

Concerns with the Immigration, Residence and Protection Bill

Introduction

This information sheet summarises some of the key concerns relating to the Immigration, Residence and Protection Bill. **We acknowledge the work of the Irish Refugee Council, the Immigrant Council of Ireland, the Migrant Rights Centre of Ireland, the Refugee Information Service, Migration Studies, Dept Geography UCC and Integrating Ireland in informing this summary.**

Key Concerns

- The Bill is a legal framework and does not set out clear immigration rules in primary legislation. The Minister then has the power to make regulations and as such the parliamentary role and elected representatives is curtailed. For instance rules setting out the basis for migrants entering the state, conditions on which permission is granted may or may not be left to secondary legislation.
- There is excessive ministerial discretion. Applicants do not have a clear idea as to whether their application will be granted, even if they appear to satisfy the criteria for applying. Also, applicants do not always know the grounds upon which their application may be refused. The reliance on Ministerial discretion gives rise to concerns regarding the potential for arbitrary and inconsistent decisions.
- The Bill makes no statutory provision for family reunification.
 1. The definition of 'family' is too narrow. Minor refugees are not allowed to apply for their siblings, which can place parents in an unacceptable dilemma of whether to join their child in Ireland or remain in their country of origin with their other child/children. In addition only spouses are included and not unmarried partners even if they can prove a long term relationship. Need to take cultural differences in account with regard to concept of 'family'.
 2. Programme Refugees are not entitled to family reunification. All those granted protection in Ireland should have the same rights. All individuals have a right to enjoy family life and programme refugees like other persons cannot return to their country of origin
 3. The Bill fails to clarify the rights of family reunified members if the refugee/person granted subsidiary protection dies or if the marriage breaks down.
 4. The Bill fails to provide for the right of appeal for those whose applications for family reunification have been unsuccessful. Such an appeal should be independent.
- Entitlements of migrants while in the state are not covered in the legislation.
- There is no definition of Integration although it is referred to in the Bill.
- The Bill ignores the views of the Irish Human Rights Commission in their report on the 2006 Scheme for the Bill.
- Rights of vulnerable people e.g. children/victims of trafficking/victims of domestic violence: no new provisions have been included to improve protection for separated children, measures should be put in place to improve identification, age assessment, registration, family tracing, guardianship, best interests determination, treatment and care.

We welcome a new section on the protection of suspected victims of trafficking. However this provision needs to be further developed to facilitate ratification of the *Council of Europe Convention on Action against Trafficking in Human Beings* and the *UN Trafficking Protocol*. In particular, specific provisions relating to the protection of suspected trafficked children and the specific entitlements of those who are granted temporary residency should be added. Trafficked persons should be exempted from the pre-removal powers of detention provided in the Bill. An explicit recognition of the right of trafficked persons to seek international protection and to have access to free legal aid should be included.

There is no provision for the case of vulnerable people e.g. victims of domestic violence when their status within Ireland depends on the legal status of their spouse. For instance a woman married to an EU/Irish/Refugee man for two years, who is being abused and who leave the relationship can in practice be left with very few options in relation to social welfare or residency in Ireland.
- As a Cork-based NGO Nasc is aware of the difficulties in a centralised immigration/protection system in terms of cost and accessibility for individuals on minor administrative matters. Some operational issues could be delegated to local areas. In general we also believe that the Bill ought to address the training needs of officials at the Dept of Justice locally and nationally and others working with asylum seekers and immigrants e.g. management and staff in Direct Provision centres. Nasc opposes the current Direct Provision system in principle but at the very least we would call for training for existing staff, many of whom have requested such training themselves.

Further Concerns Relating to Immigration

- Long term residence: Section 36 of the Bill provides a statutory footing for the existing practice of granting long-term residents permits on certain conditions to people who have been legally resident in Ireland for a total of 60 months. This gives no real permanence to people who have contributed to this country for five years or more. This is common in other EU countries. (In addition in practice people generally have problems in having time recognised because there are sometimes gaps in stamping of passports and this is often not the fault of the individual. Also the waiting time for processing applications for long-term residence is currently 18 months).
- Independent Appeals: the bill fails to provide a right to an independent appeal against decisions taken at different stages e.g. in certain types of visa applications the process is an internal review and there is no obligation to give reasons for the decision.
- Judicial Reviews: the Bill re-enacts the 14-day time limit for the initiation of judicial review proceedings to all types of immigration decisions (Section 118 (2)). This severely limits migrants' access to justice. In most other areas of law people have three months to make an application to the High Court.
- Right to marry: an Irish citizen may marry a foreign national but this does not, of itself, confer a right on that foreign national to enter or be present in the State. In addition a marriage contracted between two persons, one of whom is or both of whom are foreign nationals, is invalid in law unless the foreign national concerned has given 3 months' notice of the proposed marriage to the Minister and the person is at the time of the marriage the holder either of an entry permit issued for that purpose or of a residence permit (other than a protection temporary residence permit or a non-renewable permit). The minister is given broad powers to refuse permission to marry on the basis that it "would be inconsistent with a relevant immigration policy statement". The Bill also criminalizes anyone who solemnises a marriage without the permission of the Minister for Justice. The restriction on the right to marry has been introduced with a view to controlling illegal immigration. Nasc believes it is disproportionate since the government has provided no evidence that marriage is being exploited for immigration reasons.
- Undocumented workers: there are a significant number of non-EU migrant workers who enter Ireland legally but who become undocumented for reasons beyond their control. There is currently no official mechanism to assist people to reenter the system and the legislation should exclude the possibility of summary removal/obligation to remove oneself in these circumstances. The IRP Bill should also provide a procedure to legalize people who have become undocumented for other reasons beyond their control in the form of a temporary six-month bridging visa for which an individual could apply and secure, once they fulfill defined criteria.
- Summary Deportations: Section 4(5) provides a significant new power that is being vested in the State and effectively abolishes the 'Section 3 process' established in the Immigration Act, 1999 as amended. Currently, a person who has entered and is residing in Ireland can be removed from the State on foot of a deportation order. The deportation order requires notice and gives the person concerned 15 working days to make submissions as to why he or she should not be removed from the State. Those reasons can include matters such as family circumstances, duration of residence in Ireland and humanitarian considerations.

Further Concerns Relating to Protection

- Single Decision Process/First Instance: we welcome this principle of a single decision-making process for all forms of protection, to assess claims for asylum, subsidiary protection, non-refoulement and *compelling reasons*. We do, however, have concerns about the current processes, including the lack of legislated Rules/Guidelines, and the use of accelerated procedures. We are disappointed that the Bill has not been amended to provide for official records of proceedings (rather than a summary kept by the interviewer), or the publication of decisions, both of which we would consider to be good practice internationally. Further, concerns regarding the lack of clarity around the role of the observer (s. 74 (9)), and disclosure to the applicant regarding the evidence to be relied upon by the State have not been addressed.
- Protection Review Tribunal ("PRT"): We welcome the Minister's assurances that the protection appeals process will be more transparent and fair than that provided by the current Refugee Appeals Tribunal ("RAT"). However, as currently drafted, the proposed PRT is effectively the same body as the Refugee Appeals Tribunal ("RAT"), save in name. Only selected decisions of the PRT will be published, despite internationally recognised best practice (including in the UK) providing for publication of anonymised decisions. The Chair of RAT is deemed the Chair of PRT. The Chair can delegate key duties to others. The Chair *may* produce public Rules and *may*

produce internal Guidelines to be relied upon by the Members. We would urge amendment of the legislation to provide for publication of decisions (suitably anonymised), to require the Chair to publish Rules and Guidelines and to remove s. 95 (7)(a), which undermines the lawyer's role and duty in representing their client.

- **Carrier Liability:** Carrier liability improperly shifts responsibility for protection decisions from the State to carriers. Carrier sanctions will mean that those seeking protection may be prevented from accessing the State, in breach of the State's obligations under the *1951 Convention*. This may well have the effect of forcing persons to rely on traffickers/smugglers. At minimum, the State should allow for an asylum/protection-related defence to carrier liability and exempt carriers where persons make protection applications upon arrival to Ireland and/or where persons are particularly vulnerable (i.e. trafficked persons and separated children).
- **Section 73 (13) children 'deemed' to be included in protection application:** The above sub-section would appear to be in direct contravention of the recent Irish Supreme Court decision, *A. N. & ors -v- Minister for Justice & Anor*, released on 18 October 2007, and with the 1951 Convention. Every person has the right to seek asylum. No person can be removed from the State until their individual protection needs are assessed.
- **Deemed withdrawal/no appeal rights:** There are no appeal rights where a protection application is deemed withdrawn (whether at first-instance or upon appeal). This seems to be inconsistent with the Procedures Directive, Article 39 (1), which states: Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against... (b) the refusal to reopen the examination of an application after its discontinuation (pursuant to Articles 19 and 20 of the Directive). Further article 20(2) of the Directive requires States to ensure that an applicant is entitled to request that his or her case is reopened following a discontinuation (Section 89 of the Bill, as currently drafted, is unclear as to its impact on this crucial question, which goes to the heart of protection against *refoulement* for this issue).
- **Leave to Remain/humanitarian considerations:** As outlined in the Bill, protection applicants who are not entitled to protection in the State may be granted residence permission as per Sections 79 (2) (c) and 83. However, in those sections, humanitarian considerations are not listed and it is unclear who would meet the 'compelling reasons' criterion and whether or not residence criteria (at Section 31) will also be applied. We are concerned that vulnerable persons who are now granted leave to remain status as well as those who cannot be *refouled* may be denied residence permission under the terms of the Bill, particularly if the residence criteria are applied.
- **Refoulement:** The combination of the Dublin Regulation rules and the safe-third-country and safe-country-of-origin concepts, as well as rules on carrier sanctions and transporters' liability, limited access to interpreters and lawyers and the lack of suspensive effect of certain appeal procedures constitute a threat to the principle of non-*refoulement*. (See European Parliament Resolution A5-0451/2002 of 15 January 2003 Report SWIEBEL (2001)). Also, provisions relating to the breach of conditions leading to revocation and Section 97(11) (c) (obligation to remove oneself and power of removal without notice) increase the risk of *refoulement*.
- **Procurement and Exchange of Information:** There are a variety of provisions in the Bill regarding the procurement and exchange of information. In this regard, the IRC stresses the need for consent, confidentiality and data protection. The IRC would like to seek clarity on the necessity, nature and implications of some of these provisions including stated restrictions on the application of the *Data Protection Act* and *Freedom of Information Act*. With respect to the acquisition of information, children should not be required to furnish biometric data without their consent and the consent of their guardian. Age assessment measures should be in line with the minimum standards outlined in the *Procedures Directive*.