

An Bille um Chosaint Idirnáisiúnta, 2015 International Protection Bill 2015

Meabhrán Mínitheach agus Airgeadais Explanatory and Financial Memorandum



AN BILLE UM CHOSAINT IDIRNÁISIÚNTA, 2015 INTERNATIONAL PROTECTION BILL 2015

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The principal purpose of the International Protection Bill 2015 is to reform the system for determining applications for international protection (also known as asylum) in Ireland through the introduction of a single procedure. It is intended that the Bill will be in compliance with the United Nations Convention relating to the status of Refugees and related EU Directives on asylum procedures and qualification into which Ireland has opted. International protection can be either (a) as a person who is eligible for refugee protection on the basis of a well-founded fear of persecution in the country of origin or (b) as a person who is eligible for subsidiary protection on the basis of a real risk of suffering serious harm if returned to the country of origin. Under the proposed single procedure, an applicant will make one application only, and will have all grounds for seeking international protection and to be permitted to remain in the State examined and determined in one process.

Main provisions of the Bill

PART 1

PRELIMINARY

Part 1 (sections 1 to 6) of the Bill deals with preliminary matters such as citation, commencement, interpretation, regulations, expenses, service of documents and repeals and revocations.

Sections 1, 3, 4 and 6 are standard provisions dealing with the short title and commencement of the Act, regulations which may be made under the Act, expenses incurred in the administration of the Act and repeals and revocations of various enactments subject to the transitional provisions of Part 11.

Section 2 sets out the interpretation of various terms for the purposes of the Act. The section defines the term "refugee" as a person who is outside his or her country of origin due to a well-founded fear of being persecuted for specified reasons. The section defines the term "person eligible for subsidiary protection" as a person who, not qualifying as a refugee, faces a real risk of suffering serious harm if returned to his or her country of origin. The term "serious harm" is defined as including execution, torture or serious threat to a civilian's life in a situation of armed conflict. Subsection (2) provides that a person shall cease to be an applicant where his or her application is determined to be inadmissible, is withdrawn or is subject to a final decision or where the applicant is transferred to another EU Member State responsible for examining the application.

Section 5 deals with the service of a notice or other document under the Act including by prepaid registered letter which is deemed to have been served on the third day after sending.

PART 2

QUALIFICATION FOR INTERNATIONAL PROTECTION

Part 2 (sections 7 to 12) of the Bill deals with the qualification of a foreign national for international protection (either as a refugee or as a person eligible for subsidiary protection) in compliance with the EU Asylum Qualification Directive 2004/83/EC. The Directive was adopted in 2004 and recast in 2011 to provide a uniform status in the EU Member States for refugees or for persons eligible for subsidiary protection. Ireland opted into the 2004 Directive but not the 2011 recast and consequently remains bound by the 2004 Directive. However, the Bill has been prepared in order to be in compliance with the 2011 recast as this more favourable standard is compatible with the 2004 Directive.

Section 7 sets out an elaboration of acts of persecution constituting a severe violation of basic human rights or an accumulation of violations of human rights which are sufficiently severe. Subsection (2) sets out examples of acts which may amount to acts of persecution. Subsection (3) provides that there must be a connection between the reasons for persecution and the acts of persecution or the absence of protection.

Section 8 sets out an elaboration of the reasons for persecution which are contained in the United Nations Convention relating to the Status of Refugees. The Convention provides for five grounds which are considered to motivate persecution, i.e. race, religion, nationality, membership of a particular social group and political opinion. Subsection (2) clarifies that it is sufficient for an actor of persecution to attribute such a characteristic to an applicant.

Section 9 sets out the circumstances in which a person shall cease to be a refugee including a change in the circumstances in connection with which he or she has been recognised as a refugee. Subsection (2) provides that regard shall be had as to whether such a change in circumstances is of a significant and non-temporary nature. Subsection (3) provides for a continuation of refugee status in a case of a refugee who can invoke compelling reasons arising out of previous persecution.

Section 10 sets out the circumstances in which a person is excluded from being a refugee. A person is excluded if he or she is receiving protection from organs or agencies of the United Nations or from another country. A person is also excluded where there are serious reasons for considering that he or she has committed a serious crime or is guilty of acts contrary to the purposes and principles of the United Nations.

Section 11 provides that a person shall cease to be eligible for subsidiary protection when the circumstances which led to eligibility have ceased to exist or have changed. Subsection (2) provides that regard shall be had as to whether such a change in circumstances is of a significant and non-temporary nature. Subsection (3) provides for a continuation of subsidiary protection in the case of a person who can invoke compelling reasons arising out of previous serious harm.

Section 12 sets out the circumstances in which a person is excluded from being eligible for subsidiary protection. A person is excluded where there are serious reasons for considering that he or she has committed a serious crime, is guilty of acts contrary to the purposes and principles of the United

Nations or has committed a crime and has left the country of origin in order to avoid sanctions resulting from that crime.

PART 3

APPLICATION FOR INTERNATIONAL PROTECTION

Part 3 (sections 13 to 25) of the Bill deals with the procedure in respect of a person seeking international protection in Ireland and provides generally for the regulation of the presence in the State of such persons. This part of the Bill is in compliance with the EU Asylum Procedures Directive 2005/85/EC.

Section 13 provides for the conducting of a preliminary interview with a person who wishes to, or who may wish to, apply for international protection in Ireland.

Section 14 provides for the Child and Family Agency to be notified of an unaccompanied person under the age of 18 years and for the application of enactments relating to the care and welfare of such persons.

Section 15 sets out the procedure for making an application for international protection by a person who is over the age of 18 years on his or her own behalf or on behalf of a dependent person under the age of 18 years. Subsection (3) provides that an application shall be deemed to have been made on behalf of a dependent child of the applicant. Subsection (4) provides for the making of an application by the Child and Family Agency on behalf of an unaccompanied minor.

Section 16 provides that an applicant shall be given permission to remain in the State for the sole purpose of the examination of his or her application. Subsection (2) provides that the permission shall be valid until the person ceases to be an applicant. Subsection (3) places restrictions and obligations on an applicant, notably not to enter into employment or engage in a business.

Section 17 provides for the issue to an applicant of a temporary residence certificate containing such details as the applicant's name and photograph.

Section 18 provides for the issue to an applicant of a statement in writing specifying the procedures to be followed in the examination of the application for international protection under the Act. Subsection (2) provides that an applicant shall be informed of his or her entitlement and obligation to submit information that would be relevant to the Minister's consideration of whether to give permission to remain in the State to such a person who is being refused international protection.

Section 19 provides for the taking of fingerprints of an applicant for international protection and of a foreign national found in the State without permission for the purpose of checking if he or she previously applied for international protection in another EU Member State.

Section 20 provides for the arrest and detention of an applicant on various grounds which are specified in *subsection (1)*. Subsections (2) and (3) provide that a judge of the District Court may commit the person to a place of detention for a period not exceeding 21 days or release the person subject to conditions. Subsection (6) provides that detention does not apply to a person under the age of 18 years.

Section 21 provides that an application is inadmissible if another EU Member State has granted international protection to the applicant or if a non-EU country is a first country of asylum for the applicant. Subsection (6) provides that a person may appeal to the International Protection Appeals

Tribunal against a recommendation that the application be determined to be inadmissible.

Section 22 provides that a person who has been previously refused international protection shall not make a subsequent application without the consent of the Minister. Subsection (4) provides for a preliminary examination of the application for consent to establish if new elements or findings have arisen or have been presented by the person which make it significantly more likely that the person will qualify for international protection. Subsection (8) provides that a person may appeal to the International Protection Appeals Tribunal against a recommendation to refuse consent to the making of a subsequent application.

Section 23 provides that the Minister or the International Protection Appeals Tribunal may require an examination of an applicant in relation to his or her physical or psychological health.

Section 24 provides for the use by the Minister of an examination, including a medical examination, to determine the age of an applicant who is presenting as an unaccompanied minor where there are reasons to have doubts in relation to the age of the applicant. Subsection (6) provides that the best interests of the child shall be a primary consideration in the application of the section.

Section 25 provides for the protection of the identity of an applicant. The Minister and Tribunal are obliged to take all practicable steps to ensure that the identity of an applicant is kept confidential and it is an offence to publish or broadcast information likely to lead members of the public to identify a person as an applicant.

PART 4

ASSESSMENT OF APPLICATIONS FOR INTERNATIONAL PROTECTION

Part 4 (sections 26 to 32) of the Bill deals with the assessment of applications for international protection based on the provisions of the EU Directives.

Section 26 provides that it shall be the duty of the applicant to cooperate in the examination of his or her application and in the determination of any appeal.

Section 27 provides for the assessment of the facts and circumstances of the application on an individual basis, including all relevant facts as they relate to the country of origin, the individual position and personal circumstances of the applicant and the general credibility of the applicant.

Section 28 deals with international protection needs arising sur place based on events which have taken place since the applicant left his or her country of origin.

Section 29 provides that actors of persecution or serious harm include a state, parties controlling a state or part of a state, or non-state actors where protection against persecution or serious harm is not provided.

Section 30 sets out that protection against persecution or serious harm can only be provided by a state or parties controlling a state or part of a state, provided they are willing and able to offer protection which is effective and of a non-temporary nature.

Section 31 provides that an applicant is not in need of international protection if a part of his or her country of origin is safe for the applicant and he or she could reasonably be expected to settle there.

Section 32 provides that a country designated under section 71 as a safe country of origin shall be so considered in relation to a particular applicant only where the applicant has not submitted serious grounds for considering the country not to be safe for him or her.

PART 5

EXAMINATION OF APPLICATIONS AT FIRST INSTANCE

Part 5 (sections 33 to 39) of the Bill deals with the examination of applications for international protection.

Section 33 provides for the examination of an application by an authorised officer to determine first if the applicant should be given a refugee declaration, and if not, if the applicant should be given a subsidiary protection declaration.

Section 34 provides that as part of the examination of an application that the applicant shall be the subject of a personal interview. Subsection (2) provides that whenever necessary that the applicant shall be provided with the services of an interpreter. Subsection (7) provides for the Child and Family Agency to be notified of the case of an applicant under the age of 18 years who is accompanied by an adult where the interviewer is not satisfied in relation to the role of the adult.

Section 35 sets out certain guarantees applicable in the case of applicants who are unaccompanied minors including that the interview is conducted by a person who has the necessary knowledge of the special needs of minors.

Section 36 deals with the withdrawal by an applicant of his or her application for international protection.

Section 37 deals with the circumstances in which for the purposes of his or her application an applicant shall be deemed not to have made a genuine effort to substantiate his or her application. This can arise where an applicant does not attend for a personal interview on the date fixed or where the applicant does not furnish any confirmation or a satisfactory confirmation of his or her wish to continue with his or her application.

Section 38 deals with the report of the examination and determination of an application. The report shall refer to matters relevant to the application and shall set out the recommendation of the authorised officer in relation to whether the applicant should be given a refugee declaration or a subsidiary protection declaration. Subsection (4) sets out a number of additional findings which may be made in the case of an applicant who is being refused international protection. Subsection (5) provides for information to be given, upon request from the applicant, on the estimated timeframe within which a recommendation may be made where it cannot be made within 6 months of the date of the application.

Section 39 provides for the notification to the applicant of the determination of his or her application at first instance. Where the recommendation is to refuse protection as a refugee, or both as a refugee and as a person eligible for subsidiary protection, the recommendation shall be accompanied by a statement of the reasons for that refusal.

PART 6

APPEALS TO TRIBUNAL

Part 6 (sections 40 to 45) of the Bill deals with the right of an applicant whose application for either form of international protection is refused at first instance to appeal to the independent International Protection Appeals Tribunal which may set aside the refusal at first instance and recommend that refugee status or, as the case may be, subsidiary protection status, be granted.

Section 40 provides that an appeal may be brought by notice in writing within 15 days of the sending of the notification of the determination at first instance. Subsection (4) provides that the Minister may make regulations for procedures in relation to appeals.

Section 41 provides for the holding of an oral hearing by the Tribunal for the purpose of an appeal either where the applicant has requested this or where the Tribunal is of the opinion that it is in the interests of justice to do so. Subsection (4) provides that an oral hearing shall be held in private. Subsection (6) provides for the presence at the oral hearing of the applicant to present his or her case and an officer of the Minister or another person to explain the recommendation that is the subject of the appeal.

Section 42 provides for accelerated appeals procedures in the case of applicants who are subject to any of the additional findings set out in section 38(4). Such appeals are to be decided by the Tribunal without holding an oral hearing unless the Tribunal considers it is in the interests of justice to hold an oral hearing.

Section 43 provides that the Minister shall furnish information to the Tribunal for the purposes of an appeal by an applicant.

Section 44 provides that an applicant may withdraw his or her appeal by notice in writing. An applicant's appeal shall be deemed to be withdrawn where an applicant does not attend for an oral hearing on the date fixed or where the applicant does not furnish any confirmation or a satisfactory confirmation of his or her wish to continue with his or her appeal.

Section 45 provides for the decision of the Tribunal on an appeal. The Tribunal may decide to affirm the recommendation under appeal or it may decide to set aside the recommendation and recommend that the applicant be given a refugee declaration or, as the case may be, a subsidiary protection declaration. Subsection (6) provides that the decision of the Tribunal and the reasons for it shall be communicated to the applicant concerned.

PART 7

DECLARATIONS AND OTHER OUTCOMES

Part 7 (sections 46 to 51) of the Bill deals with the various outcomes for applicants for international protection.

Section 46 provides for the giving of, and the refusal to give, a declaration of refugee status or of subsidiary protection status. The declaration is a statement in writing by the Minister declaring that the person to whom it relates is a refugee or, as the case may be, a person eligible for subsidiary protection. Subsection (6) provides that a refugee declaration shall effectively replace a subsidiary protection declaration where this had been previously given to the person. Subsection (7) provides that the Minister shall send the applicant a notice in writing of the outcome of his or her application for international protection.

Section 47 provides for the option to voluntarily return to the country of origin for an applicant who wishes to withdraw from the application process or whose application has been refused. Subsection (5) provides that a deportation order shall not be made in respect of the person for so long as the Minister is of the opinion that the person is making reasonable efforts to leave the State.

Section 48 provides that the Minister shall, in the case of an applicant who is being refused international protection, consider whether the applicant should be given permission to be present in the State. Subsection (3) provides that in making this decision the Minister shall have regard to the applicant's family and personal circumstances. Subsection (4) provides that the Minister shall decide to either give, or refuse to give, the applicant a permission.

Section 49 provides for the prohibition of refoulement based on the Convention relating to the Status of Refugees and the European Convention of Human Rights.

Section 50 provides for the making of a deportation order in relation to a person who is refused international protection and any other permission to reside in the State. Subsection (3) provides that a deportation order made under this Act shall be deemed to be an order made under section 3 of the Immigration Act 1999.

Section 51 provides for the revocation of a refugee declaration or a subsidiary protection declaration principally where the person is excluded from, or has ceased to be eligible for, international protection. Subsection (4) provides for a notice of a proposed revocation to be given to the person inviting representations on the proposal. Subsection (8) provides for an appeal to the High Court against a decision by the Minister to revoke a declaration.

PART 8

CONTENT OF INTERNATIONAL PROTECTION

Part 8 (sections 52 to 57) of the Bill deals with the rights and entitlements of persons who have been granted international protection in accordance with the EU Asylum Qualification Directive.

Section 52 provides for the extension to persons who are given a refugee declaration or a subsidiary protection declaration of rights to which Irish citizens are entitled such as access to the labour market, health, social welfare and housing services.

Section 53 provides for permission to reside in the State to be given to persons who are given a refugee declaration or a subsidiary protection declaration and their family members who are given permission to reside in the State under this Part. Section 54 provides for the issue of a travel document to these persons.

Section 55 provides for a procedure whereby a permission for a family member to enter and reside in the State may be applied for by a person who is given a refugee declaration or a subsidiary protection declaration. Subsection (9) defines the family as a married couple or civil partners and their unmarried minor children. Section 56 provides for a similar procedure in respect of family members who are already in the State.

Section 57 provides that in the application of sections 52 to 56 due regard shall be had to the situation of vulnerable persons and that the best interests of the child shall be a primary consideration.

PART 9

PROGRAMME REFUGEES AND TEMPORARY PROTECTION

Part 9 (sections 58 to 59) of the Bill provides for matters relating to programme refugees and temporary protection of displaced persons.

Section 58 provides for the admission to the State of persons for resettlement, which is usually in cooperation with the United Nations High Commissioner for Refugees. Subsection (2) provides that such persons shall have similar rights to persons who are given a refugee declaration.

Section 59 provides in more detail than the existing legislation for the EU Temporary Protection Directive 2001/55/EC which, if invoked under the terms of the Directive by a Decision of the Council of the European Union, would promote a balance of efforts between Member States in receiving a mass influx of displaced third-country nationals. Subsection (2) provides for the application of the section to a displaced person who is given permission to enter and remain in the State for temporary protection as part of a group of persons. Subsection (10) provides for the rights of such a displaced person such as access to the labour market, health, social welfare and housing services.

PART 10

INTERNATIONAL PROTECTION APPEALS TRIBUNAL

Part 10 (sections 60 to 66) of the Bill makes provision for the establishment of the International Protection Appeals Tribunal to replace the Refugee Appeals Tribunal. The Tribunal will determine appeals against a decision made in relation to an application for international protection including a refusal of international protection and, in accordance with the relevant statutory instrument, a decision to transfer an applicant to another EU Member State which is the responsible State under Regulation (EU) No 604/2013 ("the Dublin Regulation").

Section 60 provides for the establishment of the International Protection Appeals Tribunal. Subsection (2) provides for the appointment of the establishment day for the Tribunal and subsection (3) provides that it shall be independent in the performance of its functions. Subsection (5) provides that the Minister shall appoint persons to be members of the staff of the Tribunal.

Section 61 provides that the Tribunal shall consist of a chairperson, not more than 2 deputy chairpersons and such number of other members as the Minister may appoint with the consent of the Minister for Public Expenditure and Reform. Subsection (2) provides that persons appointed to be members of the Tribunal shall have not less than 5 years' experience as a practising barrister or practising solicitor. Subsection (7) provides for the terms of office of the chairperson, the deputy chairpersons and the members of the Tribunal. Subsection (13) provides that a member of the Tribunal may be removed from office by the Minister for stated reasons.

Section 62 provides for the functions of the chairperson of the Tribunal which include ensuring that the functions of the Tribunal are performed efficiently. Subsection (2) provides that the chairperson may issue to members of the Tribunal guidelines on the application of this Part of the Act and on developments in the law relating to international protection. Subsection (3) provides that the chairperson may issue guidelines to the Registrar of the Tribunal for the performance of his or her functions of assigning or re-assigning appeals. Subsection (8) provides for the Chairperson to make reports to the Minister including an annual report.

Section 63 provides for the functions of a deputy chairperson of the Tribunal including performing the functions of the chairperson where assigned.

Section 64 provides for the role of members of the Tribunal including to ensure that the business assigned to him or her is managed efficiently and disposed of as expeditiously as is consistent with fairness and natural justice.

Section 65 provides for the appointment by the Minister of a person to be the Registrar of the Tribunal. Section 66 provides that the functions of the Registrar shall include managing the staff and administration of the Tribunal and assigning to each member the appeals to be determined by him or her.

PART 11

TRANSITIONAL PROVISIONS

Part 11 (sections 67 to 70) of the Bill deals with further provisions and transitional arrangements to be made in respect of existing international protection caseloads which are underway and the transfer of asylum business to the Minister for Justice and Equality and the new Tribunal.

Section 67 provides for the continued detention of a person who is detained under section 9 of the Refugee Act 1996 immediately before the coming into operation of subsection (1).

Section 68 provides for the continuation under the Act of declarations and permissions given under the enactments which are to be repealed or revoked. The persons concerned are refugees, persons eligible for subsidiary protection and their family members.

Section 69 deals with transitional provisions relating to caseloads under existing asylum legislation. Subsections (1) to (6) provide for the transfer of the existing applications for refugee status or subsidiary protection status under the existing legislation into applications for international protection under the new Act. Such applications will be processed to completion under the new arrangements while retaining decisions already made in relation to eligibility for refugee status. Subsections (7) and (8) provide for applications which shall continue to be processed under the existing legislation. Subsections (10) to (13) deal with procedures in train relating to subsequent applications for international protection, proposals to revoke declarations and applications for family reunification. Subsections (16) to (19) provide for the transfer of functions, information, records and legal proceedings from the Refugee Applications Commissioner to the Minister.

Section 70 deals with transitional provisions relating to the International Protection Appeals Tribunal. Subsection (1) provides for the transfer of the business of the Refugee Appeals Tribunal to the new Tribunal. Subsection (3) deals with appeals which are to be decided under the repealed or revoked legislation. Subsections (6) and (7) provide that the existing chairperson and members of the Refugee Appeals Tribunal shall be deemed to have been appointed to the new Tribunal for the unexpired term of their appointments. Subsection (8) makes a somewhat similar provision in respect of the post of Registrar of the new Tribunal.

PART 12

MISCELLANEOUS

Part 12 (sections 71 to 73) of the Bill deals with matters relating to safe countries of origin, prioritisation of applications and appeals and contracts for services.

Section 71 deals with the designation of safe countries of origin. A country may be so designated by order made by the Minister if he or she is satisfied that, on the basis of an assessment, it can be shown that there is generally and consistently no persecution, 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.

Section 72 provides that the Minister may accord priority to any application or that the Minister may request the chairperson of the Tribunal to accord priority to any appeal. Subhead (2) provides that in doing so the Minister may have regard to the matters stated.

Section 73 provides that the Minister may enter into contracts for services with persons to assist him or her in the performance of his or her functions under the Act.

PART 13

MISCELLANEOUS AMENDMENTS

Part 13 (sections 74 to 77) of the Bill deals with amendments to the Immigration Acts of 1999, 2003 and 2004 and to the Illegal Immigrants (Trafficking) Act 2000.

Section 74 provides for the substitution of section 5 of the Immigration Act 1999 dealing with the arrest, detention and removal of non-nationals against whom a deportation order is in force. This amendment addresses the following issues:

- to provide for the power to enter the dwelling in certain circumstances in order to arrest a person who has not complied with a provision of their deportation order, who intends to leave the State and enter another state without lawful authority or who intends to avoid removal from the State.
- to allow for the current eight week maximum period for detention to be extended where there are fresh grounds for detention.
- to allow for detention at ports and airports pending deportation or removal where that detention is more than for a very short time.
- to clarify that the Minister has the power to deport a person from prison.

Section 75 deals with the insertion into section 5 of the Illegal Immigrants (Trafficking) Act 2000 of the specified decisions made under the Bill. Section 5 of the Illegal Immigrants (Trafficking) Act 2000 provides for customised arrangements in relation to the judicial review of decisions in the fields of immigration and international protection. The amendment will have the effect of applying these arrangements to the judicial review of the specified decisions under the Bill.

Section 76 provides for the amendment of section 5 of the Immigration Act 2003 dealing with removal from the State of persons refused leave to land. The amendment is to provide for detention at ports and airports for a very short period pending removal.

Section 77(a) provides for the amendment of section 3 of the Immigration Act 2004 in order to allow for the appointment by the Minister of immigration officers in the context of the ongoing civilianisation of border control duties. These amendments deal with the terms and conditions of appointment and a warrant of appointment.

Section 77(b) provides for an amendment of section 5(1) of the Immigration Act 2004 to make absolutely clear the existing situation whereby permission to remain encompasses circumstances where a person's permission to be in the State is deemed to arise from the inherent executive power of the Minister.

Section 77(c) provides for the amendment of section 6 of the Immigration Act 2004 in order to expand the powers available to the Minister for designating a place to be an approved port for the purposes of entry into the State and to introduce new offences in relation to operating a port or other place that is not an approved port as if it were such.

Schedule 1 sets out, for convenience of reference, the text of the 1951 Convention relating to the Status of Refuges.

Schedule 2 sets out, for convenience of reference, the text of the 1967 Protocol relating to the Status of Refuges.

Financial and staffing implications

The Bill is expected to generate efficiencies in the operation of the State's system for the determination of applications for international protection. It is intended that the new arrangements for the determination of applications for international protection will be more efficient than the existing sequential system. Accordingly, in respect of new applicants it is expected that there will be a positive impact on the cost to the State of operating the asylum system and of providing material and other support to asylum seekers. There are no staffing implications.

An Roinn Dlí agus Cirt agus Comhionannais Samhain, 2015.