



Right to Work

Evaluating the Case for Extending the Right to Persons Seeking Protection in Ireland

Working Paper

Submission to Working Group on Protection Process

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1. Right to Work: Framework of Paper

1.1 Approach

In this short paper, JRS Ireland explores the viability of extending the right to seek employment (hereafter called the right to work) to persons seeking protection in Ireland. For the purposes of this introduction, no demarcation is made between persons at the various stages (or end) of the protection process.

The human costs associated with the ban on accessing the labour market are set out, as identified through reports from various national agencies, international bodies and the consultation process conducted by the Working Group on the Protection Process.

Consequences and associated costs are identified (not exhaustive) and restrictions to mitigate anticipated risks are also outlined.

1.2 Scope

The scope of this discussion extends to individuals, children and families residing both in and outside Direct Provision, in addition to future applicants for protection in Ireland. In addition, the right to work is assumed to include the right to establish a business or be self-employed.

While JRS Ireland fundamentally supports the extension of the right to work, this paper does not identify a distinct recommendation. Rather, the information provided is intended for use as a basis to evaluate specific right to work proposals.

This paper assumes that the Working Group on the Protection Process will either support an existing proposal (eg. Submission by IRC / IRC Core Group of Asylum Seekers and Refugees) or submit an alternative.

1.3 Risks / Constraints

A number of risks / constraints exist which must be identified at the outset:

- i. **Practical Difficulties:** Any proposed reform will necessitate both legislative change (e.g. Section 9 of the Refugee Act 1996) and the implementation of new administrative functions.
- ii. **Legally Acceptable:** Legal advice may be required to determine the appropriateness of tailored solutions that grant different rights to different categories of protection applicant.
- iii. **Financial Implications:** Exact costs are difficult to estimate due to the nature of the reform required (i.e. the provision of a right to seek work, as opposed to a guarantee of employment, makes it difficult to define and cost the impact).
- iv. **Government Policy:** Any proposed reform would be in conflict with the stated policy of all parties that have formed government(s) since the inception of the Direct Provision system.
- v. **Public Education:** In recognition of the difficult economic climate, any extension of the right to work would have to be explained to the general public in the context of Ireland harmonising its protection system.

2. The Case for the Right to Work

Principles supporting the extension of the right to work to protection applicants include, but are not limited to:

- Extending the right to work to protection applicants would greatly harmonize the position of Ireland within the Common European Asylum System. This would place persons seeking protection in Ireland in comparably the same situation as other Member States, apart from Denmark¹.
- Employment is an internationally recognised indicator of health and wellbeing.
- Employment facilitates the integration of migrant populations within host communities.
- The right to work promotes self-sufficiency and independence - qualities that deteriorate as a result of residence in an institutional environment such as Direct Provision.
- The right to work offers greater dignity, decision making ability and control over the welfare of children to protection applicants.
- Employment can increase the ability of protection applicants to transition from Direct Provision.
- Some commentators highlight the enhanced ability of failed protection applicants to engage in return processes as a result of the income and motivation generated through employment.

2.1 Existing and Future Protection Applicants

Any proposals will need to take account of the position of the existing cohort of protection applicants as well as future applicants who may benefit from a fully operational Single Procedure or enhanced form of Direct Provision.

The following guiding principles should be respected as far as practicable:

- No proposal should place future applicants in a more advantageous position than legacy cases in the absence of agreed durable solutions for those longest in the system.
- Additional supports (e.g. educational) may be required to enable persons living long term in Direct Provision to realise any right to work.
- Trends indicating potential increases in the numbers of future protection applicants should not undermine any proposals to extend the right to work to the existing cohort.
- Extending the right to work should not create an expectation that future applicants will face no integration or transition barriers. Additional supports may still be required.

¹ Although Denmark did not sign up to the revised Reception Conditions Directive, it has provided for the right to work in separate legislation.

3. Assessing the Impact of the Prohibition on Employment

In general, many of the human costs associated with living long term in Direct Provision are synonymous with the negative impacts of the prohibition on employment:

- Boredom, isolation and social exclusion.
- Obsolescence of skills and creation of dependency.
- Negative impacts on physical, emotional and mental health.

In addition - if human dignity is understood as the affirmation of a person's sense of value or worth and demands the realisation of physical, emotional and mental integrity so that a person has autonomy and effective control over their lives – then the prohibition on the right to seek employment is a barrier to living with dignity.

3.1 Direct Impacts

- Previously acquired skills and competencies made redundant.
- Effective integration of adults inhibited through the denial of a network of colleagues and the accompanying lack of resources necessary for participation in the community.
- Effective integration of children inhibited through the accompanying lack of resources necessary for participation in extra-curricular activities.
- Creation of dependency on State or other sources of support (e.g. philanthropic).
- Increased vulnerability as a result of negative impacts on mental health.
- Corrosion of family life due to the undermining of parent's ability to act as role model; make decisions to improve the welfare of their children; or assume position of household provider.

3.2 Indirect Impacts

- Recourse to accessing labour on the "black market".
- Recourse to inappropriate or dangerous behaviour as a result of boredom and/or loss of opportunity.
- Ability of Direct Provision residents to transition to independent living undermined.
- Potential loss of taxable earnings for the Irish State.
- Potential loss of skilled labour force by the Irish State.

3.3. Testimonies²

- *The longer the time we are not allowed to work, the more we rot and waste away. Our mental and physical health is greatly disturbed and completely demoralized.*
- *These effects include dependency syndrome and laziness coming from the fact it is illegal...to seek work.*
- *Work offers dignity and the best means of integration and reduces the cost to the State.*
- *We that has stayed for a long time, had our children in Ireland who grow up here should be allowed stay and work to contribute to our economy.*
- *I don't need any help from anyone just want at least to allow us work for Gods sake.*
- *These wasted years doing nothing – after leaving the system you are faced with a dilemma of where to start from and where to go from here – what would I put on my resume for these years?*

² Sample of testimony from written consultation conducted by Working Group on Protection Process.

4. Addressing Risks and Concerns

4.1 The Case against the Right to Work

It is acknowledged that there are inherent risks and concerns associated with extending the right to work to protection applicants. These include, but are not limited, to:

- The creation of a pull-factor as a result of Ireland harmonising its position with that of other EU Member States.
- The negative public reaction to increasing pressure on a labour market which does not currently meet public need.
- The potential costs associated with the right to work facilitating greater access to and dependence on social welfare.
- The potential costs associated with the right to work facilitating greater access to and pressure on the education system.
- The incompatibility with the system of Direct Provision accommodating persons with means to meet their needs.

4.2 Mitigating Risks³

In order to address some of the above concerns, there are restrictions that could accompany any right to work:

i. Reduced Working Week

International students in Ireland are entitled to take up casual employment, which is defined as 20 hours part time work per week during standard term-times. Rather than granting unconditional access to the labour market, the State could limit the right to work of protection applicants according to comparable temporal conditions.

ii. Exclusion of Persons with Deportation Orders

In recognition of the perceivable anomaly of granting additional rights to persons who have been requested to leave the territory of the Irish State, those persons with deportation orders could be excluded. This would result in roughly 1,011 less persons having access to the labour market.

iii. Exclusion of Persons outside the Protection Process

Expanding point (ii), the Irish State might consider it inappropriate to grant a right to work to persons who have been adjudged in no need of protection. Restricting the right to work to persons within the protection process would exclude in excess of 4,000 persons.

iv. Eligibility based on length of time awaiting decision at First Instance

Restricting the right to work to those persons who have been awaiting a decision at first instance for in excess of a defined period of time (for example 9 months as per the recommendation from the Irish Refugee Council) would still limit the number of persons granted the right to work but also place a justifiable onus on the decision making functions of the State to operate as efficiently as possible. It must be noted that this restriction is more suitable for a context in which the Single Procedure is operational.

v. Eligibility based on Length of time within Protection Process

Expanding on point (iv) but with a greater focus on the current cohort of protection applicants, a restriction based on the length of time since the initial application could considerably limit the scope of the right. For instance, restricting the right to work to those persons waiting more than 3 years since first lodging an application, would exclude nearly 1,500 persons.

5. Additional Consequences and Costs

³ The numbers highlighted in this section are for illustrative purposes only. They would have to be recalibrated to take account of the number of children (roughly one-third) included.

It must be noted that granting protection applicants a right to work would have indirect impacts on other aspects of Irish society and public administration. However, understanding the limitations of those impacts is essential when evaluating proposals.

Table 2: Consequences and Costs Associated with Right to Work

Area of Indirect Impact	Consequences	Mitigating Factors	Potential Areas of Cost & Mitigating Factors
<i>Social Protection</i>	<ul style="list-style-type: none"> - Eligibility for Jobseeker's benefit and other contribution based schemes. - Eligibility for Family Income Supplement (FIS). - Potential eligibility for Back to Education allowance. 	<ul style="list-style-type: none"> - Habitual Residence Condition prevents eligibility for Child Benefit and any Assistance schemes. - Eligibility for jobseekers benefit requires at least 2 years of contributions paid (or a mix of paid/credited contributions) within a certain timeframe. - The existing cohort of protection applicants would currently have zero contributions. - FIS requires a claimant to be working a minimum number of hours per week/fortnight and earning below a certain threshold. 	<p><i>Costs</i></p> <ul style="list-style-type: none"> - The payment of Jobseekers Benefit. - The payment of FIS. <p><i>Mitigating Factors</i></p> <ul style="list-style-type: none"> - The payment of PRSI Contributions. - The payment, if appropriate, of USC and PAYE. - The application of a means tested payment by DP residents who secure employment but choose to remain in DP.
<i>Education</i>	<ul style="list-style-type: none"> - Eligibility for additional categories of labour market focused Further Education courses. 	<ul style="list-style-type: none"> - Some labour market focused courses also require a recognised period of 6 months unemployment (e.g. VTOS) or have additional eligibility conditions. 	<p><i>Costs</i></p> <ul style="list-style-type: none"> - Any widening of Further Education would either lead to additional costs or a displacement effect. <p><i>Mitigating Factors</i></p> <ul style="list-style-type: none"> - Any means testing that applies to the general public could apply to protection applicants who secure employment.
<i>Housing</i>	<ul style="list-style-type: none"> - Increased income among protection applicants could lead to greater numbers seeking private accommodation during time of housing shortage and without security that these tenants will be allowed remain in Ireland. 	<ul style="list-style-type: none"> - Any restriction on the working week would limit ability to afford independent living. - A fully operational Single Procedure should reduce this anomaly going forward. 	<p><i>Costs</i></p> <ul style="list-style-type: none"> - No additional financial burden on the State. <p><i>Mitigating Factors</i></p> <ul style="list-style-type: none"> - Ability to transition from DP would be greatly enhanced.
<i>Other</i>	<ul style="list-style-type: none"> - New administrative functions will be required to manage any means tested payment by DP residents who secure employment but choose to remain in DP. 	<ul style="list-style-type: none"> - A fully operational Single Procedure should reduce the anomaly of gainfully employed persons still residing in DP. 	<p><i>Costs</i></p> <ul style="list-style-type: none"> - New administrative functions in Dept. of Justice. <p><i>Mitigating Factors</i></p> <ul style="list-style-type: none"> - These new functions will provide an additional source of revenue.