

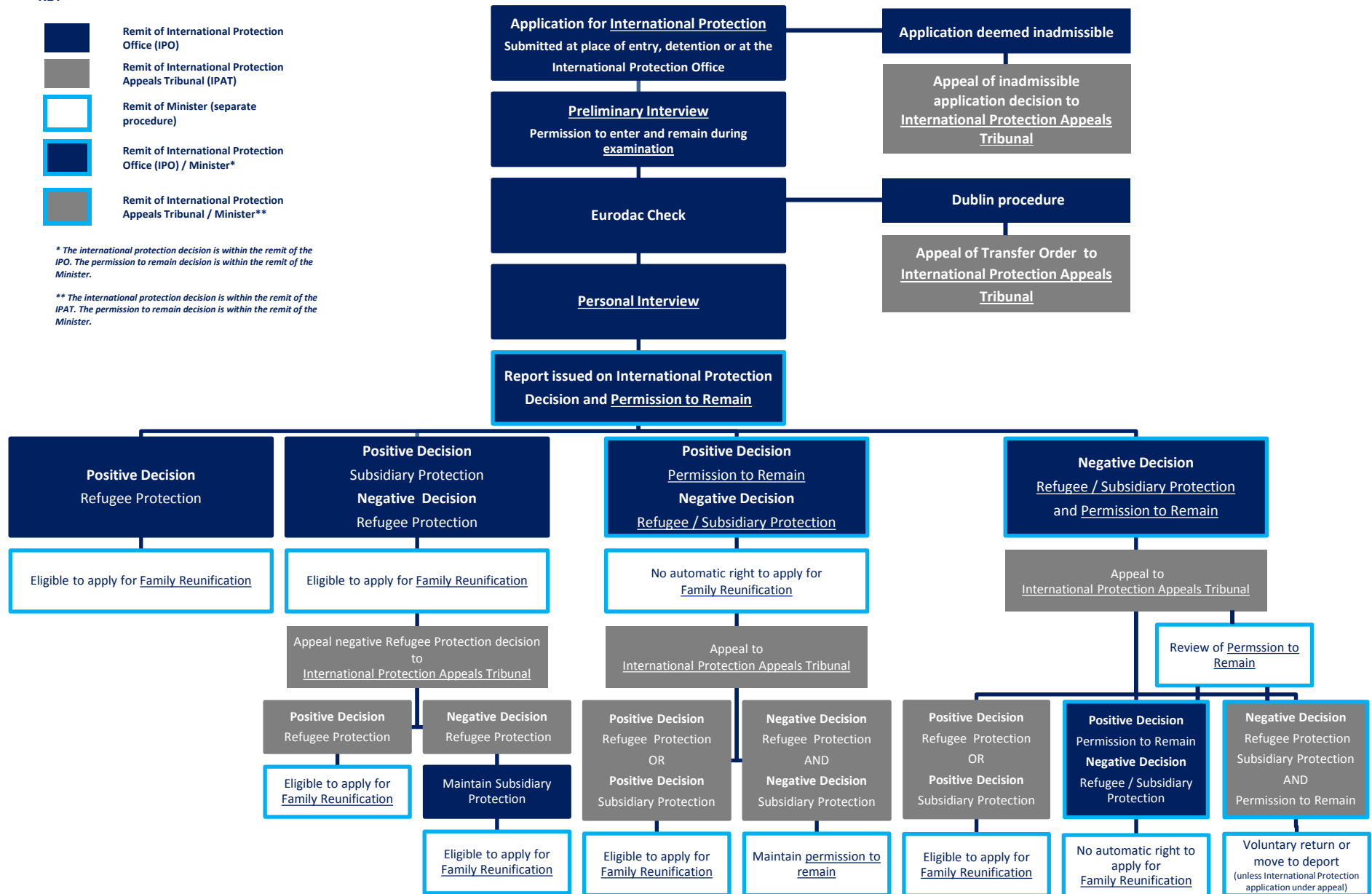
Overview of new application process under International Protection Act 2015

KEY

- Remit of International Protection Office (IPO)
- Remit of International Protection Appeals Tribunal (IPAT)
- Remit of Minister (separate procedure)
- Remit of International Protection Office (IPO) / Minister*
- Remit of International Protection Appeals Tribunal / Minister**

* The international protection decision is within the remit of the IPO. The permission to remain decision is within the remit of the Minister.

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Definition of terms

International Protection

The international protection application process comprises refugee protection and subsidiary protection. Applications are determined by international protection officers. The Office of the Refugee Applications Commissioner (ORAC) has been replaced by the International Protection Office which is a dedicated office within the Immigration and Naturalisation Service of Ireland (INIS). An international protection officer is independent in the performance of his or her functions, S. 74(4).

The International Protection Act 2015 provides for the introduction of a single application procedure for people seeking international protection, bringing Ireland into line with other EU Member States. Under the single procedure, an applicant makes only one application, and will have all grounds for seeking international protection (and to be permitted to remain in the State for other reasons) examined and determined in one process.

All applications for international protection from 31 December 2016 are processed under the new arrangements, by the new Chief International Protection Officer (replacing the Refugee Applications Commissioner) and his staff and any appeals arising are heard by the new International Protection Appeals Tribunal (replacing the Refugee Appeals Tribunal).

Similarly to the Refugee Act 1996, the Act defines a refugee as:-

'a person...who...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his or her country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons mentioned above, is unable or, owing to such fear, unwilling to return to it'.

Persecution is defined as:

'Sufficiently serious by nature or repetition to constitute a severe violation of basic human rights, or an accumulation of various measures or violations', S. 7(1)(a)(b). This includes, for example, physical or mental violence; discrimination in access to justice; discriminatory or disproportionate prosecution or punishment; prosecution or punishment for refusal to perform military service, S. 10(2); acts of gender or child-specific nature.

Subsidiary protection

The Act also defines a beneficiary of subsidiary protection as someone who is not a national of a Member State of the European Union, who does not qualify as a refugee and in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering *serious harm* and is who is unable or, owing to such risk, unwilling to avail himself or herself the protection of that country.

Serious harm is defined as:

- a. *'death penalty or execution,*
- b. *torture or inhuman or degrading treatment or punishment of a person in his or her 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', S. 2.*

Experience or threat of persecution or serious harm is a 'serious indication' of the applicant's well-founded fear unless there is good evidence to suggest it will not be repeated, S. 28(6).

Actors of persecution or serious harm are:

- A State;
- Parties or organisations controlling a State or part of a State; and
- non-state actors where the above or international organisations are unable to provide protection, S. 30.

Protection must be effective, S. 31(2) and provided by the State or parties or organisations controlling the State, S. 31(1).

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Preliminary interview

During the preliminary interview, officers of the Minister or immigration officials seek to ascertain the reasons for seeking protection; basic information about the person; information about travel and reason for coming to Ireland; whether or not the person entered legally; and whether or not the person's application can be deemed inadmissible, S. 13.

Inadmissibility may apply where:

- a person is granted protection by another Member State or where a person has transited through a country other than a Member State;
- they have been granted protection by that country or they would enjoy sufficient protection in that country (including *non-refoulement*);
- and would be re-admitted to that country, S. 21.

Personal Interview

Personal interviews are conducted by the international protection officer. While certain types of appeals may be 'paper-based', all personal interviews for international protection are conducted orally except in situations where an interview may be dispensed, S. 35(8).

S. 35 of the Act sets out a number of safeguards. The applicant's legal representative (or person nominated by the legal representative with consent of the applicant) and a representative from UNHCR (upon request by UNHCR) may attend the interview. The interview must respect the applicant's right to confidentiality, S. 35(5)(b) and they must have access to an interpreter where required, S. 35(2), (3)(b). A written report of the interview is also being prepared, S. 35(12).

The interview takes place separate from family members unless the IPO considers it necessary to have family members present, S. 35(5)(a).

Interviews may not be required if the IPO is of the opinion that the applicant should be given a refugee declaration, the minor applicant's age or maturity would not advance the examination, or the applicant is unfit or unable to be interviewed.

Assessment of facts and circumstances

The international protection officers are responsible for assessing the application on an individual basis. The assessment must look at similar elements identified in the preliminary interview, S. 35, 28(3) and:

- information relating to the country of origin at the time of the decision;
- relevant statements and documents provided by the applicant, S. 28(7);
- position/circumstances of applicant;
- the applicant's activities since leaving the country of origin or usual place of residence;
- whether the applicant could avail of the protection of another country where they could assert citizenship; and
- general credibility, S. 28.

The applicant, UNHCR or any other person concerned may make representations in writing to the Minister before, during, S. 35(10) or after the interview and prior to the preparation of the report under S.39(1) in relation to the application.

Refugee Status & Subsidiary Protection: Content of Rights

Beneficiaries of refugee and subsidiary protection have the same rights as citizens to

- seek employment, S. 53(a);
- medical care and social welfare benefits, S. 53(b);
- reside in the State, S. 53(c) for a specified period of not less than 3 years and engage in any business, trade or profession and have access to education and training in the State, S. 54; and
- travel to and from the State, S. 53(d) (a travel document is to be provided if necessary), S. 55.

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Permission to Remain

The single application procedure assesses all grounds for seeking international protection and permission to remain. Permission to remain is part of the single application procedure. It should also be noted that an applicant is entitled to a review of a decision to refuse permission to remain, S. 49(7) if they submit new relevant information within the required timeframe.

If the decision is to refuse the application for international protection, permission to remain is to be assessed by the Minister, who will have regard to such matters as the applicant's family and personal circumstances and his or her right to respect for private and family life. This application is not part of the single procedure, S. 49.

Permission to Remain (content of rights)

Permission to remain granted in the Act is deemed to be permission under S.4 of the Immigration Act 2004, as amended.

International Protection Appeals Tribunal (IPAT)

The IPAT consists of a chairperson, not more than 2 deputy chairpersons, tribunal members (as many as deemed necessary) and a registrar. The IPAT is responsible for determining appeals of decisions to refuse international protection and appeals of Dublin Regulation decisions. The IPAT is also responsible for determining paper (rather than oral) appeals of decisions to refuse to allow subsequent applications and applications deemed inadmissible, Part 10. There is no appeal mechanism for a refusal of permission to remain.

Family Reunification

Beneficiaries of international protection are eligible to apply for family members to enter Ireland, S. 56(8) and/or reside in Ireland (for those already present in the State), S. 57.

The Act defines 'family members' of sponsors as including parents (in the case of minor refugees), spouses, and children who are unmarried and under the age of 18. The Act of 2015 also includes civil partners of sponsors, S. 56(9).

The Act places a 12 month time-limit on the making of the application, S. 56(8) to run from the date on which the sponsor was given a declaration of refugee status or subsidiary protection. Any permission to enter and reside in the State which has been granted on foot of the application must be taken up by the date specified by the Minister when granting it, otherwise it lapses, S. 56(5). Permission also ceases if the marriage or partnership ceases, S. 56(6).

Family members are provided with permission to remain for not less than a specified period of 1 year and not less than 2 upon renewal.

Voluntary Return

A person may agree to return to their country of origin voluntarily by confirming their intention to the Minister. This applies to persons who have been refused international protection, refused international protection and permission to remain or persons who withdrew their application or appeal for international protection, S. 48, 37. In this case, the Minister will not issue a deportation order, unless the person is a danger to the security of the State or community having been convicted, whether in the State or not, of a particularly serious crime.

Deportation

Deportation orders are made in respect of persons who are refused international protection, permission to remain and who do not plan to leave the State voluntarily. There is no appeal mechanism, S. 51. Prohibition of *refoulement* applies to those with Deportation Orders, S. 50.