



# Relate

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The journal of developments in social services, policy and legislation in Ireland

## International Protection Act 2015

The International Protection Act 2015 was commenced on 31 December 2016. The Act provides a new procedure for the processing of asylum applications in Ireland. It repeals the Refugee Act 1996, which previously governed the processing of these applications.

The International Protection Office (IPO) was established under the International Protection Act 2015 within the Irish Naturalisation and Immigration Service, and it replaces the Office of the Refugee Applications Commissioner (ORAC). The IPO is responsible for examining and processing applications for international protection. The head of the IPO is the Chief International Protection Officer.

## What is international protection?

Under the International Protection Act 2015, there are two forms of international protection, refugee status and subsidiary protection status. People seeking international protection from persecution or serious harm in their home country are said to be seeking asylum. Asylum seekers are people who are waiting for the authorities to accept or reject their application for refugee or subsidiary protection status.

## Refugee status

Under the Act, the term "refugee" describes someone outside of their country of nationality, who holds a well-founded fear of being persecuted for reasons of:

- Race
- Religion

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- Nationality
- Political opinion or
- Membership of a social group

and that person is unable or unwilling, due to such fear, to avail of the protections in their country of nationality.

The term also refers to a stateless person who is outside of their country of habitual residence for the same reasons. There must be a connection between the reasons for persecution and the acts of persecution, or the absence of protection in that person's country of origin or habitual residence.

Persecution includes acts which would constitute a severe violation of basic human rights or a regime which would have a similar effect. Such acts include:

- Physical, mental or sexual violence
- Legal, administrative or policing measures which are discriminatory
- Acts of a gender-specific or child-specific nature
- A denial of judicial redress which results in a disproportionate or discriminatory punishment

### ***Cessation of refugee status***

You will no longer be a refugee if you:

- Voluntarily re-avail yourself of the protection of your country of nationality
- Having lost your nationality, voluntarily re-acquire it
- Have acquired a new nationality (other than Irish) and enjoy the protection of that country
- Voluntarily re-establish yourself in the country which you left or have stayed outside of owing to fear of persecution
- Continue to refuse the protection of your country of nationality despite a change in the circumstances of that country to the extent that you would no longer be recognised as a refugee

### ***Exclusion from being a refugee***

You are excluded from being a refugee if you are currently receiving protection or assistance from agencies of the United Nations, if you are formally recognised as having the rights and obligations which attach to nationality within the country where you have taken up residence, or if there are serious reasons for considering that you have committed (or have incited or participated in) a serious crime including non-political crimes.

## **Subsidiary protection status**

Under the Act, if you do not qualify for refugee status, you may be eligible for subsidiary protection status. You may qualify if it is determined that, if you return to your country of origin, you would face a real risk of suffering serious harm and that, due to that risk, you are unable or unwilling to avail of the protection of that country.

You will no longer be eligible for subsidiary protection if the circumstances which meant that you were eligible have changed to such a degree that you no longer require protection. Such a change must not be temporary. You may be able to rely on reasons of previous serious harm as to why you still cannot avail of the protection of your country of nationality or former habitual residence.

You will not be eligible for subsidiary protection if there are significant reasons for considering that you have committed a serious crime or are a danger to the public or to the security of the State. You will also not be eligible if you have committed a crime, which would also be a crime in Ireland, punishable by imprisonment and you have fled your country of origin to avoid sanctions for that crime.

## **Applying for international protection**

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### **Preliminary interview**

If you are at the frontier of the State or already in the State, whether lawfully or unlawfully, you can make an application for international protection to the International Protection Office. You can apply for yourself, or on behalf of a child, where you are an adult and are taking responsibility for that child. If you apply for yourself, you will be deemed to have also applied on behalf of your dependent children.

Before you can make your application, you must attend a preliminary interview with an international protection officer or immigration officer. The purpose of this interview is to assess whether or not your application is admissible. The assistance of an interpreter will be available for the preliminary interview where necessary and possible.

During your preliminary interview, you may be asked about your identity, your route to Ireland, and your reasons for seeking international protection. You may also have your fingerprints taken, to be checked against EURODAC to see if you have ever applied for asylum before. EURODAC is an electronic system for the exchange and comparison of fingerprints between contracting member states for the effective application of the EU Dublin Regulation. The

member states of the EURODAC system are the 28 EU members, Iceland, Norway, Liechtenstein and Switzerland.

The Dublin Regulation sets out the European legal procedures for determining which state is responsible for examining an application for international protection made by a national from a non-member state or a stateless person. If it is found that you come under the provisions of the Dublin Regulation, you may be transferred to another participating state to have your application examined there.

Your data can only be used for the purposes defined by law. Only EURODAC will receive your data. If you request asylum in the future in another country governed by the Dublin Regulation (a Dublin country), your fingerprints will be sent to that country for verification. The data stored in EURODAC will not be shared with any other country or organisation outside the Dublin countries. Your fingerprints may be searched by authorities such as national police forces and the European police office (Europol) who may request access to the EURODAC database for the purpose of preventing, detecting and investigating serious crimes and terrorism. Data is collected for anyone over 14 years of age. Data is kept for 10 years unless you obtain the citizenship of one of the EURODAC member states, when your particulars are immediately erased.

Your application for international protection will not be admissible if:

- Another EU member state has granted you refugee or subsidiary protection status
- A country, other than an EU member state, has recognised you as a refugee and you can still avail yourself of that protection
- You otherwise enjoy sufficient protection in that country, including benefiting from the principle of non-refoulement (see page 7) and you will be readmitted to that country

If your application is found to be inadmissible, you will receive a written report of the reasons for this decision. You are entitled to appeal a decision of inadmissibility to the International Protection Appeals Tribunal (IPAT). IPAT has replaced the former Refugee Appeals Tribunal (RAT). IPAT will review the contents of your notice of appeal, as well as the material it receives from the Minister, and any other matters IPAT considers relevant. IPAT will make its decision on such appeals without holding an oral hearing.

Following the preliminary interview, if your application is admissible, you will be allowed to make an application for international protection. This will be accepted by the Minister for Justice and Equality for investigation and determination by the International Protection Office (IPO).

## Application for international protection

When applying to the Minister for Justice and Equality for international protection, you must make your application in person through the IPO, using the required form. The form includes details of your background, your family, and your reasons for claiming international protection in Ireland. You have a duty to provide all the information requested and to co-operate fully with the examination of your application. You should bring any documents you have with you to the IPO when making your application, for example, passport, travel documents, identity cards, marriage and birth certificates.

You have the right to consult a legal representative for the purposes of your application. The Legal Aid Board will provide you with legal assistance and advice, and representation in the case of an appeal you may take to IPAT following a negative recommendation on your application. Alternatively, you can seek private legal representation at your own expense.

Once you have made your application, you will get a statement setting out the procedures of the application process. You will also be given the Application for International Protection Questionnaire (IPO 2) which must be completed and returned to the IPO. You must return the questionnaire by the date and time specified by the IPO. If you do not return the questionnaire in time, you may be found to have failed in your duty to co-operate with the process (see page 5).

## Arrest and detention

As part of the application process, you may be arrested without a warrant and detained if there is a reasonable cause to believe that you:

- Pose a threat to public security and order
- Have committed a serious non-political crime outside of Ireland
- Have not made a reasonable effort to establish your identity (including a refusal to provide fingerprints)
- Have attempted to leave the State and enter another without lawful authority or
- Are in possession of forged identity documents or have destroyed identity documents

If you are arrested and detained for any of the reasons above, you will be brought before the District Court as soon as possible. The court will decide whether you may be released subject to conditions, or if any of the reasons above apply, detained for a period of up to 21 days. The period of detention can be renewed by periods of up to 21 days while a

decision is being made on your application. This rule will not apply to a person who has not reached 18 years of age.

If, during your detention, you want to leave the State and withdraw your application, you may go before the District Court, which can order the Minister to arrange to remove you from the State.

## Child applicant

During your application process, if it appears to an interviewer that you are under 18 years old and you are not accompanied by an adult, the interviewer will notify Tusla – the Child and Family Agency. You will then receive the same entitlements to care and welfare as any person under 18 years. Tusla will decide what type of application is in your best interests (such as an application for international protection) or whether other options apply, such as family reunification (see page 7). Tusla may accompany you to the IPO interviews and can assist you in obtaining legal advice.

If the international protection officer is not certain of your age, they may request that you be medically examined, with your consent, in order to confirm that you are under the age of 18 years. If you refuse such an examination, your age will be determined solely based on interview.

## Permission to enter and remain

Once you have made your application, you will be given permission to enter and remain in the State, or to remain if you were already in the State, while your application is being examined, including any appeal of a recommendation. This permission will end as soon as you are no longer an applicant. You will no longer be an applicant when:

- Your application has been approved or refused, and you have not appealed that refusal
- You are transferred from the State in accordance with the Dublin Regulation
- You have been granted a subsidiary protection declaration but you are appealing this decision and seeking a refugee declaration

While you hold permission to enter and remain, you must obey the terms of that permission, which can include:

- Prohibition on leaving the State without the consent of the Minister for Justice and Equality
- Prohibition on entering employment or self-employment
- Requirement to inform the Minister for Justice and Equality of any change of address

- Requirement that you must reside in a specific district and/or report to a specific Garda station regularly as directed under the terms of your permission

If you do not obey the terms of your permission, you may be imprisoned for one month, or required to pay a class D fine, or both.

## Temporary residence certificate

During the application process, you will be given a temporary residence certificate (TRC). The TRC is evidence that you have submitted an international protection application in Ireland. If your permission is revoked, your certificate will no longer be valid and you must return your TRC to the Minister for Justice and Equality.

Under Section 12 of the Immigration Act 2004, a person living in Ireland who is not a national of the EEA or Switzerland may be asked at any time to produce a document showing their identity such as a valid passport, and a registration document showing they are registered with permission to remain in the State. Your TRC is evidence of your permission to remain in the State. Failure to produce such documents when asked is a crime, punishable by a fine, or up to 12 months' imprisonment, or both.

It is also crime to forge such a certificate, punishable by up to 12 months' imprisonment, or a fine, or both.

## Subsequent applications

If you have already received a decision on a previous application for international protection, or you withdrew a previous application, you may not make a subsequent application without the consent of the Minister for Justice and Equality. You must give a written explanation to the Minister of how your circumstances have changed when requesting this consent. You may be given consent to reapply where new elements or findings have arisen which make you more likely to qualify for protection, or where your previous withdrawal was not done through your own fault. If you are refused permission to make a subsequent application, you may appeal this decision to IPAT. IPAT may affirm or set aside that decision.

## Examination of your application

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### International protection interview

After submitting your application you will be given a date, time and place for your international protection interview. Your interview will be conducted in private. The international protection officer will use this interview to examine your application. This is an opportunity for you to speak to the international protection officer in person, and to explain your circumstances and the reasons why you are seeking protection.

A written record of the interview will be kept, and you will be asked to confirm the contents of the record throughout the interview. An interpreter will be provided if necessary and you are entitled to have your legal adviser present at the interview.

You have a duty to co-operate with the application process. If the Minister for Justice and Equality believes you are not co-operating, you will be notified in writing and you will be given 10 days to respond. You will also be asked if you want to continue with your application, and you will be reminded of your duty to co-operate. If you do not reply, your application will be examined based on the information already provided only.

You can only postpone your interview for reasons of ill-health or other exceptional reasons. You should inform the IPO as soon as possible if you think you may be unable to attend your interview. You will be asked to provide medical evidence of your illness from your GP in advance of the interview.

If you miss your interview, you must provide an explanation to the IPO within three working days. If you do not provide a reasonable explanation within that time, your application will be assessed based on the information you have already provided only.

### Prioritising of applications

The Minister may give priority to any application where this is considered necessary based on the needs of fairness and efficiency, for example, in cases involving unaccompanied minors, or applicants over 70 years of age who are not part of a family group. Priority may also be given on health grounds or if it is likely that the application is well-founded. However, prioritisation relates only to the scheduling of the interview and does not determine any recommendation to be made. All applications, whether prioritised or not, will receive the same full and individual assessment under the procedure.

## Report and recommendation

A final written report will be prepared by the international protection officer following your interview. This report will contain all the information the officer thinks is relevant as gathered from your application form and both of your interviews. The report will also contain one of the following recommendations for your application:

- That you should be given a refugee declaration
- That you should not be given a refugee declaration but should be given a subsidiary protection declaration
- That you should not be given either a refugee or subsidiary protection declaration

If it is recommended that you should not be given either a refugee or a subsidiary protection declaration, you will be given the reasons for this recommendation. You will also be given a copy of the report and the procedures for appealing to IPAT.

### Possible additional findings:

The report may also contain one or more of the following findings:

- That your application has raised only issues that are not relevant, or are of minimal relevance, to your eligibility for international protection
- That you have made inconsistent, contradictory, improbable or insufficient representations, which make your claim to be eligible for international protection clearly unconvincing
- That you failed, without reasonable cause, to make your application as soon as reasonably practicable having had an opportunity to do so
- That you are not in need of international protection as protection is available to you in a part of your country of origin or country of former habitual residence
- That your country of origin or country of former habitual residence is a designated safe country of origin or country of former habitual residence

In a case where a report includes one or more of these findings, a shorter period for an appeal to IPAT may apply.

If it is decided that you should not be given international protection, the IPO will consider whether you should be given permission to remain based on other grounds (see page 7).



## Appealing a refusal of international protection

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If it is recommended that you are not entitled to refugee or subsidiary protection status, you can appeal that recommendation to the International Protection Appeals Tribunal (IPAT). You may also appeal a recommendation that your protection application is inadmissible or that you should not be allowed to make a subsequent application.

### How to appeal

You must make your appeal in writing to IPAT. Your appeal should state the grounds of your appeal and whether you wish to have an oral hearing before IPAT.

IPAT will hold an oral hearing of an appeal only where it considers that it is in the interests of justice to do so. These oral hearings will be conducted as informally as possible, and you are entitled to legal representation at the hearing. You may withdraw an appeal at any time before IPAT makes its decision. If you fail to attend an oral hearing, and do not provide an explanation for this to IPAT, your appeal will be deemed to be withdrawn.

The time limits within which you must submit your appeal will be set out in the written recommendation you receive from the international protection officer.

IPAT will consider all the available information before it when making its decision. IPAT may uphold the recommendation of the international protection officer that neither status should be declared. Or it may set aside a recommendation, and instead, recommend that you should be given refugee status. Or it may uphold a recommendation that you should not be given refugee status, but that you should be given subsidiary protection status.

If IPAT upholds the recommendation to refuse both refugee and subsidiary protection status, the Minister for Justice and Equality may still review the decision not to grant you permission to remain on alternative grounds, where you have submitted additional information (see page 7).

### Declarations

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If the IPO, either from a recommendation by an international protection officer or by IPAT, recommends that you are entitled to a refugee declaration or a subsidiary protection

declaration, the Minister will give you the declaration as soon as possible.

A person who receives a refugee or subsidiary protection declaration is entitled to the following (in the same way as an Irish citizen):

- To seek and enter employment and engage in any business in the State
- To access education and training in the State
- To receive medical care
- To reside in the State
- To travel within, to or from the State

If the IPO has recommended that you should not be granted either declaration, and you have not appealed this recommendation, or you have been unsuccessful in your appeal, the Minister will refuse to grant you either declaration.

The Minister may refuse a declaration, even if the IPO has recommended that you are entitled to a refugee declaration, if you are reasonably considered to be a danger to the security of the State or the community.

After a declaration is granted, the Minister may revoke a declaration. They may do so if there are reasonable grounds for believing that you are a danger to the State, or that you misrepresented or have omitted relevant facts during the application process.

## Voluntary return and deportation

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You have the option to return voluntarily to your country of origin or country of former habitual residence at any time during the international protection process. You may also return voluntarily if your application is unsuccessful.

If you have been refused a declaration, the Minister will write to you with notification of that refusal and will give you the option of voluntary return. In order to avail of this, you must notify the Minister in writing within five days of being notified. If you decide to return voluntarily, you can obtain advice and assistance regarding travel documents and financial assistance from the International Organization for Migration.

If you do not choose to return voluntarily, the Minister for Justice and Equality will issue a deportation order against you, and arrangements will be made for your removal from the State. If you do not comply with a deportation order, you will have no legal basis to remain in the State.

The benefit of returning voluntarily is that you may return to the State at a later stage if your circumstances have changed, and you may be able to establish a right to either status at that point. If you are deported, you will have been ordered to leave the State and you may not return unless that deportation order is revoked.

## Other possible outcomes

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### Permission

If you are refused a refugee declaration and a subsidiary protection declaration, it may be possible for you to remain in the State based on other grounds. As part of your application questionnaire, you will be asked if there is any information which you would like the Minister to consider when deciding whether to grant you longer-term permission to remain, known as "permission". You can also provide such further information at any time throughout the application process.

The Minister will consider your family and personal circumstances and your general conduct, both inside and outside the State. If you are refused permission, your temporary residence certificate (see page 4) will no longer be valid, and should be returned to the IPO. You will be given the option to return voluntarily or, if you do not return voluntarily, you will be deported (see page 6). You are not entitled to appeal a refusal of permission. However, if you appeal a recommendation to IPAT, and your circumstances change during that time, you can have the decision to refuse permission reviewed by the Minister.

### Prohibition of refoulement

A person will not be returned to the frontier of a country where, in the opinion of the Minister, the life or freedom of that person would be threatened for reasons of race, nationality, membership of a social group or political views. A person will also not be returned if there is a serious risk that the person would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Unlike international protection status, the prohibition of refoulement applies not only in respect of a person's country of origin, but to any country where a person has reason to fear persecution. The prohibition can be availed of regardless of whether a person is formally recognised as a refugee or not.

## Family reunification

If you are granted either a refugee or subsidiary protection declaration, you may apply to the Minister for permission for your family members to enter and reside in the State. Such family members will have the same entitlements as you (see page 6). You must apply within 12 months of obtaining your declaration.

A family member is defined as:

- Your spouse or civil partner
- Your parents and siblings if you are under the age of 18 and are unmarried at the time of the family member's application for permission
- Your child, provided that child is under the age of 18 and unmarried at the time of the application for permission

A family member will lose their permission if:

- They do not enter the State by the date specified in their permission
- The family member is a spouse or civil partner of the qualified person and that marriage or civil partnership ends
- It is in the interest of national security or public policy
- The entitlement of the qualified person ends
- The family member gives false or misleading information during their application process
- The family member would be excluded from being eligible for a refugee declaration or a subsidiary protection declaration (see page 2)

## Transitional arrangements for existing applicants

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Transitional arrangements govern the investigation and determination of applications for international protection which were made in the State before the commencement of the International Protection Act 2015 on 31 December 2016.

### Application to the Office of the Refugee Applications Commissioner

If you made an application for refugee status to the Office of the Refugee Applications Commissioner (ORAC) before the commencement date but ORAC had not made a recommendation, your application will now be processed by the IPO. Your application will be deemed to be an application

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for international protection (both refugee status and subsidiary protection) under the 2015 Act, as already described. It is not necessary for you to make a new application, but you may be asked to provide additional information to the IPO by completing an application form for international protection, which you should receive by post.

## Appeal to the Refugee Appeals Tribunal

If you are currently waiting for the outcome of a Refugee Appeals Tribunal (RAT) decision, following a refusal by ORAC to grant you refugee status, your file has been transferred to the IPO. However, the IPO will only consider your case for subsidiary protection. The recommendation on your refugee status application made by ORAC will be preserved and will remain in place.

If you are refused a subsidiary protection declaration, the Minister will consider you for permission to remain in the State (see page 7). If you appeal both the refusal to grant you refugee status (made by ORAC) and the refusal to grant you subsidiary protection (made by the IPO) to IPAT, the two appeals will be treated as one and will be heard together. If you are also refused permission to remain by the IPO, you may not appeal the decision on permission to remain to IPAT.

## Application for subsidiary protection

If you applied for subsidiary protection prior to the commencement date and ORAC had started the investigation of the application by that date, the application is not affected by the 2015 Act, apart from the fact that the IPO takes over the functions of ORAC. The pre-existing legislation continues to apply and the IPO will examine your application under the old procedures.

If you applied for subsidiary protection prior to the commencement date and ORAC had not started its investigation by that date, your application has been transferred to the IPO for consideration of the issue of subsidiary protection only under the 2015 Act.

If you made an application for subsidiary protection and this application was appealed to RAT before the commencement date, the appeal will be transferred to IPAT, which will decide it under the pre-existing legislation.

## Permission to remain

If the IPO recommends that your application for international protection under the 2015 Act be refused, a decision will be made whether you should be given permission to remain in the State on another basis.

Under the 2015 Act, the decision will be based on the information and papers already provided in your case. Therefore, if your case was transferred to the IPO, you must give in writing any reasons why you consider you should be granted permission to remain, in the appropriate part of the Application for International Protection Questionnaire. You must also keep the IPO informed of any change in your circumstances that might be relevant.

The information in *Relate* is intended as a general guide only and is not a legal interpretation

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