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An Comhchoiste um Dhlí agus Ceart agus Comhionannas

**Tuarascáil maidir le Grinnscrúdú ar an mBille um Chosaint Idirnáisiúnta
(Athaontú Teaghlaigh) (Leasú), 2017 [BCP]**

Iúil 2019

Houses of the Oireachtas

Joint Committee on Justice and Equality

**Report on Scrutiny of the International Protection (Family
Reunification) (Amendment) Bill 2017 [PMB]
July 2019**

32/JAE/40

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Chairman's Preface

The main purpose of the International Protection (Family Reunification) (Amendment) Bill 2017 is to give persons who have been granted international protection under the *International Protection Act 2015* a statutory entitlement to apply for family reunification in respect of dependent members of the wider family, in addition to their current automatic right to family reunification in respect of the nuclear family.

The Committee broadly welcomes the proposed Bill.

A hearing took place on 6 February 2019, at which the Committee heard evidence from the Irish Refugee Council and Nasc – the Migrant and Refugee Rights Centre. A few key issues were identified, including the limitations of the current legislation; the effectiveness of current reunification schemes; and the cost implications of the proposal.

On foot of its deliberations, the Committee has made a number of observations and an overall recommendation, which can be found at the end of this report.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence. Finally, I also wish to thank the staff of the Committees Secretariat, and of the Library & Research Service, who assisted in the preparation of this report. Go raibh maith agaibh.



A handwritten signature in black ink, which reads "Caoimhghín Ó Caoláin".

Caoimhghín Ó Caoláin T.D.

Chairman – July 2019

Introduction

The *International Protection (Family Reunification) Amendment Bill 2017* was initiated in the Seanad on 13 July 2017. It was approved by the Seanad (with amendment) on 7 March 2018 and set down for Second Stage debate in the Dáil. The [*Bill \(as passed by the Seanad\)*](#) was debated at second stage on 6 December 2018 and approved by the Dáil on 8 December 2018. Under (then) Standing Order 141, it was referred for detailed scrutiny to the Joint Committee on Justice and Equality.

The Bill is sponsored by the Civil Engagement Group¹ in Seanad Éireann and was moved by Deputy Clare Daly (Independents 4 Change) in the Dáil on 6 December 2018.

Procedural basis for scrutiny

Private Members Bills referred to Select Committee are subject to the provisions of Standing Order 141(2) [Dáil], which provides that a Select Committee “shall undertake detailed scrutiny of the provisions of such Bills ... and shall report thereon to the Dáil prior to Committee stage consideration ...” unless the Committee decides in relation to a particular Bill that detailed scrutiny is not necessary.

Paragraph (3) of Standing Order 141 permits scrutiny of the Bill in Joint Committee: “Nothing in this Standing Order shall preclude a Joint Committee from undertaking detailed scrutiny as set out in paragraph (2) and reporting thereon to both Houses prior to Committee Stage consideration of the Bill by the Select Committee”.

Minister’s observations

The Minister for Justice and Equality was included in the circulation of a draft of this report, in accordance with Standing Order 141(2), as an *ex officio* Committee Member, and invited to make observations. The Minister’s response has been included as **Appendix 1** to this report.

¹ Senators Alice-Mary Higgins (leader), Colette Kelleher, Lynn Ruane, Frances Black, John Dolan and Grace O’Sullivan.

Background

Purpose of the Bill

The central aim of the Bill is to give persons who have been granted international protection under the *International Protection Act 2015* a statutory entitlement to apply for family reunification in respect of dependent members of the wider family, in addition to their current automatic right to family reunification in respect of the nuclear family. It has been determined that a money message from Government is required for this Bill to proceed to formal committee stage.

Where a person is recognised as a refugee or as a person eligible for subsidiary protection (*i.e.* has been granted international protection under the [International Protection Act 2015](#)), certain entitlements arise including the right of that person to apply for family reunification.² Under ss.56 and 57 of 2015 Act, a sponsor (*i.e.* an individual who has been granted international protection status) may apply for family reunification in respect of:

- A spouse or a civil partner (provided the marriage/partnership existed on the date the individual made an application for international protection in the State) (s56(9) (a) and (b)); or
- Parent(s), provided that the sponsor is under the age of 18 and not married *on the date of application for family reunification* 56(8)(c); or
- A child who is under 18 years of age on the date of the application for family reunification 58(8)(d).

The key purpose of this Bill is to extend this definition beyond the nuclear family to give an automatic entitlement to family reunification in respect of *dependent* members of the sponsor's wider family. This would be achieved by replacing the definition of 'family member' currently set out in s.56(9) and, in doing so, adding a further category. The new category is:

'Any grandparent, parent, brother, sister, child, grandchild ward or guardian of the sponsor *who is dependent* on the qualified person **or** is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself of herself fully.'

² Family reunification is the process whereby certain family members of a person who has legal permission to reside in the State are given permission to join that person and/or reside in the State.

There is currently no statutory right to apply for family reunification in respect of dependent members of the extended family. Rather, there are two ways in which beneficiaries of international protection may apply for family reunification with members of the extended family, neither of which is underpinned by a statutory right (further discussed below).

A second purpose of the Bill is to delete the requirement (set out at s56(8)) that an application for family reunification (for a member to 'enter and reside' in the State – Box 1) must be made within 12 months of a sponsor being given international protection under the Act in order to be valid.

Box 1: permission to 'enter and reside' and permission to 'reside' under the 2015 Act

Section 56 of the 2015 Act concerns an application for family reunification in respect of an eligible family member who has not entered the State (in which case it seeks permission for the family member to *enter and reside* in the State). Section 57 concerns an application for a family member who has already entered the State (in which case it is 'permission to reside.' **This Bill proposes to remove the 12-month deadline in respect of the former by deleting s.56(8) of the 2015 Act.**

A third purpose of the Bill, which is the result of an amendment made by the Seanad, is to provide a sponsor with the right to seek a review of a decision where permission to enter and reside (s.56), or to reside (s.57), has been refused or revoked for any of the reasons set out at s.56(7) or s.57(6). Under the proposed new section, applications for a review would be submitted to the Minister within 15 days of receipt of the Minister's decision on the application (although the Minister may extend this), and the review is undertaken by an officer (senior grade) of the Minister, who may confirm or 'set aside' and substitute the original decision.

Sections 56 (7) (and 57(6) of the 2015 Act would be unchanged; this provides that the Minister may refuse to give permission to (or revoke the right to reside) a person to enter and reside, or to reside, in the State (even where that person is eligible for family reunification under the definition of family in the Act):

(a) in the interest of national security or public policy ("ordre public"),

- (b) where the person would be or is excluded from being a refugee in accordance with *section 10*,
- (c) where the person would be or is excluded from being eligible for subsidiary protection in accordance with [section 12](#) ,
- (d) where the entitlement of the sponsor to remain in the State ceases, or
- (e) where misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person the permission.

[Appendix 1](#) sets out the proposed provisions in this Bill in the context of the 2015 Act (*i.e.* the amendments that would be made to the 2015 Act if this Bill were enacted).³ The full text of the Bill as passed by Seanad Éireann can be found at the following link: [International Protection \(Family Reunification\) Amendment Bill 2017](#).

³ Oireachtas Library & Research Service (2019) "Briefing Paper for Joint Committee on Justice and Equality in support of detailed scrutiny of the *International Protection (family reunification) amendment Bill 2017 PMB*"

Committee hearings

The Joint Oireachtas Committee on Equality and Justice held a public hearing with stakeholders on 6th February 2019. On behalf of the Civil Engagement Group, Senator Colette Kelleher outlined the main provisions of the Bill. Committee Members also had the opportunity to engage with representatives of:

- The Irish Refugee Council; and

Nasc – the Migrant and Refugee Rights Centre

The transcript of the hearing can be found at the following link:

[Official Report](#)

Limitations of current legislation and reunification schemes

Senator Kelleher, in her opening statement, recognised the support refugees and their families receive from the Irish Government and Irish organisations, while also highlighting the scale of the global displacement being faced. The UN Refugee Agency has identified that by the end of 2017, more than 68.5 million people were forced to flee from wars, violence and persecution, 25.4 million of whom crossed borders in search of safety.⁴ With many families being separated in the course of their search for safety, family reunification has become a priority for refugees looking to rebuild their lives and has been recognised by the Council of Europe Commissioner for Human Rights as a “pressing human rights issue”.

Senator Kelleher outlined that the primary aim of the proposed Bill is to amend the provisions of the International Protection Act 2015 so as to allow refugees and those with subsidiary protection the right to apply to reunite with dependent family members. It proposes to revert to an extended definition of a family member as per the Refugee Act 1996, and changes the 12-month timeframe for applicants applying for reunification.

During the course of its hearing, the Committee heard evidence that the legislation as it currently stands in the International Protection Act 2015 is both restrictive and challenging for those applying for family reunification. Although the current Act allows for the right to apply for reunification, it is within an extremely limited category of family members. Committee Members noted that the case law of the European Court of Human Rights holds that the right to family life extends beyond the central relationships of the nuclear family and into the extended family, and agreed that the Bill’s provision allowing for the broadening of the definition of family would correspond with this.

On behalf of the Irish Refugee Council, Nick Henderson contended that the definition of family as set out in the current Act is too restrictive, ignoring the realities of modern familial relationships:

“Parents can apply for reunification with their children under 18 but children over 18 are ineligible under the International Protection Act. This arbitrarily breaks up nuclear families ... The same is true in

⁴ <https://www.unhcr.org/5b27be547.pdf>

the reverse, so that a young person who is over 18 cannot bring their parents to join them in Ireland.”

He also highlighted the inflexibility of those with refugee status being required to make an application for reunification with a family member within 12 months of receiving their status to remain in Ireland. With 700 persons with refugee status currently living in Direct Provision centres, the Committee noted the difficulties associated with applying for reunification within the first 12 months where the sponsor has no ability to accommodate or provide for family members.

In response concerns that the Bill would give an automatic entitlement to reunification with dependent family members, Senator Kelleher emphasised that it provided only an entitlement to apply for reunification. Family reunification would only be granted subject to the applicant supplying extensive evidence and documentation to support the application, including proof of dependency. The Department of Justice and Equality will still have control of accepting or rejecting applications. The Irish Refugee Council further clarified that while the eligibility criteria would be changed, the grounds upon which an application can be rejected as listed in Section 56(7) of the International Protection Act 2015 would continue to exist with the enactment of the proposed Bill.

Regarding the issue of Ministerial discretion and the State’s ability to respond to future crises, Senator Kelleher maintained that the proposed Bill retains discretion and does not preclude the Minister or the Department from introducing other schemes in response to future crises. The Irish Refugee Council added that the Bill “does not remove existing provisions that allow the Minister to refuse an application”. As set out in the IRC’s written submission, the Minister will continue to have considerable power to control the process and to balance the applicant’s rights and the State’s power to regulate immigration as per the case law of the Supreme Court.

While Members of the Committee supported and welcomed the introduction of the Government’s most recent family reunification initiative, the Irish Refugee Protection Programme Humanitarian Admissions Programme (IHAP), the view was also expressed that the IHAP initiative, which was introduced in order to fulfil the 4,000 refugees quota committed to under the EU resettlement and relocation programme, is inconsistent with the Department of Justice and Equality’s arguments against the proposed Bill. Furthermore, there was

agreement amongst stakeholders that the decision to introduce two rounds of IHAP could be viewed as an admission that the current family reunification legislation under the International Protection Act is inadequate and in need of reform.

Witnesses expressed concern that IHAP was significantly limited, both in terms of eligibility to apply and being a temporary scheme. Under IHAP, applications for reunification are open only to those from ten eligible countries, covering the most significant source countries of refugees based on the UNHCR Annual Global Trends Report. Ms Fiona Hurley of Nasc emphasised that since the statistics forming the basis of this report are global and not Irish, they do not reflect those who need reunification in Ireland, and applications are not received from several of the countries on the list. By contrast, many of the countries from which Ireland receives a high number of applications are automatically rejected on the basis of being an ineligible country.

Potential costs of proposal

Standing Order 179 of Dáil Éireann provides as follows in respect of Bills involving the appropriation of revenue or other public moneys:

“179.(1) A Bill which involves the appropriation of revenue or other public moneys, other than incidental expenses, shall not be initiated by any member, save a member of the Government.

(2) The Committee Stage of a Bill which involves the appropriation of revenue or other public moneys, including incidental expenses, shall not be taken unless the purpose of the appropriation has been recommended to the Dáil by a Message from the Government...”

Following a determination that the Bill in question requires a “Money Message” pursuant to SO 179, some witnesses and Committee Members contended that the Standing Orders – which are designed to ensure compliance with Article 17.2 of the Constitution – are being interpreted in an overly restrictive manner.

Senator Kelleher questioned the Government concern that the proposed Bill would have significant financial implications, stating that the provisions are modest and do not appropriate public funds:

"I am of the firm belief that this modest piece of legislation does not require a money message. It does not appropriate public funds; it does not compel the government to make expenditure. It does not set up a new government agency or create a new body... Any costs related to this bill would clearly be incidental. Should this Bill require a money message, it is difficult to think of a piece of legislation that would not."

The Irish Refugee Council submitted that the enactment of the Bill would not create a tax or public expenditure burden, and that the Bill simply creates an opportunity to submit an application for reunification - the number of which can be projected based on the number of people with refugee status. The Bill creates an internal review mechanism. It does not create a new body. Since potential applications would be processed by a pre-existing body, any incidental expenses incurred by the Bill would be minor, with no setting up of agencies or additional monies being allocated as a result.

Addressing concerns raised by the Minister of State at the Department of Justice and Equality, David Stanton, that the Bill would legally oblige the State to reserve resources for unquantifiable numbers of potential applicants, Fiona Finn argued that, based on family reunification data, this was unlikely to be the case:

"In any one year between 2014 and 2016 inclusive, under the family reunification provisions contained in the 1996 Refugee Act which allows an application to be made in respect of extended family members, only between 200 and 400 family members were granted family reunification. There were 229 in 2014, 328 in 2015, and 406 in 2015, with an average of 2.8 family members per sponsor. They are not overwhelming or unmanageable numbers and provide us with a very solid basis to quantify the numbers of potential future applicants."

She added that broadening the definition of family as proposed in this Bill would also reduce the need for and cost of additional schemes such as the IHAP, and create more transparent, rights-based family reunification laws. Further, Ms Finn outlined that the first round of IHAP received 908 applications for family reunification - significantly more than a normal year of applications under the 1996 Act. Some Members of the Committee agreed that this could be viewed as

evidence that sufficient resources are already available to manage applications submitted on the basis of the proposed Bill.

Observations and Conclusions

The Committee agreed that, pursuant to Standing Orders, it would report to Dáil Éireann that it has undertaken and completed detailed scrutiny of the Bill, with the following observations and conclusions:-

The Joint Committee:-

1. Commends the proposers in drafting and bringing the Bill forward;
2. Welcomes and supports the Bill as a relatively modest proposal to rectify undue restrictions introduced in the International Protection Act 2015;
3. Recognises the complexities of disaster, crisis and conflict situations and agrees that a broader definition of family and dependents, as proposed, would offer fairer, more transparent and unambiguous family reunification laws that better reflect the realities of familial relationships;
4. Dismisses any contention that the proposals would “open the floodgates” or oblige the State to reserve resources for unquantifiable numbers of potential applicants. The Bill only provides for a highly conditional right for refugees to apply for some extended family members. The Bill is further limited by the fact that sponsors are required to prove that the subjects of the application are dependent on them or that they are suffering from a mental or physical disability to such an extent that it is not reasonable for them to maintain themselves fully;
5. Believes that the statutory time limit of 12 months (from the date of receiving status to remain in Ireland) in which to make an application for reunification with a family member is too inflexible and restrictive. There are many potential difficulties and challenges in applying for reunification within the first 12 months, when the sponsor may have no ability to accommodate or provide for family members;
6. While supportive of the temporary Irish humanitarian admission programme (IHAP), is of the view that the programme is too limited in terms of eligibility, and the temporary nature of the programme creates further uncertainty for those seeking reunification. The Committee

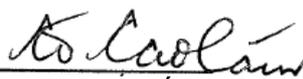
believes that what is proposed in the Bill would be a step towards better reflecting family reunification needs in Ireland.

7. Believes that the costs associated with the passage of the Bill are minor and largely administrative in nature. The withholding of a money message by the Government would constitute an overly restrictive application of Standing Order 179(2) and of Article 17(2) of the Constitution.

Recommendation

The Committee recommends that a money message be granted by the Government pursuant to Article 17(2) of the Constitution and Standing Order 179(2), and that the Bill should proceed to formal Committee Stage.

The Joint Committee commends this report to the House.


Caoimhghín Ó Caoláin T.D.
Chairman
July 2019

Oireachtas Joint Committee on Justice and Equality Draft
Report on Scrutiny of the International Protection (Family
Reunification) (Amendment) Bill 2017

Observations of the Minister for Justice and Equality

Introduction:

- The Minister shares the view of the Committee on the importance of family reunification to the migration approach in Ireland and in particular to support the integration of beneficiaries of international protection. Our family reunification policy is kept under constant review to ensure that it is fair and humane and that we are broadly consistent with our EU counterparts, notwithstanding that we do not participate in the EU Directive on Family Reunification. The Minister is concerned that the INIS Non-EEA Policy Document on Family Reunification appears to be underutilised by those who wish to bring their families to Ireland. For this reason, a review of the document has already been undertaken by his officials in order to improve its accessibility and suitability. The document will be further refined in the near future to enhance the understanding of the many pathways that exist to bring qualified family members to Ireland.

12 - month time limit for applications:

- The Minister notes the view of the Committee in relation to the 12-month time limit (from the date of receiving status to remain in Ireland) in which to make an application for family reunification under the International Protection Act 2015. The Minister would like to assure the Committee that there is sufficient flexibility within the legislation and in the INIS Policy Document to take account of the particular circumstances of individual applicants. For example:
 - (i) Once the application under the 2015 Act is lodged within the 12-month period, it can remain open until the sponsor is in a position to proceed with the application, for example, in the case of missing family members.
 - (ii) The INIS Non-EEA Policy Document allows people granted

international protection to apply for the admission of family members after the expiry of the 12-month period. The Minister also has the discretion to waive the economic conditions set out under the document including for humanitarian reasons.

Alternative pathways for admission:

- The extension of the family reunification provisions under the 2015 Act, as proposed in this Bill, would limit the Minister's ability to ensure that the finite resources available to him are prioritised for those in greatest humanitarian need. The Minister's willingness to proactively respond to crises is evidenced by his introduction of the Irish Humanitarian Admission Programme (IHAP) under the Irish Refugee Protection Programme. This programme is unique to Ireland and is being delivered in partnership with UNHCR Ireland. It prioritises the admission of family members from the top ten refugee producing countries in the world and it is open to both beneficiaries of international protection and Irish citizens (natural and naturalised) to make a proposal to the Minister for admission of their family member(s). A programme of this type is not replicated in any other EU Member State.
- The Minister would like to share with the Committee the views of a person who engaged with the programme and who recently wrote to the Department to say:

'The great humanitarian programmes (SHAP, IHAP1 and IHAP2) which are done by the Department of Justice are unique in Europe and much appreciated as these programmes are responsible for saving the lives of many people suffering from war around the world and specially in my home country of Syria'.

- The Minister is concerned that that the Bill could have the unintended consequence of limiting his ability to provide for future targeted programmes, like the IHAP, to prioritise family members in immediate danger in conflict zones. The EU Fundamental Rights Agency in its 2015 paper on "*Legal entry channels to the EU for persons in need of international protection*" highlighted Ireland's work on humanitarian admissions as promising practice, specifically in relation to the Syrian Humanitarian Admissions Programme (SHAP), which pre-dated the IHAP but was restricted to Syrian nationals. The IHAP covers the top ten refugee producing

nationalities identified by UNHCR.

- The Minister would like to address some of the criticism of the IHAP, in terms of the perceived limitations around eligibility to apply and it being a temporary scheme:

(i) Firstly, the IHAP is not limited to people with refugee status. For the first time, and uniquely in Europe, it is also open to Irish citizens, people with subsidiary protection and people with programme refugee status to make a proposal to the Minister. It allows the State and the proposer to partner and work together to identify and share existing resources for people most at risk. This innovative community partnership strategy in the context of scarce supports, in turn has ensured that beneficiaries are speedily admitted to the country.

(ii) Secondly, by design, the Government's Humanitarian Admissions Programme is tailored towards those with family members from the top ten major source of countries of refugees (Syrian Arab Republic, Afghanistan, South Sudan, Somalia, Sudan, Democratic Republic of Congo, Central African Republic, Myanmar, Eritrea and Burundi) as defined by UNHCR. This list is flexible in that it is reviewed by the UNHCR on an annual basis and can change subject to the escalation of conflicts throughout the world. Maintaining the flexibility of the Minister to use his discretion proactively, to identify and allocate limited resources for a quantifiable number of people in need allows the State to respond in a timely and flexible manner, prioritising those with the highest humanitarian needs. This is the best and most humanitarian way to respond quickly to urgent needs. The unquantifiable increased demand arising from the proposed Bill's provisions, confines the Minister by prescriptive law. The Minister believes that in a time of global challenge and danger maintaining the necessary flexibility is a better way to shape our humanitarian responses rather than introducing a legally prescribed equivalence between those fleeing conflict and those who live elsewhere in safety. Thus, the humanitarian admissions programmes are aimed at those most in need to bring their families here to urgent safety and not just towards extended family member of refugees already in the State. They are already entitled to have immediate family members join them or visit them in Ireland, or they may have relatives in other States who could offer them the same facilities there. The contrary assertion and *raison d'être* of the Bill that the current provisions keep

extended families apart, is not vindicated when one considers the provisions of the law and the flexibility of the application of the INIS Non-EEA policy document. This allows extended family members with status in another country to visit their families here, for periods of up to 90 days with each immigration permission.

(iii) Finally, the second call for proposals under the IHAP scheme has only recently closed for applications and the processing of received applications is ongoing. Should the proposed Bill be passed by the Oireachtas, bearing in mind the need to ensure resources exist to support and house these dependent extended family members, it is likely the Minister's scope to respond to immediate humanitarian challenges could be curtailed in the future. This is because it would be impossible to predict when and where people could qualify for admission under these new provisions. Ireland has consistently demonstrated and shared the burden of sudden migration challenges arising from conflict with other EU Member States and has shown leadership and solidarity at a time when international debate is not always sympathetic to the crises that arise. Curtailing the Minister's discretionary powers would be a loss to our prompt capacity to respond to global humanitarian challenges.

Financial and resource implications of the proposed Bill:

- The Minister believes that the Bill would have significant cost and resource implications. For example, the Bill prioritises the admission of dependent adults. There has been no consultation with those who provide critical services and supports to vulnerable dependents and no scoping or detailed examination of the cost or resource implications of an increased demand in this crucial area has been undertaken.
- The Bill would generate additional costs and demands for critical State services and supports that are already subject to pressure, in particular, healthcare, education, welfare payments and housing. People who are admitted under family reunification are entitled to access State benefits and other social support services in their own right. As the Committee has noted, there are currently more than 700 people with a status or a permission to remain still living in direct provision centres whose housing need has yet to be met. The Minister therefore considers that in the case of this Bill, a money message is required.

- The broadening of the family reunification provisions to more extended family members will lead to a significant increase in more complex and time-consuming applications with an associated administrative burden and increased cost. It may reverse the gains made in reducing processing times under the provisions of the International Protection Act 2015, which have hugely benefitted the speedy reunification of nuclear families. It has been suggested that the processing of applications under the IHAP could be viewed as evidence that sufficient resources are already available to manage applications submitted based on the proposed Bill. It is important to note that the IHAP has clearly defined criteria that allows for a much simpler processing of applications. The IHAP process builds-in the identification and verification of the critical resources, including housing, which are necessary to enable the dependent person to live in the State. The proposed Bill makes no such requirement.
- Proposals received under IHAP provide an indication of the increase in potential applications that may arise if extended family members are included in the 2015 Act. When proposals were invited for the first call of the IHAP, (with clearly defined criteria) 908 proposals were submitted in respect of 2,186 applicants. Out of the 908 proposals received, 82 proposals in respect of 141 applicants were deemed to have actually qualified under the programme's published criteria. The impact of such a volume of ineligible applications was to delay those qualified in being assessed and in coming to Ireland from the country where a significant risk to their wellbeing existed. Under the previous open-ended provisions of the now repealed Refugee Act 1996, a significant amount of time was spent examining non-qualifying applications, which slowed down the granting and ultimately the arrival of those who did qualify for admission. The Bill could create a similar significant delay to the reunification of immediate family members with their sponsoring family member here in Ireland.
- It is suggested that the Bill only provides for a highly conditional and limited right for refugees to apply for extended family members, who are dependent on them or that are suffering from a mental or physical disability, to such an extent that it is not reasonable for them to maintain themselves fully. The Minister and his Department officials would have serious reservations on this based on the past practical operation of Section 18(4) of the now repealed Refugee Act, 1996. Specifically in some key aspects:

- (i) The Bill places no conditions or limits on the sponsor to restrict the number of extended family members for which he or she can apply. This previously resulted in significant numbers of applications for a large number of extended family members. This created a significant administrative burden on the processing of applications for family reunification and resulted in prolonging the time for reuniting refugees with their immediate family. The new reforms passed overwhelmingly by the Oireachtas under the 2015 Act has ensured that family reunification times have been reduced by 75% averaging six months as opposed to two years previously. This is a significant benefit to refugees, which has not been acknowledged by the report. Any reversion to the previous position of significant delay will require the outlay of significant resources to increase processing times. This will have significant financial implications.
- (ii) No consultation has been undertaken of the provisions of the proposed Bill with the providers of health and social support services to dependent people, especially those who may come to live in areas of the country where support services are already under significant pressures. No estimate is provided for qualifying numbers, and the fact that any new beneficiaries would be entitled to housing in their own right has not been addressed as a cost.
- (iii) In practice, the definition of dependency was effectively broadened due to a decision of the High Court, SC 89/2014, in the Shariif case. The judgment was upheld in the Supreme Court in October 2014. It found that, in defining dependency, the decision maker must consider whether there is moral, social or emotional dependency. The Committee will appreciate that it is extremely challenging to establish and adjudicate on dependency from afar.

Reform of our international protection and reception systems:

- The Minister wishes to point out that the family reunification provisions, in Section 56 of the International Protection Act 2015, reflect the values of a society that wishes to offer protection to vulnerable families. These provisions in law are already equivalent or exceed some of the more restrictive qualification provisions existing in other EU Member States. In drafting the

relevant family reunification Section for the 2015 Act, reference was made to the Council Directive 2003/86/EC on Family Reunification. The EU Directive in Article 4(1) provides a similar definition of family members as provided for in the 2015 Act. In addition, Article 4 allows Member States to have a requirement that applications must comply with certain economic conditions as set out in Article 7 of the Directive, if the application is not submitted within a period of three months after the granting of refugee status. Ireland does not impose economic requirements once the application is made within 12 months of International Protection being granted.

- The proposed changes in this Bill allow for a more open-ended process, which allows the sponsor to apply for unlimited family members to enter and reside in the State at any time after their status is granted. The proposed changes do not require an element of sponsorship between the sponsor and the subject, which is a requirement in other EU Member States. The operation of such a policy in Ireland would also be at variance in its relative open-endedness, as compared to other EU Member States. The introduction of the proposed Bill could act as a potential pull-factor and undermine the integrity of the Common Travel Area.
- Crucially, since Ireland has opted into the Recast Receptions Conditions Directive, granting broad access to the labour market, it is less likely that applicants will have been economically dependent on the State prior to being granted status. This substantially mitigates any economic challenge that may have existed in the absence of such a broad and effective access being granted to the labour force in Ireland. This significant reform and economic advantage was not mentioned in the report nor does it appear to influence its conclusions. Therefore those granted status now, may in fact have been economically independent for a number of years prior to the twelve month deadline being reached, thus substantially mitigating the argument of the economic restrictions of the twelve months put forward by the Committee.

It is asserted that there is currently no statutory right to apply for family reunification in respect of dependent members of the extended family. The Minister wishes to point out that avenues already exist for the admission of more extended family members under the provisions of the INIS Non-EEA Policy Document on Family Reunification. This allows beneficiaries of international protection and other Non-EEA migrants residing lawfully in Ireland to make an application to have their family members join them here and

ensures that extended families can remain in close contact with each other.

- As the Minister assured the Oireachtas during the debate on the Bill, he proactively applies the provisions under the INIS Non-EEA Policy Document on Family Reunification. Where appropriate, the Minister may waive the economic conditions for sponsors on humanitarian grounds. He assured the Houses that this practice will continue.
- This form of discretion continues to be the most flexible tool available to the Minister to allow the State to respond to humanitarian cases when they occur. It is impossible to predict in law all the scenarios that may need to be considered. Ministerial discretion allows the broadest possible humanitarian consideration for such changing and volatile situations facing those fleeing conflict. Ireland's leadership in responding to global crises has been noted internationally throughout the current period of challenge and conflict.
- Also in this regard it should also be noted that a recent ex-tempore judgment given by Judge Humphries, in the Chakari case, upheld Section 56(9) of International Protection Act 2015 and identified the INIS Non-EEA Policy Document as an alternative remedy available. The Minister can exercise his discretion in any application for admission to the State lawfully and must consider any such application in accordance with the Constitution and the European Convention on Human Rights.

Conclusions:

- As mentioned previously, the Minister notes the Committee's conclusion that the statutory time limit of 12 months (from the date of receiving status to remain in Ireland) in which to make an application for family reunification is too inflexible and restrictive, particularly when the sponsor may have no ability to accommodate or provide for family members. In this context, the Minister would like to draw to the attention of the Committee to the significant reform of access to the labour market for eligible applicants, which will assist in their economic independence. In effect, by the time a status is finally determined and the twelve months window is exhausted, a sponsor for family reunification may have been lawfully employed for a number of years in Ireland, which is a key enabling provision for any potential sponsor of family reunification. This substantially mitigates any economic challenge that may have existed in the absence of such a broad and effective access being granted to the labour market in Ireland. The Committee's deliberations would seem more to reflect the previous situation where applicants could only begin economic activity on being granted their status. This situation radically changed

in June 2018 by Ireland opting-in to the EU's recast Reception Conditions Directive. In addition to this major enabling reform, the Minister notes that the existing time limit for making an application for family reunification under the 2015 Act is less restrictive when compared with other EU Member States and less restrictive than suggested in the Council Directive 2003/86/EC on Family Reunification.

- Furthermore, the sponsor is not required to be in a position to accommodate or provide for family members approved under the 2015 Act. Any beneficiary of the proposed provisions would be entitled to the same rights and privileges as the sponsor, including access to State benefits and other social support services, including housing. However, broad access to the labour market after only nine months in the protection process hugely strengthens the economic capacity of any applicant family unit today.
- The Minister is keen to assure the Committee that those who cannot locate their family can still make an application within the 12-month period and that there is a mechanism available for those who wish to apply for their spouse after the 12-month period has passed.
- In light of the above, the Minister is confident that the Committee's concerns, regarding the 12-month time limit in which to make an application, are addressed.
- The reference in the report, which infers that there is a contention on behalf of the Minister or his Department that the proposed Bill would "open the floodgates" is not the basis for the opposition to the Bill. The Minister's responsibility is to manage immigration, to respect the integrity of the State's borders and to use his discretion in responding to humanitarian situations that may arise. The Minister takes that responsibility very seriously and he oversees an open, fair and managed immigration system, which upholds the highest standards for those in need of protection. As has already been outlined, the Minister has introduced a range of reforms and humanitarian responses along with a Migrant Integration Strategy.
- On this basis, the Minister while appreciating the undoubted humanitarian intentions that prompted the Bill cannot endorse the Committee's recommendation that a money message be granted by Government. He

assures the Committee that the immediate and humanitarian use of his discretion to respond to conflict in a timely and compassionate way remains his priority. The current policy is working. It is recognised internationally that Ireland is playing its part in offering shelter and safety to those in danger. These are the priorities that the Minister believes best reflect the response the Irish people would expect of him when conflict and forced displacement arises abroad.

- Finally, the Minister would like to assure the Committee that he keeps these matters under review and remains open to proposals to enhance Ireland's immigration system.

Appendix 2: 2015 International Protection Act as it would look if amended by this Bill (2017)

s56 2015 Act with amendments proposed by this Bill inserted

Permission to enter and reside for member of family of qualified person

56. (1) A qualified person (in this section referred to as the "sponsor") may, subject to subsection (8), make an application to the Minister for permission to be given to a member of the family of the sponsor to enter and reside in the State.

(2) The Minister shall investigate, or cause to be investigated, an application under subsection (1) to determine—

(a) the identity of the person who is the subject of the application,

(b) the relationship between the sponsor and the person who is the subject of the application, and

(c) the domestic circumstances of the person who is the subject of the application.

(3) It shall be the duty of the sponsor and the person who is the subject of the application to co-operate fully in the investigation under subsection (2), including by providing all information in his or her possession, control or procurement relevant to the application.

(4) Subject to subsection (7), if the Minister is satisfied that the person who is the subject of an application under this section is a member of the family of the sponsor, the Minister shall give permission in writing to the person to enter and reside in the State and the person shall, while the permission is in force and the sponsor is entitled to remain in the State, be entitled to the rights and privileges specified in section 53 in relation to a qualified person.

(5) A permission given under subsection (4) shall cease to be in force if the person to whom it is given does not enter and reside in the State by a date specified by the Minister when giving the permission.

(6) A permission given under subsection (4) to the spouse or civil partner of a sponsor

shall cease to be in force where the marriage or the civil partnership concerned ceases to subsist.

(7) The Minister may refuse to give permission to enter and reside in the State to a person referred to in subsection (4) or revoke any permission given to such a person—

(a) in the interest of national security or public policy (“ordre public”),

(b) where the person would be or is excluded from being a refugee in accordance with section 10,

(c) where the person would be or is excluded from being eligible for subsidiary protection in accordance with section 12 ,

(d) where the entitlement of the sponsor to remain in the State ceases, or

(e) where misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person the permission.

2015 Act	As this Bill proposes to amend it
<p>(8) An application under subsection (1) shall be made within 12 months of the giving under section 47 of the refugee declaration or, as the case may be, subsidiary protection declaration to the sponsor concerned.</p> <p>(9) In this section and section 57, “member of the family” means, in relation to the sponsor—</p> <p>(a) where the sponsor is married, his or her spouse (provided that the marriage is subsisting on the date the sponsor made an application for international protection in the State);</p> <p>(b) where the sponsor is a civil partner, his or her civil partner (provided that the civil partnership is subsisting on the date the sponsor made an application for international protection in the State);</p> <p>(c) where the sponsor is, on the date of the application under subsection (1) under the age of 18 years and is not married, his or her parents and their children who, on the date of the application under subsection (1), are under the age of 18 years and are not married, or</p> <p>(d) a child of the sponsor who, on the date of the application under subsection (1), is</p>	<p>“(8) In this section and section 57, ‘member of the family’ means, in relation to the sponsor—</p> <p>(a) where the sponsor is married, his or her spouse (provided that the marriage is subsisting on the date the sponsor made an application for international protection in the State),</p> <p>(b) where the sponsor is a civil partner, his or her civil partner (provided that the civil partnership is subsisting on the date the sponsor made an application for international protection in the State),</p> <p>(c) where the sponsor is, on the date of the application under subsection (1) under the age of 18 years and is not married, his or her parents and their children who, on the date of the application under subsection (1), are under the age of 18 years and are not married,</p> <p>(d) a child of the sponsor who, on the date of the application under subsection (1), is under the age of 18 years and is not married, or</p> <p>(e) any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the sponsor who is dependent on the</p>

~~under the age of 18 years and is not married.~~

qualified person or is suffering from a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully.”.

S57 of 2015 Act with amendments proposed by this bill inserted

S.57 Permission to reside for member of family of qualified person

57. (1) A qualified person (in this section referred to as the “sponsor”) may, subject to subsection (7), make an application to the Minister for permission to reside in the State to be given to a member of the family⁵ of the sponsor who, on the date of the application, is in the State (whether lawfully or unlawfully) and who does not himself or herself qualify for international protection.

(2) The Minister shall investigate, or cause to be investigated, an application under subsection (1) to determine—

(a) the identity of the person who is the subject of the application,

(b) the relationship between the sponsor and the person who is the subject of the application, and

(c) the domestic circumstances of the person who is the subject of the application.

(3) It shall be the duty of the sponsor and the person who is the subject of the application to co-operate fully in the investigation under subsection (2), including by providing all information in his or her possession, control or procurement relevant to the application.

(4) Subject to subsection (6), if the Minister is satisfied that the person who is the subject of an application under this section is a member of the family of the sponsor, the Minister shall give permission in writing to the person to reside in the State and the person shall, while the permission is in force and the sponsor is entitled to remain in the State, be entitled to the rights and privileges specified in section 53 in relation to a qualified person.

(5) A permission given under subsection (4) to the spouse or civil partner of a sponsor shall cease to be in force where the marriage or civil partnership concerned ceases to subsist.

(6) The Minister may refuse to give permission to reside in the State to a person referred to in subsection (4) or, as the case may be, revoke any permission given to such a person—

(a) in the interest of national security or public policy (“ordre public”),

(b) where the person would be or is excluded from being a refugee in accordance with section 10,

(c) where the person would be or is excluded from being eligible for subsidiary

⁵ As defined under s56(9)

protection in accordance with section 12,

(d) where the entitlement of the sponsor to remain in the State ceases, or

(e) where misrepresentation or omission of facts, whether or not including the use of false documents, by the person was decisive in the decision to give the person the permission.

(7) An application under subsection (1) shall be made within 12 months of the giving under section 47 of the refugee declaration or, as the case may be, subsidiary protection declaration to the sponsor concerned.

57A NEW SECTION INSERTED BY BILL

57A. (1) Where an application under section 56(1) made by a sponsor for permission to be given to a member of the family of the sponsor to enter and reside in the State has been refused, or where a permission to enter and reside in the State granted to a member of the family of the sponsor has been revoked pursuant to section 56(7), the sponsor may seek a review of that decision.

(2) Where an application under section 57(1) made by a sponsor for permission to be given to a member of the family of a sponsor to reside in the State has been refused or where a permission to reside in the State granted to a member of the family of a sponsor has been revoked pursuant to section 57(6), the sponsor may seek a review of that decision.

(3) An application for a review pursuant to subsection (1) and (2) shall be submitted to the Minister within 15 working days of the receipt of the decision and shall set out in writing the grounds for review. The Minister may, where he or she is satisfied that it is warranted in the particular circumstances, extend the period referred to in subsection (3) within which a review must be submitted.

(5) A review under this section shall be carried out by an officer of the Minister and shall be of a grade senior to the grade of the person who made the decision.

(6) The officer carrying out the review may—

(a) confirm the decision the subject of the review on the same or other grounds having regard to the information contained in the application for the review, or

(b) set aside the decision and substitute his or her determination for the decision.”

Joint Committee on Justice and Equality

Deputies



Caoimhghín Ó Caoláin TD
(SF) [Chair]



Colm Brophy TD
(FG)

Jack Chambers TD
(FF)

Clare Daly TD
(I4C)

Peter Fitzpatrick TD
(IND)



Jim O'Callaghan TD
(FF)

Mick Wallace TD
(I4C)

Senators



Frances Black
(CEG)



Lorraine Clifford-Lee
(FF)



Martin Conway
(FG)



Niall Ó Donnghaile
(SF)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16th June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 20th July 2016.

JOINT COMMITTEE ON JUSTICE AND EQUALITY

TERMS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

- (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
 - (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

**b. Scope and Context of Activities of Committees (as derived from Standing Orders)
[DSO 84; SSO 70]**

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.
- (6) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.



Oral Statement to the Joint Oireachtas Committee on Justice & Equality on the International Protection (Family Reunification) (Amendment) Bill 2017 – Pre-Legislative Scrutiny

Good morning and thank you so much for the opportunity to present to the Justice Committee on this critical Bill that seeks to restore rights to family reunification for refugee families. My name is Fiona Finn and I am the CEO of Nasc, the Migrant and Refugee Rights Centre and I am here today with my colleague Fiona Hurley who is Nasc's Legal Service Manager.

Nasc has almost two decades of experience supporting beneficiaries of international protection (refugees and those with subsidiary protection) with applying for family reunification, and we are grateful for the invitation to present to the Joint Oireachtas Committee on Justice and Equality on that experience. In 2017, we provided 347 consultations in relation to family reunification for refugees, and 43 of our clients who were beneficiaries of international protection were successful in their applications to bring family members to Ireland.

Our contribution today to the Committee's detailed scrutiny of the International Protection (Family Reunification) (Amendment) Bill, 2017 is directly informed by the issues that present in our legal clinics and through our direct work with people seeking to be reunited with family members.

Since the commencement of the International Protection Act, 2015 at the end of 2016, Nasc has seen first-hand the impact the restrictions to family reunification have made to people granted international protection in Ireland. In particular, the time limits and the removal of dependent family members has caused great hardship for the refugee families we work with. People are not able to fully settle into their lives here, knowing that their family members remain in conflict zones, at risk of persecution. We have seen families split up because only some family members are eligible; we have seen individuals descend into deep depression because they are forced to leave family members in the midst of horrific conditions.

We adamantly believe that the modest but critical amendments to the International Protection Act, 2015 introduced in this Bill would go a significant way to improving the lives of refugees living in Ireland, and in fulfilling our obligations to support people seeking safety in Europe.

From the outset I wish to acknowledge the role of Senator Colette Kelleher and the Civil Engagement Group of Seanad Eireann, our partners, the Irish Refugee Council and Oxfam for their support and hard work in getting this Bill to this stage.

I would also like to take this opportunity to recognise and commend Minister of State at the Department of Justice Equality Deputy David Stanton for his commitment and dedication to providing solutions for refugees through the Irish Refugee Protection Programme and initiatives such as Irish Humanitarian Visa Programme and Refugee

Community Sponsorship. And for his statement in the Dail on 6 December where he confirmed the Government's commitment to assisting family reunification proactively. So, it would seem that we have achieved a broad consensus here and our views may not be as divergent as they may first appear.

Context:

People fleeing persecution and conflict often become separated from their families. Many have had to leave family members behind or to leave without being able to ensure or know if they are safe. They also become separated or lose track of each other during the migration journey. Finding and reuniting with family members is, in our vast experience, one of the most pressing concerns of asylum seekers, refugees, and others in need of international protection.

Over the course of the debates in both the Seanad and the Dail the Minister raised a number of concerns which I would like to address here.

2. Unquantifiable numbers

Concerns were raised that the current proposals in the Bill "would legally oblige the State to reserve resources for unquantifiable numbers of potential applicants". It must be noted that this Bill provides the right for refugees to apply for some extended family members. This right, as is the case with all rights, is not absolute and open ended. It is further limited by the fact that sponsors are required to prove that the subjects of the application are dependent upon him/ her or that they are suffering from a mental or physical disability to such extent that it is not reasonable for him to maintain himself or herself fully. All applicants must provide a very high level of evidence and documentation to support any application. We also know 2014-2016, under the family reunification provisions in the 1996 Refugee Act, which allowed an application for extended family members - between 200-400 family members were granted family reunification - the numbers **(229 in 2014; 328 in 2015; 406 in 2016), with an average of 2.8 family members per sponsor.** These are not overwhelming or unmanageable numbers and provide a solid basis to qualify the numbers of potential future applicants. In our experience refugee families prioritize their more vulnerable family members, who for the most part are parents or older unmarried children. They also tend to wait until they have secured housing and employment prior to submitting an application for extended family members, which illustrates the need for the removal of the 12-month time limit.

Since the new Act has been in place only 272 persons were approved for family reunification. This is an extremely low number and one that should cause us some shame given the scale of the current global refugee crisis. We can and must do more to provide durable solutions for these families and this modest proposal in the Bill will help to undo the harm and suffering that has been caused to refugees. We must also be mindful and guided by Article 41.1.1 of the Constitution which "recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law", and guarantees its protection by the state. This Bill is giving clear effect to both the spirit and text of this constitutional provision.

2. A Curtailment of the Government's ability to respond in times of crisis.

During the debates it was noted that this provision would substantially "curtail the state's ability to respond to ongoing and future crisis". There is nothing in this modest provision that in

any way curtails the state's ability to respond to the ongoing and future crisis. This is evidenced by the fact that during the lifetime of the old Refugee Act, which contained the broader definition of family, the Government introduced the first Humanitarian Admission Programme for Syrian refugees and nationals living in Ireland. We would also submit that by broadening the definition of family, would see a reduction in the need for and additional cost of operating once off ad hoc limited schemes such as the current Irish Humanitarian Admissions Programme. The introduction of broad, clear, rights-based family reunification laws brings with its certainty for both the State and refugees. The fact that the Government introduced the Humanitarian Admissions Programme, laudable as that was, which afforded a limited number of refugees and Irish nationals to apply for extended family members, could be viewed as a clear admission by the Government that our current family reunification law and policy are inadequate and in need of reform.

3. The Current Provisions under the INIS non- EEA Policy Document on Family Reunification.

In the debates claims were also made that Minister for Justice and Equality "proactively applies" discretionary permission under the INIS non-EEA policy document on family reunification. Unfortunately, that has not been Nasc's experience of supporting families to apply for visas for their loved ones, particularly elderly parents. In the Department of Justice's Policy Document on Family Reunification for Non-EEA nationals, it is stated that the "default position" for applications for visas for elderly parents is "a refusal". It is difficult to see how a policy with such a harsh default position could be construed as a viable alternative for refugees seeking to be reunited with family members. It also requires persons who wish to apply for a visa for elderly parents to have income (after taxes and deductions) for three successive years in excess of €60,000 to apply for one parent and €75,000 to apply for two parents. Realistically this allows for only the wealthiest in our society to even make an application. Even then with substantial earnings, applications may still be refused. It is simply unrealistic to expect that a person newly granted international protection status will be in a position to earn anywhere near these income thresholds.

4. The current law is in line with E.U. Directive and EU norms.

The Minister also noted that the current limited provisions are in line with the E.U. Family Reunification Directive.

Firstly, when considering the Directive, it is important to note that this is a unified document which provides a legal basis for both refugee and non-refugee family reunification and it sets down minimum standards for member states to implement. In its face and when viewed in isolation the current definition of family falls within the minimum standard set out in the Directive. However, when we construe the Directive as whole and in particular the preamble which sets out the clear purpose and objective of the Directive which provides that:

"Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification."

Also, Directive provides more favourable family reunification rights for unaccompanied minors granting them the right to reunite with their legal guardian, it provides member states with clear guidelines on extended family members stating positively which family members Member States may include. Additionally, it sets down clear time limits for the processing of applications and grants family members an autonomous residency

permission and provides in law the right of family reunification for non-refugees, all of which are absent in our current Family Reunification Laws. It is therefore somewhat disingenuous to state that Ireland is in compliance with the Directive when we have cherry picked the provisions to justify a removal of the rights for refugees to apply to reunite with extended family members.

Concerns were also expressed that we cannot go beyond EU norms, however a 2016 recent report on Family Reunification in the EU which was compiled by the European Migration Network¹ on behalf of the European Commission highlighted the fact the average percentage of permits issued by member states for family members was 30%. Ireland came in second last at 7% just ahead of Poland, so it would seem that we have some way to go to bring us in line with current EU norms.

Conclusion

It is overwhelmingly clear in Nasc's experience that refugee families rarely fit into nuclear family arrangements, and the precariousness of life in the midst of conflict means that our understanding of what constitutes family cannot be overly rigid or proscribed. In our work, we have come across any number of refugees who are now forced to make 'Sophie's Choice' type decisions when applying for family reunification – one woman who had to decide whether to apply for her husband because he was the sole carer for her elderly and unwell mother who would not be eligible; one man who applied for his minor daughter but was not eligible to apply for that daughter's child – his grandchild – born as a result of rape; an 'aged out minor' who has waited years for his status and is now not eligible to bring his parents and siblings. These are the real unintended consequences of our current laws. What becomes clear from working day in and day out with beneficiaries of international protection is that there are no 'norms' to how human lives operate in the context of conflict, persecution and displacement.

As part of our membership bid for the UN Security Council 2021 -2029 Ireland had placed "Empathy" as place as one of our core Pillars. The campaign brochure recalls "the great compassion and open doors shown around the world to Irish emigrants fleeing famine as they sought refuge. It then goes on to state that "We reflect on that as we work to assist today's refugees". We would ask the Committee Members here today to reflect upon this and upon the impact the erosion of family rights has had upon refugees and how this modest proposal will go some way to ameliorating the harshness of our current law.

Thank you.

¹ Family Reunification of Third Country Nationals in the EU plus Norway: National Practices – EMN Synthesis Report for the ENM Focussed Study 2016 available here: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf



SENATOR

COLETTE KELLEHER

Opening Statement by

Senator Colette Kelleher

On behalf of the

proposers of the

International Protection (Family Reunification)
(Amendment) Bill 2017

Senators Frances Black, John Dolan, Alice Mary Higgins, Colette
Kelleher and Grace OSullivan For Detailed Scrutiny

**Joint Oireachtas Committee on Justice and
Equality**

We have debated this legislation in both Houses of the Oireachtas, and I welcome the opportunity to discuss it in more detail during this sitting of the Joint Oireachtas Committee on Justice and Equality. At the outset I want to recognise the actions of the Irish Government and the Department of Justice and Equality in support of refugees and their families, including the introduction last year of a temporary Irish Refugee Protection Programme Humanitarian Admission Programme (IHAP). The Minister and I are united in our belief on the importance of international protection and I recognise his personal commitment to this issue. I also want to recognise the work of Nasa, the Irish Refugee Council and Oxfam Ireland in support of this legislation and for their work with refugees and asylum seekers here in Ireland and overseas. Most importantly, I want to thank the people who have shared their personal experiences of family separation and reunification – including the statement by Izzeddeen Alkarajeh. It is these lived experiences which have motivated us to work together and champion the 'Family Reunification' bill that you are scrutinising today.

Before I discuss the details of the bill, I first want to remind all Members of the scale of the global displacement challenge that we are facing. Last year, wars, violence and persecution lead to record numbers of women, men and children being driven from their homes. The UN's Refugee Agency, the UNHCR, has identified that by the end of 2017, more than 68.5 million people were forced to flee, 25.4 million of whom crossed borders in the search of safety. [1]

An enormous human tragedy is unfolding before our eyes – in places like Syria, where the seventh year of protracted crisis and conflict has led to over 5.6 million people seeking safety in Turkey, Lebanon, Jordan and beyond[2]; in South Sudan, where there are 2 million internally displaced people and almost 2.5 million refugees in the region, the majority of whom are women and children[3]; and in Europe, where hundreds of pregnant women, unaccompanied children and survivors of torture are being abandoned in refugee camps on the Greek islands.[4]

While the number of people crossing the Mediterranean has dropped significantly in recent years, the risks have increased. In 2018, an estimated 2,275 people died or went missing in the Mediterranean – an average of six deaths a day. [5] In the words of the UNHCR, "these trends look set to continue as the root causes of displacement – conflict, poverty or human rights violations – remain to be resolved". I have heard the arguments that Ireland has done enough, that our resources are limited. But let us remember that it is the global south who are overwhelmingly affected by this crisis. Approximately 84% of displaced people live in low-income countries – where some of the poorest communities in the world are providing refuge. [6]

A common thread that unites the experiences of all refugees is family separation. [7] In the desperate search for safety, families can become separated and scattered, forced to follow different routes as they flee. When a person reaches safety, finding and reuniting with their loved ones is often their number one priority.

The Council of Europe Commissioner for Human Rights has identified family reunification for refugees as a "pressing human rights issue", without which family members are left in peril and a refugee's capacity to integrate is 'completely undermined'. [8] Evidence has shown how separation from family can be a source of extreme anxiety for refugees and interfere with efforts to become self-sufficient and integrate. [9] My colleagues in Nasc will be able to speak to the impact of separation and of the many benefits family reunification has for integration. My current studies in Family Therapy reaffirm what I expect we all know to be true, the centrality of family in people's wellbeing and ability to live well in the world. Family reunification, which is what this bill is all about, offers refugees the best chance to rebuild their lives on a firm footing – with their family by their side.

I want to turn to the contents of the bill. The International Protection (Family Reunification) (Amendment) bill 2017. It is a modest piece of legislation which seeks to return to the provisions on refugee family reunification that existed in Ireland for nearly twenty years, in the Refugee Act 1996.

The 'Family Reunification' bill seeks to amend provisions of the International Protection Act 2015 which are causing undue distress and trauma by putting the *right to apply* to reunite with dependent family members on a statutory basis; it proposes to revert to the definition of family that existed under the Refugee Act 1996; and gives applicants a more realistic timeframe for people to apply for family reunification, in recognition of the significant challenges that this can present. The legislation also calls for the bill to come into force three months following the date of legislative approval – this would ensure a timely response to refugees and family members in crisis today.

Acknowledging that this legislation has received substantial cross-party support and enjoyed conclusive voting majorities in both Houses of the Oireachtas, I wish to take the opportunity to remind Members why the small changes represented in this bill are necessary.

Restrictions introduced in the International Protection Act ('IPA') mean that refugees, or persons with subsidiary protection, currently have a statutory right to apply to reunite with a *very restricted category* of family members – essentially spouses or civil partners, children under 18, and parents and siblings (under 18) of an unaccompanied minor. They also have a 12-month time limit to make their

application – a timeframe that can be particularly challenging when in situations of humanitarian crisis, which my colleagues in Nasc and the Irish Refugee Council will be able to elaborate upon.

I hope the Minister and Members of the Committee would agree with me that you can have dependent family members who are outside of the definition set out in the International Protection Act. When we think of our children for instance, who here would believe that they are fully independent of us at 18? Do we know of parents who rely financially on their adult children? Or of elder brothers and sisters who, through circumstances and chance, are the carers of their younger siblings? Relationships of dependency do not fit into the neat confines of the 2015 IPA – not here and certainly not in places where the complex realities of disaster, conflict and crisis can reconfigure family units.

I want to draw Members' attention to a report last year from the Irish Human Rights and Equality Commission (IHREC), which outlines the Commission's concerns with family reunification provisions in the International Protection Act 2015. In their comprehensive analysis, IHREC describes the removal of the right to apply for family reunification for extended family members and the introduction of a statutory time limit as a "retrogressive measures".^[11] The Commission calls for family reunification law and policy to be strengthened and expanded, to facilitate safe and legal pathways for family members of refugee communities here in Ireland. The 'Family Reunification' bill that you are scrutinising is very much in line with many of IHREC's recommendations.

I have heard the Minister's arguments on discretion, and I agree that discretion is important for flexibility and responsiveness. But I strongly believe that the right to apply for dependent family members should be placed on a statutory footing, as was previously the case in Ireland for nearly twenty years. The Minister has said that discretion provides flexibility. But experience shows that a *reliance* on discretion *alone* creates uncertainty for refugees, for their family members, and for the legal practitioners who provide assistance. Discretion plays a role – and the Committee will note that discretion is retained within this bill – but discretion alone is not enough.

The Minister has spoken about the Irish Refugee Protection Programme Humanitarian Admissions Programme (IHAP) and the opportunities it presents to people seeking to reunite with their families. I recognise the role of the scheme and know that it will have a transformational impact on all who have successful applications. I would indeed welcome broadening and expanding IHAP. However, this scheme has critical limitations. My colleagues in Nasc and IRC will be able to speak to their experience of working with people applying through this mechanism, and I think it is critical that these lessons are taken on board. From my perspective, I note that this is a *temporary* scheme and is only applicable to people coming from ten countries, based on the UNHCR Annual Global Trends Report of the top ten major source countries for refugees. Many people with international protection status in Ireland are from countries outside of this 'top ten' – what opportunities are there for them to reunite with their dependent loved ones?

Before I turn to the issue of the money message, I want to reflect on the debate on this legislation and on issues of international protection and migration more broadly. I want to challenge arguments put forward in the course of the debate, that migration and diversity are problematic per se and divisive. Specifically, I want to challenge the suggestion made by the Minister in the course of debates on the bill that the arrival of more refugees to Ireland could provoke a political and social backlash similar to what we have witnessed in some European countries. My own lived experience challenges that. I was an emigrant in London for 17 years. I was a net contributor. My children went to a state primary school in a not very affluent Tottenham. 31 languages were spoken at the school where my children attended. They, including my own, had parents from and roots in all parts of the world. We were people escaping danger, poverty or mass unemployment in my case, seeking a better life for our children and ourselves. I recall with fondness my

children's' friends and schoolmates, all learning and playing together. Crowland School was the LB Haringey at its best. Our home and school were in a constituency which, although poor, voted overwhelmingly to 'remain' in the Brexit referendum. So my direct experience is that diversity is a strength. Government action in doing all that is possible to respond to refugees and their families in a generous and welcoming way, as the 'Family Reunification' bill proposes, is the strong and the moral thing to do.

It can also be the popular thing to do too. Research published on attitudes to migration and refugee protection by the Social Change Initiative, recently launched by Minister Stanton, shows that there is an openness to immigration and a welcome for refugees in Ireland. [12] 70% of those surveyed agreed with the statement "If I were from another country and fleeing terrible circumstances I would want Ireland to offer me protection". Only 7% of those surveyed disagreed with this statement. There is also a recognition of the importance of embracing diversity. [13] It is incumbent upon all of us as members of the Oireachtas to challenge anti-immigrant and anti-refugee rhetoric, to not follow the 'dog whistle', to act and lead morally and do the right thing.

I was very surprised and disappointed by the government's decision to deny a money message for this legislation, particularly as it came so early into the legislative process. I hope now that the government have given this bill due consideration and listened to the debate before making their decision. I am of the firm belief that this modest piece of legislation does not require a money message. It does not appropriate public funds; it does not compel the government to make expenditure. It does not set up a new government agency or create a new body. I have heard this bill described as "open ended", that it will "open the floodgates" – but this is a fundamental misunderstanding of the legislation. This bill does not give people an automatic entitlement to bring their dependent family members to Ireland.

What the bill does do is change existing regulations – it gives refugees and people with subsidiary protection a statutory right *to apply* to reunite with dependent family members. Applicants must *still* comply with the rigorous requirements of the application; they must *still* prove dependency. The Department of Justice and Equality will *still* have control of accepting or rejecting applications. This is a managed system. My colleague from the IRC will be able to speak further to the money message issue and to the rigours of proving dependency. Any costs related to this bill would clearly be incidental. Should this bill require a money message it is difficult to think of a piece of legislation that would not.

The International Protection (Family Reunification) (Amendment) bill 2017 is a timely, humane, modest piece of legislation which falls well within the resources the government has available to it. I am thankful to Members of both Houses for their continued and overwhelming support for this legislation and I am hopeful we can resolve the money message issue as soon as possible and enact the urgent change that is so desperately needed for refugee families.

[1] UNHCR (2018). Global Trends - Forced Displacement in 2017.

UNHCR . <https://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>

[2] UNHCR (2019). Syria emergency. <https://www.unhcr.org/syria-emergency.html>

[3] UNHCR (2019). South Sudan emergency. <https://www.unhcr.org/south-sudan-emergency.html>

[4] Oxfam (2019). Vulnerable and abandoned: How the Greek reception system is failing to protect the most vulnerable people seeking asylum. Oxfam. <https://www.oxfam.org/en/research/vulnerable-and-abandoned>

[5] UNHCR (2019). Desperate Journeys: Refugees and migrants arriving in Europe and at Europe's borders. <https://www.unhcr.org/desperatejourneys/>

[6] UNHCR (2018). Global Trends - Forced Displacement in 2017.

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[7] Sample, E. (2007). State practice and the family unity of African refugees. Forced Migration Review. 28.

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/capacitybuilding/sample.pdf> [8] Costello, C. and Halleskov, S. (2017). Realising the right to family reunification of refugees in

Europe. Issue paper published by the Council of Europe Commissioner for Human Rights. <https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0>

[9] Eilidh, B, Musgrave, A and Liebl, J. (2018). Safe but not settled: The impact of family separation on refugee in the UK. Oxfam. <https://policy-practice.oxfam.org.uk/publications/safe-but-not-settled-the-impact-of-family-separation-on-refugees-in-the-uk-620409>

[10] <http://www.irishstatutebook.ie/eli/2010/act/24/enacted/en/html>

[11] IHREC (2018). The right to family reunification for beneficiaries of international protection. <https://www.ihrec.ie/app/uploads/2018/06/The-right-to-family-reunification-for-beneficiaries-of-international-protection-June-2018.pdf>

[12] Social Change Initiative (2018). Immigration and refugee protection in Ireland -An analysis of public attitudes. <https://www.thesocialchangeinitiative.org/migration/>

[13] Social Change Initiative (2018). Immigration and refugee protection in Ireland -An analysis of public attitudes. <https://www.thesocialchangeinitiative.org/migration/>

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