

# THE ORGANISATION OF ASYLUM AND MIGRATION POLICIES 2012: IRELAND

Emma Quinn  
Gillian Kingston

*November 2012*

# EMN

European Migration Network



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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN has been established via Council Decision 2008/381/EC.

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## The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

## The ESRI

The Economic Research Institute was founded in Dublin in 1960, with the assistance of a grant from the Ford Foundation of New York. In 1966 the remit of the Institute was expanded to include social research, resulting in the Institute being renamed The Economic and Social Research Institute (ESRI).

In 2010 the Institute entered into a strategic research alliance with Trinity College Dublin, while retaining its status as an independent research institute.

The ESRI is governed by an independent Council which acts as the board of the Institute with responsibility for guaranteeing its independence and integrity. The Institute's research strategy is determined by the Council in association with the Director and staff. The research agenda seeks to contribute to three overarching and interconnected goals, namely, economic growth, social progress and environmental sustainability. The Institute's research is disseminated through international and national peer reviewed journals and books, in reports and books published directly by the Institute itself and in the Institute's working paper series. Researchers are responsible for the accuracy of their research.

## The Authors

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The opinions presented in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice and Equality or the European Commission Directorate-General Home Affairs.

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## Abbreviations and Irish Terms

AFIS	Automatic Fingerprint Identification System
An Garda Síochána	Police
AVATS	Automated Visa Application Tracking System
CISs	Citizens Information Services
CTA	Common Travel Area
Dáil	Parliament
EASO	European Asylum Support Office
ECJ	European Court Justice
EURODAC	European Fingerprint Database
EUTR	EU Treaty Rights
Gardaí	Police
GNIB	Garda National Immigration Bureau
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
MRCI	Migrant Rights Council Ireland
NERA	National Employment Rights Agency
Oireachtas	Parliament
ORAC	Office of the Refugee Applications Commissioner
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
RLS	Refugee Legal Service
UNHCR	United Nations High Commissioner for Refugees
VAARP	Voluntary Assisted Return and Reintegration Programme



## Executive Summary

This study is an updated version of the 2009 EMN study *The Organisation of Migration and Asylum Policies in Ireland*. It is intended to be a useful updated reference document, providing a ‘map’ of immigration and asylum-related policy in Ireland in 2012. The focus is on non-EU immigration. Irish immigration policy is unusual within Europe in that it is strongly influenced by the Common Travel Area we share with the UK. In addition, Ireland and the UK may opt out of EU measures relating to immigration and asylum. As a result Irish immigration and asylum policy differs significantly to that of other EU Member States. Immigration in Ireland is a relatively new trend, and this is reflected in the still disparate nature of our immigration policy. This report describes how immigration and asylum policies are currently organised in Ireland as well as indicating where changes may soon be made.

In Chapter Two an overview is provided of the organisation of the political, legislative and institutional framework in relation to immigration and asylum in Ireland. The Department of Justice and Equality is the main government department involved in asylum and migration management in Ireland. The Department has a range of responsibilities, including asylum and immigration policy and services, crime and security, law reform, equality and human rights. The Department houses the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Department of Jobs, Enterprise and Innovation administers employment permit schemes and develops labour market policy. The Department of Foreign Affairs and Trade has responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice and Equality does not operate a dedicated visa office. A description of the relevant areas within the government departments, as well as external agencies working with departments, is also provided.

The Irish asylum process is subject to judicial review and this lies with the Court System. Immigration matters are dealt with on an administrative basis by the Minister for Justice, Equality and Defence, and the relevance of the courts is generally limited to judicial review. The *Refugee Act 1996* was commenced in 2000 and allowed for the establishment of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. The 1996 Act was amended by several subsequent pieces of legislation enabling the system to be modified in response to changing circumstances. Irish asylum law has also been impacted upon by a number of EU instruments. In contrast to the asylum system the immigration area is less well defined. Domestic immigration law is currently based on various pieces of immigration legislation, including the *Aliens Act 1935* and orders made under it. Significant parts of the system remain on an administrative rather than legislative basis. Due in part to the Irish opt-out

facility, EU legislation has had a limited impact on immigration policy. The now withdrawn *Immigration, Residence and Protection Bill 2010* constituted the first codification in law of many aspects of Irish immigration policy. The Department of Justice and Equality expect that a Bill will be reintroduced in 2013.

The recent history of migration and asylum flows to Ireland is interesting. Examining the flows from the perspective of the current study, i.e. the development of immigration and asylum systems, the recent history of Irish migration can be characterised as having had five phases (dates are approximate):

- A history of sustained net emigration prior to the early 1990s
- Increasing immigration from the mid 1990s to early 2000s, driven by returning Irish nationals. Dramatic increases in the number of asylum applicants
- 2002-2004 New peaks reached in non-EEA immigration flows and numbers of asylum applications during 2002. Asylum applications fell quickly from 2002 peak and stabilised at much lower level from 2004
- 2004-2007 Substantial part of non-EEA immigration flows converted to EU flow after accession in 2004. New highs reached in overall immigration, driven by nationals of the enlarged EU
- 2008-2012 New phase of net emigration driven by Irish nationals, dramatic drop of immigration flows after a peak in 2007, slight increase in flows since 2010. Asylum applications continue to decrease.

Chapter Three provides an historical overview of asylum and immigration flows and of the development of the asylum and immigration systems. It can be seen that between the mid 1990s and mid 2000s the government placed a deliberate emphasis on addressing the asylum situation and developments in the immigration area had less priority. Immigration policy and priorities have since adapted over the previous years, and have changed significantly in light of the current economic recession. Ireland as a relatively new country of immigration and asylum had to act quickly to cope with increased flows. Therefore asylum and immigration systems were created on an administrative rather than legislative footing. The development of the current employment permits system is discussed in Section 3.2.3.

In March 2011 elections brought a major change of government and Alan Shatter T.D. was elected Minister for Justice, Equality and Defence. Since this appointment the Minister has put in place a programme of initiatives and reform in the immigration area. Significant reforms are now in place with more planned for 2012.

In Chapter Four we discuss how policy is organised at each step of the asylum/immigration procedure i.e. from pre-entry visas to family reunification

and return. Chapter Four provides a detailed description of entry procedures, admission conditions, legal residence, access to the labour market and return. Each topic is discussed in turn in relation to asylum and migration. Where available the relevant legislative position is provided. Information is frequently more difficult to access in relation to immigration. Where no legislative provision exists, information on existing administrative practices is used if available. Links between the asylum and immigration areas and between asylum and immigration and other policy areas are discussed in Section 4.8.

Chapter Five provides an analysis of Irish asylum and immigration systems, including the lessons learnt thus far in the development of the asylum and migration systems, and how these have been applied to develop the asylum and migration systems. The impact of the EU *acquis* on the asylum and migration systems is also discussed.

# Chapter 1

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## Introduction: Purpose and Methodology Followed

This study is an update study of the 'Organisation of Migration and Asylum Policy: Ireland' published in 2009. It is intended to be a useful reference document for the European Commission, policymakers at national and European levels, other European Migration Network (EMN) National Contact Points (NCPs) and the general public. The current report is descriptive in nature, the intention being to provide a 'map' of immigration and asylum-related policy in Ireland in 2011, how it is formed, its substance and how it is implemented. The focus is on non-EU immigration. The reference period for this study is up to, and including, May 2012.

Irish immigration policy is strongly influenced by the Common Travel Area (CTA) that Ireland shares with the UK, the Isle of Man, Jersey and Guernsey. Unlike the other 25 EU Member States and Iceland, Norway, Switzerland and Liechtenstein, Ireland and the UK are not Schengen states, choosing instead to maintain border controls with the rest of the EU and to maintain their own Common Travel Area. In addition the application of Title IV of the EC Treaty to Ireland and the UK is subject to the provisions of a fourth Protocol to the Treaty of Amsterdam. This fourth Protocol means that Ireland and the UK may opt out of EU measures relating to immigration and asylum. As a result Irish immigration and asylum policy differs significantly to that of other EU Member States.

Immigration in Ireland is a relatively new trend. A well-established tradition of emigration was dramatically reversed in a decade beginning in the mid 1990s. As a result Irish immigration policy was developed under pressure in response to the challenges posed by very rapidly increasing flows. While Irish asylum policy is grounded in legislation, the immigration system is still mainly on an administrative rather than legislative footing. Therefore, unlike the asylum area, many procedural aspects are not well defined. This report attempts to lend clarity to how immigration and asylum policies are organised in Ireland.

The current study was compiled mainly through desk research using official sources such as the websites of the Department of Justice and Equality; Department of Jobs, Enterprise and Innovation; and the Department of Foreign Affairs and Trade. The Citizen's Information website<sup>1</sup> also proved to be a useful

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<sup>1</sup>

[www.citizensinformation.ie](http://www.citizensinformation.ie).

source of information. Parliamentary questions, annual reports of relevant organisations, strategy statements, and information leaflets were also consulted. Previous EMN Ireland reports were also used. In order to access outstanding information and to check the accuracy of the report, interviews were conducted with officials from the Department of Justice and Equality (Immigration and Citizenship areas). This report aims to draw together available material in order to provide an overview of the area. A similar report will be produced by other participating EMN NCPs.

Chapter Two provides an overview of the legal system in relation to asylum and immigration in Ireland followed by a description of the main institutions (mainly government departments) involved. Chapter Three provides a historical overview of asylum and immigration flows and of the development of the asylum and immigration systems. This is followed by a more detailed discussion in Chapter Four of how policy is organised at each step of the asylum/immigration procedure i.e. from pre-entry visas to family reunification and return. Finally, Chapter Five provides an analysis of the Irish asylum and immigration systems.

# Chapter 2

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## Overview of Organisation of Political, Legislative and Institutional Framework in Ireland

### 2.1 OVERALL POLITICAL SYSTEM AND INSTITUTIONAL FRAMEWORK

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Government is led by the Taoiseach (the Prime Minister, Enda Kenny T.D.) and Tánaiste (Deputy Prime Minister, Eamonn Gilmore T.D.). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the people, from one of 43 constituencies. General elections take place at least once every five years and the most recent one took place in February 2011 when the 31<sup>st</sup> Dáil was elected. Fine Gael won a record 76 seats and for the first time in its 79-year history became the largest party in the Dáil. Fianna Fáil suffered the worst defeat of a sitting government since the formation of the Irish State in 1921. Labour became the second largest party and Sinn Féin also increased its number of seats. Fine Gael leader Enda Kenny became Taoiseach, in a coalition with the Labour party led by Eamonn Gilmore T.D.<sup>2</sup>

There are 16 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland:

- a) The Department of Justice and Equality<sup>3</sup> has a range of responsibilities including asylum and immigration policy and services, crime and security, law reform, equality and human rights. The Department of Justice and Equality was formerly named the Department of Justice, Equality and Law Reform, until the change of government in February 2011. The Department houses the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Garda National Immigration Bureau (GNIB) is part of An Garda Síochána (police force) which is under the political responsibility of the Minister for Justice, Equality and Defence. The Department of Justice and Equality is the main government department involved in asylum and migration management in Ireland. The Department is responsible for policy making, implementation, evaluation and control. The Office of

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<sup>2</sup> [http://www.tcd.ie/Political\\_Science/staff/michael\\_gallagher/Election2011.php](http://www.tcd.ie/Political_Science/staff/michael_gallagher/Election2011.php).

<sup>3</sup> <http://www.justice.ie>.

the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) are statutorily independent offices under the aegis of the Department of Justice and Equality. These bodies have responsibility for processing first-instance asylum claims and for hearing appeals respectively.

- b) The Department of Jobs, Enterprise and Innovation<sup>4</sup> administers employment permit schemes and develops labour market policy. The Department was formerly named the Department of Enterprise, Trade and Innovation; however the name of the office changed with the new government in February 2011.
- c) The Department of Foreign Affairs and Trade<sup>5</sup> has some delegated responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice and Equality does not operate a dedicated visa office. The majority of visas are now applied for and issued via an online service, administered by the Department of Justice and Equality. The Department of Foreign Affairs and Trade was formerly named the Department of Foreign Affairs; however the role of the Department changed with the new government in February 2011.

### 2.1.1 Department of Justice and Equality

The Minister for Justice, Equality and Defence is currently Alan Shatter T.D. The Secretary General of the Department of Justice and Equality, Mr Brian Purcell, is the senior civil servant and non-political head of the Department of Justice and Equality. The Secretary General is responsible for management of the Department and its non-political strategic planning and direction. He is assisted by the Department's Management Advisory Committee.

The Management Advisory Committee is chaired by the Secretary General and is composed of the Director General of the Irish Naturalisation and Immigration Service (INIS), Assistant Secretaries and other senior officials who head up functions within the Department. Functions represented on this Committee that are directly relevant to the EMN include:

- Immigration Related Services (asylum, immigration and citizenship)
- Reception and Integration Agency
- Anti-Trafficking Unit
- An Garda Síochána.

On 1 June 2010 the functions vested in the Minister for Justice, Equality and Law Reform in relation to the promotion of the integration of persons (other

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<sup>4</sup> <http://www.djei.ie>.

<sup>5</sup> <http://www.dfa.ie>.

than protection applicants) transferred to the Minister for Community, Rural and Gaeltacht Affairs. The functions have since moved back to the Department of Justice and Equality, these functions relate to the integration of persons who are not, or were not previously Irish citizens, and their families, who are lawfully resident in the state.

#### *2.1.1.1 Irish Naturalisation and Immigration Service (INIS)<sup>6</sup>*

The Irish Naturalisation and Immigration Service (INIS) was established in 2005 and is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Defence in relation to asylum, immigration (including Visas) and citizenship matters. INIS can be subdivided into the following units/divisions:

- Asylum Policy Unit
- Citizenship Unit
- EU Treaty Rights Unit
- General Immigration Unit
- Irish Born Child Unit
- Immigration Control and Investigation Unit
- Immigration and Citizenship Policy
- Long-Term Residency
- Repatriation
- Visa Division.

#### *2.1.1.2 Reception and Integration Agency (RIA)<sup>7</sup>*

The Reception and Integration Agency has responsibility for planning and co-ordinating the provision of services to asylum seekers, refugees and persons granted leave to remain in the state. RIA is responsible for accommodating asylum seekers in RIA accommodation centres while their applications for asylum are processed. The agency organises the provision of services (e.g. health, education, etc.) to asylum seekers in RIA accommodation. RIA facilitates the voluntary return home of destitute nationals from certain EU states, and accommodates suspected victims of human trafficking pending a determination of their case and during the 60 day recovery and reflection period.

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<sup>6</sup> <http://www.inis.ie>.

<sup>7</sup> <http://www.ria.gov.ie>.



### 2.1.1.3 *Anti-Human Trafficking Unit (AHTU)*<sup>8</sup>

An Anti-Human Trafficking Unit was established within the Crime Section of the Department of Justice and Equality in February, 2008 with a new interdepartmental High Level Group on Combating Trafficking in Human Beings also established during 2008. The Unit is working to ensure that the State's response to trafficking in human beings is co-ordinated and comprehensive. The Unit is also responsible for the implementation of the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012*.<sup>9</sup> The National Action Plan focuses on:

- Prevention and Awareness Raising
- Prosecution of Traffickers
- Protection of Victims
- Child Trafficking.

### 2.1.1.4 *The Garda National Immigration Bureau (GNIB)*<sup>10</sup>

The Garda National Immigration Bureau is responsible for all immigration-related Garda (police) operations in the State and exists under the auspices of An Garda Síochána. The Bureau works closely with the Department of Justice and Equality. The GNIB was established in 2000<sup>11</sup> and carries out registrations of all non-EEA nationals aged 16 and above, deportations, border control, and investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and at all approved ports and airports. The Bureau monitors the movement of non-Irish nationals at all air and seaports throughout the State and along the border with Northern Ireland, with a view to the prevention of, and detection of, irregular immigration.

The GNIB oversees all incoming air traffic, ensuring that the relevant immigration legislative provisions are effectively and efficiently enforced to prevent and detect breaches of the criminal law at Ports of Entry to the State.<sup>12</sup> Airline Liaison Officers (ALOs) are deployed to hub airports where they are responsible for monitoring whether passengers have complied with the immigration requirements of the country of destination, and provide advice to

<sup>8</sup> <http://www.justice.ie/en/JELR/Pages/WP09000005>.

<sup>9</sup> <http://www.justice.ie/en/JELR/Final%20National%20Action%20Plan2.pdf/Files/Final%20National%20Action%20Plan2.pdf>.

<sup>10</sup> <http://www.garda.ie/controller.aspx?page=31>.

<sup>11</sup> EU Agis Conference 2005 'An Examination of Best Practice in Fighting and Preventing the Corruption of Public Figures involved in the administration of Immigration Regulations'. Available at: <http://www.garda.ie/Documents/User/an%20examination%20of%20best%20practice%20in%20fighting%20&%20preventing%20the%20corruption%20of%20public%20figures%20involved%20in%20the%20administration%20of%20immigration%20regulations.pdf>.

<sup>12</sup> Written answer by Minister for Justice and Equality to Parliamentary Question, Wednesday 14 September 2011 <http://debates.oireachtas.ie/dail/2011/09/14/00470.asp>.

the Department of Justice and Equality. There is a border control unit attached to Dundalk Garda Station, and a border control unit at Dublin Airport. The Border Control Office based in Dundalk operates on an intelligence basis and targets transport across the border to Northern Ireland. This office operates under the direction of the chief superintendent in Dundalk; there are two sergeants and ten Gardaí in this office.<sup>13</sup>

At year-end 2011, there were approximately 130,500 people registered with the GNIB.<sup>14</sup> The GNIB is headed by a Detective Chief Superintendent with a Garda Staff of two Detective Superintendents, four Detective Inspectors, 24 Detective Sergeants and 180 Detective Gardaí and Gardaí. They are supported by 68 civilian staff.<sup>15</sup>

#### *2.1.1.5 Office for the Promotion of Migrant Integration<sup>16</sup>*

The Office for the Promotion of Migrant Integration (formerly the Office of the Minister of State for Integration) was set up to develop, drive and co-ordinate policy in relation to the integration of legally-resident immigrants across Government Departments. The functions include the promotion of the integration of legal immigrants into Irish society, the establishment of new structures for this purpose, the management of the resettlement of refugees admitted as part of the United Nations Resettlement Programme and the administration of funding from national and EU sources to promote integration. A Ministerial Council on Migrant Integration was established within the Department in 2010, in order to advise the Minister of State for Integration on issues faced by migrants in Ireland. The Council consists of 74 members and four regional groups. The future of the Council is currently under decision.

#### *2.1.1.6 Other Relevant Divisions under the Department of Justice and Equality*

The Department of Justice and Equality works with EU and other international bodies such as the Council of Europe and the United Nations. Department of Justice and Equality strategies in the area of crime, law reform, asylum, immigration and equality are influenced by initiatives and programmes arising at EU and international level.

#### *EU Affairs*

Most of the Department's involvement in this area takes place within the Council of Ministers, especially the Justice and Home Affairs (JHA) Council

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<sup>13</sup> Interview GNIB Official.

<sup>14</sup> 'Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow' Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>15</sup> <http://www.garda.ie/controller.aspx?page=31>.

<sup>16</sup> <http://www.integration.ie>.

(which deals with immigration and asylum policy and Schengen-related matters among other issues) and within 20 working Council working groups including the Strategic Committee on Immigration Frontiers and Asylum (SCIFA). The Director General of INIS attends SCIFA in order to ensure that the State's policy on migration is developed and represented in harmony with partners in the EU, Council of Europe and other relevant international groupings.

#### *Council of Europe Working Groups*

The Department is involved in various working groups of the Council of Europe including committees on asylum and refugees (CAHAR) and criminal matters (CDPC).

#### *International Policy Division*

The International Policy Division (IPD) is involved in internally co-ordinating and preparing the Department's participation in key areas such as the Justice and Home Affairs (JHA) Council, Schengen matters and Oireachtas scrutiny (examination by the Oireachtas of EU issues).

#### *2.1.1.7 Bodies/Offices under the Aegis of the Department of Justice and Equality*

##### *Office of the Refugee Applications Commissioner<sup>17</sup>*

The Office of the Refugee Applications Commissioner (ORAC) is the first instance decision making body in the Irish asylum system. The office was established under the *Refugee Act 1996* (as amended). Under the Act, the Commissioner is required to investigate each asylum application lodged within the State and to make recommendations to the Minister for Justice, Equality and Defence. ORAC has responsibility for processing cases under the EU Dublin Regulation. The Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications. The Commissioner is independent in the exercise of his or her functions. The Single Procedure Transition Team (within ORAC) is tasked with preparing for the introduction of a single protection procedure, which had been provided for in the now-withdrawn *Immigration, Residence and Protection Bill, 2010*.

##### *Refugee Appeals Tribunal<sup>18</sup>*

The Refugee Appeals Tribunal was established in 2000 and decides appeals of those asylum seekers whose applications for refugee status have not been recommended by the Office of the Refugee Applications Commissioner. The

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<sup>17</sup> <http://www.orac.ie>.

<sup>18</sup> <http://www.refappeal.ie>.

Tribunal is a statutorily independent body and exercises a quasi-judicial function under the 1996 Refugee Act. The *Immigration Act 1999* amended the *Refugee Act 1996* substantially, and established the Refugee Appeals Tribunal in place of the Appeals Authority. The tribunal was due to be replaced by a new body, the Protection Review Tribunal, under the now-withdrawn *Immigration, Residence and Protection Bill, 2010*. However if re-enacted in its current form, this legislation proposes that the Protection Review Tribunal will be statutorily independent, and will deal with appeals against a refusal to grant refugee status, or subsidiary protection under the EU Qualification Directive.

#### *Legal Aid Board*<sup>19</sup>

The Legal Aid Board is responsible for the provision of legal aid and advice on matters of civil law to persons unable to fund such services from their own resources. The Legal Aid Board does not provide legal aid in criminal matters. Within the Legal Aid Board, the Refugee Legal Service provides legal services to persons applying for asylum in Ireland. Legal aid and advice is provided also in appropriate cases on immigration and deportation matters. The Refugee Documentation Centre (RDC) is an independent library and research service within the Legal Aid Board used mainly by legal practitioners working in the field.

#### *2.1.1.8 External Bodies Related to the Work of the Department of Justice and Equality*

##### *Intergovernmental Consultations on Migration, Asylum and Refugees (IGC)*

Ireland participates in the IGC by attending working groups as well as high level policy meetings at Director General level.<sup>20</sup>

##### *General Directors of Immigration Services Conference (GDISC)*<sup>21</sup>

GDISC is an EU Member State network established in order to facilitate practical cooperation on immigration matters. Both asylum and immigration areas of INIS participate in the GDISC, depending on the agenda items under discussion. Working groups are organised, as well as meetings up to Director General level. GDISC has a rotating Chair currently occupied by Sweden and the secretariat is based in Stockholm.<sup>22</sup>

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<sup>19</sup> <http://www.legalaidboard.ie>.

<sup>20</sup> Established in 1985 the IGC is an informal, non-decision making forum for intergovernmental information exchange and policy debate on the management of international migration. The IGC brings together 17 participating states (Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, The Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, UK and USA) and three organisations: European Commission, IOM and UNHCR.

<sup>21</sup> <http://www.gdisc.org>.

<sup>22</sup> GDISC has 33 member countries: the 27 EU states, Croatia, Turkey and the Former Yugoslav Republic of Macedonia, Iceland, Norway and Switzerland.

*European Asylum Office (EASO)*

EASO was established in 2010 and plays a key role in the concrete development of the Common European Asylum policy. The Refugee Applications Commissioner is currently the Irish representative on the EASO Management Board. The aim of the EASO is to help to improve the implementation of the Common European Asylum system, to strengthen practical cooperation among Member States on asylum, and to provide and/or co-ordinate the provision of operational support.<sup>23</sup>

*Eurostat*

Eurostat is responsible for providing the European Union with a high quality statistical information service to enable it to compare statistics between countries and regions. Through the Asylum Policy Division, Ireland provides national asylum, immigration and migration statistics to Eurostat. The Central Statistics Office also maintains national migration statistics.<sup>24</sup>

*Frontex*<sup>25</sup>

Frontex is a specialised and independent body tasked to co-ordinate the operational cooperation between Member States in the field of border security. Although, as a non-Schengen State Ireland is not a full member of Frontex, the GNIB and INIS participate in border control training with Frontex. Ireland also participates in Frontex joint/charter repatriation flights and operations, and makes an annual financial contribution to Frontex.

*International Organization for Migration (IOM)*<sup>26</sup>

The IOM mission in Dublin co-ordinates a number of Voluntary Assisted Return Programmes on behalf of the Department of Justice and Equality.

*United Nations High Commissioner for Refugees (UNHCR)*<sup>27</sup>

UNHCR monitors government compliance with international refugee law and provides assistance in the area of refugee law training to the main statutory agencies dealing with asylum.

**2.1.2 Department of Jobs, Enterprise and Innovation**

The current Minister for Jobs, Enterprise and Innovation is Richard Bruton, T.D.; the Secretary General of the Department is John Murphy. The Department is organised into five divisions which broadly reflect distinct functional units but

<sup>23</sup> [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_migration/jl0022\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_migration/jl0022_en.htm).

<sup>24</sup> <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>.

<sup>25</sup> <http://www.frontex.europa.eu>.

<sup>26</sup> <http://www.iomdublin.org>.

<sup>27</sup> <http://www.unhcr.ch>.

there is also a substantial degree of cooperation and interaction between divisions:

- Competitiveness and Jobs
- Innovation and Investment
- Commerce, Consumer and Competition
- Employment Rights and Industrial Relations and Corporate Services
- EU Affairs and Trade Policy.

#### *2.1.2.1 Employment Permits Section*

The Department of Jobs, Enterprise and Innovation administers the employment permits system on behalf of the Minister for Jobs, Enterprise and Innovation. The division whose work is most relevant to the EMN is EU Affairs and Trade Policy which has a wide range of functions including:

- EU Affairs
- EU Directives
- Internal Market
- Trade Policy
- Employment Permits
- Economic Migration Policy.

Other responsibilities of the department include Common Commercial Policy, Import Licensing, Export Licensing, Bilateral Trade Promotion and Chemicals Regulation Policy.

The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies through a number of actions:

- Leading the development and review of policy on economic migration and access to employment in Ireland
- Promoting research and planning on the contribution of economic migrants to the development of the Irish economy
- Working with other national authorities to ensure a whole-of-Government approach in the area
- Managing on behalf of the Department specific domestic, EU and international initiatives arising in the field of economic migration.

### 2.1.2.2 *Bodies/Offices under the Aegis of the Department of Jobs, Enterprise and Innovation*

#### *Foras Áiseanna Saothair (FÁS)*<sup>28</sup>

The functions of FÁS include the operation of training and employment programmes, the provision of an employment/recruitment service, an advisory service for industry, and support for community-based enterprises. In July 2011 the Minister for Education and Skills announced that FÁS will be disbanded and ultimately replaced by a new education and training programme which will include the establishment of SOLAS. SOLAS will operate under the aegis of the Department of Education and Skills. Following the introduction of SOLAS and the transfer of the remaining employment and community services elements to the Department of Social Protection, FÁS will be disbanded.<sup>29</sup> SOLAS will co-ordinate and fund the wide range of training and further education programmes around the country.

Currently the Economic Migration Policy and Employment Permits Section of the Department of Jobs, Enterprise and Innovation work with FÁS to administer the labour market needs test which must be conducted before an employment permit is issued. A new application for a work permit must be accompanied by documentary evidence that a 'labour market needs test' has been carried out.<sup>30</sup> Evidence that the test has been performed must be included with any work permit application.

FÁS also has a research function relevant to the Department through the Skills and Labour Market Research Unit. The FÁS Skills and Labour Market Research Unit provides the group with data, analysis and research and manages the National Skills Database. Forfás provides the group with research and secretariat support. The Group's work programme is managed by the Head of Secretariat based in Forfás. Under the *Social Welfare and Pensions Bill, 2011* the Skills and Labour Market Research Unit will transfer to SOLAS and some tasks of the Labour Market Research Unit will transfer to the Department of Social Protection.

#### *Expert Group on Future Skills Needs*<sup>31</sup>

The Expert Group on Future Skills Needs (EGFSN) advises the Irish Government on current and future skills needs of the economy and on other labour market issues that impact on Ireland's enterprise and employment growth. It has a

<sup>28</sup> <http://www.fas.ie/en>.

<sup>29</sup> Written answer by Minister for Social protection to Parliamentary Question Thursday 24 November, 2011 <http://debates.oireachtas.ie/dail/2011/11/24/00114.asp#N3>.

<sup>30</sup> From 1 June 2009 the test requires that the vacancy must have been advertised with the FÁS/EURES employment network for eight weeks (previously four weeks) and in local and national newspapers for six days (previously three days). This is to ensure that, in the first instance an EEA or Swiss national, or in the second instance, a Bulgarian or Romanian national, cannot be found to fill the vacancy.

<sup>31</sup> <http://www.skillsireland.ie>.

central role in ensuring that labour market needs for skilled workers are anticipated and met. Established in 1997, the EGFSN reports to the Minister for Jobs, Enterprise and Innovation and the Minister for Education and Skills.

#### *National Employment Rights Authority (NERA)*<sup>32</sup>

The National Employment Rights Authority (NERA) was established under the Social Partnership Agreement *Towards 2016* in order to enforce employment law and to promote compliance. NERA provides information to employers and employees and currently has 66 inspectors.

#### *2.1.2.3 External Bodies Related to the Work of the Department of Jobs, Enterprise and Innovation*

The Economic Migration Policy and Employment Permits Section consults closely with social partners (Trade Unions and employers organisations such as IBEC and CIF) and NGOs on policy initiatives as they emerge. They also work with social partners to formulate lists of occupations eligible for green cards and lists of occupations ineligible for work permits. The section liaises with the Health Service Executive on a weekly basis regarding the immigration of nurses and other medical workers.

The Department of Jobs, Enterprise and Innovation also has bilateral contacts with other parties such as employers, ambassadors, NGOs, and the National Employment Rights Authority (NERA). Industry representatives may approach DETI with a business case for easing restrictions on certain niche occupations.

Existing policy is reviewed within the Department of Jobs, Enterprise and Innovation in the context of annual strategy statements, Ministerial meetings and internal reviews held before major events. For example the next major review of the employment permits system is likely to take place before the accession of Croatia. Political representatives, NGOs, employers and the general public also scrutinise policy through the political representation system (e.g. letters to the Minister).

#### **2.1.3 Department of Foreign Affairs and Trade**<sup>33</sup>

The Minister for Foreign affairs and Trade is Deputy Eamonn Gilmore T.D. who also serves as the Tánaiste (Deputy Prime Minister). The Department of Foreign Affairs and Trade manages all aspects of foreign policy and co-ordinates Ireland's response to international developments. It also provides advice and support on all issues relevant to the pursuit of peace, partnership and reconciliation in Northern Ireland, and between North and South of the island, and to deepen Ireland's relationship with Britain.

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<sup>32</sup> <http://www.employmentrights.ie/en>.

<sup>33</sup> <http://www.dfa.ie/home/index.aspx?id=369>.



Officials of the Department work in Dublin, Limerick and in Ireland's network of 76 Missions overseas, which are an essential element of the Department's work and responsibilities. At the Department's headquarters in Dublin, there are 11 divisions. The role of the Permanent Representation to the European Union in Brussels is to represent the State in its interface with the EU institutions and in negotiations at official level in the Council of Ministers. It also advises on negotiations at political level in the Council of Ministers and at the European Council. The Department has a staff of approximately 1,400, around half of whom serve abroad.

#### **2.1.4 Stakeholders Involved in Asylum and Migration Processes**

There are several non-state stakeholders, organisations, bodies and agencies involved in the asylum and migration processes. The United Nations High Commissioner for Refugees (UNHCR) works to safeguard the rights and well-being of refugees, asylum seekers and stateless people in Ireland through the provision of guidance, training and support to the Irish authorities. UNHCR conducts its work through cooperation with the relevant national authorities, by working with Government as well as civil society partners to support durable solutions for refugees. UNHCR also offers its expertise in asylum practice to the asylum determination bodies and provides assistance to the Irish Government's resettlement programme.

The International Organization of Migration (IOM) works with the Irish government to implement return policy. IOM is an inter-governmental organisation established in 1951; Ireland became a full Member State of the IOM organisation in 2002. In Ireland, IOM's activities relate mainly to the operation of Voluntary Assisted Return and Reintegration Programme (VARRP). The VARRP is open to irregular migrants and asylum seekers from non-EEA countries who wish to return home voluntarily but do not have the means, including the necessary documentation, to do so. IOM Dublin can assist with obtaining the necessary travel documentation, as well as covering the financial costs of the travel from Ireland to the country of origin. In addition, a small reintegration grant is available to all returnees to help cover the costs of an income generating activity, such as education, professional training and/or business set-up.

The Migrant Rights Council Ireland (MRCI)<sup>34</sup> is a non-governmental organisation which provides support services for migrants, and aims to promote the empowerment and inclusion of migrant workers and their families at risk of poverty, social exclusion and discrimination. The MRCI work focuses on campaigns, training, and information and referral service, advocacy and worker action groups.

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<http://www.migrantproject.ie>.

The Irish Refugee Council (IRC)<sup>35</sup> is a non-governmental organisation which provides information, legal advice and representation to those in the early stage of the asylum application. The IRC's priorities include delivering high quality legal support to asylum seekers through its independent law centre; supporting and protecting children and young people in the immigration system; public awareness; and capacity building among key players in the asylum system in order to bring about change to practice and policy.

The Immigrant Council Ireland (ICI)<sup>36</sup> is a non-governmental organisation that provides information, support, advocacy and legal services for migrants. The ICI is an independent human rights organisation and independent law centre, which advocates for the rights of migrants and their families and acts as a catalyst for public debate and policy change.

These are just some of the many community organisations and networks that provide support, information and advice to asylum seekers and migrants across Ireland. Over 436 organisations have been identified in Ireland by the Trinity Immigration Initiative.<sup>37</sup>

## 2.2 OVERVIEW OF THE LEGAL FRAMEWORK

Current Irish law, and the modern Irish legal system, is based on Common Law as modified by subsequent legislation and by the *Constitution of Ireland*, 1937. All draft legislation or Bills may be initiated in either the Dáil or the Seanad. The First Stage of the legislative process is the initiation of a Bill by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a motion of whether the Bill would now constitute good law. If passed in the motion, the Bill is then passed to the other House, with second to fifth stages repeated there. Finally the President of Ireland signs the Bill into law.

In accordance with the Constitution, justice is administered in public in courts established by law, with judges appointed by the President on the advice of the Government. The Irish court system is hierarchical in nature and there are four types of courts in Ireland, which hear different types and levels of cases. In ascending hierarchical order the four types of courts are as follows:

- District Court
- Circuit Court
- High Court
- Supreme Court.

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<sup>35</sup> <http://www.irishrefugeecouncil.ie>.

<sup>36</sup> <http://www.immigrantcouncil.ie>.

<sup>37</sup> [http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-8JJGY6134507-en/\\$File/Trinity.pdf](http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-8JJGY6134507-en/$File/Trinity.pdf).

The Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice, Equality and Defence, and the relevance of the courts is generally limited to judicial review (see below).

The Refugee Applications Commissioner was established under Section 6 of the *Refugee Act 1996* as amended. The Act also provides that the Commissioner shall be independent in the exercise of his or her functions and that the position of the Commissioner shall be a position in the Civil Service. Section 11 of the 1996 Act provides that it is the function of the Refugee Applications Commissioner to investigate an application for asylum for the purpose of ascertaining whether the applicant is a person in respect of whom a refugee declaration should be given.

Section 15 of the *Refugee Act 1996* (as amended) established the Refugee Appeals Tribunal. Tribunals are bodies with quasi-judicial or administrative functions established by statute and which lie outside the court system. The Refugee Appeals Tribunal's function is to affirm or set aside a recommendation of the Refugee Applications Commissioner on appeal.

It is important to note that it is the Minister for Justice, Equality and Defence who declares, in light of the Refugee Applications Commissioner and Refugee Appeals Tribunal decisions, that an applicant is a refugee. The Minister also has the power to refuse to grant such a declaration.

There is no right of appeal from the Refugee Appeals Tribunal to the courts, whether generally or on points of law. Neither are there any immigration-related processes that allow appeals to the courts. Judicial review is the means by which the High Court may exercise its supervisory function over inferior decision-making bodies, such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, as well as over administrative decisions. Judicial review is not concerned with the substance of decisions, but with the decision-making process.

Section 5 of the *Illegal Immigrants (Trafficking) Act 2000* provides that certain prescribed decisions made in the immigration and asylum processes, including the Minister's decision refusing a recommendation of refugee status, the Minister's proposal to deport, and the Minister's decision to deport, cannot be questioned other than by way of judicial review. The Act also stipulates certain more stringent requirements for such applications for judicial review. Firstly the application for leave (i.e. permission) from the High Court for judicial review must be made within 14 days of the date of the notification of the impugned decision (such time being extendable by the High Court only where the Court is satisfied that there is good and sufficient reason to so extend). In the case of normal judicial review applications the time limit is usually six months. Secondly the application for leave must be made on notice to the Minister for Justice, Equality and Defence; this requirement does not exist in a normal application.

Thirdly the High Court shall not grant leave unless it is satisfied that there are substantial grounds for contending that the impugned decision should be quashed as opposed to merely a 'stateable case' in the case of normal applications. Fourthly the right of appeal to the Supreme Court is severely restricted in respect of such 'special' judicial review applications.

The 2000 Act provides that a determination of the High Court on a matter to which the Section applies can be appealed to the Supreme Court, only where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. The Supreme Court is the court of final appeal in Ireland.

It is important to note that not all immigration and asylum related decisions are subject to these more stringent rules for judicial review, only those stipulated under Section 5 of the *Illegal Immigrants (Trafficking) Act 2000*.

### 2.2.1 Relevant Irish Law

Appendix I contains a list of relevant legislation in the asylum and immigration area.

The principal piece of domestic legislation dealing with refugees and asylum seekers is the *Refugee Act 1996*, as amended by several subsequent pieces of legislation. In addition *S.I. No. 518 of 2006*<sup>38</sup> seeks to ensure compliance with EU *Directive 2004/83/EC*<sup>39</sup> ("The Qualification Directive"). S.I. numbers 51 and 52 of 2011 give further effect in Irish law to EU (*Council Directive 2005/85/EC*: 'The Asylum Procedures Directive'). Ireland is also a signatory to the Dublin Convention, and is subject to the *Dublin Regulation (EC 343/2003)* which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU.

Domestic immigration law in Ireland is currently based on various pieces of immigration legislation, including the *Aliens Act 1935* and Orders made under it, the *Illegal Immigrants (Trafficking) Act 2000*, and the *Immigration Act 1999, 2003 and 2004*.

The *Immigration Act 1999* was enacted because in the case of *Laurentiu v Minister for Justice, Equality and Law Reform*, the *Aliens Act 1935* was found to be unconstitutional in the manner in which it gave the Minister for Justice, Equality and Law Reform the power to deport.<sup>40</sup> The 1999 Act sets out the

<sup>38</sup> *S.I. 518 of 2006 'European Communities (Eligibility for Protection) Regulation 2006*.

<sup>39</sup> Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted.

<sup>40</sup> *Laurentiu v Minister for Justice and Equality* [2000] 1 ILRM (Supreme Court, 20/05/1999) and *Leontjava and Chang v Minister for Justice, Equality and Law Reform* [2005] 1 ILRM (Supreme Court, 24/06/2004). See Quinn, Stanley, Joyce and O'Connell (2008) for more information.

principles, procedures and criteria which govern the detention and removal of non-Irish nationals from the State, and makes provision for the issuing of deportation and exclusion orders. This Act also amended the *Refugee Act 1996* substantially, inter alia, amending the jurisdiction of the Refugee Applications Commissioner and establishing the Refugee Appeals Tribunal in place of the former, non-statutory, Appeals Authority.

The *Illegal Immigrants (Trafficking) Act* makes it an offence to organise or knowingly facilitate the entry into the State of an illegal immigrant or a person who intends to seek asylum. The *Immigration Act 2003* introduced substantial amendments to the *Refugee Act 1996* (dealt with in Section 3.2.1) and introduced carrier sanctions and liability. Carriers are required to carry out basic checks to ensure that passengers boarded for carriage into the State from outside the Common Travel Area are in possession of valid documentation necessary for entry into the State. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.

Prior to the introduction of the *Immigration Act 2004*, the principal piece of legislation governing the entry and residence of non-Irish nationals in Ireland was the *Aliens Act 1935*. The 2004 *Immigration Act* includes a wide range of provisions that would previously have been contained in Orders made under the 1935 Act including provision for the appointment of immigration officers and criteria for permission to land. It provides the Minister with powers to make orders regarding visas and approved ports for landing, and imposes limits on the duration of a non-Irish national's stay. Persons landing in the State are required to be in possession of a passport or identity document, and non-Irish nationals are required to register with the Gardaí.

In October 2011, the European Communities ('Communication of Passenger Data') Regulations 2011, S.I. 597/2011, requesting airlines to provide Advance Passenger Information (API) transposed *Council Directive 2004/82/EC*. This measure was introduced to improve border control and combat irregular migration, it is mandatory for all inbound flights to Ireland from outside the EU. The measure means that carriers are responsible for providing data on passengers in advance of flights arriving in Ireland from outside of the EU.

The *Immigration, Residence and Protection Bill, 2010* constituted a single piece of proposed legislation for the management of both immigration and protection issues. The Bill was withdrawn in 2012, in part due to a high number of proposed amendments. A revised Bill, incorporating amendments, is expected in 2013. As with the 2007 and 2008 Immigration, Residence and Protection Bills, the 2010 Bill set out a legislative framework for the management of inward migration to Ireland. The Bill laid down a number of important principles

governing the presence in the State of foreign nationals, including the obligation on a foreign national who is unlawfully in the State to leave.<sup>41</sup> The 2010 Bill collated the State's immigration and refugee legislation and contained some important proposed changes.

This Government has stated a commitment, under the Programme for National Recovery to "Introduce comprehensive reforms of the immigration, residency and asylum systems in Ireland, which will include a statutory appeals system and set out rights and obligations in a transparent way". It is from this policy perspective that work on the details of the *Immigration, Residence and Protection Bill, 2010*, inherited from the last Government, is ongoing in the Department of Justice and Equality.<sup>42</sup>

### 2.2.2 EU Legislation and Implementation in Ireland

All EU legislation must have a legal basis on a particular EC Treaty article. Most asylum and immigration related measures fall under Title IV of the Treaty. Under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty unless Ireland opts in by notifying the Council that it wishes to take part in the adoption and application of the proposed measure.

In practice, once a proposal for legislation in the area is presented, the UK and Ireland have three months to decide whether they wish to participate in discussions. If either State does not wish to participate in discussion on the proposal then it could ultimately be adopted by the other Member States without their participation. After adoption of legislation in cases which proceeded without UK and/or Irish participation, either of the two Member States may then choose to opt in to that piece of legislation at a later date and with the approval of the European Commission. Ireland has given an undertaking to opt in to measures that do not compromise the Common Travel Area with the UK.

As a result of these special conditions the development of the Irish asylum and immigration systems has been influenced more by the existence of the Common Travel Area with the UK than the European *acquis*. On the immigration side the main influence of European law has been on illegal immigration and border control management. Although Ireland is not a Schengen state it is party to measures related to Schengen police and judicial cooperation in criminal matters. In June 2000, Ireland applied to take part in

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<sup>41</sup> Joyce (2011) Annual Policy Report on Migration and Asylum: Ireland.

<sup>42</sup> Address by the Minister for Justice, Equality and Defence, Mr Alan Shatter, T.D. to mark World Refugee Day on 20 June 2012. Available at: <http://www.merrionstreet.ie/index.php/2012/06/address-by-the-minister-for-justice-equality-and-defence-mr-alan-shatter-t-d-to-mark-world-refugee-day-on-20-june-2012>.

some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS). The Council adopted a decision approving Ireland's request on 28 February, 2002. It is necessary for Ireland to put new legislative and other measures in place to give effect to the relevant elements of the Schengen *acquis*. This is a project which is being actively pursued.

EU legislation has had a more significant impact on the Irish asylum system. As mentioned above, Irish asylum law is currently based on the *Refugee Act 1996* as amended, and *S.I. No. 518 of 2006* which seeks to implement EU *Directive 2004/83/EC* ('The Qualification Directive'), and S.I. numbers 51 and 52 of 2011 give further effect in Irish law to EU (*Council Directive 2005/85/EC*: 'The Asylum Procedures Directive'). Other significant EU instruments impacting on Irish asylum law are *Directive 2001/55/EC* ('The Temporary Protection Directive'), Regulation (EC) No. 343/2003 ('The Dublin Regulation'), *Directive 2005/85/EC* ('The Procedures Directive') and Regulation (EC) No. 2725/2000 (EURODAC), each of which Ireland has opted into.

# Chapter 3

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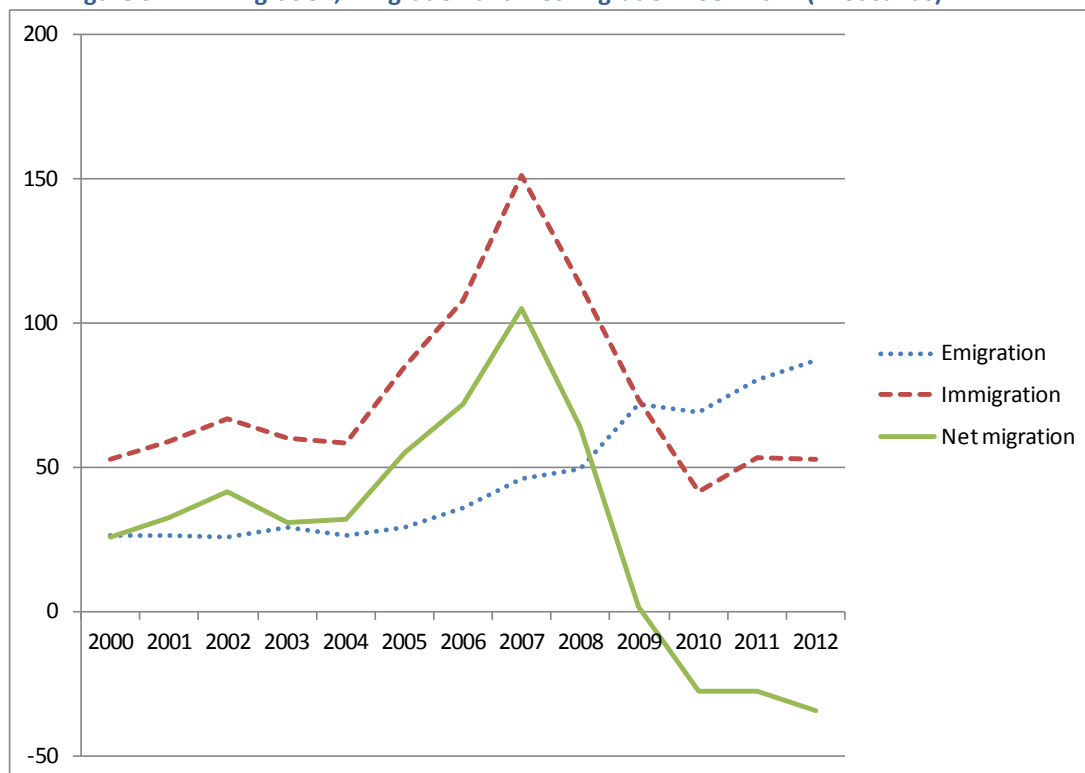
## Development of Asylum and Migration Systems

### 3.1 RECENT HISTORY OF MIGRATION AND ASYLUM FLOWS

In general terms, the recent history of Irish migration can be characterised as having had five phases (dates are approximate):

- A history of sustained net emigration prior to the early 1990s
- Mid 1990s - early 2000s. Increasing immigration driven largely by returning Irish nationals. Dramatic increases in the number of asylum applicants
- 2002-2004. New peaks reached in non-EEA immigration flow and numbers of asylum applications during 2002. Asylum applications fell quickly from 2002 peak and stabilised at much lower level from 2004
- 2004-2008. Substantial part of non-EEA immigration flows converted to EU flow after accession in 2004. New highs reached in overall immigration, driven by nationals of the enlarged EU
- 2009-2012. New phase of net emigration, dramatic drop of immigration flows after a peak in 2007, slight increase in flows since 2010. Asylum applications continue to decrease.



**Figure 3.1 Immigration, Emigration and Net Migration 1987-2012 (Thousands)**

Source: CSO, Population and Migration Estimates, Various releases (with revisions from April 2007 to April 2011).<sup>43</sup>

### 3.1.1 Recent Developments in Migration Flows

Ireland experienced unprecedented increases in immigration flows from the middle of the 1990s. Prior to the mid 1990s Ireland had experienced a long history of net emigration. Strong outward migration during the 1950s led to a population low point of 2.8 million being recorded in the 1961 Census. A period of extended economic growth in mid 1990s attracted both economic immigrants and returning Irish emigrants. The EU enlargement in 2004<sup>44</sup> saw a significant increase in economic immigration to Ireland, and inflows were heavily dominated by EU10/12 nationals from 2005 to 2009.

<sup>43</sup> The population total recorded in the 2011 Census was 4.59 million; 103,952 more than the total estimated population contained in the CSO *Population and Migration Estimates* published in 2011. As a result the CSO published revised population estimates for the years 2007 to 2011 (i.e. the period over which this differential arose) in 2012.

<sup>44</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU in 2004. Bulgaria and Romania joined in 2007.

**Table 3.1 Gross and Net Migration Flows 2000-2012**

	Emigration	Immigration	Net migration
2012	87.1	52.7	-34.4
2011	80.6	53.3	-27.4
2010	69.2	41.8	-27.5
2009	72.0	73.7	1.6
2008	49.2	113.5	64.3
2007	46.3	151.1	104.8
2006	36.0	107.8	71.8
2005	29.4	84.6	55.1
2004	26.5	58.5	32.0
2003	29.3	60.0	30.7
2002	25.6	66.9	41.3
2001	26.2	59.0	32.8
2000	26.6	52.6	26.0

**Source:** Population and Migration Estimates, CSO (with revisions from April 2007 to April 2012).

**Note:** 2012 data are preliminary.

The most recent official migration statistics show that since 2009/2010 Ireland has entered a new phase of net emigration. The nationality breakdown of the inflow is important. Between 2005 and 2008 more than 40 per cent of the immigration flow was made up of nationals of the 12 EU States that acceded in 2004 and 2007. EU migrants can reside, work and move freely within the EU without seeking permission to do so. Immigrants from non-EEA countries (comprising the USA and 'Rest of World' categories) require permission to enter and remain on Irish territory and to work here; their movements involve a substantial degree of involvement of the immigration services. In the year prior to the 2004 EU enlargement, non-EU immigrants accounted for over 40 per cent of immigrants. This proportion fell to below 20 per cent in the years 2005-2010 as EU migrants dominated the flows.

As Table 3.2 demonstrates the number of immigrants moving to Ireland peaked in 2007, and then steadily decreased until 2011. Immigration to Ireland has remained at approximately 53,000 in the years to April 2011 and April 2012.

**Table 3.2 Estimated Immigration by Nationality, 2003 – 2012**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Irish	17.6	16.7	18.5	18.9	30.7	23.8	23.0	17.9	19.6	20.6
UK	9.1	7.4	8.9	9.9	4.3	6.8	3.9	2.5	4.1	2.2
EU13*	8.8	13.3	9.3	12.7	11.8	9.6	11.5	6.2	7.1	7.2
EU10/12**	-	-	34.1	49.9	85.3	54.7	21.1	9.3	10.1	10.4
Non-EU	24.5	21.1	13.7	16.4	19.0	18.6	14.1	6.0	12.4	12.4
All nationalities	60.0	58.5	84.6	107.8	151.1	113.5	73.7	41.8	53.3	52.7

**Source:** Population and Migration Estimates, CSO, various releases (with revisions from April 2007 to April 2012)

**Note:** \* EU 15 excluding UK and Ireland

\*\* EU MS that joined in 2004 and 2007

The latest census was carried out in April 2011. The total population enumerated on April 2011 was 4,588,252 persons,<sup>45</sup> compared with 4,239,848 persons in April 2006, an increase of 348,404 persons since 2006 or 8.1 per cent. Between Census 2006 and Census 2011 the number of non-Irish nationals increased by 124,624, which represents an annual average inflow of 24,925 persons. This is lower than the average annual inflow of 47,832 in the previous intercensal period (2002 to 2006).

Between 2006 and 2011 the number of non-Irish nationals, increased by 124,624 persons, or 29.7 per cent, from 419,733 persons to 544,357 persons. The groups which showed the largest increase were those already well-established in Ireland. The fastest growing groups were Romanians (up 125 per cent), Indians (up 101 per cent), Brazilians (up 98 per cent) and Polish (up 94 per cent). In 2011, non-Irish nationals made up 11.9 per cent of the population in Ireland. Polish nationals were the largest group (2.7 per cent), followed by UK nationals (2.5 per cent).

**Table 3.3 Persons Usually Resident and Present in the State on Census Night 2006 and 2011, Classified by Nationality**

	2006 000s	%	2011 000s	%
Irish	3,706,683	88.8	3,927,143	86.8
UK	112,548	2.7	112,259	2.5
EU13	42,693	1.0	48,280	1.1
EU 10/12	120,534	2.9	226,225	5.0
Total EU	284,440	6.6	386,764	8.5
Other European	24,425	0.6	16,307	0.4
American	21,124	0.3	24,884	0.5
Africa	35,326	0.8	41,642	0.9
Asia	46,952	1.1	65,579	1.4
Other nationalities	22,422	0.5	22,210	0.5
Multi/no nationality/not stated	47,955	1.1	54,621	1.2
Total Non-Irish	419,733	10.1	544,357	11.9
Total Non- EU	150,249	3.4	170,622	3.8
Total	4,172,013	100.0	4,525,281	100.0

Source: CSO, Census 2011

A total of 5,012<sup>46</sup> applications for naturalisation were approved during 2010. Overall, 2,949 naturalisation applications were either refused or deemed ineligible during 2010, with 34 applications either deferred or suspended. In 2011, major reforms were introduced to the processing of naturalisation applications discussed in Section 3.2.2.1.

<sup>45</sup> CSO (2012) *This is Ireland Census of Population* (2011). Available at: <http://www.cso.ie/en/census/census2011preliminaryreport>.

<sup>46</sup> Data are provisional. Joyce (forthcoming) Annual Policy Report 2011: Ireland.

### 3.1.2 Recent Developments in Asylum Flows

The number of new asylum applications made in Ireland was very low prior to 1992. The next ten years saw a huge increase in applications. In 2000 the number of applications was almost 11,000 having increased more than nine-fold from 1,200 in 1996. The flow peaked in 2002 at 11,600, and has rapidly fallen since then. The scale of these increases took Ireland by surprise and policymakers struggled to cope with the flows. An entire asylum system had to be created rapidly, due to the ever increasing demand. Since 2002 the number of asylum seekers has been declining annually and reached a low of 1,290 in 2011.

**Table 3.4 Asylum Applications 1994 – 2011**

Year	Applications
2011	1,290
2010	1,939
2009	2,689
2008	3,866
2007	3,985
2006	4,314
2005	4,323
2004	4,766
2003	7,900
2002	11,634
2001	10,325
2000	10,938
1999	7,724
1998	4,626
1997	3,883
1996	1,179
1995	424
1994	362
Total	86,167

**Source:** 1994-2010 Office of the Refugee Applications Commissioner, available at <http://www.orac.ie>  
2011 Reception and Integration Agency

**Note:** \* ORAC 2011 Annual Report.

The nationality breakdown of asylum applicants is shown below in Table 3.5. The flows have been dominated in recent years by Nigerian, Pakistani and Chinese nationals.

**Table 3.5 Applications for Asylum by Nationality 2007, 2009, 2011**

2007		2009		2011	
Country	No.	Country	No.	Country	No.
Nigeria	1,028	Nigeria	570	Nigeria	182
Iraq	285	Pakistan	257	Pakistan	175
China	259	China	194	China	142
Pakistan	185	DR Congo	102	DR Congo	70
Georgia	174	Zimbabwe	91	Afghanistan	67
Others	2,054	Others	1,475	Others	654
Total	3,985	Total	2,689	Total	1,290

*Source:* Office of the Refugee Applications Commissioner.

### 3.2 DEVELOPMENT OF ASYLUM AND IMMIGRATION SYSTEMS

Immigration and asylum legislation has emerged in a somewhat piecemeal matter. Ireland, as a relatively new country of immigration and asylum, had to act quickly to cope with increased flows. Therefore asylum and immigration systems were initially created on an administrative rather than legislative basis and legislation followed in parts thereafter. In March 2011, elections brought a change of government and a programme of initiatives and reform in the immigration area was initiated. The *Immigration, Residence and Protection Bill, 2010* was withdrawn in early 2012 and it is expected that it will be reintroduced incorporating significant amendments before the end of 2012. Further developments in the immigration system are discussed below in Section 3.2.2.

#### 3.2.1 Development of the Asylum System

It was only in the late 1990s that asylum became an important policy issue in Ireland due to rapidly increasing numbers of applications. In 1996 there were four people in the asylum division of the Department of Justice and Equality, known then as the Asylum Seekers Task Force.<sup>47</sup> As the number of applicants multiplied, long queues developed outside asylum processing centres, calls were made for emergency accommodation for applicants and backlogs in the processing of asylum applications drew significant media attention. The Government was under pressure to address the problems and in 2000 asylum was the key government priority in the Justice area.

The *Refugee Act 1996* had been drafted at a time when there were fewer than 500 asylum applications per year. The Act had to be substantially revised in subsequent years in order to make it workable in the context of many thousands of applicants. An administrative arrangement based on a letter sent

by the Irish Government to the UNHCR in 1997, ‘the Hope Hanlan letter’, served as an interim measure in that it set out in detail the Irish asylum procedures.<sup>48</sup>

*The Immigration Act 1999*, the *Illegal Immigrants (Trafficking) Act 2000* and the *Immigration Act 2003* provided opportunities for the government to substantially amend the 1996 Act which was eventually commenced on 20 November 2000. The *Refugee Act 1996* established the Refugee Applications Commissioner as a statutorily independent body which considers asylum applications at first instance. The ORAC is also responsible for investigating family reunification applications made by refugees. The ORAC reports its recommendations to the Minister for Justice, Equality and Defence.

The *Refugee Act 1996* originally provided for the establishment of an independent Refugee Appeals Board to ‘consider and decide appeals’. This Board was replaced by the Refugee Appeals Tribunal under amendments to the Act introduced in the *Immigration Act 1999*. An independent Refugee Appeal Advisory Board was also established at this time, some provisions relating to the office of Refugee Applications Commissioner were altered and fingerprinting of all asylum seekers over 14 years was introduced.<sup>49</sup> The *Illegal Immigrants (Trafficking) Act 2000* introduced more stringent requirements in relation to making applications for judicial review of certain asylum and immigration-related decisions (see Section 2.2).

In 1999-2000 the shortage of housing for asylum applicants became severe, particularly in the private rented sector in Dublin.<sup>50</sup> In January 2000, 2,600 asylum applicants were housed in emergency bed and breakfast accommodation in the then Eastern Health Board area, including the greater Dublin area.<sup>51</sup> Emergency accommodation was also sourced at various other centres, including army barracks, outside this area.<sup>52</sup> With effect from 10 April 2000, the direct provision and dispersal systems became official government policy. Asylum applicants are now housed in dedicated centres, usually outside Dublin, and receive a weekly allowance. On 2 April 2001, the Directorate for Asylum Support Services was subsumed into the Reception and Integration Agency (RIA). This Agency assumed responsibility for the administration of the

<sup>48</sup> A letter written in 1985 by the then Assistant Secretary for the Department of Justice, to the UNHCR in London (which became known as the Von Armin letter) set out what was to be the practice within the Irish State in regard to the processing of claims for asylum. The courts later deemed the letter to be legally binding and it served as the legal basis for asylum procedures up until 1997. Fraser, Ursula, *The asylum procedure*. Cited in Fraser, U. and Harvey, C. (2003). *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*. Dublin: IPA.

<sup>49</sup> Kenny, Catherine (2003). *Asylum in Ireland: The Appeal Stage: A Report on the Fairness and Sustainability of Refugee Determination at Appeal Stage*. Dublin: Irish Refugee Council.

<sup>50</sup> Until April 2000 asylum applicants were provided with the same welfare support as others in the State, i.e. means tested payments through the Supplementary Welfare Allowance scheme and, where applicable, rent supplement. Asylum applicants were required to lodge their claim in Dublin. The provision of accommodation to asylum applicants at that time fell mainly to the then Eastern Health Board as most people arrived in Dublin.

<sup>51</sup> Written answer by Minister for Health and Children to Parliamentary Question 11 April, 2000. <http://historical-debates.oireachtas.ie/D/0517/D.0517.200004110199.html>.

<sup>52</sup> Quinn and Hughes (2005b).

direct provision system in Ireland as well as for the provision of other supports to asylum applicants and integration supports to refugees. As of 31 December 2011, there are 39 centres in the RIA portfolio, across 18 counties. Occupancy was 5,423 persons out of a contracted capacity of 5984, representing an occupancy rate of 91 per cent.<sup>53</sup>

The establishment of the Refugee Legal Service (RLS) in 1999 and the Garda National Immigration Bureau (GNIB) in 2000 were also important parts of the new institutional structure constructed at this time to deal with the unprecedented flows of asylum applications. The GNIB was established with an initial brief to execute deportation orders, primarily issued in respect of unsuccessful asylum applicants. Its scope has since increased and it is now responsible for all Garda matters pertaining to immigration on a national basis.<sup>54</sup>

With the various organisations of the asylum system in place, the focus turned to processing times and the backlog of asylum cases that had accumulated. The *Refugee Act 1996* was amended again by the *Immigration Act 2003* which provided for a number of measures designed to speed up the asylum process namely an increased duty to cooperate on the applicant; where this obligation is not met the application is deemed withdrawn and his/her application rejected.

The Minister for Justice, Equality and Defence was empowered to designate 'safe countries of origin' in consultation with the Minister for Foreign Affairs and Trade for the purpose of considering asylum applications from nationals of those States. Asylum seekers from these countries are presumed not to be refugees unless they can show reasonable grounds for the contention that they are refugees.

The Minister for Justice, Equality and Defence was empowered to issue prioritisation directives for certain categories of applicants including apparently unfounded claims, apparently well-founded claims and cases of family reunification. These arrangements continue to apply to nationals of Croatia and South Africa. They also applied to Romania and Bulgaria prior to their accession to the EU on 1 January 2007. A prioritisation directive requires ORAC and RAT to deal with the specified category of cases as soon as possible. In 2010, 6.9 per cent of all applications were processed under the 'Ministerial Prioritisation Directive', which was introduced by legislation in September 2003. In effect, all prioritised applications (except those that could not be processed for health and/or other compelling reasons) are scheduled for interview within nine to 12 working days from the date of application and completed within a further eight

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<sup>53</sup> RIA Monthly Report December 2011 (2012). Available at: [http://www.ria.gov.ie/en/RIA/RIADec\(A4\)2011.pdf/Files/RIADec\(A4\)2011.pdf](http://www.ria.gov.ie/en/RIA/RIADec(A4)2011.pdf/Files/RIADec(A4)2011.pdf).

<sup>54</sup> INIS Report on Review of Immigration and Asylum (2006). Available at: <http://www.inis.gov.ie/en/INIS/VFMReport.pdf/Files/VFMReport.pdf>.

working days, giving an average processing time of 17 to 20 working days from the date of application.<sup>55</sup>

A more streamlined accelerated procedure was introduced at appeal stage aimed at those applicants found not to be refugees at first instance and whose cases display certain features considered to be indicative of abuse of the asylum process including a delay in making an application for asylum without reasonable cause and manifestly unfounded claims.

The *Social Welfare (Miscellaneous Provisions) Act, 2003* which commenced in May 2003, restricted the awarding of a rent supplement to asylum seekers who wish to live outside the direct provision system. The *Social Welfare (Miscellaneous Provisions) Act 2004* resulted in the withdrawal of child benefit from asylum seekers as a result of the Habitual Residency Condition (see below).

As a result of such changes together with lower numbers of asylum applications, processing times were quickly reduced after 2003. A large number of cases on hand were closed. The number of new asylum applications lodged per year fell quickly after the 2002 peak: new applications made in 2011 were just 11 per cent of the number made in 2002. The fall may be attributed in part to the changes designed to speed up the applications procedures described above, but also to changes in relation to citizenship and residency discussed in Section 3.2.2.1 below and to the introduction of carrier liability in the *Immigration Act 2003*. This means that carriers are now required to check that individuals have appropriate documentation before allowing that person to board a vehicle. The EURODAC system came into operation in January 2003 and had the effect of increasing the number of Dublin II transfers sought and effected. The Irish government also worked closely on a bilateral basis with the UK and France to tackle misuse of the asylum system.

In 2006 the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)* were introduced to give effect to the European 'Qualification Directive', which came into force in October 2006 and which provides, inter alia, for a system of subsidiary protection. The Minister for Justice, Equality and Defence is now responsible for considering applications for subsidiary protection after an application for refugee status is determined.<sup>56</sup>

In October 2008, the Government agreed to a new round of Value for Money (VFM) reviews for the period 2009 - 2011. One of the expenditure programmes

<sup>55</sup> *Office of Refugee Appeals Commissioner Annual Report (2010)*. Available at <http://www.orac.ie/pdf/PDFCustService/AnnualReports/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%20Annual%20Report%20-%202010.pdf>.

<sup>56</sup> An applicant may be granted subsidiary protection if they a) are not a national of a Member State of the European Union, b) have been refused a declaration as a refugee in Ireland, and c) substantial grounds have been shown for believing that, if returned to the country of origin, or country of former habitual residence, an individual would face a real risk of suffering serious harm and are unable, or, owing to such risk, unwilling to avail of the protection of that country.



to be the subject of such a review was the provision of full board accommodation services for asylum seekers (Direct Provision) by the Reception and Integration Agency (RIA). The Review had a number of purposes. It had to examine (with particular concentration on 2005 to 2008) the aims and objectives of the programme and determine if those aims and objectives remain relevant and warrant the continued allocation of public funds; to determine whether the programme is providing value for money; to make recommendations as to how the value for money of the programme can be improved; to examine alternatives to the programme and to determine whether those alternatives would provide better value for money. The review found that these options would be significantly more expensive than direct provision and concluded that using direct provision has proven to be the correct choice in providing for the accommodation needs of asylum seekers.<sup>57</sup>

### 3.2.2 Development of the Migration System

For the reasons discussed above the government prioritised the development of the asylum system from the late 1990s to mid 2000s. However the data in Tables 3.6 and 3.7 illustrate the fact that the immigration, citizenship and visa services were also under severe strain. Sufficient resources were not available to meet increased demand in these areas and this led to backlogs in dealing with applications as well as longer processing timeframes. Immigration policy evolved in an often ad hoc manner, responding to problems as they arose.

In 2004 within the Department of Justice and Equality, the Immigration Operations Unit was responsible for permission to remain, state entry/re-entry, travel documents and EEA residence permits. General Immigration was responsible for family reunification, change of name, general permission to remain, diplomatic passports, without condition stamps and proposals to deport.

Around 2004 to 2005 priority began to shift onto the areas of immigration, visas and citizenship. In March 2005 the Irish Naturalisation and Immigration Service (INIS) was established to provide a 'one stop shop' for immigration, asylum, visas and citizenship services. The Visa Office of the Department of Foreign Affairs transferred to INIS in January 2006.

<sup>57</sup>

Reception and Integration Agency (2010) *Value for Money and Policy Review, the Asylum Seekers Accommodation Programme*. Available at <http://www.ria.gov.ie/en/RIA/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf/Files/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf>.

**Table 3.6 Applications for Naturalisation Received 2000-2011**

Year	Applications for Naturalisation Received
2011	28,000*
2010	25,671
2009	28,000
2008	11,000
2007	7,500
2006	7,030
2005	4,523
2004	4,074
2003	3,580
2002	3,574
2001	1,431
2000	1,004

**Source:** 2000-2006 Parliamentary Question no. 221. Available at <http://debates.oireachtas.ie>.  
 2007-2009 Parliamentary Question no. 82 [39323/11]. Available at:  
<http://debates.oireachtas.ie/dail/2011/12/08/00089.asp>.  
 2010-2011 Parliamentary Question no. [38890/11] Available at:  
<http://debates.oireachtas.ie/dail/2011/12/06/00245.asp>.

**Note:** \* Preliminary.

Table 3.6 shows that the workload of the citizenship section multiplied many times between 2000 and 2011. The investigations carried out by the Department before citizenship may be granted are necessarily detailed and intensive. In 2011 over 111,000 new or renewed registrations of permission to remain in the State were issued by the GNIB. This number is over twice the number registered in 2000, when only 47,000 people registered. The provisional 2011 year-end estimate of non-EEA nationals with permission to remain in the state is approximately 130,500.<sup>58</sup> The GNIB manage a database (GNIB information system) containing the details of legally-resident non EEA nationals, asylum applicants and those persons evading deportation orders. Every non-EEA national resident in Ireland must register with GNIB and re-register as required.

**Table 3.7 Persons Registered with GNIB (New Registrations plus Renewals)**

Year	No. Registered with the GNIB
2011	130,500 **
2007	155,253
2004	133,957
2000	47,000*

**Source:** Department of Justice and Equality.

**Notes:** \* Approximate figure  
 \*\* Provisional figure.

In December 2011 Ireland and the UK signed a historic agreement reinforcing their commitment to preserving the Common Travel Area (CTA) while further clamping down on illegal immigration and 'spurious asylum claims'. The

<sup>58</sup>

Department of Justice and Equality 'Immigration in 2011 - a year-end snapshot - major changes and more to follow.' Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

countries signed a statement working towards joint standards for entry and ultimately enhanced electronic border systems to identify those with no right to enter the CTA before they arrive at the border. The agreement promotes the exchange of information such as fingerprint biometrics and biographical details, particularly from 'high risk' countries, as part of the visa issuing process.<sup>59</sup>

In 2005 outline policy proposals for an Immigration and Residence Bill were published. In 2007 an Immigration, Residence and Protection Bill was published with a broader than anticipated scope i.e. proposing to replace existing refugee legislation as well as codify the immigration systems in law. This Bill fell with the change of government in 2007, a new *Immigration, Residence and Protection Bill 2010* also fell with the change of Government. It is expected that a redrafted Bill will be enacted in late 2012. In anticipation of this Bill, Irish immigration systems are being organised in a more consistent way, with information on procedures more accessible than before. Information on recent progress in relation to IT systems is provided in Section 4.8. The Minister for Justice, Equality and Defence has also signalled his broad plans for further significant reforms of the immigration system in 2013.

In early 2011 a review of immigration and asylum services took place; INIS, ORAC, RAT and RIA were all assessed. Following the review, functional responsibilities within a number of INIS Divisions have been re-aligned to further consolidate activities and to achieve greater coherence on service delivery. Priority work objectives have been agreed as part of the INIS Business Transformation Work Programme. Staff members were deployed to priority areas and all immigration and asylum departments are focusing on removing the current backlog of applications, and are focused on providing more streamlined and effective services.<sup>60</sup>

In terms of planned developments, the Minister for Justice, Equality and Defence has undertaken to develop a comprehensive policy approach to family reunification or settlement in 2012. The concentration will be on cases involving non-EEA family members of Irish citizens and also those where both parties come from outside the EEA. While the Government must retain the discretion to determine the State's approach to immigration, bearing in mind wider concerns of public policy, the Minister considers that a clear statement of policy will be of benefit to prospective migrants and all those involved in immigration management. The Department of Justice and Equality also plans to complete

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<sup>59</sup> <http://www.justice.ie/en/JELR/Pages/PR11000267>.

<sup>60</sup> Public Service Agreement 2010-2014 (Croke Park Agreement) Part B - Savings Verification - Department of Justice and Equality. Available at <http://www.justice.ie/en/JELR/Savings%20Template%2012.4.11-%20Department.pdf/Files/Savings%20Template%2012.4.11-%20Department.pdf>.

the development of an English language/civics test for naturalisation applicants during 2012.<sup>61</sup>

### 3.2.2.1 *Developments in the Acquisition of Citizenship*

There have been very significant policy developments in relation to non-Irish nationals and Irish citizenship in recent years. In the past non-Irish parents of Irish-born children could apply for residency in Ireland based on the Irish citizenship of their child. This led to concerns that people were travelling to Ireland and having children in order to gain that status. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the *Irish Nationality and Citizenship Act 2004*, which commenced in January 2005. The 2004 Act provides that any person born in Ireland after 1 January 2005 to non-Irish parents will not be automatically entitled to Irish citizenship unless one of the parents was lawfully resident in Ireland for at least three out of the four years preceding the child's birth. The Act has the effect that it is no longer possible for all persons born in Ireland to obtain automatic Irish citizenship.

An Irish Born Child Unit was established in 2005 to deal with applications for residency by family members of Irish born children. In January of that year the Department of Justice and Equality moved to clarify the position of the non-Irish national parents of Irish born children who had applied for residency on the basis of their Irish child but had had their claims suspended in 2003. Such persons were invited to apply under the *Irish Born Child 2005 Scheme (IBC/05)*. This was a special Scheme under which non-Irish national parents of Irish children could apply for permission to remain in the State. Almost 18,000 applications were submitted under the Scheme. Of these, 16,693 were approved.<sup>62</sup> In 2007 under the IBC/05 renewal scheme, many people granted leave to remain through the scheme had their leave to remain extended for three years subject to certain conditions. In 2010 successful applicants could again apply for a further three-year extension of their leave to remain. After they have been resident in Ireland for five years they are eligible to apply for Irish citizenship.<sup>63</sup>

In a development related to citizenship in March 2011, the European Court of Justice (ECJ) ruled in the Zambrano case (C 34/09), that an EU Member State may not refuse the non-EU parents of a dependent child, who is a citizen of,

<sup>61</sup> Immigration in Ireland - a year-end snapshot. Available at: <http://www.inis.gov.ie/en/INIS/Pages/Immigration%20in%20Ireland%202011%20%E2%80%93%20a%20year-end%20snapshot%20%E2%80%93%20major%20changes%20and%20more%20to%20follow> .

<sup>62</sup> Department of Justice and Equality (May 2006).

<sup>63</sup> This group do not have a right to family reunification but anyone who is entitled to reside and remain in the State may apply to the Minister to permit family members to join them. The Minister for Justice, Equality and Defence can grant or refuse permission on a discretionary basis. In addition, foreign national parents granted leave to remain under the Irish Born Child Scheme (IBC/05) are not eligible for maintenance grants or free fees for third-level education.

and resident in, an EU Member State, the right to live and work in that Member State. The Department of Justice and Equality is examining the cases of non-EEA parents of Irish citizen minor children which may meet the criteria specified in the Zambrano judgment. If they meet the Zambrano criteria, the non-EEA parents may be given permission to live and work in Ireland without the requirement for an employment permit or business permission.<sup>64</sup> To date, 1,680 persons have applied to INIS to have their case to remain in the State examined in accordance with the principles set out in the Zambrano judgment. To date, decisions have been made in 925 cases with permission to remain in the State granted in respect of 791 of this number. In addition, 193 cases were subject to judicial review proceedings in cases where a link to the Zambrano judgment had been identified. To date, 148 of these cases have been granted permission to remain in the State under the terms of the Zambrano judgment. The majority of the remaining outstanding applications are cases where all of the required documentation and information has not yet been submitted and where this is the case, the persons involved have been advised in writing as to what further documentation or information is required.<sup>65</sup>

Within INIS, the Asylum Policy Division, the Immigration Policy Unit, and the Immigration and Citizenship Division work closely together on issues as they arise, for example on the implications of the recent Zambrano case. Recently a new unit was set up in INIS named the Central Investigations Unit, which brings together personnel from existing units in INIS including from the Visa Section and EU Treaty Rights Section. The Central Investigations Unit carries out immigration-related inspections across all areas, to ensure compliance with immigration conditions.<sup>66</sup>

During 2011 the Minister for Justice, Equality and Defence introduced reforms to the processing of citizenship applications which were aimed at tackling a backlog of applications. The backlog had arisen in part due to the increase in the volume of naturalisation applications in recent years; from 1,000 applications in the year 2000 to 25,671 in 2010, an almost 25-fold increase in the ten-year period.<sup>67</sup> The new measures were also introduced with the aim of processing almost all new citizenship applications within six months. These measures have resulted in a significant increase in the number of cases decided with double the volume of valid applications being decided in 2011, some 16,000, compared to 2010, when fewer than 8,000 were decided. By summer of 2012 the Department anticipates that all standard applications, those including

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<sup>64</sup> [www.citizensinformation.ie](http://www.citizensinformation.ie).

<sup>65</sup> Written answer to Parliamentary Question by Minister for Justice, Equality and Defence Thursday 29 March, 2012. <http://debates.oireachtas.ie/dail/2012/03/29/00157.asp>.

<sup>66</sup> <http://www.inis.gov.ie/en/INIS/Guidelines%20for%20Colleges%20-%20August%202011.pdf/Files/Guidelines%20for%20Colleges%20-%20August%202011.pdf>.

<sup>67</sup> Department of Justice and Equality 'Immigration in Ireland 2011 - a year-end snapshot'. Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

non-complex cases, which account for 70 per cent of all applications, will be completed within six months.<sup>68</sup>

In 2011 the Minister for Justice, Equality and Defence also introduced citizenship ceremonies for the first time in the State. The ceremonies are designed to give a sense of occasion to the granting of citizenship for new citizens. Persons from 112 countries attended 28 citizenship ceremonies in 2011; in April 2012 4,000 people attended a citizenship ceremony in Dublin.<sup>69</sup>

### 3.2.3 Development of an Employment Permits System

Prior to 2002 work permits were issued to non EEA workers in any occupation. The numbers issued were relatively low: less than 6,000 in 1999.<sup>70</sup> A working visa/authorisation programme was introduced in 2000 to facilitate the recruitment of highly-skilled workers. A work visa/authorisation was a fast track employment permit issued to highly skilled non-EEA personnel mainly in IT, medical and construction sectors.

Ruhs (2005)<sup>71</sup> characterises the development of the Irish work permit system (as distinct from work visa/authorisation system) as laissez-faire until April 2003 with more interventionist policies emerging after that date. Prior to the enactment of the first *Employments Permit Act*, in April 2003 the work permit system was almost entirely employer-led with little government intervention. For example before 2002 there was a voluntary requirement on the employer to check on the availability of local workers before applying for a work permit for a non-EEA national. After January 2002, employers had to advertise their vacancy within the EU for four weeks before applying for a new permit and provide evidence of their search to the Department of Jobs, Enterprise and Innovation.

Since 2003, migration policy in relation to non-EEA nationals is to meet skills needs that cannot be met from within the EU by attracting workers with high or scarce skills and to attract workers to areas where there are labour shortages.<sup>72</sup> The emphasis has been on facilitating the participation of EU nationals in the Irish labour market. The *Employment Permits Act 2003* was introduced to facilitate access to the Irish labour market to nationals of the new EU accession states after 1 May 2004. The Act also incorporated a provision whereby, for the first time, the requirements for employment permits in respect of non-Irish

<sup>68</sup> Department of Justice and Equality 'Immigration in 2011 - a year-end snapshot- major changes and more to follow.' Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>69</sup> Department of Justice and Equality 'Immigration in 2011 - a year-end snapshot - major changes and more to follow.' Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>70</sup> Ruhs (2005) *Managing the Immigration and Employment of Non-EU nationals in Ireland*.

<sup>71</sup> Ruhs (2005) *Managing the Immigration and Employment of Non-EU nationals in Ireland*.

<sup>72</sup> See Quinn and O'Connell (2008) for further discussion on the development of Irish highly skilled migration policy.

nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance.

In 2003 a list of occupations was published in which work permits could no longer be issued as it was believed there were sufficient personnel in the EU to meet labour demands. Late in 2003 the Department of Jobs, Enterprise and Innovation began to implement a policy of preference for work permit applications made in respect of accession country nationals. They sent applications made in respect of non-accession state nationals back to employers, with an explanation of policy, in cases where experience had shown that the requisite skills were available in the accession countries. Employers were also informed that an application to fill the post in question with an accession state national would be more likely to succeed.<sup>73</sup>

In February 2004 the Minister for Jobs, Enterprise and Innovation announced that the spouses of certain categories of migrant workers could apply to work in Ireland under a new spousal work permit scheme. Spouses still required a work permit to take up employment in Ireland but the procedure was simplified and made more favourable to the spousal applicant. A revised spousal permit scheme was introduced in 2007, extending the existing scheme to spouses of all permit holders and not just spouses of certain skilled non-EEA nationals working in Ireland.

Romania and Bulgaria acceded in January 2007 and it was announced by the Government that nationals from these countries would continue to require a work permit to access the Irish labour market. This requirement was later lifted in 2012.

In January 2007 a new Employment Permits Scheme was introduced that significantly altered the system of highly skilled labour migration to Ireland. Work visas/authorisations were phased out and a green card was introduced which applies to an extensive list of occupations with annual salaries of €60,000 and above, and to a more limited list of occupations with salaries between €30,000 and €60,000. A revised work permit scheme was introduced mainly for non-green card occupations in the €30,000 to €60,000 annual salary range and for occupations with salaries below €30,000 in exceptional circumstances only. This new employment permits system further develops Ireland's policy of limiting non-EEA labour migration to areas of skills or labour shortages that cannot be met from within the EU. Table 3.8 shows the number of employment permits issued in the period 2004-2011.

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See Quinn and Hughes (2005a) for more information.

**Table 3.8 Employment Permits Issued 2004-2011.**

	New	Renewals	Issued	Refused	Withdrawn
2011	3,184	2,016	5,200	1,007	201
2010	3,394	3,877	7,271	990	199
2009	4,024	3,938	7,962	1,901	442
2008	8,481	5,086	13,567	13,567	2,288
2007	10,134	13,457	23,604	23,604	2,342
2006	7,298	16,600	24,854	24,854	1,191
2005	7,354	18,970	27,136	27,136	1,215
2004	10,020	23,246	34,067	34,067	1,486

*Source:* Department of Jobs, Enterprise and Innovation

In response to a tightening labour market certain restrictions were introduced to the employment permit scheme in 2009. The list of occupations qualifying for green cards was revised and a number of occupations were removed. The labour market needs test was strengthened. New rules were introduced which had the effect that the vacancy must now be advertised with the FÁS/EURES employment network for eight weeks and in national media for six days.<sup>74</sup> The spouses of first time new work permit holders are no longer eligible for a spousal work permit and must instead hold a permit in their own right.

Also since August 2009 work permit holders, who were employed in Ireland on a work permit but who have been made redundant, may remain for six months to look for new employment. Under these circumstances any new job secured would not be subject to a labour market needs test. Migrant workers who have been legally resident in the State for five years on the basis of a work permit may apply for a five-year residency extension and may apply to work without a work permit. In August 2009 this provision was extended to work permit holders who had been made redundant after five years or more. The green card as introduced in January 2007 was intended to lead directly to long-term residence after two years. The delays in enacting the necessary legislation mean that this intention cannot yet be fulfilled. As an interim measure green card holders who reach the end of their initial two-year residence may have their residence permission renewed for an additional two years (increased in 2010 from one year) (Quinn, 2010).

<sup>74</sup>

[http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/work\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/work_permits.html).



# Chapter 4

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## Organisation of Asylum and Migration Policy

### 4.1 ENTRY PROCEDURES

#### 4.1.1 Asylum (Entry Procedures)

Section 9 (1) of the *Refugee Act 1996* provides that a person who arrives at the frontiers of the State seeking asylum or otherwise indicating an unwillingness to leave the State for fear of persecution, shall be given leave to enter the State. The *Refugee Act* provides that persons arriving at the frontiers of the State seeking asylum are initially dealt with by an immigration officer.

An immigration officer conducts a preliminary interview with the applicant. The purpose of this interview, which is provided for in Section 8(2) of the Act, is to establish inter alia whether the person wishes to make an application for a declaration for refugee status. The interview establishes the general grounds upon which the application is based, the identity of the person and their nationality, transport and route taken to reach Ireland, as well as the legal basis for entry into or presence in the State. The Act also specifies that the interview shall be conducted in the presence of an interpreter where necessary and possible. A copy of this interview is provided to the applicant and another copy is forwarded to ORAC together with any documentation submitted.<sup>75</sup> The applicant is also informed that he/she is entitled to consult legal counsel and the UNHCR. As part of the asylum process applicants have their photographs and fingerprints taken. Fingerprints may be disclosed in confidence to the relevant Irish authorities and to asylum authorities of other countries, which may have responsibility for considering applications under the Dublin II Regulation. If an applicant has a previous criminal or asylum seeking history they may be detained for questioning.

Section 8(5) (a) of the *Refugee Act 1996*, as amended, provides that

*where it appears to an immigration officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer shall, as soon as practicable, so inform the Health Service Executive in whose functional area the child is and*

*thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child.*

Section 8(5) (b) of the Refugee Act, 1996 provides that

*Where it appears to the Health Service Executive, on the basis of information available to it, that an application for a declaration should be made by or on behalf of a child referred to in paragraph (a), the Health Service Executive shall arrange for the appointment of an employee of the Health Service Executive or such other person as it may determine to make an application on behalf of the child.*

The purpose of Section 8(5) of the Refugee Act, 1996 is twofold namely to:

- ensure the protection of unaccompanied minors by bringing them to the attention of the relevant statutory body in the State and
- enable them to make an asylum application via the Health Service Executive if deemed appropriate by that body.

Information on the asylum procedure is not given at borders, instead any person entering the State who declares that they intend to seek asylum in Ireland is required to report to the Office of the Refugee Applications Commissioner (ORAC) for the further processing of their application. Persons who do not present themselves at the frontiers of the State may apply directly at the ORAC office in Dublin. In such cases the preliminary interview is conducted by a designated official of ORAC. In practice, the vast majority of applications are made directly at the Office of the RAC rather than at ports of entry. Information on the asylum procedure and asylum applicant's rights are given at ORAC offices. Applicants are given a number of documents including an information leaflet on the asylum procedures and refugee status in Ireland (available in a wide selection of languages), and a 'Refugee Legal Service Information Leaflet' on the right to consult a legal representative and the UNHCR.<sup>76</sup>

The Minister for Justice, Equality and Defence may give a direction in writing to the Commissioner and the Tribunal to prioritise asylum applicants' cases by reference to certain matters including the country of origin of the applicant, the age of the applicant, where there are national security/public policy issues and where there is a probability that the application is well-founded. In such cases the application will be given priority and may be dealt with before other applications by the Commissioner and if necessary the Refugee Appeals Tribunal. If the investigation of an applicant's claim is to be prioritised they will be informed of this at the preliminary interview.

<sup>76</sup>

<http://www.orac.ie/PDF/Leaflets/Revised%20General%20Information%20Leaflet%20with%20effect%20from%2015%20September,%202003.pdf>.

The Minister for Justice, Equality and Defence is the person who will make the decision to either grant or refuse a declaration as a refugee in accordance with Section 17 of the *Refugee Act, 1996 (as amended)*. The decision of the Minister will be based on the recommendation of the Refugee Applications Commissioner or the Refugee Appeals Tribunal (if appropriate). The Minister also decides applications for leave to remain. Leave to remain is a status which is granted at the discretion of the Minister for Justice, Equality and Defence to persons whose claims for asylum are not considered to meet the criteria set out in the *1951 Geneva Convention* but who are not returned home for humanitarian or for some other compelling reason. Persons granted leave to remain have many of the same rights as persons granted refugee status. The Minister also considers applications for subsidiary protection under the *European Communities (Eligibility for Protection) Regulations 2006 [S.I. No. 518 of 2006]*.<sup>77</sup>

Since 1998, under the UNHCR Refugee Resettlement Programme, Ireland has agreed to admit, on a yearly basis, a number of 'special case' refugees (and their close relatives) who do not come under the scope of Ireland's obligations under the *Geneva Convention of 1951*. 'Programme Refugees', in contrast to asylum applicants, are admitted for the purpose of permanent resettlement rather than for temporary protection. Cases are selected following face to face interviews by UNHCR, in the country of refuge or on the basis of a paper-based application. During 2011 some 45 refugees were admitted to Ireland under the Resettlement Programme: nationals from Sudan, Morocco, Ethiopia, Iraq and Eritrea were resettled under the programme. Between 2008 and 2011, 358 resettlement programme refugees were admitted to Ireland.<sup>78</sup>

Some 23 unaccompanied minors applied for asylum in Ireland during 2011.<sup>79</sup> From January 2010 onwards all newly arriving unaccompanied minors under 12 years are placed on arrival in a foster care placement. All newly arrived minors over 12 years are placed in one of the four registered residential intake units for four to six weeks, where a preliminary assessment of the minor and their needs is carried out.

#### 4.1.1.1 *Family Reunification for Recognised Refugees*

Persons granted refugee status in Ireland under the Geneva Convention, can apply to the Minister for Justice, Equality and Defence for family reunification under Section 18 of the *Refugee Act 1996*. Applications are made to INIS and then passed to the Office of the Refugee Applications Commissioner for

<sup>77</sup> <http://www.irishstatutebook.ie/2006/en/si/0518.html>.

<sup>78</sup> <http://www.integration.ie/website/omi/omiwebv6.nsf/page/resettlement-overviewofrecentrefugeeresettlementprogrammes2000-2011-en>.

<sup>79</sup> [http://www.ria.gov.ie/en/RIA/RIADec\(A4\)2011.pdf/Files/RIADec\(A4\)2011.pdf](http://www.ria.gov.ie/en/RIA/RIADec(A4)2011.pdf/Files/RIADec(A4)2011.pdf).

investigation, and a notification is given to the United Nations High Commissioner for Refugees.

On completion of its investigation, ORAC submits a report to the Minister for Justice, Equality and Defence for a final decision. If the Minister is satisfied, after considering the report from the Refugee Applications Commissioner, that the subject of the application is a member of the refugee's family or a civil partner, the Minister may grant permission in writing to the person to enter and reside in the State. A refugee may apply for their spouse or civil partner, and also may apply for permission for his/her children who are under the age of 18 and unmarried. The Minister for Justice, Equality and Defence also has discretion to grant permission for other dependent family members to be reunified with a refugee (grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee) provided clear evidence of dependency is shown.<sup>80</sup> Where the Minister grants permission for family reunification, subjects of an application who are outside the State may then be instructed to apply for a visa. Subjects of an application over the age of 16 who are already present in the State are instructed to register with GNIB. If the application is denied there is no way in which to appeal the decision, unless significant new information becomes available, in which case an application may be made again. In the case of a person who has been issued a notice of refusal for a declaration as a refugee, the Minister may make an order in accordance with Section 3 of the *Immigration Act, 1999* requiring that person to leave the State.

A total of 323 applications (representing 581 persons) for family reunification by recognised refugees were received and overseen by ORAC during 2010. Some 317 cases (representing 576 dependants) were commenced during the year, with 260 cases (representing 493 dependants) considered completed with a report sent to the Minister for Justice, Equality and Defence. As of year-end 2010, some 177 cases (representing 313 persons) remained outstanding with the ORAC. The main countries of nationality of those submitting applications for family reunification during 2010 were Somalia (42 cases), Sudan (42 cases), Iraq (34 cases), Nigeria (27 cases) and Afghanistan (32 cases).<sup>81</sup> Data is currently unavailable for family reunification applications in 2011, as statistics are currently under review after the implementation of a new IT system. In 2012 ORAC received 31 applications in the period until 29 February.<sup>82</sup>

Significant progress had been made in reducing the waiting period for decision of applications for family reunification for refugees to 15-16 months. However the Minister for Justice, Equality and Defence has stated that family reunification cases can give rise to longer than average processing times because of the necessary checks to establish the family relationships and,

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<sup>80</sup> "Family Reunification Information Leaflet". Available at <http://www.inis.gov.ie>.

<sup>81</sup> Joyce (2010) Annual Policy Report on Migration and Asylum 2010: Ireland.

<sup>82</sup> ORAC(2012) February Monthly Statistics 2012. Available at: <http://www.orac.ie/pages/Stats/2012.htm>.

where appropriate, dependency on the applicant. This work includes the examination and verification of relevant documentation and other background investigations.<sup>83</sup>

#### 4.1.1.2 Detention at the Border

If an asylum or visa applicant is suspected to have a criminal record, or to be attempting to irregularly enter the country, or have irregularly entered another country they can be detained at the border. There are no detention centres in Ireland for the exclusive housing of immigration detainees, instead prisons are availed of. The circumstances in which an asylum seeker may be detained (Section 9 (8) of the *Refugee Act 1996*) are where it is suspected that he or she; poses a threat to national security or public order in the State; has committed a serious non-political crime outside the State; has not made reasonable efforts to establish his or her true identity; intends to avoid removal from the State in the event of his or her application for asylum being transferred under Dublin II Regulation or to a safe third country; intends to leave the State and enter another state without lawful authority without reasonable cause; does not possess valid identity and travel documents; or where the documents have been destroyed or are forged.<sup>84</sup> However INIS officials interviewed for the study indicate that detention is rarely availed of, the vast majority of people who are refused entry are redirected back on a flight and leave the country straight away. Detention is only used where absolutely necessary, such as when a person refuses to cooperate. When detention is used, the incarceration takes place for the minimum possible time, and is only permissible for the purpose of their removal from the State.<sup>85</sup> Under Section 5 of the *Immigration Act 2003* a person can be detained for fifty-six days for the purpose of their removal from the State.<sup>86</sup>

### 4.1.2 Migration (Entry Procedures)

#### 4.1.2.1 Pre Entry Visas

The Minister for Justice, Equality and Defence is the Minister responsible for setting overall visa policy. The Irish Naturalisation and Immigration Service has responsibility for administering the statutory and administrative functions of the Minister in relation, inter alia, to visas. Within INIS, the Visa Unit is responsible for processing and deciding visa applications. Visas are the first stage of Ireland's immigration regime. An Irish visa is a form of pre-entry

<sup>83</sup> Written answer by Minister for Justice, Equality and Defence, to Parliamentary Question Tuesday 5 July, 2011 <http://debates.oireachtas.ie/dail/2011/07/05/member355.asp>.

<sup>84</sup> <http://www.inis.gov.ie/en/INIS/Pages/Detention>.

<sup>85</sup> Interview with INIS official.

<sup>86</sup> <http://www.irishstatutebook.ie/2003/en/act/pub/0026/sec0005.html>.

clearance to travel to a point of entry to the State.<sup>87</sup> An Irish visa is a certificate placed on the individual's passport or travel document to indicate that they are authorised to land in the State subject to any other conditions of landing being fulfilled. All non-EU citizens, whether visa-required or not, are subject to ordinary immigration controls at the port of entry.

Pre departure information is available through the Department of Foreign Affairs and Trade website<sup>88</sup>, and the INIS website.<sup>89</sup> Since mid 2009, all applications for Irish visas must be made via an online system called the Automated Visa Application Tracking System (AVATS). Completing the online application form is the first step in the visa application process. An application can only be processed when the online form is completed and the required supporting documentation, passport photograph and appropriate fee are received by the relevant office as indicated by the online system.<sup>90</sup> Applications should be made at least eight weeks before travel.

On application for a visa individuals intending to travel to Ireland must indicate:

- 1) Whether their travel will be for a short stay (C Visa: 90 days or less) or a long stay (D visa: over 90 days).
- 2) Whether their application is for a single journey or multiple journeys. It is not general practice to issue multiple-journey visas unless the applicant can show a compliant travel history to Ireland in the recent past.
- 3) The purpose of their travel: visit, tourist, business, to join spouse/parent (Irish, EEA or non-Irish/EEA), conference/performance, medical treatment, study, employment, research, other, or with a Van der Elst Visa.<sup>91</sup>

Applicants must also supply personal and family details, information on previous visa applications and migration history, employment/college details in the country of origin, information on who the applicant will travel with, contact and (if relevant) employment/study information in Ireland. The completed application is then submitted online and documents sent to the Irish Embassy/Consulate or Visa office in, or accredited to, the applicant's country of permanent residence.

The application must be accompanied by a photograph and the relevant fee. The standard visa application processing fees are: single-journey visa €60,

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<sup>87</sup> Quinn (2011) Visa Policy as a Migration Channel: Ireland.

<sup>88</sup> [www.dfa.ie/index.aspx](http://www.dfa.ie/index.aspx).

<sup>89</sup> <http://www.inis.gov.ie>.

<sup>90</sup> <http://dfa.ie/home/index.aspx?id=8605>.

<sup>91</sup> Holders of a Van der Elst Visa do not require a work permit to work in Ireland: to qualify for such a visa a person must be lawfully employed in another EU Member State, and must be coming to Ireland to provide services on behalf of their employer.

multiple-journey visa €100, transit visa €25.<sup>92</sup> Some applicants are not required to pay a fee including visa-required spouses and certain family members of EEA citizens (including Irish nationals) provided that proof of the relationship is submitted with the application. In addition, applicants from some countries are not required to pay a fee, an administration or communications fee may apply in respect of some of these countries.

In July 2011 the government introduced a new Short-stay Visa Waiver Programme for holders of certain UK visas. Under this pilot scheme, passport holders from 16 named countries, who are granted a UK visa and who have a current permission to be in the UK, are able to travel to Ireland without the requirement to obtain an Irish visa.<sup>93</sup> In March 2012 Minister for Justice, Equality and Defence announced that the Visa Waiver programme would be extended for a further period of four years. The Minister also announced the following changes to the programme: Bosnia and Herzegovina are to be added to the existing list of 16 countries already covered by the programme; as a further measure to encourage tourism, the fee for visas will be waived for long-term residents in the countries covered by the programme who live in the Schengen area.<sup>94</sup>

The Irish visa system is essentially discretionary, whereby the Minister for Justice, Equality and Defence decides whether or not to grant applications for visas; exceptions relate to beneficiaries of EU Treaty-based free movement rights.<sup>95</sup> EEA nationals and nationals of other specified countries specified in *S.I. No. 657 of 2006 Immigration Act 2004 (Visas) (No. 2) Order 2006* do not need an entry visa before arriving in Ireland. People from other countries need a valid Irish entry visa before arrival, whether by air, sea or land. *S.I. No. 657 of 2006* also includes a shorter list of transit visa-required countries. A transit visa does not permit the holder to leave the port/airport, only to transit to an onward connection, and the person must have a valid visa (if required) for their final destination.

Applicants for a visa for employment must have their work permit/green card number to insert on the form as well as the details of their proposed employment. Applicants for a student visa must have been accepted onto a recognised course in a recognised college, and must supply detailed information on their proposed studies. The educational and other credentials of a college will be taken into consideration by the Department of Justice and Equality in reaching a decision on a visa application.

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<sup>92</sup> <http://www.inis.gov.ie/en/INIS/Pages/WP08000047>.

<sup>93</sup> <http://www.inis.gov.ie/en/INIS/VWP%20Info%20NoteRev4-20111024.pdf/Files/VWP%20Info%20NoteRev4-20111024.pdf>.

<sup>94</sup> <http://www.inis.gov.ie/en/INIS/Pages/Irish%20Short-stay%20Visa%20Waiver%20Programme%20Extension>.

<sup>95</sup> Quinn (2011) Visa Policy as a Migration Channel: Ireland.

Since 1 January 2011 there are new immigration rules for full-time non-EEA students who are coming to study in Ireland. In September 2010, the Department of Education and Skills launched a new five-year strategy document framework, 'Investing in Global Relationships'. Seeking to enhance Ireland's competitive position, the document sets an objective to increase the total number of international students by 50 per cent by 2015. A related new immigration regime was announced in September 2010. A *New Immigration Regime for Full Time non-EEA Students* report contained more than 20 recommendations; a number of these recommendations came into effect from 1 January 2011. These recommendations include the introduction of a differentiated approach as between 'Degree Programme' courses and those at the 'Language or Non Degree Programme' level, and the introduction of maximum periods of residence in the State according to type of course followed. In general, non-EEA student permission are now limited to seven years in total, except in cases where the course is at PhD level, or a programme of study of long duration, or where the Minister for Justice, Equality and Defence is satisfied that 'special circumstances exist'. All eligible education providers must be included on a State-administered 'Internationalisation Register'. Interim arrangements for current students affected by the change were also announced, including a six-month concession period applicable in cases for timed-out students to regularise their status. Students on short-term English language courses are now viewed as 'educational tourists', and are not required to fulfil standard student conditions for entry.<sup>96</sup> Non-EEA students with Stamp 2 permission to remain are allowed to take up casual employment. As a general rule non-EEA students coming to Ireland do not have the right to bring their family with them. Spouses, partners and children of non-EEA nationals can apply to enter and live in Ireland in their own right, but they cannot apply on the basis of their relationship to a non-EEA student. There are some exceptions to this rule, for example, for PhD students or for students who can prove they have sufficient funds to support their family.

In the majority of cases, visa applications are processed locally at the Irish Embassy, Consulate or Visa Office in the country of application. Other applications are processed by Visa Officers in the Department of Justice and Equality in Dublin. Applicants receive a reference number which they may use to check the decision on their visa application online. An updated list is posted on the INIS website each week.

Visa-required nationals, who are legally resident in Ireland, must hold an Irish re-entry visa in order to temporarily leave the State during their stay.



#### 4.1.2.2 *Border Control and Prevention of Illegal Entry*

Whilst overall policy development in relation to the tackling of irregular migration is the responsibility of the Minister for Justice, Equality and Defence, operational strategies in this area are the responsibility of An Garda Síochána, the national police service of Ireland. The prevention of irregular entry to the state is mainly operated by the Garda National Immigration Bureau (GNIB), which has responsibility nationally for all law enforcement matters pertaining to immigration.

The GNIB operates two main border control offices within Ireland - the Border Control unit in Dundalk, and the GNIB Immigration Control Point at Dublin Airport. All Garda district headquarters have staff assigned to immigration duties. If a person is not visa- required and is coming in for business they must present to immigration within seven days. If a person is coming in for non-business purposes they have up to thirty days to present to at an immigration office. A person is then examined under Section 4 of the *Immigration Act 2004*, and that may lead to a refusal of entry, or permission to enter the State.

In October 2011 the Minister for Justice, Equality and Defence, signed regulations transposing into Irish law an EU Directive requiring air carriers to provide advance passenger data to Irish Immigration authorities for the purposes of improving border control and combating illegal immigration.<sup>97</sup>

The IILU (Investigations and Internal Liaisons Unit) within the GNIB is tasked with investigating instances of potential fraud and abuse. The Unit also has a role in inspecting the premises of colleges that wish to be included on the Internationalisation Register and to attract international students. Visa Officers may identify unusual patterns in visa applications and supply this information to the Unit. The IILU has recently been subsumed into the larger INIS-wide Investigations Team. The Irish Visa Section in Dublin, through the Investigations and Internal Liaisons Unit, works closely with its UK counterpart liaising daily on various operational levels. The UK Border Agency (UKBA) regularly shares information with INIS on potentially fraudulent practices. On the consular level, Irish and UK Embassies also work closely together.<sup>98</sup>

Irish Visa Office staff overseas participate in various anti-fraud groups which meet locally. In reference to the decision to open six visa processing offices in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi, INIS stressed the importance of local knowledge in putting practices in place to deter fraudulent visa applications and the potential for overstaying should a visa be granted. In

<sup>97</sup> The European Communities (Communication of Passenger Data) Regulations 2011 transposed *Council Directive 2004/82/EC* of 29 April, 2004 on the obligation of carriers to communicate passenger data into Irish law. The Directive was adopted following a request by the European Council of 25 and 26 March 2004, which met following the terrorist attacks in Madrid.

<sup>98</sup> Quinn (2011) *Visa Policy as a Migration Channel: Ireland*.

December 2011 Ireland and the UK signed a Memorandum of Understanding which will have the effect that visa application data, from nine specified countries, will be automatically shared between INIS and UKBA.<sup>99</sup>

Other measures to detect irregular entry include using CO<sub>2</sub> detectors at ports; this equipment is used at all ports in Ireland. This equipment is used to detect the presence of CO<sub>2</sub> in freight containers to indicate the presence of human beings. In March 2010, Ireland began the 'e-Visa' project, where biometric data is collected as part of the visa application procedure in Nigeria. This system is used to avoid irregular entry and fraudulent applicants. The government is exploring the possibility of applying biometric technology to visa applications from Pakistan in an effort to prevent marriages of convenience in Ireland.<sup>100</sup>

There are several organisations in Ireland dealing with persons who have an irregular status in Ireland. The Migrant Rights Council Ireland (MRCI) promotes justice, equality and empowerment of undocumented migrants, and provides support services for this group.<sup>101</sup> The Crosscare Migrant Project is an information, advocacy and referral organisation for migrants in vulnerable situations including irregular migrants.<sup>102</sup> Nasc the Irish Immigrant Support Centre, provides legal advice and an advocacy service for both regular and irregular migrants, and assists with irregular migrants with citizenship applications.<sup>103</sup> The International Organization for Migration (IOM) Ireland aids irregular migrants with a voluntary assisted return and reintegration programme.<sup>104</sup> The IOM also provide family reunification travel assistance. The Immigrant Council Ireland (ICI) provides information, support, advocacy and legal services for undocumented migrants.<sup>105</sup>

#### 4.1.2.3 Carrier Liability

Under the *Immigration Act 2003*, where a vehicle arrives in Ireland from outside the Common Travel Area the carrier is responsible for ensuring that all persons on board the vehicle seeking to land are presented to an immigration officer for examination in respect of leave to land. Carriers are also required to check that travellers have a valid passport or other equivalent document which establishes his or her identity and nationality and, if required by law, a valid Irish transit visa or a valid Irish visa. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.

In October 2011 the *European Communities (Communication of Passenger Data) Regulations 2011* requesting airlines to provide 'Advance Passenger

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<sup>99</sup> Quinn (2011) *Visa Policy as a Migration Channel: Ireland*.  
<sup>100</sup> <http://www.irishtimes.com/newspaper/ireland/2011/0108/1224287042286.html>.  
<sup>101</sup> <http://www.mrci.ie>.  
<sup>102</sup> <http://www.migrantproject.ie>.  
<sup>103</sup> <http://www.nascireland.org>.  
<sup>104</sup> <http://www.iomdublin.org>.  
<sup>105</sup> <http://www.immigrantcouncil.ie>.

Information' (API) transposed *Council Directive 2004/82/EC* on the obligation of carriers to communicate passenger data, of 29 April, 2004.<sup>106</sup> This measure was introduced to improve border control and combat irregular migration, it is mandatory for all inbound flights to Ireland from outside the EU. The measure means that carriers are responsible for providing data on passengers in advance of flights arriving in Ireland. The information to be provided is contained on the machine readable zone of passports. Carriers must then transmit the data captured to the Irish Immigration authorities after the completion of a flight's check-in. Carriers must also ensure that each non-Irish national on board seeking to land in the State, or pass through the State in order to travel to another state, has with him or her a valid passport or other equivalent document which establishes his/her identity and if required by law a valid Irish transit visa or valid visa. If a carrier does not comply with these regulations and the vehicle is coming from anywhere outside the common travel area, the carrier is committing an offence.

## 4.2 ADMISSION CONDITIONS

### 4.2.1 Asylum (Admission Conditions)

Following the preliminary interview with ORAC, a standard form (an ASY1 form) is completed and signed by the asylum applicant. This contains the individual's biographical data and a brief outline of their claim. The applicant is then given a detailed questionnaire, which requires him or her to provide biographical and other personal details, travel particulars and the reasons for seeking asylum. The applicant is required to return the completed questionnaire to ORAC within six working days for prioritised applicants, seven working days for non-prioritised applicants, and ten days for unaccompanied minors.

Applicants and their dependent minors are photographed, and then issued with a Temporary Residence Certificate/Card (TRC) by ORAC. Applicants who are issued with a TRC do not have to register with GNIB. However, if granted refugee status they must register with GNIB as soon as possible and generally once a year thereafter. Applicants are also required to have their fingerprints taken and these are cross referenced with the EURODAC database which contains the fingerprints of asylum applicants across Europe. The *Refugee Act, 1996* was amended by the *Immigration Act 1999* to include that an authorised officer or an immigration officer may, for the purposes of this Act, take, or cause to be taken, the fingerprints of an applicant above the age of 14 years. Fingerprints are taken upon registration by the GNIB and also provide Garda Immigration authorities with the ability to capture and store prints at ports of entry including sea and air ports. Such information is currently stored on GNIB

<sup>106</sup>

<http://www.inis.gov.ie/en/INIS/Pages/Minister%20Shatter%20signs%20new%20law%20requiring%20airlines%20to%20provide%20Advance%20Passenger%20Information>.

AFIS System. Fingerprints may be disclosed in confidence to the relevant Irish authorities and to asylum authorities of other countries, which may have responsibility for considering applications under the Dublin II Regulation.

The applicant is then referred to the Reception and Integration Agency (RIA).<sup>107</sup> RIA is responsible for the planning, co-ordination and provision of reception services to asylum seekers. RIA has a number of reception centres in Dublin, where asylum seekers are accommodated initially. Applicants may subsequently be dispersed to another accommodation centre throughout the State. This accommodation is provided on a full board basis.

In order to investigate their application, the applicant is invited to a detailed interview in accordance with Section 11 of the Refugee Act. This substantive interview is carried out by an ORAC caseworker, with the assistance of an interpreter where required. An applicant is also entitled to have a legal representative present during the interview. In order to assist in evaluating the applicant's claim the ORAC caseworker researches country of origin information. They may do this with the help and resources of the ORAC Research Section, who may in turn source information from the Refugee Documentation Centre. In the case of an unaccompanied minor, a HSE representative will also attend the interview.

On the basis of the findings of the preliminary interview, the completed questionnaire, the substantive interview, and any relevant documentation, including country of origin information, the caseworker prepares a report on the application which will incorporate a recommendation on whether or not refugee status should be granted as well as the reasons for this recommendation. Where it is recommended that the applicant be granted refugee status ORAC notifies the Minister for Justice, Equality and Defence, who is bound by the recommendation except where questions of national security or public policy arise. Where a recommendation is negative, the Minister still has the option to grant status. In either case the Minister issues the final decision.

Applicants who receive a negative recommendation following interview are entitled to appeal to the Refugee Appeals Tribunal. The normal procedure is that an appeal must be made within 15 working days of the sending of the negative decision and the applicant is entitled to request an oral hearing for their appeal. In certain circumstances, which are set out in the Refugee Act, the period within which an appeal must be made is shorter (10 working days) and the appeal will be dealt with by the Refugee Appeals Tribunal without an oral hearing.

In cases where applicants withdraw or fail to participate in the process (e.g. through non-attendance at interview) the applications will be deemed

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<sup>107</sup>

<http://www.ria.gov.ie>.

withdrawn and a negative recommendation is issued, against which there is no appeal.

Legal assistance in application for asylum is provided by the Refugee Legal Service, who provide independent and confidential legal advice and services to people applying for asylum in Ireland. The service provides assistance with submission of application, representation before the Refugee Appeals Tribunal and assistance in relation to deportation orders and Judicial Review procedures.<sup>108</sup> A person can apply for free legal aid through the Irish Refugee Council and the Immigrant Council Ireland. A person can also arrange for private legal assistance if their means are too high to qualify for aid with the Refugee Legal Service.

## 4.2.2 Migration (Admission Conditions)

### 4.2.2.1 *Permission to Land*

All non-EEA nationals are required to seek leave to land in the State by reporting to an immigration officer at an Irish port of entry. The immigration officer may grant leave to enter for a maximum period of three months. They may, depending on the documentation presented grant a lesser period than three months. There are no fast track procedures available at this stage of the immigration process. The immigration officer is responsible for checking the main prerequisites for admission; integration measures are not included at this stage of migration.

The *Aliens Order 1946* made under the *Aliens Act 1935* sets out the conditions under which a person may be refused permission to enter the State. EU/EEA/Swiss nationals may be refused permission to land only if they are suffering from a specified disease or disability or they represent a danger to public security or their presence would be contrary to public policy.

Nationals of other countries must get permission to land when they arrive in Ireland. An immigration officer may refuse permission if he or she believes that person:

- Has insufficient funds to support the person plus dependants
- Intend to take up employment without the relevant permit
- Suffers from certain specified conditions including TB, other infectious diseases, drug addiction and profound mental disturbance
- Has been convicted of an offence which carries a penalty of a year's imprisonment or more
- Does not have a requisite visa

- Is the subject of a deportation order, an exclusion order or similar order
- Does not have a valid passport
- Intend to abuse the Common Travel Area
- Poses a threat to national security or be contrary to public policy.

A person refused permission to land must be given the reasons for refusal in writing. If a visa application is refused, the applicant can appeal this decision by writing to the Visa Appeals Officer. On receipt of the appeal the Appeals Officer will review the application again, taking account of any further grounds of appeal and of any supporting documentation. On examination and review the original decision may be reversed. If the appeals officer does not alter the decision, the applicant is notified in writing. A person can apply for private legal assistance when applying for visas, there are no dedicated services that provide legal assistance when applying for/appealing a visa decision.

Some applicants may be given permission to land but with conditions attached for example a restricted time period. If they wish to stay in Ireland for a longer time, they must get permission to remain by registering with the local immigration office. In Dublin this is in the GNIB, and outside Dublin it is the local Garda district headquarters. If a person refused leave to land wishes to apply for asylum they must be allowed to do so. Persons refused permission to land are removed from the State. See Section 4.5 below.

### 4.3 LEGAL RESIDENCE

#### 4.3.1 Asylum (Legal Residence)

Asylum applicants have permission to remain in the State in accordance with Section 9 of the *Refugee Act* until their asylum application is withdrawn, transferred under the Dublin II regulation, or refused. If a person receives a declaration of refugee status by the Minister for Justice, Equality and Defence, their rights are similar to those of an Irish citizen. Recognised refugees must register with the GNIB where they will receive a registration card endorsed with Stamp 4 that must be updated annually. Persons with refugee status are entitled to work without any further documentation and may access social welfare, medical and housing support, and apply for family reunification. They may also apply for a travel document and with it may leave and return to Ireland without a visa.

In January 2005 application procedures were introduced with regard to prioritised cases and accelerated processing arrangements. These arrangements apply to nationals of Croatia and South Africa. The arrangements previously also applied to Nigeria, Romania and Bulgaria. During 2011, the median processing time for asylum applications by the ORAC was approximately six weeks in the case of prioritised applications, and 12 weeks in the case of non-

prioritised applications. 1,290 new applications for refugee status were received in the ORAC in 2011 with 1,447 determinations made. The median processing times for appeals dealt with by the RAT in 2011 was approximately 22 weeks in the case of substantive appeals (cases involving an oral hearing) and five weeks in the case of accelerated appeals (appeals dealt with on the basis of documentation). During 2011, 1,106 new appeals were received in the RAT with 1,330 decisions made.<sup>109</sup> Some cases take significantly longer to complete due to, for example, medical reasons, non-availability of interpreters or because of judicial review proceedings.

Individuals who are not granted refugee status may make representations to the Minister for Justice, Equality and Defence for as to why they should be granted leave to remain before a deportation order may be issued. The majority of unsuccessful asylum applicants choose to make representations to the Minister as to why they should be allowed leave to remain on humanitarian grounds. In practice few are granted permission to remain and an unsuccessful application automatically results in a deportation order being issued. A total of 2,897 people have been granted humanitarian leave to remain between 2007 and 2011. Almost half were granted the status in 2008, 1,101 were granted the status in 2011.<sup>110</sup> Since October 2006 applicants may also apply for subsidiary protection under the *European Communities (Eligibility for Protection) Regulations 2006*. In 2011, 884 decisions on subsidiary protection were made and 13 were granted.<sup>111</sup>

Proposed changes under the now lapsed *Immigration, Residence and Protection Bill, 2010* include a shift to a single protection determination procedure meaning that all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure. Applicants would be required to set out all of the grounds on which they wish to remain in the State (including non-protection-related reasons for permission to remain) at the outset of their claim, and all of these matters would be examined together. The Bill proposes that functions currently being carried out by the Office of RAC with regard to protection would be carried out by the Minister for Justice, Equality and Defence, and the Refugee Appeals Tribunal would be replaced with a Protection Review Tribunal.<sup>112</sup> The Minister for Justice, Equality and Defence has stated in the Dáil that he intends to republish the Bill in late 2012.

<sup>109</sup> Written answer by Minister for Justice, Equality and Defence to Parliamentary Question Tuesday 21 February 2012. <http://debates.oireachtas.ie/dail/2012/02/21/00338.asp>.

<sup>110</sup> Written answer by Minister for Justice, Equality and Defence to Parliamentary Question Wednesday 18 April, 2012. <http://debates.oireachtas.ie/dail/2012/04/18/00665.asp>.

<sup>111</sup> Written answer by Minister for Justice, Equality and Defence to Parliamentary Question Tuesday 21 February 2012. <http://debates.oireachtas.ie/dail/2012/02/21/00338.asp>.

<sup>112</sup> <http://www.justice.ie/en/JELR/Pages/Immigration,%20Residence%20and%20Protection%20Bill%202010%20D%C3%A1il%20C%89ireann%20Second%20Stage%20Speech%20by%20Mr%20Dermot%20Ahern%20TD,%20Minister%20for%20Justice%20and%20Law%20Reform%206%20October%202010>.

### 4.3.2 Migration (Legal Residence)

If an immigrant is not a citizen of the EEA or Switzerland, there are various forms of residence rights (permission to remain) that allow them to live in Ireland. If the individual is granted permission to remain an immigration stamp and a Certificate of Registration are issued by the Garda National Immigration Bureau (GNIB) or the local Garda registration office on payment of €150 fee. Permission to Remain is issued in the form of a stamp in the passport; in Ireland it is a statement of the conditions on which a non-EEA national is permitted to remain in the State and the duration of that permission given on behalf of the Minister for Justice, Equality and Defence. A residency document 'Certificate of Registration' may also be issued for the same period of time as the Stamp.

The Certificate of Registration is issued to lawfully resident non-Irish nationals who expect to stay in the State for more than three months and verifies that the person has registered with their registration officer. The Certificate contains the person's photo, registration number, relevant immigration stamp, and an expiry date. One of a number of different immigration stamps may be issued:

- Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission
- Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions
- Stamp number 2A: issued to non-EEA national students who are not permitted to work
- Stamp number 3: issued to non-EEA nationals who are not permitted to work
- Stamp number 4: issued to people who are permitted to work without needing an employment permit or business permission for example: Spouses and dependants of Irish and EEA nationals; Convention and Programme refugees; Non-EEA nationals on intra-company transfer
- Stamp number 4: (EU FAM) issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the *European Communities (Free Movement of Persons) Regulations 2006*. People holding this Stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations
- Stamp number 5: issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice and Equality to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work



- Stamp number 6: can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

Non-EEA nationals must renew their registration with the GNIB in Dublin or local Garda registration office. The immigration stamps are generally renewable annually but can be issued for longer periods of three to five years. Stamps 5 and six need only to be renewed on expiry of a passport. The *Immigration, Residence and Protection Bill, 2010* proposes a new system comprising different residence permits allocated according to the category into which a foreign national falls. The Bill proposes factors to be considered by the Minister when determining an application for residency. At year-end 2011 there were approximately 130,500 people registered with the GNIB.<sup>113</sup>

#### 4.3.2.1 *Spouses of Irish Citizens*

Non-EEA nationals who wish to reside in the State on the basis of their marriage to an Irish national must make an application for permission to remain in the State. The application process is the same as for foreign nationals who are not the spouses or civil partners of Irish citizens but there are more favourable residence requirements. The Minister for Justice, Equality and Defence has discretion to grant or refuse applications. The *Civil Law (Miscellaneous Provisions) Act 2011*<sup>114</sup> allows for civil partners to receive treatment equal to married couples in citizenship matters.

In order to qualify for permission to remain in the State, the spouse or civil partner of an Irish citizen who is applying for Irish citizenship must meet the following conditions:

- Applicants must be married to or in a recognised civil partnership with the Irish citizen for at least three years
- Applicants must have had a period of 1 year's continuous reckonable residence
- Applicants must have been living on the island of Ireland for at least two of the four years before that year of continuous residence
- Applicants marriage or civil partnership must be recognised as valid under Irish law.

Foreign relationships registered outside Ireland were recognised by the State on 13 January 2011 when the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>115</sup> came into force. This means that, if a civil partnership was registered outside Ireland before 2011, only the applicant's

<sup>113</sup> <http://www.inis.gov.ie/en/JELR/Pages/PR12000001>.

<sup>114</sup> <http://www.oireachtas.ie/documents/bills28/bills/2011/2911/B2911s.pdf>.

<sup>115</sup> <http://www.irishstatutebook.ie/2010/en/act/pub/0024/index.html>.

residence as the civil partner of an Irish citizen since 13 January 2011 will be counted as part of the three-year period required for naturalisation based on applicant's civil partnership with an Irish citizen. A certificate of naturalisation confirming Irish citizenship will normally be issued within 30 days of the letter informing the applicant of the decision.

#### 4.3.2.2 *Spouses and Dependents of EEA Nationals*

*S.I. No. 310 of 2008 European Communities Free Movement of Persons* states that dependent family members who are not nationals of an EU Member State must apply for a residence card which will confirm that he/she is a family member of an EU citizen residing in Ireland. This residence card can be used in place of an Irish re-entry visa, where the holder wishes to leave Ireland on a short journey and return to the State. EU citizens and the family members of EU citizens may apply for a permanent residence certificate or permanent residence card respectively, after they have resided for a continuous period of five years in Ireland. Applications for the relevant certificate/cards are processed by the EU Treaty Rights Section of the Irish Naturalisation and Immigration Service.

Prior to the introduction of the 2008 Regulations, children under 16 years of age were specifically excluded from the requirement to register their presence in Ireland. The Regulations allow for the facilitation of the admission of the partner of an EU citizen where they are in a durable relationship which is duly attested. Non-EEA family members of an EU national will be given a temporary Stamp 4 while waiting for applications under EU Treaty Rights to be processed.

#### 4.3.2.3 *Long-Term Residence*

An application for long-term residence status is currently processed through an administrative scheme i.e. there is no statutory provision as yet. Persons who have been legally resident in the State for over five years (i.e. 60 months) on the basis of employment permits may apply for a five-year residency extension. In that context they may also apply to be exempt from employment permit requirements. A statutory long-term residence in Ireland was proposed in the *Immigration, Residence and Protection Bill, 2010*. This status would be for an initial period of five years and foreign nationals granted long-term residency would be entitled to the same rights of travel as Irish citizens, to work in the State to the same extent as Irish citizens, and to the same medical care and services and social welfare benefits as Irish citizens. Since 7 September 2009, under the *Long-Term Residency (Fees) Regulations*, applicants must pay a fee of €500 when granted long-term residency. Applications generally take about six months to process.<sup>116</sup>

<sup>116</sup>

[http://www.inis.gov.ie/en/INIS/Pages/Long\\_Term\\_Residency](http://www.inis.gov.ie/en/INIS/Pages/Long_Term_Residency).

## 4.4 INTEGRATION

### 4.4.1 Asylum (Integration)

There are no integration procedures in place for asylum applicants while a decision on an application is pending. The Office for Promotion for Migrant Integration is responsible for the management of the resettlement programme of refugees admitted as part of the United Nations Resettlement Programme.

### 4.4.2 Migration (Integration)

The Office for the Promotion of Migrant Integration is the Government office with responsibility for the facilitation of integration; it is based within the Department of Justice and Equality. The Office has a cross-Departmental mandate to develop, drive and co-ordinate integration policy across other Government Departments, agencies and services. The functions include the promotion of the integration of legal immigrants into Irish society, the establishment of new structures for this purpose, the management of the resettlement of refugees admitted as part of the United Nations Resettlement Programme and the administration of funding from national and EU sources to promote integration.<sup>117</sup> There are currently no compulsory integration measures for any category of migrant in Ireland.

Ireland adopts a policy of mainstream service provision in the integration area while recognising the need for targeted initiatives to meet specific short-term needs. Integration measures are targeted at all legal migrant groups. While overall responsibility for the promotion and co-ordination of integration measures for legally resident immigrants rests with the Office for the Promotion of Migrant Integration, in general, the actual delivery of integration services is the responsibility of mainstream Government Departments. The non-pay allocation for the Office in 2011 was €2.796 million. This covers non-pay administrative expenditure as well as programme expenditure. In addition, €1.5 million is allocated for expenditure from the European Refugee Fund and the European Integration Fund. There are 17 staff in the Office, of whom six are in the resettlement area.<sup>118</sup>

The Cross-Departmental Group on Migrant Integration, an inter-departmental committee comprising senior civil servants, was established by the Office of Promotion of Migrant Integration to assist the former Minister for Integration to drive forward the integration agenda in relevant Departments and agencies. The Committee is representative of the Departments and Offices with a significant role in integration. The Committee meets as required to review

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<sup>117</sup>

<http://www.integration.ie>.

<sup>118</sup>

Written Answer to Parliamentary Question by Minister for Justice, Equality and Defence Thursday 16 June, 2011. <http://debates.oireachtas.ie/dail/2011/06/16/00134.asp>.

activities in relation to integration and to resolve issues which arise. The last meeting of the Committee took place in January 2011.

The network of National Contact Points on Integration is a forum for the exchange of information and good practice at the EU level with the purpose of finding successful solutions for the integration of immigrants in all Member States and to ensure policy co-ordination and coherence at national level and with EU initiatives. Ireland is a member of the network of National Contact Points on Integration and a representative of the Office for the Promotion of Migrant Integration takes part in these meetings.

The Office of Promotion for Migrant Integration also established the Ministerial Council on Integration on a non-statutory basis in 2010. Its purpose was to provide a forum where migrants could speak directly to the Minister of State regarding their experiences of integration in Ireland, and thereby promote better-informed policy by making and identifying any issues and bringing them to attention. Applications were sought from migrants who have been legally resident in Ireland for at least two years; applications from international protection applicants were not eligible. Almost 500 applications for membership of the Council were received, representing 76 nationalities.<sup>119</sup> The Council is organised in regional formation and an inaugural meeting of each regional forum was held in 2010. The future of the Council is currently under consideration.

There are several non-governmental organisations in Ireland involved in the integration of migrants. The Integration Centre is an organisation which is committed to the integration and inclusion of people from immigrant backgrounds in Ireland, and among its activities, publishes an Annual integration Monitor in conjunction with the ESRI. The Immigrant Council Ireland, Crosscare Migrant Project, Migrant Rights Council Ireland, Nasc and the Irish Refugee Council, along with several other organisations play a key role in facilitating the integration of migrants in Ireland.

In September 2010 the Department of Education and Skills launched a national *Intercultural Education Strategy 2010-15*, which aims to assist in ensuring that 'inclusion and integration within an intercultural learning environment becomes the norm'.<sup>120</sup> In autumn 2011, Dublin City Council's Office for Integration (OFI) lead a campaign focused on integration. The 'One City One People Campaign' was aimed at the city's immigrant population to promote inclusion, integration and to combat racism and discrimination.<sup>121</sup>

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<sup>119</sup> Office of the Minister for Integration (18 January 2011). 'Minister White chairs meeting of Inter-Departmental Group on Integration'. Press Release. Available at [www.integration.ie](http://www.integration.ie).

<sup>120</sup> <http://www.education.ie/home/home.jsp?pcategory=10856&ecategory=51881&language=EN>.

<sup>121</sup> <http://www.dublin.ie/arts-culture/one-city-one-people.htm>.

In January 2012 Crosscare Migrant Project launched a new migrant integration scheme, with the aim of encouraging migrant participation in and understanding of politics in Ireland. The 'Opening Power to Diversity' scheme will place migrants with T.D.s or Senators for two days a week over a six-month period. The migrant participants will shadow the work of the politician and will also contribute to the work of his/her office both at a parliamentary and constituency level. It is envisaged that the migrant participants will communicate to their communities and the wider immigrant community what the everyday experience of politics is like.

## 4.5 CITIZENSHIP

### 4.5.1 Asylum (Citizenship)

There are currently no citizenship procedures in place for asylum applicants while a decision on an application is pending.

### 4.5.2 Migration (Citizenship)

The Minister for Justice, Equality and Defence is responsible for determining entitlement to citizenship in accordance with the *Irish Nationality and Citizenship Acts, 1956 to 2004*. Every person born on the island of Ireland before 1 January, 2005 is entitled to be an Irish citizen. The citizenship of a person born on the island of Ireland on or after 1 January, 2005 depends on the citizenship of the person's parents at the time of the person's birth or the residency history of one of the parents prior to the birth. Under the *Irish Nationality and Citizenship Acts, 1956 to 2004*, a person who was born outside Ireland is automatically an Irish citizen by descent if one of that person's parents was an Irish citizen who was born in Ireland.

Foreign nationals can apply to become Irish citizens through naturalisation. A foreign national who is either married to an Irish citizen or a civil partner of an Irish citizen, can also apply for Irish citizenship through naturalisation. The residence requirements are more favourable for the spouse or civil partner of an Irish citizen but there is no longer an absolute entitlement to Irish citizenship through marriage.

Irish naturalisation is considered under the provisions of the *Irish Nationality and Citizenship Act, 1956*, as amended and is granted at the absolute discretion of the Minister for Justice, Equality and Defence. In order to qualify for naturalisation an applicant must meet the following conditions:-

- Applicant must be of full age
- Applicant must be of good character, the Garda Síochána will be asked to provide a report about applicant's background

- Applicant must have had a period of one year's continuous reckonable residence in the State immediately before the date of the application and, during the eight years preceding that, have had a total reckonable residence in the State amounting to four years
- Applicant must intend in good faith to continue to reside in the State after naturalisation
- Applicant must make a declaration of fidelity to the nation and loyalty to the State and undertake to faithfully observe the laws of the State and to respect its democratic values.

An Online Naturalisation Residency Calculator Tool<sup>122</sup> is available as a guide to whether an applicant satisfies the naturalisation residency conditions before submitting an application. In general, apart from refugees and stateless persons, applicants for naturalisation must prove they can support themselves and their families while living in Ireland. If an applicant can show that they have not received State support in the three years before application, this will generally meet the Minister for Justice, Equality and Defence's requirement that the applicant has been supporting themselves and their dependants and that they will continue to do so. There are no citizenship, integration or language tests involved in the citizenship application procedure in Ireland.

In November 2011 the Minister for Justice, Equality and Defence introduced new citizenship application forms<sup>123</sup> and all applications made on or after 10 November 2011 must use the new application form. New fees for application were also introduced in November under the *Irish Nationality and Citizenship Regulations 2011*, on making an application for citizenship the fee is €175 On the issue of a certificate of naturalisation a fee of €950 applies - except where the application is made on behalf of a minor, in which case a fee of €200 applies. Where the application is made by a widow or widower whose spouse or civil partner of an Irish citizen a fee of €200 applies; Refugees, stateless persons and Programme Refugees do not have to pay a fee for a Certificate of Naturalisation.<sup>124</sup>

Applications for naturalisation are considered by the Citizenship Division of INIS.<sup>125</sup> The Minister for Justice, Equality and Defence introduced a number of measures in 2012 with the aim of reducing a backlog of applications awaiting a decision. These measures have resulted in a significant increase in the number of cases decided; double the volume of valid applications were decided in 2011

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<sup>122</sup> [http://www.inis.gov.ie/en/INIS/Pages/Naturalisation\\_Residency\\_Calculator](http://www.inis.gov.ie/en/INIS/Pages/Naturalisation_Residency_Calculator).

<sup>123</sup> <http://www.inis.gov.ie/en/INIS/Pages/WP11000029>.

<sup>124</sup> <http://www.citizensinformation.ie>.

<sup>125</sup> [http://www.citizensinformation.ie/en/moving\\_country/irish\\_citizenship/becoming\\_an\\_irish\\_citizen\\_through\\_naturalisation.html](http://www.citizensinformation.ie/en/moving_country/irish_citizenship/becoming_an_irish_citizen_through_naturalisation.html).

(16,000) compared to 2010 when fewer than 8,000 were decided.<sup>126</sup> By late spring/early summer of 2012 the Department of Justice and Equality anticipate that all standard applications, i.e. non complex cases accounting for 70 per cent of all applications, will be completed within six months.

In June 2011 the Minister for Justice, Equality and Defence introduced a pilot Citizenship Ceremony scheme: 73 people were granted Irish citizenship, attended a formal citizenship ceremony in Dublin Castle, and swore an oath of fidelity to the nation. The Minister has since made this a permanent scheme. In 2011, persons from 112 countries attended 28 citizenship ceremonies around Ireland.<sup>127</sup>

## 4.6 ACCESS TO THE LABOUR MARKET

### 4.6.1 Asylum (Access to the Labour Market)

Asylum applicants may not legally access the Irish labour market while a decision on their status is pending.

### 4.6.2 Migration (Access to the Labour Market)

The application process for visa is standard whether an applicant is a Third Country National who came for the purpose of family reunion, or an economic migrant.

There are several types of permits that allow access to the Irish labour market:

- Green Cards
- Work Permits
- Spousal/Dependant Permits
- Intra-Company Transfer Permits
- Graduate Scheme.

Each type of permit is issued by the Department of Jobs, Enterprise and Innovation and applications are processed by the Employment Permits Section of the Department.

#### *Green Cards*

Green cards were introduced in 2007 in order to attract highly earning workers (€60,000 and over) and those in occupations where Ireland is experiencing skills shortages. It is also available for a restricted list of occupations with annual

<sup>126</sup> Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow'. Available at <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>127</sup> Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow'. Available at <http://www.justice.ie/en/JELR/Pages/PR12000001>.

salaries of €30,000 to €59,999 in the following sectors of employment: information and communications technology, healthcare, industry, financial services and research. The applicant must have a job offer from a company or employer who is registered with the Revenue Commissioners, trading in Ireland and registered with the Companies Registration Office and the job offer must be for two years or more. There is no requirement for a labour market needs test. The green card permit is issued for two years and a renewal permit is not required as it is intended to lead to the granting of long-term residence (Delays in enacting the necessary legislation mean that in practice green card holders who reach the end of their initial two year residence may have their residence permission renewed for an additional two years, increased from one year in 2010).<sup>128</sup> Green cards carry with them an entitlement to immediate family reunification; either prospective employers or employees may apply. Just fewer than 3,000 green cards were issued in 2007; by 2010 this number had significantly dropped to 560.<sup>129</sup>

In November 2010 updated immigration arrangements concerning those eligible under the five year Worker and Redundancy Policy were introduced with immediate effect. In certain circumstances, holders of Green Card permits for a period of two years or those who have been issued with a 'Stamp 4' for twelve months as a prior Green Card holder may be eligible for a granting of a 'Stamp 4' permit for a duration of two years. This permit will allow them to remain in the State and obtain employment without the requirement of an employment permit. Updated redundancy policy allows persons with more than six months remaining on their immigration permission (as indicated on their GNIB Card) and who have been made redundant to continue to reside under their existing Stamp 1 permission for six months. Following completion of the six month 'grace period' the permission will be liable to be terminated unless in the meantime the holder has obtained further employment or has been permitted to remain on another basis.

#### *Work Permit*

A revised work permit scheme also formed part of the new employment permits system introduced in 2007. Since 2009 work permits are not available for salaries below €30,000, although they may be considered in exceptional circumstances. The permit is granted for two years initially, and then for a further three years. There is a list of occupations considered ineligible for work permits. A labour market needs test is required with all work permit applications, the prospective employer must supply evidence that the vacancy has been advertised with the FÁS/EURES employment network for eight weeks and in national media for six days. This is to ensure that, in the first instance an

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<sup>128</sup>

Quinn E. (2011) *Temporary and Circular Migration: Ireland*.

<sup>129</sup>

Department of Jobs, Enterprise and Innovation (2011).



EEA or Swiss national, or, in the second instance, a Bulgarian or Romanian national cannot be found to fill the vacancy.<sup>130</sup> Either the employer or employee may apply for the employment permit, based on an offer of employment. The permit is granted to the employee and the employer is prohibited from deducting recruitment expenses from the employee's pay or retaining the employee's personal documents. Work permit holders are entitled to bring family to live in Ireland after a year of legally working on a work permit. Since 2009 spouses, civil partners and dependants of new employment permit holders are no longer exempt from the labour markets needs test and fees, and the permit holder must have an income above the threshold which would qualify the family for payment under the Family Income Supplement (FIS) Scheme, to demonstrate that the worker can provide for dependents.<sup>131</sup>

#### *Spousal/Dependent Permits*

Spousal/dependant work permits are not automatically available to spouses, civil partners and dependants of holders of new work permits applied for since June 2009. From June 2009 onwards spouses and dependents of new work permit holders must apply for a work permit in their own right. Applying for a work permit in their own right means a labour market needs test is required, fees are payable when applying for or renewing a work permit and applications for work permits for spouses, civil partners or dependants will not be considered for occupations listed as ineligible for work permits.

#### *Intra Company Transfers*

This scheme is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch. The employee must be earning at least €40,000 a year and have been working for the company for a minimum of 12 months. An intra-company transfer permit may be granted for a maximum of two years initially and may be extended to a maximum of five years.

#### *Graduate Scheme*

Non-EEA students who have graduated with a degree at level of 'ordinary bachelor degree' or above from an Irish third-level institution and have a current certificate of registration may be permitted to apply for the Third Level Graduate Scheme. Under the scheme, those who have a level seven 'ordinary bachelor' degree will be granted a non-renewable extension of their current student permission (Stamp 2) for six months starting on the date upon which the person receives their examination results. Those with a degree at levels

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<sup>130</sup> [http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/work\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/work_permits.html).

<sup>131</sup> [www.citizensinformation.ie](http://www.citizensinformation.ie).

eight, nine or ten (honours bachelor degree, Masters or Doctoral degree) will be granted a 12-month extension. The purpose of the permission to remain under this scheme is to seek employment and gain a Green Card or work permit.<sup>132</sup>

In April 2012 processing times for the various employment permits were approximately 20 days. Appeals currently take at least 70 days to process.<sup>133</sup> Under the current legislation, the fee for a work permit of six months or less duration is €500 and is €1,000 for a seven to 24 month permit.

The number of employment permits issued to non-EEA nationals during 2011 was 5,200, of which 3,184 were new issues and 2,016 were renewals. In 2011, 1,007 work permits were refused and 201 were withdrawn. In 2012, in the period January to mid April, 779 new work permits and 327 renewal permits have been issued.<sup>134</sup>

Operational from June 2010, new arrangements were announced concerning the issuing of employment permits for non-EEA doctors recruited to the Irish Public Health Service.<sup>135</sup> Certain categories of doctors (specifically, non-internship registrations within the Trainee Specialist category and non-Consultant Hospital Doctors with a job offer as a Senior House Officer or Registrar in the Public Health Service) will no longer require a work permit. No labour market needs test will apply for recruitment of doctors, with all arrangements to be subject to review.

During 2011 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005* on a specific procedure for admitting Third Country Nationals for the purposes of scientific research. Since the scheme was launched in Ireland in 2007, some 1,410 hosting agreements have been processed to date to 33 research institutions accredited including eight industrial organisations. Researchers represent 75 different non-EU nationalities, and the top three Countries of Origin are India (275 or 19 per cent), China (259 or 18 per cent) and America (157 or 11 per cent).<sup>136</sup>

The irregular employment of Third Country Nationals is monitored by NERA, the National Employment Rights Agency.<sup>137</sup> The aim of NERA is to secure compliance with employment rights legislation. Its main activities are providing information on employment rights and monitoring employment conditions through its inspectors. It can also enforce compliance and seek redress. NERA inspectors undertake both 'announced' and 'unannounced' inspections.

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<sup>132</sup> [http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/green\\_card\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/green_card_permits.html).

<sup>133</sup> <http://www.djei.ie/labour/workpermits/processingdates.htm>.

<sup>134</sup> <http://www.djei.ie/labour/workpermits/statistics.htm>.

<sup>135</sup> Department of Enterprise, Trade and Innovation (2010). 'New Procedures for Employment Permits for Doctors'. Available at [www.deti.ie](http://www.deti.ie).

<sup>136</sup> <http://www.iua.ie/iua-activities/HostingAgreementScheme.html>.

<sup>137</sup> <http://www.employmentrights.ie/en>.

In November 2010 it was announced that the NERA would be inspecting persons employing domestic workers such as nannies, housekeepers and cleaners for the first time. The initiative gives formal recognition to the fact that the private home can also be a workplace, and that domestic workers need the full protection of the law and to have their rights monitored and enforced. In the course of 2010, NERA established a dedicated team to carry out inspections on major capital public construction projects.<sup>138</sup>

The active labour market programmes for the unemployed (particularly services provided by FÁS and the Local Employment Services) are available to immigrants on a restricted basis. In general, only immigrants from within the EEA countries can avail of the full set of Local Employment Services (LES). At local level, community and non-governmental organisations have begun to co-ordinate services for labour market facilitation for some categories of immigrants and some peer led migrant groups are also involved in supporting their members.<sup>139</sup> The Immigrant Council of Ireland provides an information service to migrants, which includes providing information on employment. The Migrant Rights Centre of Ireland (MRCI) provides a free legal information and advocacy service to migrant workers experiencing violations of their rights at the workplace. The 'Business Community in Ireland' group run the network Employment for People from Immigrant Communities (EPIC).<sup>140</sup> EPIC support adults from EU states entitled to work in Ireland and those from non-EU states with Stamp 4 with securing employment, training and education in Ireland.

## 4.7 RETURN

### 4.7.1 Types of Return

There are four relevant types of return in Ireland and an individual's circumstances determine which type of return is appropriate.

#### *Assisted Voluntary Return*

Assisted Voluntary Return is available to non-EEA nationals who do not have a clear legal right to be in the State, including asylum applicants and vulnerable irregular migrants. Persons in respect of whom a deportation order is made may not avail of assisted voluntary return. The International Organization for Migration (IOM) co-ordinates the Voluntary Assisted Return Programme (VAARP) in Ireland.<sup>141</sup> The VARRP is open to migrants from non-EEA countries,

<sup>138</sup> Written answer by Minister for Justice, Equality and Defence to Parliamentary Question Thursday 10 November, 2011. <http://debates.oireachtas.ie/dail/2011/11/10/00097.asp>.

<sup>139</sup> [http://www.publicjobs.ie/publicjobs/downloads/Dynamic/DynaPages/Publications/PAS\\_diversity\\_report\\_Final.pdf](http://www.publicjobs.ie/publicjobs/downloads/Dynamic/DynaPages/Publications/PAS_diversity_report_Final.pdf).

<sup>140</sup> <http://www.bitc.ie/epic>.

<sup>141</sup> <http://www.iomdublin.org/images/pdf/publications/iom%20dublin%20avr%20statistical%20overview%202001%20-%202010.pdf>.

who wish to return home voluntarily but do not have the means, including the necessary documentation to do so. IOM Dublin can assist with obtaining the necessary travel documentation, as well as covering the financial costs of the travel from Ireland to the country of origin. In addition, a small reintegration grant is available to all returnees to help cover the costs of an income generating activity, such as education, professional training and/or business set-up. In 2010 there were 461 assisted voluntary returns made, 376 were assisted through the IOM. A further 84 were facilitated through the Department of Justice and Equality; State aided return is funded by the individual and assistance is limited to the procurement of documents.<sup>142</sup> A total of 475 persons chose to return home voluntarily in 2011. Of that number, 402 were assisted to return by the International Organisation for Migration (IOM). The top five nationalities of returnees were Brazil, Moldova, Nigeria, Georgia and Mongolia.<sup>143</sup>

### *Deportation*

Those liable to deportation from the State are mainly those who come legally and fail to comply with laws of State, particularly immigration requirements. Such people may be deported under *Immigration Act 1999*, Section 3, enforced by Section 5. Almost 4,000 people were deported/removed from the State in 2011. This number comprises almost 3,700 persons who were refused entry into the State at ports of entry and were returned to the place from where they had come. In 2011, 2,470 persons were found to be illegally present in the State. In addition 280 unsuccessful asylum seekers and irregular migrants were deported from the State in 2011. A total of 111 persons were deported on charter flights and 169 on scheduled commercial aircraft. In addition a further 41 EU nationals were returned to their countries of origin on foot of an EU Removal Order.<sup>144</sup>

### *Removal*

Those liable for removal from the State include irregular migrants who come to the State without permission, or Third Country Nationals who overstay their visa.<sup>145</sup> People who are refused permission to land at the Irish border on the grounds set out at Section 4 of the *Immigration Act 2004* are removed under Section 5 of the *Immigration Act 2003*. Persons who claim asylum but are detained under the *Refugee Act* may decide to go home rather than pursue their asylum claim and may be eligible for removal from the State. During 2011,

<sup>142</sup> Department of Justice and Equality (2011).

<sup>143</sup> 'Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow'. Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>144</sup> 'Immigration in Ireland 2011 – a year-end snapshot – major changes and more to follow'. Available at: <http://www.justice.ie/en/JELR/Pages/PR12000001>.

<sup>145</sup> Within the first three months of their stay a person can be removed under a purely administrative procedure under the *Immigration Act 2003*, Section 5.

the GNIB refused just fewer than 3,700 entries into the State for one or more reason at airports and other ports of entry to the State. The number of persons removed under this category, excluding those who having been refused entry, subsequently claimed asylum, together with other persons who were transferred under the Dublin II Regulation to the EU Member State in which they first applied for asylum, and EU nationals who were returned to their countries of origin on foot of an EU Removal Order, was 2,719.<sup>146</sup>

#### *Dublin II Regulation Transfer*

Asylum applicants who had prior connection with another EU Member State may be transferred to that EU State under the Dublin II Regulation. The Dublin II Regulation also includes those who are to be transferred to another EU Member State for family unification purposes; those in respect of whom another Regulation State has issued a visa or work permit; those who regularly crossed the frontier of another Regulation State prior to applying for asylum in Ireland; those who have made an asylum claim in another Regulation State which has not yet been finalised, or those whose claim was withdrawn or rejected. The GNIB reports that the vast majority of Dublin II returnees are people who fall into the latter category and are picked up on the EURODAC system. The EURODAC system enables Member States to identify asylum-seekers and persons who have crossed an external frontier of the Community in an irregular manner. By comparing fingerprints, Member States can determine whether an asylum-seeker or a foreign national found illegally present within a Member State has previously claimed asylum in another Member State.<sup>147</sup> Where an applicant's prints are matched to a claim in another country, they may be transferred to the country in which they first lodged an application. ORAC sends the applicant's file to the Repatriation Unit of the Department of Justice and Equality. A Transfer Order is signed by the Minister for Justice, Equality and Defence, and the GNIB enforces the Transfer Order. In 2011, 144 asylum applicants were transferred to the EU Member State in which they first applied for asylum under the Dublin Regulation. In addition a further 41 EU nationals were returned to their countries of origin on foot of an EU Removal Order.

#### **4.7.2 Departments/Agencies involved in Return**

Under Section 3 of the *Immigration Act 1999* the Minister for Justice, Equality and Defence must give each individual case consideration as to whether a deportation order should be issued or whether that person should be granted leave to remain in the State. This status is granted purely at the discretion of

<sup>146</sup> Written answer by Minister for Justice, Equality and Defence to Parliamentary Question 21 February, 2012. <http://debates.oireachtas.ie/dail/2012/02/21/00340.asp>.

<sup>147</sup> [http://www.citizensinformation.ie/en/moving\\_country/asylum\\_seekers\\_and\\_refugees/the\\_asylum\\_process\\_in\\_ireland/eurodac\\_system.html?tab=.](http://www.citizensinformation.ie/en/moving_country/asylum_seekers_and_refugees/the_asylum_process_in_ireland/eurodac_system.html?tab=)

the Minister. An assessment of each case is made on the basis of eleven factors including the duration of residence in the State of the person; the nature of the person's connection with the State, if any; humanitarian considerations and any representations made by or on behalf of the person.

All deportation orders or Dublin II Regulation Transfer Orders must be signed by the Minister for Justice, Equality and Defence. ORAC are responsible for the implementation of Dublin II regulations. ORAC and the relevant Dublin II office decide on whether to return a person to that country. Applicants who claim asylum are the responsibility of ORAC; the GNIB is responsible for the operational implementation of return and controlling borders. An asylum applicant who is not granted refugee status or any person served with a Deportation Order, Transfer Order or Removal Order is obliged to leave the State and failure to comply may result in arrest, detention and subsequent deportation. Deportation Orders, Dublin II Regulation transfers or, in the case of EU Citizens, Removal Orders, are enforced by the GNIB. When a person is served a Deportation Order there is a legal requirement that they present themselves at the offices of the GNIB on a specified date and time in order to make arrangements for their deportation from the State. From this point on, the enforcement of the Deportation Order becomes an operational matter for the GNIB.

The Repatriation Division within INIS has a range of diverse functions relating to voluntary return, forced removals, and Dublin II Regulation transfers. The Unit contains the Ministerial Decisions Unit, which takes the final decision on asylum claims, and the judicial review unit. The Repatriation Division also assesses and makes practical arrangements for the deportation of persons issued with a Deportation Order or a Removal Order. The unit also assists in the voluntary return to their countries of origin of failed asylum seekers or other non-EEA national persons who wish to avail of this option.<sup>148</sup> The Repatriation Division works in close cooperation with the GNIB in the arrangement of deportations and Dublin II Regulation transfers. The Repatriation Unit is also responsible for actively encouraging voluntary repatriation to the country of origin. The Unit is responsible for giving effect to the transfer of persons under the EU Dublin II Regulation to the appropriate EU State for their asylum applications to be determined there and for giving effect to the implementation of a bilateral readmission agreement with Nigeria.<sup>149</sup>

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<sup>148</sup><sup>149</sup>

Quinn (2011) *Programmes and Strategies in Ireland Fostering Assisted Return to Third Countries: Ireland*.  
<http://www.inis.gov.ie>.

## 4.8 LINKS IN ASYLUM AND MIGRATION AND WITHIN OTHER POLICY AREAS

### 4.8.1 Links between asylum and immigration areas

Within INIS the Asylum Policy Division, the Immigration Policy Unit, the Immigration and Citizenship Division and the EU Treaty Rights Unit work closely together on issues as they arise, for example on the implications of the recent Zambrano case.<sup>150</sup> Recently a new unit was set up in INIS named the Central Investigations Unit, which brings together existing staff in INIS including from the Visa Section and EU Treaty Rights Section. The Central Investigations Unit carries out immigration related inspections across all areas, to ensure compliance with immigration conditions.<sup>151</sup>

Both asylum and immigration areas of INIS participate in the IGC (Intergovernmental Consultations on Migration, Asylum and Refugees) and in the GDISC (General Directors of Immigration Services Conference) depending on the agenda items under discussion. The General of INIS attends the Strategic Committee for Immigration, Frontiers and Asylum (SCIFA), a forum for exchanges of information amongst the Member States in the fields of asylum, immigration and frontiers. The Committee meets in order to implement a European Union strategic approach to matters related to asylum, immigration and frontiers.

Due to recent information sharing developments some areas of the immigration and asylum systems have access to each other's information systems. In addition substantial investment has taken place on the following:

#### *AFIS electronic fingerprinting system.*

In 2007 a new integrated electronic fingerprint system (AFIS) was implemented for storing fingerprints of asylum seekers (in ORAC) and immigrants on registration with the GNIB.<sup>152</sup>

#### *AVATS visa management system*

Since mid 2009 all applications for Irish visas must be made via the online Automated Visa Application Tracking System (AVATS).<sup>153</sup> The AVATS system facilitates the detailed tracking of an individual application from its receipt to its completion.

<sup>150</sup> On 8 March 2011 the European Court of Justice (ECJ) ruled in the Zambrano case C 34/09, that an EU Member State may not refuse the non-EU parents of a dependent child who is a citizen of, and resident in, an EU Member State the right to live and work in that Member State.

<sup>151</sup> <http://www.inis.gov.ie/en/INIS/Guidelines%20for%20Colleges%20-%20August%202011.pdf/Files/Guidelines%20for%20Colleges%20-%20August%202011.pdf>.

<sup>152</sup> <http://www.gardai.ie>.

<sup>153</sup> Quinn (2011) Visa Policy as a Migration Channel: Ireland.

*The Asylum and Immigration Strategic Integration Programme (AISIP)*

The case management and statistical information system was implemented in October 2011. This system enables all business areas in INIS to operate from the same IT system. The system will also be implemented in the management of the Reception and Integration Agency (RIA) accommodation system, and will be used for the electronic tracking of all files. The main change that AISIP will bring about will be the introduction of a new applicant reference numbering system, which will be used across all areas of INIS.<sup>154</sup>

*The Country of Origin Information System (e-library)*

The Country of Origin Information System which launched in late 2007 as part of the AISIP project. The system provides facilities for the maintenance of and access to electronic information.<sup>155</sup>

**4.8.2 Links with other policy areas**

The asylum-related structures are all located under the aegis of the Department of Justice and Equality although there are important operational links with other Departments. For example all asylum applicants are housed under the direct provision system meaning that they are accommodated under a full board arrangement and receive an allowance administered through the Department of Social Protection. In addition the Health Service Executive (HSE) has responsibility for unaccompanied minors who enter the State and where applicable may make an application for asylum on their behalf. The HSE also provides screening and health care services to asylum applicants.

Immigration Policy and Operations areas within INIS liaise closely with the Economic Migration Policy and Work Permits Section of the Department of Jobs, Enterprise and Innovation. This often involves individual cases, checking visas against employment permits, arranging residency stamps for workers in exceptional circumstances etc. INIS and the Department of Jobs, Enterprise and Innovation also work closely on major policy initiatives such as the EU Directive on a Blue Card for highly skilled workers. Currently Ireland does not opt into the EU Directive Blue Card.

INIS staff also work with the Department of Environment, Community and Local Government on housing; Department of Education and Skills on primary and post primary education; and the Department of Foreign Affairs and Trade on visas. INIS staff work with the Department of Social Protection on implementation of the Habitual Residency Condition.

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<sup>154</sup> <http://www.ria.gov.ie/en/RIA/Info%20Note%20on%20AISIP%20&%20PINs.pdf/Files/Info%20Note%20on%20AISIP%20&%20PINs.pdf>.

<sup>155</sup> <http://www.inis.gov.ie/en/INIS/Pages/PR07000276>.



The Central Investigations Unit within INIS is responsible for data sharing with the UK. The unit brings together expertise from existing units in INIS including staff from the Visa Section and EU Treaty Rights Section, the Department of Social Protection, Revenue and the GNIB, and the UK in order to address fraud within the State and more broadly within the CTA. The National Employment Rights Authority (NERA) is an agency of the Department of Jobs, Enterprise and Innovation which investigates compliance with employment permits legislation, along with a wide range of other duties. NERA cooperates on occasion with the GNIB, Revenue and the Department of Social Protection on inspections. NERA may also request information from the GNIB and ORAC.<sup>156</sup>

# Chapter 5

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## Analysis of Asylum and Migration Systems

### 5.1 ANALYSIS OF THE ASYLUM SYSTEM

The Irish statutory asylum system has been in development since approximately 1996. Ireland initially legislated for its obligations under the 1951 Refugee Convention through the *Refugee Act 1996* which was commenced in November 2000. The system continues to develop as international and domestic conditions change. The asylum system was established at a time of exponentially increasing numbers of applicants and it is perhaps unsurprising that it has faced challenges. One of the most pressing historical problems has been that of lengthy processing times which have been significantly reduced in recent years. As discussed in Section 3.2.1 this can be attributed in part to the introduction of measures designed to speed up the asylum system such as the prioritisation of certain cases and the designation of safe countries of origin.

In order to meet its international obligations in the area of asylum, the Government has allocated significant resources over the years to asylum determination structures, to reception arrangements and to the provision of services to asylum seekers. The Reception and Integration Agency (RIA) of the Department of Justice and Equality is responsible for the accommodation of asylum seekers in accordance with the Government policy of direct provision and dispersal. The system allows the State to ensure that a suitable standard of accommodation, food and ancillary services are provided to asylum seekers resident in the State. Over the years, the system, as in other countries, has been open to scrutiny by many international bodies. Centres have been visited by various UN bodies, including the UNHCR, by the Council of Europe Human Rights Commissioner and by the Council of Europe's European Commission against Racism and Intolerance (ECRI).<sup>157</sup> The programme of direct provision was reviewed in 2008 as part of the cross Governmental 'Value for Money' Review, which was published in 2010. The Review examined (with particular concentration on 2005 to 2008) the aims and objectives of direct provision, and determined if it warranted the continued allocation of public funds. It also considered whether the system of direct provision provided value for money for the Government. The Review examined alternatives such as allowing asylum seekers to claim social welfare and rent supplement, in order to determine

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<sup>157</sup>

Written Answer to Parliamentary Question by Minister for Justice, Equality and Defence. Tuesday 22 May 2012. <http://debates.oireachtas.ie/dail/2012/05/22/00318.asp>.

whether better value for money could be provided by alternate systems. It found that these alternative options would be significantly more expensive than direct provision, and concluded that using direct provision has proven to be the correct choice in providing for the accommodation needs of asylum seekers.<sup>158</sup>

Reflecting on the lessons learned thus far in the development of the asylum system, Government officials have noted the proposed revision of the current system of asylum application, primarily contained within the *Immigration, Residence and Protection Bill, 2010*. The current system involves several stages; if an applicant is unsuccessful applying for asylum, they may subsequently apply for subsidiary protection, and may make representations to the Minister for Justice, Equality and Defence as to why they should be allowed leave to remain in Ireland, before a deportation order is issued. Ireland is the only EU state without a single protection procedure application system. Proposals were contained in the now withdrawn *Immigration, Residence and Protection Bill, 2010* to change this and make the system more efficient and effective.<sup>159</sup> The Bill proposed that an applicant be asked to set out all of the grounds on which they wish to remain in the State (including non-protection-related reasons for permission to remain) at the outset of their claim, and all of these matters would be examined together. This system would also see the functions of the Office of the Refugee Applications Commissioner (ORAC) subsumed into the Department of Justice and Equality. It was envisioned by the Department of Justice and Equality that this will provide for more flexibility if all international protection related staff and services were within one organisation.<sup>160</sup>

In addition, the system of judicial review has been very costly to the State, as it stands the several stages in the asylum protection system allow for judicial review of many decisions. The Annual Report of the Refugee Appeals Tribunal 2011 shows that in 2011, 73 per cent of the Tribunal's non-pay expenditure went on legal costs associated with judicial review proceedings, amounting to €3,168,952.<sup>161</sup>

The current, costly over-reliance of the present international protection system on the courts has been noted by officials interviewed for the purposes of this study. The Minister for Justice and Equality has stated that a redrafted version of the *Immigration, Residence and Protection Bill* will be reintroduced in 2013. It is envisioned by the Minister that the Bill will comprehensively reform and

<sup>158</sup> Reception and Integration Agency (2010) *Value for Money and Policy Review, the Asylum Seekers Accommodation Programme*. Available at <http://www.ria.gov.ie/en/RIA/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf/Files/FINAL%20VFM%20Report%20on%20Asylum%20Seeker%20Accomm%20July272010.pdf>.

<sup>159</sup> Interview with Government Official.

<sup>160</sup> Interview with Government Official.

<sup>161</sup> Refugee Appeals Tribunal (RAT). Annual Report 2011. Available at: <http://www.refappeal.ie>.

simplify the current refugee status determination process by the introduction of a single procedure system.<sup>162</sup>

## 5.2 ANALYSIS OF THE MIGRATION SYSTEM

Unlike the asylum system the immigration system is mainly still on an administrative footing. In terms of lessons learnt in the development of migration systems in Ireland, the modification of policies as related to non-EEA students has demonstrated where gaps in provision lay, and highlighted where stricter terms needed to be implemented.<sup>163</sup> A review of this policy began in 2009, based on twin governmental concerns that the current student provision was open to abuse, and that the full economic benefits of international students was not being utilised. *A New Immigration Regime for Full Time non-EEA Students* was subsequently published in 2010 and contained more than 20 recommendations designed to reform the student immigration regime in a manner that is better integrated with Ireland's immigration policy generally, while providing a stronger regulatory framework for the sustainable development of the international education sector. In effect from January 2011, these recommendations included the introduction of maximum periods of residence in the State on foot of student permission according to type of course followed. In general, non-EEA student permission is limited to seven years in total.<sup>164</sup> Another recommendation included that all eligible education providers must be included on a State-administered 'Internationalisation Register', to prevent abuse of the system, and to prevent the existence of illegitimate education providers. A further review by the same Interdepartmental Committee on Student Immigration regarding access to the labour market by non-EEA students took place during 2011, with the work concession for students reviewed and a subsequent refining of policies taking place.

There is no formal system of review of Government immigration policies in place, instead policy makers meet bi-annually with a forum of Non-Governmental Organisations for briefing updates, at which gaps and weaknesses in policy and operational activities are highlighted.<sup>165</sup> Cost saving with regard to the migration system was implemented after a report by the 'Special Group on Public Service Numbers and Expenditure Programmes' was published in July 2009. In light of the economic recession, the Report described a potential €5.3bn of savings, including 17,300 public service job cuts and a five

<sup>162</sup> Written Answer to Parliamentary Question by Minister for Justice, Equality and Defence, Thursday 7 June 2012. <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2012060700119?opendocument&highlight=immigration%20residence%20protection>.

<sup>163</sup> Irish Naturalisation and Immigration Service (January 2011). 'New Immigration Regime for Full Time Non-EEA Students - Guidelines for Degree Programme Students'. Available at [www.inis.gov.ie](http://www.inis.gov.ie).

<sup>164</sup> Except in cases where the course is at PhD level or a programme of study of long duration or where the Minister for Justice, Equality and Defence is satisfied that "special circumstances exist".

<sup>165</sup> Interview with Officials from INIS.

per cent cut in social welfare. This spurred a change of structure of the Department of Justice and Equality, including increased flexibility of the Department and the movement of staff between Departments. Consolidation of services is now a key focus of government. The statistical function also drives migration policy; whilst statistics were collected pre-2009, the Regulation on European Statistics was implemented in 2009, and since then the Government has had greater access to standardised and cross comparable statistical information to assist policy makers.

### 5.3 IMPACT OF THE EU ACQUIS

#### 5.3.1 Asylum

Ireland initially legislated for its obligations under the 1951 Refugee Convention through the *Refugee Act, 1996*. Since then, Ireland has amended the Act several times, both because of domestic policy developments, and because of the development of the EU asylum *acquis*. Ireland does not automatically opt into EU asylum measures, but has an option to adopt such measures. In practice, Ireland is presumed not to be participating in such measures unless it expressly decides to opt in. There are generally two points at which Ireland might indicate that it wished to participate in an asylum or migration related measure; firstly, within three months of the publication of the proposal by the European Commission or, secondly, at any point following the final adoption of the measure. In this regard the legal relationship of Ireland and the UK to the Treaties is laid down in Protocol No. 21 to the Treaty on the Functioning of the European Union in relation to measures proposed in the area of Freedom, Security and Justice. Ireland has opted into most of the asylum *acquis*, though it is not participating in *Directive 2003/9/EC* (i.e. the ‘Reception Directive’).

The ‘Dublin Regulation’ Council Regulation (EC) 343/2003, enabled through Section 22 of the *Refugee Act, 1996* (as amended), and the *Refugee Act, 1996* (Section 22) Order, 2003 (*S.I. 423/2003*), establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States. Ireland opted-in to *Directive 2004/83/EC* (the ‘Qualification Directive’), and the Directive is given domestic effect in the *European Communities (Eligibility for Protection) Regulations, 2006* (*S.I. 518/2006*) in conjunction with the *Refugee Act 1996*. Ireland has not opted into the recast version of the Directive (i.e. *Directive 2011/95/EU*). This will give rise to a situation whereby two Qualification Directives will apply in different Member States simultaneously. *Council Directive 2005/85/EC* (the ‘Procedures Directive’) establishes minimum standards for procedures for granting and withdrawing refugee status. The State initially did not expressly transpose the Directive, relying instead of the procedures already in place under the *Refugee Act*, and in line with the

administrative procedures determined by the Minister and the various statutory bodies under that Act.

An emerging emphasis as noted by Irish policymakers consulted for this study was the impact of EU *acquis* through the European Court of Justice (ECJ). Several high profile ECJ decisions both in Irish cases, and across the EU, can be seen to have directly impacted on current asylum procedures. When a particular issue is under consideration by the ECJ and pending judgment, similar cases are put on hold in the Irish context until an opinion is issued by the ECJ.

### 5.3.2 Migration

Ireland has not opted to take part in many EU migration measures. Accordingly, the impact of EU legislation and policies on Irish migration law has been limited.<sup>166</sup> Ireland opted into, but has yet to transpose, the Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. Ireland opted into *Directive 2004/82/EC*, which has been transposed by the *European Communities (Communication of Passenger Data) Regulations 2011*. Ireland also opted into *Council Directive 2002/90/EC* defining the facilitation of unauthorised entry, transit and residence and the *Researchers Directive 2005/71/EC*. Also, on the basis of participation in some aspects of the Schengen *acquis*, Ireland participates in several, but not all, Schengen-related measures, including Regulation (EC) No 377/2004, which creates an immigration liaison officers network.

The historical, cultural and economic importance of the Common Travel Area has profoundly affected Ireland's external relationship with the EU *acquis*. In the interests of preserving the Common Travel Area, Ireland has aligned its immigration and asylum policies with the UK and as such has an external relationship with the EU *acquis*. Perhaps the most obvious consequence of this policy is the EU labour migration policy which has had no real impact on Irish immigration policy. As regards the provisions of international agreements involving the EU that fall within the scope of Part Three, Title V of the Treaty on the Functioning of the European Union; such agreements bind the United Kingdom and Ireland as separate contracting parties, and not as part of the European Union.<sup>167</sup>

In addition Ireland does not participate in visa and border aspects of the Schengen *acquis*, the legal basis of which is laid out in a separate protocol to

<sup>166</sup> For example, Ireland has opted not to participate in *Directive 2008/115/EC* (the 'Returns Directive'), which seeks to establish common EU rules on the deportation of illegal immigrants; *Council Directive 2003/110/EC* on assistance in cases of transit for the purposes of removal by air; the Frontex Regulation (2007/2004); and *Directive 2009/52/EC* (the 'Sanctions Directive'), which penalises employers of illegal immigrants.

<sup>167</sup> Council of the European Union 665/08. Available at: <http://www.dfa.ie/uploads/documents/EU%20Division/EU%20Reform%20Treaty/consolidated%20eu%20treaties%20in%20english%20as%20amended%20by%20reform%20treaty%20.pdf>.

the Treaty on the Functioning of the European Union. As such Ireland is precluded from taking part in border-related initiatives. This would include the Frontex Regulation, the Border Code and the Common Visa Policy. While the Smart Borders proposals have not been published up to this point, it is expected that they will build on those provisions of the Schengen *acquis* in which Ireland does not participate and, as a result, it is unlikely that Ireland will be in a position to participate in the Smart Borders initiative.<sup>168</sup>

As referenced earlier, a number of current issues associated with the asylum and immigration system were to be addressed in the *Immigration, Residence and Protection Bill, 2010*. The Minister for Justice, Equality and Defence has stated in the Dáil that he intends to republish the Bill; it is currently expected to be introduced in late 2012. If enacted, the *Immigration Residence and Protection Bill* would comprehensively reform and simplify the current refugee status determination process by providing for a single procedure decision system. It is hoped that introducing a single procedure will facilitate speedier processing of an application without jeopardising the fairness of the decision reached. In line with the Programme for Government it is also expected that the Bill, if and when republished, will also contain a number of new elements, such as provision for a statutory appeals system.

## Bibliography

- CSO (2011). Annual Migration and Population Estimates 2011. Available at [www.cso.ie/en/media](http://www.cso.ie/en/media).
- CSO (2012). *This is Ireland Census of Population 2011*. Available at [www.cso.ie/en/census/census2011](http://www.cso.ie/en/census/census2011).
- Department of Enterprise, Trade and Innovation (2010). *New Procedures for Employment Permits for Doctors*. Available at [www.deti.ie](http://www.deti.ie).
- Department of Justice and Equality (2005b). "Immigration and Residence in Ireland. Outline policy proposals for an Immigration and Residence Bill: A discussion document". Dublin: Department of Justice and Equality.
- Department of Justice and Equality (2010). "*Immigration, Residence and Protection Bill, 2010*" Dáil Éireann Second Stage Speech by Mr Dermot Ahern T.D., Minister for Justice and Equality October 2010. Available at [www.justice.ie/en/JELR/Pages/Immigration](http://www.justice.ie/en/JELR/Pages/Immigration).
- Department of Justice and Equality (2011a). "Statement by Minister for Justice, Equality and Defence, Mr Alan Shatter, T.D., on the implications of the recent ruling of the Court of Justice of the European Union in the case of Ruiz Zambrano". Press Release. Available at [www.justice.ie/en/JELR/Pages/PR11000019](http://www.justice.ie/en/JELR/Pages/PR11000019).
- Department of Justice and Equality (2011). "Public Service Agreement 2010-2014 (Croke Park Agreement) Part B – Savings Verification-Department of Justice and Equality". Available at [www.justice.ie/en/JELR/Savings](http://www.justice.ie/en/JELR/Savings).
- Department of Justice and Equality (2011). "Minister Shatter signs new law requiring airlines to provide Advance Passenger Information. New measure to improve border control and combat illegal immigration". Available at [www.inis.gov.ie/en/INIS/Pages](http://www.inis.gov.ie/en/INIS/Pages).
- Department of Justice and Equality (2011). "Ireland-UK accord to further secure the Common Travel Area". Available at [www.justice.ie/en/JELR/Pages/PR11000267](http://www.justice.ie/en/JELR/Pages/PR11000267).
- Department of Justice and Equality (March 2012). "Minister Shatter announces extension of Irish Short-stay Visa Waiver Programme". Available at [www.inis.gov.ie/en/INIS/Pages](http://www.inis.gov.ie/en/INIS/Pages).
- Department of Jobs, Enterprise and Innovation (2011). "Government decides to maintain restrictions on Bulgarian and Romanian access to the Irish labour market in 2012 and 2013". Available at [www.djei.ie/press/2011/20111216a.htm](http://www.djei.ie/press/2011/20111216a.htm).
- EU Agis Conference (2005). "An Examination of Best Practice in Fighting and Preventing the Corruption of Public Figures involved in the administration of Immigration Regulations". Available at [www.garda.ie/Documents/User](http://www.garda.ie/Documents/User).
- Flac (2010). Submission of FLAC to Joint Oireachtas Committee on Justice, Defence and Women's Rights. Available at [www.flac.ie/download/pdf/irp\\_bill\\_submission.pdf](http://www.flac.ie/download/pdf/irp_bill_submission.pdf).
- Fraser, U. (2003). "The asylum procedure". In Fraser, Ursula and Harvey, Colin, 2003. *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*. Dublin: IPA.
- Immigrant Council of Ireland (2010a). "*The Immigration, Residence and Protection Bill, 2010 - a critical overview*". Available at [www.immigrantcouncil.ie](http://www.immigrantcouncil.ie).



Immigrant Council of Ireland (2010b). "ICI Proposal for a Model for an Independent Appeals Mechanism for Immigration Decisions". Available at [www.immigrantcouncil.ie/images/](http://www.immigrantcouncil.ie/images/).

Immigrant Council Ireland (2010c). "Long Term Residence and Citizenship". Briefing paper. Available at: [www.immigrantcouncil.ie](http://www.immigrantcouncil.ie).

INIS (2006). "Report on Review of Immigration and Asylum". Available at [www.inis.gov.ie/en/INIS/VFMReport.pdf/Files/VFMReport.pdf](http://www.inis.gov.ie/en/INIS/VFMReport.pdf/Files/VFMReport.pdf).

INIS (2011). "New Immigration Regime for full time non EEA students". Available at [www.inis.gov.ie/en/INIS/Guidelines](http://www.inis.gov.ie/en/INIS/Guidelines).

INIS (2011). "Irish Short Stay Visa Waiver Programme Information Note". Available at [www.inis.gov.ie/en/INIS/VWP](http://www.inis.gov.ie/en/INIS/VWP).

INIS (2012). "Minister Shatter announces extension of Irish Short-stay Visa Waiver Programme". Available at [www.inis.gov.ie/en/INIS/Pages/](http://www.inis.gov.ie/en/INIS/Pages/).

The Integration Centre (2010). "Submission to the Committee on Justice, Defence and Women's Rights on the *Immigration Residence and Protection Bill, 2010*". Available at [www.integrationcentre.ie/getattachment/](http://www.integrationcentre.ie/getattachment/).

IOM Dublin (2011). Assisted Voluntary Return Statistics November 2011- December 2010. Available at [www.iomdublin.org/images/pdf/publications/iom](http://www.iomdublin.org/images/pdf/publications/iom).

Joyce, C. (2011). *Annual Policy Report on Migration and Asylum 2010: Ireland*. European Migration Network. ESRI: Dublin.

Joyce, C. (forthcoming). *Annual Policy Report on Migration and Asylum 2011: Ireland*. European Migration Network. ESRI: Dublin.

Kenny, C. (2003). *Asylum in Ireland: The Appeal Stage- A Report on the Fairness and Sustainability of Refugee Determination at Appeal Stage*. Dublin: Irish Refugee Council.

NGO (2011). "Coalition Briefing on *Immigration, Residence and Protection Bill, 2010*". Available at [www.integrationcentre.ie/getattachment/](http://www.integrationcentre.ie/getattachment/).

Office of the Minister for Integration (18 January 2011). "Minister White chairs meeting of Inter-Departmental Group on Integration". Press Release. Available at [www.integration.ie](http://www.integration.ie).

Office of Refugee Appeals Commissioner (2003). "Information Leaflet for Applicants for Refugee Status in Ireland a guide". Available at [www.orac.ie/PDF/Leaflets/](http://www.orac.ie/PDF/Leaflets/).

Office of Refugee Appeals Commissioner (2011). *Annual Report 2010*. Available at [www.orac.ie/pdf/PDFCustService/AnnualReports/](http://www.orac.ie/pdf/PDFCustService/AnnualReports/).

Office of Refugee Appeals Commissioner (2012). "February Monthly Statistics 2012". Available at [www.orac.ie/pages/Stats/2012.htm](http://www.orac.ie/pages/Stats/2012.htm).

Quinn and Hughes (2005a). *Policy Analysis Report on Asylum and Immigration: Ireland 2003 to Mid-2004*. European Migration Network. Dublin: ESRI.

Quinn and Hughes (2005b). *Reception Systems, their Capacities and the Social Situation of Applicants within the Reception System in Ireland*. European Migration Network. Dublin: ESRI.

- Quinn, E., Stanley, J., Joyce, C., O'Connell, P.J.,(2008a). *Handbook on Immigration and Asylum in Ireland 2007*. European Migration Network. Dublin: ESRI.
- Quinn, E. and O'Connell, P.J., (2008). *Conditions of Entry and Residence of Third Country Highly Skilled Workers in Ireland, 2006*. Dublin: ESRI.
- Quinn (2010). *Satisfying Labour Demand Through Migration: Ireland*. European Migration Network. Dublin: ESRI.
- Quinn (2011a). *Temporary and Circular Migration: Ireland*. European Migration Network. Dublin: ESRI.
- Quinn (2011b). *Programmes and Strategies in Ireland Fostering Assisted Return to Third Countries: Ireland*. European Migration Network. Dublin: ESRI.
- Quinn (2011c). *Visa Policy as a Migration Channel: Ireland*. European Migration Network. Dublin: ESRI.
- Reception and Integration Agency (2012). *Monthly Report December 2011*. Available at [www.ria.gov.ie/en/RIA/RIADec\(A4\)2011.pdf/Files/RIADec\(A4\)2011.pdf](http://www.ria.gov.ie/en/RIA/RIADec(A4)2011.pdf/Files/RIADec(A4)2011.pdf).
- Reception and Integration Agency (2011). *Monthly Statistics Report December 2011*. Available at [www.ria.gov.ie/en/RIA/RIADec\(A4\)2011.pdf/Files/RIADec\(A4\)2011.pdf](http://www.ria.gov.ie/en/RIA/RIADec(A4)2011.pdf/Files/RIADec(A4)2011.pdf).
- Reception and Integration Agency (2010). *Value for Money and Policy Review, the Asylum Seekers Accommodation Programme*. Available at [www.ria.gov.ie/en/RIA/](http://www.ria.gov.ie/en/RIA/).
- Refugee Appeals Tribunal (2011). *Annual Report 2010*. Available at [www.refappeal.ie/website/rat/ratweb.nsf/page/about\\_the\\_tribunal-en](http://www.refappeal.ie/website/rat/ratweb.nsf/page/about_the_tribunal-en).
- Ruhs, M.,(2005). *Managing the Immigration and Employment of Non-EU nationals in Ireland*. The Policy Institute, Dublin: Trinity College.

## Appendix I: List of Irish Immigration, Asylum and Citizenship Legislative Instruments

- S.I. No. 284/2011 - Irish Nationality and Citizenship (Amendment) Regulations 2011.*
- S.I. No. 146 of 2011 - The Immigration Act 2004 (Visas) Order 2011.*
- S.I. No. 52/2011 - Refugee Act 1996 (Asylum Procedures) Regulations 2011.*
- S.I. No. 51/2011 - European Communities (Asylum Procedures) Regulations 2011.*
- S.I. No. 453 of 2009 - The Immigration Act 2004 (Visas) (No. 2) Order 2009.*
- S.I. No. 238 of 2009 - The Immigration Act 2004 (Visas) (No. 1) Order 2009.*
- S.I. No. 340 of 2008 - Immigration Act 2004 (Registration Certificate) (Amendment) Regulations 2008.*
- S.I. No. 310 of 2008 - European Communities (Free Movement of Persons) (Amendment) Regulations 2008.*
- S.I. No. 294 of 2008 - Irish Nationality and Citizenship (Fees) Regulations 2008.*
- Immigration, Residence and Protection Bill, 2008.*
- S.I. No. 656 of 2006 - European Communities (Free Movement of Persons) (No. 2) Regulations 2006.*
- S.I. No. 657 of 2006 - Immigration Act 2004 (Visas) (No. 2) Order 2006.*
- S.I. No. 518 of 2006 - European Communities (Eligibility for Protection) Regulations 2006.*
- S.I. No. 253 of 2006 - Immigration Act 2004 (Registration Certificate Fee) Regulations 2006.*
- Irish Nationality and Citizenship Act Commencement Order 2004.*
- S.I. No. 730 of 2005 - Civil Legal Aid (Refugee Appeals Tribunal) Order 2005.*
- Immigration Act 2004 (Visas) Order 2005.*
- Refugee Act 1996 unofficial restatement updated to 2004.*
- S.I. No. 55 of 2005 - Immigration Act 1999 (Deportation) Regulations 2005.*
- S.I. No. 56 of 2005 - Immigration Act 2003 (Removal Places of Detention) Regulations 2005.*
- Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Act 2004: informal consolidation.*
- Irish Nationality and Citizenship Act 2004.*
- S.I. No. 714 of 2004 - Refugee Act 1996 (Safe Country of Origin) Order 2004.*
- Irish Nationality and Citizenship Bill, 2004.*
- Immigration Act 2004.*

*S.I. No. 708 of 2003 - Aliens (Visas) Order 2003.*

*S.I. No. 444 of 2003 - Immigration Act 2003 (Removal Places of Detention) Regulations 2003.*

*S.I. No. 423 of 2003 - Refugee Act 1996 (Section 22) Order 2003.*

*S.I. No. 424 of 2003 - Refugee Act 1996 (appeals) Regulations 2003.*

*S.I. No. 422 of 2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003.  
Immigration Act 2003.*

*Immigration Act 1999 (as amended to date: unofficial restatement).*

*Irish Nationality and Citizenship Acts 1956 to 2001: unofficial restatement.*

*S.I. No. 103 of 2002 - Immigration Act 1999 (Deportation) Regulations 2002.*

*S.I. No. 36 OF 2001 - Aliens (Visas) Order 2001.*

*Illegal Immigrants (Trafficking) Act 2000.*

*Immigration Act 1999.*

*Refugee Act 1996.*

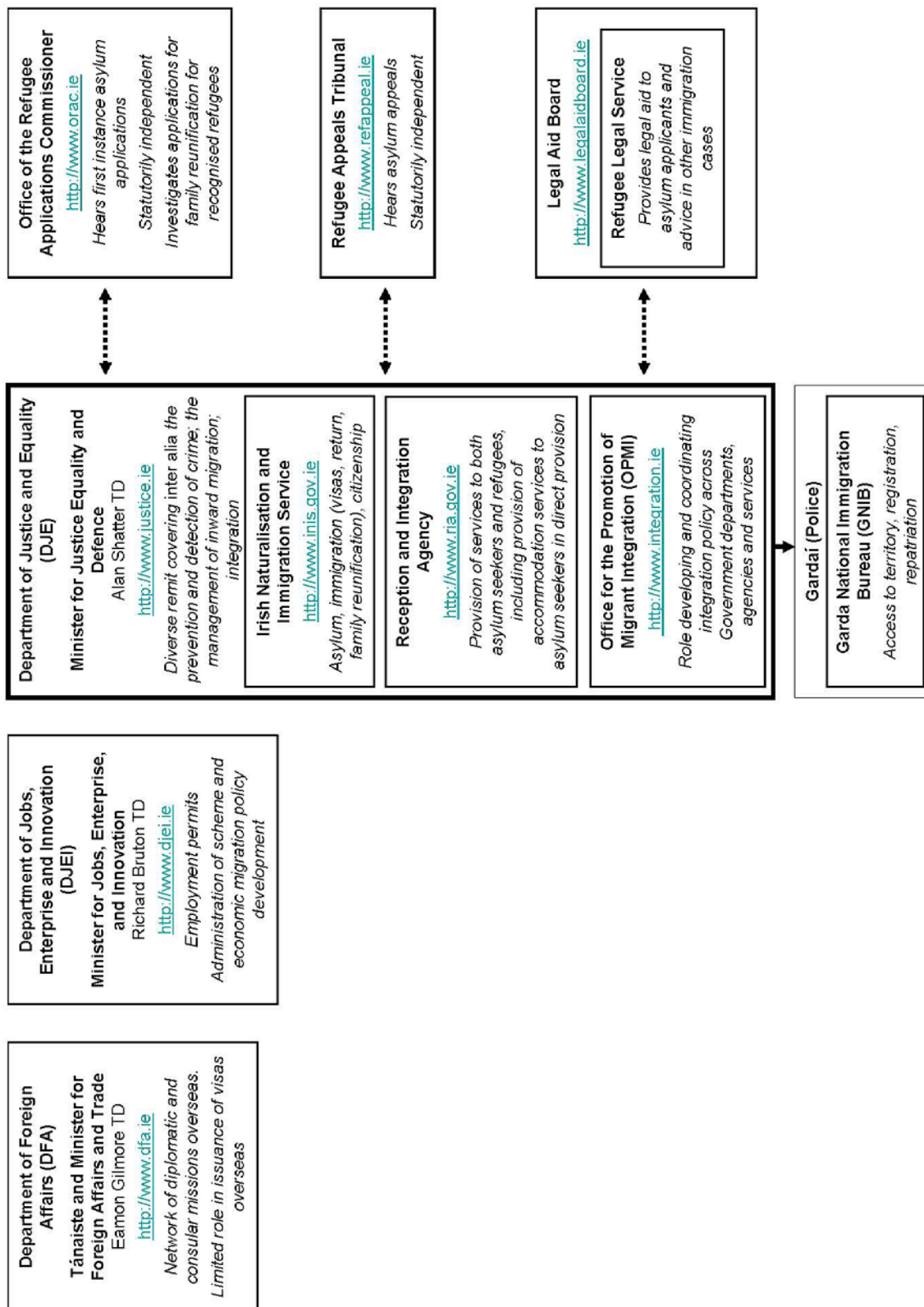
*S.I. No. 128/1975 Aliens (Amendment) Order 1975.*

*S.I. No. 395/1946 Aliens Order 1946.*

*Aliens Act 1935.*

## Appendix II: Institutions in Ireland with Responsibility for Asylum and Immigration: April 2012

(Simplified for illustration purposes)





European Migration Network

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