

## Ireland Immigration Detention Profile<sup>1</sup>

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### INTRODUCTION

In 2016, the Republic of Ireland showed a net positive immigration rate for the first time since 2009.<sup>2</sup> By the end of 2015, the number of non-EU residents living in Ireland rose to 114,000, up from 105,000 at the end of 2014. The number of people ordered to leave the country has also steadily increased: 3,790 people were issued return orders in 2015 compared with 1,285 in 2008.<sup>3</sup>

Ireland places very few people in immigration detention. According to the Irish Prison Service (IPS), there were 335 individual detainees in 2015, down from 390 in 2014 and 374 in 2013. In 2014, the average daily number of migrant detainees was 6; in 2015 it was 4.<sup>4</sup> The statistics provided by the Irish Prison Service appear to indicate that some immigration detainees may be re-detained for immigration reasons after release. For instance, the 2015 IPS annual report states (p. 23), “In 2015 there were 342 committals in respect of immigration issues involving 335 detainees.”

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<sup>1</sup> The Global Detention Project gratefully acknowledges the research assistance provided by Remi Vespi as well as efforts by various organizations in Ireland, including the Irish Immigrant Support Centre and Irish Penal Reform Trust, to address questions that arose during production of this profile.

<sup>2</sup> Ireland Central Statistics Office, Population and Migration Statistics April 2016, <http://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2016/>

<sup>3</sup> Department of Justice and Equality, Irish Naturalisation and Immigration Service, Immigration in Ireland: Annual Review 2015, <http://www.justice.ie/en/JELR/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf/Files/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf>.

<sup>4</sup> Irish Prison Service, Annual Report 2015, [http://www.irishprisons.ie/wp-content/uploads/documents\\_pdf/12232-Irish-Prison-Service-AnnualReport2015-v7-2.pdf](http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12232-Irish-Prison-Service-AnnualReport2015-v7-2.pdf); Irish Prison Service, Annual Report 2014, [http://www.irishprisons.ie/images/pdf/ar2014\\_english.pdf](http://www.irishprisons.ie/images/pdf/ar2014_english.pdf).

Ireland also receives a modest number of asylum applicants annually and in 2015 established the Irish Refugee Protection Program in response to Europe's migration "crisis," which includes measures to relocate asylum seekers detained in "hotspots" in [Greece](#) and [Italy](#).<sup>5</sup> There were approximately 2,000 new asylum applications in 2016, down from 3,276 in 2015, which was the highest number recorded since 2008.<sup>6</sup> In 2015, the main countries of origin of asylum seekers were Pakistan (41.3%), Bangladesh (8.7%), Albania (6.5%), Nigeria (5.7%) and India (4.4%).<sup>7</sup> In 2013, Irish officials reported that Ireland does not maintain desegregated statistics on the numbers of asylum seekers placed in immigration detention<sup>8</sup>; however, according to the Office of Refugee Applications Commissioner, during 2015 among the 335 total detainees 35 expressed a desire to apply for asylum after being detained and 17 people were given asylum interviews while still in detention.<sup>9</sup>

Although Ireland detains only a small number of people each year, human rights watchdogs have repeatedly criticized the country for using prisons and police (Garda Síochána) stations for immigration detention purposes. In a report on its visit to Ireland in September 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) reiterated its argument--which it had made in previous reports to Ireland--that "a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence."<sup>10</sup> In its response to the CPT report, the Irish government stated that it planned to open a dedicated immigration detention centre at Dublin Airport by 2016,<sup>11</sup> a date it later

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<sup>5</sup> Despite this policy, as of early 2017, Ireland had blocked the relocation of asylum seekers from Italy because of the Italian government's refusal to allow Irish police to complete their own security assessments of applicants. See ECRE, "Italy: security checks by Irish police blocks relocation of refugees," 13 January 2017, <http://www.ecre.org/italy-security-checks-by-irish-police-blocks-relocation-of-refugees/>.

<sup>6</sup> Office of the Refugee Applications Commissioner, Monthly Statistical Report November 2016, [http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AGWD4L9271523-en/\\$File/2016%2011%20ORAC%20Nov%20monthly%20stats%20book.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AGWD4L9271523-en/$File/2016%2011%20ORAC%20Nov%20monthly%20stats%20book.pdf).

<sup>7</sup> Office of the Refugee Applications Commissioner, Annual Report 2015, [http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/\\$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf)

<sup>8</sup> Aisling Brennan (Ireland Department of Justice and Equality), Letter to Lydia Medland (Access Info) Responding to Joint Access Info-Global Detention Project Questionnaire, 14 October 2013. See also, Irish Refugee Council, "Republic of Ireland," Asylum Information Database/ECRE, November 2015, <http://www.asylumineurope.org/reports/country/republic-ireland>.

<sup>9</sup> Office of the Refugee Applications Commissioner, Annual Report 2015, [http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/\\$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf)

<sup>10</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Ireland on the Visit to Ireland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014, Council of Europe, 17 November 2015.

<sup>11</sup> Government of Ireland, Response of the Government of Ireland to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its Visit to Ireland from 16 to 26 September 2014, Council of Europe, 17 November 2015.

pushed back during questioning at the Dáil (Assembly of Ireland).<sup>12</sup> The Global Detention Project was unable to confirm the status of this facility although GDP sent numerous information requests to the Department of Justice and Equality, but the department merely "acknowledged" receipt of the requests without providing any information.<sup>13</sup>

Changes to Ireland's immigration laws provided in the International Protection Act 2015, which came into effect on 31 December 2016, have increased the government's ability to enforce deportation orders in cases where an individual is viewed as evading or frustrating his or her removal from the country. According to the Department of Justice and Equality, the Act "improves the effectiveness of existing legislative provisions allowing for the arrest, detention and removal of non-nationals against whom a deportation order is in force and removal from the State of persons refused leave to land."<sup>14</sup> The Act has been criticised for implementing harsher detention measures and for its hasty six-week enactment, which allowed minimal time for political debate and input from civil society.<sup>15</sup>

## LAWS, POLICIES, PRACTICES

**Key norms.** Ireland's principal immigration norms are provided in the Aliens Act 1946, the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000, the Immigration Act 2003, the Immigration Act 2004, and the International Protection Act 2015, as well as subsequent amendments and regulations.

A new Immigration, Residence, and Protection Bill intended to replace all previous legislation on immigration was introduced in 2010.<sup>16</sup> The legislation was meant to establish a more unified immigration code, with its primary focus the improvement of efficiency and transparency within the system.<sup>17</sup> However, the Bill was left "in limbo,

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<sup>12</sup> Minister for Justice and Equality (Deputy Frances Fitzgerald), Dáil Answer to Question No 69, addressed by Deputy Jonathan O'Brien, 7 July 2016, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070700075>.

<sup>13</sup> Christopher Quattrociocchi, Department of Justice and Equality (info@justice.ie), Emails to Global Detention Project (admin@globaldetentionproject.org), 30 May 2016 and 7 June 2016.

<sup>14</sup> Department of Justice and Equality, Irish Naturalisation and Immigration Service, Immigration in Ireland: Annual Review 2015, <http://www.justice.ie/en/JELR/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf/Files/INIS%20-%20Immigration%20in%20Ireland%20Annual%20Review%202015.pdf>.

<sup>15</sup> European Council on Refugees and Exiles, Asylum Reforms in Ireland will Fail Refugees, 8 January 2016, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1333-asylum-reforms-in-ireland-will-fail-refugees-.html>.

<sup>16</sup> Nasc, Immigration Residence & Protection Bill (Archive), accessed on 26 May 2016, <http://www.nascireland.org/campaigns-for-change/immigration-residence-protection-bill/>.

<sup>17</sup> Irish Refugee Council, The Right to Protection: Submission to the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights on the Protection Aspects of the Immigration, Residence and Protection Bill, March 2008.

waiting to be re-drafted” after part of it was used to create the International Protection Act 2015, which was signed into law in January 2016.<sup>18</sup>

The International Protection Act 2015 reformed asylum law in Ireland. The Act “streamlines procedures, creating a single application process for all applicants of international protection aimed at speeding up waiting times and reducing time spent in the Direct Provision system of reception.” The Act also allows for harsher detention measures and restricts family reunification provisions by excluding extended family members and those who get married after the submission of their asylum application.<sup>19</sup>

The International Protection Act 2015 has been described by the Irish Refugee Council as a “step backwards for Ireland in both its support for refugees and in its standing in the international community.”<sup>20</sup> Observers argue that it contains insufficient safeguards to ensure the full and proper consideration of asylum claims. They also criticised the way the Act was enacted, arguing that the government ignored the widespread concerns of NGOs and others by allowing little time for political debate and amendments.<sup>21</sup>

**Grounds for Detention.** Irish law provides various grounds for the detention of both asylum seekers and unauthorized migrants. A 2012 report by the European Migration Network summarizes: “Under certain specific circumstances Irish law permits the detention of: asylum applicants; persons refused leave to land; persons in respect of whom a deportation order has been issued; and persons who are to be transferred under the Dublin Regulation.”<sup>22</sup>

“A concluded intention to deport is required in order to detain for the purpose of deportation; as soon as the intention to deport ceases the individual cannot generally be detained. It must also be evident that the deportation can actually be effected within the eight-week period.”<sup>23</sup>

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<sup>18</sup> European Council on Refugees and Exiles, Asylum Reforms in Ireland will Fail Refugees, 8 January 2016, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1333-asylum-reforms-in-ireland-will-fail-refugees-.html>; The Irish Immigrant Support Centre, Immigration Residence & Protection Bill (Archive), accessed on 26 May 2016, <http://www.nascireland.org/campaigns-for-change/immigration-residence-protection-bill/>.

<sup>19</sup> European Council on Refugees and Exiles, Asylum Reforms in Ireland will Fail Refugees, 8 January 2016, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1333-asylum-reforms-in-ireland-will-fail-refugees-.html>.

<sup>20</sup> Irish Refugee Council, International Protection Act 2015 is a Step Backwards for Ireland’s Support for Refugees, say Irish Refugee Council, Media Statement, 30 December 2015, <http://www.irishrefugeecouncil.ie/news/international-protection-act-2015-is-a-step-backwards-for-irelands-support-for-refugees-say-irish-refugee-council/4533>.

<sup>21</sup> European Council on Refugees and Exiles, Asylum Reforms in Ireland will Fail Refugees, 8 January 2016, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1333-asylum-reforms-in-ireland-will-fail-refugees-.html>.

<sup>22</sup> Emma Quinn & Gillian Kingston, Practical Measures for Reducing Irregular Migration, European Migration Network, Economic and Social Research Institute, March 2012.

<sup>23</sup> Emma Quinn & Gillian Kingston, Practical Measures for Reducing Irregular Migration, European Migration Network, Economic and Social Research Institute, March 2012.

The Immigration Act 2003 (Section 5.2) provides that an immigration officer or Garda Síochána can detain anyone age 18 or over who has been refused to enter the country or who is suspected of being “unlawfully in the State for a continuous period of less than 3 months.”<sup>24</sup> The government contends that “In practice, persons refused leave to land are held for very short periods (in most cases overnight). There is a requirement in law to remove such persons as soon as practicable.”<sup>25</sup>

Ireland and the [United Kingdom](#) are the only EU countries that do not implement the EU Returns Directive. However the grounds for pre-removal detention in Ireland broadly reflect the directive. Section 3.1 of the Immigration Act 1999 provides for removal and indefinite exclusion, as well as detention in order to carry out a removal order. According to Section 5.1 of the 1999 law, “Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that a person against whom a deportation order is in force has failed to comply with any provision of the order or with a requirement in a notice under section 3(3)(b)(ii), he or she may arrest him or her without warrant and detain him or her in a prescribed place.”<sup>26</sup>

Section 5.1 of the 1999 Act further specifies that authorities can arrest and detain without warrant a person who has been issued a removal order and has (1) failed to comply with any provision of the order; (2) can reasonably be suspected of trying to leave the country and enter another without legal authorization; (3) has destroyed identity documents or is in possession of false documents; (4) or intends to avoid removal.<sup>27</sup>

Under Section 22 of the Refugee Act 1996, which implements the Dublin Regulation in Irish law, a person can be detained by an immigration officer or member of the Garda Síochána for the purpose of ensuring transfer under the Dublin Regulation. The Office Refugee Applications Commissioner has suggested that this provision will be used when officials believe a person is at risk of absconding.<sup>28</sup>

In addition, under the International Protection Act 2015, a member of the Garda Síochána or an immigration officer can detain an asylum seeker without a warrant if there is reasonable cause to suspect that the person: poses a threat to national security or public order; has committed a serious non-political crime; has not made reasonable efforts to establish his or her identity; intends to leave the state and enter another state

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<sup>24</sup> Immigration Act 2003 §5.2,

<http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>.

<sup>25</sup> Government of Ireland, “Observations of Ireland on the Questionnaire Related to: The Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, in Order that the Court May Decide Without Delay on the Lawfulness of His or Her Detention and Order His or Her Release if the Detention is Not Lawful,” UN Working Group on Arbitrary Detention, 2013, <http://www.ohchr.org/EN/Issues/Detention/Pages/QuestionnaireDraftBasicPrinciples.aspx>.

<sup>26</sup> Immigration Act 1999 §3.1,

<http://www.irishstatutebook.ie/eli/1999/act/22/section/3/enacted/en/html#sec3>.

<sup>27</sup> Immigration Act 1999 §5.1,

<http://www.irishstatutebook.ie/eli/1999/act/22/section/5/enacted/en/html#sec5>.

<sup>28</sup> Irish Refugee Council (ed. European Council on Refugees and Exiles), Country Report: Ireland, Asylum Information Database, November 2015.

without lawful authority; has acted or intends to act in a way that would undermine the asylum system or arrangements related to the Common Travel Area; or, without reasonable cause, has destroyed his or her identity or travel documents or has been or is in possession of a forged, altered, or substituted identity document.<sup>29</sup>

**Length of detention.** There are differing provisions in Irish law regarding lengths of detention, depending on a person's specific circumstances and whether or she has applied for asylum.

And amendment to the Immigration Act 1999 provided in Section 78 of the International Protection Act 2015 provides that a person can be detained for up to 12 hours at facilities at a port of entry.

Asylum seekers can be detained under orders of a District Judge for consecutive 21-day "committals," until their application has been decided. There is no limit to the number of committals, which means asylum seekers can potentially be detained indefinitely.<sup>30</sup>

Immigration detainees can also be held at Garda Síochána stations for a period not exceeding 48 hours, or two consecutive overnight stays

Unauthorized non-nationals can be detained for a period not exceeding 56 days. However, if they contest removal orders or appeal negative decisions, the period of time during which those legal processes are on-going are not counted as part of the eight-week detention limit.<sup>31</sup> While the eight-week maximum detention period is relatively short when compared to the majority of the EU countries and the EU Returns Directive (which permits detention up to 18 months), under the EU Returns Directive, as interpreted by the Court of Justice of the European Union (CJEU) in the [Kadzoev case](#), the period of time during appeal proceedings is to be taken into account in calculating the maximum permissible length of detention.

According to the Minister of Justice and Equality, between 2011 and 2012, 780 people were detained for immigration related issues. Of those people, 465 were detained for three days or less, 113 were detained for four to seven days, 68 were detained for eight to 14 days, 67 were detained for 15 to 30 days, 37 were detained for 31 to 50 days, and 30 were detained for 51 days or longer.<sup>32</sup>

**Asylum seekers.** Asylum seekers are generally not detained in Ireland and the country has agreed. However, the International Protection Act 2015 authorizes the Garda Síochána or immigration officers to detain an asylum seeker without a warrant if there is reasonable cause to suspect that the person: poses a threat to national security or

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<sup>29</sup> International Protection Act 2015, Section 20.

<sup>30</sup> Refugee Act, 1996 (last amended in 2003), 15 July 2003, <http://www.refworld.org/docid/3ae6b60e0.html>.

<sup>31</sup> Immigration Act 2003 §5.2, <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>.

<sup>32</sup> Nasc, PQ: Immigration Data (Length of Time in Detention), 29 January 2014, <http://www.nascireland.org/parliamentary-questions/pq-immigration-data-length-time-detention/>.



public order; has committed a serious non-political crime; has not made reasonable efforts to establish his or her identity; intends to leave the state and enter another state without lawful authority; has acted or intends to act in a way that would undermine the asylum system or arrangements related to the Common Travel Area (meaning the United Kingdom, Channel Islands, Isle of Man, and Ireland); or, without reasonable cause, has destroyed his or her identity or travel documents or has been or is in possession of a forged, altered, or substituted identity document.<sup>33</sup>

Additionally, “Persons who receive a Dublin Regulation Transfer Order may be detained pending removal although [Irish Naturalisation and Immigration Service (INIS)] stated that this is not common practice. The legal basis for detention pending Dublin II transfer is Section 22 of the Refugee Act, 1996 as amended, and Section 7(5) of S.I. 423 of 2003.”<sup>34</sup>

As is common in many countries that detain asylum seekers, Ireland does not provide desegregated statistics specifying the numbers of asylum seekers placed in detention. In 2013, responding to a freedom of information request sent as part of a joint Global Detention Project – Access Info study, a government Freedom of Information Officer wrote that “The Irish Prison Service does not keep statistics on the specific immigration or residency status of prisoners so it is unable to provide details of ‘the total number of asylum-seekers who were placed in detention’ during the above years. This part of the request is accordingly refused under Section 10(1)(a) as the records do not exist.”<sup>35</sup>

However, according to the Office of the Refugee Applications Commissioner (ORAC), in 2014 “22 applications – 1.5% of all applications – were received from persons in places of detention.”<sup>36</sup> ORAC reported that during 2015 among the 335 total immigration detainees 35 expressed a desire to apply for asylum after being detained and 17 people were given asylum interviews while still in detention.<sup>37</sup>

The International Protection Act 2015 streamlined Ireland’s asylum system by creating a single application procedure for asylum seekers in an attempt to shorten waiting times and reduce time spent in the Direct Provision system.<sup>38</sup>

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<sup>33</sup> International Protection Act 2015, Section 20.

<sup>34</sup> Emma Quinn & Gillian Kingston, Practical Measures for Reducing Irregular Migration, European Migration Network, Economic and Social Research Institute, March 2012.

<sup>35</sup> Aisling Brennan (Ireland Department of Justice and Equality), Letter to Lydia Medland (Access Info) Responding to Joint Access Info-Global Detention Project Questionnaire, 14 October 2013.

<sup>36</sup> Office of the Refugee Applications Commissioner, Annual Report – 2014, [http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-9XQK2A15304722-en/\\$File/2014%20Annual%20Report.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/CRSE-9XQK2A15304722-en/$File/2014%20Annual%20Report.pdf).

<sup>37</sup> Office of the Refugee Applications Commissioner, Annual Report 2015, [http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/\\$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf](http://www.orac.ie/website/orac/oracwebsite.nsf/page/AJNR-AB7FHF12301623-en/$File/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%202015%20Annual%20Report.pdf)

<sup>38</sup> Kitty Holland, Government Pledge on Asylum Reform Report Dropped, The Irish Times, 14 May 2016, <http://www.irishtimes.com/news/social-affairs/government-pledge-on-asylum-reform-report-dropped-1.2647500>.

However, concern has been expressed about a lack of procedural safeguards, which could prolong the asylum process by resulting in lengthy appeals in Ireland's higher courts or people being wrongfully deported to countries where they may face persecution. The European Council on Refugees and Exiles notes that the new procedure "lacks a mechanism to identify and assess the needs of vulnerable applicants," in addition to including harsher detention measures and more restrictive family reunification provisions.<sup>39</sup>

While agencies like UNHCR have lauded Ireland for not emphasizing the detention of asylum seekers,<sup>40</sup> the government's "direct provision" system for asylum seekers has been heavily criticized. Under this system, when asylum seekers arrive in the country, they are placed in one of the country's accommodation centres, which include a reception centre in Dublin and 33 centres around the country.<sup>41</sup> During their stay, which can last several months, asylum seekers are not allowed to work and are excluded from most social welfare entitlements;<sup>42</sup> instead, the Irish government directly provides for their basic needs, which according to Ireland's Department of Justice and Equality amounts to weekly allowances of €19.10 per adult and €9.60 per child.<sup>43</sup> However, according to the Children's Rights Alliance, the Department of Social Protection announced in January 2016 that the child component of the weekly payment would be increased.<sup>44</sup> Asylum seekers are also entitled to a medical card and children have access to schools and school transportation.<sup>45</sup> The direct provision system accommodation centres are managed by private contractors on behalf of Ireland's Reception and Integration Agency.<sup>46</sup>

When Ireland introduced the direct provision system in 2000, the idea was for asylum seekers to live in the accommodations on a short-term basis of not more than six months while their applications were being processed. However, in practice many asylum seekers ultimately stay in the centres for lengthy periods, with a study by the Working Group to Report to the Government on Improvements to the Protection

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<sup>39</sup> European Council on Refugees and Exiles, *Asylum Reforms in Ireland will Fail Refugees*, 8 January 2016, <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/1333-asylum-reforms-in-ireland-will-fail-refugees-.html>.

<sup>40</sup> United Nations High Commissioner for Refugees, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: IRELAND*, 2011.

<sup>41</sup> Liam Thornton, *Time to Legislate for Direct Provision System for Asylum Seekers*, *Irish Times*, 5 August 2013, <http://www.irishtimes.com/news/politics/oireachtas/time-to-legislate-for-direct-provision-system-for-asylum-seekers-1.1484416>; Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, Government of Ireland, June 2015.

<sup>42</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, Government of Ireland, June 2015.

<sup>43</sup> Ireland Department of Justice and Equality, Reception and Integration Agency, *Direct Provision*, [http://www.ria.gov.ie/en/RIA/Pages/Direct\\_Provision\\_FAQs](http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs).

<sup>44</sup> Children's Rights Alliance, *Report Card 2016*, 23 February 2015, <http://www.childrensrights.ie/content/report-card-2016>.

<sup>45</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, *Final Report*, Government of Ireland, June 2015.

<sup>46</sup> Children's Rights Alliance, *Report Card 2016*, 23 February 2015, <http://www.childrensrights.ie/content/report-card-2016>.



Process, including Direct Provision and Supports to Asylum Seekers finding that “of the estimated 7,937 people in the system on 16 February 2015, 55% have been in the system for over five years.” The same study also revealed that 45 percent of those individuals were living in direct provision accommodation centres. Lengthy stays in direct provision accommodation centres are problematic because such stays, even though they do not amount to deprivation of liberty, can have negative impacts on the physical, emotional, and mental health of asylum seekers.<sup>47</sup>

Asylum seekers and rights advocates have also pointed to deficiencies in the direct provision system with respect to the treatment of children. These issues were highlighted in a high-profile court case in the United Kingdom when a family of Sudanese asylum seekers fled to Northern Ireland after their asylum cases were rejected in Ireland. When the UK Border Agency sought to deport the family back to Ireland under the Dublin II regulation, they mounted a legal challenge to their deportation, arguing that Ireland’s refugee and protection status determination system, and in particular its low refugee recognition rate and its direct provision system, would violate their rights under the European Charter of Fundamental Rights. The High Court of Northern Ireland issued a judgement on the case in August 2013, ruling on behalf of the Sudanese family on the grounds that if they were returned to Ireland, the best interests of the children could not be ensured.<sup>48</sup>

The number of asylum applications in Ireland fell every year between 2004 and 2013, with 4,766 asylum applications in 2004 and only 946 in 2013. However, the country has recently seen an increase in asylum applications, with 1,448 being submitted in 2014.<sup>49</sup>

Ireland has had low refugee recognition rates. In 2012, it had a 1.5 percent acceptance at first instance and 6 percent on appeal. However, recent increases in Ireland’s acceptance rate have been welcomed, with 10 percent acceptance at first instance and 6.8 percent acceptance on appeal in 2013.<sup>50</sup> In 2014, the acceptance rate at first instance reached 12.5 percent.<sup>51</sup> For comparison, the 2014 acceptance rates for the European Union were 45 percent at first instance and 18 percent on appeal.<sup>52</sup> By 2015, Ireland’s recognition rate in first instance decisions increased to 43 percent.<sup>53</sup>

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<sup>47</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report, Government of Ireland, June 2015.

<sup>48</sup> For a review of the case see: Liam Thornton, Ireland’s Asylum & Direct Provision System under the Spotlight in Northern Ireland High Court, Human Rights in Ireland, 14 August 2013, <http://humanrights.ie/children-and-the-law/irelands-asylum-direct-provision-system-under-the-spotlight-in-northern-ireland-high-court/>

<sup>49</sup> Ken Foxe, Seeking Asylum in Ireland, RTÉ Ireland, Investigations Unit, 20 October 2015, <http://www.rte.ie/iu/asylum/>.

<sup>50</sup> Irish Refugee Council, The Latest Statistics on Asylum in Europe Shows that Ireland has amongst the Lowest Rates of Acceptance of Refugees, 19 June 2013, <http://www.irishrefugeecouncil.ie/news/the-latest-statistics-on-asylum-in-europe-shows-that-ireland-has-amongst-the-lowest-rates-of-acceptance-of-refugees/2042>.

<sup>51</sup> Ken Foxe, Seeking Asylum in Ireland, RTÉ Ireland, Investigations Unit, 20 October 2015, <http://www.rte.ie/iu/asylum/>.

<sup>52</sup> Eurostat, Asylum Decisions in the EU: EU Member States Granted Protection to More than 185,000 Asylum Seekers in 2014, European Union, 12 May 2015,

**Children.** Irish law does not provide for the detention of accompanied and unaccompanied minors. However, concerns have been raised in the past about the possibility of minors being placed in detention because of deficiencies in the process of determining a person's age.

Under the International Protection Act 2015, when it appears to an immigration officer that an unaccompanied minor is applying for asylum, the officer must notify the Child and Family Agency as soon as practicable. Upon notification to the Child and Family Agency, it will be presumed that the individual is a child and the relevant laws and regulations related to children will apply.<sup>54</sup>

With regard to the possible detention of children, Section 20(7) of the International Protection Act 2015 provides that children may not be detained. However, the detention provisions of the Act will apply to "a person who has indicated that he or she has not attained the age of 18 years if and for so long as" two members of the Garda Síochána or two immigration officers, or one member of the Garda Síochána and one immigration officer, reasonably believe that the person is not a child. In addition, detention provisions will apply to such individuals when one member of the Garda Síochána or one immigration officer reasonably believes the person to be over 18, if the result of an age assessment is that the person is at least 18 or if the person refuses to undergo an age assessment examination.<sup>55</sup>

According to the Office of the Refugee Applications Commissioner, a group of experienced interviewers received additional training, facilitated by UNHCR, to better prepare them for cases involving unaccompanied minors. However, the Irish Refugee Council has found that in practice, when age assessments cannot establish the exact age of an individual, "young people are not generally given the benefit of the doubt. If someone seems over 18, even by a day, there is typically a decision to move the young person into adult accommodation."<sup>56</sup> Specific concerns have also been raised in relation to the provisions of the International Protection Act 2015, namely the possibility of children seeking asylum being detained in adult prisons.<sup>57</sup>

Migrant children seeking asylum along with their families can also be accommodated in the direct provision system.<sup>58</sup> While direct provision accommodations do not constitute

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<http://ec.europa.eu/eurostat/documents/2995521/6827382/3-12052015-AP-EN.pdf/6733f080-c072-4bf5-91fc-f591abf28176>.

<sup>53</sup> Eurostat, Asylum Decisions in the EU, 20 April 2016,

<http://ec.europa.eu/eurostat/documents/2995521/7233417/3-20042016-AP-EN.pdf/>.

<sup>54</sup> International Protection Act 2015, Section 14.

<sup>55</sup> International Protection Act 2015, Section 20.

<sup>56</sup> Irish Refugee Council (ed. European Council on Refugees and Exiles), Country Report: Ireland, Asylum Information Database, November 2015.

<sup>57</sup> Fiona Gartland, New Asylum Laws Could See Under-18s in Adult Jails, Conference Told, The Irish Times, 7 March 2016, <http://www.irishtimes.com/news/crime-and-law/new-asylum-laws-could-see-under-18s-in-adult-jails-conference-told-1.2563595>.

<sup>58</sup> Irish Penal Reform Trust, Children's Rights Behind Bars, Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms, National Report: Ireland, August 2014, [http://www.iprt.ie/files/IRELAND\\_FINAL\\_REPORT1.pdf](http://www.iprt.ie/files/IRELAND_FINAL_REPORT1.pdf).

places of detention, the system has been criticised in relation to children. The Children's Rights Alliance estimates that half of the children in asylum-seeking families in Ireland live in direct provision accommodation centres.<sup>59</sup> In its 2016 concluding observations on Ireland, the UN Committee on the Rights of the Child expressed concern "about reports that the majority of children in an asylum-seeking or refugee situation are accommodated in privately run centres that are not covered by national standards."<sup>60</sup>

**Procedural guarantees.** Irish law provides various guarantees for individuals detained for immigration purposes. These include consideration for the special needs of those who may have a physical or mental disability, the right of detainees to maintain contact with their family, and the fact that information regarding a detainee cannot be communicated to the consular authorities of the state from which the detainee claims to be fleeing without the express consent, in writing, of the detainee.<sup>61</sup>

According to the Ministry for Justice and Equality, "the Garda National Immigration Bureau, who has responsibility for removals from the State of non-nationals, makes every effort to keep the period of detention to a minimum and to return the person concerned on the next available flight. In general, detention is used sparingly in relation to immigration related matters. Where possible, persons are served with a notice under section 14 of the Immigration Act 2004 which provides for the issue of a written instruction setting out reporting and residence conditions to a non-national who does not have permission to be in the State. This is used in certain low risk cases as an alternative to detention prior to return."<sup>62</sup>

**Detaining authorities.** Police (Garda Síochána) and immigration officers are both legally authorised to arrest people suspected of immigration violations. The Minister for Justice, Equality, and Law Reform can also authorize medical inspectors to detain and examine suspected non-citizens arriving at or leaving the country.<sup>63</sup>

**Authorized places of detention.** Regulations for the Immigration Act 2003 on "Removal Places of Detention" (also [Statutory Instrument No. 56/2005](#)) stipulates that all Garda Síochána stations and nine listed prisons can be used for immigration-related detention.<sup>64</sup> Detainees are often kept for a brief initial period of time at a Garda Síochána station before being returned to the carrier on which they arrived, or transferred to one of the prisons specified in immigration regulations for immigration

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<sup>59</sup> Children's Rights Alliance, Report Card 2016, 23 February 2015, <http://www.childrensrights.ie/content/report-card-2016>.

<sup>60</sup> Committee on the Rights of the Child, Concluding Observations on the Combined Third and Fourth Periodic Reports of Ireland, CRC/C/IRL/CO/3-4, 1 March 2016.

<sup>61</sup> Irish Refugee Council (ed. European Council on Refugees and Exiles), Country Report: Ireland, Asylum Information Database, November 2015.

<sup>62</sup> Minister for Justice and Equality (Deputy Frances Fitzgerald), Dáil Answer to Question No 69, addressed by Deputy Jonathan O'Brien, 7 July 2016, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070700075>.

<sup>63</sup> Immigration Act 2004 §3.3, <http://www.irishstatutebook.ie/eli/2004/act/1/section/3/enacted/en/html#sec3>.

<sup>64</sup> Republic of Ireland, S.I. No. 56/2005 - Immigration Act 2003 (Removal Places of Detention) Regulations 2005, <http://www.irishstatutebook.ie/eli/2005/si/56/made/en/print>.

uses.<sup>65</sup> Non-citizens who are refused entry must “as soon as practicable” be brought before a District Court judge to determine whether the person should be kept in detention.

**Non-custodial measures (alternative to detention).** Irish law does not make direct reference to detention alternatives.<sup>66</sup> An official with the Ministry for Justice and Equality stated in 2016 that “Where possible, persons are served with a notice under section 14 of the Immigration Act 2004 which provides for the issue of a written instruction setting out reporting and residence conditions to a non-national who does not have permission to be in the State. This is used in certain low risk cases as an alternative to detention prior to return.”<sup>67</sup>

**Criminalisation.** Ireland has provided criminal penalties for violations of immigration laws since as early as the Aliens Act of 1935. These penalties were amended in the Immigration Act of 1999. According to Article 9 of the Immigration Act, “A person guilty of an offence under this Act shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.” Offences listed in the act include obstructing deportation proceedings and documentation fraud.

## DETENTION INFRASTRUCTURE

Unlike the vast majority of the EU countries, Ireland does not have dedicated immigration centres. Rather, non-citizens subject to administrative detention can be confined briefly at police stations before being transferred to a select group of criminal prisons, which are operated by the Irish Prison Service. Importantly, the practice of using penitentiaries for immigration purposes does not face the same legal challenges in Ireland that it faces in EU countries that apply the Returns Directive, which stipulates the use of separate facilities and has successfully challenged at the European Court of Justice (for more information, see the 2014 CJEU judgement in [Bero & Bouzalmate](#)).

There are nine prisons authorized for this type of detention in the Immigration Act 2003 (Removal Places of Detention) Regulations 2005. However, according to the Irish Department of Justice and Equality, by 2013, only seven prisons were in use for immigration-related reasons: Castlerea Prison, Cloverhill Prison, Cork Prison, Limerick Prison, Mountjoy Prison, Dochas (Mountjoy Women’s Prison), and Wheatfield Prison.<sup>68</sup>

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<sup>65</sup> M. Kelly, Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland, Human Rights Consultants, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>; Immigration Act 2003 (Removal Places of Detention) Regulations 2005.

<sup>66</sup> Immigration Act 2003 §5.2, <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>.

<sup>67</sup> Minister for Justice and Equality (Deputy Frances Fitzgerald), Dáil Answer to Question No 69, addressed by Deputy Jonathan O’Brien, 7 July 2016, <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016070700075>.

<sup>68</sup> Aisling Brennan (Ireland Department of Justice and Equality), Letter to Lydia Medland (Access Info) Responding to Joint Access Info-Global Detention Project Questionnaire, 14 October 2013.

Prison facilities previously authorized for immigration detention included Saint Patrick's Institution and the Training Unit in Glengariff Parade, a semi-secure facility that emphasizes work release program.<sup>69</sup> Additionally, Ireland at one time reportedly used the Arbour Hill prison in Dublin to hold people on immigration violations despite the fact that it was not designated in the Immigration Act 2003 for this purpose.<sup>70</sup>

Traditionally, two of the more important facilities used for immigration purposes were Cloverhill Prison (for men) and the Dóchas Centre at Mountjoy Prison (for women).<sup>71</sup> It is unclear if these facilities continue to be prioritised today.

**Criticism and reform.** Observers have long criticized Ireland's practice of confining immigration detainees in prisons and the conditions of detention for asylum seekers and migrants in these facilities. The Council of Europe's Committee for the Prevention of Torture has repeatedly urged Ireland to end this practice and in 2008 the UN Human Rights Committee advised the country to "take immediate and effective measures to ensure that all persons detained for immigration related reasons are held in facilities specifically designed for this purpose."<sup>72</sup> As of early 2017, however, there was no indication that reforms had been implemented.

In its 2015 report to the government of Ireland, the CPT stated that "a prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence. In those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose." However, because immigration detainees continue to be held in prisons, the CPT noted that "all appropriate steps should be taken to ensure that their exposure to remand and sentenced prisoners is limited, that they are offered as much time out of cell as possible and that they are afforded open visits." Although the CPT recognized that considerable steps had been taken by the government to improve the prison system, it also expressed concern about the inability of prison managers and officers to properly care for immigration detainees. The CPT urged the Irish government to continue pursuing the establishment of a detention centre designed specifically for immigration detainees.<sup>73</sup>

In its response to the 2015 report of the CPT, the government of Ireland stated that plans for a dedicated immigration detention facility at Dublin Airport were progressing, with the facility expected to be in place in 2016. The government further noted that "detention is used sparingly in relation to immigration related matters" and that in certain

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<sup>69</sup> Immigration Act 2003 (Removal Places of Detention) Regulations 2005, S.I. No. 56 Of 2005.

<sup>70</sup> Irish Prison Service, Irish Prison Service Annual Report 2007, 18 December 2008, [www.irishprisons.ie/documents/IPS\\_AR\\_2007.pdf](http://www.irishprisons.ie/documents/IPS_AR_2007.pdf).

<sup>71</sup> Tony O'Riordan, Ireland of the Exclusionary Welcomes: Uncovering Immigration-Related Detention, Irish Quarterly Review Volume 96 - No. 381, March 2007.

<sup>72</sup> UN Human Rights Committee, Concluding Observations on Ireland, 2008.

<sup>73</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Ireland on the Visit to Ireland Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 26 September 2014, Council of Europe, 17 November 2015.

low risk cases, reporting and residence conditions are used as an alternative to detention. Finally, the government stated that immigration detainees are “in general kept apart from convicted persons while in detention.”<sup>74</sup>

In 2014, the UN Human Rights Committee highlighted several deficiencies in the prisons system, including with respect to immigration detainees. It stated: “the Committee is concerned at the lack of progress in eliminating adverse conditions in a number of prisons in the State party, such as ... lack of segregation of remand and convicted prisoners, and between detained immigrants and sentenced prisoners.”<sup>75</sup>

Rights groups have also criticised Ireland’s use of prisons for the detention of immigrants. The Irish Immigrant Support Centre (or Nasc) states that “International best practice also dictates that immigration detainees should not be housed with the main prison population, as they have not been suspected nor convicted of a crime.”<sup>76</sup>

Previously, in 2004, research undertaken by the Irish Refugee Council, the Immigrant Council of Ireland, and Irish Penal Reform Trust found that accommodation in prisons with people suspected of and/or sentenced for having committed criminal offences can be extremely traumatic for immigration detainees. Their report stated that immigration detainees in Ireland are a “particularly disadvantaged group—away from the public eye they may not have access to services which have been made available for immigrants, they may not be made aware of their rights and entitlements or may not be able to exercise them because of language and/or literacy difficulties.”<sup>77</sup> The report further highlighted problems experienced due to cultural difference, compounded by a lack of access to legal aid.<sup>78</sup>

Despite claims by the government about opening a dedicated immigration detention facility, as of early 2017 the facility still did not appear to be in operation. The lack of progress may be at least in part related to the decision to put on hold plans for building a “super” prison at Thornton Hall that would have included dedicated immigration facilities.

According to Nasc, “The Irish Authorities in response to the CPTs scathing critique of this practice stated that a facility for immigration detainees had been identified and would be ready in 2016 but to date we have seen no sign of this facility.”<sup>79</sup>

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<sup>74</sup> Government of Ireland, Response of the Government of Ireland to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its Visit to Ireland from 16 to 26 September 2014, Council of Europe, 17 November 2015.

<sup>75</sup> Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland, UN Doc CCPR/C/IRL/CO/4, 19 August 2014.

<sup>76</sup> Fiona Finn (Nasc), Email correspondence with Global Detention Project, 1 July 2016.

<sup>77</sup> M. Kelly, Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland, Human Rights Consultants, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>.

<sup>78</sup> M. Kelly, Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland, Human Rights Consultants, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>.

<sup>79</sup> Fiona Finn (Nasc), Email correspondence with Global Detention Project, 1 July 2016.



During parliamentary questioning in July 2016, an official at the Ministry for Justice and Equality stated that “Plans are being progressed for the provision of a dedicated immigration detention facility at Dublin Airport. I am informed that plans for the facility have been drawn up and agreement reached with the Office of Public Works and the Dublin Airport Authority for the necessary redevelopment work to be carried out. This redevelopment will be completed as soon as possible within the next 12 months and will replace the existing Garda Station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility.”<sup>80</sup>

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<sup>80</sup> Question No: 69, Dáil Question addressed to the Minister for Justice and Equality (Deputy Frances Fitzgerald) by Deputy Jonathan O’Brien for Written on Thursday, 7th July, 2016.

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