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The Slow March to Work for Asylum Seekers in Ireland

Dr Liam Thornton, Associate Professor, UCD School of Law

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Two key issues of focus

1. Denying the right to work for asylum seekers 1996-2018
2. The Potential and Limits of Law
Denying the Right to Work 1996-2018

Access *The Direct Provision Files* to see Government (limited) discussions on these issues.
Rationales
The Limits of ‘Reform’ Initiatives
Constitutionalising Freedom to Work for Asylum Seekers


Briefing Note for Dáil Éireann

ISSUE:
The Minister for Justice and Equality is seeking the approval of the Houses of the Oireachtas to exercise the State’s discretion under Protocol No. 11 to the position of the UK and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to opt into the following EU Directive: Directive 2012/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recaet).

The Government Decision to propose an opt-in to the Directive to give effect to the Supreme Court judgment of 30 May last is reflective of its ongoing commitment to fundamentally reform Ireland’s international protection system. It proposes going beyond the singular issue of providing access to the labour market for international protection applicants and instead use the opportunity afforded by the Supreme Court decision to align the supports and reception conditions provided to applicants with the norms across the rest of the European Union Member States.
“...it cannot be said that the legitimate differences between an asylum seeker and a citizen can continue to justify the exclusion of an asylum seeker from the possibility of employment. The damage to the individual’s self-worth and sense of themselves is exactly the damage which the constitutional right [Art. 40.3] seeks to guard against.”
The Potential and Limits of Human Rights Law
Europeanisation of Freedom to Work in Ireland - 2018 Reception Regulations
Core Qualification Criteria

Labour market access permission

11. (1) Save as may be provided under any other enactment or rule of law an applicant shall not seek, enter or be in employment or self-employment except in accordance with—

(a) a labour market access permission granted or renewed by the Minister under this Regulation (in this Regulation referred to as a "permission") that is valid, and

(b) this Regulation and, where applicable, Regulation16.

(2) Save as may be provided under any other enactment or rule of law, a recipient who is not an applicant shall not seek, enter or be in employment or self-employment.

(3) An applicant may make an application for a permission, which application shall be—

If no first instance protection decision within 9 months may apply for access to labour market.

Access in essence limited to private sector, public/civil service employment totally excluded

May continue to work until completion of protection decision

50/50 rule in effect- cannot be more than 50% non EU/EEA employees in business that employs protection seeker
Remaining Issues

When does 9-month period start? See IPAT decisions in Georgia (2018), overturned by Bangladesh (2019)—potential to challenge this?

Dublin Transfer applicants: if waiting 9 months, can exercise freedom to work? IPAT says yes, High Court says no. Will be decided by Court of Justice of the European Union.
Proposals to Enhance Freedom to Work (June 2020)

Interdepartmental Group around February 2020: Report to Minister, recommends period reduced to 3 months.

Dr Day Group (government, civil society, activist) 05 June 2020: Briefing Note sent to Oireachtas Members, recommendation to reduce time period to access work. Other limited recommendations, most NB transition away from ‘direct provision’ model (subsequently backed up by Minister for Justice).
Reflections

i. A **long winding road**- cannot ‘recommend’ the Irish approach- took almost 20 years to gain right to work

ii. Law, and human rights law, does not necessarily equate with **justice and equality**.

iii. Law can often give expression to **exclusion and limitation**, because that is what politicians/public want.

iv. Be aware of **potentials for ‘moving back’** and political/bureaucratic/public obsession with ‘pull factors’

v. Ireland **was overly obsessed with how UK** ‘did things’- but this has waned significantly post Brexit, but may re-emerge.

vi. In comparison, **current** right to work in Ireland is in effect/reality one of better in Europe and **lets hope will further improve**.
Resources relied on for presentation


Reception Conditions Regulation *Decision Database*.

AIDA, *Country Reports on Reception Conditions*.

O'Reilly, *The In-Between Spaces of Asylum and Migration* (2020)


Blog posts I wrote on [www.liamthornton.ie](http://www.liamthornton.ie) (here) and [www.exploringdirectprovision.ie](http://www.exploringdirectprovision.ie) (here).
