



COUNTRY REPORT

IMMIGRATION DETENTION IN IRELAND:
WILL BETTER DETENTION MEAN MORE
DETENTION?

March 2018



GLOBAL **DETENTION** PROJECT

ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) facilitating accountability and transparency in the treatment of detainees; and (3) encouraging scholarship in this field of immigration and refugee studies.

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1. INTRODUCTION

Ireland does not emphasize detention in its migration and asylum policies. It also does not face the same migratory pressures as other EU countries. Subsequently, the number of individuals placed in immigration detention is relatively low. Observers have complained about a lack of transparency around the issue of immigration detention in the country,¹ but some statistics are available. According to the Irish Prison Service (IPS), the number of detainees rose in 2016: While there were 335 individual immigration detainees in 2015, the number rose to 408 in 2016 ([Luxembourg](#) and [Lithuania](#) have similar detention rates). The average daily number of migrant detainees was four in 2015 and five in 2016.²

Its limited detention activities notwithstanding, Ireland has faced significant international criticism for its practice of placing immigration detainees in prisons and Garda Síochána stations rather than dedicated facilities. The European Committee on the Prevention of Torture (CPT) has repeatedly challenged this policy, highlighting it in several reports and calling on Irish authorities to review arrangements for accommodating immigration detainees.³ In its 2015 report, the committee wrote: "A prison is by definition not a suitable place in which to detain someone who is neither suspected nor convicted of a criminal offence."⁴

In mid-2017, this issue was the subject of widespread national and local media coverage following the overnight detention of a Brazilian tourist in the Dochas all-female prison. The Brazilian Embassy in Dublin expressed its concern that its

¹ Migrant and Refugee Rights Centre (NASC), *Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice*, 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>

² Irish Prisons Service, "Annual Report 2016," 2017, http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf

³ Nasc, the Migrant and Refugee Rights Centre, "Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice," 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>

⁴ 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, <https://rm.coe.int/1680696c9a>

citizens were being sent to "common prisons,"⁵ and a petition calling for Ireland's Minister of Justice to apologise to the tourist was signed by more than 2,900 people.⁶

In its response to the 2015 CPT report, the Irish government stated that it planned to open a dedicated immigration detention centre at Dublin Airport by 2016. This was, however, soon delayed. According to an Irish newspaper, the Ministry of Justice stated in 2017 that the construction would start in September 2017 and be completed in July 2018.⁷ As of early 2018, the precise state of these developments remained unclear.

Separately, in November 2017, Ireland's Minister of Justice and Equality announced that the country would opt-in to the EU Recast Reception Conditions Directive to comply with a Supreme Court ruling in May 2017, which ruled against the country's prohibition on asylum seekers accessing employment.⁸ The directive will require the state to provide a specialised detention facility for detained protection applicants, amongst other measures.⁹ In practice, this will mean that Ireland will no longer be permitted to detain such applicants in penal facilities.

⁵ M. Byrne and E. Quinn, "The Effectiveness of Return in EU Member States: Challenges and Good Practices Linked to EU Rules and Standards," *European Migration Network*, November 2017, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/14a_ireland_effectiveness_of_return_final_en.pdf

⁶ Uplift, "Apologise for the Mistreatment of Au Pair Paloma Aparecida Silva Carvalho," <https://my.uplift.ie/petitions/apologise-for-the-mistreatment-of-paloma-aparecida-silva-carvalho>

⁷ The Irish Times, "Work on Dublin Airport Immigration Detention Centre to begin," *The Irish Times*, 28 July 2017, <https://www.irishtimes.com/news/politics/work-on-dublin-airport-immigration-detention-centre-to-begin-1.3169079>.

⁸ European Council of Refugees and Exiles (ECRE), "Ireland: Planned Opt-In to Recast Reception Conditions Directive," 24 November 2017, <https://www.ecre.org/ireland-planned-opt-in-to-recast-reception-conditions-directive/>

⁹ Nasc, the Migrant and Refugee Rights Centre, "Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice," 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>



2. LAWS, POLICIES, PRACTICES

2.1 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.

With relevant norms scattered across various acts, a new Immigration, Residence, and Protection Bill intended to replace all previous legislation on immigration was introduced in 2010.¹⁰ The legislation was meant to establish a more unified immigration code, with its primary focus being the improvement of efficiency and transparency within the system.¹¹ However, the bill was left "in limbo, 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 and came into force on 31 December 2016.¹²

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."

Allowing for harsher detention measures, as well as restricting family reunification provisions by excluding extended family members and those who get married after the submission of their asylum application,¹³ the act has been described by the Irish Refugee Council as a "step backwards for Ireland in both its support for refugees

¹⁰ Nasc, the Migrant and Refugee Rights Centre, "Immigration Residence & Protection Bill (Archive)," <http://www.nascireland.org/campaigns-for-change/immigration-residence-protection-bill/>

¹¹ 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, <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/IRC-Submission-on-the-IRP-Bill-2008.pdf>

¹² European Council on Refugees and Exiles (ECRE), "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)," <http://www.nascireland.org/campaigns-for-change/immigration-residence-protection-bill/>; European Council on Refugees and Exiles (ECRE), "AIDA 2016 Update: Ireland," 13 March 2017, <https://www.ecre.org/aida-2016-update-ireland/>

¹³ European Council on Refugees and Exiles (ECRE), "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>

and in its standing in the international community.”¹⁴ Observers argue that it contains insufficient safeguards to ensure the full and proper consideration of asylum claims. They also criticise the way the act was enacted, arguing that the government ignored widespread concerns of NGOs and others by leaving little time for political debate and amendments.¹⁵

2.2 Grounds for Detention. Irish law provides various grounds for the detention of both asylum seekers and unauthorised migrants, including for those refused entry to the country and those in removal proceedings.¹⁶

The Immigration Act 2003 (Section 5.2) provides that an immigration officer or Garda Síochána (police officer) can detain anyone aged 18 or over who has been refused entry to the country or who is suspected of being “unlawfully in the State for a continuous period of less than 3 months.”¹⁷ The Irish government, in a 2013 response to questions raised by the UN Working Group on Arbitrary Detention, stated 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.”¹⁸

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.”¹⁹

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

¹⁴ 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>

¹⁵ European Council on Refugees and Exiles (ECRE), “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>

¹⁶ E. Quinn & G. Kingston, “Practical Measures for Reducing Irregular Migration,” *European Migration Network/ Economic and Social Research Institute*, March 2012, http://emn.ie/files/p_201205080239292012_Irregular%20Migration%20Study_Mar2012.pdf

¹⁷ Government of Ireland, “Immigration Act 2003, Section 5.2,” <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>

¹⁸ 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>

¹⁹ Government of Ireland, “Immigration Act 1999 Section 3.1,” <http://www.irishstatutebook.ie/eli/1999/act/22/section/3/enacted/en/html#sec3>

comply with any provision of the order; (2) can reasonably be suspected of trying to leave the country and enter another without legal authorisation; (3) has destroyed identity documents or is in possession of false documents; or (4) intends to avoid removal.²⁰

According to the Irish Prison Service, there were 421 immigration law related committals involving 408 detainees in 2016. With 342 committals involving 335 detainees in 2015, the statistics demonstrate a significant increase in the use of immigration detention between 2015 and 2016.²¹

2.3 Asylum seekers. Under the International Protection Act 2015 (Section 20), 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: (1) poses a threat to national security or public order; (2) has committed a serious non-political crime; (3) has not made reasonable efforts to establish his or her identity; (4) intends to leave the state and enter another state without lawful authority; (5) 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, (6) 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.²²

In general, asylum seekers are not detained in Ireland. However, as outlined above in "Grounds for Detention," the country's International Protection Act 2015 authorises the Garda Síochána or immigration officers to detain an asylum seeker without a warrant if there is reasonable cause.

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."²³

²⁰ Government of Ireland, "Immigration Act 1999 Section 5.1," <http://www.irishstatutebook.ie/eli/1999/act/22/section/5/enacted/en/html#sec5>.

²¹ Irish Prison Service, "Annual Report 2016," 2017, http://www.irishprisons.ie/wp-content/uploads/documents_pdf/12631-IPS-annualreport-2016_Web.pdf

²² Government of Ireland, "International Protection Act 2015, Section 20," <http://www.irishstatutebook.ie/eli/2015/act/66/section/20/enacted/en/html#sec20>

²³ 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.

However, according to the Office of the Refugee Applications Commissioner (ORAC),²⁴ in 2014 “22 applications – 1.5% of all applications – were received from persons in places of detention.”²⁵ ORAC reported that during 2015, of 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.²⁶

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.²⁷

While agencies like UNHCR have lauded Ireland for not emphasising the detention of asylum seekers,²⁸ the government’s “direct provision” system for asylum seekers has been heavily criticised. Under this system, newly arrived asylum seekers are placed in one of the country’s accommodation centres, which include a reception centre in Dublin and 33 centres around the country.²⁹ During their stay, which can last several months, asylum seekers are not allowed to work and are excluded from most social welfare entitlements;³⁰ instead, the Irish government directly provides for their basic needs which, according to the country’s Department of Justice and Equality, amounts to weekly allowances of 19.10 EUR per adult and 9.60 EUR per child.³¹ (According to the Children’s Rights Alliance, the Department of Social Protection announced in January 2016 that the child component of the weekly

²⁴ With the implementation of the International Protection Act 2015, ORAC was abolished and certain functions were transferred to the newly established International Protection Office within the Irish Naturalisation and Immigration Service, which is responsible for the assessment of applications. The former Refugee Appeals Tribunal was replaced by the International Protection Appeal Tribunal (IPAT), a statutorily independent body. See: ORAC, “Important Information Notice: Abolition of ORAC and Transfer of Certain Functions to New International Protection Office,” <http://www.orac.ie/website/orac/oracwebsite.nsf/page/index-en>; Department of Justice and Equality, “Irish Naturalisation and Immigration Service: Immigration in Ireland: Annual Review 2016,” http://justice.ie/en/JELR/INIS_Immigration_in_Ireland_Annual_Review_2016.pdf/Files/INIS_Immigration_in_Ireland_Annual_Review_2016.pdf

²⁵ Office of the Refugee Applications Commissioner, “Annual Report - 2014,” 2015, [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)

²⁶ Office of the Refugee Applications Commissioner, “Annual Report - 2015,” 2016, [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)

²⁷ K. 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>

²⁸ United Nations High Commissioner for Refugees (UNHCR), “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,” March 2011, <http://bit.ly/2HNXnLT>

²⁹ L. 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, <http://bit.ly/1GYBUL5>

³⁰ 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, <http://bit.ly/1GYBUL5>

³¹ Department of Justice and Equality, Reception and Integration Agency, “Direct Provision,” http://www.ria.gov.ie/en/RIA/Pages/Direct_Provision_FAQs

payment would be increased.³²) Asylum seekers are also entitled to a medical card and children have access to schools and school transportation.³³ The direct provision system's accommodation centres are managed by private contractors on behalf of Ireland's Reception and Integration Agency.³⁴

When Ireland introduced the direct provision system in 2000, the idea was for asylum seekers to live in the centres on a short-term basis of no more than six months while their applications were being processed. In practice however, many asylum seekers find themselves staying in the centres for lengthier periods of time. One study by the Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers found 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.³⁵

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.³⁶

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

³² Children's Rights Alliance, "Report Card 2016," 6 February 2016, <http://www.childrensrights.ie/content/report-card-2016-1>

³³ 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, <http://bit.ly/1GYBUL5>

³⁴ Children's Rights Alliance, "Report Card 2016," 6 February 2016, <http://www.childrensrights.ie/content/report-card-2016-1>

³⁵ 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, <http://bit.ly/1GYBUL5>

³⁶ For a review of the case see: L. 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/>

country has recently seen an increase in asylum applications, with 2245 being submitted in 2016.³⁷

Ireland has low refugee recognition rates. Despite increasing over the past few years, it is still below average rates across the EU. 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 2013.³⁸ In 2014, the acceptance rate at first instance reached 12.5 percent³⁹, but in comparison to the EU average (45 percent at first instance)⁴⁰, this was still relatively low. In 2015, meanwhile, acceptance rates in Ireland increased substantially – to 42 percent at first instance, in comparison to the EU average of 52 percent.⁴¹

2.4 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 that an unaccompanied minor is applying for asylum, an immigration officer must notify the Child and Family Agency as soon as practicable. Once the Child and Family Agency is notified, it will be presumed that the individual is a child and the relevant laws and regulations related to children will apply.⁴²

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, two immigration officers, or one member of the Garda Síochána and one immigration officer reasonably believe that the individual is not a child. In addition, detention provisions will apply to such individuals when just one member of the Garda Síochána or one immigration officer reasonably believes the person to be

³⁷ K. Foxe, "Seeking Asylum in Ireland," *RTÉ Ireland (Investigations Unit)*, 20 October 2015, <http://www.rte.ie/iu/asylum/>; Irish Refugee Council, "Statistics: Republic of Ireland," AIDA, <http://www.asylumineurope.org/reports/country/republic-ireland/statistics>

³⁸ 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://bit.ly/2u2fn3p>

³⁹ K. Foxe, "Seeking Asylum in Ireland," *RTÉ Ireland, (Investigations Unit)*, 20 October 2015, <http://www.rte.ie/iu/asylum/>

⁴⁰ 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, <http://ec.europa.eu/eurostat/documents/2995521/6827382/3-12052015-AP-EN.pdf/6733f080-c072-4bf5-91fc-f591abf28176>

⁴¹ 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, <http://ec.europa.eu/eurostat/documents/2995521/6827382/3-12052015-AP-EN.pdf/6733f080-c072-4bf5-91fc-f591abf28176>

⁴² Government of Ireland, "International Protection Act 2015, Section 14," <http://www.irishstatutebook.ie/eli/2015/act/66/section/14/enacted/en/html>

over 18, and if an age assessment determines that the person is at least 18 or if the person refuses to undergo an age assessment examination.⁴³

According to the Office of the Refugee Applications Commissioner (ORAC), UNHCR facilitated additional training for a group of experienced interviewers, 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.”⁴⁴ Specific concerns have also been raised in relation to the provisions of the International Protection Act 2015—namely, the possibility of child asylum seekers being detained in adult prisons.⁴⁵

Migrant child asylum seekers, along with their families, can also be accommodated in the direct provision system.⁴⁶ While direct provision accommodations do not constitute 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.⁴⁷ 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.”⁴⁸

2.5 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.⁴⁹

The Immigration Act 2015 enshrines several safeguards in Section 20, such as the detainee’s right to consult a legal representative and to be assisted by an interpreter

⁴³ Government of Ireland, “International Protection Act 2015, Section 20,” <http://www.irishstatutebook.ie/eli/2015/act/66/section/20/enacted/en/html>

⁴⁴ Irish Refugee Council, “Country Report: Ireland,” *Asylum Information Database*, November 2015, <http://www.asylumineurope.org/reports/country/republic-ireland>

⁴⁵ F. 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>

⁴⁶ 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/contents/2685>

⁴⁷ Children’s Rights Alliance, “Report Card 2016,” 6 February 2016, <http://www.childrensrights.ie/content/report-card-2016-1>

⁴⁸ 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,” 29 January 2016, <http://www.refworld.org/docid/56c17f574.html>

⁴⁹ Irish Refugee Council, “Country Report: Ireland,” *Asylum Information Database*, November 2015, <http://www.asylumineurope.org/reports/country/republic-ireland>

for the purpose of the consultations; the detainee's entitlement to have the High Commissioner and another nominated individual notified about their detention (Section 14); the detainee's right to be informed about the grounds of their detention, without delay, in a language they can understand; and the provision that the detainee has to be brought before a court, as soon as practicable (Section 15).⁵⁰

Prison rules, which are to be applied to persons detained, including those under the various immigration acts, are also set out in Statutory Instrument No. 252 of 2007.⁵¹ Section 16 (1) determines that a "foreign national shall be provided with the means to contact a consul and, in addition, an asylum applicant shall be provided with the means to contact (a) the United Nations High Commissioner for Refugees or the Representative in Ireland of the High Commissioner, [...] and national or international authorities and organisations whose principal object is to serve the interests of refugees or stateless persons or to protect the civil and human rights of such persons." Section 16 (2) further states that the detainee is to be informed about the entitlement to be visited by a legal adviser (Rule 38).

However, concern has been expressed about a lack of procedural safeguards, which could prolong the asylum process as a result of lengthy appeals in Ireland's higher court or see persons 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.⁵²

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

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.⁵³

An 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. Immigration detainees can also be held at Garda

⁵⁰ Government of Ireland, "International Protection Act 2015, Section 20," <http://www.irishstatutebook.ie/eli/2015/act/66/section/20/enacted/en/html>

⁵¹ Government of Ireland, "S.I. No. 252/2007 - Prison Rules, 2007, Section 16," <http://www.irishstatutebook.ie/eli/2007/si/252/made/en/print#article16> ; Irish Refugee Council, "Legal Assistance for Review of Detention, Republic of Ireland," <http://www.asylumineurope.org/reports/country/republic-ireland/detention-asylum-seekers/procedural-safeguards/legal-assistance>

⁵² European Council on Refugees and Exiles (ECRE), "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>

⁵³ Irish Refugee Council, "Duration of Detention," *Asylum Information Database*, <http://www.asylumineurope.org/reports/country/republic-ireland/detention-asylum-seekers/legal-framework-detention/duration>

Síochána stations for a period not exceeding 48 hours, or two consecutive overnight stays

Unauthorised 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.⁵⁴ 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.⁵⁵

2.7 Criminalisation. Ireland has provided criminal penalties for violations of immigration laws since as early as the Aliens Act of 1935. These penalties were, however, 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.

2.8 Detaining authorities and institutions. 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 authorise medical inspectors to detain and examine suspected non-citizens arriving at or leaving the country.⁵⁶

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.⁵⁷ 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

⁵⁴ Government of Ireland, "Immigration Act 2003 Section 5.2," <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>

⁵⁵ Nasc, the Migrant and Refugee Rights Centre, "Parliamentary Question: Immigration Data (Length of Time in Detention)," 29 January 2014, <http://www.nascireland.org/parliamentary-questions/pq-immigration-data-length-time-detention/>

⁵⁶ Government of Ireland, "Immigration Act 2004 Section 3.3," <http://www.irishstatutebook.ie/eli/2004/act/1/section/3/enacted/en/html#sec3>

⁵⁷ Government 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>

specified in immigration regulations for immigration use.⁵⁸ Non-citizens who are refused entry must be brought before a District Court judge “as soon as practicable” to determine whether the person should be kept in detention.

2.9 Non-custodial measures. Irish law does not make explicit reference to “alternatives to detention.”⁵⁹ However, Irish immigration acts entail provisions that can be considered a legal footing for the application of non-custodial measures.⁶⁰ According to Section 20 (3b) of the International Protection Act 2015 and Section 14 of the Immigration Act 2004, detainees can be released but requested to reside or remain in particular districts or locations in the state or to regularly report to an immigration officer or member of the Garda Síochána.⁶¹ An official within 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.”⁶²

2.10 Monitoring. Ireland has been party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment since 11 April 2002, and signed its Optional Protocol (OPCAT) on 2 October 2007. Yet, more than ten years later, it has still not ratified the Protocol and has therefore impeded the UN Subcommittee on the Prevention of Torture (SPT) from monitoring its places of detention—something which is, in the case of the Protocol’s ratification, mandated.⁶³

Moreover, on the national level, Ireland has so far failed to implement a national preventive mechanism, as required by OPCAT. To date, the Inspector of Prisons has been responsible for monitoring the country’s prisons. However, in his 2014 annual report, only seven out of then 14 facilities were covered.⁶⁴

⁵⁸ M. Kelly, “Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council,” *Irish Penal Reform Trust and Immigrant Council of Ireland*, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>; Government 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>

⁵⁹ Government of Ireland, “Immigration Act 2003 Section 5.2,” <http://www.irishstatutebook.ie/eli/2003/act/26/section/5/enacted/en/html#sec5>

⁶⁰ Irish Refugee Council, “Alternatives to Detention,” Asylum Information Database, <http://www.asylumineurope.org/reports/country/republic-ireland/detention-asylum-seekers/legal-framework-detention/alternatives>

⁶¹ Government of Ireland, “International Protection Act 2015, Section 20 (3b),” <http://www.irishstatutebook.ie/eli/2015/act/66/section/20/enacted/en/html>; Government of Ireland, “Immigration Act 14, Section 14,” <http://www.irishstatutebook.ie/eli/2004/act/1/section/14/enacted/en/html#sec14>

⁶² 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>

⁶³ United Nations Human Rights Office of the High Commissioner (OHCHR), “Reporting Status for Ireland,” http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=IRL&Lang=EN

⁶⁴ Committee against Torture, “Concluding Observations on the Second Periodic Report of Ireland, CAT /C/IRL/CO/2,” 31 August 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/IRL/CO/2&Lang=En

2.11 Trends and statistics. According to Irish Prison Service, Ireland detained 408 non-citizens in 2016, 335 in 2015, 390 in 2014, 374 in 2013, 385 in 2012, 395 in 2011, and 459 in 2010.⁶⁵ In 2014, most of the detainees came from Albania (71), China (62), Nigeria (28), and Pakistan (27).⁶⁶

⁶⁵ Migrant and Refugee Rights Centre (NASC), Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice, 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>

⁶⁶ Migrant and Refugee Rights Centre (NASC), Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice, 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>



3. DETENTION INFRASTRUCTURE

Unlike its EU neighbours, Ireland does not have dedicated immigration detention 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, because Ireland is not a state party to the EU Returns Directive, the practice of using penitentiaries for immigration purposes does not face the same legal challenges that it faces in other EU countries. The directive, which stipulates the use of separate facilities for this purpose, has led to rulings of the Court of Justice of the European Union against this practice, most notably in [Germany](#) (CJEU).⁶⁷

3.1 Detention Facilities. There are nine prisons authorised for administrative 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.⁶⁸

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

The prisons traditionally used for immigration purposes have been Cloverhill Prison (for men) and the Dóchas Centre at Mountjoy Prison (for women).⁷¹ For instance in 2014, 273 non-citizens were held in Cloverhill and 76 in Dóchas.

⁶⁷ See the 2014 CJEU judgement in [Bero & Bouzalmate](#).

⁶⁸ 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.

⁶⁹ Government of Ireland, "Immigration Act 2003 (Removal Places of Detention) Regulations 2005, S.I. No. 56 of 2005", <http://www.irishstatutebook.ie/eli/2005/si/56/made/en/print>

⁷⁰ Irish Prison Service, "Irish Prison Service Annual Report 2007," 18 December 2008, www.irishprisons.ie/documents/IPS_AR_2007.pdf

⁷¹ T. O'Riordan, "Ireland of the Exclusionary Welcomes: Uncovering Immigration-Related Detention," *Irish Quarterly Review*, 96 (381), March 2007, http://www.jstor.org/stable/27896430?seq=1#page_scan_tab_contents

3.2 Conditions in Detention. Observers have long criticised Ireland's practice of confining immigration detainees in prisons, as well as the conditions of detention for asylum seekers and migrants in these facilities. Discussing this practice, the Irish Immigrant Support Centre (or Nasc) states that "international best practice ... dictates that immigration detainees should not be housed with the main prison population, as they have not been suspected nor convicted of a crime."⁷²

Research undertaken by the Irish Refugee Council, the Immigrant Council of Ireland, and Irish Penal Reform Trust has found that accommodation in prisons with people suspected of and/or sentenced for having committed criminal offences can be extremely traumatic for immigration detainees. They reported 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."⁷³ The report further highlighted problems experienced due to cultural difference, compounded by a lack of access to legal aid.⁷⁴

Perhaps most notable have been the repeated calls by Council of Europe's Committee for the Prevention of Torture (CPT) to end this practice, as well as by the UN Human Rights Committee, which in 2008 urged Ireland "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."⁷⁵ In 2014, the UN Human Rights Committee also 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."⁷⁶

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

⁷² Fiona Finn (Nasc), Email correspondence with Global Detention Project, 1 July 2016.

⁷³ M. Kelly, "Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council," *Irish Penal Reform Trust and Immigrant Council of Ireland*, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>

⁷⁴ M. Kelly, "Immigration-Related Detention in Ireland: Research Report for the Irish Refugee Council," *Irish Penal Reform Trust and Immigrant Council of Ireland*, November 2005, <http://idc.rfbf.com.au/wp-content/uploads/2009/06/irc-detention-report-2005.pdf>

⁷⁵ UN Human Rights Committee, "Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee – Ireland," <http://www.refworld.org/publisher,HRC,CONCOBSERVATIONS,IRL,48c4ff452,0.html>

⁷⁶ Human Rights Committee, "Concluding Observations on the Fourth Periodic Report of Ireland CCPR/C/IRL/CO/4," 19 August 2014, <http://bit.ly/1P3CIPE>

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 recognised 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.⁷⁷

In its response to the 2015 report of the CPT, the Irish government noted that “detention is used sparingly in relation to immigration related matters” and that in certain low risk cases, reporting and residence conditions are used as an alternative to detention. It also stated that immigration detainees are “in general kept apart from convicted persons while in detention.”⁷⁸

The government also announced at the time that plans for a dedicated immigration detention facility at Dublin Airport were progressing, with the facility expected to be ready by 2016. The opening, however, has been repeatedly delayed. 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. ... 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.”⁷⁹

This Dublin airport facility, however, has never materialized, and in mid-2017 the Ministry of Justice stated that the construction of a dedicated immigration detention centre was supposed to start in September 2017 and to be completed ten months later in July 2018.⁸⁰ During parliamentary questioning in October 2017, authorities clarified that construction was still pending. The Minister of Justice and Equality confirmed that the commencement of the project’s development phase was due during the fourth quarter of 2017.⁸¹

Dublin Airport. People refused entry may be detained at the Dublin Airport, until the next available flight. According to the NASC, it is not a designated place of detention

⁷⁷ 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, <https://rm.coe.int/1680696c9a>

⁷⁸ 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, <http://www.refworld.org/docid/5666fcf34.html>

⁷⁹ 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>

⁸⁰ The Irish Times, “Work on Dublin Airport Immigration Detention Centre to begin,” *The Irish Times*, 28 July 2017, <https://www.irishtimes.com/news/politics/work-on-dublin-airport-immigration-detention-centre-to-begin-1.3169079>

⁸¹ Department of Justice and Equality, “Parliamentary Questions,” 19 October 2017, <http://www.justice.ie/en/JELR/Pages/PQ-19-10-2017-134>

and people placed there do not have access to legal safeguards and basic entitlements, such as access to a lawyer, medical assistance, or substantial review of decision. The NASC also observed that at times people are not placed in the next available flight and spend several hours at the airport.⁸²

⁸² Migrant and Refugee Rights Centre (NASC), Immigration Detention and Border Control in Ireland: Revisiting Irish Law, Policy and Practice, 2018, <http://www.nascireland.org/wp-content/uploads/2018/03/Nasc-Immigration-Detention-Border-Control-in-Ireland.pdf>



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