

Joint Oireachtas Committee on Justice and Equality

17th January 2018

‘Motion to Opt Into the EU (recast) Reception Conditions Directive (2013/33/EU)’

Chairman, Committee Members,

I am pleased to be here before the Committee today to present the Government’s proposal that the State opts into the EU (recast) Reception Conditions Directive under the terms of Protocol 21, annexed to the EU Treaties.

At the outset, I want to reiterate that the Directive that is under discussion pertains to asylum seekers. An asylum seeker is a person who comes to Ireland seeking international protection status (refugee status or subsidiary protection status) under international law on grounds that they fear persecution in their own country for reasons of race, religion, nationality, membership of a particular social group or political opinion or where they would face a real risk of suffering serious harm if returned to their country of origin. When an asylum seeker comes to Ireland seeking international protection status, they enter a legal process.

Opting into this Directive will align that process fully with EU norms. It will be an important and progressive step, which reaffirms our commitment to continue to implement our programme of reforms to Ireland’s international protection system. Reforming the protection process began with inviting Judge Bryan McMahon and a group of experts to review our protection system including supports for applicants in 2014. They made 173 recommendations and the Government committed to undertake a process of reform that has seen positive action across many Government Departments and services to improve what we do for people in need of protection and the way in which we do that important job.

The Government has made a strong commitment to playing its part in addressing the refugee crisis arising from the protracted conflict in Syria. The Committee is also aware of our voluntary opt-in to the EU resettlement and relocation programmes, which will see 4000 people coming to Ireland to begin a new life here and the commendable work of our Naval Service who has come to the aid of those fleeing conflict as they perilously cross the Mediterranean Sea to Europe. As a former Minister for Foreign Affairs and Trade, I am particularly familiar with our international aid programmes and the Committee will be aware that since 2012 Ireland has contributed over €90 million to the humanitarian response to the Syria crisis.

Like many members, I am concerned about the length of time that applicants spend in the protection process awaiting a final decision. To address this issue, the Government undertook the biggest single reform of our legislation by introducing a single applications procedure under the International Protection Act 2015 – the most significant reform of our international protection procedure in over a decade.

Ensuring that we have a simplified and efficient independent protection process is one part of our commitment to reform. The other part is to ensure that we continue to improve the living conditions and the opportunities for regular family life, in so far as possible, for applicants and their families while they await a final decision on their application for protection. Many of the McMahon recommendations go to the heart of this issue and I am proud that we have responded positively to enable enhanced family living in our accommodation centres and in the range of supports and services that we provide to international protection applicants.

I want to inform the Committee that the McMahon Group continue to be actively involved in the process of reforming Direct Provision including for example by playing a role in the standards development process currently underway. This process is being led by senior officials in my Department. Those who participated in the McMahon process are giving of their expertise to ensure that the standards under development for direct provision centres result in concrete improvements

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and greater consistency across the system. I'd like to take this opportunity to thank them for their contribution.

When the Supreme Court gave its judgment in the N.V.H. case on 30 May last, the outcome was that the Court declared Section 16(3)(b) of the International Protection Act, which prohibits access to employment without any temporal limit for applicants, to be unconstitutional in a protection process.

The Government could have chosen to interpret this decision narrowly. It could have simply amended the provision prohibiting access to the labour market in the Act by way of primary legislation. Instead, the Government listened to the calls from Deputies and Senators, the McMahon group and NGOs that Ireland should align its bespoke system with European norms. It decided that the State would give effect to the judgment by way of opting into the EU (recast) Reception Conditions Directive. In doing so, the Government has chosen to be ambitious and to enhance and protect the rights of international protection applicants and their families. We are using the opportunity afforded to us by the Supreme Court decision to continue our programme of reforms undertaken since 2014. The Directive not only provides a framework for effective access to the labour force, but reaches into many other areas, which the Government feels it is timely to have validated by the European Commission that we do reach and comply with European standards.

In addition to labour market access, the Directive also includes important provisions in relation to children's rights, health, education and material reception conditions for applicants, which includes housing, food, clothing and a daily expenses allowance. Participation in the Directive will place the provision of material reception conditions for applicants, which are currently provided under the executive system of Direct Provision, on a statutory basis, underpinned by EU law, for the first time. I am aware that some of the Committee members have called for this action publicly in previous debates in the Houses. I do not wish to predetermine the outcome of the Oireachtas approval process as part of the opt-in procedure to the Directive, but if approved, the State will be required to fully demonstrate its compliance with all of the provisions of the Directive to the European Commission before it confirms our participation in the Directive. This will be a rigorous and transparent process, which will allow us to align the supports and reception conditions provided to applicants with the norms across the rest of the European Union Member States. I can assure the Committee members that we will make any changes required of us by the European Commission to confirm our compliance. We are committed to this process and my own Department is leading an Implementation Group, established by Government, to oversee the opt-in procedure and the compliance process within the timeframe set by the Commission, which is four months.

The Directive provides for access to the labour market for applicants who have not had a first instance decision within nine months of making their application and provided that the delay cannot be attributed to the applicant. In determining the level of access to be provided to applicants, the Implementation Group, membership of which is drawn from across a wide range of Government Departments and services, will be cognisant of a number of important factors.

The State already has a functioning employment permits system for Third Country Nationals, which we must be careful not to undermine. Nor must we take any action, which would be detrimental to our legal migration system and the Court's judgment acknowledges our role in setting these parameters. However, we all recognise that the Supreme Court has adjudged that protection applicants have a constitutional right to seek employment, a right that is not conferred on other Third Country Nationals who are legally residing in the State.

While the Court was also clear that this is not an unfettered right, the Government and I consider that it is appropriate to apply a balanced approach under the scope of the Directive where access required will be in excess of that provided under the employment permits system. Once the State's participation in the Directive is confirmed, I intend to provide for access for eligible applicants by way of an immigration permission, which would exempt applicants from the employment permits system and the associated fee. In determining the list of sectors of employment to which access will be granted, regard will be had to labour market gaps, as well as the skill set of applicants and the expert advice of frontline Departments. We must also be cognisant of any potential pull factors this may

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create including consideration of the impact of Brexit. The outcome of the current review of the employment permits system by the Department of Business, Enterprise and Innovation, which is expected to be finalised in April, will be an important consideration and will also inform these deliberations. Government has agreed that eligible applicants will also have access to self-employment and eligible applicants may now qualify for further vocational training, which was previously unattainable.

At the Supreme Court hearing of 30 November last, the State outlined its plans to the Court to opt into the Directive, subject to Oireachtas approval, and of the four month process necessitated by the European Commission to confirm the opt in following formal notification of our wish to be bound by the Directive. We respectfully asked the Court to adjourn the making of its Final Order until this process was completed. However, the Court was not mindful to grant this request and decided that the prohibition on international protection applicants accessing the labour market under the International Protection Act 2015 would be struck down on 9 February 2018. The participation of the State in the Directive will not be confirmed by the Court's deadline as we await your support and Oireachtas approval. As a result, access to the labour market for applicants will now take place under a two-stage process and intensive work is underway to pave the way for the implementation of the Directive pending its formal entry into force. I will be announcing further details in the coming weeks following further consultation with my Government colleagues. In making this process a success I want to work with you, Members of the Committee, and with NGOs, employers and other stakeholders.

In conclusion, I believe that participation in the Directive would be a positive step forward in bringing our international protection system and supports for applicants more closely in line with EU norms and standards. It should be noted that there are some areas of the Directive, particularly around health and education where we already apply more favourable provisions than would be required and these will be maintained. Minister Stanton and I are committed to ensuring that our protection process is fit for purpose and that applicants are treated humanely and with dignity while their application is being decided. We also aim to reduce the backlogs and to issue a first instance decision within 9 months for the majority of applicants. I hope that this Committee and the entire Oireachtas will look favourably on the proposed opt-in and the benefits which it would quickly bring to applicants and their families. I look forward to the debate and my officials and I are happy to answer any questions you might have.

ENDS

