
Migration and Refugee Crises

24 September 2015

Introduction

In the midst of the continuing refugee and migration crises, EU Justice and Home Affairs Ministers met on 22 September 2015 to consider mandatory refugee relocation proposals.

An emergency summit of EU leaders followed on Wednesday 23 September 2015 to discuss immediate priorities (including an additional €1 billion in emergency funding) together with longer-term solutions.

By way of brief background, this *L&RS Note* provides information on the following aspects of the current migration and refugee crises.

- Current humanitarian crises
- The terminology of seeking protection
- EU response to the current crises
- Ireland's response
- Additional L&RS resources on these, and related, issues.

Current Humanitarian Crises

The UN High Commissioner for Refugees (UNHCR) estimates that wars, conflict and persecution around the world had forcibly displaced almost 60 million people by the end of 2014. Over half of Syria's 22 million-estimated population is now either a registered refugee, or internally displaced within Syria, following the outbreak of conflict in March 2011.

Based on investigations carried out over the first half of 2015, an [Independent Commission Report](#) published by the UNHCR states that there is no end in sight to the Syrian conflict. Belligerents fighting for more than four years are reported to have operational capabilities to sustain the conflict for several more years, bringing greater potential for internationalisation of the conflict.

According to the [Independent Commission Report](#), Syrians of all backgrounds are subject to serious violations of international humanitarian law and gross violations of human rights, which are massive in extent and scope. Reporting on civilian casualties, the Report found that "few civilians have been left unscathed by the continuing brutality of the Syrian war". Besieged communities are reported to be living under shocking and inhuman conditions and are inaccessible to humanitarian access.

The uninterrupted flow of refugees to neighbouring states has had a destabilising effect on the region and has caused states to adopt stricter border controls thus limiting refugees' potential to leave the region. Based on 2014 registration trends, UNHCR data show the movement of large numbers of Syrians to neighbouring countries, as illustrated by the L&RS graphic below.

The UNHCR notes the deepening impact of the Syrian crisis on Lebanon. [Forecast figures](#) show that Lebanon can expect to receive 1.8 million registered refugees from Syria by December 2015. Given its population of just under 6 million (in July 2014), this undoubtedly stretches what the UNHCR describes as Lebanon's "exceptional hospitality".¹

Forecast numbers of Syrian refugees fleeing to neighbouring states



Source: Library & Research Service, using forecast figures published by the [UNHCR](#) for December 2015

Beyond Syria

[Reports from Yemen](#) show that political instability and internal conflicts continue to result in the displacement of people. Yemen itself hosts almost 250,000 refugees, mainly of Somali origin and is considered by the UNHCR to be a transit country of mixed migration flows.

In the [horn of Africa](#), violence in Southern Sudan erupting late in 2013 has caused 450,000 new South Sudanese refugees to flee to Ethiopia, Kenya, Sudan and Uganda. Ethiopia has witnessed an influx of Eritrean refugees and the UNHCR sees the high risk of trafficking and smuggling of Eritrean refugees as is a major protection concern. The UNHCR further highlights how the regional topography and lack of infrastructure impede humanitarian assistance, particularly during the rainy season.

A recent [opinion piece](#) in the Irish Times reported from Rwanda on the growing instability in Burundi. It cites UN estimates that half a million people may leave Burundi if the crisis is not resolved. In 2015 alone 75,000 Burundians have fled to Rwanda, adding 7% to their population. The writer emphasises that *“it is always neighbouring countries that bear the brunt, whether Turkey as Syrian refugees arrive today or Britain as Irish economic migrants arrive, well, any day.”*²

The terminology of seeking protection

The UNHCR seeks to explain the difficult and sometimes confused [migrant / refugee distinction](#) stressing the important consequences of using the correct terminology, and emphasises the particular [challenges associated with mixed migration flows](#).

In the EU context, a person who is fleeing persecution or serious harm, including armed conflict, is entitled to “**international protection**”. This incorporates both refugee status and subsidiary protection. In the hierarchy of protection, recognition as a refugee is the strongest protection which an asylum seeker can attain. Whether a person is a recognised refugee is thus considered first.

Refugee Status

The [UN Convention](#) definition of a “**refugee**” has been incorporated into Irish law by s.2 of the [Refugee Act 1996](#). The definition encompasses a person 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, 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; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

This definition excludes certain persons e.g. those receiving UN assistance, persons who have committed crimes against peace or are guilty of acts contrary to UN purposes or principles.

Under the [Refugee Act 1996](#) Ireland cannot expel a person from the State, where that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. This gives expression to the **principle of non-refoulement**.

Refugee status includes a right to family reunification under s.18 of the [Refugee Act 1996](#). In brief, Irish law currently provides for family reunification of the nuclear family (i.e. immediate family unit) and allows for reunification of dependent family members on the discretion of the Minister for Justice and Equality. Changes to family reunification may be proposed under the forthcoming *International Protection Bill*, if the approach in the [General Scheme](#) is followed (discussed further on p.11 of this *Note*).

Provision under the [Refugee Act 1996](#) is also made for a “**programme refugee**” who “enter and remain in the State for temporary protection or resettlement as part of a group of persons” by permission of the Government and whose name is entered in a register established and maintained by the Minister for Foreign Affairs and Trade. A person may be accepted as a “programme refugee”, whether or not such person is a refugee within the meaning of the definition of “refugee” in s.2 of the [Refugee Act 1996](#). The distinction can be explained as follows:

“A programme refugee comes to a receiving state on the invitation of the government as part of a resettlement programme or for temporary protection... [T]he Refugee Act 1996 awards programme refugees automatic refugee status, although many who enter the country in this manner would not be recognised under Geneva Convention criteria, which excludes those who flee their country as a result of natural disaster, war or broadly-based political and economic turmoil.”³

Subsidiary Protection

An applicant who has not been recognised as a refugee may be granted “**subsidiary protection**”, under the [Recast Qualification Directive](#) where the person faces a “real risk of suffering serious harm, and is unable, or owing to such risk, unwilling to avail himself of the protection” of his/her country of origin or his/her country of former habitual residence. The term “**serious harm**” consists of:

- (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 situations of international or internal armed conflict.*⁴

Recognition as a refugee generally requires an individual threat. However, the failure to establish that a person is specifically targeted is not fatal to an application for subsidiary protection, where the applicant can show a high level of indiscriminate violence in his/her country of origin. This was confirmed before the Court of Justice of the EU, [Elgafaji v Staatssecretaris van Justitia](#), a case of Iraqi nationals seeking protection in the Netherlands.

Where a person is neither recognised as a refugee nor given “subsidiary protection”, they may still be granted “**leave to remain**” in the state for humanitarian or other compelling reasons.

The *Dublin Regulation* prescribes the criteria and mechanism to determine the Member State responsible for dealing with an asylum application. The European Commission’s relocation proposals (outlined below) would require certain derogations from the Dublin

Regulation. The Regulation covers 32 countries which include the EU member states, Iceland, Norway, Liechtenstein and Switzerland.

The *International Protection Bill 2015* (forthcoming) will introduce a single procedure for examining applications for international protection in Ireland. The Library & Research Service have compiled resources on this reform, which are available on the internal L&RS [Bills Tracker page for the *International Protection Bill*](#).

EU response to the current crises

The Greek islands have become the main entry point for refugees entering the European Union from Turkey. The UNHCR reports that more than 318,000 refugees have risked this dangerous journey this year, with 192,000 arriving since August 2015. The Mediterranean Sea has claimed an estimated 3,000 lives this year.

EU Commission proposals

On 9 September, the European Commission put forward a [package of proposals](#) to assist in the refugee crisis and to deliver on the [European Agenda on Migration](#), dated May 2015. The proposed mandatory relocation proposal is a burden-sharing initiative grounded in solidarity and involves the relocation of asylum seekers in order to ease the emergency pressure on particular Member States. It can be distinguished from [resettlement](#), which is an ongoing programme of resettling refugees and giving them an opportunity to rebuild their lives (described further below).⁵

The European Commission put forward a [Refugee Relocation proposal](#) whereby persons in need of international protection may be transferred from one Member State to another, to alleviate pressure on frontier states. On an emergency basis it proposed the relocation of 120,000 people from Italy, Hungary and Greece over two years. This figure was in addition to the 40,000 proposed to be relocated from Italy and Greece, proposed in May 2015, bringing Commission relocation proposals to 160,000.

Under the Commission proposals, relocation would benefit applicants of nationalities with high recognition rates i.e. where the rate of international protection for those specific nationalities at EU level is over 75%. This would currently apply to Syrians, Eritreans and Iraqis.

Decisions on relocation would take account of objective distribution criteria for the receiving Member State, including population size, GDP, number of past asylum applications and

unemployment rate. Funding support of €780 million for relocation would be made available under the proposals.

In response to emergency migratory pressures, the Commission proposed the setting up of “hotspots”, in which EU agencies⁶ would work with authorities on the frontline to assist them with fulfilling their EU law obligations and to swiftly identify, register and fingerprint incoming migrants.

Further aspects of the Commission proposal relate to a common list of Safe Countries of Origin, an effective return policy and addressing the external dimension. The Commission has published the [full legislative texts of the proposals](#) and a useful [Factsheet](#).

President of the Commission, Jean-Claude Juncker appealed to Member States’ national memory of migratory plight saying: “there is a reason the number of O’Neills and Murphys in the US exceeds by far those living in Ireland?”, as [reported the Irish Times](#) on 10 September 2015.

East / West tensions on imposing mandatory quotas

EU Member States convened at the extraordinary Home Affairs Council on 14 September 2015, to discuss the Commission proposals on relocation, which would enable adoption by the European Council of a Decision, on consulting with the European Parliament.⁷

At the meeting of the 14 September, Ministerial representatives for Home Affairs agreed to relocate 40,000 persons from Italy and Greece and agreed “in principle” to the relocation of a further 120,000 persons. It committed to the allocation of emergency resources and to a full consideration of the Commission proposals.

The European Council stressed the importance of “effective border control” seen as “imperative for the management of migration flows”. European Council President Donald Tusk is [reported in the Irish Times](#) on 23 September 2015 as urging leaders to address strategic issues relating to external borders.

In recent weeks, divisions have arisen in relation to imposing mandatory quotas for relocation. Hungary has been [strongly criticised](#) for its handling of the crisis, and Hungary's parliament passed legislation permitting the army to use rubber bullets, tear gas grenades and net guns against refugees.⁸

Relocation of 120,000 persons

EU Justice and Home Affairs Ministers met again on 22 September and agreed, not by consensus but by qualified majority vote (QMV), to relocate 120,000 persons over two years.⁹ This [Council Decision](#) was reported to have been resisted by the Czech Republic, Slovakia, Romania and Hungary. Finland abstained from the vote.¹⁰ Ireland did not have a vote at the meeting (due to the opt-out it exercises), but has indicated that it will opt-in to the relocation scheme. Slovakia indicated that it will legally challenge the relocation scheme, as reported in an [Irish Independent article](#) of 23 September 2015.

Under the [Council Decision](#), 66,000 persons will be relocated from Italy and Greece, including 15,600 from Italy and 50,400 from Greece. The remaining 54,000 persons will be relocated from Italy and Greece, in the same proportion, in September 2016.

The [Council Decision](#) also committed to financial support of a lump sum of €6,000 per beneficiary of international protection, for the Member State of relocation. Italy and Greece are to receive €500 per person relocated.

Informal meeting of Heads of State

Heads of State and Heads of Government met at an informal European Council meeting on 23 September 2015, to discuss the “unprecedented migration and refugee crisis” faced by the EU, as reported in a [European Council Statement](#). Discussions focussed on both immediate priorities and long-term sustainable solutions. The statement emphasised the need to uphold and apply existing rules, including the *Dublin Regulation* and the *Schengen acquis*.

European Council President Donald Tusk, in his [statement](#), urged leaders to “end the public finger pointing” and engage in an “honest discussion on the nature of the problem and possible solutions”, according to the President’s statement. He spoke of millions of potential refugees trying to reach Europe and the responding need to “correct the policy of open doors and windows”. He called for an end to the “current chaos” at the EU’s external borders, advocating urgent measures to ensure that the Schengen area does not exist only in theory.

Ireland’s response

Ireland and the United Kingdom availed of an opt-out of Title V, Part Three of the *Treaty on the Functioning of the European Union*. Therefore Ireland is not bound to participate in the EU’s emergency response. However, the Department of Justice and Equality stated on 20 July 2015 that a motion for Ireland to opt-in, will be brought before the Oireachtas.¹¹

Ireland is assisting vulnerable Syrian persons, through various programmes, described in detail below. These initiatives can be summarised, on a general basis, as set out in the table below (based on press releases from the Department of Justice and Equality). Ireland's response was also summarised in a [statement by the Minister for Justice and Equality](#) on 23 September 2015.

Persons affected	Relevant programme	Department source	Year of implementation
114	Syrian Humanitarian Admission Programme	September 2015, see here	2014
90	Resettlement	March 2014, see here	2014
100	Resettlement	December 2014, see here	2015
120	Resettlement	December 2014, see here	2016
300	Resettlement	May 2015, see here	2016
600	Relocation	September 2015, see here	By end 2016
2880	Relocation	September 2015, see here	By end 2016

Source: Library & Research Service, using data from the Dept. of Justice and Equality

Syrian Humanitarian Admission Programme

In March 2014, the then Minister for Justice, Equality and Defence, Alan Shatter announced the "[Syrian Humanitarian Admission Programme](#)" ("SHAP"). Under the SHAP, naturalised Irish citizens of Syrian birth and Syrian nationals lawfully in the State could apply for up to four vulnerable close family members to join them here on a temporary basis for up to two years.¹² This was additional to established avenues of protection, including family reunification for family members of refugees and persons with subsidiary protection and the UNHCR's resettlement programme. The Minister noted that almost all Syrians seeking asylum in Ireland since March 2011 have been declared to be refugees.

In December 2014 the Minister for Justice and Equality, Frances Fitzgerald, announced that out of 308 applications for the SHAP, [111 vulnerable people from Syria were granted admission to reside in Ireland](#). A subsequent [press release](#) from the Department of Justice and Equality on 23 September 2015 states that 114 persons would join family members in Ireland under this scheme. A condition of the scheme was that those admitted should not become a burden on the State and should be financially dependent on their sponsor family member.

Resettlement

The [Irish Resettlement programme](#), operated in partnership with UNHCR, was established in 2000. The Minister for Justice and Equality decides who Ireland will accept for resettlement, in consultation with the Minister for Foreign Affairs and Trade and the UNHCR. The Office for the Promotion of Migrant Integration co-ordinates induction and resettlement of persons admitted under these programmes, including social inclusion initiatives.

Ireland participates in “selection missions” in order to conduct face-to-face interviews. It carried out a mission to Jordan in 2014 (in relation to Syrian persons) and in 2015 further selection missions were undertaken to Lebanon (in relation to persons of Syrian and Iraqi origin).

Relocation Programme

On 10 September 2015, the Government announced the establishment of **Emergency Reception and Orientation Centres**, under “[Resettlement & Relocation Programmes](#)”. Decisions on refugee status would be made, “within weeks” within these Reception and Orientation Centres, according to a [press release](#) from the Department of Justice and Equality.

The maximum figure of 4,000 persons would include the 600 persons under the EU Relocation programme agreed in July 2015, and a further 520 persons previously agreed to be resettled in Ireland. Therefore the renewed commitment is confined to a maximum of 2,880 persons. However, Minister for Social Protection stated that refugees would be eligible to avail of family reunification measures which would cause this figure to be increased.

The Department of Justice and Equality further announced that a cross-departmental taskforce would co-ordinate and implement the Programme.

On the same day it announced that the Government “approves additional budget allocation to deal with major increase in asylum and other immigration cases”.

A further [update](#) from the Department of Justice and Equality, provided that decisions on refugee status would be likely to be made “very quickly” considering that applicants are coming from Syria and Eritrea. This press release reported on the perception across Europe that up to 90% of persons will qualify as refugees as the majority are fleeing from war-torn Syria and Eritrea.

Accommodation of refugees

An [Information note](#), released by the Department of Justice and Equality on 13 September 2015, stated that the Irish Red Cross (amongst other NGOs and religious organisations) would play an important role in coordinating public offers of accommodation and support for recognised refugees accepted by Ireland.

The accommodation proposed is within “Emergency Reception and Orientation Centres”, which will operate outside of direct provision. It was reported in an [article in the Irish Times](#) on 23 September 2015, that the housing options will mirror centres for direct provision, directly providing food and accommodation, but will accommodate relocated persons for a shorter time as Minister Fitzgerald envisages refugee recognition in a “fast track manner”.

A [recent article](#) in the Irish Times argues that the current refugee resettlement could be used to address the direct provision crisis and to grant an amnesty to those in direct provision. The current housing crisis would be likely to impact on those benefitting from the amnesty, who are exiting direct provision and seeking accommodation.

Naval response and humanitarian aid

Ireland’s wider response to the refugee crisis includes rescue operations by the Irish Naval Service, which, to date, has rescued 6,720 people and humanitarian aid. Through the Irish Aid programme, the State will provide nearly €80 million in funding to support those affected by humanitarian crises.

International Protection Bill 2015

The *International Protection Bill 2015* is due to be published on an expedited basis, and will introduce a single procedure for examining applications for international protection in Ireland.

This Bill will introduce significant changes to the processing of applications for international protection. It may also make amendments to how family reunification will operate in the future. For example, there is no equivalent provision in the General Scheme of the Bill to allow refugees to seek family reunification in respect of “dependent family members”, as is currently allowed, on a discretionary basis, under [s.18\(4\) of the Refugee Act 1996](#).

It is anticipated that resettlement of refugees in Ireland will take place on an incremental basis and it remains to be seen how the transition from the current processes for assessing applications to the new single procedure will impact on the refugees to be relocated.

Additional L&RS resources

The Library & Research Service has recently produced a Note providing an [Overview of the System of Direct Provision in Ireland](#) and has published a [Bills Tracker page for the International Protection Bill](#). This Bill is due to be published shortly.

¹ See the website of the UNHCR, data on Lebanon, available [here](#).

² Acheson, J. (2015) *Why are we so mean in our response to the refugee crisis?* The Irish Times, 18 September 2015.

³ Byrne, C (1998) *Anismova: The Legal Basis for Return to a Third Country in Irish Law* Trinity College Law Review, 1, 87-103.

⁴ The *Qualification Directive* was transposed in Ireland by the - [European Communities \(Eligibility for Protection\) Regulations 2006](#) (S.I. No. 518/2006).

⁵ See the Press Release of the Minister for Justice and Equality dated 20 July 2015, available [here](#), and further information on the resettlement process [here](#).

⁶ The principal EU agencies working in this field are [Frontex](#) and [European Asylum Support Office](#).

⁷ The European Commission proposal was based on Article 78(3) of the Treaty on the Functioning of the European Union: *“As part of the common policy on asylum, Article 78(3) of the Treaty provides a specific legal basis to deal with emergency situations. Based on a proposal by the European Commission, it enables the Council, after consulting the European Parliament, to adopt provisional measures for the benefit of Member State(s) confronted with an emergency situation characterised by a sudden inflow of nationals of third countries into one or more Member State(s). The provisional measures envisaged by Article 78(3) are exceptional in nature. They can only be triggered when a certain threshold of urgency and severity of the problems created in the Member State(s)' asylum system(s) by a sudden inflow of third country nationals is met.”*

⁸ See ongoing reporting by *The Guardian* on the situation in Hungary, available [here](#).

⁹ The response of the UNHCR to the relocation programme is available [here](#).

¹⁰ Comprehensive analysis of how the Member States voted was provided in *The Guardian* on 22 September 2015, available [here](#).

¹¹ See the Press Release of the Department of Justice and Equality, of 20 July 2015, available [here](#).

¹² There was a limited period in which to make an application as the closing date was set at 30 April 2014.