreign national who meets the standard eligibility requirements (set out in *subsection (2)*) or the eligibility requirements set out in a relevant statement of immigration policy, where the latter are more favourable. A long-term residence permit will be valid for a period of 5 years and shall be renewable on conditions (*subsection (1)(b)*) and its validity will not be affected by absence from the State of the holder for a continuous period of less than one year (*subsection (1)(c)*). *Subsection (3)* sets out the entitlements attaching to a long-term residence permit. *Paragraph (a)* of *subsection (4)* enables the Minister to issue a long-term residence permit to a person who does not meet the residence requirement provided for at *subsection (2)(a)*. *Paragraph (b)* sets out the conditions that will apply for a probationary period of 2 years, or such lesser probationary period as the Minister may specify, to a long-term residence permit issued under *paragraph (a)*. *Paragraph (c)* makes provision for the issue of a long-term residence permit following the expiry of the probationary period.

Section 35 makes provision for a protection temporary residence permit which will be issued to a protection applicant when he or she is permitted to enter the State for the purpose of having his or her application determined. This section is based on sections 9(2), (3), (4), (4A), (5), (6) and (7) of the Refugee Act 1996.

Section 36 contains provisions allowing for the detention of protection applicants. It is based on section 9(8), (9), (10), (11), (12), (13), (14) and section 10 of the Refugee Act 1996 with no substantive change.

Section 37 makes provision for priority to be given to applications from protection applicants who have been detained. It is based on section 10(4) of the Refugee Act 1996.

Section 38 makes provision for a protection residence permit which will be issued to any person who is determined to be eligible for protection in the State. The section is based on section 3 of the Refugee Act and Regulation 17 of the European Communities (Eligibility for Protection) Regulations 2006 with no substantive change.

Section 39 provides for the establishment and maintenance of a register of foreign nationals to whom residence permits and protection temporary residence permits have issued.

Sections 40 to 43 makes provision for the discontinuance of the different classes of residence permits and the procedures for discontinuance. The sections are based on section 3(4) and (6) of the Immigration Act 1999, section 21 of the Refugee Act 1996 and Regulations 11 and 14 of the European Communities (Eligibility for Protection) Regulations 2006 with suitable modifications but no change of substance.

Section 44 makes provision for the making of a expulsion order by the Minister when discontinuing a residence permit.

Section 45 makes provision for the setting of fees for applications for different classes of permits. Provision is made at *subsection (6)* for the waiver of fees in respect of applications for protection and applications from persons under 18 years of age.

Section 46 deals with programme refugees and is based on section 24 of the Refugee Act 1996.

Section 47 provides for a scheme of temporary protection in accordance with Council Directive 2001/55/EC² on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons and bearing the consequences thereof. The section applies to a foreign national to whom, in accordance with the provisions of the Council Directive, permission to enter and remain in the State has been given by the Government.

Section 48 provides for the issue of a travel document to a person who has been granted a protection residence permit identifying its holder as that person. The section is based on section 4 of the Refugee Act 1996 and Regulation 18 of the European Communities (Eligibility for Protection) Regulations 2006 with no change of substance.

Section 49 sets out the circumstances under which the Minister may grant permission to family members of holders of protection residence permits to enter and reside in the State. It also sets out the entitlements of family members granted such permission (*subsection (4)(a)*). The section is based on section 18 of the Refugee Act 1996 and Regulation 16 of the European Communities (Eligibility for Protection) Regulations 2006 with no change of substance.

PART 6

REMOVAL FROM THE STATE

Part 6 of the Bill contains provisions dealing with removal of foreign national from the State. Removal will only arise where the foreign national concerned, being unlawfully present in the State, has failed to comply with his or her obligation under *section 5* to leave.

Section 50 defines *refoulement* (*subsection (1)*). The section also sets out (*subsections (2), (3) and (5)*) the circumstances where the sending of a foreign national from the State to particular destinations will be presumed not to be a *refoulement*. *Subsection (4)* provides that the presumptions at *subsections (2) and (3)* are rebuttable. *Subsection (6)* is based on section 25 of the Refugee Act 1996.

Section 51 provides for the removal from the State, by an immigration officer or a member of the Garda Síochána, of a foreign national unlawfully present in the State or at a frontier of the State. It is based on section 5(5), (8) and (9) of the Immigration Act 2003. It requires the person being removed (*subsection (6)*) or his or her parent, guardian or person having responsibility for him or her (*subsection (7)*) to co-operate in any way necessary to facilitate the removal. A person removed under this section is ineligible for permission to enter the State for 6 months from the date of removal (*subsection (9)*) but this period may be disregarded in certain circumstances (*subsection (10)*).

Section 52, which is based on provisions in section 5 of the Immigration Act 1999 and section 5 of the Immigration Act 2003, provides for the arrest and detention of a foreign national for the purposes of removing him or her from the State. By *subsection (5)*, the foreign national may be detained only until such time (being as soon as

²OJ L 212 of 7 August 2001.

practicable) as he or she is removed from the State. By *subsection (8)*, where the foreign national is a party to any proceedings, the High Court may order his or her release from detention if satisfied that those proceedings require his or her continued presence in the State. *Subsection (12)* provides for an alternative to detention; namely, a requirement to comply with conditions including a condition to reside or remain in a specified place.

By *section 53*, which is based on section 5(4) of the Immigration Act 1999 and section 5(2)(b) of the Immigration Act 2004, the detention provisions do not apply to a foreign national who is under 18 years of age. However, by *subsection (4)* such a foreign national may be required to comply with the conditions set out in *section 52(12)*.

Section 54, which is based on provisions in section 5 of the Immigration Act 1999 and section 5 of the Immigration Act 2003, provides for the responsibilities of carriers in relation to removal of persons from the State. An immigration officer or a member of the Garda Síochána may place a detained foreign national on a ship, aircraft or other vehicle that is about to leave the State (*subsection (1)*). The person in charge of the ship, aircraft or other vehicle shall, if so directed within a reasonable time before departure (*subsection (4)*), receive such a foreign national on board (*subsection (2)*). By *subsection (3)*, the Minister will reimburse the reasonable expenses (which, by *subsection (11)* may be prescribed) incurred by the carrier in complying with *subsections (1)* and *(2)*. Where a detained foreign national arrived in the State by means of a ship, aircraft or other vehicle the person in charge of the ship, aircraft or other vehicle must, if so directed, remove the foreign national without delay from the State (*subsection (5)*) or arrange for his or her removal by another carrier (*subsection (6)*). A carrier who fails to comply with a direction under *subsection (5)* or *(6)* commits an offence. By *subsection (7)* and *(8)*, the officer or member may make alternative arrangements where the carrier fails to comply with a direction under *subsection (5)* or *(6)* and the costs of such arrangements will be recoverable from the carrier concerned.

Section 55 provides that the Minister may require a foreign national removed from the State to pay the reasonable expenses incurred by virtue of his or her detention, removal and maintenance for the purposes of that removal, subject to maximum amounts which may be prescribed.

PART 7

PROTECTION

Part 7 of the Bill contains provisions relating to the meaning, content, procedures and eligibility criteria relating to the giving of protection to a foreign national in the State. It integrates many of the provisions of the Refugee Act 1996 and the European Communities (Eligibility for Protection) Regulations 2006 with appropriate modifications to take account of the introduction of a unified process for the determination of protection applications (“single procedure”).

Section 56 is an interpretation section.

Section 57 provides that a person who is either a refugee or a person eligible for subsidiary protection is entitled to protection in the State. For the purposes of the unified process for the determination of protection applications, *subsection (2)* deems an application for any form of protection to be an application for refugee status.

Section 58 outlines the procedure for a foreign national, whether lawfully or unlawfully in the State, to make an application for protection to the Minister. The section is based on sections 8 and 11(8) of the Refugee Act 1996 and Articles 6 and 10 of the Procedures Directive.

Section 59 sets out the process whereby the Minister will investigate protection applications. It is based on section 11(1) to (5) and (12) of the Refugee Act 1996. It also takes account of Articles 12 and 13 of the Procedures Directive.

Section 60 outlines the nature and source of the information which must be taken into account by the Minister in the course of his investigation into a protection application. It is based on Regulations 5, 6 and 7 of the European Communities (Eligibility for Protection) Regulations 2006.

Section 61 is based on Regulation 9 of the European Communities (Eligibility for Protection) Regulations 2006 and outlines what may constitute acts of persecution for the purpose of assessing whether a person is a refugee.

Section 62 is based on Regulation 10 of the European Communities (Eligibility for Protection) Regulations 2006 and outlines what may constitute reasons for persecution for the purpose of assessing whether a person is a refugee.

Section 63 is based on section 2 of the Refugee Act 1996 and Regulations 12 and 13 of the European Communities (Eligibility for Protection) Regulations 2006 and sets out the circumstances in which an applicant for protection will be excluded from receiving protection in the State.

Section 64 provides that protection against persecution or serious harm shall be regarded as being generally provided where reasonable steps are taken by a state or parties controlling a state or part of the territory to prevent the persecution or suffering of serious harm. It is based on Regulations 2 and 8 of the European Communities (Eligibility for Protection) Regulations 2006.

Section 65 provides a mechanism for a protection application to be withdrawn or be deemed withdrawn from the protection application investigation process. It is based on sections 11(9) to 11(11) and 13(4) of the Refugee Act 1996 and Articles 19 and 20 of the Procedures Directive.

Section 66, based on section 11A of the Refugee Act 1996, provides that the burden of proof for establishing a credible claim for protection is primarily on the person asserting the fear of persecution or serious harm; namely, the protection applicant. This section also provides for an obligation on the Minister and the Protection Review Tribunal to assess the relevant elements of the claim in co-operation with the applicant.

Section 67, based on section 11B of the Refugee Act 1996 modified to reflect the single procedure, outlines the factors that are relevant in relation to the credibility of a protection applicant.

Section 68, based on section 11B of the Refugee Act 1996, places a duty on applicants to cooperate with the requirements and procedures set by the Minister, including furnishing the Minister with relevant information as to his or her identity and reasons for applying for protection in the State.

Section 69, based on section 12 of the Refugee Act 1996 and Article 23 of the Procedures Directive, provides that the Minister may give priority to the processing of different classes and categories of protection application on a wide variety of grounds.

Section 70, provides for the report of the investigation into the protection application conducted by the Minister at first instance. *Subsection (1)* is based on section 13(1) of the Refugee Act and Article 14 of the Procedures Directive. *Subsection (2)* sets out the possible outcomes of the investigation — the applicant is either; (i) a refugee; (ii) not a refugee but eligible for subsidiary protection; (iii) not eligible for protection but will be given a residence permit (other than a protection residence permit); or (iv) not eligible for protection and must leave the State. The fact that either of these outcomes is possible from the first instance investigation is a consequence of the single procedure being introduced by the Bill. *Subsection (3)* is based on section 13(6) of the Refugee Act 1996. *Subsection (4)* is based on Article 23(2) of the Procedures Directive.

Section 71, based on provisions in section 13 of the Refugee Act 1996 and Article 14 of the Procedures Directive, provides that the Minister must notify a protection applicant of the Minister's determination of the protection application and the reasons for that determination. The notification must also inform the applicant of the procedures in relation to an appeal to the Protection Review Tribunal against the Minister's determination.

Section 72, based on provisions at section 21 of the Refugee Act 1996 and Regulations 11 and 14 of the European Communities (Eligibility for Protection) Regulations 2006, provides for the circumstances in which a person ceases to be a refugee or a person eligible for subsidiary protection in the State.

Section 73 sets out the nature of the consideration which will determine whether a person who is not granted a protection residence permit will be allowed to remain in the State.

Section 74, based on provisions at section 17 of the Refugee Act 1996 and Regulation 17 of the European Communities (Eligibility for Protection) Regulations 2006, makes provision for the issue of (*subsection (1)*), or refusal to issue (*subsection (2) and (3)*), a protection residence permit. The section also provides (*subsection (4)*) for notification to the applicant and the UNHCR of the granting or, as the case may be, the refusal to grant a protection residence permit.

Section 75, based on section 15 of the Refugee Act 1996 and paragraphs (9) and (10) of the Second Schedule to that Act, provides for the establishment of the Protection Review Tribunal, whose functions are set out later in the Bill.

Section 76 is based on paragraphs (1) to (8) of the Second Schedule to the Refugee Act 1996 and deals with membership of the Tribunal.

Section 77, based on paragraphs (12) to (20) of the Second Schedule to the Refugee Act 1996, provides for the functions and powers of the chairperson. *Subsections (8) and (9)* enable the chairperson to deal with decisions of members of the Tribunal that he or she considers to be erroneous.

Section 78 sets out the role of a member of the Tribunal — to determine appeals under this Part of the Act. It primarily involves

the transacting of business as assigned by the chairperson. *Subsection (2)* sets out the obligations of the Member in carrying out his or her role.

Section 79, based on section 16(1), (3), (4), (5), (6) and (7) of the Refugee Act 1996, provides that a protection applicant may appeal to the Protection Review Tribunal against a determination of the Minister that he or she is not a refugee or is not a person eligible for subsidiary protection.

Section 80, based on section 16(2), (8), (16A), (17) and (18) of the Refugee Act 1996, provides for the possible outcomes of an appeal to the Protection Review Tribunal.

Section 81, based section 16(2A), (2B) and (9) of the Refugee Act 1996, deals with the withdrawal or deemed withdrawal of an appeal.

Section 82, based section 16(2A), (2B) and (9) of the Refugee Act 1996, sets out the process for oral hearings under the Act.

Section 83, based section 16(16) of the Refugee Act 1996, provides for the matters and material to be considered by the Tribunal before deciding an appeal.

Section 84, based section 17(7) of the Refugee Act 1996 and Articles 32 and 34 of the Procedures Directive, makes provision for subsequent applications for protection in the State. By *subsection (1)*, person who already applied for protection in the State may not, without the consent of the Minister, make a further application for protection in the State. *Subsection (2)* sets out the process for making a subsequent application for protection. By *subsection (4)*, the Minister must consent to a subsequent application being made where the applicant has submitted new information which significantly adds to the likelihood that the applicant will qualify for protection in the State.

Section 85, based section 19(1) to (4) of the Refugee Act 1996, makes provision for the protection of the identity of applicants for protection.

Section 86, based section 19(4A) and (5) of the Refugee Act 1996, makes provision for the publication of decisions of the Tribunal. It reflects the Supreme Court Decision in *Atanasov*³ relating to access to decisions of the Refugee Appeals Tribunal and sets out the procedures to be followed in relation to access to decisions of the Protection Review Tribunal. *Subsection (8)* provides for the making of regulations by the Minister to provide for matters relating to the making available or publication of decisions of the Tribunal.

Section 87, based sections 12(4) and (22) of the Refugee Act 1996 and, consistent with Articles 27, 30 and 31 of the Procedures Directive, provides for the designation of safe countries of origin (*subsections (1) and (2)*) and the making of agreements with safe third countries for the transfer of protection applications (*subsections (3) and (4)*). It also contains the necessary arrangements to give effect to the “Dublin II” Regulation⁴ (*subsections (3)*).

³*Atanasov -v- Refugee Appeals Tribunal & ors* [2006] IESC 53.

⁴Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national. OJ L50 of 25 February 2003.

PART 8

FURTHER PROVISIONS

Part 8 of the Bill contains general provisions.

Section 88, based on section 20 of the Refugee Act 1996, provides for certain offences pertaining to the making of statements or provision of documents which the person knows, or ought to know, to be false or misleading and the destruction, concealment, forgery, fraudulent alteration, sale supply or facilitation of unlawful use of identity documents.

Section 89, based on section (3) of the Immigration Act 2004, deals with the appointment of immigration officers, authorised officers and immigration registration officers for the purposes of the Act.

Section 90 deals with the appointment of medical inspectors for the purposes of the Act and is based on section (3) of the Immigration Act 2004.

Section 91 provides for the powers that may be exercised by an immigration officer for the purpose of performing any of his or her functions under the Act and is based on section 15 of the Immigration Act 2004.

Section 92 is based on section 8 of the Immigration Act 2003 and makes provision for the exchange of information relating to the operation and administration of the law about the entry into, presence in and removal from the State of foreign nationals.

Section 93, based on sections 8 and 9 of the Aliens Act 1935, continues the existing restrictions applicable to foreign nationals in relation to change of name.

Section 94 makes provision in relation to the marriage of a foreign national in the State. By *subsection (1)*, the marriage of a foreign national and an Irish citizen does not, of itself, confer a right on that foreign national to enter or be present in the State. By *subsection (2)* a marriage contracted between two persons one of whom is or both of whom are foreign nationals is invalid in law unless the foreign national concerned has given 3 months notice of the proposed marriage to the Minister and the person is at the time of the marriage the holder of an entry permit issued for that purpose or a residence permit (other than a protection temporary residence permit or a non-renewable permit). *Subsection (3)* enables the Minister, upon application in the prescribed form, to grant an exemption from the residence permit requirement. The Minister may refuse to grant an exemption in the circumstances listed at *subsection (4)*. A person to whom an application has been made in relation to the solemnisation of a proposed marriage is obliged (*subsection (5)*) to require the production of evidence of compliance with this section. That person must not solemnise the marriage in the absence of such evidence and must notify the Minister of the refusal to do so and the reasons for that refusal (*subsection (6)*). By *subsection (7)*, a person who knowingly solemnises or permits the solemnisation of, is a party to, or facilitates such a form of marriage is guilty of an offence and liable to the penalties set out in *section 100*.

Section 95, based to a large extent on section 9A of the Refugee Act 1996, sets out the obligations of foreign nationals to provide biometric information to an immigration officer or a member of the Garda Síochána when required to do so. “Biometric information” is

defined at *section 4. Subsection (2)* enables the type of biometric information required to be prescribed. Failure to provide the relevant data is an offence. *Subsections (3) and (4)* make special provision for the taking of biometric information from a person under 14 years of age. By *subsection (5)*, a foreign national who does not co-operate fully in the taking of biometric information is deemed to have failed to comply with the conditions of his or her residence permit. Where that person is a protection applicant, he or she is deemed to have failed to make reasonable efforts to establish his or her identity and to have failed to co-operate as required at *section 68. Subsections (7) and (8)* make provision for the destruction of biometric information taken in circumstances where the foreign national to whom it relates becomes an Irish citizen.

Section 96 is based on section 4 of the Immigration Act 1999 and enables the Minister, by order, to exclude a foreign national from the State.

Section 97 is based on section 9 of the Immigration Act 2004 and imposes an obligation on persons engaged in passenger transport, the provision of lodging or sleeping accommodation on a commercial basis, the provision of education or certain prescribed businesses to display a statutory notice stating the effect of this Act and any directions given under it.

Section 98 is based on section 10 of the Immigration Act 2004 and sets out the duty of the manager or proprietor of certain premises, including a hotel or educational establishment, to keep a register of all foreign nationals enrolled in, attending at or staying in the premises and to produce such a register when required to do so by an immigration officer.

Section 99 is based on section 5 of the Illegal Immigrants (Trafficking) Act 2000 and deals with judicial review for the purposes of the Act. By *subsection (2)* an application for judicial review must be made within 14 days of the impugned decision. This period may be extended where the High Court is satisfied that substantial grounds exist for doing so. *Subsection (3)* sets out the circumstances where the High Court may not extend the period. By *subsections (7) and (8)* the High Court may award costs against a legal representative of an applicant who has initiated judicial review proceedings which are, in the opinion of the Court, on (e.g.) frivolous or vexatious grounds. An application for leave to apply for judicial review will not of itself (*subsection (9)*) suspend or prevent the transfer, or removal of a foreign national from the State unless the Court considers it necessary for that foreign national to be in the State in order to give instructions to his or her legal representatives (*subsection (10)*). *Subsection (11)* operates to prevent a foreign national, following the rejection of his or her protection application, from challenging his or her removal solely on the basis of information that was not available to the Minister or the Tribunal before the rejection of the application.

Section 100 sets out a range of penalties which shall apply to the offences provided for in the Act.

Section 101 is a standard regulation-making power.

Section 102 is based on section 6 of the Immigration Act 1999 and provides for matters pertaining to the service of notices for the purposes of the Act.

Section 103 empowers the Minister to delegate to another Minister

or, by order, to any other person any of the Minister's functions under this Act.

Section 104 is a standard provision which provides for the repeal of current legislation and sets out transitional arrangements.

Section 105 restates, with no change of substance, section 11 of the Immigration Act 2004.

Section 106 provides for the exchange of information (including biometric information) about a foreign national with another state and the making of arrangements with other states for those purposes.

Financial implications

The Bill is expected to generate efficiencies in the State's immigration and protection processes with consequent savings in costs to the Exchequer.

An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí Aibreán, 2007.