

## IMMIGRATION, RESIDENCE AND PROTECTION BILL 2007

### BILL

*entitled*

AN ACT TO RESTATE AND 5 MODIFY CERTAIN ASPECTS OF THE LAW RELATING TO THE ENTRY INTO PRESENCE IN AND REMOVAL FROM THE STATE OF CERTAIN FOREIGN NATIONALS AND OTHERS, INCLUDING FOREIGN NATIONALS IN NEED OF PROTECTION FROM THE RISK OF SERIOUS HARM OR PERSECUTION ELSEWHERE AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

(...)

### PART 7

#### Protection

*Definitions.*

**56.—**(1) In this Part—

“person eligible for subsidiary protection” means a person—

(a) who is not a national of a Member State,

(b) who does not qualify as a refugee,

(c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or, in the case of a stateless person, to his or her country of former habitual residence,

would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that 5 country, construed in accordance with *section 64*, and

(d) to whom *section 63* does not apply;

“refugee” means a person—

(a) who, without prejudice to the Protocol on Asylum for nationals of a Member State, is not a national of a Member State,

(b) who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion—

(i) is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, construed in accordance with *section 64*,

(ii) if a stateless person, is outside of the country of his or her former habitual residence and is unable or, owing to such fear, unwilling to return to it, and

(c) to whom *section 63* does not apply;

“serious harm” means—

(a) death penalty or execution,

(b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin, or

(c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict;

"act of persecution" shall be construed in accordance with *section 61*;

"membership of a particular social group" shall include membership of a Trade Union;

"sexual orientation" does not include orientation towards the commission of acts considered to be criminal in the State.

*Entitlement to protection in the State.*

**57.—**(1) A foreign national is entitled to protection in the State if he or she—

(a) is a refugee, or

(b) not being a refugee, is a person eligible for subsidiary protection, and in this Act "protection" shall be construed accordingly.

(2) A person who seeks any form of protection in the State shall be deemed to have sought protection in the State as a refugee.

*Application for protection and information to be given to protection applicant re procedure.*

**58.—**(1) (a) A foreign national, whether lawfully or unlawfully in the State, may apply to the Minister for protection in the State.

(b) A foreign national who applies for protection under *paragraph (a)* shall be interviewed by an authorised officer or an immigration officer at such times as may be specified by the officer and the foreign national shall make himself or herself available for such interview at the times so specified.

(2) An interview under *subsection (1)(b)* shall, in relation to the person the subject of the interview, seek to establish *inter alia*—

(a) whether the person wishes to make an application for protection and, if he or she does so wish, the general grounds upon which the application is based,

(b) the identity of the person,

(c) the nationality and country of origin of the person,

(d) the mode of transport used, the route travelled by the person to the State and details of any person who assisted the person in travelling to the State,

(e) the reason why the person came to the State, and

(f) the legal basis for the entry into or presence in the State of the person.

(3) An interview under *subsection (1)(b)* shall, where necessary and possible, be conducted with the assistance of an interpreter and a record of the interview shall be kept by the officer conducting it and a copy of it shall be furnished to the person and, if the interview was conducted by an immigration officer who is not an officer of the Minister, to the Minister.

(4) (a) Where it appears to the officer that the foreign national referred to in *subsection (1)(a)* is under the age of 18 years, the officer shall, as soon as practicable, so inform the Health Service Executive; and thereupon the provisions of the Child Care Act 1991 and other enactments relating to the care and welfare of persons under the age of 18 years shall apply in relation to that foreign national.

(b) (i) Where a foreign national to whom *paragraph (a)* applies is accompanied by an adult, the officer concerned, where he or she considers it appropriate to do so, may require that accompanying adult to verify that he or she is taking parental responsibility for the foreign national concerned.

(ii) The officer, where he or she is not satisfied that the adult referred to in *subparagraph (i)* is taking parental responsibility for the foreign national, shall so inform the Health Service Executive and thereupon the provisions of the Child Care Act 1991 and

other enactments relating to the care and welfare of persons under the age of 18 years shall apply in relation to the foreign national.

(c) (i) Where it appears to the Health Service Executive, on the basis of information available to it, that an application for protection should be made by or on behalf of the foreign national referred to in *paragraph (a)* or *(b)(ii)*, or in *subsection (6)* of *section 23*, it shall arrange for the appointment of an employee of the Health Service Executive or such other person as it may determine to make such an application on behalf of the foreign national.

(ii) An application for protection shall not be made pursuant to *subparagraph (i)* by the Health Service Executive unless it is satisfied that it is in the best interest of the foreign national concerned that such an application should be made.

(iii) Any costs incurred by a person appointed under *subparagraph*

*(i)* other than any legal costs arising from an application for protection shall be paid by the Health Service Executive.

(5) The officer referred to in *subsection (1)(b)* shall inform the foreign national concerned that he or she is entitled to consult a solicitor and the High Commissioner.

(6) (a) Subject to *paragraph (b)*, a foreign national making an application for protection under *subsection (1)* shall state whether the application is also being made on behalf of his or her dependants.

(b) In the absence of a statement under *paragraph (a)*, the application shall be deemed to be made on behalf of all the dependants of the foreign national concerned.

(c) Where dependants included in an application for protection are over 18 years of age they shall provide written consent to the application being made on their behalf.

(d) A dependant to whom *paragraph (c)* applies who does not consent to an application being made on his or her behalf may make an application on his or her own behalf.

(7) An application for protection under *subsection (1)* shall be made in the prescribed form and presented by the applicant in person and shall include all details of the grounds on which—

(a) protection is being claimed, and

(b) in the event of protection not being granted, the applicant should be allowed to remain in the State.

(8) (a) The Minister shall notify the High Commissioner in writing of the making of an application for protection and the notice shall include the name of the applicant and the name of his or her country of origin and such other information as the Minister may determine.

(b) The Minister shall furnish a copy of the record of any interview under *subsection (1)(b)* to the High Commissioner whenever so requested by him or her in writing.

(9) The Minister, as soon as possible after receipt by him or her of an application for protection, shall give or cause to be given to the applicant a statement in writing specifying, where possible in a language that he or she understands—

(a) the procedures to be observed in the investigation of applications for protection under this Part,

(b) the entitlement of the applicant to consult a solicitor and, where necessary and practicable, to be provided with an interpreter,

(c) the entitlement of the applicant to communicate with the High Commissioner,

(d) the entitlement of the applicant to make written submissions to the Minister,

(e) the duty of the applicant to co-operate with the Minister and to furnish information relevant to his or her application for protection and to all other aspects of his or her request to be given a residence permit,

(f) the obligation of the applicant to comply with conditions imposed under *section 35* and the possible consequences of non-compliance with those conditions including—

- (i) the possibility that his or her application for protection may be deemed to be withdrawn,
- (ii) the possibility that Minister may refuse to grant the applicant protection in the State, with the consequence that the protection applicant will then be unlawfully in the State,
- (iii) the requirement, under *section 5* of this Act, that a person whose presence in the State is unlawful leave the State and the possibility that such a person may be removed or caused to be removed from the State,
- (g) the possible consequences of the failure of the applicant to attend an interview under *section 59*.

*Minister's investigation of protection applications.*

**59.—**(1) The Minister shall investigate each protection application for the purpose of determining whether—

- (a) the protection applicant is entitled to a protection residence permit, or
- (b) notwithstanding that the protection applicant is not so entitled, he or she should be given a residence permit other than a protection residence permit.

(2) As part of an investigation under *subsection (1)*, the Minister shall cause the protection applicant concerned to be interviewed.

(3) An interviewer may, where he or she considers it necessary to do so, interview any dependents of the protection applicant concerned.

(4) (a) An interview under *subsection (2)* or *(3)* shall, where necessary and possible, be conducted with the assistance of an interpreter who is able to ensure appropriate communication between the applicant and the interviewer.

(b) The requirement at *paragraph (a)* shall be deemed to have been complied with if interpretation is provided in a language which the applicant can reasonably be expected to understand and in which he or she is able to communicate.

(5) (a) An interview under *subsection (2)* or *(3)* shall take place:

(i) without the presence of other members of the family unless the interviewer considers it necessary for an appropriate examination to have other family members present;

(ii) under conditions which ensure appropriate confidentiality.

(b) The High Commissioner may, whenever he or she so requests, be present at an interview under *subsection (2)* or *(3)*.

(c) The Minister may prescribe the conditions governing the presence of third parties at an interview under *subsection (2)* or *(3)*.

(6) (a) An interview under *subsection (2)* or *(3)* may be dispensed with where the Minister is of the opinion that—

- (i) based on the available evidence, the applicant is a refugee or a person eligible for subsidiary protection; or
- (ii) based on a medical or psychological certificate provided by or on behalf of the applicant, the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control.

(b) The application of *paragraph (a)* shall not of itself operate to—

(i) prevent information relating to the applicant's protection claim from being submitted to the Minister by or on behalf of the applicant,

(ii) prevent the Minister from making a final determination in respect of the application, or

(iii) adversely affect the final determination of the protection application.

(7) (a) The protection applicant, the High Commissioner or any other person concerned may make representations in writing to the Minister in relation to any matter relevant to an investigation by him or her under this section and the Minister shall take account of any such representations made before or during an interview under *subsection (2) or (3)*.

(b) *Paragraph (a)* shall not be construed as preventing the Minister from taking into account any representations made following an interview under *subsection (2) or (3)* provided that such representations are made prior to the determination referred to in *section 70(1)*.

(8) (a) The Minister may, for the purposes of his or her functions under this Part, by notice in writing, request any Minister or such other person as may be specified in the notice to make such inquiries and to furnish to him or her such information in his or her possession or control as he or she may reasonably require within such period as shall be specified in the notice.

(b) For the purpose of his or her functions under this Part, the Minister is not fixed with knowledge of any information in the hands of another information holder (within the meaning of *section 92*) except to the extent that such information has been furnished to him or her either under *paragraph (a)* or by the applicant to whom the information relates.

(c) *Paragraph (b)* does not limit the use by the Minister of information within his or her knowledge relating to an applicant whether or not it has been furnished to him or her under *paragraph (a)* or by the applicant to whom the information relates.

(9) Nothing in the Data Protection Act 1988 shall be construed as prohibiting a person or body from giving to the Minister, on request by him or her, such information as is in the person's possession or control relating to the application.

(10) The procedures to be followed in investigations under this section may be prescribed and different procedures may be prescribed for different classes of applications.

(11) Following the conclusion of an investigation under this section, the Minister shall cause a report to be prepared in writing, which shall contain the matters mentioned in *section 70(1)*.

*Assessment of facts and circumstances.*

**60.—**(1) The following matters, in so far as they are known, shall be taken into account by the Minister or, as the case may be, the Tribunal for the purposes of determining an application for protection or an appeal under *section 79*:

(a) all relevant facts as they relate to the country of origin at the time of making a determination in respect of the application, including laws and regulations of the country of origin and the manner in which they are applied;

(b) the relevant statements and documentation presented by the applicant including information on whether he or she has been or may be subject to persecution or serious harm;

(c) the individual position and personal circumstances of the applicant, including factors such as background, gender and age, so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;

(d) whether the applicant's activities since leaving his or her country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for protection so as to assess whether these activities will expose the applicant to persecution or serious harm if returned to that country;

(e) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.

(2) (a) The fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, shall, subject to *paragraph (b)*, be regarded as a serious indication of the applicant's wellfounded fear of persecution or real risk of suffering serious harm.

(b) *Paragraph (a)* shall not apply where there are good reasons to consider that such persecution or serious harm will not be repeated.

(3) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on events which have taken place since the protection applicant left his or her country of origin.

(4) A well-founded fear of being persecuted or a real risk of suffering serious harm may be based on activities which have been engaged in by the protection applicant since he or she left his or her country of origin, in particular where it is established that

the activities relied upon constitute the expression and continuation of convictions or orientations held by the protection applicant in the country of origin.

(5) The Minister or Tribunal may determine that an applicant is not in need of protection if the applicant can reasonably be expected to stay in a part of his or her country of origin where there is no well-founded fear of being persecuted or real risk of suffering serious harm.

(6) In examining whether a part of the country of origin accords with *subsection (5)*, the Minister or Tribunal shall have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

(7) Where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation where the Minister or Tribunal is satisfied that—

(a) the applicant has made a genuine effort to substantiate his or her application,

(b) all relevant elements at the applicant's disposal have been submitted and a satisfactory explanation regarding any lack of other relevant elements has been given,

(c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case,

(d) the applicant has applied for protection at the earliest possible time, except where an applicant demonstrates good reason for not having done so, and

(e) the general credibility of the applicant has been established.

#### *Acts of persecution.*

**61.—**(1) Acts are not acts of persecution for the purposes of this Part unless they are:

(a) sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

(b) an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in *paragraph (a)*.

(2) The following are examples of acts which may amount to acts of persecution for the purposes of this Part:

(a) acts of physical or mental violence, including acts of sexual violence;

(b) legal, administrative police, or judicial measures, or a combination of these measures, that are in themselves discriminatory or which are implemented in a discriminatory manner;

(c) prosecution or punishment that is disproportionate or discriminatory;

(d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;

(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts of a kind referred to in *section 63(2)* or *(5)*;

(f) acts of a gender-specific or child-specific nature.

(3) There must be a connection between the reasons for persecution, as construed under *section 62*, and the acts of persecution as construed under this section.

#### *Reasons for persecution.*

**62.—**(1) The Minister or, as the case may be, the Tribunal, shall take the following into account when assessing whether the persecution on which the applicant has based his or her application for protection was, or is for reasons of race, religion, nationality, membership of a particular social group or political opinion:

- (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
- (b) the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
- (c) the concept of nationality shall not be confined to citizenship or lack thereof but shall in particular include membership of a group determined by its 5 cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
- (d) (i) a group shall be considered to form a particular social group where in particular—
- (I) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, or
- (II) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society,
- (ii) a particular social group may include a group based on a common characteristic of sexual orientation, depending on the circumstances in the country of origin,
- (iii) gender-related aspects may be taken into account in assessing whether an applicant is a member of a social group based on sexual orientation without by themselves creating a presumption for the applicability of this Part;
- (e) the concept of political opinion shall in particular include the holding of an opinion, thought or belief on a matter related to the potential actors of persecution and to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the protection applicant.

(2) In the assessment of whether an applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by an actor of persecution.

(3) In this Part, “actors of persecution or serious harm” include—

- (a) a state,
- (b) parties or organisations controlling a state or a substantial part of the territory of that state, and
- (c) non-state actors, if it can be demonstrated that the actors mentioned in *paragraphs (a) and (b)*, including international organisations, are unable or unwilling to provide protection against persecution or serious harm.

*Exclusion from protection.*

**63.—**(1) A person is excluded from being a refugee where he or she is—

- (a) receiving from organs or agencies of the United Nations (other than the High Commissioner) protection or assistance (subject to *subsection (6)*), or
- (b) recognised by the competent authorities of the country in which he or she has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those.

(2) A person is excluded from being a refugee where there are serious reasons for considering that he or she—

- (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,
- (b) has committed a serious non-political crime outside the State prior to the issue of a protection residence permit, or
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

(3) A person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that he or she—

(a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) has committed a serious crime;

(c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or

(d) constitutes a danger to the community or to the security of the State.

(4) A person may be excluded from being eligible for subsidiary protection if he or she has, prior to his or her admission to the State, committed one or more crimes, outside the scope of *subsection (3)*, which would be punishable by imprisonment had they been committed in the State, and left his or her country of origin solely in order to avoid sanctions resulting from these crimes.

(5) A person who has instigated or otherwise participated in the commission of an act or crime mentioned in *subsection (2)* or *(3)* is excluded from being a refugee or, as the case may be, a person eligible for subsidiary protection.

(6) *Subsection (1)(a)* shall not apply where the protection or assistance referred to in that subsection has ceased for any reason, without the position of persons who had been receiving that protection or assistance being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

(7) For the purposes of *subsection (2)(b)*, "serious non-political crime" can include particularly cruel actions, even if committed with an allegedly political objective.

*Protection against persecution or serious harm.*

**64.—**(1) For the purposes of this Part, protection against persecution or serious harm shall be regarded as being generally provided where reasonable steps are taken by a state or parties or organisations, including international organisations, controlling a state or a substantial part of the territory of a state to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, where the applicant has access to such protection.

(2) For the purposes of assessing whether an international organisation controls a state or a substantial part of the territory of a state and provides protection against persecution or serious harm, the Minister or Tribunal shall take into account any guidance which may be provided in relevant acts of the Council of the European Union.

*Withdrawal of protection application.*

**65.—**(1) An applicant for protection may withdraw his or her application by sending notice of withdrawal to the Minister.

(2) Where an applicant for protection does not attend for interview under *section 59* on the date and at the time fixed for the interview then, unless the applicant, not later than 3 working days from that date, furnishes the Minister with an explanation for the nonattendance which in the opinion of the Minister is reasonable in the circumstances, his or her protection application shall be deemed to be withdrawn.

(3) Where—

(a) it appears to the Minister that an applicant for protection is failing in his or her duty to co-operate with the Minister or to furnish information relevant to his or her application, or

(b) the Minister is of the opinion that the applicant for protection is in breach of *section 35(3)(a)*, *(c)* or *(d)* or *(4)*,

the Minister shall send to the protection applicant a notice in writing inviting the protection applicant to indicate in writing within working days of the sending of the notice whether he or she wishes to continue with his or her protection application; and, if a protection applicant does not furnish an indication within the time specified in the notice, his or her protection application shall be deemed to be withdrawn.

(4) Where an application for protection is withdrawn or deemed to be withdrawn pursuant to *subsection (1)*, *(2)* or *(3)*, then—



(a) any investigation of the protection application shall be terminated,

(b) the report referred to in *section 70* shall state that the application has been withdrawn or deemed to be withdrawn, as the case may be, and shall include a determination that the applicant concerned is not entitled to protection in the State, and

(c) no appeal under *section 79* shall lie against a determination under *paragraph (b)*.

*Burden of proof.*

**66.—**(1) (a) Subject to *section 60(7)*, at all times during the consideration of a protection application, including an appeal under *section 79* it shall be for a protection applicant to establish that he or she is entitled to protection in the State.

(b) The Minister shall, in co-operation with the applicant, assess the relevant elements of the protection application and all other aspects of the claim to remain in the State.

(c) The Tribunal shall, for the purpose of an appeal, in cooperation with the applicant, assess the relevant elements of the protection application.

(2) Where it appears to the Minister that a protection application should be transferred to a Member State under *section 87* it shall be for the protection applicant to establish that his or her protection application should be considered in the State.

(3) Where, at any time during the investigation of an application for protection by the Minister under *section 59*, it appears to him or her that the protection applicant—

(a) is a national of, or has a right of residence in, a country standing designated by order under *section 87* as a safe country of origin, or

(b) had lodged a prior application for protection in another state party to the Geneva Convention,

(c) has been recognised as a refugee under the Geneva Convention by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking protection in the State does not relate to a fear of persecution or serious harm in that state, or

(d) has been recognised as a person eligible for subsidiary protection in accordance with Council Directive 2004/83/EC or any other instrument replacing or amending that Directive, by a Member State and whose reason for leaving or not returning to that Member State and for seeking protection in the State does not relate to a fear of persecution or serious harm in that Member State, then the applicant shall be presumed not to be in need of protection in the State unless he or she shows reasonable grounds for the contention that he or she is entitled to such protection.

*Credibility.*

**67.—**(1) The Minister or the Tribunal, as appropriate, shall assess the credibility of a protection applicant for the purposes of:

(a) the investigation of his or her protection application;

(b) the determination of an appeal in respect of his or her protection application; and 20J No. L304/12 of 30.9.2004

(c) the consideration of whether the protection applicant should be allowed to remain in the State on other grounds.

(2) The following are examples of the matters to which the Minister or the Tribunal, as appropriate, may have regard for the purposes of *subsection (1)*—

(a) whether the applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of any such document,

(b) where the applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has provided a reasonable explanation for so doing,

(c) whether the applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence,

(d) where the protection application was made other than at a frontier of the State, whether the applicant has provided a reasonable explanation to show why he or she did not claim protection immediately on arriving at a frontier of the State unless the application is grounded on events which have taken place since his or her arrival in the State,

(e) whether the applicant has provided a full and true explanation of how he or she travelled to or arrived in the State,

(f) whether the application does not show grounds for the contention that the applicant is in need of protection,

(g) whether the applicant has made false or misleading representations in relation to his or her application including by withholding relevant information or documents with respect to his or her identity or nationality that could have a negative impact on the decision,

(h) whether the applicant has made inconsistent, contradictory, improbable or insufficient representations,

(i) whether the applicant, without reasonable cause, having withdrawn his or her application and not having been refused protection under *section 70*, has made a subsequent application for protection,

(j) whether the applicant, without reasonable cause, has made the protection application following receipt of a notification of a decision or proposal to discontinue his or her entry or residence permit under *section 40* or any other notification to the effect that his or her presence in the State is unlawful, or following the commencement of arrangements for his or her removal under this Act,

(k) whether the applicant has, without reasonable cause, failed to comply with the requirements of *section 35(3)(a), (c) or (d)* or (4),

(l) whether the applicant has complied with the requirements of *section 68*, and

(m) whether, in the case of an application to which *section 79* applies, the applicant has furnished information in relation to the application which he or she could reasonably have furnished during the investigation of the application by the Minister but did not so furnish.

(3) The Minister or the Tribunal, as appropriate, may have regard to such other matters as may seem reasonable for the purposes of *subsection (1)*.

*Duty to co-operate.*

**68.—(1)** It shall be the duty of an applicant to co-operate in—

(a) the investigation of his or her protection application,

(b) the determination of an appeal in respect of his or her protection application, and

(c) the consideration of whether he or she should be allowed to remain in the State on other grounds.

(2) (a) (i) In complying with *subsection (1)*, an applicant shall furnish to the Minister or the Tribunal, as the case may be, as soon as reasonably practicable, all information in his or her possession, control or procurement in order to substantiate his or her protection application.

(ii) Where the protection application referred to in *subparagraph (i)* includes any relative or dependant of the applicant, *subparagraph (i)* shall apply in respect of each relative or dependant concerned.

(b) Without limiting *paragraph (a)*, the information referred to in that paragraph includes information on the country of origin, biometric data and all statements made by the applicant and all documentation at the applicant's disposal regarding his or her—

(i) age,

(ii) background (including that of relevant relatives),

(iii) identity,

(iv) nationality or nationalities,

- (v) country or countries and place or places of previous residence,
- (vi) previous protection applications,
- (vii) travel routes and details of persons who assisted the applicant in travelling to the State,
- (viii) identity and travel documents, and
- (ix) reasons for applying for protection or for otherwise wishing to remain in the State.

*Prioritisation of applications.*

**69.**—(1) The Minister may, subject to the need for fairness and efficiency in dealing with applications for protection under this Act, where he or she considers it necessary or expedient to do so, give a direction in writing to the Tribunal to accord priority to such application or applications as is or are specified in the direction.

(2) In specifying an application or applications which is or are to be accorded priority the Minister shall have regard to one or more of the following—

- (a) the grounds of an application under *section 58* or otherwise;
  - (b) the country of origin or habitual residence of an applicant;
  - (c) any family relationship between applicants;
  - (d) the age of an applicant and, in particular, of a person under the age of 18 years in respect of whom an application is made;
  - (e) the dates on which an application was made;
  - (f) considerations of public security or public policy ("*ordre public*");
  - (g) the likelihood that an application is well-founded;
  - (h) whether there are special circumstances regarding the welfare of an applicant or the welfare of family members of an applicant;
  - (i) whether an application does not show on its face grounds for the contention that the applicant is in need of protection;
  - (j) whether an applicant has made false or misleading representations in relation to his or her application, including by withholding relevant information or documents with respect to his or her identity or nationality that could have a negative impact on the decision;
  - (k) whether an applicant has made inconsistent, contradictory, improbable or insufficient representations;
  - (l) whether an applicant has not complied with his or her duty to co-operate in the investigation of his or her application under *section 68* or *section 95*;
  - (m) whether an applicant had, or could have, lodged a prior application for protection in another country, including a country with which the State has entered an agreement under *section 87*;
  - (n) whether an application under *section 58* was made at the earliest opportunity after the applicant's arrival in the State;
  - (o) whether an applicant is a national of or has a right of residence in a country of origin designated as safe under *section 87*;
  - (p) whether an applicant is a person to whom *section 63* applies;
  - (q) whether an applicant had previously made an application for protection in the State which contained different personal data.
- (3) The Tribunal shall comply with a direction given to it under *subsection (1)*.

(4) The Minister may by a direction revoke or alter a direction given by him or her under *subsection (1)*.

*Determination and report of investigation of protection application.*

**70.**—(1) The report prepared under *section 59(11)* shall refer to the matters raised by the protection applicant in relation to his or her application and in any interview under that section and to such other matters as the Minister considers appropriate and shall set out the findings of the Minister together with his or her determination in relation to the protection application.

(2) The determination referred to in *subsection (1)* shall be that the applicant, along with as the case may be, his or her dependants on whose behalf the application was made or deemed to have been made:

(a) is entitled to protection in the State as a refugee and will be granted a protection residence permit on that basis,

(b) is not entitled to protection in the State as a refugee but is entitled to protection in the State as a person eligible for subsidiary protection and will be granted a protection residence permit on that basis,

(c) is not entitled to protection in the State but will be granted a residence permit, other than a protection residence permit, subject to such conditions the Minister may deem fit, or

(d) is not entitled to protection in the State and will not be granted a residence permit.

(3) Where a report under *subsection (1)* includes the determination set out in *paragraph (d)* of *subsection (2)* the findings of the Minister in that report may include one or more of the following:

(a) that the application showed either no basis or a minimal basis for the contention that the applicant is in need of protection in the State;

(b) that the applicant made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded;

(c) that the applicant, without reasonable cause, failed to provide identification documents or provided false identification documents;

(d) that the applicant, without reasonable cause, failed to make an application as soon as reasonably practicable after arrival in the State;

(e) that the application was made pursuant to *section 84*;

(f) that the applicant had lodged a prior application for protection in another Member State or state party to the Geneva Convention (whether or not that application had been determined, granted or rejected);

(g) that the applicant is a national of, or has a right of residence in, a safe country of origin for the time being so designated by order under *section 87*.

(4) (a) Where a determination under *subsection (1)* cannot be made within six months of the date of application then the Minister shall, upon request from the protection applicant, provide the applicant with information on the estimated time-frame in which a determination may be made.

(b) The provision under *paragraph (a)* by the Minister of an estimated time-frame in which a determination may be made shall not of itself oblige the Minister to make a determination within that time-frame.

*Notification of determination of protection application at first instance.*

**71.**—(1) The Minister shall notify the applicant, his or her solicitor (if known) and, whenever so requested by him or her, the High Commissioner, of his or her determination of the protection application under *section 70(1)*.

(2) A notification under *subsection (1)* shall be accompanied by—

(a) a notice of the Minister's determination in respect of the protection application and the reasons for that determination,

(b) a copy of the report under *section 59(11)*, and

(c) subject to *subsections (3) and (4)*,

(i) copies of any reports, documents or representations in writing submitted to the Minister under *section 59* and not already available to the applicant or his or her legal advisor, and

(ii) an indication in writing of the nature and source of any other information relating to the application which has come to the notice of the Minister in the course of an investigation by him or her under that section.

(3) The Minister may withhold any information in his or her possession or control in the interest of public security or public policy ("*ordre public*").

(4) Where information has been supplied to the Minister, a Department of State or another branch or office of the public service by or on behalf of the government of another state in accordance with an undertaking (express or implied) that the information or its existence, would be kept confidential, the information or its existence shall not, without the consent of the other state be produced or further disclosed otherwise than in accordance with the undertaking.

(5) The notification under *subsection (1)* of a determination under *section 70(2), (b), (c) or (d)* shall inform the applicant of the procedures set out in *section 79*.

(6) Where a report under *section 59(11)* includes:

(a) a determination that the applicant is not entitled to protection in the State and will not be granted a residence permit, and

(b) any of the findings in *section 70(3)*, then, subject to *subsection (8)*, the notification under *subsection (1)*

shall, notwithstanding *subsection (5)*, include a statement that the applicant may, within 10 working days from the sending of the notification, appeal to the Tribunal under *section 79* and that any such appeal will be determined without an oral hearing.

(7) The Minister may investigate under *section 59* such classes of applications as he or she considers appropriate in accordance with the procedures referred to in *subsection (8)*.

(8) Where a report under *section 59(11)* in respect of an application referred to in *subsection (6)* includes—

(a) a determination that the applicant is not entitled to protection in the State and will not be granted a residence permit, and

(b) any of the findings in *section 70(3)*, then, subject to *subsection (9)*, the notification under *subsection (1)*

shall, notwithstanding *subsection (5)*, state that the applicant may, within 4 working days from the sending of the notification, appeal to the Tribunal under *section 79* and that any such appeal will be determined without an oral hearing.

(9) (a) Where an application is to be investigated in accordance with the procedures referred to in *subsection (8)*, the Minister shall notify the applicant accordingly in writing and shall send a copy of the notice to his or her solicitor (if known) and, if so requested by the High Commissioner, to him or her.

(b) *Subsection (8)* shall not apply to such an application unless the applicant concerned and his or her solicitor (if known) have been notified in accordance with *paragraph (a)*.

*Cessation of protection status.*

**72.—(1)** A person shall cease to be a refugee if he or she—

(a) has voluntarily re-availed himself or herself of the protection of the country of nationality,

(b) having lost his or her nationality, has voluntarily reacquired it,

(c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality,

(d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution,

(e) subject to *subsection (2)*, can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality, or

(f) subject to *subsection (2)*, being a stateless person he or she is able, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(2) In determining whether *subsection (1)(e)* or *(f)* applies, the Minister shall have regard to whether the change of circumstances is of such a significant and non-temporary nature that the person's fear of persecution can no longer be regarded as well-founded.

(3) A person shall cease to be eligible for subsidiary protection when—

(a) the circumstances which led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required, and

(b) the change of circumstances is of such a significant and non-temporary nature that the person no longer faces a real risk of serious harm.

*Criteria for nonprotection aspects of protection application.*

**73.**—(1) The Minister shall not make a determination referred to in *section 70(2)(c)* in relation to a foreign national the lawfulness of whose presence in the State arises only out of a protection temporary residence permit unless in the Minister's opinion there are exceptionally serious reasons for permitting the foreign national to remain in the State.

(2) In determining whether exceptionally serious reasons exist in a particular case—

(a) the Minister shall consider whether the presence of the applicant in the State would give the applicant an unfair advantage compared to a person not present in the State but in otherwise similar circumstances, and

(b) the Minister shall not be obliged to take into account factors in the case that do not relate to reasons for the applicant's departure from his or her country of origin or,

as the case may be, of habitual residence or that have arisen since that departure.

*Protection residence permit: further provisions.*

**74.**—(1) Where—

(a) The Minister determines, under *section 70*, or

(b) the Tribunal recommends, under *section 80(2)*, that a protection applicant should be declared to be a refugee or entitled to protection in the State as a person eligible for subsidiary protection, the Minister shall as soon as possible thereafter issue a protection residence permit to him or her, or cause it to be issued.

(2) The Minister may refuse to grant a protection residence permit to a protection applicant to whom *subsection (1)* applies where—

(a) there are reasonable grounds for regarding the applicant as a danger to the security of the State, or

(b) the applicant, having been by a final judgment convicted of a particularly serious crime, constitutes a danger to the community of the State.

(3) The Minister shall not grant a protection residence permit to a protection applicant where—

(a) following a determination under *section 70* or *section 80(2)*, the applicant is found not to be a refugee or, as the case may be, a person eligible for subsidiary protection in the State,

(b) the application is withdrawn or deemed to be withdrawn under *section 65*;

(c) an appeal under *section 79* is withdrawn or deemed to be withdrawn under *section 81*.

(4) (a) The Minister shall send a notice in writing of the granting of or, as the case may be, the refusal to grant a protection residence permit to a protection applicant.

(b) The Minister shall notify the High Commissioner of the granting of or, as the case may be, the refusal to grant a protection residence permit to a protection applicant under *subsection (1), (2) or (3)*.

(c) Where the Minister has determined that a protection residence permit shall not be granted to a protection applicant, the notice referred to in *paragraph (a)* shall inform the applicant that his or her temporary protection residence permit has expired and that he or she—

(i) is for all purposes unlawfully in the State,

(ii) is under an obligation to remove himself or herself from the State, and

(iii) is liable to be removed without notice, if necessary against his or her will, from the State and to be detained for the purpose of securing his or her removal.

#### *Protection Review Tribunal.*

**75.—**(1) On the establishment day there shall stand established a Tribunal to be known as the Protection Review Tribunal which shall perform the functions conferred on it by or under this Act.

(2) The functions of the Tribunal shall be to determine appeals as set out in this Part.

(3) (a) Subject to *paragraph (b)*, the Tribunal shall be—

(i) inquisitorial in nature, and

(ii) independent in the performance of its functions.

(b) This Part shall not be construed as prejudicing the generality of any other provision of these sections (including any provision of any regulation 5 under these sections).

(4) The Minister may appoint such and so many persons to be members of the staff of the Tribunal as he or she considers necessary to assist the Tribunal in the performance of its functions and such members of the staff of the Tribunal shall receive such remuneration and be subject to such other terms and conditions of service as the Minister may, with the consent of the Minister for Finance, determine.

(5) Members of the staff of the Tribunal shall be civil servants within the meaning of the Civil Service Regulation Act 1956.

#### *Membership of the Tribunal.*

**76.—**(1) The Tribunal shall consist of the following members:

(a) a chairperson; and

(b) such number of members, appointed either in a wholetime or a part-time capacity, as the Minister, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal, each of whom shall have had before his or her appointment either—

(i) in relation to the chairperson, not less than 5 years experience as a practising barrister or practising solicitor; or

(ii) in relation to members other than the chairperson, not less than 5 years' relevant experience.

(2) For the purposes of *subsection (1)*, "relevant experience" shall mean experience as a practising barrister or practising solicitor or such experience of protection matters as may for the purpose be prescribed, or a combination of these.

(3) (a) A person being appointed to be a member of the Tribunal in a part-time capacity shall be appointed by the Minister.

(b) A person shall not be appointed to be the chairperson of the Tribunal, or a member of the Tribunal, in a wholetime capacity, unless the Commission for Public Service Appointments, within the meaning of the Public Service Management (Recruitment

and Appointment) Act 2004, after holding a competition under section 47 of that Act, have selected him or her for appointment to the position.

(c) *Paragraph (b)* shall not apply to the reappointment of a member in accordance with *subsection (5)*, for a second or subsequent term.

(4) Each member of the Tribunal shall hold office under a contract of service in writing, containing such terms and conditions (including terms and conditions relating to remuneration, allowances and expenses and superannuation) as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(5) The term of office of the members of the Tribunal shall be as follows:

(a) the term of office of the chairperson shall be 5 years and a chairperson may be reappointed to the office for a second or subsequent term not exceeding 5 years;

(b) the term of office of a member appointed in a whole-time capacity shall be 3 years or such longer duration not exceeding 5 years as may be prescribed and such a member may be reappointed to the office for a second or subsequent term not exceeding 3 years or such longer duration not exceeding 5 years as may be prescribed;

(c) the term of office of a member appointed in a part-time capacity shall be 3 years and such a member may be reappointed to the office for a second or subsequent term not exceeding 3 years.

(6) A member of the Tribunal may resign his or her membership by letter addressed to the Minister and the resignation shall take effect from the date specified in the letter.

(7) Where a member of the Tribunal is—

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(c) regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to that Parliament,

(d) elected or co-opted as a member of a local authority,

(e) appointed to judicial office, or

(f) appointed Attorney General,

he or she shall thereupon cease to be a member of the Tribunal.

(8) Without prejudice to the generality of *subsection (7)*, that subsection shall be construed as prohibiting the reckoning of a period therein mentioned as service with the Tribunal for the purposes of any superannuation benefits payable under this Act or otherwise.

(9) A member who is for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein,

(b) a member of the European Parliament, or

(c) entitled under the standing orders of a local authority to sit as a member thereof,

shall, while he or she is so entitled under *paragraph (a)* or *(c)* or is such a member under *paragraph (b)*, be disqualified from being a member of the Tribunal.

(10) In this subsection “local authority” means a local authority for the purposes of the Local Government Act 2001.

(11) A member of the Tribunal may be removed from office by the Minister for stated reasons.



(12) (a) If a member appointed in a part-time capacity dies, resigns, becomes disqualified, is removed from office or is for any reason temporarily unable to perform his or her functions, the Minister may, subject to this Act, appoint another person to be a member of the Tribunal in a part-time capacity to fill the casual vacancy so occasioned.

(b) If a member appointed in a whole-time capacity—

(i) dies, resigns, becomes disqualified or is removed from office, or

(ii) is for any reason temporarily unable to perform his or her functions,

the Minister may appoint a person to be a member in a whole-time or part-time capacity until an appointment is made under *subsection (3)(b)*, and the person so appointed may perform all the functions conferred on such a member by this Act.

*Chairperson of the Tribunal.*

**77.—**(1) The chairperson shall ensure that the business of the Tribunal is managed efficiently and that the business assigned to each member is disposed of as expeditiously as may be consistent with fairness and natural justice.

(2) The chairperson may, having regard to the need to observe fair procedures, establish rules and procedures for the conduct of oral appeals under this Part and shall make copies of those rules and procedures available to members of the Tribunal, to the Minister, to the High Commissioner and to persons likely to be affected by them.

(3) The chairperson may from time to time issue guidelines or guidance notes generally on the practical application and operation of the provisions, or any particular provisions, of this Part and on developments in the law relating to protection.

(4) The chairperson may, if he or she considers it appropriate to do so in the interest of the fair and efficient discharge of the business of the Tribunal, assign classes of business to each member having regard to the following matters:

(a) the grounds of the appeals set out in the notices of appeal;

(b) the country of origin of applicants;

(c) any family relationship between applicants;

(d) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made;

(e) the provisions of this Act pursuant to which the appeals are made.

(5) The chairperson shall—

(a) assign to each member the business to be transacted by him or her,

(b) re-assign business from one member to a different member if, in the opinion of the chairperson, such reassignment is warranted—

(i) by the inability or unwillingness of the member to which the business was originally assigned to transact that business, or

(ii) in the interest of the fair and efficient discharge of the business of the Tribunal,

(c) require a member to prepare a report of his or her determination of each appeal within a period specified in the guidelines referred to at *subsection (3)*,

(d) require a member to prepare a report on any aspect of the transaction of the business assigned to the member.

(6) The chairperson may from time to time convene a meeting with a member or members of the Tribunal for the purpose of discussing matters relating to the discharge of the business of the Tribunal, including, in particular, such matters as the avoidance of undue divergences in the exercise by the members of their functions under these sections.

(7) The chairperson shall convene a meeting of the members of the Tribunal at least once a year to review the work of the Tribunal and, where necessary, to make provision for training programmes for members of the Tribunal.

(8) Where it appears to the chairperson that a decision made by a member of the Tribunal but not yet issued (in this subsection a “draft decision”) may contain an error of law or of fact, he or she may request the member to review the draft decision and the member so requested shall review the draft decision and make such amendments as that member considers necessary and the decision following such review and such amendments as have been made by that member shall be the final decision of the member.

(9) (a) The chairperson may, on notice to the applicant, refer any final decision in relation to an appeal under this Act for the direction of the High Court where he or she considers that the decision was erroneous by reason of some mistake having been made in relation to the law.

(b) The High Court shall determine an application under *paragraph (a)* by giving such directions and making such orders as it considers appropriate.

(10) The chairperson may delegate to a member of his or her staff his or her functions of—

(a) assigning to each member the business to be transacted by him or her, and

(b) receiving reports under *section 78(2)(d)* from members.

(11) The chairperson shall, not later than 3 months after the end of each year, submit a report in writing to the Minister of his or her activities during that year; and, not later than 1 month after such submission, the Minister shall cause a copy of the report to be laid before each House of the Oireachtas.

(12) (a) The chairperson may, if he or she considers it appropriate to do so, make a report in writing to the Minister in relation to any function performed by him or her under this Part or any matter relating to the operation of this Part.

(b) The chairperson shall, if so required by the Minister, provide him or her with a report in writing in relation to any function performed by the chairperson under this Part or any matter relating to the operation of this Part.

(13) Where the chairperson is for any reason temporarily unable to act as the chairperson, or the office of the chairperson is vacant, the Minister shall appoint a person to be the chairperson for the duration of the inability or until an appointment is made under *subsection (3)(b) of section 76*, as appropriate, and the person so appointed may perform all the functions conferred on the chairperson by this Act.

(14) The chairperson may resign from the office of the chairperson by letter addressed to the Minister and the resignation shall take effect from the date specified in the letter.

(15) Where the chairperson is determining an appeal under these sections, the provisions of these sections shall apply to the chairperson as if he or she were a member of the Tribunal.

(16) The Tribunal shall be named as applicant, respondent, plaintiff or defendant, as appropriate, in any proceedings relating to any aspect of the transaction of the business of the Tribunal and the chairperson shall be responsible for the conduct of the Tribunal's functions in relation to such proceedings.

#### *Role of members of Tribunal.*

**78.—(1)** (a) A member of the Tribunal shall on behalf of the Tribunal transact the business assigned to him or her by the chairperson.

(b) In this Part, “business” means the determination of appeals under this Part.

(2) A member shall, in the performance of his or her functions under this Part—

(a) ensure that the business assigned to him or her is managed efficiently and is disposed of as expeditiously as may be consistent with fairness and natural justice,

(b) conduct oral hearings in accordance with such rules and procedures as are established or adopted by the chairperson under *section 77(2)*,

(c) have regard to any guidelines or guidance notes issued by the chairperson under *section 77(3)*,

(d) prepare the report mentioned in *subsection (5)(c) or (d) of section 77* and provide this to the chairperson when requested to do so,

(e) attend any meetings convened by the chairperson under *section 77(6) or (7)*, unless it is impracticable to do so.

*Appeal to Tribunal.*

**79.—**(1) A protection applicant may appeal in the prescribed manner against a determination of the Minister, made under *section 70*, that the applicant—

(a) is not entitled to protection in the State as a refugee but is entitled to protection in the State as a person eligible for subsidiary protection, or

(b) is not entitled to protection in the State.

(2) An appeal under *subsection (1)(a)* shall be brought by notice in writing—

(a) within 15 working days of the notification referred to in *section 71(1)* or, as the case may be, within the period specified in *section 71(6) or section 71(8)*, as appropriate, and

(b) specifying the grounds of appeal and, except in a case to which *section 71(6) or 71(8)*, applies, indicating whether the applicant wishes the Tribunal to hold an oral hearing for the purpose of his or her appeal.

(c) The Tribunal shall ensure that an appeal to which *section 71(6) or 71(8)* applies shall be dealt with as soon as may be and, if necessary, before any other appeal.

(3) The Tribunal shall notify the Minister and the High Commissioner of the making of the appeal.

(4) The Minister shall furnish the Tribunal with copies of the documents and information referred to in *section 71(2)* and of the notification referred to in that section.

(5) (a) Where the Minister has withheld information from an applicant pursuant to *section 71(3)* he or she may also withhold such information from the Tribunal for the reasons stated in that section.

(b) Where the Minister furnishes the Tribunal with information which has been withheld from the applicant in accordance with *section 71(3)*, the Tribunal shall not disclose that information to the applicant.

(c) Where the Minister furnishes the Tribunal with information to which *section 71(4)* relates, the Tribunal shall not disclose that information, other than in accordance with that subsection.

(6) The Tribunal may, for the purposes of its functions under these sections, request the Minister to make such further inquiries and to furnish the Tribunal with such further information as the Tribunal considers necessary within such period as may reasonably be specified by the Tribunal.

(7) The Minister shall furnish the Tribunal with observations in writing concerning any matter arising on the grounds of appeal whenever so requested by the Tribunal and a copy of such observations shall be furnished to the applicant concerned and his or her solicitor (if known).

*Appeal to Tribunal: further provisions.*

**80.—**(1) (a) The Tribunal shall furnish the applicant concerned and his or her solicitor (if known) and 5 the High Commissioner whenever so requested by him or her with copies of any reports, observations, or representations in writing or any other document, furnished to the Tribunal by the Minister, copies of which have not been previously furnished to the applicant or, as the case may be, the High Commissioner.

(b) Notwithstanding *paragraph (a)* country of origin information on which the Tribunal member intends to rely in the making of a decision shall be made available to the applicant except for such information as is publicly available or of a general nature.

(2) (a) The Tribunal may—

(i) affirm a determination of the Minister, or

(ii) set aside a determination of the Minister and recommend that the applicant should be declared to be a refugee or, as the case may be, a person entitled to protection in the State as a person eligible for subsidiary protection.

(b) The Tribunal shall affirm a determination of the Minister unless it is satisfied, having considered the matters referred to in *section 83*, that the applicant is a refugee or, as the case may be, a person entitled to protection in the State as a person eligible for subsidiary protection.

(c) A decision of the Tribunal under *paragraph (a)* and the reasons therefor shall be communicated by the Tribunal to—

(i) the applicant concerned and his or her solicitor (if known), and

(ii) the Minister.

(d) A decision of the Tribunal under *paragraph (a)* shall be communicated to the High Commissioner.

(e) A decision of the Tribunal shall become final once it has been communicated to the applicant or his or her solicitor under *paragraph (c)(i)*.

#### *Withdrawal of appeal.*

**81.—**(1) Where an applicant fails, without reasonable cause, to attend an oral hearing under *section 82*, then unless the applicant, not later than 3 working days from the date fixed for the oral hearing, furnishes the Tribunal with an explanation for not attending the hearing which the Tribunal considers reasonable in the circumstances, his or her appeal shall be deemed to be withdrawn.

(2) Where—

(a) it appears to the Tribunal that an applicant is failing in his or her duty to co-operate with the Minister or to furnish information relevant to his or her appeal, or

(b) the Minister notifies the Tribunal that he or she is of opinion that the applicant is in breach of *section 35(3)(a), (c) or (d) or (4)*,

the Tribunal shall send to the applicant a notice in writing inviting the applicant to indicate in writing (within 10 working days of the sending of the notice) whether he or she wishes to continue with his or her appeal; and, if an applicant does not furnish an indication within the time specified in the notice, his or her appeal shall be deemed to be withdrawn.

(3) (a) An applicant may withdraw his or her appeal to the Tribunal by sending notice of withdrawal to the Tribunal and the Tribunal shall, as soon as may be, notify the Minister of the withdrawal.

(b) Where an appeal is deemed to be withdrawn pursuant to *subsection (1) or (2)* the Tribunal shall, as soon as may be, notify the applicant, his or her solicitor (if known) and the Minister of the withdrawal.

#### *Oral hearings.*

**82.—**(1) (a) (i) Except where otherwise provided in *section 71(6) and 71(8)* the Tribunal shall, where appropriate, hold an oral hearing for the purposes of an appeal under this Act.

(ii) An oral hearing shall, subject to *subparagraph (iii)*, be held in private.

(iii) The High Commissioner may be present at an oral hearing for the purpose of observing the proceedings.

(b) For the purposes of an oral hearing, the Tribunal may—

(i) direct in writing any person, except the Minister or an officer of the Minister, whose evidence is required by the Tribunal to attend before the Tribunal on a date and at a time and place specified in the direction and there to give evidence and to produce any document or thing in his or her possession or control specified in the direction,

(ii) direct any such person to produce any specified document or thing in his or her possession or control,

(iii) give any other directions for the purpose of an appeal that appear to the Tribunal reasonable and just.

(c) Subparagraphs (i) and (ii) of paragraph (b) shall not apply to a document or thing relating to information as respects which the Minister or the Minister for Foreign Affairs, as the case may be, directs (which he or she is hereby empowered to do) that the information be withheld in the interest of public security or public policy ("*ordre public*").

(d) The Tribunal shall enable the applicant and an officer of the Minister to be present at and participate in the hearing and present their case to the Tribunal in person or through a legal representative or other person.

(e) The Tribunal shall, where necessary and possible, procure the attendance of an interpreter to assist at the hearing.

(f) An oral hearing under this section may be dispensed with where the Tribunal is of the opinion, based on a medical or psychological certificate provided by or on behalf of the applicant, that the applicant is unfit or unable to participate in the hearing.

(g) The application of paragraph (f) shall not of itself operate—

(i) to prevent information relating to the applicant's protection claim from being submitted to the Tribunal by or on behalf of the applicant,

(ii) prevent the Tribunal from making a final determination in respect of the appeal, or

(iii) adversely affect the final determination of the appeal.

(2) Subject to section 79(5), a witness whose evidence has been or is to be given before the Tribunal shall be entitled to the same privileges and immunities as a witness in a court.

(3) The Tribunal, where it considers it appropriate to do so in the interest of the fair and efficient discharge of its business, may decide to hold—

(a) a single oral hearing in respect of more than one appeal, or

(b) separate oral hearings in respect of each of a number of applicants, notwithstanding that the applicants are members of the same family or that the applications are otherwise related.

#### *Consideration of appeal by Tribunal.*

**83.**—Before deciding an appeal under this Part, the Tribunal shall consider the following:

(a) the relevant notice under section 79(2);

(b) all material provided to the Tribunal by the Minister under section 79(4);

(c) the determination of the Minister under section 70;

(d) any observations made to the Tribunal by the Minister or the High Commissioner; and

(e) the evidence adduced and any representations made at an oral hearing, if any.

#### *Subsequent applications for protection*

**84.**—(1) A person who has applied for protection in the State may not, without the consent of the Minister, make a further application for protection in the State where—

(a) his or her protection application has been withdrawn or deemed to be withdrawn under this Act,

(b) following a determination of his or her protection application, the Minister has decided that he or she should not be granted a protection residence permit,

(c) an appeal made by the applicant concerned against a determination by the Minister in relation to his or her protection application has been withdrawn or deemed to be withdrawn under this Act,

(d) the Tribunal under *section 80(2)*, has affirmed a determination of the Minister that he or she should not be granted a protection residence permit, or

(e) a protection residence permit issued to the person has been discontinued under this Act.

(2) Before making a decision as to whether he or she will consent or refuse to consent to the making of a further application for protection in the State under *subsection (1)*, the Minister shall require the applicant to—

(a) outline in the prescribed manner the reasons why he or she considers that the Minister should consent to a further application being made,

(b) where the previous application or appeal was withdrawn or deemed to be withdrawn, provide an explanation of the circumstances giving rise to the withdrawal or deemed withdrawal of the application or appeal,

(c) provide all relevant information being relied upon by the applicant to demonstrate that he or she is entitled to protection in the State, and

(d) draw attention to any new circumstances which have arisen since the withdrawal or deemed withdrawal so referred to in *subsection (1)(a)* or *(c)*, the determination referred to in *subsection (1)(b)*, the affirmation referred to in *subsection (1)(d)* or the discontinuation referred to in *subsection (1)(e)*.

(3) *Section 99(11)* applies to an application made under this section.

(4) The Minister shall consent to a further application for protection being made where he or she is satisfied that the applicant has submitted new information which significantly adds to the likelihood that the applicant will qualify for protection in the State and which could not reasonably have been provided earlier.

(5) The Minister shall notify the applicant of his or decision to consent or, as the case may be, not to consent to a further application being made under this section and the reasons for that decision.

#### *Protection of identity of applicants.*

**85.—**(1) The Minister and the Tribunal and their respective officers shall take all practicable steps to ensure that the identity of applicants is kept confidential.

(2) No matter likely to lead members of the public to identify a person as an applicant under this Act shall, without the consent of that person, be published in a written publication available to the public or be broadcast.

(3) If any matter is published or broadcast in contravention of *subsection (2)*, the following persons, namely—

(a) in the case of a publication in a newspaper or periodical, any proprietor, an editor and any publisher of the newspaper or periodical,

(b) in the case of any other publication, the person who publishes it, and

(c) in the case of matter broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of the editor of a newspaper, shall be guilty of an offence.

(4) Where a person is charged with an offence under *subsection*

(3) it shall be a defence to prove that at the time of the alleged offence he or she was not aware, and neither suspected nor had reason to suspect, that the publication or broadcast in question was of such matter as is mentioned in *subsection (2)*.

(5) In this section—

“broadcast” means the transmission, relaying or distribution by wireless telegraphy of communications, sounds, signs, visual images or signals intended for direct reception by the general public whether such communications, sounds, signs, visual images or signals are actually received or not;

“written publication” includes a film, a sound track and any other record in permanent form (including a record that is not in a legible form but which is capable of being reproduced in a legible form) but does not include an indictment or other document prepared for use in particular legal proceedings.

*Access to Tribunal decisions.*

**86.**—(1) A protection applicant may, but only at the time of making an appeal under *section 79*, apply in the prescribed manner to the chairperson of the Tribunal to make available to him or her any decision of the Tribunal which is legally relevant to his or her appeal.

(2) Where the chairperson is satisfied that—

(a) the application complies with regulations under *subsection (8)*,

(b) the request is reasonable, and

(c) there exists a decision which is relevant to the applicant's appeal,

then he or she shall, subject to *subsection (3)* and in accordance with regulations under *subsection (8)*, make such decision available to the applicant.

(3) Where, in relation to a request under *subsection (1)*, there is more than one decision of the Tribunal that is of legal relevance set out in that subsection, and the chairperson is of opinion that—

(a) the requirements of fairness would be sufficiently served by making available a representative sample of such decisions in lieu of providing all such decisions, or

(b) a representative sample of such decisions sufficient to meet the requirements of fairness has already been published under *subsection (5)*,

the making available of such representative sample shall be sufficient to comply with the requirements of this section.

(4) The chairperson may refuse a request where he or she is satisfied that the request is frivolous or vexatious.

(5) The chairperson may at his or her discretion, where he or she considers that a decision of the Tribunal is of legal importance, publish such decision in such manner as he or she considers reasonable.

(6) A decision made available or published under this section shall exclude any matters which would tend to identify a person as an applicant for protection under this Act or otherwise breach the requirement of *section 85* that the identity of applicants be kept confidential.

(7) An applicant's legal representative shall—

(a) bring to the attention of the Tribunal any decisions of which the representative is aware which may tend not to support the appeal, and

(b) distinguish such decisions from the decisions being relied upon in support of the appeal.

(8) The Minister may by regulation provide for any matters relating to the making available or publication of decisions under this section that he or she considers appropriate, including—

(a) the details which are to be submitted with an application under *subsection (1)* to allow the chairperson to—

(i) establish to his or her satisfaction that the request is reasonable, and

(ii) determine what decision, if any, is legally relevant to the appeal,

(b) the provision by the applicant or his or her legal representative or researcher of an undertaking to the effect that any decision made available under this section—

(i) will be used only for *bona fide* legal research in connection with the applicant's appeal under this Act, and

(ii) will not be published,

(c) the manner in which a decision is to be made available or published under this section,

(d) the conditions under which any decision made available, under *subsection (2)*, to an organisation providing legal representation for the purposes of an appeal under this Act may be made available to other legal representatives or researchers of that organisation for the purposes of an appeal under this Act, including the provision by that organisation of an undertaking that—

(i) the decision will be used only for *bona fide* legal research in connection with an appeal under this Act in respect of which the legal representatives or researchers concerned are acting,

(ii) the decision will not be made available to legal representatives or researchers who are not part of or engaged by that organisation, and

(iii) the decision will not be published,

(e) rules governing the—

(i) making available of,

(ii) publication of, and

(iii) method of access to, decisions of the Tribunal under this section, and

(f) the keeping of records of decisions made available to any person or published under this section.

(9) Where Regulations made under *subsection (8)* provide for an undertaking or condition of the kind referred to in *paragraphs (b) or (d)* of that subsection, it shall be an offence to fail to comply with such an undertaking or condition.

*Safe countries.*

**87.—(1)** (a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country or part of a country as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that, in the country or part of the country concerned, there is generally and consistently no persecution, construed in accordance with *sections 61 and 62*, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

(b) In deciding whether to make an order under *paragraph (a)*, the Minister shall have regard to the following matters:

(i) whether the country is a party to and generally complies with obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights;

(ii) whether the country has a democratic political system and an independent judiciary;

(iii) whether the country respects the principle of nonrefoulement according to the Geneva Convention;

(iv) whether the country is governed by the rule of law.

(c) The determination as to whether an order under *paragraph*

(a) should be made in relation to a particular country or part of a particular country shall be based on, *inter alia*, available information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.

(d) The Minister shall notify the European Commission of the making, amendment or revocation of an order under *paragraph (a)*.

(2) In this section:



“the Convention against Torture” means the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by resolution 39/46 of the General Assembly of the United Nations on 10 December 1984;

“the European Convention on Human Rights” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950; 20

“the International Covenant on Civil and Political Rights” means the International Covenant on Civil and Political Rights adopted by Resolution 2200A (XXI) of the General Assembly of the United Nations on 16 December 1966.

(3) (a) The Minister may make such orders as appear to him or her to be necessary or expedient for the purpose of giving effect to—

(i) Council Regulation (EC) No. 343/2003 or any Regulation amending or replacing that Regulation,

(ii) any agreement of the kind referred to in *subsection (4)*.

(b) Without prejudice to the generality of *paragraph (a)*, an order under this subsection may—

(i) specify the circumstances and procedure by reference to which an application for protection—

(I) shall be examined in the State,

(II) shall be transferred for examination in accordance with Council Regulation (EC) No. 343/2003 or any Regulation amending or replacing that Regulation or to a safe third country in accordance with any agreement of the kind referred to in *subsection (4)*, or

(III) shall be accepted for examination in the State pursuant to a request made by a Member State, in accordance with Council Regulation (EC) 45 No. 343/2003 or any Regulation amending or 3OJ No. L50/1 of 25.02.2003. replacing that Regulation, in which the application for protection was lodged or pursuant to an agreement to which *subsection (4)* refers,

(ii) provide for an appeal against a determination to transfer an application for protection to a Member State or a safe third country and for the procedure in relation to such an appeal,

(iii) provide, where the order specifies that the making of an appeal shall not suspend the transfer of the application or of the applicant to the safe third country, that such transfer is without prejudice to the appeal decision,

(iv) require that an application for protection shall not be investigated by the Minister until it has been decided whether a Member State is responsible for examining the application or whether the application should be transferred to a safe third country,

(v) require that an application for protection which is being investigated by the Minister shall be transferred to a Member State or a safe third country, as the case may be, for examination,

(vi) provide that, where an application has been transferred to a Member State for examination or to a safe third country, the person concerned shall go to that Member State or to that safe third country,

(vii) provide for the investigation of an application for protection by the Minister notwithstanding that a Member State or a safe third country has responsibility for examining the application,

(viii) specify the measures to be taken for the purpose of the removal of a person whose application has been transferred to a Member State or a safe third country from the State to that Member State or safe third country including, where necessary, the temporary detention or restraint of the person, and

(ix) provide for the temporary detention (for a period not exceeding 48 hours) until a decision on the matters referred to in *subparagraph (i)* has been made, of a person who, having arrived in the State directly from a Member State or a safe third country, makes an application for protection.

(4) (a) The Minister may, after consultation with the Minister for Foreign Affairs, by order designate a country as a safe third country (referred to in this section as “a safe third country”).

(b) In deciding whether to make an order under *paragraph*

(a), the Minister shall have regard to the following matters:

(i) whether the country is party to and complies generally with its obligations under the Geneva Convention, the Convention against Torture and the International Covenant on Civil and Political Rights;

(ii) whether the country has a democratic political system and an independent judiciary;

(iii) whether the country is governed by the rule of law; and that country and the State are parties to an agreement which contains provisions providing for—

(I) the prompt transfer to that country of a protection application made in the State by a person who has arrived from that country, and

(II) the prompt transfer to the State of a protection application made in that country by a person who has arrived in that country from the State.

(5) An order under this section may make provision for such consequential, incidental, ancillary and supplementary matters as the Minister considers necessary or expedient.

(6) Where a protection application has been transferred to a Member State pursuant to Council Regulation (EC) No. 343/2003 or any Regulation amending or replacing that Regulation, or to a safe third country for examination, the application shall be deemed to be withdrawn.

(7) The Minister may communicate to a safe third country such information relating to a protection application or to the person making such application (including personal information) as may be necessary for giving effect to an agreement to which *subsection (4)* refers; but information concerning the grounds on which a particular application for protection is based or the grounds on which a decision concerning such an application is based shall not be communicated under this section without the prior consent of the person the subject of the application.

(8) In this section, "Member State" means—

(a) a Member State of the European Communities, and

(b) the Republic of Iceland and the Kingdom of Norway.

(...)