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RETURNING REJECTED ASYLUM SEEKERS: PRACTICES AND CHALLENGES IN IRELAND

ANNE SHERIDAN

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The Irish National Contact Point of European Migration Network, EMN Ireland, sits within the Economic and Social Research Institute.

THE AUTHOR

Anne Sheridan is Senior Policy Officer at the Irish National Contact Point of the EMN, within the ESRI.

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ABOUT THIS REPORT

This European Migration Network study describes the procedures and legal framework applicable in Ireland in returning persons, who have had an application for international protection and leave/permission to remain rejected, to their country of origin. It also explores challenges experienced by Ireland in relation to the effective return of this group, and approaches to address those challenges. The report consists of information gathered by way of a common template, primarily for an overview, EU-level synthesis report, *The return of rejected asylum seekers: Challenges and good practices.*

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Abbreviations

AVR	Assisted voluntary return
EU	European Union
EMN	European Migration Network
ESRI	Economic and Social Research Institute
GNIB	Garda National Immigration Bureau
INIS	Irish Naturalisation and Immigration Service
IOM	International Organisation for Migration
IPAT	International Protection Appeals Tribunal
IPO	International Protection Office
IRPP	Irish Refugee Protection Programme
ORAC	Office of the Refugee Applications Commissioner
VARRP	Voluntary Assisted Return and Reintegration Programme

EXECUTIVE SUMMARY

The purpose of this study is to map the process of return, to their countries of origin, of applicants for international protection who have had their application rejected in Ireland. The study sets out to examine the challenges regarding effective return of rejected applicants to their countries of origin and policies and practices to overcome these challenges.

The study was originally prepared as the national contribution to the European Migration Network (EMN) study, *The Return of rejected asylum seekers: Challenges and good practices* (European Migration Network, 2016b).

The impetus to undertake the EMN study arose from the exponential increase in the number of applications for international protection (asylum) in the EU since 2014, and the consequent increase in the number of rejected applications. The European Commission has stated that, in 2014, less than 40% of the total number of irregular migrants ordered to leave the EU departed effectively (European Commission, 2015, p. 2). The aim behind the EU-level study was to examine the challenges faced by Member States in returning third-country nationals, who have had their applications for international protection rejected, to third countries, and to examine approaches taken by Member States to address these challenges.

STATISTICAL OVERVIEW

The number of applications for international protection in the EU rose exponentially in the period 2014–2015. According to Eurostat data, in 2015, 1.32 million applications for asylum were received in the EU28+Norway, representing a doubling of the applications made in 2014 (626,960). Eurostat data for total asylum applications show that applications were at a similar level for 2016, with 1.26 million applications received.[1] In the period 2014–2015, a total of 484,960 negative recommendations were made at first instance in the EU28 and there were 266,810 rejected applications at final decision stage (European Migration Network 2016b, pp. 46–47). Eurostat figures show that, for 2016, 433,505 applications were rejected at first instance across the EU,[2] and 183,280 applications were rejected at final decision stage.[3]

Ireland also experienced a rise in applications for international protection in the same period. The number of applications for asylum received by the Office of the Refugee Applications Commissioner (ORAC) in 2015 was 126% of 2014 levels

[1] Eurostat table migr_asyappctzm. Data extracted 11 May 2017.
[2] Eurostat table migr_asydec tps00192. Data extracted 15 June 2017.
[3] Eurostat table migr_asydec tps00193. Data extracted 15 June 2017

(Office of the Refugee Applications Commissioner, 2015, p. 5).[4] However, Ireland has not been affected to the same extent as other Member States by the migration crisis: for 2015, Ireland's total – 3,276 applications – represented 0.2% of the EU total. Over 2014–2015, there were 1,329 first instance negative recommendations for refugee status following interview made by ORAC, and Ireland reported a total of 420 rejected applications at final decision stage to Eurostat.

Regarding return rates, the European Commission has said that the implementation rates for return decisions in the EU are very low. From 2014 to 2015, the rate of effective returns to third countries dropped from 36.6% to 36.4%. When return to Western Balkan countries is disregarded, the return rate falls still further to 27% (European Commission, 2017, p. 5).

Ireland was one of a minority of Member States to provide data specifically on the number of rejected applicants for international protection issued return decisions for the EU synthesis report relating to the current study. For the purposes of the Irish data, a return decision equates to a deportation order signed and/or effected.

In 2015, 71% of deportation orders signed were in respect of rejected asylum applicants and 78% of deportation orders effected were in respect of the same category. A total of 545 deportation orders were signed in respect of rejected asylum applicants in 2015. In the same year, 197 deportation orders in respect of rejected asylum applicants were enforced. Voluntary return is possible up until a deportation order is signed. Assisted voluntary return (AVR) may be available from the International Organisation for Migration (IOM)/Department of Justice and Equality Assisted Voluntary Return Programme. In 2015, 30 rejected asylum applicants returned voluntarily, of which 22 availed of assisted voluntary return.

One key recent challenge to the implementation of deportation orders was the case *Omar v. Governor of Cloverhill Prison* from 2013.[5] The case ruled that there was no legislative power of entry to private dwellings to enforce a deportation order. This challenge was common to all deportation orders, not just those in respect of rejected asylum seekers. Section 78 of the International Protection Act 2015 addresses this challenge by providing a power to enable the Garda National Immigration Bureau to enter a residential address for the purpose of arresting someone subject to a deportation order and removing them from the State.

It is not possible to provide exact year-on-year implementation rates for deportation orders in Ireland, as a person may not be returned in the same year as their deportation order is issued. However, the *Report on improvements to the*

[4] This figure dropped by 31% for 2016.
[5] *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579.

protection process noted that approximately 20% of deportation orders are implemented (Working Group on the Protection Process, 2015, Recommendation 3.135). The report noted that this is in line with the EU average, quoting a mean implementation rate of 22.79% from 2013. When making comparisons, it should be noted that a return decision issued in accordance with the EU Return Directive (2008/115/EC) has a period for voluntary return built into it. In the Irish system, the period for availing of voluntary return expires once the deportation order is issued.

POLICY CONTEXT AND PUBLIC DEBATE

The EU-level synthesis report drew a parallel between the scale of the number of rejected international protection applicants to be returned in a Member State and the extent to which return was seen as a policy priority. It found that return of rejected applicants has become a policy priority in countries like Germany and Sweden, because of the mass influx of asylum seekers to those countries. In countries where flows are much less (including Ireland), it found that the effective return of rejected international protection applicants was still considered a necessary part of maintaining the credibility of the asylum system (European Migration Network, 2016b, p. 10). A review of parliamentary debates conducted for this study found that, in Ireland, the focus of public debate is not particularly focused on the return of rejected asylum seekers. Rather, the emphasis in public debate on the migration crisis has largely been on the humanitarian crisis and how Ireland responds to it. From the government perspective, the emphasis has been on Ireland playing a part in responding to the crisis, while recognising that Ireland does not face the same migratory pressure as other EU Member States. The Irish Refugee Protection Programme (IRPP), which has committed to taking in 4,000 persons from a combination of voluntary participation in the EU Council decisions on relocation and resettlement, is central to Ireland's response to the crisis. Similarly, criticism of government policy regarding the migration crisis has not centred on a failure to return rejected applicants but on the pace of arrivals of refugees and asylum seekers under the IRPP, and on the need to create safe and legal pathways to Ireland and the EU for refugees fleeing conflict.

Concerns have been expressed about the resource implications associated with the Irish international protection system, in particular with the length of time applicants spend in the system. The length of time spent in the protection system has been a concern for both policymakers and other commentators. This was the key concern behind the work of the Working Group established by Government in 2014 to report on improvements to the protection process, including in relation to direct provision and supports for asylum seekers. The *Report to government on improvements to the protection process, including direct provision and supports to asylum seekers* made certain key recommendations directly related to the length

of time spent in the system. These were: the recommendation for the speedy enactment of the International Protection Act 2015, which provides for the single application procedure for international protection applications; and the recommendation to review the cases of persons within the system for five years or more. The latter included the review of cases of holders of deportation orders (Working Group on the Protection Process, 2015, Recommendations 3.134 and 3.135).

For policymakers, the focus has been on creating efficiencies within the system via the single application procedure to allow a final decision to be reached faster. Regarding rejected applicants, the Department of Justice and Equality has said that the speeding up of processing protection applications through the system should, in turn, lead to the possibility of speedier repatriation to the country of origin for unsuccessful applications.[6]

LEGAL FRAMEWORK

Up to December 2016, there was no separate legislative regime in operation for the return of rejected applicants for international protection in Ireland – all return of non-EEA nationals with no leave to remain was dealt with under the Immigration Act 1999. Following the commencement of the International Protection Act 2015 throughout 2016, and the entry into operation of the single application procedure from 31 December 2016, a separate legal framework applies to rejected applicants for international protection. That Act provides that certain provisions of the Immigration Act 1999 (as amended) apply to deportation orders made under the International Protection Act 2015. The possibility for the Minister to revoke or amend a deportation order is still included under Section 3(11) of the Immigration Act 1999.

This study maps out the process for an international protection applicant who is unsuccessful in either being granted international protection status or permission to remain; a process that begins with the applicant's first application and ends with them either removing themselves from the State voluntarily or being issued with a deportation order. It includes a comparison of the pathway before and after 31 December 2016, prior to which the system of assessment of leave to remain was set out in Section 3 of the Immigration Act 1999 (which still applies to other irregular migrants), as opposed to being part of the single application procedure under the International Protection Act 2015. Certain key principles remain the same in both frameworks – the prohibition on *refoulement*, which must be assessed prior to making the deportation order is included in Section 50 of the International Protection Act 2015, and voluntary return (including assisted

[6] Interview with official, Irish Naturalisation and Immigration Service, 8 May 2017.

voluntary return) can only be availed of up until the issuing of the deportation order. Rejected applicants under the International Protection Act 2015 are given five days to confirm to the Minister that they will return voluntarily to the country of origin. A central question in the EMN study was whether or not return procedures could start before all asylum appeals were exhausted. The synthesis report showed that Ireland is in the minority group of Member States (alongside Bulgaria, Greece and Latvia) where a return decision can only enter into force after all asylum appeals have been exhausted (European Migration Network 2016b, p. 19). Most Member States have a number of scenarios that can apply, depending on the circumstances. For example, in some Member States,[7] return decisions become enforceable after all asylum appeals have been exhausted, but in many of these Member States, the return decision can also generally become enforceable after the first level appeal on the asylum decision. In some Member States,[8] the asylum seeker can be removed before they have exercised fully their right to an effective remedy in exceptional circumstances, for example, if the applicant comes from a safe country of origin (see Section 3.4). In most Member States, however, overall, first instance appeals have a suspensive effect (European Migration Network, 2016b, pp. 17–19).

CONSEQUENCES OF A NEGATIVE DECISION

The EU-level synthesis report found that many EU Member States are moving towards a policy whereby access to accommodation and other material supports is reduced for rejected applicants after a certain period, in order to disincentivise stay and encourage cooperation with the return procedure. In Ireland, rejected applicants for international protection, who are residents in the state-provided accommodation centres in the direct provision system, can, in practice, continue to reside in direct provision accommodation until they leave the State voluntarily or are removed.

Ireland does not issue temporary statuses or 'tolerated stays' to rejected applicants for international protection. With regard to regularisations, Ireland adopts the policy, in line with the European Pact on Immigration and Asylum, to use regularisations only on a case-by-case basis.[9]

The *Report on the improvements to the protection process* recommended exceptional measures for persons in the international protection system for five years or more, including holders of deportation orders. It also recommended that deportation order holders who have been in the system for five years or more from

[7] Austria, Bulgaria, the Czech Republic, Estonia, Greece, Finland, France, Croatia, Italy, Lithuania, Luxembourg, Latvia, Poland, Sweden, Slovenia, Slovakia and the UK.
[8] Belgium, Germany, Finland, France, Malta, the Netherlands, Sweden, Slovakia and the UK.
[9] See response to parliamentary questions 7684/17 and 7685/17. Available at www.justice.ie.

the date of first application should have their deportation orders revoked, subject to meeting certain conditions, and that leave to remain should then be granted, subject to certain conditions (Working Group on the Protection Process, 2015, Recommendations 3.134 and 3.135). The Department of Justice and Equality has indicated, in its second audit of progress on the implementation of the recommendations of the report, that these recommendations are implemented. It has been repeatedly emphasised that this process is not an amnesty or blanket regularisation (Department of Justice and Equality, 2017b).

PRACTICAL CHALLENGES TO RETURN AND MEASURES TO ADDRESS THEM

Ireland experiences many of the same challenges to return as other EU Member States, including those relating to identification and obtaining travel documentation for returnees. According to the *Report on improvements to the protection process*, obstacles include the limited number of embassies in Ireland and the consequential gap in assistance with travel documentation and return arrangements. The report also indicates that other obstacles to implementation of deportation orders include evasion of deportation orders, judicial reviews taken by persons subject to deportation orders, and the impact of a 'trailing family member' at another stage in the protection process (Working Group on the Protection Process, 2015, paragraphs 3.87 and 3.89).

In order to address problems regarding cooperation with third countries on return documentation, officials from the Irish Naturalisation and Immigration Service (INIS) take a proactive approach to building up good working relationships with London-based embassies. While Ireland has opted into the EU readmission agreements with third countries, none of these agreements has been ratified by Ireland. Cooperation with the UK in relation to flows of migrants is also very important to INIS. [10]

In common with other EU Member States, Ireland uses assisted voluntary return (AVR) programmes as a tool for the effective return of rejected asylum seekers to their countries of origin. Voluntary return is always preferred over forced return. The Department of Justice and Equality, in conjunction with the IOM, offers AVR and reintegration programmes for asylum seekers, rejected asylum seekers and other illegally present migrants. The programme for asylum seekers and rejected asylum seekers is called the Voluntary Assisted Return and Reintegration Programme (VARRP).

[10] Interview with official Irish Naturalisation and Immigration Service, 28 June 2016.

SECTION 1

Introduction

1.1 OBJECTIVES AND BACKGROUND TO THE STUDY

This study aims to map the process of return, to their countries of origin, of applicants for international protection who have had their applications rejected in Ireland. The study sets out to examine the challenges regarding effective return of rejected applicants to their countries of origin and policies and practices to overcome these challenges.

This study was originally prepared as the Irish contribution to the EMN study, *The return of rejected asylum seekers: Challenges and good practices* (European Migration Network, 2016b). It was prepared in accordance with common specifications agreed centrally by the EMN. The aim of the EMN study was to examine the approaches of EMN-participating States (Norway and EU Member States except Denmark) to the return of rejected asylum seekers, including legal frameworks, policies and practices. Its rationale arose from the dramatic increase in the EU in the numbers of asylum applicants and, in turn, rejected applicants, especially in 2014 and 2015, alongside low return rates for irregular migrants to whom a return decision has been issued in accordance with the Return Directive (2008/115/EC) (European Migration Network 2016b, p. 1). According to the European Commission:

> *In 2014 less than 40% of the irregular migrants that were ordered to leave the EU departed effectively.*[11] *(European Commission 2015, p. 2)*

The aim behind the EU-level study was to examine the challenges faced by Member States in returning third-country nationals, who have had their applications for international protection rejected, to third countries, and to examine approaches taken by Member States to address these challenges.

The EU Action Plan on Return, of September 2015 (European Commission, 2015), called for the return of rejected asylum applicants in order to maintain trust in the EU's asylum system for those who need it, and highlighted a need to link return policy to the asylum procedure (European Commission 2015, p. 5). In March 2017, the Commission launched the *Communication on a more effective return policy in the European Union* (European Commission, 2017) in response to the increasing difficulties with effective return of third-country nationals from the EU. The 2017

[11] This rate includes both rejected applicants for international protection and other irregular migrants.

Communication updates the Action Plan on Return, with a particular focus on better implementation of the Return Directive.

The EMN study examined a number of broad research areas, including: linkages between asylum procedures and return procedures in Member States; incentivising the return of rejected asylum seekers; the practical challenges faced by Member States in implementing return decisions (including cooperation with third countries), and measures taken to address these challenges; and the consequences for the rejected asylum seeker in receipt of a return decision. The EMN study explored approaches taken by Member States when rejected applicants cannot immediately be returned or returned, including tolerated stays or possibilities for regularisation. It also looked at any distinctions in the rights accorded to asylum seekers (for example, in relation to accommodation, services and right to work) and rejected applicants, both at the initial point of rejection and at a later stage when they are not yet returned (European Migration Network, 2016b).

Ireland does not participate in the EU Return Directive (2008/115/EC) and participates to a limited extent in the EU asylum *acquis*. [12] A review of parliamentary debates conducted for the Irish contribution to the EMN study indicated that the non-return of rejected protection applicants is not the particular focus of political debate on migration issues in Ireland. Debate on the migration crisis has instead focused on the need for Government to take a whole-of-government response to the humanitarian crisis. However, effective return is still a priority for Irish policymakers and Ireland supports the aims of the EU Action Plan on Return. [13] The Irish contribution therefore mapped out the legal and policy framework for international protection and return in Ireland and examined particular challenges to the effective return of rejected applicants for international protection, as well as how these might be addressed.

1.2 OUTLINE OF STUDY

This national study maps the legislation and procedures in place in Ireland relating to the return of rejected applicants for international protection. Drawing on the synthesis report for the EMN study, published in November 2016, it draws certain contrasts and correlations between Ireland and the other contributing EU Member States. Ireland's original contribution to the EMN study was submitted in July 2016, but this report brings the legal framework up-to-date, specifically regarding the

[12] Ireland does not participate in the 'recast' Qualification Directive (2011/95/EU) or Procedures Directive (2013/32/EU). Ireland participated in the original Qualification Directive (2004/83/EC) and Procedures Directive (2005/85/EC). Ireland also does not participate in the Reception Conditions Directive (2013/33/EU). Ireland participates in the Dublin Regulation EU No 604/2013.

[13] Interview with official, Irish Naturalisation and Immigration Service, June 2016.

single procedure under the International Protection Act 2015, which came into operation on 31 December 2016. The tables cover applications for refugee status and the return of rejected applicants up to end 2016 (under the former legal framework), as available.

Section 2 sets out the policy context, including: an overview of relevant asylum and return statistics; the political environment regarding the return of rejected applicants for international protection; and the applicable legislation for international protection and return of rejected applicants for international protection in Ireland. It also sets out the reception procedure and entitlements for protection applicants in Ireland.

Section 3 sets out the steps in the process for return of a rejected protection applicant, from the time the original application is lodged to the possible forced return via a deportation order, and including the option for voluntary return.

Section 4 sets out other consequences for a rejected protection applicant of the issuance of a deportation order in Ireland. It includes some comparisons and contrasts with practices of other EU Member States in terms of reception conditions given to rejected applicants, the use of legal status such as 'tolerated stay', and the use of regularisations.

Section 5 sets out the challenges to implementing deportation orders for the State, including cooperation with third countries. It also discusses measures to mitigate those challenges.

Section 6 draws some conclusions, linked to contrasts that can be drawn between Ireland's approach and that of other EU Member States.

1.3 METHODOLOGY

This study was originally written to agreed specifications. Desk research covered legislation, policy reports, previous EMN outputs, press releases, news articles and parliamentary debates. This was supplemented by interviews and correspondence with officials from the Irish Naturalisation and Immigration Service (INIS).

This national study has been updated from the original contribution provided for the EMN synthesis report, to include developments in procedure since the entering into operation of the single application procedure under the International Protection Act 2015. The study has been internally and externally reviewed.

The study also uses the EMN synthesis report, *The Return of rejected asylum seekers: Challenges and good practices*, published in November 2016, as a source of comparative information on policies and practices in other EU Member States.[14]

1.4 KEY TERMS AND THEIR SCOPE

Accelerated procedure: An expedited procedure to examine an application for international protection that is either already deemed manifestly unfounded, involves serious national security or public order concerns, or is a subsequent application.

Asylum seeker: A person who has made an application under the Geneva Convention in respect of which a final decision has not yet been taken.

The term 'asylum seeker' is used throughout this study for applicants who, up to the end of 2016, applied for refugee status in Ireland under the Refugee Act 1996 (as amended) and for subsidiary protection under the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) as amended by the European Union (Subsidiary Protection) Regulations 2015 (S.I. No. 137 of 2015). This term is therefore used for the tables, which provide data up to the end of 2015 or 2016, as available.

Applicant for international protection: A third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken.

The term 'protection applicant' is used throughout this study for applicants who apply for international protection in Ireland under the provisions of the International Protection Act 2015. This term, therefore, is used in the description of the updated applicable legal framework.

Rejected asylum seeker/Rejected protection applicant: A person covered by a first instance decision rejecting an application for international protection (a first instance decision can be appealed), including decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies.

[14] The synthesis report was based on national contributions from 25 EMN NCPs – Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden and the UK.

Return decision: An administrative or judicial decision or act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.

In Ireland, in accordance with the provisions of the Immigration Act 1999, 'return decision' covers a two-part process. Firstly, a '15-day letter' is issued, stating the intention to deport the illegally present non-EEA national, which contains an option for assessment of leave to remain on non-protection grounds. Secondly, a deportation order is issued, after assessment of the prohibition on *refoulement*, requiring the non-EEA national to leave the State and remain outside the State thereafter, if the leave to remain application is unsuccessful. This legal framework applied to rejected asylum seekers up to end December 2016.

Since 31 December 2016, under the International Protection Act 2015, the assessment of leave to remain is replaced by an assessment of permission to remain on non-protection grounds undertaken as part of the single procedure. Subject to the prohibition on *refoulement*, the legislation provides that a deportation order shall be issued in respect of applicants who are not successful in their protection application or in obtaining permission to remain, and who do not leave the State voluntarily. Rejected applicants are given five days from the date of receipt of the Minister's notice rejecting their application to confirm to the Minister that they will voluntarily return to their country of origin.

For the purposes of the tables, which cover the period from 2011 to 2015 or 2016, as available, 'return decision' means an enforceable deportation order.

Deportation order: A deportation order requires the person specified in the order to leave the State within the period specified in the notice given under Section 51(3) of the International Protection Act 2015 and thereafter to remain out of the State.

For rejected protection applicants: In Ireland, up to 31 December 2016, a deportation order was issued under Section 3(9) of the Immigration Act 1999. The format of the deportation order is set out in the Immigration Act 1999 (Deportation) Regulations 2005. Since 31 December 2016, a deportation order is issued under Section 51 of the International Protection Act 2015. The format of the deportation order is set out in the International Protection Act 2015 (Deportation) Regulations 2016 (S.I. No. 668 of 2016).

Forced return: In the EU context, this term refers to the process of going back, whether in voluntary or enforced compliance with an obligation to return, to: one's country of origin or to a country of transit, in accordance with EU or bilateral

readmission agreements or other arrangements; or another third country, to which the third-country national concerned voluntarily decides to return and in which they will be accepted.

Permission to remain: In the Irish context, this means permission to remain in the State that may be granted to a person who has been unsuccessful in an application for international protection, under Section 49 of the International Protection Act 2015.

Regularisation: In the EU context, this is the state procedure by which illegally staying third-country nationals are awarded a legal status.

Readmission agreement: An agreement between the EU and/or a Member State with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence in the territories of the third country or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation.

Safe country of origin: A country where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of the Recast Qualification Directive (2011/95/EU), no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In the Irish context, under the International Protection Act 2015, a safe country of origin is defined as a country designated as a safe country of origin under Section 72 of the Act.

Voluntary return: The assisted or independent return to the country of origin, transit or third country, based on the free will of the returnee.

Assisted voluntary return: Voluntary return or voluntary departure supported by logistical, financial and/or other material assistance.

Other than information above that is specific to the Irish context (as indicated), these definitions are adapted from the *EMN glossary v. 3.0* (European Migration Network, 2014).

SECTION 2

Policy context

2.1 STATISTICAL OVERVIEW

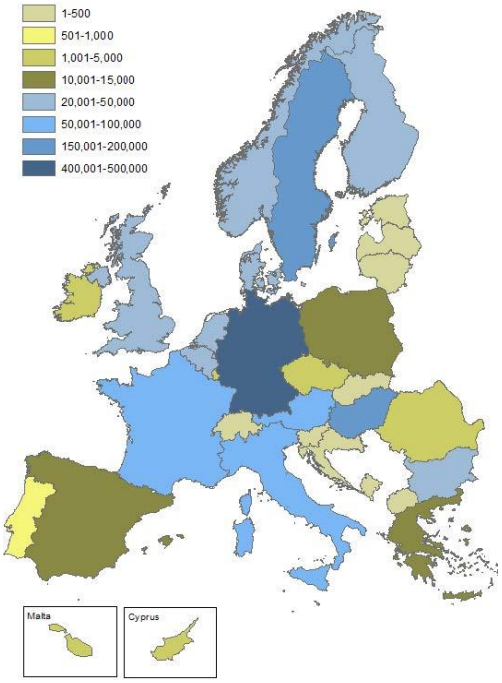
2.1.1 Asylum data

At EU level, the number of asylum applications has increased significantly in recent years, particularly in the period 2014–2015. In 2015, 1.32 million applications for asylum were received in the EU28+Norway, representing a doubling of the amount of applications – 626,960 – made in 2014. Eurostat data for total asylum applications show that applications were at a similar level for 2016, with 1.26 million applications received.[15]

As with other EU Member States, since the beginning of the refugee and migration crisis the numbers of applications for refugee status in Ireland has risen. In 2015, the Office of the Refugee Applications Commissioner (ORAC) received the highest number of asylum applications (3,276) since 2008; applications had increased by 126% over 2014 levels (Office of the Refugee Applications Commissioner, 2016, p. 5). However, Ireland has not been affected by the migration crisis in terms of mass influx to the same extent as some other Member States. During 2015, Ireland's asylum applications represented 0.2% of the EU total of 1.32 million.

[15] Eurostat table migr_asyappctzm. Data extracted 11 May 2017.

FIGURE 1 COMPARISON OF APPLICATIONS FOR REFUGEE STATUS, IRELAND AND EU28+NORWAY, 2015



EU total for 2015: 1,321,621.

Highest number of applicants registered in Germany (36%).

Germany, Hungary, Sweden, Austria and Italy registered 75% of all asylum applicants.

Ireland total for 2015: 3,275 (0.2% of EU total).

Source: EMN synthesis report, Annual report on migration and asylum 2015 (European Migration Network, 2016a).

In 2015, in Ireland, there was a notable increase in applications submitted by Pakistani and Bangladeshi nationals (with Pakistani nationals submitting 41% of the total of applications). In relation to this, the Refugee Applications Commissioner noted that the majority of Pakistani and Bangladeshi applicants had previously been resident in the UK (Office of the Refugee Applications Commissioner, 2016, p. 5). In March 2016, an amendment to the Immigration Act 2004 was commenced to provide that permission to land may be refused in certain circumstances to non-Irish nationals who had prior legal residence or permission to enter another territory in the Common Travel Area between Ireland and the UK.[16]

Monthly statistics for 2016 from ORAC[17] show that 2,244 applications for refugee status were lodged up to end December 2016. This represents a decrease of 31% over the 2015 total of 3,276 applications. These figures include applications made by applicants relocated to Ireland under the EU relocation programmes. The top five nationalities of applicants were Syria, Pakistan, Albania, Zimbabwe and Nigeria. The synthesis report for the EMN study noted that Eurostat data for the

[16] Section 81 of the International Protection Act 2015 amended Section 4(3) of the Immigration Act 2004 to provide that permission to land may be refused to a non-Irish national who has prior legal residence or permission to enter another territory in the Common Travel Area between Ireland and the UK within the previous 12 months, and who travels to Ireland from within the Common Travel Area, and enters Ireland with the purpose of extending stay in the Common Travel Area regardless of whether or not the person intends to make an application for international protection. This provision was commenced via the International Protection Act 2015 (Commencement)(No.2) Order 2016 on 9 March 2016.

[17] Available at: www.orac.ie.

period 2014–2015 show there were 484,690 negative recommendations at first instance in the EU28. This comprised 54% of applications in 2014, and 48% in 2015. In the same period, 266,810 applications were rejected at final stage. The total percentage of final asylum decisions that were rejections was 81% in 2014 and 86% in 2015 (European Migration Network 2016b, pp. 46-47). Eurostat figures show that, for 2016, 433,505 applications were rejected at first instance across the EU,[18] and 183,280 applications were rejected at final decision stage.[19]

For the period 2014–2016, figures from ORAC show that 728 positive recommendations for refugee status were made at first instance. In the same period, 2,987 negative recommendations were made after interview. A further 1,260 applications had other negative recommendations or were withdrawn, and 917 determinations were made under the European Union Dublin system. It should be noted that these figures relate to the year when the recommendation was made, not the year that the application was lodged.[20]

TABLE 1 POSITIVE AND NEGATIVE RECOMMENDATIONS FOR REFUGEE STATUS AT FIRST INSTANCE, IRELAND, 2014–2016

	2014	2015	2016
Positive recommendations	132	152	444
Negative recommendations following interview	661	668	1,658
Other negative recommendations and cases withdrawn	246	430	584
Determinations under Dublin system	21	302	594

Source: Office of the Refugee Applications Commissioner (ORAC), Monthly Statistics, December 2016.

Table 2 below presents data from the synthesis report indicating that the percentage of rejected applications in Ireland, at final decision stage, was 55% in 2014 and 58% in 2015.

[18] Eurostat table migr_asydec tps00192, Data extracted 15 June 2017.
[19] Eurostat table migr_asydec tps00193, Data extracted 15 June 2017.
[20] Monthly statistics December 2016. Available at: www.orac.ie.

TABLE 2 REJECTED APPLICATIONS FOR REFUGEE STATUS AT FINAL DECISION STAGE, IRELAND, 2014–2016

	Number of rejected applications	% of final decisions
2014	**115**	**55**
2015	**305**	**58**
2016	**385**	*****

Source: Synthesis report, Tbe Return of rejected asylum seekers: Cchallenges and good practices, Annex 2, Table A2.3. For 2016: Eurostat migr_asydcfina (data extracted 10 May 2017).
*Note: * = no data available.*

2.1.2 Return data

Only a minority of Member States (including Ireland) provided data on the number of return decisions issued to rejected asylum seekers or the percentage of rejected asylum seekers out of total effective returns for the synthesis report. It is therefore not possible to draw comparisons between a total EU trend and the numbers of rejected asylum seekers issued return decisions or effectively returned in Ireland. However, as stated in the European Commission Communication on return, of 8 March 2017, the implementation figures for return decisions in the EU in general are very low. In 2014 and 2015, the rate of effective returns to third countries was 36.6% and 36.4% respectively. When return to Western Balkans is disregarded, the European Union return rate drops to 27% (European Commission, 2017, p. 2).

In Ireland, a deportation order is the final stage of a longer process, including the possibility of voluntary return, after the applicant has been unsuccessful in being granted refugee or subsidiary protection status and/or permission to remain in the State. The tables below provide figures up to end 2015 or 2016, as available. They cover applicants who were unsuccessful in being granted refugee status, subsidiary protection status and leave to remain under Section 3 of the Immigration Act 1999.

Over the period 2011–2015, the percentage of rejected asylum seekers in Ireland, out of the total of non-EEA nationals in respect of whom a deportation order was signed, varied from 60% to 79% (see Table 3). Rejected asylum seekers also accounted for the majority of deportation orders effected over these five years, with the exception of 2014.

TABLE 3 PERCENTAGE OF REJECTED ASYLUM SEEKER CASES OUT OF TOTAL DEPORTATION ORDERS SIGNED AND EFFECTED, IRELAND, 2011–2016.

	2011	2012	2013	2014	2015
Rejected asylum seekers out of total non-EEA nationals issued a return decision (%)	68	79	60	68	71
Rejected asylum seekers out of total non-EEA nationals effectively returned (%)	79	78	67	47	78

Source: Irish Naturalisation and Immigration Service (INIS).
Note: Return decision = deportation order signed; Effectively returned = deportation order effected.

Tables 4 and 5 show the number of deportation orders issued in Ireland in respect of rejected asylum seekers from 2011 to 2015, as well as the total number of rejected asylum seekers actually returned, either through voluntary return or deportation.

TABLE 4 NUMBERS OF RETURN DECISIONS ISSUED IN RESPECT OF REJECTED ASYLUM SEEKERS, IRELAND, 2011–2015

2011	2012	2013	2014	2015
1,404	1,643	1,108	506	545

Source: Irish Naturalisation and Immigration Service (INIS).
Note: Return decision = deportation order signed.

TABLE 5 REJECTED ASYLUM SEEKERS RETURNED THROUGH VOLUNTARY AND FORCED RETURN, IRELAND, 2011–2016 (N.)

Year	Total voluntary returns (up to point of deportation order issued)	Total forced returns (=deportation orders effected)
2011	184	224
2012	119	236
2013	89	139
2014	59	53
2015	30	197
2016	*	367

Source: Parliamentary question 27451/17, 24 January 2017, available at: www.justice.ie.
*Note: * data not available.*

It is not possible to provide exact year-on-year implementation rates of deportation orders, as a non-EEA national may not be effectively returned in the

same year as the deportation order is issued. However, the *Report on improvements to the protection process* notes that approximately 20% of deportation orders are implemented. It also notes that this is in line with the EU average, quoting a mean EU implementation rate of 22.79% from 2013 (Working Group on the Protection Process 2015, paragraph 3.87). When making comparisons, however, it should be noted that a return decision issued in accordance with the Return Directive has a period for voluntary return (including assisted voluntary return) built into it.[21] In the Irish system, the period for availing of voluntary return expires once a deportation order is issued.

The *Report on improvements to the protection process* also notes that 90% of the deportation orders against those in the protection system for five years or more, from the date of their initial application, were outstanding for more than 24 months. Of those deportation orders that had been implemented, the report notes that the mean implementation time was 17 months (Working Group on the Protection Process, 2015, Recommendation 3.135).

2.2 POLITICAL ENVIRONMENT

The synthesis report found that all contributing Member States considered the return of rejected asylum seekers to be an important policy priority, but the extent to which this was so depended on the scale of rejected asylum seekers to be returned within each Member State. Thus, in countries like Germany and Sweden, return of rejected asylum seekers has become a priority because of the mass influx of asylum seekers to those countries. In other countries (for example, Belgium, France and the UK), the return of rejected asylum seekers is seen as part of a broader policy priority on return. The synthesis report found that in countries with a comparatively small number of asylum seekers (such as Estonia, Ireland, Latvia and Lithuania), return was less of a policy priority. Nevertheless, all these countries see the effective return of rejected asylum seekers as a necessary factor in maintaining the credibility of the asylum system (European Migration Network 2016b, p. 10). Effective return is a priority for Irish policymakers and Ireland supports the aims of the EU Action Plan on Return.[22]

A review of parliamentary debates conducted for this study found that the non-return of rejected asylum seekers is not addressed directly in political debate in Ireland, at least not to any great extent.

[21] Article 7 of Return Directive (2008/115/EC). Member States can specify a period for voluntary return of between seven and 30 days in the return decision.
[22] Interview with official, Irish Naturalisation and Immigration Service, June 2016.

An extensive parliamentary debate held on 28 April 2016 on the migration and refugee crisis illustrates the political environment surrounding these issues in Ireland.[23] Throughout 2016, other debates were held by the Joint Committee on Justice and Equality. [24] Ireland does not have a political party with an anti-immigration platform in its parliament and representatives have articulated the view that Ireland stands apart from such rhetoric.[25] The Minister for Justice and Equality said, '*At a time when anti-immigration and anti-refugee sentiment has, unfortunately, been part of mainstream rhetoric in the international political and media debate, it matters that Ireland and this House stand by our tradition of supporting refugees.*'[26]

In addressing the migration crisis, policymakers have adopted a cross-departmental approach, involving: the humanitarian response, including search and rescue, humanitarian funding and resettlement; participation in EU relocation measures and other related forms of cooperation in managing the crisis; and supporting cooperation with countries of origin and transit, including on return.[27]

The Government's focus therefore has been on its humanitarian response to the crisis and taking part in the response to the crisis while recognising that Ireland does not face the same migratory pressures as other EU Member States. This includes a continuing emphasis on Irish navy search and rescue missions in the Mediterranean, which continued throughout 2016, and which is generally welcomed by all sides of the Oireachtas (Department of Defence, 2016a and 2016b). In addition, Ireland has made a substantial contribution to humanitarian funding for the Syrian conflict: €62 million committed to end 2016.[28] The Irish Refugee Protection Programme (IRPP) has committed to taking in 4,000 persons from a combination of resettlement and voluntary participation in the EU Council decisions on relocation. Ireland has also pledged a contribution of €3 million to the Emergency Trust Fund for Africa, agreed at the Valletta Summit on Migration in November 2015 (Department of Justice and Equality, 2015).[29] By the end of 2016, Ireland had taken in 519 persons under the refugee resettlement programme and

[23] EU Migration and Refugee Crisis: Statements, Dáil Debates, 28 April 2016, available at: www.oireachtas.oireachtasdebates.ie.
[24] For example, 'UN summit on refugees and migration: Discussion', 5 October 2016 and 'Migrant crisis: Discussion', 16 November 2016, available at www.oireachtas.oireachtasdebates.ie.
[25] For example, in a response to a parliamentary question (41152/15), the Minister for Justice and Equality said, 'In addition it is a feature of Irish political life that no political party espouses extreme right-wing views on immigrants which I take to indicate that there is little support amongst the public for such extreme opinions'.
[26] Minister for Justice and Equality EU Migration and Refugee Crisis: Statements, Dáil Debates, 28 April 2016, available at: http://oireachtasdebates.oireachtas.ie.
[27] See parliamentary question response 28226/15 (13 October 2015), available on www.justice.ie.
[28] Statement of Sean Sherlock TD, EU Migration and Refugee Crisis, Dáil Debates, 28 April 2016, available at: http://oireachtasdebates.oireachtas.ie.
[29] See 'Pledged contributions – EU Emergency Trust Fund for Africa, 6 June 2016', available at: http://ec.europa.eu/europeaid/pledged-contributions-eu-emergency-trust-fund-africa_en.

240 persons on relocation from Greece, including 12 unaccompanied minors (Department of Justice and Equality, 2017). Ireland also made a commitment to the Greek authorities in December 2016 to have relocated 1,100 asylum seekers from Greece by September 2017 (Department of Justice and Equality, December 2016).

Criticism of the Government's policies in relation to the migration crisis has focused on whether enough is being done to address the crisis, rather than on making the return of rejected asylum applicants a policy priority, as has been the case in some other Member States (European Migration Network 2016b, p. 10). For example, the pace of the arrival of refugees under the relocation and resettlement programmes (Irish Times, 2016a),[30] the need for more humanitarian aid,[31] and concerns about participation in the EU-Turkey agreement[32] have all been raised as concerns.

Non-government organisations (NGOs) such as the Irish Refugee Council[33] and Nasc, through its Safe Passage Campaign, have emphasised the need for safe and legal pathways to the EU and Ireland for refugees fleeing conflict. Nasc made a presentation to the Joint Oireachtas Committee on Justice and Equality on 16 November 2016, arguing for family reunification to be used as a vehicle for bringing more refugees safely to Ireland,[34] including via an extension of the Syrian Humanitarian Assistance Programme (SHAP), which was run by the Department of Justice and Equality in 2014.

Concerns have been expressed about the particular situation of unaccompanied minors.[35] In November 2016, the Government decided to allocate 200 places, from

[30] For example, Joint Oireachtas Committee Debate of 5 November 2016, 'UN Summit on Migration and Refugees: Discussion', available at: http://oireachtasdebates.oireachtas.ie. It should be noted that the pace of arrival of refugees increased throughout 2016, with 240 refugees relocated from Greece, and 519 out of the commitment of 520 refugees resettled by end 2016.

[31] See *Migration and refugee crisis: Statements*, Dáil Debates, 28 April 2016, available at: http://oireachtasdebates.oireachtas.ie.

[32] For example, in parliamentary question 8319/16 (26 April 2016), Deputy Róisín Shortall asked the Minister for Justice and Equality if, with regard to the recent European Union-Turkish migration agreement, she considers Turkey a safe third country for migrants to seek refuge in, given Turkey's human rights record, the recent condemnation of the agreement by the Council of Europe and the backlog of 200,000 asylum applications that the Turkish government is currently processing; to state her views on the guarantees given to the European Commission by the Turkish government that migrants' rights will be respected; to state whether the three migration experts seconded from her Department have arrived in Turkey; to state whether she will provide an update on the request for Ireland to contribute personnel to Frontex as part of the agreement; and if she will make a statement on the matter.

[33] See presentation by the Irish Refugee Council at the EMN Ireland conference, *Responding to the refugee crisis*, available at: www.emn.ie.

[34] 'Migrant crisis: Discussion', 16 November 2016, available at: http://oireachtasdebates.oireachtas.ie.

[35] See for example, Joint Oireachtas Committee on Justice and Equality (5 October 2016), 'UN Summit on Refugees and Migrants', Deputy Clare Daly, available at: www.oireachtasdebates.oireachtas.ie.

the overall 4,000 in the IRPP, to unaccompanied minors, previously resident in the migrant camp in Calais, who express a wish to come to Ireland (Department of Justice and Equality, 2017, p. 17).

However, the resource implications associated with the international protection system has been an issue of concern, in particular in relation to the length of time applicants spend in the system. In November 2015, the acting secretary general of the Department of Justice and Equality made a presentation to the Public Accounts Committee on the 2014 report of the comptroller and auditor general on the Justice Group of Votes. Concerns about the increase in applications for asylum, the relatively low recognition rate and the resource impact on the system were raised by members of the Committee during the presentation.[36] The secretary general was also questioned about the impact that the new proposed single application procedure would have on the system and if there would be a consequent increase in deportations. Another issue raised by the Committee was the position of persons who had been within the asylum determination process for an extended period.

The length of time that asylum seekers spend in the protection system has been a concern for both policymakers and other commentators. Concerns about the direct provision system of reception have been a major concern for NGOs. The focus in public debate has been on issues that have a particular impact due to the length of time that persons spend in the system, including the reception conditions, the ban on the right to work, and access to educational opportunities, rather than on return rates for rejected applicants. In November 2014, the Government established an independent working group to report on improvements with the protection process, including direct provision supports for asylum seekers, and improvements to the determination process, including the length of time in the system. The Minister for Justice and Equality published the *Report to Government on improvements to the protection process, including direct provision and supports to asylum seekers* (hereafter referred to as the *Report on improvements to the protection process)*, on 30 June 2015. The report made a total of 173 recommendations and two progress reports have been published by the

[36] For example, Deputy John Deasy said, 'I think about the people who are actually genuine refugees who deserve attention and accommodation and deserve to have governments look at them differently. Frankly, what we are dealing with here seems to be people who are applying for refugee status spuriously in many cases. That seems to have been a hallmark of our system down through the years, bearing in mind the rates Mr. Waters just cited. He mentioned that the number of genuine refugees is increasing. It is reflected in the refugee status granting rates. However, the question arises as to how effective the system will be outside the fast-tracking process. Consider how much money we spend in this area and where it needs to be allocated. When there is an increase to 3,800 from 900, which was the number a couple of years ago, we have a problem. The problem is that the money is not going where it should be.' Committee of Public Accounts, 5 November 2015, available at: www.oireachtasdebates.oireachtas.ie. It is of interest that the difficulties discussed in this debate in relation to numbers of Pakistani and Bangladeshi applicants originating in the UK were addressed in March 2016 via the commencement of Section 81 of the International Protection Act 2015.

Department of Justice and Equality on their implementation (Department of Justice and Equality 2017b). Key recommendations directly related to reducing the length of time in the protection system were: the recommendation for the speedy enactment of the International Protection Act 2015, which provides for the single application procedure for international protection applications; and the recommendation to review the cases of persons within the system for five years or more. This included persons with extant deportation orders (Working Group on the Protection Process, 2015, Recommendations 3.134 and 3.135).

For policymakers, the focus has been on creating efficiencies in the international protection system via the single application procedure to allow a final decision be reached faster, and, as the Department of Justice of Equality has said, 'to achieve the desired balance in treating asylum seekers with humanity and respect whilst also ensuring that we have more efficient asylum and immigration procedures and safeguards in place'.[37] Regarding rejected applicants, the Department of Justice and Equality has said that, 'the speeding up of processing protection applicants through the system should, in turn, lead to the possibility of speedier repatriation to the country of origin for unsuccessful applications.'[38]

2.3 APPLICABLE LEGISLATION ON INTERNATIONAL PROTECTION AND RETURN IN IRELAND

2.3.1 International protection

Up to 31 December 2016, the Refugee Act 1996 (as amended) supplemented by a number of statutory instruments formed the basis of the legal framework for dealing with international protection under Irish law. Applications for subsidiary protection were dealt with under the provisions of the European Union (Subsidiary Protection) Regulations 2015 (S.I. 426 of 2013) as amended by the European Union (Subsidiary Protection) Regulations 2015 (S.I. No. 137 of 2015). The Refugee Act 1996 (as amended) also set out provisions of particular relevance to this study in relation to determining safe countries of origin and accelerated procedures.

The International Protection Act 2015, which came into operation on 31 December 2016, overhauls the system for assessing applications for international protection. The new single application procedure applies to all new protection applications from 31 December 2016. The Act replaces the former sequential asylum application process with a single application procedure, bringing Ireland into line with other EU Member States. The 2015 Act provides for applications for international protection (refugee status and subsidiary protection) as well as

[37] Correspondence with Asylum Policy Division, Irish Naturalisation and Immigration Service, March 2016.
[38] Interviews with Irish Naturalisation and Immigration Service, 8 May 2017.

permission to remain cases to be processed as part of a single procedure by one decision maker. This compares to the previous multi-layered process that involved multiple bodies and procedures.[39]

A number of regulations to give effect to the provisions of the Act were passed throughout 2016; these are outlined below.

Certain standalone provisions of the International Protection Act 2015 regarding immigration and deportation were commenced in March 2016 via the International Protection Act 2015 (Commencement) (No. 2) Order 2016. (See 2.3.2 below.)

International Protection Act 2015 (Commencement) (No. 3) Order 2016 (S.I. No. 663 of 2016): This Order provides for the commencement of the International Protection Act 2015 from 31 December 2016.[40] Limited provisions had been commenced in previous commencement orders. This Order also facilitates the commencement of the other instruments listed below.

International Protection Act 2015 (Application for International Protection Form) Regulations 2016 (S.I. No. 660 of 2016): These Regulations prescribe the application form for the purposes of Section 15 of the International Protection Act 2015. These Regulations replace the Refugee Act 1996 (Application Form) Regulations 2000.

International Protection Act 2015 (Establishment Day) Order 2016 (S.I. No. 661 of 2016): This Order provides for the establishment of the International Protection Appeals Tribunal to hear appeals against recommendations of an International Protection Officer under the International Protection Act 2015.

International Protection Act 2015 (Temporary Residence Certificate) (Prescribed Information) Regulations 2016 (S.I. No. 662 of 2016): These Regulations set out the information to be included on the temporary residence certificate issued to protection applicants under the International Protection Act 2015. These Regulations replace the Refugee Act 1996 (Temporary Residence Certificate) Regulations 2000.

[39] Department of Justice and Equality: Irish Naturalisation and Immigration Service, International Protection Policy Division, February 2017.
[40] Other than paragraphs (b) (f) (i) (j) (l) (m) and (p) of Section 6(2). The sections not commenced refer to various repeals.

International Protection Act 2015 (Permission to Remain) Regulations 2016 (S.I. No. 664 of 2016): These Regulations set out the time period for the provision of information following receipt by an applicant of a decision of the International Protection Appeals Tribunal for the purposes of Section 49(9) of the International Protection Act 2015. Section 49(9) concerns consideration of permission to remain for applicants unsuccessful in obtaining a declaration of refugee status or subsidiary protection status.]

International Protection Act 2015 (Voluntary Return) Regulations 2016 (S.I. No. 665 of 2016): These Regulations set out the procedure and the form to be issued in cases where an applicant for international protection opts to voluntarily return to their country of origin in line with Section 48 of the International Protection Act 2015.

International Protection Act 2015 (Places of Detention) Regulations 2016 (S.I. No. 666 of 2016): These Regulations prescribe the places of detention for the purposes of Section 20 of the International Protection Act 2015.

International Protection Act 2015 (Travel Document) Regulations 2016 (S.I. No. 667 of 2016): These Regulations prescribe the fee, the application form to be completed and additional information required when applying for a travel document under Section 55 of the International Protection Act 2015. It also prescribes the form of the travel document to be issued. These Regulations replace the Refugee Act 1996 (Travel Document) Regulations 2000 and 2011.

International Protection Act 2015 (Deportation) Regulations 2016 (S.I. No. 668 of 2016): These Regulations prescribe the Deportation Order to be issued under Section 51(1) of the International Protection Act 2015.

2.3.2 Return

Up to 31 December 2016, procedures for removal of all illegally present non-EEA nationals from the State were set out in the Immigration Act 1999. The International Protection Act 2015 introduces a new legal regime for the return of rejected applicants for international protection. The prohibition on *refoulement*, which must be assessed prior to issuing a deportation order, is also included in the new legislation.

Certain provisions in the Immigration Act 1999 continue to apply to deportation orders issued to rejected asylum seekers. This includes the power for the Minister to revoke a deportation order under Section 3(11) of the Immigration Act 1999.

The International Protection Act 2015 also contains amendments to the Immigration Act 1999, which are applicable to return in general. amends the Immigration Act 1999, following the case *Omar v. Governor of Cloverhill Prison*,[41] to enable the Garda Síochána to enter a residential address for the purpose of arresting someone subject to a deportation order and removing them from the State. This amendment was commenced via the International Protection Act 2015 (Commencement) (No. 2) Order 2016 S.I. No. 133 of 2016).

2.3.3 Judicial review

The system of judicial review has a significant impact on the process. Judicial review is not a substantive appeal on the initial decision, but a review of the lawfulness of the decision in terms of how the decision was made and the fairness of it. Applications for judicial review are made to the High Court. The applicant first applies for leave to take the judicial review proceedings, followed by the judicial review proceedings if leave is granted. Judicial reviews can be taken at all stages of the protection and return process. Judicial reviews can also be taken in relation to decisions regarding revocation of deportation orders.

Section 5 of the Illegal Immigrants (Trafficking) Act 2000, as amended by Section 34 of the Employment Permits (Amendment) Act 2014, provides that an application for judicial review in relation to *inter alia* these matters must be made within 28 days.

2.4 RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN IRELAND

An area of interest in the EMN study was whether or not the right to reception and other services (such as accommodation, healthcare, education and employment) that are offered to asylum seekers continue to apply after the application for international protection is rejected and, if so, for how long. The synthesis report explores whether reception supports are continued or altered and in what circumstances; for example, for how long a rejected applicant will continue to have supports after their application has been rejected (European Migration Network, 2016b, pp. 12–15). Section 4 looks at this in more detail.

The reception system in Ireland is known as 'direct provision' and covers state-provided accommodation as well as medical, education, social protection and other State services.[42] Protection applicants are offered accommodation on a full board basis.

[41] *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579.
[42] Irish Naturalisation and Immigration Service, Reception and Integration Agency, June 2017.

Just over half of all protection applicants reside in direct provision accommodation centres; the offer of accommodation is made to all protection applicants but there is no legal obligation to accept it. According to the *Report on improvements to the protection process,* 'accommodation arrangements are not known for the remaining group – they may stay with friends/family or in private accommodation at their own expense' (Working Group on the Protection Process, 2015, paragraph 1.32).

A protection applicant may stay in direct provision accommodation until 'such times as they are granted some form of status and move into the community, leave the State voluntarily or are removed' (Working Group on the Protection Process, 2015, paragraph 1.30).

Table 6 below shows the reception conditions for international protection applicants in Ireland.

TABLE 6 RECEPTION CONDITIONS AND ENTITLEMENTS FOR APPLICANTS FOR INTERNATIONAL PROTECTION IN IRELAND

Area	Reception conditions and entitlements
Accommodation	A protection applicant may stay in direct provision accommodation until 'such times as they are granted some form of status and move into the community, leave the State voluntarily or are removed'. Residents are provided with accommodation on a full board basis and related facilities (including toiletries etc). The weekly allowance referred to below is provided to meet incidental expenses.[43]
Employment	Protection applicants may not access the labour market. The prohibition on access to the labour market is set out in Section 16(3) of the International Protection Act 2015. On 30 May 2017, in the case *NVH v. Minister for Justice and Equality*, the Supreme Court ruled 'that in circumstances where there is no temporal limit on the asylum process, then the absolute prohibition on seeking of employment' as set out in the 1996 Refugee Act (and replicated in the International Protection Act 2015) 'is contrary to the constitutional right to seek employment.[44] The matter was adjourned for six months to allow the legislature consider how to address the situation.[45]
Education	Protection applicants of school-going age are entitled to attend primary and/or secondary school. Children under 16 years of age are obliged to participate in primary education. This entitlement flows from the Education (Welfare) Act 2000 in conjunction with the Equal Status Acts 2000–2004. Following the recommendations of the Working Group on the Protection Process, in June 2016 the Department of Education and Skills extended supports for third level and post-Leaving Certificate courses to persons who are protection applicants or are at the leave to remain stage if they have been in the Irish school system for five years or more and satisfy the relevant academic and other eligibility criteria (Department of Justice and Equality, 2017b). These supports were first introduced in September 2015 (Department of Education and Skills, 2015a).
Welfare	A weekly direct provision payment of €19.10 for adults and €15.60 for children is paid to residents of direct provision centres.

[43] Irish Naturalisation and Immigration Service, Reception and Integration Agency, June 2017.
[44] *N.V.H. v. Minister for Justice and Equality* [2017] IESC 35. Case summary is available at www.emn.ie.
[45] 'Supreme Court ruling on ban on asylum seekers looking for work', 2016 News, www.emn.ie.

	Residents can also apply for 'exceptional needs payments' to cover once-off needs (for example, a buggy for a new baby or assistance for children doing out-of-school activities, such as sports or school trips). Clothing payments issue from the Community Welfare Service of the Department of Social Protection. The payment is part of the exceptional needs payment structure of social welfare and is discretionary. In addition, the Back-to-school Clothing and Footwear Allowance is made available once a year to children in full-time education.
Health	Applicants for international protection receive a medical card (not subject to a means test if residing in direct provision accommodation), which provides access to public medical services in the State, including primary care. This flows from the Health Act 1970.[46]

The *Report on improvements to the protection process* notes that at the time of the writing of the report, an estimated 9% of persons within the protection system were at the deportation stage. An estimated 80% of this group were living in direct provision accommodation (Working Group on the Protection Process, 2015, paragraph 3.73).[47]

[46] Persons who are 'ordinarily resident' in the State and who fulfil a means test are entitled to a medical card.
[47] The total was an estimated 718 persons, of whom 577 resided in direct provision centres. The remaining 141 were reporting to the Garda National Immigration Bureau (GNIB). The GNIB does not distinguish in its figures between former protection applicants and other illegal immigrants with deportation orders. The figure of 141 is an estimated 60% share of the total number of persons signing on with the GNIB (paragraph 3.87). However, the number of persons with deportation orders and not signing on with the GNIB was unknown.

SECTION 3

Process to return rejected asylum seekers in Ireland

This section sets out the procedure and options for return of rejected asylum seekers in Ireland. To give a proper context for the study, and to see where the full range of options including voluntary return fit in, it is necessary to set out the path from a negative asylum decision to a deportation order.

Up to December 2016, there was no separate legislative regime in operation for the return of rejected asylum applicants in Ireland – all return of non-EEA nationals with no leave to remain was dealt with under the Immigration Act 1999. Since the commencement of the International Protection Act 2015 throughout 2016, and the entry into operation of the single application procedure from 31 December 2016, a separate legal framework applies to rejected applicants for international protection.

In Ireland, a deportation order is the final stage of a longer process that includes the possibility of voluntary return. Similarly, at EU level, as provided for in the Return Directive (see Recital 10),[48] voluntary return is preferred over forced removal, if it does not undermine the integrity of the return process. A central question in the EMN study was whether or not return procedures could start before all asylum appeals were exhausted. The synthesis report showed that Ireland is in the minority group of Member States where a return decision can only enter into force after all asylum appeals have been exhausted (alongside Bulgaria, Greece and Latvia) (European Migration Network 2016b, p. 19). Most Member States have a number of scenarios that can apply depending on the circumstances. For example, in some Member States,[49] return decisions become enforceable after all asylum appeals have been exhausted, but in many of these Member States, the return decision can also generally become enforceable after the first level appeal on the asylum decision. In some Member States,[50] the asylum seeker can be removed before they have exercised fully their right to an effective remedy in exceptional circumstances, for example, if they come from a safe country of origin (see Section 3.4). In most Member States, however, overall, first instance appeals have a suspensive effect (European Migration Network, 2016b, pp. 17–19).

[48] 'Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted…' Recital 10, Directive (2008/115/EC).

[49] Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Sweden and the UK.

[50] Belgium, Germany, Finland, France, Malta, the Netherlands, Slovakia, Sweden and the UK.

3.1 PROTECTION DETERMINATION PROCESS

The International Protection Act 2015, which entered into operation from 31 December 2016, forms the basis of the legal framework for dealing with applications for international protection and permission to remain for international protection applicants in Irish law. The 2015 Act provides for applications for international protection (refugee status and subsidiary protection), as well as permission to remain cases, to be processed as part of a single procedure by one decision maker.

The International Protection Act 2015 overhauls the previously sequential process, which was set out in the Refugee Act 1996 (as amended) and the European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013) as amended by the European Union (Subsidiary Protection) Regulations 2015 (S.I. No. 137 of 2015).

The International Protection Office (IPO) replaces the Office of the Refugee Applications Commissioner (ORAC) as the first instance decision-making body. The IPO is an office within the Irish Naturalisation and Immigration Service (INIS) responsible for processing applications for international protection under the International Protection Act 2015. It also considers, as part of a single procedure process, whether applicants should be given permission to remain. The IPO comprises, *inter alia*, a chief international protection officer and international protection officers who are independent in the performance of their international protection functions (Department of Justice and Equality, December 2016).[51]

From 31 December 2016, the first instance appeals body, formerly the Refugee Appeals Tribunal, is replaced by the statutorily independent International Protection Appeals Tribunal (IPAT).[52]

The Tribunal hears appeals from negative determinations of international protection made by the IPO and also appeals under the Dublin Regulations.

3.1.1 The protection application

The protection applicant makes an application for international protection under Section 15 of the International Protection Act 2015. The format of the application form is set out in the International Protection Act 2015 (Application for International Protection Form) Regulations 2016 (S.I. No. 660 of 2016). The application should cover the grounds for the application for international protection (refugee status and subsidiary protection), and should also contain

[51] Department of Justice and Equality, Irish Naturalisation and Immigration Service (23 December 2016) 'Notice – Commencement of the International Protection Act 2015", available at www.inis.gov.ie.
[52] International Protection Act 2015 (Establishment Day) Order 2016 (S.I. No. 661 of 2016).

further information for assessing permission to remain under Section 49 of the Act and for assessing application of the prohibition on non-*refoulement* under Section 50 of the Act.

If the international protection officer deems the application admissible, after the personal interview with the applicant they prepare a report with a recommendation under Section 39 of the Act. This report can recommend that the applicant be granted refugee status, subsidiary protection status or neither refugee nor subsidiary protection status. Under Section 40 of the Act, the Minister notifies the applicant of the recommendation of the international protection officer.

3.1.2 Assessment of permission to remain where a negative recommendation for protection status is made at first instance

Once the international protection officer has made a negative recommendation under Section 39 of the Act, the Minister assesses the case for permission to remain of the applicant under Section 49 of the Act. In deciding on the application for permission to remain, the Minister has due regard to

a) the nature of the applicant's connection with the State, if any;
b) humanitarian considerations;
c) the character and conduct of the applicant both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
d) considerations of national security and public order; and
e) any other considerations of the common good.

The applicant is notified of the decision with regard to permission to remain, at the same time as being notified of the negative recommendation relating to protection status.

3.1.3 First instance appeal to International Protection Appeals Tribunal

If the applicant has been unsuccessful in being granted international protection at first instance, under Section 41 of the Act, they can appeal the negative recommendation for refugee status or the negative recommendation for refugee and subsidiary protection status to the International Protection Appeals Tribunal. Even if the applicant has received a positive recommendation for permission to remain under Section 49, the applicant may still proceed with the first instance appeal against the negative recommendation for international protection status.[53]

[53] See commentary on this in the *Information booklet for applicants*: '13.6 What happens if I am granted permission to remain but I decide to appeal the protection recommendation from the IPO to the IPAT? 13.6.1

3.1.4 Review of permission to remain decision following unsuccessful appeal to International Protection Appeals Tribunal

If the negative recommendation of the international protection officer to grant international protection to the applicant is affirmed by the International Protection Appeals Tribunal (IPAT), the decision in relation to permission to remain is reviewed under Section 49(7) of the Act. The applicant is given the opportunity to submit further information in support of their claim for permission to remain for the review. A time period of five days for submission of extra information is set out in the International Protection Act 2015 (Permission to Remain) Regulations 2016 (S.I. No. 664 of 2016). There is no appeal to IPAT against a negative decision regarding permission to remain.

3.2 JUDICIAL REVIEW

As noted at Section 2.3.3, judicial reviews can be taken against decisions made at any stage of the protection process. The High Court can decide to send back the decision to the relevant decision-making body for a fresh decision. As the International Protection Act 2015 brings into force a single determination procedure with permission to remain being assessed as part of one process, this has the impact of reducing the number of opportunities to take judicial reviews. Prior to implementation of the International Protection Act 2015, a negative recommendation of ORAC, the Refugee Appeals Tribunal (RAT) or a negative decision of the Minister for Justice and Equality in relation to refugee or subsidiary protection status or on leave to remain could all be separately judicially reviewed (Working Group on the Protection Process, 2015, paragraph 1.29). According to the *Report on improvements to the protection process*, in the period 2009–2014, judicial reviews were filed in relation to an annual average of 3.81% of ORAC decisions, 15.41% of RAT decisions and 28.29% of INIS decisions (Working Group on the Protection Process, 2015, Appendix 6).

3.3 SUBSEQUENT APPLICATIONS FOR REFUGEE STATUS

Section 22 of the International Protection Act 2015 updates the earlier provisions under Section 17(7) of the Refugee Act 1996 (as amended), for a person who has been refused protection status to make a further application with the consent of the Minister. Consent to make a subsequent application is only given where, following a preliminary examination, the Minister is satisfied that new elements or findings have arisen or have been presented by the applicant that make it

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You can still register at your local Immigration Registration Office so your permission to remain in the State (Ireland) can come into effect. However, if you appeal the protection decision, because you are still an applicant for international protection, you will not be able to enter or be in employment, or engage in business, trade or a profession until the outcome of your appeal to the IPAT is known', available at: www.ipo.gov.ie.

significantly more likely that the person will be declared a refugee or qualify for protection in the State and the person through no fault of their own was incapable of presenting these findings for the purposes of his or her previous application (including any appeal). If the Minister gives his or her consent, the applicant's subsequent application for asylum follows the same procedure as a first instance application and has a suspensive effect. If the Minister does not consent to the applicant making a subsequent asylum application, it is open to the applicant to appeal the refusal decision to IPAT. This appeal is decided without an oral hearing. Under the Refugee Act 1996, the numbers of persons seeking permission to make subsequent applications for asylum were relatively low.[54]

3.4 ACCELERATED PROCEDURES AND SAFE COUNTRIES OF ORIGIN

One of the areas explored in the EMN study was the use of accelerated procedures and the safe country of origin concept in the processing of asylum claims. Article 31(8) of the recast Procedures Directive sets out ten situations in which Member States bound by the directive can use accelerated procedures. The synthesis report for the EMN study found that being from a safe country of origin was one of the situations most likely to trigger accelerated procedures in Member States (European Migration Network 2016, p. 26). Recent EMN outputs have shown that there is considerable interest among other Member States regarding the development of safe countries of origin lists and their use in relation to asylum applications. The EMN ad-hoc query summary on safe countries of origin, published in March 2017, indicates that the Netherlands has 31 designated safe countries of origin, followed by the UK (25) and Austria (20). Eleven countries that have safe countries of origin lists, including the Netherland and Austria, use accelerated procedures for applicants from safe countries of origin (European Migration Network, 2017).

In Ireland, South Africa is designated as a safe country of origin. Section 72 of the International Protection Act 2015 provides that the Minister for Justice and Equality may designate safe countries of origin. Section 73 of the International Protection Act sets out a non-exhaustive list of situations in which the Minister may accord priority to certain cases. Applicants from safe countries of origin are not specifically listed. However, applicants from safe countries of origin are not treated exactly the same as other applicants. Section 43 provides for an accelerated appeals procedure for applicants from safe countries of origin; in other words, the appeal will be processed without holding an oral hearing.

[54] Correspondence with Asylum Policy Division, Irish Naturalisation and Immigration Service, Department of Justice and Equality, June 2016.

3.5 RETURN

If the applicant is refused permission to remain at the review process, the applicant is then without permission to remain in the State. The applicant is eligible for voluntary return and must notify the Minister for Justice and Equality under Section 48(4) of the Act of their decision to return voluntarily to the country of origin within five days of receipt of the final negative decision relating to permission to remain. If the applicant does not return voluntarily, or is not seen to be making reasonable efforts to depart voluntarily under Section 48(5) of the Act, the Minister for Justice issues a deportation order under Section 51 of the Act, following consideration of the prohibition of *refoulement* under Section 50.

The procedures relating to permission to remain under the International Protection Act 2015 differ from those relating to leave to remain, which apply to persons, other than rejected protection applicants, who are illegally present in the State, under the Immigration Act 1999. In the procedure under the Immigration Act 1999, which applied to rejected asylum seekers prior to the entry into force of the International Protection Act 2015 on 31 December 2016, the non-EEA national illegally present in the State receive a '15-day letter', notifying them of the intention to issue a deportation order and the options open to them, including voluntary return and the submission of information for assessment of 'leave to remain'. If leave to remain is not granted, then a deportation order is issued.[55]

3.5.1 Voluntary return

Voluntary return is an option for protection applicants and rejected protection applicants who have not had a deportation order made against them. Once a deportation order has been issued, the option of voluntary return is no longer available (Working Group on the Protection Process, 2015, paragraph 1.27).

Section 48 of the International Protection Act 2015 provides for the option to return voluntarily to the country of origin. This can apply to applicants who have not yet had their applications or first instance appeals determined, or to applicants who have been unsuccessful in their applications for protection and for permission to remain. The Minister sets out the options to both categories in writing. In the case of applicants who have not yet had a final determination, they can withdraw their application or first instance appeal, and confirm to the Minister that they will voluntarily leave the State, within the period specified in the Minister's notice. In the case of rejected applicants, applicants are given five days from the date of

[55] For a fuller discussion of the procedure leading to the issuing of a deportation order under the Immigration Act 1999, see Quinn and Gusciute, 2015 (section 2).

receipt of the Minister's notice, to confirm to the Minister that they will voluntarily return to their country of origin.

Voluntary return does not apply to persons who are deemed to be a danger to the security of the State or have been convicted of a particularly serious crime. A deportation order will still issue in such cases, even if the person expresses a wish for voluntary return.

The form of both notices is set out in the International Protection Act 2015 (Voluntary Return) Regulations 2016 (S.I. No. 665 of 2016). The notices explain the benefits of voluntary return over a deportation order (i.e. that the person may be eligible to return to the State at a later stage under a legal scheme if they leave voluntarily but that a deportation order means that the person is permanently excluded from the State).

The notice also explains that assistance in return, including payment of travel and the possibility of a small reintegration grant, may be available from IOM, and that administrative and other supports are available from the Voluntary Return Unit of the Irish Naturalisation and Immigration Service (INIS). (For details on the Department of Justice and Equality/IOM assisted voluntary return programme, see Section 5.2.1).

3.5.2 Deportation order stage

Subject to the prohibition on *refoulement* contained in Section 50 of the International Protection Act 2015, Section 51 of the Act provides that the Minister for Justice and Equality shall make a deportation order against an applicant who has been unsuccessful in applications for refugee status, subsidiary protection and permission to remain. A deportation order will not be made against a person who has withdrawn their application for international protection/first instance appeal, and has confirmed under Section 48 of the International Protection Act 2015 that they will voluntarily return to their country of origin and for so long as the Minister is satisfied that the person is making a reasonable effort to remove themselves from the State.

Prior to the commencement of the International Protection Act 2015, all forced returns, both in respect of rejected protection applicants and other third-country nationals without leave to remain in the State, were made under the Immigration Act 1999. Section 51 of the International Protection Act 2015 provides that a deportation order made under that section will be deemed to be a deportation order made under the Immigration Act 1999 and certain relevant provisions in that Act will apply to the deportation order.

The rejected applicant, who is subject to a deportation order, will receive a notice of deportation and, if necessary, in a language that the person understands. The format of the deportation order is set out in the International Protection Act 2015 (Deportation) Regulations 2016 (S.I. No. 668 of 2016). The deportation order specifies a date by which the person is required to remove themselves from the State, and thereafter to remain outside the State.

A deportation order is accompanied by a covering letter, referred to as an 'arrangements letter'. The arrangements letter specifies the date by which the person is required to leave the State. If the person does not leave the State, they are obliged to report to the Garda National Immigration Bureau (GNIB) at a time specified in the arrangements letter to allow for arrangements to be made for deportation. At the appointment, the person is required to produce any travel documents, such as tickets, which could help in their removal from the State. The arrangements letter also notes that if the person fails to comply with the terms of the deportation order, or contained in the arrangements letter, the person may be liable to arrest without warrant and detention under the terms of Section 5 of the Immigration Act 1999.

The person is required to report at regular intervals at the GNIB headquarters, at Burgh Quay in Dublin, or at a local Garda station.[56]

3.5.2.1 Revocation of deportation order

Under Section 3(11) of the Immigration Act 1999, a deportation order can be amended or revoked by the Minister for Justice and Equality. There is no other form of suspension, withdrawal or administrative appeal for a deportation order (Quinn and Gusciute, 2015, p. 23). A deportation order can be revoked if the person is inside or outside the State.

Section 3(11) of the Immigration Act 1999 continues to apply to revocation of deportation orders of rejected protection applicants, made under the International Protection Act 2015.

It has been established in case law that applicants seeking revocation of deportation orders under Section 3(11) need to present the Minister with new information. In *EAI v. Minister for Justice*, the Court stated that the Minister 'must also satisfy himself that no new circumstances are shown to have arisen since the making of the deportation order which would bring into play any of the statutory impediments to the execution of a deportation order.'[57] The Court said that such new circumstances could include new information to substantiate a request for

[56] Interview with official Irish Naturalisation and Immigration Service, 28 June 2016.
[57] *EAI v. Minister for Justice* [2009] IEHC 334.

leave to remain, or information about changed conditions in the country of origin that could impact on an assessment of the prohibition of *refoulement* under the Refugee Act 1996.

In *Akujabi v. Minister for Justice,* the judge stated:

> *any such application under section 3(11) to revoke a deportation order made having considered such representations, must advance matters which are truly materially different from those presented or capable of being presented in the earlier application. There must be...unusual, special or changed circumstances.*[58]

This requirement for new information 'can be understood to be an attempt to prevent applicants from trying to frustrate their deportation by presenting information in support of the revocation application which was readily available to them in advance of the making of the deportation order' (Quinn and Gusciute, 2015, p. 24).

3.5.2.2 Suspensive effect of legal proceedings in relation to deportation orders

A revocation application does not, in itself, suspend the enforcement of a deportation order.[59] As noted by Quinn and Gusciute (2015, p. 25), this principle was established in *Okunande v. Minister for Justice*, 'where the question for consideration was whether the issuing of proceedings seeking leave to apply for judicial review to overturn the deportation entitled the applicants to remain in the State pending the hearing of the leave application. The Supreme Court held that no such entitlement existed' (Quinn and Gusciute, 2015, p. 25). However, this has also been considered in recent jurisprudence. In *A v. Governor of the Dóchas Centre* [2014] IEHC 643, the applicant had been evading deportation for almost five years and subsequently applied for revocation of the deportation orders against her and her daughter under Section 3(11) of the Immigration Act 1999. She was advised by the Repatriation Unit of INIS that she would need to attend the offices of the GNIB in order for the application to be considered. Her solicitor was informed:

> *We are unable to provide your client with an undertaking in this case. Please be advised that your request is non-suspensive of the deportation order made in respect of your client. The enforcement of the deportation order remains an operational matter for the Garda National Immigration Bureau (GNIB).*[60]

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[58] *Akujabi v. Minister for Justice* [2007] IEHC 19.
[59] *Okunade v. Minister for Justice* [2012] IESC 49.
[60] See *A. v. Governor of the Dóchas Centre* [IEHC] 643, paragraph 10.

The applicant was arrested and placed into detention, pending arrangements being made for her removal. The judge found that the Minister was not entitled to impose such a condition in relation to the applicant's application under Section 3(11) and ordered that the applicant be released.[61] However, in the subsequent judicial review proceedings challenging the refusal to revoke the deportation orders in relation to the same applicant and her daughter, the judge, hearing the judicial review proceedings, made the obiter (aside) comment that:

> *rule of law considerations might suggest that the more significant illegality in the case, that one might have thought needed to be addressed prior to favourably considering any such application, was the disregard by the first named applicant of her legal obligations.*[62]

In relation to judicial reviews, the *Report on improvements to the protection process* notes that 'when a judicial review is lodged at the High Court, the person remains at the stage in the process where they are until the judicial review is resolved' (Working Group on the Protection Process, 2015, paragraph 3.122). Thus, when a challenge to a deportation order is taken by means of judicial review, while the taking of the proceedings does not in itself have a direct suspensive effect, the proceedings do delay the effecting of the deportation order. When granting leave to take judicial review proceedings in relation to deportation orders, the judge may also choose to grant an injunction restraining deportation.[63]

3.5.2.3 Detention for the purposes of effecting a deportation order

Section 5 of the Immigration Act 1999 provides that if a person fails to comply with any aspect of the deportation order, they may be arrested and detained pending removal. This provision does not apply to minors.[64] The period for such detention is 56 days.[65] The International Protection Act 2015 amends Section 5(9)(b) of the Immigration Act 1999 (as amended) to permit the detention period of 56 days to be extended beyond that period by a District Court judge.[66] Section 51(4) of the

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[61] *A. v. Governor of the Dóchas Centre* [IEHC] 643, paragraphs 20 and 21 (Eager J).

[62] *K.R.A. and B.M.A. v. the Minister for Justice and Equality* [2016] IEHC 289, paragraph 6 (Humphreys J).

[63] For example, see *K.R.A. and B.M.A. v. the Minister for Justice and Equality* [2016] IEHC 289, paragraph 9: 'On 3rd June 2015, the applicant was granted leave to being the present proceedings by Faherty J., who also granted an injunction restraining deportation'. Furthermore, Humphreys J, while dismissing the applicants' claim and the basis for the injunction being therefore removed, decided to leave the injunction in place until any applications for appeal be lodged, in the interests of the orderly management of the proceedings' (paragraph 89).

[64] Immigration Act 1999, Section 5(4) (a).

[65] Immigration Act 1999, Section 5 (6) (a).

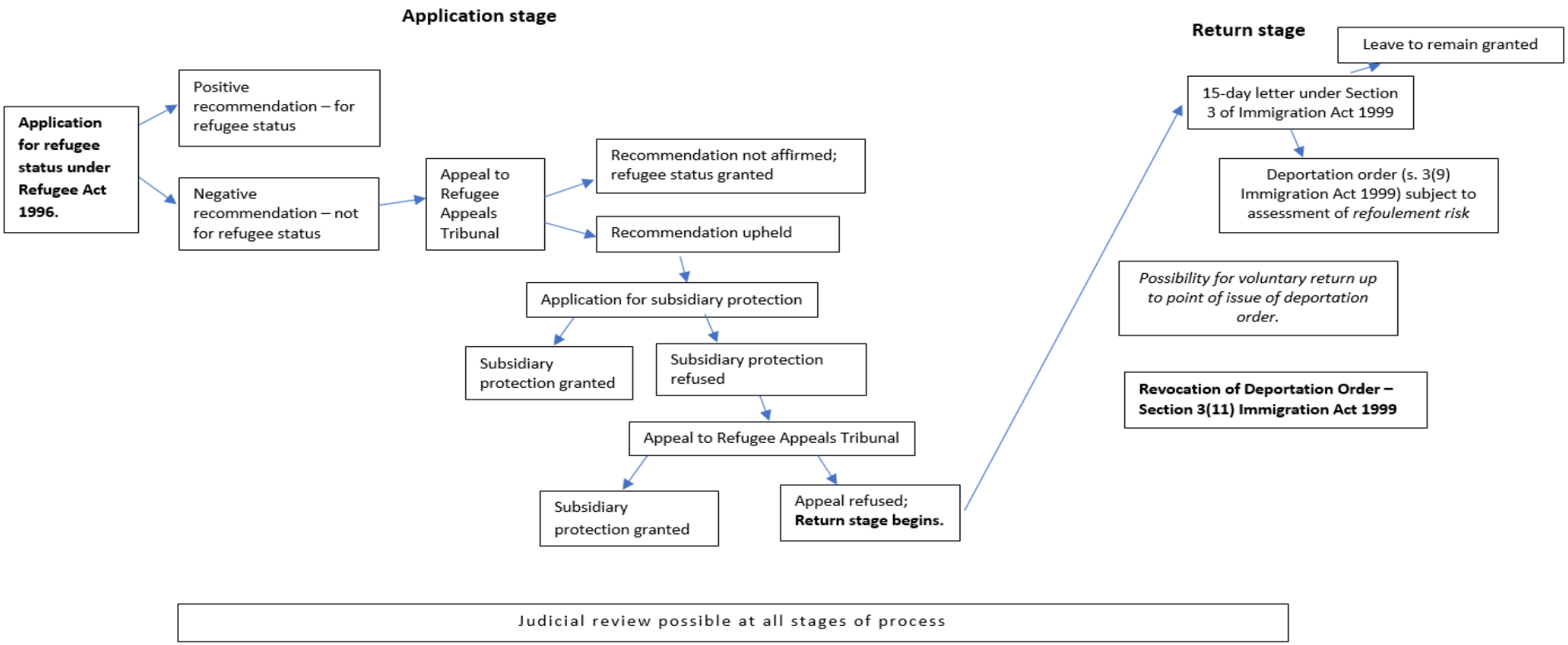
[66] Section 5 of the Immigration Act 1999 as substituted by Section 78 of the International Protection Act 2015. Section 78 of the International Protection Act 2015 was commenced by the International Protection Act 2015 (Commencement) (No. 2) Order 2016 (S.I. No. 133 of 2016).

International Protection Act 2015 provides *inter alia* that the provisions on detention in the Immigration Act 1999 apply to a deportation order made under Section 51 of the International Protection Act 2015.[67]

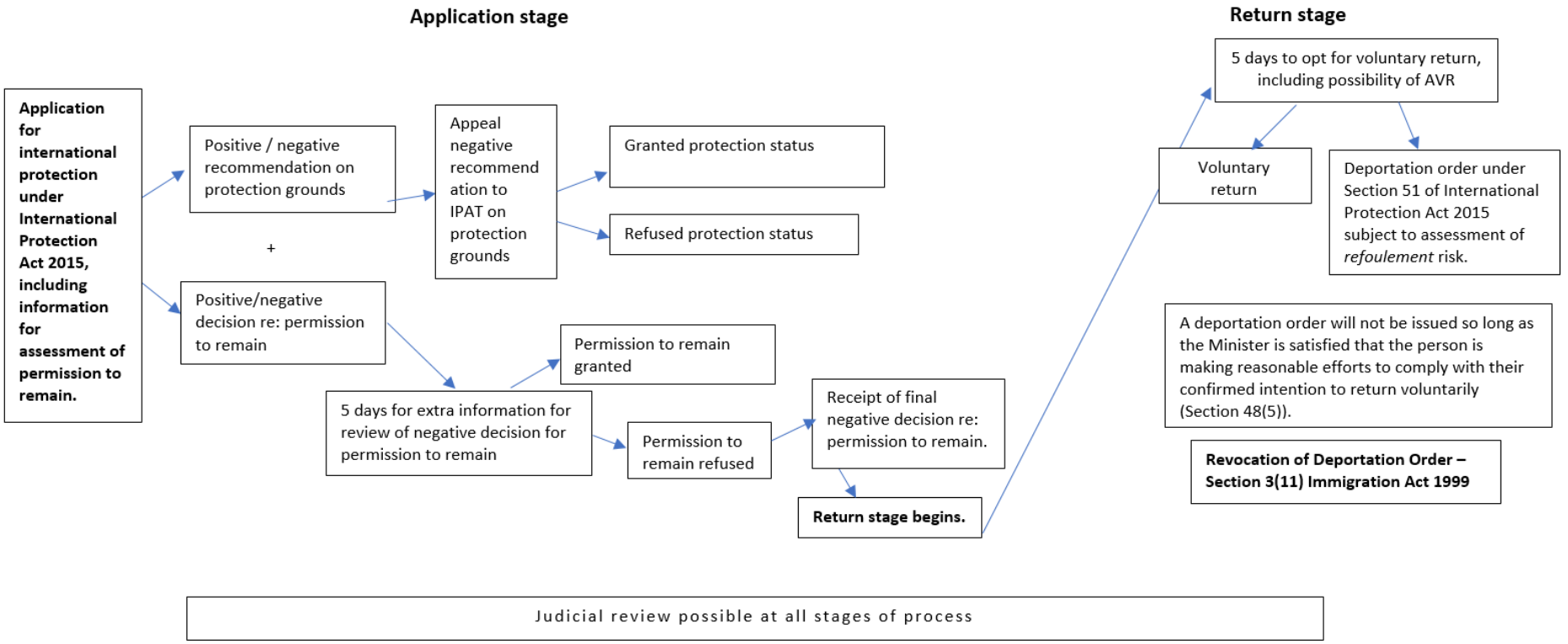
Figure 2 contrasts the pathway from protection application to issuing of a deportation order prior to and subsequent to commencement of the International Protection Act 2015.

[67] The Immigration Act 1999 applies to deportation orders made under the International Protection Act 2015, except for subsections (2), (3), (4), (5), (6), (7), (8), (9)(b) and (12) of Section 3.

FIGURE 2 PATHWAY FROM APPLICATION FOR INTERNATIONAL PROTECTION TO ISSUING OF A DEPORTATION ORDER IN IRELAND, BEFORE AND AFTER 31 DECEMBER 2016



After 31 December 2016:



SECTION 4

Other consequences of a negative decision

4.1 SUPPORTS TO REJECTED ASYLUM SEEKERS

The obligation to return is the obvious consequence of a negative decision on a protection application and permission to remain. The EMN study also placed emphasis on other consequences, in terms of conditions and rights, that might have an impact on incentivising cooperation by rejected protection applicants in return procedures.

In particular, the synthesis report found that there has been some shift towards withdrawing or reducing access to accommodation and other supports from the applicant at an earlier stage, rather than waiting up to the point that the applicant leaves the territory. The report distinguished between supports available to rejected asylum seekers during appeal procedures, after final appeal, during the period of voluntary departure (in accordance with the Return Directive), and after the period of voluntary departure has elapsed. It explored whether or not accommodation and other supports after the period of voluntary departure has elapsed are conditional with cooperation with the return process (European Migration Network 2016b, pp. 12–15).

For example, in Sweden, there has been a change in the accommodation and supports provided to rejected asylum seekers, who formerly had the right to accommodation and daily allowances until they left the territory. According to the synthesis report, Sweden considered that these rules 'did not encourage the return of rejected asylum seekers'. From June 2016, new rules provide that rejected asylum seekers can only stay in reception facilities during the period of voluntary departure or if they cooperate in the return procedure (European Migration Network, 2016b, p. 12).

The synthesis report also stated that 'the rationale for keeping rights to a minimum flows directly from the desire to make further stay unattractive and to not undermine the credibility and sustainability of the EU migration and asylum systems' (European Migration Network, 2016b, p. 13).

According to the findings of the synthesis report, Ireland is unusual in that it allows continued residence in direct provision accommodation for rejected asylum seekers until 'such times as they are granted some form of status and move into the community, leave the State voluntarily or are removed' (Working Group on the Protection Process, 2015, paragraph 1.30). The synthesis report found that, in

Ireland and Luxembourg, rejected asylum seekers, in practice, stay in reception facilities after the period of voluntary departure has ended – in effect until they leave the territory (European Migration Network, 2016b, p. 15). However, it should be noted that exceptions and special facilities apply for vulnerable groups in other Member States who do not allow continued residence in reception facilities beyond the period of voluntary departure or for people who do not cooperate in the return procedure. For example, in Sweden, families with minor children and unaccompanied minors are exempt from the new rules. In the Netherlands, families with minor children are usually placed in a family care facility and in Finland, the director of the reception centre can decide that a person can stay for a reasonable period on special personal grounds (European Migration Network, 2016b, p. 15).

In Ireland, rejected protection applicants can continue to reside in direct provision accommodation (Working Group on the Protection Process, 2015, paragraph 1.30). In practice, rejected applicants living in direct provision centres retain their medical card, which provides access to all public medical services in State, for as long as they remain in the system. [68] Rejected protection applicants residing in direct provision can also continue to receive some exceptional needs payments.

The prohibition on employment applicable to protection applicants[69] continues for rejected applicants. A rejected protection applicant will not have access to the labour market unless they obtain permission to remain and a consequent immigration status that brings with it the right to access the labour market. A rejected protection applicant with a deportation order against them has had a final negative decision regarding permission to remain.

With regard to education, children may continue to attend school for as long as they are in the State. However, jurisprudence has held that although a child has a right to education while in the State, this does not confer any right not to be removed. In the case *K.R.A. v. B.M.A. – v-Minister for Justice and Equality*, the Court declared:

> *the right to education including to free primary education is a natural and imprescriptible right of the child to be enjoyed without discrimination on grounds such as nationality, legal status or marital status of parents by any child within the jurisdiction; … such a right only applies while the child*

[68] Correspondence with Asylum Policy Division, Department of Justice and Equality, June 2016.
[69] See Section 2.4 regarding Supreme Court ruling of 30 May 2017 in case *N.V.H. v. Minister for Justice and Equality* [2017] IESC 35.

is present in the State and does not confer any right not to be removed, even to a country with an inferior social or educational system.[70]

4.2 TOLERATED STAYS AND REGULARISATION

The EMN study also looked at how Member States deal with the situation where the rejected asylum seeker cannot be returned or immediately returned. This can lead to a number of consequences for the rejected protection applicant, including the granting of 'tolerated stays' or regularisations in various circumstances.

The synthesis report found that Ireland is in a small minority of Member States who do not issue a separate decision relating to the fact that the person cannot be immediately returned (European Migration Network, 2016b, p. 32).[71]

4.2.1 Temporary statuses/'tolerated stay'

Member States can issue temporary statuses to third-country nationals who cannot immediately be returned, in accordance with certain criteria, which include personal circumstances of the individual (such as illness), readmission issues with the country of origin, or serious threat to the life or freedom of the individual (European Migration Network, 2016b, p. 32). The synthesis report posits that one rationale for granting tolerated stays is: 'ensuring that persons who cannot immediately return/be returned remain in contact with the authorities, so that they can easily be found when their return becomes viable (i.e. when obstacles to return have disappeared' (European Migration Network, 2016b, p. 32).

Ireland does not distinguish deportation orders that cannot immediately be enforced from other deportation orders and, consequently, does not apply the concept of 'tolerated stay' to persons in receipt of deportation orders who cannot immediately be returned. Humanitarian considerations are considered part of the permission to remain assessment process, and the risk of *refoulement* is considered prior to the issuing of a deportation order under the International Protection Act 2015 (see Sections 3.1.3 and 3.5 above). The provisions of Section 4 of the Immigration Act 2004 apply to any permission to remain granted, in relation to the requirement to register for an immigration permission and the conditions attaching to any immigration permission – such as the right to work or study. A permission to remain given under Section 49(11) of the International Protection Act 2015 is deemed to be a permission under Section 4 of the Immigration Act 2004 and the provisions of that Act apply accordingly.

[70] *K.R.A. and B.M.A. v. Minister for Justice and Equality* [2016] IEHC 289, paragraph 90 (Humphreys J).
[71] Ireland, alongside Belgium, Finland, France, Italy and Poland.

If there are other obstacles to the enforcement of a deportation order, such as lack of cooperation in the country of origin, this does not lead to a temporary tolerated status. In such a case, the deportation order would still stand, unless there was new information leading to a successful application to revoke the deportation order (see Section 3.5.2.1 above).

4.2.2 Possibility for regularisation

The synthesis report found that several Member States provide some form of regularisation, but, in most cases, regularisations are granted on a case-by-case basis in specific circumstances (European Migration Network, 2016b, p. 33). This is in line with the commitment in the European Pact on Immigration and Asylum of October 2008 (Council of the European Union, 2008) for Member States 'to use only case-by-case regularisations rather than generalised regularisation, under national law, for humanitarian or economic reasons'. The Pact underlies Ireland's policy in respect of regularisations of rejected asylum seekers or other irregular migrants. The Minister for Justice and Equality has said that, 'while the Pact is not legally binding, the political commitment among Member States, then and now, is clearly against any form of process that would in any way legitimise the status of those unlawfully present without first examining the merits of their individual cases.'[72]

However, the *Report on improvements to the protection process* recommended exceptional measures for persons in the system for five years or more: that the deportation orders of persons in the protection system for five years or more from the date of initial application be revoked subject to certain conditions; and that such persons be granted leave to remain (Working Group on the Protection Process, 2015, Recommendations 3.134 and 3.135). The details of the recommendations and the conditions are as follows:

> *3.134 All persons with a deportation order who have been in the system for five years or more from the date of initial application should have their deportation order revoked under section 3(11) of the Immigration Act 1999 as soon as possible and within a maximum of six months from the implementation start date subject to the conditions below:*
>
> *a. that they confirm their identity, or if unable to do so, that they swear a declaration as to their identity and that they have no other identities;*
>
> *b. that they cooperate with the State with the review of their case;*

[72] Department of Justice and Equality (February 2017) Response to parliamentary questions 7684/17 and 7685/17.

> *c. that the person has not been evading deportation;*
>
> *d. that they pose no threat to public order or national security and that they have not been involved in criminal activity.*
>
> *3.135 Leave to remain should then be granted, as soon as possible and within a maximum of six months from the implementation start date subject to the three conditions at para 3.129 above. This is recommended as an exceptional measure.*

The three conditions referred to are: the character and conduct of the person both within and (where relevant and ascertainable) outside the State including any criminal convictions; the common good; and considerations of national security and public policy.

According to the second audit of progress on the implementation of the recommendations of the *Report on improvements to the protection process* (Department of Justice and Equality, 2017b), these recommendations have been implemented. According to the Department, 'it is estimated that almost all of those identified in the Report as being over 5 years in the Direct Provision system and who don't have any impediments such as ongoing judicial reviews have now had their cases processed to completion' (Department of Justice and Equality, 2017b, p. 1).

The fact that this is not an amnesty or blanket regularisation has been repeatedly emphasised (for example, *Irish Times,* June 2016b).[73] The Department of Justice again made this point in the second audit, stating that 'blanket revocations without due process are not considered appropriate notwithstanding length of time considerations' and, similarly, that leave to remain should only be granted after due process (Department of Justice and Equality, 2017b, pp. 1-2).

The *Report on improvements to the protection process* also recommended:

> *in the future for persons who are five years or more in the system, who have an unenforced Deportation Order for 24 months and who have cooperated with the authorities, and taking into account relevant public policy issues, consideration should be given on a case by case basis to apply the principles and solutions outlined at paragraph 3.134.*

In the *Second audit of progress*, the Department of Justice and Equality states that revocation of deportation orders has been considered on a case-by-case basis since June 2015, and that 'the satisfactory implementation of the Single Procedure …

[73] "Minister rules out amnesty for asylum seekers in direct provision." Available at: www.irishtimes.com

over a period of time will continue to assist in this process' (Department of Justice and Equality, 2017b, p. 19).

SECTION 5

Challenges regarding effective return of rejected asylum seekers

5.1 CHALLENGES TO EFFECTIVE RETURN OF REJECTED ASYLUM SEEKERS

While it can be said that the focus of the public debate on the migration crisis and the international protection system is not on return of rejected asylum seekers, return is still a policy priority for the Irish authorities (Section 1.1). Ireland faces many of the same challenges relating to return and to the effecting of deportation orders as other EU Member States. As noted in Section 2, Ireland, although not participating in the EU Return Directive, fully supports the EU Action Plan on Return from September 2015 and the aims of the Commission Communication on Effective Return from March 2017.

The synthesis report for the EMN study explored a number of challenges to effective return that are common to all Member States. These challenges include those related to the resistance of the third-country national to removal (such as physical resistance or absconding), refusal by third countries to readmit their citizens; refusal by countries of origin to issue travel or identity documents; problems in the acquisition of travel documents, particularly when no copies of the originals are available and when establishing citizenship is complex and poses administrative and organisational challenges, for example, when the Member State does not have diplomatic representation in the country of return.

Ireland experiences many similar challenges to return as other EU Member States, in particular in relation to identification and obtaining travel documentation for returnees, given that many third-country embassies are based in London. There are also some challenges that are particular to the Irish context. The *Report on improvements to the protection process* noted:

> *obstacles to the implementation of deportation orders include people evading deportation orders, judicial reviews being taken by persons who are the subject of deportation orders and the impact of a 'trailing family member' at another stage in the system. [See further detail below]. Additional obstacles include the limited number of embassies in Ireland and the consequential gap in assistance with travel documentation and return arrangements.*

It further noted that 'a low deportation order implementation rate can have a negative impact on the integrity of the protection process' (Working Group on the Protection Process, 2015, paragraphs 3.87 and 3.89).

Particular challenges can arise out of jurisprudence. The case *Omar v. Governor of Cloverhill Prison* ruled that there was no legislative power of entry to private dwellings to enforce a deportation order.[74] This challenge was common to all deportation orders, not just those in respect of rejected asylum seekers. Section 78 of the International Protection Act 2015 addresses this challenge by providing a power to enable the Garda National Immigration Bureau (GNIB) to enter a residential address for the purpose of arresting someone subject to a deportation order and removing them from the State. As noted in Section 2.3.2, this power was commenced in March 2016 via the International Protection Act 2015 (Commencement) (No.2) Order 2016 (S.I. No. 133 of 2016).

The challenge of a 'trailing family member' is more common to the return of rejected asylum seekers.[75] According to the *Report on improvements to the protection* process:

> *under current practice, a person's leave to remain case is not processed to finality if they have a family member at the protection process stage in the judicial review process. The practice of INIS is to wait until all family members are at the leave to remain stage or until the case of the 'trailing family member' has otherwise been resolved at the protection process or by means of the judicial review process. The total number of cases which cannot be processed due to the practice in relation to 'trailing family members' is unknown but the number is considered to be significant.* (Working Group on the Protection Process, paragraph 3.70)

As also noted by the report, this issue can impact on the timing of the implementation of deportation orders (Working Group on the Protection Process, 2015, paragraph 3.87). According to INIS, however, this issue is not as large a problem as it was at the time of the writing of the report.[76] Some of these issues have been addressed by the exceptional measures, recommended by the *Report on improvements to the protection process,* in relation to clearing the backlog of cases of persons within the system for five years or more (see Section 4.2.2 above). The coming into operation of the single procedure under the International Protection Act 2015 is also likely to impact on this issue, in that protection and permission to remain will be dealt with as part of the same process, and the timeline will be shorter.

[74] *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579
[75] Interview with official, Irish Naturalisation and Immigration Service, June 2016.
[76] Interview with official, Irish Naturalisation and Immigration Service, June 2016.

5.2 MEASURES TO ADDRESS CHALLENGES TO EFFECTIVE RETURN OF REJECTED ASYLUM SEEKERS

Ireland uses a number of measures to address the challenges to return identified in Section 5. These include the development of assisted voluntary return programmes, bilateral cooperation with third countries, cooperation with other jurisdictions (the UK) and, some applicants are detained pending their removal from the State. There are also legislative amendments to address challenges as they arise. The commencement of the International Protection Act 2015 is also intended to result in 'the speeding up of processing protection applicants through the system and, in turn, to lead to the possibility of speedier repatriation to the country of origin for unsuccessful applications'.[77]

5.2.1 Assisted voluntary return

The Department of Justice and Equality, in conjunction with the International Organisation for Migration (IOM), offers a Voluntary Assisted Return and Reintegration Programme (VARRP) for asylum seekers, rejected asylum seekers and other illegally present migrants. The programme for asylum seekers and rejected asylum seekers is the Voluntary Assisted Return and Reintegration Programme (VARRP). Flights home are paid and IOM can assist in procuring travel documents, and provide support at the airport of departure and arrival, if necessary. Reintegration assistance, if applied for in advance and conditions are met, can also be drawn down after arrival in the home country. In addition to the VARRP, the Department of Justice and Equality assists people who are illegally present in the State and wish to return home voluntarily by covering the cost of the flight, if necessary, and assisting in securing travel documents.[78]

Table 7 shows the numbers of rejected international protection applicants availing of assisted voluntary return for the years 2011 to 2016.

[77] Interviews with Irish Naturalisation and Immigration Service, 7 May 2016.

[78] Response to parliamentary question 2648/16: 'Deputy Sean Fleming asked the Minister for Justice and Equality the funding schemes in place through her Department or through non-Government agencies funded by her Department to give a grant to non-Irish persons who are being repatriated to their own country and who agree to go voluntarily …'

TABLE 7 REJECTED ASYLUM SEEKERS AVAILING OF VOLUNTARY RETURN AND ASSISTED VOLUNTARY RETURN, IRELAND, 2011–2015 (N.)

Year	Number availing of voluntary return	Of whom, number availing of the Assisted Voluntary Return and Reintegration Programme
2011	184	159
2012	119	100
2013	89	64
2014	59	45
2015	30	22

Source: Irish Naturalisation and Immigration Service (INIS).

The *Report on improvements to the protection process* also made recommendations in relation to improving the uptake of assisted voluntary return (AVR). These included implementation of the single procedure to make it more likely that AVR will be availed of; provision of support to the IOM, NGOs and other organisations to raise awareness about AVR; provision of support to IOM for the delivery of AVR counselling and services to persons wishing to avail of AVR; and a recommendation that the Legal Aid Board should include information about AVR as part of its early legal advice, where appropriate (Working Group on the Protection Process, 2015, Recommendation 3.312). The *Second audit of progress* reports all these recommendations as implemented (Department of Justice and Equality, 2017b, p. 17).

5.2.2 Use of detention

The synthesis report found that detention is commonly used by Member States to prevent absconding (European Migration Network, 2016b, p. 29).[79] In Ireland, there is no general detention of holders of deportation orders, but there can be limited detention in relation to non-compliance with the deportation order. As discussed in Section 3.5.2.3, Section 5 of the Immigration Act 1999 provides that if a person fails to comply with any aspect of the deportation order, they may be arrested and detained pending removal. This provision does not apply to minors.[80]

[79] Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden and the UK.
[80] Immigration Act 1999 (as amended), Section 5(6) (a). Section 5 of the Immigration Act 1999 as substituted by Section 78 of the International Protection Act 2015.

The period or periods for such detention is eight weeks in aggregate.[81] The International Protection Act 2015 amends Section 5(9)(b) of the Immigration Act 1999 (as amended) to permit the eight-week aggregate detention period to be extended beyond then by a District Court judge.[82] Section 51(4) of the International Protection Act 2015 provides *inter alia* that the provisions on detention in the Immigration Act 1999 apply to a deportation order made under Section 51 of the International Protection Act 2015.[83]

5.2.3 Cooperation with third countries of origin

Many third countries of origin do not have embassies in Dublin. Officials from the repatriation section of the Irish Naturalisation and Immigration Service (INIS) try to take a proactive approach on this issue, if possible to building relationships with embassies. INIS officials travel to London-based embassies on a weekly basis. INIS look at flows and work on having a working relationship in place with relevant embassies.[84]

Ireland has also been trying to build relationships with third-country embassies.[85]

The synthesis report highlighted the practice of Member States applying incentives and disincentives to persuade third-country national authorities to cooperate in return procedures. Five Member States offer aid packages as incentives.[86] Eight Member States also apply political pressure on third countries' authorities so that they accept returns.[87] Ireland does not use these strategies.[88]

Regarding the EU readmission agreements, following approval by Government in 2013, Ireland completed the necessary parliamentary procedures (in accordance with Article 4 of Protocol 21 to the Treaty on the Functioning of the European Union) to opt into 11 EU readmission agreements (with Albania, Bosnia, Georgia, Macao, Macedonia, Montenegro, Pakistan, Russia, Serbia and Sri Lanka) in early 2014. The Council of the European Union and the European Commission were notified accordingly and, in the second half of 2014, the Commission decision accepting Ireland's application was adopted. Ireland had been opted into the Hong

[81] Immigration Act 1999 (as amended), Section 5(8) (a). Section 5 of the Immigration Act 1999 as substituted by Section 78 of the International Protection Act 2015.
[82] Section 5 of the Immigration Act 1999 as substituted by Section 78 of the International Protection Act 2015. Section 78 of the International Protection Act 2015 was commenced by the International Protection Act 2015 (Commencement) (No. 2) Order 2016 (S.I. No. 133 of 2016).
[83] The Immigration Act 1999 applies to deportation orders made under the International Protection Act 2015, except for subsections (2), (3), (4), (5), (6), (7), (8), (9)(b) and (12) of Section 3.
[84] Interview with official, Irish Naturalisation and Immigration Service, May 2016.
[85] Irish Naturalisation and Immigration Service, June 2017.
[86] Belgium, Cyprus, France, the Netherlands and Spain.
[87] Belgium, Germany, France, Lithuania, the Netherlands, Poland and Sweden.
[88] Interview with official, Irish Naturalisation and Immigration Service, May 2016.

Kong agreement since 2004. Since then, all the third countries concerned have been informed that Ireland is now bound by these agreements and arrangements have begun to draw up bilateral protocols with the relevant countries to provide for the smooth operation of the EU readmission agreements between Ireland and the country concerned. [89] While Ireland has opted into several readmission agreements, none of these is operational.

5.2.4 Cooperation with the United Kingdom

Cooperation with the UK in relation to flows that transit or originate from the UK is very important to INIS. According to INIS, this is of value from the point of view of cooperation and learning from UK best practice. Ireland also participates in joint return operations with the UK Border Agency. [90]

[89] Irish Naturalisation and Immigration Service, February 2017.
[90] Interview with official, Irish Naturalisation and Immigration Service, June 2016.

SECTION 6

Conclusions

The synthesis report found that the number of rejected asylum applicants in the EU rose in the period 2011–2015, broadly reflecting the increase in the number of applicants during the same period. The report noted that this had put 'significant additional pressure on Member States to increase the effectiveness of return in general and specifically of this group of irregular migrants' *(*European Migration Network, 2016b, p. 34). This is in the context of the generally low return rate in the EU – the European Commission has stated that, in 2014, less than 40% of the total number of irregular migrants departed effectively (European Commission 2015, p. 2).

Ireland has not implemented any special policy measures in relation to the return of rejected protection applicants directly as a result of the increased flows of migrants to the EU since 2014. While Ireland has not been affected to the same extent as other Member States by the migration crisis, the effective return of rejected protection applicants is a policy priority, and considered necessary to preserve the integrity of the protection system.

Ireland experiences many challenges to the return of rejected applicants, in common with other EU Member States. These common challenges include difficulties in identifying and documenting returnees and effective cooperation with third countries in readmitting their own nationals. These challenges are not specific to the return of rejected asylum seekers, but relate to the return of irregular migrants in general. Ireland faces the particular challenge that many third countries do not have embassies in Ireland. Ireland makes consistent efforts to build up good working relationships with authorities of third countries in relation to return, in particular by building up contacts in London-based embassies.

Ireland also experiences challenges to effective return that are specific to the Irish context. Some of these have stemmed from the duration of the protection application process and the number of opportunities for applicants to seek judicial review to the courts at various points of the process.

The entry into operation of the single application procedure, under the International Protection Act 2015, is intended to address some of these difficulties. INIS consider that the shorter duration of the application process should, in turn,

lead to the possibility of speedier repatriation to the country of origin for rejected applicants. [91]

One challenge to the implementation of deportation orders was the 2013 case, *Omar v. Governor of Cloverhill Prison*.[92] The case ruled that there was no legislative power of entry to private dwellings to enforce a deportation order. This challenge was common to all deportation orders, not just those in respect of rejected asylum seekers. Section 78 of the International Protection Act 2015 addresses this challenge by providing a power to enable the Garda National Immigration Bureau (GNIB) to enter a residential address for the purpose of arresting someone subject to a deportation order and removing them from the State.

In common with other EU Member States, Ireland offers an assisted voluntary return programme to which both protection applicants who wish to withdraw their application and rejected applicants can apply for assistance with their voluntary repatriation.

The synthesis report found that many EU Member States are moving towards a policy of reducing material supports available to rejected asylum seekers, in order to disincentivise stay and to encourage cooperation with return procedures. In Ireland, rejected applicants who are resident in State accommodation provided as part of the direct provision system in practice remain in their accommodation until they leave the State voluntarily or are removed.

The synthesis report also examined the interlinkages between asylum procedures and return procedures in the EU Member States. This included exploring the point at which a return decision could become enforceable. The synthesis report found that a number of different scenarios can apply in Member States, depending on the circumstances.

For example, in some Member States,[93] return decisions become enforceable after all asylum appeals have been exhausted, but in many of these Member States, the return decision can also generally become enforceable after the first level appeal on the asylum decision. In some Member States,[94] the asylum seeker can be removed before they have fully exercised their right to an effective remedy in exceptional circumstances; for example, if the applicant comes from a safe country

[91] Interview with official, Irish Naturalisation and Immigration Service, 8 May 2017.
[92] *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579.
[93] Austria, Bulgaria, Croatia, the Czech Republic, Estonia, Finland, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Poland, Slovakia, Slovenia, Sweden and the UK.
[94] Belgium, Finland, France, Germany, Malta, the Netherlands, Slovakia, Sweden and the UK.

of origin (see Section 3.4). In most Member States, however, overall, first instance appeals have a suspensive effect (European Migration Network, 2016b, pp. 17–19).

Ireland is in a minority of Member States where a return decision can only enter into force after all asylum appeals have been exhausted (European Migration Network 2016b, p. 19).

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EMN Ireland,
Economic and Social
Research Institute,
Whitaker Square,
Sir John Rogerson's Quay,
Dublin 2, Ireland
Telephone **+353 1 863 2000**
Email **emn.ireland@esri.ie**
Web **www.emn.ie / www.esri.ie**
Twitter **@ESRIDublin**

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