

Summary of Regulatory Impact Analysis (RIA)

Department/Office: Justice and Equality		Title of Legislation: International Protection Bill	
Stage: General Scheme of Bill published.		Date: March 2015	
Related Publications: Statement of Government Priorities 2014-2016			
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<p>What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified.</p> <p>1. Do nothing.</p> <p>2. Amend the Refugee Act 1996.</p> <p>3a. Replace existing legislation with an Act dealing with refugee status and subsidiary protection.</p> <p>3b. Replace existing legislation with an Act dealing with refugee status, subsidiary protection and other grounds for leave to remain in the State.</p> <p>Preferred Option: 3b</p>			
OPTIONS			
	COSTS	BENEFITS	IMPACTS
1	No explicit costs.	No benefits.	No improvement in the existing sequential system which is now considered unsuitable.
2	Piecemeal amending legislation. Continued existence of ORAC and RAT.	Refugee status and subsidiary protection examined together.	Single procedure introduced but operated by existing bodies.
3a	Supporting actions of information and training. Need to manage transition of caseloads.	Refugee status and subsidiary protection examined together. Reform of operating bodies.	Single procedure introduced but separate consideration of leave to remain or deportation.
3b	Supporting actions of information and training. Need to manage transition of caseloads.	Single procedure to include all grounds being presented. Reform of operating bodies.	Single procedure introduced incorporating leave to remain, voluntary return or deportation.

POLICY CONTEXT

Ireland's system for the examination of applications for international protection (asylum) comprises the Office of the Refugee Applications Commissioner (ORAC) as the determining authority at first instance and the Refugee Appeals Tribunal (RAT) which can set aside a refusal of ORAC on appeal. The system operates in a sequential manner in relation to qualification for the two categories of international protection, i.e. refugee status or subsidiary protection. A foreign national who is seeking international protection is first assessed for eligibility for refugee status, with the possibility of an appeal against a first instance refusal. If refused refugee status by a final decision, the applicant, in a separate procedure, is assessed for eligibility for subsidiary protection status, again with the possibility of an appeal before a final decision. If refused both forms of international protection the foreign national may make representations to the Minister for Justice and Equality to be allowed leave to remain in the State on other grounds. At any stage an application for judicial review can be made to the High Court by an applicant, a process which can further delay a final determination of the case.

The current system is now considered to be inefficient, out-of-step with the practice in other EU Member States and characterised by high rates of judicial review. The separate assessment in respect of the two forms of international protection effectively doubles the time required to process an application. The time required to finalise an individual case is typically further extended in order to consider representations submitted by the person to be allowed leave to remain in the State. During this lengthy procedure the person may be accommodated in the direct provision system, the cost of which is borne by the Exchequer and which has been criticised as being unsuitable for lengthy periods of stay.

The United Nations High Commissioner for Refugees, the UN agency mandated to promote and protect the rights of refugees and asylum seekers, has described the introduction of a single protection determination procedure as a priority in Ireland. The single procedure involves a single examination of an application for international protection covering all available types of international protection rather than the current separate procedures.

The Court of Justice of the European Union considered the current system in the case of *HN -v- Minister for Justice and Others* (Case C-604/12). In its judgment of 8 May 2014 the Court ruled that (a) it must be possible to submit the application for refugee status and the application for subsidiary protection at the same time and (b) the national rule that the subsidiary protection application is considered only after the refugee application has been refused must not give rise to the subsidiary protection application being considered only after an unreasonable length of time.

The introduction of a single procedure for the examination of applications of international protection is a long standing objective which was intended to be delivered by the Immigration, Residence and Protection Bill 2010. This substantial and comprehensive Bill deals with visas, entry into the State, residence, removal from the State and international protection. In order to achieve the early implementation of the single procedure it has been decided to legislate in the asylum area separately from general immigration legislation.

The Bill will give further effect to the following EU Directives in the field of international protection which are binding on Ireland:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

The Bill is also intended to be in compliance with Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

STATEMENT OF OBJECTIVES

The Bill will provide in a single legislative instrument for the protection system in Ireland thereby replacing the current system which is based on the Refugee Act 1996, which has been significantly amended, and various regulations made between 2006 and 2013, under section 3 of the European Communities Act 1972. The objectives to be achieved by the Bill include:

- to give effect to the commitment in the Statement of Government Priorities 2014-2016 to legislate to reduce the length of time the asylum applicant spends in the Direct Provision system through the establishment of a single applications procedure.
- the establishment of a single procedure for the examination of applications by foreign nationals for international protection in Ireland covering eligibility for refugee status, eligibility for subsidiary protection status and to also include in the examination and determination at first instance the assessment of any other grounds being presented by the applicant for leave to remain in the State.
- the replacement of the Refugee Applications Commissioner by the Minister for Justice and Equality as the determining authority responsible for examining applications for international protection and competent to take decisions at first instance in such cases.
- the replacement of the Refugee Appeals Tribunal by a newly constituted Tribunal with the function of providing an effective remedy against a refusal of refugee status at first instance.

- to bring Ireland’s asylum system into line with the recast EU Asylum Procedures Directive whereby, on the basis of a single application for international protection, the determining authority shall first determine whether the applicant qualifies as a refugee and, if not, then determine whether the applicant is eligible for subsidiary protection.
- to reduce the costs to the State of the direct provision system by reducing the period of time an applicant typically spends in the system by bringing to a final decision the applicant’s case in a timely and efficient procedure.
- to allow for the efficient making of a deportation order in respect of an applicant who is not eligible for international protection, who has not presented any other compelling reasons to be allowed leave to remain in the State and who does not wish to avail of the opportunity of voluntary return to his or her country of origin.

IDENTIFICATION OF POLICY OPTIONS

Option 1: Do nothing. The “do nothing” option is primarily being included for benchmarking purposes. This option would involve legislating in the area of international protection only as part of a comprehensive Bill dealing with immigration, residence and international protection.

Option 2: To amend the Refugee Act in order to introduce the single procedure. This option would involve expanding the scope of the Refugee Act to include subsidiary protection as well as refugee protection. The existing bodies, ORAC and RAT, would continue in existence.

Option 3a: To repeal the Refugee Act and the interlocking European Communities Act Regulations and enact new legislation in order to introduce the single procedure. Under this option the Minister for Justice and Equality would replace ORAC as the determining authority at first instance and the RAT would be replaced by a new Tribunal with enhanced features relating to the efficient conduct of the business of the Tribunal.

Option 3b: This is option 3a with the inclusion in the examination of an application at first instance of any other grounds that an applicant may present to be allowed leave to remain in the State. In the case of an applicant who is not eligible for international protection, who is refused leave to remain in the State and who does not wish to avail of the opportunity of voluntary return, the legislation will provide for the making of a deportation order in relation to the person.

ANALYSIS OF THE COSTS AND BENEFITS OF EACH OPTION

Option 1: This would be contrary to the commitment in the Statement of Government Priorities 2014-2016 to legislate for a single applications procedure, to be introduced by way of a Protection Bill. There would be no explicit costs associated with this option. However, implicit costs would arise from the continuation of the current system. These costs could arise from (a) the extended length of time applicants are

being accommodated in the direct provision system, (b) the high rates of judicial review associated with the multi-stage nature of the current system and (c) the reputational cost to the State of maintaining a system which, in the light of operational experience, compares unfavourably with the practice in other EU Member States.

Option 2: Since its enactment in 1996 the Refugee Act has been subject to significant amendment, notably by the Immigration Act 1999, the Immigration Act 2003 and the European Communities (Asylum Procedures) Regulations 2011. In addition the EU Asylum Qualification Directive 2004/83/EC has been given effect in Irish law by means of two sets of regulations made in 2006 and 2013 under the European Communities Act 1972. These regulations operate in an interlocking fashion with the Refugee Act and together constitute a single suite of legislation. The option of introducing further amending legislation in this area would further complicate what is already a difficult legislative framework. This option would also involve the continued existence of ORAC and RAT which is contrary to a long-standing objective of reform in relation to these bodies. The subsuming of ORAC into the Department of Justice and Equality also forms part of Government policy under its agency rationalisation programme. However, this option would be a viable method of introducing the single procedure with the benefits of a more efficient examination of applications for international protection, a reduction in the length of time needed to identify a person who is eligible for subsidiary protection and a reduction in the opportunities for the taking of judicial review cases. Under this option, however, the procedure would be limited to the statutory jurisdiction of ORAC and RAT, i.e. refugee status and subsidiary protection. Therefore, in the case of an applicant being refused international protection, a subsequent and separate procedure would be required to be conducted by the Minister for Justice and Equality in order to consider any other grounds being presented by the person to be allowed leave to remain in the State. The costs of this option would include (a) a piece-meal and difficult process of legislative amendment which would carry a risk of lack of legislative clarity and certainty, and (b) the continued operation of a system with separate examinations by different bodies, i.e ORAC and the Minister, of the case of a single person.

Option 3a: This option would have benefits significantly greater than option 2. The replacement of the existing legislation with a unified and up-to-date legislative instrument would represent a significant improvement in the ease of operation of the legislative framework and would allow for the legislation to be better aligned with the applicable EU Directives and emerging Irish and EU case-law. The subsuming of ORAC into the Department of Justice and Equality would realise the longstanding objective of improving efficiency in the administration of the asylum caseload and related business. The replacement of RAT by a new Tribunal would allow for improvements in the operation of the Tribunal, in particular in the areas of the efficient conduct of the business of the Tribunal and greater consistency in decision-making. The costs of this option would include (a) supporting actions particularly in the area of information and training and (b) the need to manage the transition of existing caseloads efficiently to the new asylum authorities.

Option 3b: This option would be similar to Option 3a with the additional feature that the Minister would consider, as part of the first instance examination of the application for international protection, any other grounds being presented by the applicant for being given leave to remain in the State in the event that he or she is not

eligible for international protection. In the event that the person is not to be permitted to remain in the State and he or she does not wish to take the opportunity of voluntary return, the legislation would provide for the making of a deportation order in relation to the person. This option would have all the benefits of Option 3a and also would have the additional benefit of further streamlining the procedure by applying a single procedure to all elements that an individual applicant might present to be allowed remain in the State. The costs of this option would include the costs of Option 3a together with the need for further supporting actions of information and training relating to the inclusion in the first instance examination of other grounds not related to international protection.

IMPACTS OF THE BILL AS PROPOSED

Socially excluded and vulnerable groups

The sequential nature of the current asylum system involves an applicant being examined for eligibility for subsidiary protection only after having been examined under the Refugee Act for eligibility for refugee protection. This can lead to an applicant who is eligible for subsidiary protection experiencing a delay in being granted this status. The single procedure should result in the granting of subsidiary protection status to those applicants who are eligible in a more timely procedure.

North-South and East-West Relations

The proposed improvements to the Irish asylum system should have a positive impact on the smooth functioning of the UK/Ireland Common Travel Area and should tend to reduce the incentives for secondary movements of asylum seekers between Ireland and the UK.

There are not expected to be any significant impacts for national competitiveness, the environment and the rights of citizens, and there is not considered to be any significant compliance burden or policy change in an economic market, including consumer and competition impacts.

CONSULTATION

The Heads of the Bill have not been the subject of fresh consultations as they draw substantially from Part 7 of the Immigration, Residence and Protection Bill which was published on three occasions and which was the subject of consultations with non-governmental organisations and the Office of the United Nations High Commissioner for Refugees (UNHCR). The Heads of the Bill have been shared with the UNHCR. The approach to providing for the single procedure decision-making framework has also been the subject of some discussion in the Working Group on the Protection Process established by the Government in October 2014 to report on what improvements can be made to the protection determination process, including direct provision and supports to applicants.

ENFORCEMENT AND COMPLIANCE

Overall responsibility for the operation and enforcement of the provisions of the Bill will rest with the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality. The Garda National Immigration Bureau (GNIB) will also have an important role, particularly, in relation to the arrival of applicants at the frontier and the enforcement of the laws to regulate the presence in the State of foreign nationals.

REVIEW

The operation of the Bill will be kept under review by INIS.