

**Persons in the system<sup>1</sup> where five years or more have elapsed since their initial asylum application was made.**

**Purpose of this paper**

The purpose of this paper is to provide information and analysis in relation to the approaches proposed by various members of the Working Group in relation to dealing with persons who have been in the system a lengthy period of time. Some members of the Working Group recommend that the focus should be on persons where five years or more have elapsed since their initial asylum application was made. Others recommend that the time period should be four years while others again in the case of vulnerable groups, recommend that the time period be two to five years since their initial asylum application was made.

For the avoidance of any doubt or misunderstanding, the Department is not proposing or recommending that any particular approach be adopted or rejected. The Department's position is that this will be a matter for consideration by the Minister in the context of her engagement with her Cabinet colleagues on the Working Group's report. However, approaches considered by the Department to be workable are signalled in the paper.

**The question of a "once-off" or "rolling" LTR arrangement**

The Department notes the differing views on this question in the Sub-Group and the suggestion that this question may require legal advice in light of the potential discriminatory effect that a once-off arrangement might have. The risks associated with recommending a rolling arrangement have been discussed in the Sub-Group, viz

- that it could give rise to expectations for further applicants and those in the system for shorter periods, that if they hold out for 5 years they will be considered for a grant of LTR;
- that it could even give rise to persons seeking to delay the processing of protection applications by taking JRs, or by whatever other means, in order to cross the five year threshold thereby becoming eligible for consideration for LTR under whatever arrangements the Working Group decides to recommend to the Government in relation to "longstayers" in the system.

As an alternative to a rolling arrangement, the Sub-Group could consider recommending that the position relating to remaining cases be reviewed upon completion of the processing of the five years plus cases in light of the experience of dealing with that cohort of cases.

**Persons currently in the System.**

At the end of September 2014, there were some 7,944 persons in the system of which:

- (i) 4,301 persons (54%) were in the protection process i.e. ORAC/RAT;

<sup>1</sup> For the purpose of this paper this includes persons currently in the protection process (ORAC/RAT), the leave to remain system (LTR) and persons with deportation orders (DOs) pending

- (ii) 3,643 persons (46%) were outside the protection process i.e. LTR/DO signed;
- (iii) 4,357 persons (55%) were in Direction Provision (DP);
- (iv) 4,139 persons (52%) were in the system 5 years or more since the date of their initial asylum application of whom:
  - 1,681 were in the protection process (483 in DP and 1,198 outside DP)
  - 1,693 were at LTR stage (472 in DP and 1,221 outside DP)
  - 765 had deportation orders signed (563 in DP and 202 outside DP)
  - 1,518 were in DP.

#### **Length of time**

It is clear from the discussions in the Working Group that the single biggest issue to address is the length of time that people spend in the system. The most negative aspects of DP have been highlighted in the submissions to the Working Group referencing its adverse effects on family life and relationships, the obsolescence of skills and qualifications and the creation of dependency, all of which it is argued, are exacerbated by the length of time in the system.

The Department has examined the approaches proposed by various members of the Working Group for dealing with persons referred to at (iv) above. The details in relation to each approach and the number of persons who could potentially be encompassed by them are set out in the attached table.

The Department has also sought to identify in the table the potential impacts of a decision by the Working Group to recommend the approaches proposed. It will be noted that the impact analysis is incomplete as input is required from the Departments of Social Protection; Environment, Community and Local Government; and Education and Skills who also need to confirm the impacts identified and any others which may arise.

#### **Categories of persons involved**

The approaches proposed by various members of the Working Group between them encompass three categories of persons who are 5 years or more in the protection process as follows:

##### **Category 1**

**Persons with pending protection applications** with the statutory bodies concerned (ORAC/RAT) incorporating two approaches, viz;

- (a) all such persons to be considered for a grant of LTR subject to certain conditions, without prejudice to the ongoing investigation of their protection applications, or
- (b) all such persons to have their applications processed by the statutory bodies concerned following which they will be considered for a grant of LTR subject to certain conditions, in the event that their protection applications are refused.

### **Category 2**

**Failed protection applicants**, who have made representations under Section 3 of the Immigration Act 1999 seeking permission to remain in the State, to be considered for a grant of LTR subject to certain conditions.

### **Category 3**

**Failed protection applicants** who are the subject of deportation orders (DOs) which have not been effected, to have their DOs considered for revocation, following which they will be considered for a grant of LTR subject to certain conditions.

### **Workable proposals**

Of the approaches proposed by members of the Working Group, in the Department's view those involving the processing of cases in accordance with the existing statutory framework are the most workable and most likely to yield early results for a significant number of people, subject to the necessary resources being available to the processing bodies concerned. In addition, such an approach rules out an amnesty, thereby avoiding conflict with national and European Union policy in this regard. In this context, the Working Group could consider making recommendations in relation to the prioritised and accelerated processing of cases by the statutory bodies concerned with decisions to be made within a limited timeframe.

### **Issues that the Working Group needs to consider in its discussions.**

In considering the approaches proposed by members, there are a number of issues that the Sub-Group needs to take into account having regard to the discussions to date.

1. Prioritisation: The order of priority to be accorded to the different categories of persons, viz
  - should categories 1 and 2 be prioritised by the processing bodies concerned i.e. ORAC, RAT and Department of Justice and Equality?
  - should the processing timeframe in all cases involving children be shorter than that for all other cases, with priority thereafter accorded to other vulnerable persons including persons with serious physical or mental health issues and their families?
  - should work associated with the processing of Category 3 cases follow completion of the work associated with Category 2 cases?
  - within all categories, should priority be accorded to persons in DP?
2. Resourcing issues - problems could arise very quickly if resources are diverted away from processing new and existing cases in a timely manner, as the length of time those persons are in the system would become an issue very quickly.
3. Qualifying conditions - in order for persons to be considered for LTR or to have their DOs revoked what baseline conditions would require to be met?

With regard to (3), while the Department does not wish to overly influence the deliberations of the Sub-Group, having regard to the experience of processing such cases, any recommendations to be made by the Working Group that persons in any of these categories be considered for a grant of leave to remain must have regard to certain baseline conditions. The types of conditions involved are set out below.

For persons to be considered eligible for a grant of LTR.

- (i) the person poses no threat to public order or national security and has no history of criminality;
- (ii) the person is not excluded from international protection;
- (iii) the person has not concealed his/her identity or misled the immigration authorities in any way - the person must be able to confirm his or her identity, or if unable to do so, to swear a declaration as to their identity, that they have no other identities and that they have no relevant immigration history with any other state;
- (iv) any legal challenges pending before the courts are concluded - granting residence while a judicial review is ongoing could expose the State to costs. It would be a matter for applicants themselves, on the advice of their legal representative, to decide whether they want to continue with their JR;
- (v) the person must at all times have fully co-operated with the State in the processing of their application;
- (vi) in the case of families with trailing family members at earlier stages of the protection process, LTR to be granted only to those family members presently at the LTR stage. Should their family members wish to abandon their protection applications in order to be considered for LTR that is a matter for them to decide.

For persons with DOs to be considered eligible for having their DOs revoked before being considered for a grant of LTR.

- (i) the DO must be in place for a minimum period of time with no immediate likelihood of the order being enforced in the near future;
- (ii) the person has not concealed his/her identity or misled the immigration authorities in any way - the person must be able to confirm their identity, or if unable to do so, to swear a declaration as to their identity, that they have no other identities and that they have no relevant immigration history with any other state;
- (iii) the DO must not be the subject of a legal challenge - granting residence while a judicial review is ongoing could expose the State to costs. It would be a matter for applicants themselves, on the advice of their legal representative, to decide whether they want to continue with their JR;

- (iv) the person must at all times have fully co-operated with the State in the processing of their application;
- (v) the person must not be an evader;
- (vi) the person must pose no threat to public order or national security and has no history of criminality;
- (vii) the person must not have been excluded from international protection;
- (viii) the possibility of voluntary return must have been ruled out.

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**Persons in the system<sup>2</sup> where five years or more have elapsed since their initial asylum application was made - Analysis of approaches to dealing with them under consideration by the Working Group on the Protection Process.**

Impacts <sup>3</sup>	Category 1 <sup>4</sup>		Category 2 <sup>5</sup>	Category 3 <sup>6</sup>
	Category 1(a)	Category 1(b)		
<b>Legislation</b>	May be required to remove the restrictions/prohibitions on protection applicants in the protection process and social welfare legislation e.g. right to work, habitual residence condition.	None.	None.	None.
<b>Number of persons involved</b>	1,681 persons (1,432 adults and 249 children)	1,681 persons (1,432 adults and 249 children)	1,693 persons (1,304 adults and 389 children).	765 failed protection applicants (519 adults and 246 children).
<b>Social Services Impacts</b>	Social housing, rent supplement and social welfare payments e.g. jobseeker allowance, one parent family payment, child	Potential impact depending on numbers granted protection status.	Social housing, rent supplement and social welfare payments e.g. jobseekers allowance, one parent family payment, child	Social housing, rent supplement and social welfare payments e.g. jobseekers allowance, one parent family payment, child

<sup>2</sup> For the purpose of this paper this includes persons currently in the protection process (ORAC/RAT), the leave to remain system (LTR) and persons with deportation orders (DOs) pending

<sup>3</sup> This impact analysis is incomplete. The Departments of Social Protection; Environment, Community and Local Government; and Education and Skills will also need to input on the impacts associated with each category and any costs arising.

<sup>4</sup> Persons with pending protection applications – two options

- (a) All such persons to be considered for a grant of LTR subject to certain conditions, without prejudice to the ongoing investigation of their protection applications;
- (b) All such persons to have their applications prioritised for processing by the statutory bodies concerned following which they may be considered for a grant of LTR, subject to certain conditions, in the event that their applications are refused.

<sup>5</sup> Failed protection applicants, who have made representations under Section 3 of the Immigration Act 1999 seeking permission to remain in the State, to be considered for a grant of leave to remain (LTR) subject to certain conditions.

<sup>6</sup> Failed protection applicants who are the subject of deportation orders which have not been effected, to have their deportation orders (DOs) considered for revocation and considered for a grant of LTR subject to certain conditions.

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<b>Social Services Impacts (cont'd)</b>	benefit etc. – 249 children under 18 years of age.  Potential impacts on live register figures.		benefit etc. – 389 children under 18 years of age.  Potential impacts on live register figures.	benefit etc. – 246 children under 18 years of age.  Potential impacts on live register figures.
<b>Legal Proceedings</b>	137 judicial reviews pending would be required to be concluded.	137 judicial reviews pending would be required to be concluded.	134 judicial reviews pending would be required to be concluded.	210 judicial reviews pending would be required to be concluded.
<b>Direct Provision</b>	483 persons (352 adults and 131 children) may be required to leave DP.  If persons granted leave to remain in the State cannot exit direct provision this may give rise to reduced social welfare payments, or persons who are working contributing to the cost of their DP accommodation.	Potential impact depending on numbers granted protection status.	472 persons (281 adults and 191 children) may be required to leave DP.  If persons granted leave to remain in the State cannot exit direct provision this may give rise to reduced social welfare payments, or persons who are working contributing to the cost of their DP accommodation.	563 persons (374 adults and 189 children) may be required to leave DP.  If persons granted leave to remain in the State cannot exit direct provision this may give rise to reduced social welfare payments, or persons who are working contributing to the cost of their DP accommodation.

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<b>Employment market</b>	Up to 1,432 persons of working age could potentially enter the employment market.	Potential impact depending on numbers granted protection status.	Up to 1,304 persons of working age could potentially enter the employment market.	Up to 519 persons of working age could potentially enter the employment market.
<b>Education and Training</b>	Up to 1,432 adults could potentially seek access to further education and training.	Potential impact depending on numbers granted protection status.	Up to 1,304 adults could potentially seek access to further education and training.	Up to 519 adults could potentially seek access to further education and training.
<b>Integrity of the protection system</b>	Negatively impacted by including persons who have yet to complete the protection process.  Potentially conflicts with the Working Group's terms of reference.	Maintained.	Maintained.	Negatively impacted by including persons who have no lawful basis for being in the State.  Potentially conflicts with the Working Group's terms of reference.
<b>Human Resources</b>	Additional staff will be required to process applications within whatever timeframe is recommended by the Working Group.	Additional staff will be required to process applications within whatever timeframe is recommended by the Working Group.	Additional staff will be required to process applications within whatever timeframe is recommended by the Working Group.	Additional staff will be required to process applications within whatever timeframe is recommended by the Working Group.

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<p><b>Exchequer Costs</b> – to be completed by the relevant Departments.</p>	<p><b>Department of Justice and Equality.</b></p> <p>The cost of DP to the Department of Justice could potentially reduce by €5.8m per annum – these savings would not be immediate as the Department has contracts in place with suppliers of DP services which would be required to be negotiated, or seen out to their expiry. In addition there may also be time lags between dates of final decisions to grant LTR and persons actually leaving DP. At the same time there may be an immediate increase in social services costs to the Departments of Social Protection and Environment, Community and Local Government.</p> <p>Possible additional staffing costs.</p> <p>Possible costs associated with settling some JRs.</p>	<p><b>Department of Justice and Equality.</b></p> <p>The cost of DP to the Department of Justice could potentially reduce depending on the numbers of persons granted protection status.</p> <p>Possible additional staffing costs.</p> <p>Possible costs associated with settling some JRs.</p>	<p><b>Department of Justice and Equality.</b></p> <p>The cost of DP to the Department of Justice could potentially reduce by €5.7m per annum – these savings would not be immediate as the Department has contracts in place with suppliers of DP services which would be required to be negotiated, or seen out to their expiry. In addition there may also be time lags between dates of final decisions to grant LTR and persons actually leaving DP. At the same time there may be an immediate increase in social services costs to the Departments of Social Protection and Environment, Community and Local Government.</p> <p>Possible additional staffing costs.</p> <p>Possible costs associated with settling some JRs.</p>	<p><b>Department of Justice and Equality.</b></p> <p>The cost of DP to the Department of Justice could potentially reduce by €6.8m per annum – these savings would not be immediate as the Department has contracts in place with suppliers of DP services which would be required to be negotiated, or seen out to their expiry. In addition there may also be time lags between dates of final decisions to grant LTR and persons actually leaving DP. At the same time there may be an immediate increase in social services costs to the Departments of Social Protection and Environment, Community and Local Government.</p> <p>Possible additional staffing costs.</p> <p>Possible costs associated with settling some JRs.</p>
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<b>Exchequer Costs (Cont'd)</b>	<b>Department of Social Protection.</b>			
	<b>Department of Environment, Community and Local Government.</b>			
	<b>Department of Education and Skills.</b>			

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