



The Immigration Residence and Protection Bill 2008

The Refugee Information Service (RIS) welcomes the recent publication of the Immigration, Residence and Protection Bill 2008. The Bill provides for an overhaul of existing immigration and protection legislation and represents an historic opportunity for the Minister for Justice, Equality and Law Reform to ensure that Ireland's legislation in this area fulfils our international human rights obligations and is a model of best practice.

The Bill provides for a single protection determination procedure where a single application is made and all grounds on which a person may seek to remain in the State (protection and humanitarian) will be assessed in a single procedure. At present all applicants for protection must apply for refugee status and have their application for this dealt with. If they are unsuccessful they may apply for subsidiary protection and/or leave to remain. There are lengthy delays at the appeal stage of the refugee determination process and in processing subsidiary protection and leave to remain applications.

It is hoped that the single procedure will lead to more efficient and expeditious decision making and help dispel the damaging perception that there are numerous ways of staying in the State for protection reasons. Speed and efficiency should not compromise the rights of all applications to a full and fair consideration of their application. The creation of a determination system that ensures fair and sustainable decision-making will lead to a reduction in appeals.

The RIS is concerned that a number of provisions contained in existing legislation will be re-enacted. Measures such as safe countries of origin and applications that are deemed to be withdrawn for non-compliance with specific obligations place persons seeking protection in danger of being returned to face persecution which is clearly contrary to Ireland's international obligations.

It is in the interests of all parties to the asylum process to ensure the co-operation of asylum seekers with this process. However, many asylum seekers arrive in Ireland traumatised after experience torture, rape and other forms of degrading treatment, or may have lost family members or friends. In many cases they arrive in Ireland unable to speak English. It should be clear therefore, that many people seeking protection who are considered not to have complied with certain obligations have not do so deliberately and deeming their applications withdrawn without the possibility of appeal is an unduly harsh response.

The Bill seeks to include additional grounds for detention for those who are seeking the protection of the State. Under current legislation, asylum seekers may be arrested and detained at any time during the determination for one or more of six grounds and persons may also be detained for the purposes of removal from the State. In addition the Bill provides that when a person seeks protection in the State, an immigration

officer shall issue that person with a protection application entry permit if it is 'practicable' to do so. If it is not practicable for the immigration officer to issue the person with a permit then the immigration officer can arrest and detain the person to facilitate the issuing of the permit. The person shall only be detained until the permit can be issued to him/her.

The Bill fails to provide a time-limit for detention in such circumstances not does it provide a guarantee that individuals will be informed of the reasons for their detention in a language they understand. Detained persons should always understand the reasons for their detention and their rights while they are in detention and this information must be provided in a language they understand. The detention described above may take place very soon after the person arrives in the State, at a time when s/he is very vulnerable

The RIS accepts that persons who, after a fair and transparent determination process, are found not to have any protection or humanitarian ground to remain in Ireland may be removed. However, a number of provisions in the Bill may risk violating Ireland's obligations not to return any person to where he or she could face, torture, inhuman or degrading treatment or punishment.

The Bill provides that any person who is unlawfully in the State is obliged to remove him/herself. If he/she fails to do that he/she will be removed. In particular, a persons need not be given notice of a proposal to remove them where the proposed removal is in accordance with the provisions of the Bill. Persons should always be given adequate opportunity to prepare themselves and their families for removal and to seek legal advice

If it 'appears' to a member of the Garda or an immigration officer that a person is unlawfully in the state, the person may be removed. This is a matter of serious concern and removal should only take place when there is clear evidence that the person is unlawfully in the State and that return would not place that individual at risk of persecution

Since the Refugee Act, 1996 became law, the rights afforded to persons seeking protection have been gradually eroded with the aim of reducing the number of applicants for asylum through legislation and policy aimed at deterrence and deflection. This trend can be reversed by legislation that guarantees to all those seeking protection in the State, a fair, transparent and accountable determination procedure, protection from return to face persecution and respect for their human rights and dignity.

Catherine Kenny,
Policy and Research Office