November 2017

ANNUAL REPORT ON MIGRATION AND ASYLUM 2016: IRELAND

ANNE SHERIDAN

EMN Ireland is co-funded by the European Union and the Department of Justice and Equality.

EMN European Migration Network

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ESRI ECONOMIC & SOCIAL RESEARCH INSTITUTE

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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 levels with a view to supporting policymaking and informing the general public. The Irish National Contact Point of the European Migration Network, EMN Ireland, sits within the Economic and Social Research Institute (ESRI).

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This European Migration Network Study, compiled according to commonly agreed specifications, provides a coherent overview of migration, asylum trends and policy developments for 2016. The report consists of information gathered primarily for the EU-level synthesis report of the EMN *Annual Report on Migration and Asylum 2016.* All reports are available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

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ABBREVIATIONS AND IRISH TERMS

AIDA	Asylum Information Database
AkiDwA	Akina Dada wa Africa
AMIF	Asylum, Migration and Integration Fund
CEDAW	UN Convention on the Elimination of Discrimination Against Women
CJEU	Court of Justice of the European Union
COSC	National Office for the Prevention of Domestic, Sexual and Gender-based Violence
CSO	Central Statistics Office
CTA	Common Travel Area
Dáil	Parliament, lower house
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
EU	European Union
FLAC	Free Legal Advice Centres
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU
Garda Síochána	National police force
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
HEA	Higher Education Authority
HIQA	Health Information and Quality Authority
HSE	Health Services Executive
HSEOL	Highly Skilled Eligible Occupations List

ICEL	Ineligible Categories of Employment List
ICI	Immigrant Council of Ireland
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme
ILEP	Interim List of Eligible Programmes
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IPAT	International Protection Appeals Tribunal
IPO	International Protection Office
IRC	Irish Refugee Council
IRPP	Irish Refugee Protection Programme
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MRCI	Migrant Rights Centre Ireland
Nasc	The Irish Immigrant Support Centre
NCP	National Contact Point
NWCI	National Women's Council of Ireland
ODA	Official Development Assistance
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
QQI	Quality and Qualifications Ireland
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
SDGs	Sustainable Development Goals
Seanad	Parliament, upper house
SIS	Schengen Information System

STEP	Start-up Entrepreneur Programme
SWAI	Sex Workers Alliance Ireland
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TCN	Third Country National
Tusla	Child and Family Agency
UN	United Nations
UNCRC	UN Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
VIS	Visa Information System
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

The purpose of this report is to provide an overview of trends, policy developments and significant debates in the area of asylum and migration during 2016 in Ireland.

STATISTICAL OVERVIEW

Provisional end-of-year figures for 2016 show approximately 115,000 non-EEA nationals with permission to remain in Ireland compared to 114,000 at the end of 2015. The top five nationalities, accounting for 48.5 per cent of all persons registered, were Brazil (13.2 per cent), India (12.2 per cent), China (9.2 per cent), USA (7.9 per cent) and Pakistan (6 per cent).

A total of 9,373 employment permits were issued during 2016, an increase over the 2015 total of 7,253. As in 2015, India was the top nationality, with 2,990 permits.

The estimated population of Ireland in the 12 months to April 2017 stood at 4.79 million, an overall increase of 52,900. This was due to the combined natural increase in the population and net inward migration, which was at the highest level since 2008. Central Statistics Office (CSO) figures released in September 2017 estimate that the number of newly arriving immigrants increased year-on-year to 84,600 at April 2017 from 82,300 at end April 2016. Non-Irish nationals from outside the EU accounted for 34.8% of total immigrants. Net inward migration for non-EU nationals is estimated at 15,700.

As in the year to April 2016, returning Irish nationals were the largest immigrant group in the year to April 2017. There was a small decrease of 1,000 in returning Irish nationals, from 28,400 to 27,400. Net outward migration of Irish nationals continued to decrease in the year to April 2017 (30,800) from its peak in 2012 (49,700). Net outward migration of Irish nationals in 2017 was 3,400, a decrease of 88.5% from its peak in 2012 (29,600).

A total of 104,572 visas, both long and short stay, were issued in 2016. The approval rate for visa applications was 90 per cent.

Provisional figures show that 4,127 persons were refused leave to land in Ireland in 2016. Of these, 396 were subsequently admitted to pursue a protection application. A total of 428 persons were deported from Ireland in 2016, with 187 persons availing of voluntary return, of whom 143 were assisted by the

International Organization for Migration (IOM).

There were 532 persons granted leave to remain under section 3 of the I*mmigration Act 1999* during 2016, of whom 467 persons were rejected asylum seekers.

There was a drop of 32 per cent in applications for refugee status (2,244) received by the Office of the Refugee Applications Commissioner (ORAC) in 2016, from the 3,276 applications received in 2015. The overall grant rate for cases at first instance was 16.8% in 2016. The Refugee Appeals Tribunal (RAT) received 1,559 new appeals from negative determinations of refugee status during the year and issued decisions in 539 cases, with ORAC's original recommendation affirmed in 351 cases. The main nationalities of first-instance applicants for refugee status were Syria, Pakistan, Albania, Zimbabwe and Nigeria. Top countries of origin for appeals were Pakistan, Nigeria, Albania, Bangladesh and Zimbabwe.

During the year, ORAC completed 641 subsidiary protection cases and 431 new applications for subsidiary protection cases were submitted to it. There were 41 recommendations made to grant subsidiary protection. The RAT received 219 appeals for refusals of the grant of subsidiary protection, 379 decisions were issued and 278 cases saw the RAT confirm the decision of ORAC.

ORAC received a total of 358 applications for family reunification in respect of recognised refugees during the year, an increase of 32 per cent over 2015.

During 2016, a total of 95 alleged trafficking victims were identified, compared to 78 in 2015. Twenty-eight of these victims were third-country nationals.

LEGISLATION

The most significant legislative development in 2016 was the commencement of the *International Protection Act 2015*, throughout 2016. The Act was fully[1] commenced by 31 December 2016. From that date, all applications for international protection are dealt with under the new provisions and, where applicable, the relevant transitional provisions contained in sections 70 and 71 of the *International Protection Act 2015*. The Act was commenced via three commencement orders introduced throughout 2016 and a number of other regulations were introduced bringing into effect various aspects of the legislation. Further details of these are included in Chapter 3.

[1] Other than paragraphs (b), (f), (i), (j), (l), (m) and (p) of section 6(2).

Other relevant legislation included statutory instruments which were introduced in relation to employment permits, visas and return. A list of these is included in Chapter 2.

CASE LAW

There were a number of significant cases related to migration and asylum during 2016 in the areas of international protection, return, legal migration and visa policy. Case summaries are included under thematic headings throughout the Report.

UNITED NATIONS-RELATED DEVELOPMENTS

2016 was an active year in terms of both Ireland's reporting obligations under various United Nations (UN) instruments and processes and Ireland's involvement in preparing for the UN High Level Summit for Refugees and Migrants, held in September 2016.

Ireland appeared before the committee for the UN Convention on the Rights of the Child (UNCRC) in January 2016. In its concluding observations, the UNCRC expressed concerns and made recommendations relevant to migrant children, including on the impact of poverty on refugee children, standards of accommodation in the direct provision system and in relation to children in an irregular migration situation.

Ireland's hearing before the Human Rights Council for the second cycle of the Universal Periodic Review (UPR) took place in May 2016. During the interactive hearing, 93 UN Member States intervened and made a total of 262 recommendations to Ireland. Migration-related recommendations included calls for protection of refugees and asylum seekers including accelerating the Irish Refugee Protection Programme and calls to sign the *International Convention on the Protection of all Migrant Workers and Their Families.* The final *Report of the Working Group on the Universal Periodic Review: Ireland* was adopted at the Human Rights Council in September 2016.

Ireland submitted its sixth and seventh periodic reports to the UN Convention for the Elimination of Discrimination Against Women (CEDAW) Committee in September 2016. Issues relevant to migrant women were addressed in both the Government and shadow reports submitted to the committee.

Ireland and Jordan were appointed in February 2016 as co-facilitators to conduct the preparatory negotiations with Member States in preparation for the UN High Level Summit for Refugees and Migrants which was held at the UN General

Assembly on 19 September 2016. At the Summit, 193 UN Member States signed up to the *New York Declaration on Refugees and Migrants.* The New York Declaration sets out plans to start negotiations for a global compact for safe, orderly and regular migration and a global compact for refugees to be adopted in 2018.

INTERNATIONAL PROTECTION

The most significant development in 2016 was the entering into force of the single application procedure under the International Protection Act 2015 from 31 December 2016. The 2015 Act provides for applications for international protection (refugee and subsidiary protection) as well as permission to remain cases to be processed as part of a single procedure.

The International Protection Office (IPO) replaced the Office of the Refugee Applications Commissioner (ORAC) from 31 December 2016. The IPO is an office within the Irish Naturalisation and Immigration Service (INIS) with responsibility for processing applications for international protection. It also considers, as part of the single procedure process, whether applicants should be given permission to remain. The IPO staff includes a Chief International Protection Officer and international protection officers who are independent in the exercise of their international protection functions. The first instance appeals body, the International Protection Applications Tribunal (IPAT), replacing the Refugee Appeals Tribunal (RAT), was established on 31 December 2016.

Implementation of the over 170 recommendations from the *Report of the Working Group on Improvements to the Protection Process, including direct provision and supports to asylum seekers* (McMahon report) continued throughout 2016. The Department of Justice and Equality published an audit of progress in June 2016. Some of the changes introduced in 2016 as a result of recommendations in the Report were an increase in the direct provision allowance for children introduced in January 2016, and preparations for the introduction of self-catering facilities in certain accommodation centres.

RESETTLEMENT AND RELOCATION

2016 saw the first full year of implementation of the Irish Refugee Protection Programme (IRPP). The IRPP was approved by Government on 10 September 2015 and provides that Ireland will take in up to 4,000 persons, primarily through a combination of relocation and resettlement.

A total of 240 persons arrived in Ireland on relocation from Greece during 2016. A total of 356 persons were resettled in Ireland in 2016. By the end of 2016, 519

persons out of the original Irish commitment of 520 under the EU Resettlement Programme had arrived in Ireland.

Two Emergency Reception and Orientation Centres (EROCs) became operational in 2016. The purpose of the EROCs is to provide initial accommodation for asylum seekers relocated to Ireland while their applications for refugee status are processed. They are also used to provide temporary initial housing for refugees arriving under the resettlement strand of the IRPP.

As a result of an Oireachtas motion passed in November 2016, the Government agreed to allocate up to 200 places to unaccompanied minors who had been living in the former migrant camp in Calais, and who expressed a wish to come to Ireland. This figure is included in the overall total of 4,000 under the IRPP.

NAVAL OPERATIONS IN THE MEDITERRANEAN

Another facet of Ireland's response to the migration crisis is the search-and-rescue operations undertaken by the Irish navy in the Mediterranean. This co-operation, on the basis of a bilateral agreement with the Italian navy, continued in 2016. Three Irish naval vessels – the LÉ *Róisín*, the LÉ *James Joyce* and the LÉ *Samuel Beckett* – were deployed to the Mediterranean in the period May to November 2016.

ECONOMIC MIGRATION

The Department of Business, Enterprise and Innovation (then the Department of Jobs, Enterprise and Innovation) launched its electronic Employment Permits Online System (EPOS) in September 2016. The system will offer benefits including fewer errors and rejected applications and faster turnaround of applications.

In September 2016, the Department of Business, Enterprise and Innovation launched a review of the Highly Skilled Eligible Occupations List (HSEOL) and the Ineligible Categories of Employment List (ICEL), which are used in relation to the granting of employment permits. These reviews were conducted to ensure the continued relevance of these lists of occupations to the skills needs of the Irish economy. In addition, in the fourth quarter of 2016, the Department of Business, Enterprise and Innovation commenced a review of minimum annual remuneration thresholds for the employment permits system.

There was a significant increase in applications received and approved under the Immigrant Investor Programme (IIP) in 2016 – 273 applications approved as opposed to 64 in 2015. A total of 43 applications were approved under the Start-Up Entrepreneur Programme (STEP).

INTERNATIONAL STUDENTS

Reform of the international education sector continued throughout 2016, following on from the reforms announced in the Government Policy Statement on the Reform of the International Education Sector and Student Immigration System of May 2015.

Three cycles of the Interim List of Eligible Programmes (ILEP) were published during 2016. Changes to the student work concession (holiday periods) were also announced. The length of immigration permission for students undertaking a full-time English language course included on the ILEP was changed from 12 months to 8 months. Permission may be granted for a maximum of three courses and a maximum period of two years.

A new Stamp 1G for graduates on the Graduate Scheme was introduced in 2016, for the purposes of clarity to help employers differentiate graduates from other student Stamp 2 holders, as the work concession entitlement is different. Conditions of eligibility for the scheme remained unchanged during 2016.

The *International Education Strategy for Ireland 2016–2020* was published in October 2016 by the Minister for Education and Skills. The key aims of the strategy are to increase the economic value of the international education sector, involving attracting 37,000 additional higher education and English language students coming to Ireland. Funding is to be directed at promotional campaigns in key markets such as the US, China, Brazil, Malaysia and the Gulf Region as well as other high-potential markets. The implementation of reforms to the student immigration sector is interlinked with the objectives of the strategy.

ADMINISTRATIVE CHANGES

An online appointments system for all registrations in the Immigration Registration Office at Burgh Quay in Dublin was introduced from 8 September 2016. The registration function in the Burgh Quay Office transferred from the Garda National Immigration Bureau (GNIB) to the INIS in summer 2016. Registrations outside Dublin continue to be processed in regional immigration offices run by An Garda Síochána.

BORDERS AND VISA POLICY

In October 2016, the Irish Short Stay Visa Waiver Programme was extended for a further five years to October 2021. Under the programme, tourists or business people who have lawfully entered the UK, including Northern Ireland, on a valid UK visa will be able to travel on to Ireland without the requirement to obtain an

Irish visa. They will be allowed to stay in Ireland for up to three months or until their UK visa runs out, whichever is shorter. The programme covers nationals from 18 countries.

Regulations were introduced in 2016 to provide a legal basis in accordance with Irish data protection law for the transfer of advance passenger information (API) data by Irish carriers to the United Kingdom for journeys that originate within the Common Travel Area (CTA). Preparations also were underway during 2016 to enable the Irish authorities to process API data from flights originating outside the EU, in accordance with the *European Communities (Communication of Passenger Data) Regulations 2011*, which transpose the EU API Directive (Directive 2004/82/EC) into Irish law.

In November 2016, Ireland launched an automated connection to Interpol's Lost and Stolen Travel Documents Database. The Minister for Justice and Equality announced that in the first eight weeks of operation of the system, over 700,000 documents were searched, with a number of people refused entry to Ireland on the basis of an alert on the system having been triggered.

INTEGRATION

Work on the development of an updated integration strategy was at an advanced stage during 2016. The new *Migrant Integration Strategy*, which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.

A call for proposals for funding under the Asylum, Migration and Integration Fund (AMIF) and the European Social Fund (ESF) in relation to migrant integration and gender equality projects was launched by the Department of Justice and Equality in September 2016. Under the AMIF, up to €4.5 million has been made available over three years for projects to support the integration of third-country nationals into Irish communities. Under the ESF, €3 million has been made available for projects aimed at improving migrants' access to the labour market.

CITIZENSHIP AND NATURALISATION

A total of 10,044 certificates of citizenship were issued in 2016. The top third-country nationalities awarded citizenship were India (1,028), Nigeria (777) and Philippines (730). Nine citizenship ceremonies were held throughout the year.

In October 2016 the *Irish Times* reported an upsurge of applications for citizenship from British nationals, foreign birth registrations and passport applications from the UK since the Brexit referendum in June 2016.

Census 2016 figures released by the CSO in 2017 show that 104,784 persons resident in Ireland had dual nationality, almost a doubling from 55,905 in 2011.

MIGRATION, DEVELOPMENT AND HUMANITARIAN AID

Ireland supported information-awareness-raising campaigns targeted at prevention of illegal migration and human trafficking though its bilateral aid programme in Ethiopia in 2016. Implementing partners were local civil society organisations. Details of the projects, including objectives and outcomes, are included in Chapter 6.

The fifth Africa–Ireland Economic Forum was held in Dublin in June 2016. The forum is organised by the Department of Foreign Affairs and Trade with African ambassadors resident in Ireland, under the Department's Africa Strategy. The 2016 forum brought together over 300 participants representing business, Government, policy-makers and civil society.

In 2016, Ireland provided just over €25 million in humanitarian assistance to the Syrian crisis. Ireland also provided almost €29 million to support humanitarian need in South Sudan, Sudan, Somalia, Ethiopia and Eritrea.

Ireland was represented at the World Humanitarian Summit in May 2016 by the President of Ireland and the Minister of State at the Department of Foreign Affairs and Trade. The Summit was called by the UN Secretary General to address increasing humanitarian needs globally. Ireland had prepared for the Summit with a two-year consultation process involving stakeholders involved in humanitarian action in Ireland.

TRAFFICKING

The second *National Action Plan to Prevent and Combat Human Trafficking* was published in October 2016. It builds on the first National Action Plan from 2008 and contains 65 actions to combat the crime of trafficking, covering criminal enforcement, victim support, raising public awareness and enhanced training for those likely to encounter victims.

The *Criminal Law (Sexual Offences) Bill 2015* cleared all stages in the Seanad and second stage in the Dáil during 2016 and was signed into law on 22 February 2017. Early enactment of the Bill, which had cross-party support in the Oireachtas, was a priority for the Government.

CHAPTER 1

Introduction

This report is the thirteenth in a series of Annual Policy Reports, a series which is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. From 2016 these reports are called Annual Reports on Migration and Asylum.[2] Previous comparable Annual Policy Reports are available for a number of other EU countries participating in the European Migration Network (EMN). The purpose of the EMN report is to provide an insight into the most significant political and legislative (including EU) developments at Member State level, as well as public debates, in the area of migration and asylum.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, the EMN National Contact Points (NCPs) in each Member State and Norway are tasked with providing an annual report detailing the migration and asylum situation in the Member State, including policy developments and statistical data. The information used to produce this report is gathered according to commonly agreed EMN specifications developed to facilitate comparability across countries. Each EMN NCP produces a national report and a comparative synthesis report is then compiled, which brings together the main findings from the national reports and places them within an EU perspective. Since 2009, EMN Annual Policy Reports also contribute to the Commission's Annual Reports on Immigration and Asylum, reviewing progress made in the implementation of asylum and migration policy.

All current and prior reports are available at www.emn.ie.[3]

The EMN *Annual Report on Migration and Asylum 2016: Ireland* covers the period 1 January 2016 to 31 December 2016.

1.1 METHODOLOGY

For the purposes of the 2016 report, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, a 'significant development/debate' within a particular year was defined as an event that had been discussed in parliament and had been widely reported in the

[2] This is to bring the title of the national reports in line with the title of the EU-level synthesis report, *EMN Annual Report on Migration and Asylum 2016*.

[3] Available National Reports from other EMN NCPs can be found at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

media. The longer the time of reporting in the media, the more significant the development. Developments will also be considered significant if they subsequently led to any proposals for amended or new legislation.

A significant development is defined in the Irish report as an event involving one or more of the following:

- all legislative developments;
- major institutional developments;
- major debates in parliament and between social partners;
- Government statements;
- media and civil society debates;
- the debate is also engaged with in parliament;
- items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit;
- academic research.

Sources and types of information used generally fall into several categories:

- published and adopted national legislation;
- Government press releases, statements and reports;
- published Government schemes;
- media reporting (both web-based and print media);
- other publications (e.g. European Commission publications, and Annual Reports, publications and information leaflets from IGOs and NGOs);
- Case law reporting.

Statistics, where available, were taken from published first-source material such as Government/other annual reports and published statistics from the Central Statistics Office. Where noted, and where it was not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Where possible, verified data have been used; where provisional data have been included, this has been highlighted.

In order to provide a comprehensive and reflective overview of national legislative and other debates, a sample of core partners were contacted with

regard to input on a draft report:

- Department of Business, Enterprise and Innovation;
- Department of Justice and Equality;
- Department of Foreign Affairs and Trade;
- Child and Family Agency, Tusla;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM);
- Irish Refugee Council (IRC);
- Migrant Rights Centre Ireland (MRCI);
- Irish Immigrant Support Centre (Nasc);
- International Protection Office (IPO);
- International Protection Appeals Tribunal (IPAT);
- UNHCR Ireland.

All definitions for technical terms or concepts used in the study are as per the EMN Migration and Asylum Glossary 3.0.[4]

Three departments are involved in migration management in Ireland (see Figure 1.1).

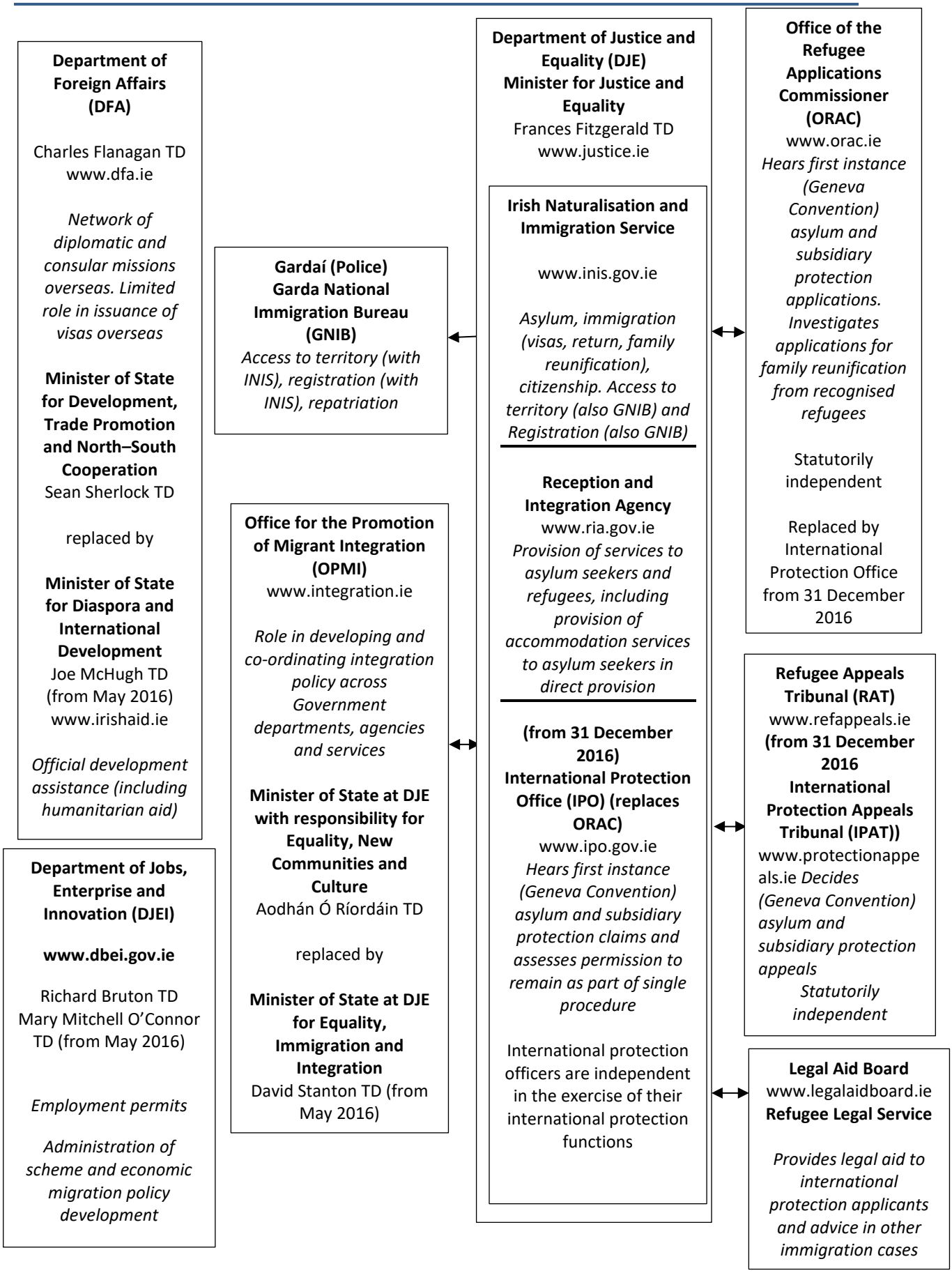
In addition, the Child and Family Agency, Tusla, is responsible for administration of the care for unaccompanied third-country minors in the State and sits under the Department of Children and Youth Affairs.

[4] Available at www.emn.ie and http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

1.2 STRUCTURE OF MIGRATION AND ASYLUM POLICY

1.2.1 Institutional context

FIGURE 1.1 INSTITUTIONS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND IMMIGRATION 2016



Department of Justice and Equality

The Department of Justice and Equality[5] is responsible for immigration management. The Minister for Justice and Equality has ultimate decision-making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration-related Garda operations in the State and is under the auspices of An Garda Síochána (national police force) and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. Since 2015, the Irish Naturalisation and Immigration Service (INIS)[6] of the Department of Justice and Equality has implemented a civilianisation project to take over frontline border control functions at Dublin Airport. GNIB also carries out the registration of non-EEA nationals, who are required to register for residence purposes, at locations outside Dublin. Since 2016, the registration function is carried out by the INIS in Dublin. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports, and at a border control unit attached to Dundalk Garda Station.

In addition, the Anti-Human Trafficking Unit[7] is part of the Department of Justice and Equality. There are three other dedicated units dealing with this issue: the Human Trafficking Investigation and Co-ordination Unit in the GNIB, the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised human trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions (DPP), as well as in the New Communities and Asylum Seekers Unit within the Department of Social Protection which is tasked with providing assistance to suspected victims not in the asylum system with their transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

INIS is responsible for administering the statutory and administrative functions of the Minister for Justice and Equality in relation to asylum, visa, immigration and citizenship processing; asylum, immigration and citizenship policy; and return decisions. The Reception and Integration Agency (RIA) is a separate office within the Department of Justice and Equality and is responsible for arranging accommodation and working with statutory and non-statutory agencies to co-ordinate the delivery of other services (including health, social services, welfare and education) for applicants for international protection.[8] Its staff include officers from the Department of Education and Skills and Tusla (the Child and Family Agency). Since 2004, it has also been responsible for supporting the voluntary return, on an ongoing basis and for the Department of Social

5 www.justice.ie.
6 www.inis.gov.ie.
7 www.justice.ie/en/JELR/Pages/WP09000005.
8 See www.ria.gov.ie, 'Functions and Responsibilities'.

Protection,[9] of destitute nationals of the 13 new Member States which have joined the EU since 2004. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making on the granting of refugee status under the *1951 Geneva Convention relating to the status of refugees,* a two-tier structure exists for asylum application processing. Up to 31 December 2016, this consisted of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). Since 31 December 2016, with the commencement of the *International Protection Act 2015*, these bodies have been replaced by the International Protection Office (IPO) and the International Protection Appeals Tribunal (IPAT). These bodies have responsibility for processing first-instance applications for international protection and for hearing appeals, respectively. The IPO is an office within the INIS responsible for processing applications for international protection under the *International Protection Act 2015*. It also considers, as part of a single procedure, whether applicants should be given permission to remain. International protection officers are independent in the performance of their international protection functions. The IPAT is independent in the performance of its functions under the *International Protection Act 2015*.[10] The Department of Justice and Equality ensures that both bodies have input into the co-ordination of asylum policy.

Since 31 December 2016, the single application procedure for international protection claims under the *International Protection Act 2015* has entered into operation. Under the single application procedure, applications for refugee status, subsidiary protection and permission to remain are assessed as part of a single procedure. This replaced the former sequential process, whereby applications for refugee status were assessed under the *Refugee Act 1996* and applications for subsidiary protection under the *European Union (Subsidiary Protection) Regulations 2013* (S.I. No. 426 of 2013).

Under section 47(1) of the *International Protection Act 2015*, the Minister is bound to accept a positive recommendation of refugee status of the international protection officer or a decision to grant refugee status in relation to an appeal heard by the IPAT, but retains a discretion not to grant refugee status to a refugee on grounds of danger to the security of the State or to the community of the State where the refugee has been convicted of a particularly serious crime.[11] The Minister shall refuse a refugee declaration where an international protection officer has recommended that the applicant be refused refugee status but be granted subsidiary protection status, and has not appealed the decision not to

9 www.welfare.ie.

10 Section 61(3)(b) of the *International Protection Act 2015.*

11 Section 47(3) *International Protection Act 2015.*

grant refugee status. The Minister is also bound by a recommendation or decision on appeal in relation to subsidiary protection status, under section 47(4) of the Act. The Minister shall refuse both refugee status and subsidiary protection status where the recommendation is that the applicant be refused both statuses and the applicant has not appealed the recommendation or when the Tribunal upholds the recommendation not to grant either status. The Minister also refuses both refugee and subsidiary protection status in circumstances where appeals are withdrawn or deemed to be withdrawn.

Under section 49 of the *International Protection Act 2015*, the Minister is bound to consider whether or not to grant permission to remain to an unsuccessful applicant for international protection. Information given by the applicant in the original application for international protection, including at interview, and any additional information which the applicant is invited to provide, is taken into account.

From 31 December 2016, the INIS is responsible for investigating applications by beneficiaries of international protection to allow family members to enter and reside in the State and for providing a report to the Minister on such applications, under sections 56 and 57 of the *International Protection Act 2015*.

The Refugee Documentation Centre (RDC)[12] is an independent library and research service within the Legal Aid Board.[13] The specialised Services for Asylum Seekers office within the Legal Aid Board provides 'confidential and independent legal services' to persons applying for asylum in Ireland. Legal aid and advice is also provided in 'appropriate cases' on immigration and deportation matters.[14] Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as 'potential victims' of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.[15] With a focus on the promotion of the integration of legal immigrants into Irish society, the OPMI has a mandate to develop, lead and co-ordinate integration policy across Government departments, agencies and services. Ireland joined the UNHCR-led resettlement scheme in 1998. The OPMI co-ordinates the resettlement of refugees admitted by Ireland under the Programme, as well as the administration of EU and national funding for the promotion of migrant integration.

The Irish Refugee Protection Programme (IRPP) was approved by Government on 10 September 2015 in response to the migration crisis. Under this programme, the Government confirmed that Ireland will take in a total of 4,000 persons,

12 www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.
13 www.legalaidboard.ie.
14 Ibid.
15 www.integration.ie.

primarily through a combination of relocation under the EU relocation mechanism and the UNHCR-led programme currently focused on resettling refugees from Lebanon, with the two main mechanisms to be given effect by the end of 2017 based on the timelines set out in the relevant commitments.[16]

Department of Business, Enterprise and Innovation

The Department of Business, Enterprise and Innovation[17] (formerly the Department of Jobs, Enterprise and Innovation) administers the employment permit schemes under the general auspices of the Labour Affairs Development Division.

- The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.

- The Employment Permits Section[18] implements a skills-oriented employment permits system in order to fill those labour and skills gaps which cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits; issues guidelines, information and procedures; and produces online statistics on applications and permits issued.[19]

- The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national researchers pursuant to *Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research*.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade[20] has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office within the country.[21] The Department of Foreign Affairs and Trade has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

Irish Aid, under the auspices of the Department of Foreign Affairs and Trade, administers Ireland's overseas development and humanitarian aid programme, with a particular focus on reducing poverty and hunger in countries in sub-Saharan Africa.[22]

16 Department of Justice and Equality, October 2017.
17 www.dbei.gov.ie.
18 www.dbei.gov.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits.
19 Department of Jobs, Enterprise and Innovation, April 2015.
20 www.dfa.ie.
21 See Quinn (2009) for further discussion.
22 www.irishaid.ie.

1.2.2 General structure of the legal system

The Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice and Equality. 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. Independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are five types of courts in Ireland, which hear different types and levels of cases. In ascending hierarchical order, these are:

- the District Court;
- the Circuit Court;
- the High Court;
- the Court of Appeal;
- the Supreme Court.

The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review.[23] Judicial review focuses on assessing the determination process through which a decision was reached to ensure that the decision-maker made their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.[24]

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under such instruments as the Hope Hanlon procedure and the *Aliens Act 1935* (and Orders made under that Act),[25] together with the relevant EU free movement Regulations and Directives[26] which came into effect in Ireland after it joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

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[23] There is a statutory appeal to the courts against decisions to revoke refugee status under section 52 of the *International Protection Act 2015*.

[24] Available at www.citizensinformation.ie.

[25] *Aliens Order 1946* (S.I. No. 395 of 1946); *Aliens (Amendment) Order 1975* (S.I. No. 128 of 1975).

[26] Relevant EU legislation included *Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC on freedom of movement for workers within the Community*, *68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families*, *72/194/EEC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, *73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services*, *75/34/EEC concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity*, *90/364/EEC on the right of residence*, *90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity*, and *93/96/EEC on the right of residence for students.*

The *International Protection Act 2015* sets out the domestic legal framework regarding applications for international protection and replaces the *Refugee Act 1996* (as amended) and the *European Communities (Subsidiary Protection) Regulations 2013* (as amended). The *Refugee Act 1996* has now been largely repealed, apart from some transitional provisions. While Ireland participated in some of the first generation of instruments under the Common European Asylum System (the Qualification Directive 2004/83/EC and Procedures Directive 2005/85/EC), Ireland does not participate in the 'recast' Qualification Directive (2011/95/EU) and Procedures Directive (2013/32/EU). Ireland does not participate in the original Reception Conditions Directive (2003/9/EC) or the revised Reception Conditions Directive (2013/33/EU).[27]

Ireland is also a signatory to the 'Dublin Convention', and is subject to the 'Dublin Regulation' which determines the EU Member State responsible for processing asylum applications made in the EU. Regulation 604/2013[28] ('the Dublin III Regulation') came into force on 29 June 2013. The *European Union (Dublin System) Regulations 2014* were adopted for the purpose of giving further effect to the Dublin III Regulation. These regulations were amended by the *European Union (Dublin System) (Amendment) Regulations 2016* in 2016.[29]

S.I. No. 310 of 2008 amended the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* (S.I. No. 656 of 2006) following the *Metock* judgment of the European Court of Justice (ECJ). The *European Community (Free Movement of Persons) Regulations 2015* (S.I. No. 548 of 2015) which came into operation on 1 February 2016 give further effect to EU Directive 2004/38/EC and revoke the 2006 Regulations, subject to transitional provisions

Domestic immigration law in Ireland is based on various pieces of legislation including the *Aliens Act 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*; and the *Immigration Acts 1999, 2003 and 2004*.[30] The Employment Permits Act 2006 as amended and secondary legislation made under it set out the legal framework for the employment permits schemes in Ireland.

Regarding the situation of Ireland concerning an 'opt-in' provision on EU measures in asylum and migration, under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union,

[26] Note that the European Commission in July 2016 launched proposals to replace the Asylum Qualifications and Procedures Directives with Regulations and to further recast the Reception Conditions Directive.

[28] *Regulation (EU) No. 604/2013* (Dublin III Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See EMN *Asylum and Migration Glossary 3.0.* Available at www.emn.ie.

[29] S.I. 140 of 2016. Available at www.irishstatutebook.ie.

[30] See Quinn (2009) for further discussion on this issue, particularly legislative development.

Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the Treaty on the Functioning of the European Union (TFEU) unless it decides to participate in the measure pursuant to a motion of the Houses of the Oireachtas. Under Declaration number 56 to the TFEU, Ireland has declared its

> *firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.*[31]

[31] Declaration by Ireland on Article 3 of the *Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice* (TFEU). Ireland also 'affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety'. An example is Ireland's participation in Council Directive 2005/71/EC ('the Researchers' Directive').

CHAPTER 2

Legislative, political and statistical context

2.1 POLITICAL DEVELOPMENTS

2.1.1 General election

A general election was held in February 2016. In May 2016, a new Partnership Government comprising Fine Gael, members of the Independent Alliance and a number of other independent TDs was formed, with Fine Gael leader Enda Kenny TD remaining as Taoiseach.

Frances Fitzgerald TD remained as Minister for Justice and Equality. David Stanton TD was appointed as Minister of State at the Department of Justice and Equality with responsibility for Equality, Immigration and Integration.

2.1.2 Programme for Partnership Government

A Programme for a Partnership Government was published in May 2016. It included commitments relating to *'ensuring a balanced migration policy'.* These commitments included a humanitarian response to the refugee crisis; the introduction of an Immigration and Residence Reform Bill; reform of the direct provision system with a particular focus on families and children; and tackling various forms of abuse of the immigration and asylum system.[32]

2.2 LEGISLATION

Several pieces of legislation relevant to the migration and international protection arena were enacted or commenced during 2016.

The *International Protection Act 2015* was commenced over the course of 2016 via three commencement orders, and a range of other regulations brought into effect various aspects of the legislation. Details of these regulations are set out in Table 3.1.

Other relevant statutory instruments included:

- *Data Protection Act 1988 (Section 2A) Regulations 2016* (S.I. No. 220 of 2016);
- *Employment Permits (Amendment) Regulations 2016* (S.I. No. 33 of 2016);
- *Employment Permits (Amendment) (No. 2) Regulations 2016* (S.I. No. 363 of 2016);

[32] Irish Government News Service (2016a), pp. 102–3.

- *Employment Permits (Trusted Partner) (Amendment) Regulations 2016* (S.I. No. 403 of 2016);
- *European Union (Dublin System) (Amendment) Regulations 2016* (S.I. No. 140 of 2016);
- *Immigration Act 2004 (Visas) (Amendment) Order 2016* (S.I. No. 502 of 2016);
- *Immigration Act 1999 (Deportation) (Amendment) Regulations 2016* (S.I. No. 134 of 2016);
- *Prisons Act 2015 (Section 24) Regulations 2016* (S.I. No. 52 of 2016).

2.3 UNITED NATIONS DEVELOPMENTS

2.3.1 Second cycle of the Universal Periodic Review[33]

As reported for 2015, preparations for Ireland's hearing for the second cycle of the Universal Periodic Review (UPR) took place during 2015.[34] The focus of the second and subsequent cycles of the UPR is to review the 'implementation of accepted recommendations and the developments of the human rights situations in the State under review' as decided by a resolution of the UN Human Rights Council in April 2011.[35] The Irish National Report under the second cycle of the UPR process was submitted to the UN Human Rights Council in February 2016.[36] As reported for 2015, a number of civil society organisations made individual submissions to the Human Rights Council.[37] In addition, a joint shadow report was submitted by the Irish Civil Society Coalition in September 2015.[38] In January 2016, the Human Rights Council selected a troika of rapporteurs – Ghana, Republic of Korea and Slovenia – to facilitate the review of Ireland. Ireland's review hearing took place in Geneva in May 2016. Ireland's delegation was headed by the Tánaiste and Minister for Justice and Equality, Frances Fitzgerald TD.[39]

As part of the interactive hearing, 93 UN Member States intervened and made a total of 262 recommendations. Ireland accepted 152 recommendations at the hearing, and did not accept 13 recommendations. A further 97 recommendations were reserved for further consideration and Ireland provided a response to these in an Addendum to the Report of the Working Group on 5 September 2016.[40] In total, out of 262 recommendations made, Ireland accepted 176, partially

33 The Working Group on the Universal Periodic Review is established under resolution 5/1 of the UN Human Rights Council.
34 Sheridan and Whelan (2016), p. 15.
35 Human Rights Council (2011).
36 See Department of Justice and Equality dedicated website, www.upr.ie.
37 Sheridan and Whelan (2016), pp. 15–16.
38 Irish Civil Society Coalition (2015).
39 Human Rights Council (2016a), paragraphs 1–2.
40 Human Rights Council (2016b).

accepted 45 and did not accept 41 recommendations.

The final *Report of the Working Group on the Universal Periodic Review: Ireland* was adopted at the 33rd session of the Human Rights Council on 23 September 2016. Ireland has committed to publishing a voluntary interim report in 2018 on progress made in implementing the accepted and partially accepted recommendations.[41]

Migration-related recommendations made by other Member States included recommendations related to:

- combating racism and xenophobia including against migrants;[42]
- protection of refugees and asylum seekers including accelerating the Irish Refugee Protection Programme (IRPP), ensuring compliance with the principle of the best interest of the child, as well as international standards for unaccompanied minors and family reunification;
- ensuring that Irish international protection law is fully compliant with international law;[43]
- several calls to consider signing or to sign the *International Convention on the Protection of all Migrant Workers and their Families*.[44]

The United States commended Ireland for co-facilitating the UN high-level plenary meeting on the addressing of large movements of refugees and migrants (see Section 2.3.4) and Ireland's work in relation to the Sustainable Development Goals (SDGs).[45]

In its written responses submitted in September 2016, Ireland referred to the international protection legislation and progress under the Irish Refugee Protection Programme (IRPP). Ireland indicated that there are no plans to sign the *International Convention on the Protection of all Migrant Workers and their Families.*[46]

2.3.2 UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)

During 2016, Ireland worked on preparing its sixth and seventh periodic reports

41 See Department of Justice and Equality dedicated website, www.upr.ie
42 Human Rights Council (2016a). For example, Iran, paragraph 17; Argentina, recommendation 135.108.
43 Ibid. Mexico recommendation 136.91; Guatemala recommendation 136.90; China recommendation 136.89.
44 Ibid. For example, Honduras, recommendation 136.2; Azerbaijan, recommendation 136.4; Indonesia recommendation 136.8; Sri Lanka, recommendation 136.48; Turkey, recommendation 137.2.
45 Ibid., paragraph 57.
46 Human Rights Council (2016b). Response to 136.2.

to the UN CEDAW Committee, and the combined sixth and seventh periodic *Report to the UN CEDAW committee*[47] was submitted to the UN on 15 September 2016.

As part of the preparation of the national report, the Department of Justice and Equality convened a consultation session with civil society on the draft answers to the List of Issues, which took place in July 2016. The Department of Justice and Equality prepared a report on the issues raised at the consultation session.[48] These either were general issues relevant to migrant women or were related to how the concerns of migrant women were reflected in the text of the draft report.

The National Women's Council of Ireland (NWCI) prepared a shadow report during 2016, which was submitted to the CEDAW committee in January 2017.[49] The shadow report incorporated contributions from a wide range of NGOs, including those in the migration sphere – the Immigrant Council of Ireland (ICI) and the Migrant Rights Centre of Ireland (MRCI). The Irish Human Rights and Equality Commission (IHREC) also made a submission in January 2017.[50] The national and shadow reports directly addressed the List of Issues which had been raised by the CEDAW committee for Ireland. Among other issues, the shadow report highlighted concerns in relation to the position of vulnerable migrant women in situations of domestic violence and in relation to trafficking.[51] The national report drew the CEDAW committee's attention to awareness-raising activities and guidance developed in relation to domestic, sexual and gender-based violence supported by Cosc,[52] targeted at specific groups including migrant communities; and also to co-operation with and funding supports to NGOs in relation to human trafficking.[53]

2.3.3 UN Convention on the Rights of the Child

As reported for 2015, the preliminary stages of the examination of Ireland's combined third and fourth periodic reports to the Committee on the Convention on the Rights of the Child took place in the second half of 2015. The State provided a response to the list of issues raised by the Committee, and civil society organisations also made submissions.[54]

The Committee considered Ireland's third and fourth periodic reports at a hearing

47 Available on Department of Justice and Equality dedicated website, www.upr.ie.
48 Department of Justice and Equality (2016a).
49 National Women's Council of Ireland (2017).
50 Irish Human Rights and Equality Commission (2017).
51 See National Women's Council of Ireland (2017) and Irish Human Rights and Equality Commission (2017).
52 Cosc – the National Office for the Prevention of Domestic, Sexual and Gender-based Violence.
53 Department of Justice and Equality (2016b), paragraphs 104–5, 113–20.
54 Sheridan and Whelan (2016), pp. 16–17.

on 14 January 2016 and adopted concluding observations on 29 January 2016.[55]

In its concluding observations, the Committee expressed concern about the impact of poverty on vulnerable groups of children including refugee children.[56]

The Committee also expressed concerns about the standards of accommodation in the direct provision system, and the level of independence of the inspection system. The Committee recommended that 'the State … strengthen its measures to ensure that children in an asylum seeking or refugee situation are ensured the same standards of and access to support services as Irish children'. In particular, the Committee recommended independent inspections of all accommodation centres and certain child-specific facilities such as recreation areas suitable for young children and families; adequate child protection services, education, food and clothing including culturally appropriate food; and to proportionately increase the direct provision children's allowance in line with the cost of living.[57]

Regarding migrant children, the Committee raised concerns about children in irregular migration situations. It emphasised that all children are entitled to the full protections of the Convention, regardless of their or their parents' migration status. It recommended that the State put in place a comprehensive legal framework for addressing the needs of migrant children, which would include 'clear and accessible formal procedures for conferring immigration status on children and their families who are in irregular migration situations', and that the State should ensure that children are provided with timely clarifications on their migration status.[58]

In February 2016, the ICI made a submission on children in the context of international migration to the United Nations' Migrant Workers' Committee and Committee on the Rights of the Child.[59] The submission was made in response to a call for submissions from both UN Committees to inform the development of a Joint General Comment on the Human Rights of Children in the Context of International Migration.[60]

The ICI submission raised issues related to the need for a child-rights approach to migration; compliance with the best interests of the child principle; due process guarantees for migrant children; access to Irish territory and safe passage; the right to family life; naturalisation and statelessness; protections for child victims

55 Committee on the Rights of the Child (2016), paragraph 1.
56 Ibid., paragraph 60.
57 Ibid., paragraph 66.
58 Ibid., paragraph 68.
59 Immigrant Council of Ireland (2016a).
60 Committee on Migrant Workers (n.d.).

of trafficking; and the right to an adequate standard of living.

Some of the specific concerns raised in the submission related to:

- the need for a clear legal framework on immigration rules for migrant children including problems associated with children not registering until age 16;
- regularisation pathways for undocumented migrant children;
- difficulties with the discretionary nature of decision-making in relation to non-statutory family reunification applications;
- difficulties in applying for naturalisation for migrant children in care;
- lack of a formal determination procedure for statelessness status for adults or children;
- the need to place the victim identification mechanism for victims of trafficking on a statutory footing;
- the impact of the habitual residence condition (HRC)[61] for access to social welfare payments on the right to an adequate standard of living for migrant children.

2.3.4 UN Summit for Refugees and Migrants 2016

The UN General Assembly held a high-level summit on large movements of refugees and migrants on 19 September 2016. A parallel Leaders' Summit on Refugees was hosted by US President Obama on the margins of the UN General Assembly on 20 September 2016. In February 2016, the President of the UN General Assembly appointed Jordan and Ireland as co-facilitators to conduct the preparatory consultations with Member States to finalise the arrangements for the Summit.[62]

At the Summit on 19 September, 193 UN Member States signed up to the *New York Declaration on Refugees and Migrants*.[63] The UN Secretary General, Ban Ki-moon, also launched a new campaign to respond to rising xenophobia called *Together – Respect, Safety and Dignity for All.* A new agreement was signed at the Summit to bring the International Organization for Migration (IOM) within the United Nations framework, thus meeting the commitment in the *New York Declaration* to strengthen the global governance of migration.

The *New York Declaration* made commitments in relation to protecting the human rights of refugees and migrants and supporting countries receiving and

[61] Applicants must satisfy the HRC for certain social welfare payments and Child Benefit. Habitual residence means that you are residing in Ireland and have proven close links to the State. Department of Social Protection (February 2016), SW 108: Habitual Residence Condition, available at www.welfare.ie.

[62] UN Summit for Refugees and Migrants 2016, available at http://refugeesigrants.un.org/summit.

[63] UN General Assembly (2016a).

hosting large numbers of refugees. It also committed to improving the delivery of humanitarian and development aid to the countries most affected. It committed to finding new homes for all refugees identified by UNHCR as needing resettlement as well as expanding opportunities for safe legal routes for migration.

The *New York Declaration* sets out plans to start negotiations for a global compact for safe, orderly and regular migration and a global compact for refugees to be adopted in 2018.[64]

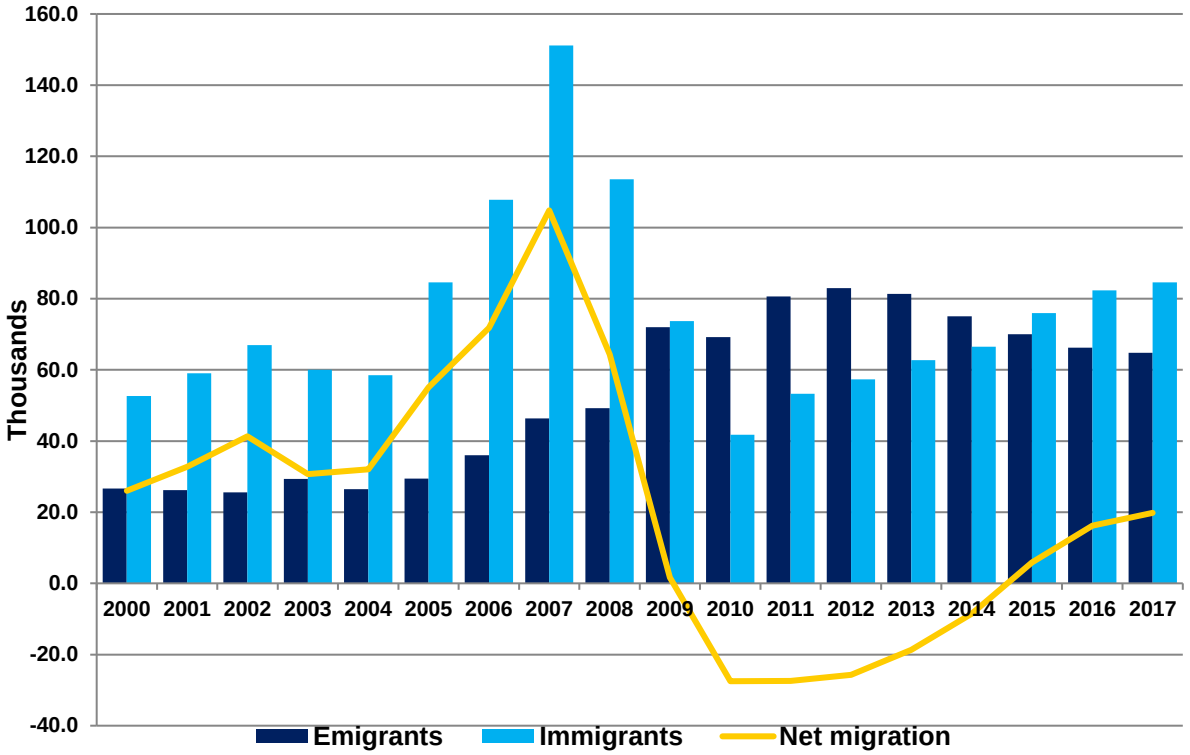
Ireland was represented at the Summit by both the Minister for Foreign Affairs and Trade and the Minister for Justice and Equality.[65] The latter represented Ireland at the Leaders' Summit on Refugees on the following day.[66]

2.4 POPULATION AND MIGRATION ESTIMATES

Central Statistics Office (CSO) figures in the *Population and Migration Estimates 2017* show an overall increase of 52,900 in Ireland's population, which brings the population estimate to 4.79 million for the year to April 2017.[67] This was due to the combined natural increase in the population and net inward migration.[68]

64 UN General Assembly (2016b).
65 Department of Foreign Affairs and Trade (2016a).
66 Department of Justice and Equality (2016c).
67 The *Population and Migration Estimates 2017* include revisions to the *Population and Migration Estimates* for the years 2012–2016 inclusive. The estimates for these years were revised in line with the Census 2016 usually resident population which became available in April 2017. As a result, the usually resident population estimate for 2016 has been revised upwards by 65,900. See Central Statistics Office (2017a).
68 Ibid.

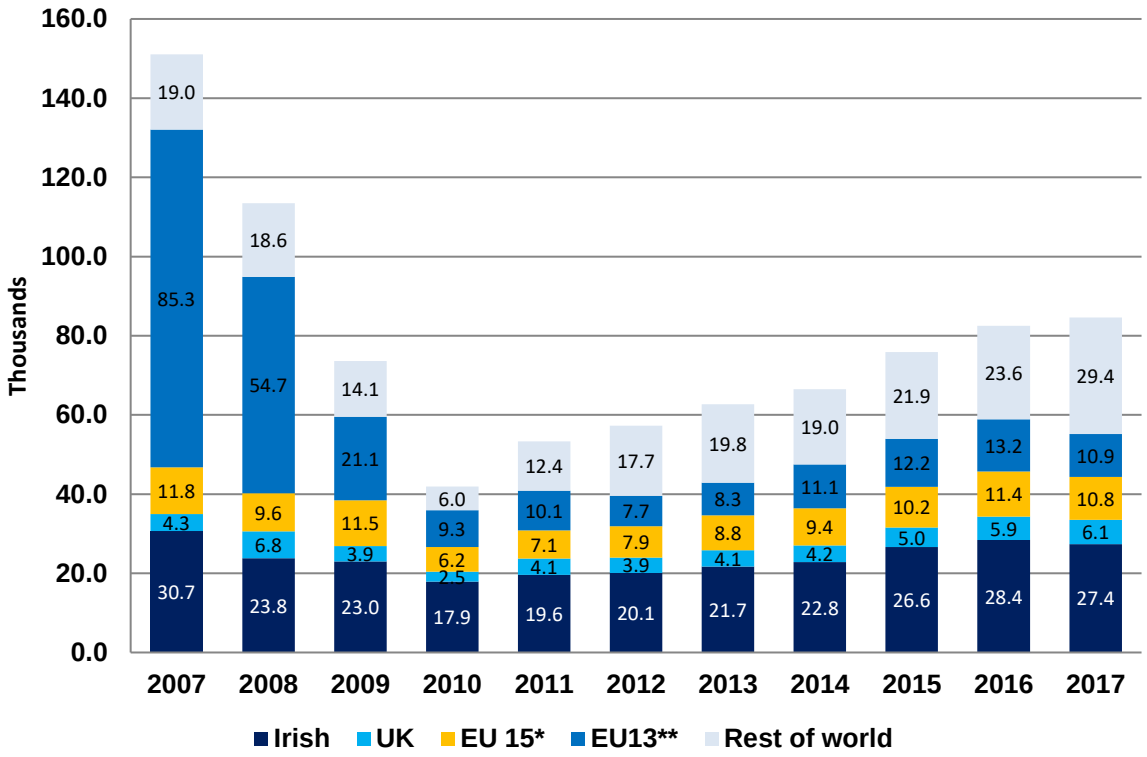
FIGURE 2.1 GROSS AND NET MIGRATION, IRELAND 2000–APRIL 2017



Source: Population and Migration Estimates, CSO.

Figure 2.1 shows gross and net migration for Ireland from 2000 to April 2017. Total net inward migration for Ireland in the year ending April 2017 was 19,800 – the highest level of net migration since 2008. Non-Irish nationals from outside the EU continued to display strong migration flows, accounting for 29,400 (34.8 per cent) of total immigrants (see Figure 2.2) and 13,700 (21.1 per cent) of total emigrants (see Figure 2.3). This resulted in a total net inward migration figure for non-EU nationals of 15,700.

FIGURE 2.2 ESTIMATED IMMIGRATION TO IRELAND, 2000–APRIL 2017



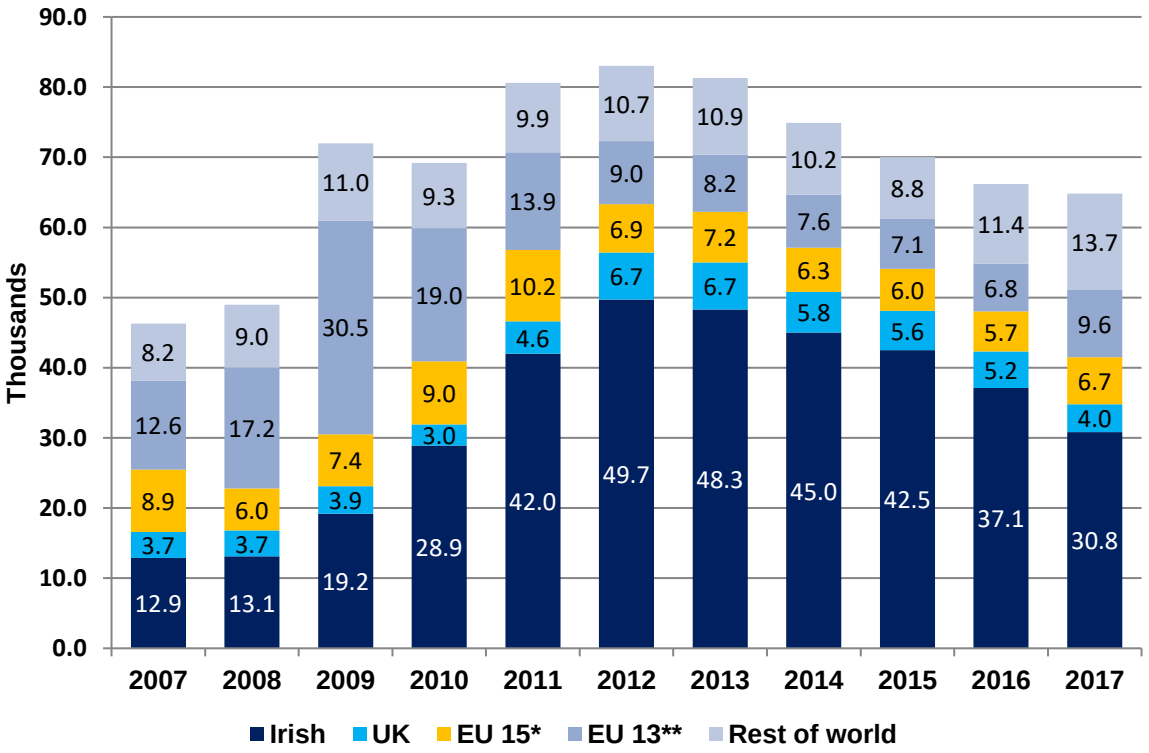
Source: *Population and Migration Estimates, CSO.*
Notes: **EU15 excluding UK and Ireland; **EU13 Member States that joined in 2004, 2007 and 2013.*

As shown in Figure 2.2, the estimated total number of immigrants to Ireland increased year-on-year to 84,600 in April 2017 from 82,300[69] in April 2016, an increase of 2.8 per cent. The largest group of immigrants during this period were non-EU nationals, showing an increase of 5,800 over 2016. In 2016, returning Irish nationals were the largest immigrant group.[70] There was a small decrease of 1,000 in returning Irish nationals from 28,400 in 2016 to 27,400 in the year ending April 2017.

[69] The 2016 estimate has increased from the April 2016 estimate of 79,300, in line with the revisions in this statistical release. See Sheridan and Whelan (2016).

[70] This figure is revised upwards from the 2016 Estimates. The 2016 Estimates showed that returning Irish nationals were the second largest immigrant group after non-EU nationals. See Sheridan and Whelan (2016), pp. 18–20 for further details.

FIGURE 2.3 ESTIMATED EMIGRATION FROM IRELAND, 2000–APRIL 2017



Source: *Population and Migration Estimates, CSO.*
Notes: **EU15 excluding UK and Ireland; **EU13 Member States that joined in 2004, 2007 and 2013.*

As Figure 2.3 shows, there was an overall slight drop of 2.1 per cent in the numbers emigrating from Ireland in the year ending April 2017, from 66,200 to 64,800. There was an increase of 20.1 per cent (2,300) in the total number of non-EU nationals emigrating (13,700) over the 2016 total (11,400).[71] As in 2016, non-EU nationals remained the second largest category of emigrants, behind Irish emigrants. Emigration by Irish nationals continued to decrease from its 2012 peak of 49,700 to 30,800 in the year ending April 2017.[72] Net outward migration of Irish nationals in 2017 was 3,400, which is a decrease of 88.5 per cent on 2012, when net outward migration of Irish nationals peaked at 29,600 (see Figure 2.1).

[71] These figures are revised downwards from the 2016 estimates. See Sheridan and Whelan (2016), pp. 18–20 for further details.
[72] These figures are revised upwards from the 2016 estimates. See Sheridan and Whelan (2016), pp. 18–20 for further details.

CHAPTER 3

International protection

3.1 INTERNATIONAL PROTECTION STATISTICS

The *International Protection Act 2015* was fully commenced with effect from 31 December 2016.[73] The following statistics relate to the former legislative regime under the *Refugee Act 1996* and the *European Union (Subsidiary Protection) Regulations 2013*.

During 2016, a total of 2,244 applications for refugee status were submitted to the Office of the Refugee Applications Commissioner (ORAC). This was a decrease of 32 per cent on 2015, when 3,276 applications were made.[74]

A total of 3,280 refugee status applications were processed by ORAC during the year, with 1,550 cases awaiting completion by the end of 2016, as compared with 2,582 cases awaiting completion at the beginning of the year, a fall of 40 per cent over the course of the year. Asylum interviews were suspended from October 2016 onwards to allow for transitional work to be undertaken for the commencement of the new legislation.

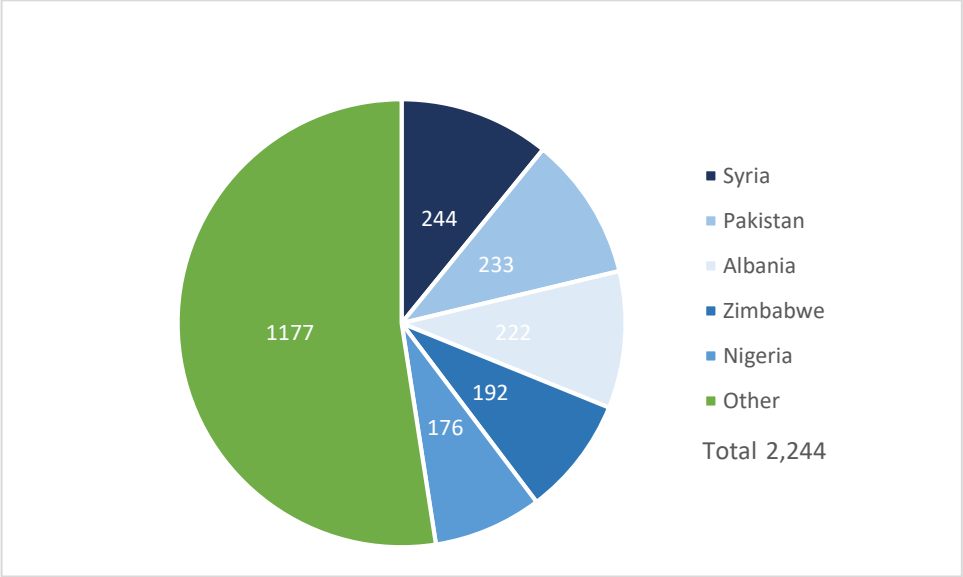
The overall grant rate for cases at first instance was 16.8 per cent in 2016.[75]

There was a 37 per cent increase in the numbers of applications which were deemed withdrawn in 2016 with 438 applications deemed to be withdrawn compared to 319 applications in 2015.[76]

The main countries of origin for first-instance applications for refugee status in 2016 were Syria (10.9 per cent), Pakistan (10.4 per cent), Albania (9.9 per cent), Zimbabwe (8.6 per cent) and Nigeria (7.8 per cent).

[73] With the exception of paragraphs (b), (f), (i), (j), (l), (m) and (p) of section 6(2). *International Protection Act 2015 (Commencement) (No. 3) Order 2015* (S.I. No. 663 of 2016).
[74] Office of the Refugee Applications Commissioner (2017), p. 5.
[75] Ibid., p. 21.
[76] Ibid., p. 5

FIGURE 3.1 ASYLUM APPLICATIONS BY TOP FIVE NATIONALITIES, 2016



Source: ORAC Summary Report of Key Developments in 2016.

As shown in Figure 3.1, Syria was the top nationality for asylum applications in 2016. Syria was not among the top five nationalities in 2015. These figures include both asylum applications from applicants who arrived directly in the State and those made under the EU Relocation Scheme. Arrivals in Ireland on relocation from Greece in 2016 were from Syria and Iraq.[77]

Applications from Pakistani nationals fell by over 82 per cent from 2015 levels. There were 233 applications from Pakistani nationals in 2016, as opposed to 1,352 in 2015.[78] As reported in 2015, it had been noted by the Refugee Applications Commissioner, in 2015, that the majority of Pakistani applicants had previously been resident in the United Kingdom.[79] The *International Protection Act 2015 (Commencement) (No. 2) Order 2016* commenced certain stand-alone provisions regarding immigration and deportation from March 2016. This included the commencement of an amendment to the *Immigration Act 2004* to provide that permission to land may be refused in certain circumstances to non-Irish nationals who had prior legal residence or permission to enter another territory in the Common Travel Area between Ireland and the UK.[80]

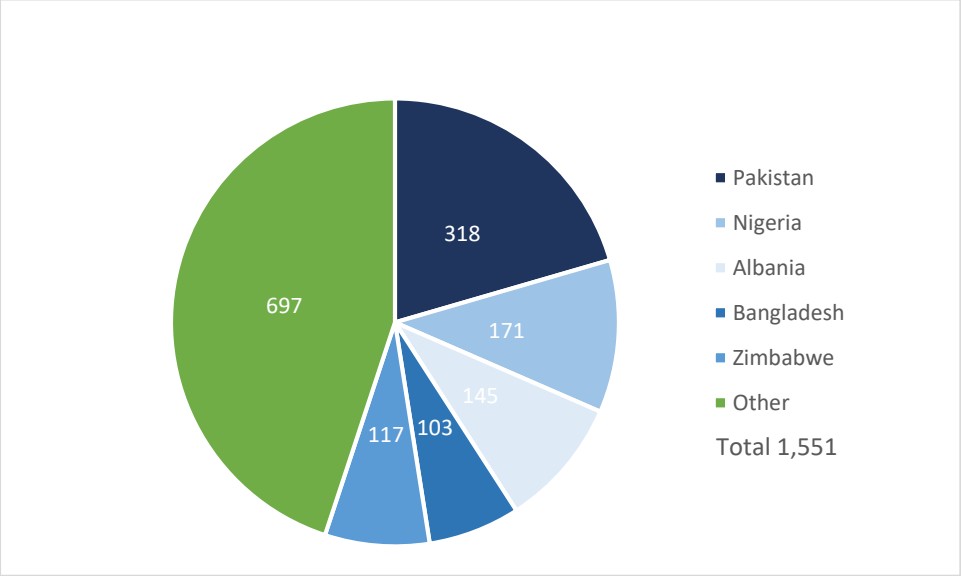
Throughout 2016, some 1,559 new appeals in relation to refugee status were

77 Ibid., p. 10.
78 Ibid., p. 18.
79 Sheridan and Whelan (2016), p. 22.
80 Section 81 of the *International Protection Act 2015* amended section 4(3) of the *Immigration Act 2004* to provide that permission to land may be refused to a non-Irish national who has prior legal residence or permission to enter another territory in the Common Travel Area between Ireland and the UK within the previous 12 months, and who travels to Ireland from within the Common Travel Area, and enters Ireland with the purpose of extending stay in the Common Travel Area regardless of whether or not the person intends to make an application for international protection. This provision was commenced via the *International Protection Act 2015 (Commencement) (No. 2) Order 2016* on 9 March 2016.

submitted to the Refugee Appeals Tribunal (RAT) (1,551 substantive appeals and 8 accelerated appeals).[81] This represented an increase of 51 per cent over the 2015 total of 759 appeals. A total of 768 appeals (705 substantive and 63 accelerated) in relation to applications for refugee status were completed by the Tribunal during the year. [82] Decisions were issued in 539 cases, with ORAC's original recommendation affirmed in 351 cases, an affirmation rate of 65 per cent.[83]

As shown in Figure 3.2, the main countries of origin at appeal stage for substantive appeals in relation to refugee status were Pakistan (28 per cent), Nigeria (10 per cent), Albania (8 per cent), Zimbabwe (8 per cent) and Bangladesh (7 per cent).[84]

FIGURE 3.2 ASYLUM APPEALS LODGED BY TOP FIVE NATIONALITIES, 2016



Source: *RAT Annual Report 2016.*

Applications for refugee status examined by ORAC were processed in a median time of 41 weeks, as opposed to just over 29 weeks in 2015. The median processing time for prioritised cases increased from 10.8 weeks in 2015 to 16 weeks in 2016. According to ORAC, the increase in timelines was due to limited staff resources. However, ORAC states that extra staff in the final quarter of 2016 and other strategies resulted in the completion of the vast majority of cases in

81 Refugee Appeals Tribunal (2017), p. 22.
82 Ibid., pp. 30–31.
83 Ibid., p. 35.
84 Ibid., p. 34.

respect of which an interview had been conducted during 2016.[85]

The Tribunal processed cases classified as substantive 15-day appeals within an approximate processing time of 90 weeks and within 41 weeks for cases processed as accelerated appeals.[86] This compared with 69 and 77 weeks respectively in 2015.[87]

Under the Dublin Regulation, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, 206 formal requests to take responsibility for applications were received by Ireland from other Dublin III Regulation Member States[88] during 2016, including both 'take back' and 'take charge' requests.[89]

Ireland accepted 133 requests during the year, which represented an acceptance rate of 59.6 per cent.[90] Ireland made a total of 547 formal requests to other Dublin III Regulation Member States in 2016.[91] A total of 456[92] formal requests from Ireland were accepted during the year, an acceptance rate of 79.9 per cent.[93] A total of 61 transfers into Ireland and 41 transfers out of Ireland were completed under the Regulation during the year.[94]

A total of 594 outgoing Dublin transfer decisions (i.e. file sent to Department of Justice and Equality for removal from the State) were processed in 2016.[95]

In 2016, 1,659 sets of fingerprints were sent to the EURODAC fingerprint identification database in order to identify cases to be processed under the terms of the Dublin III Regulation.[96]

The Tribunal received 396 appeals in relation to the Dublin Regulation during the year. This represented a 117 per cent increase over the 2015 total of 171 Dublin appeals.[97] The Tribunal completed 276 appeals in relation to ORAC's

85 Office of the Refugee Applications Commissioner (2017), p. 5.
86 Refugee Appeals Tribunal (2017), p. 33.
87 Sheridan and Whelan (2016), p. 23.
88 'Dublin' Member States are all EU Member States plus Norway, Iceland, Switzerland and Liechtenstein.
89 An example of a 'take charge' request is where another Member State has issued the applicant with a visa, residence permission or work permit, or the applicant has irregularly crossed the border of another Member State. A 'take back' request may be made where an application has been made in another Member State and is not yet finalised, or an application has been withdrawn or rejected in another Member State. See www.orac.ie.
90 Replies include a small number of requests pending from the previous year. Office of the Refugee Applications Commissioner (2017), p. 27.
91 212 were 'take back' requests and 335 'take charge' requests. Ibid., p. 24.
92 Of which 26 were from 2015. Ibid., p. 24.
93 Ibid., p. 26.
94 Ibid., p. 28.
95 Ibid., p. 24.
96 Ibid., p. 7.
97 Refugee Appeals Tribunal (2017), p. 22.

recommendation under the Regulation.[98] A total of 193 decisions were issued during the year, 94 per cent of which affirmed ORAC's recommendation.[99]

As regards subsidiary protection applications, ORAC completed 641 cases during the year. ORAC report that of the 3,840 cases transferred from the Irish Naturalisation and Immigration Service (INIS) to ORAC in November 2013, under the *European Union (Subsidiary Protection) Regulations 2013*, only 30 cases remained to be finalised by the end of 2016.[100] A total of 406 applications were pending at end 2016. Most of these will fall to be processed under the *International Protection Act 2015*.[101]

Throughout the year, some 431 new applications for subsidiary protection were submitted, up from 297 in 2015. During the year, 225 applications were refused and 41 applications were granted. Some 375 applications were withdrawn or deemed withdrawn, where the applicant did not wish to proceed or had not co-operated with ORAC, or were closed as a result of the applicants being granted a declaration of refugee status or Irish citizenship by the Minister for Justice and Equality.[102]

Figure 3.3 shows that the main countries of origin for subsidiary protection applicants were Pakistan (16 per cent), Nigeria (10.4 per cent), Zimbabwe (8.8 per cent), Algeria (8.4 per cent) and Albania (8.1 per cent).[103]

98 Ibid., p. 31. Appeals completed include decisions issued by the RAT and appeals withdrawn (both deemed withdrawn by the RAT and voluntary withdrawals by applicants) and any other appeal closed by the RAT for other reasons. International Protection Appeals Tribunal, October 2017.

99 Refugee Appeals Tribunal (2017), p. 37. These include appeals where the RAT issued a 'Granted/Set Aside' decision or a 'Refused/Affirmed' decision. Correspondence with International Protection Appeals Tribunal, October 2017.

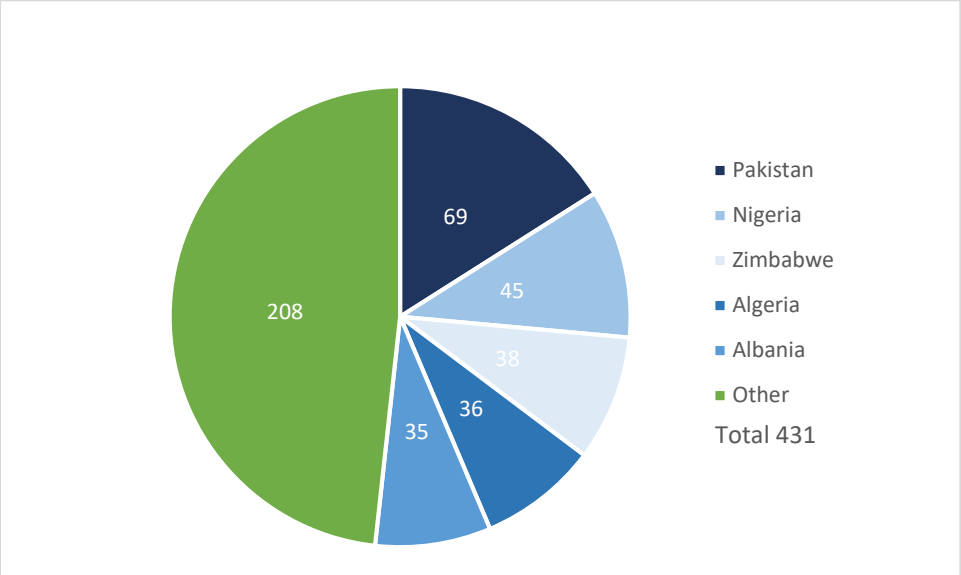
100 Office of the Refugee Applications Commissioner (2017), p. 7.

101 64 cases will be processed under the *European Union (Subsidiary Protection) Regulations 2013*. Ibid., p. 30.

102 Ibid., p. 30.

103 Ibid., p. 31.

FIGURE 3.3 SUBSIDIARY PROTECTION APPLICATIONS BY TOP FIVE NATIONALITIES, 2016



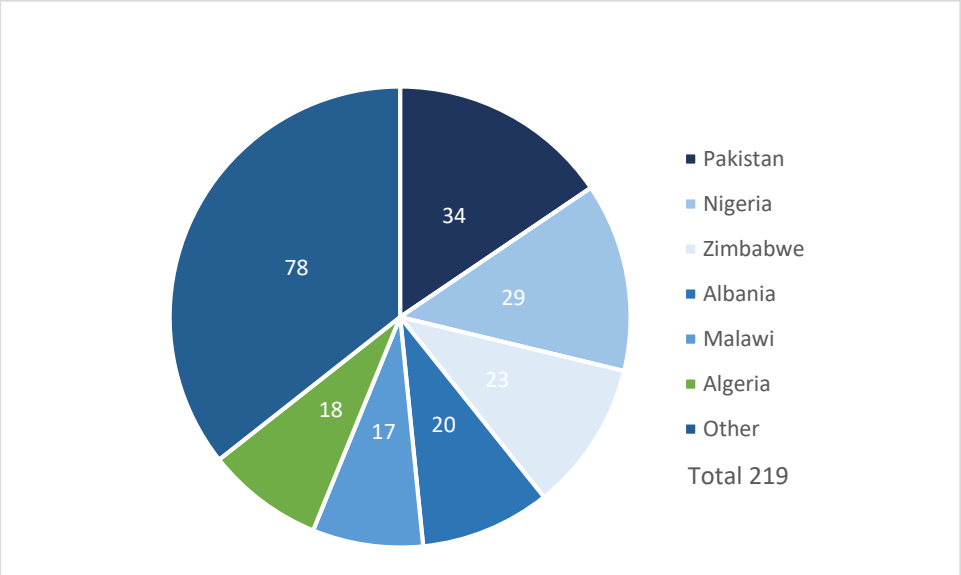
Source: ORAC Summary Report of Key Developments in 2016.

During the year, a total of 219 appeals in relation to subsidiary protection were submitted to the Tribunal. This represented a 52 per cent decrease over the 2015 total of 456 cases.[104] Decisions were issued in 379 cases, with the overall recommendation of ORAC affirmed in 278 cases, an affirmation rate of 73 per cent.[105] Overall 480 appeals were completed during the year.[106] Processing time for subsidiary protection appeals was approximately 54 weeks.[107]

At the appeal stage, as shown in Figure 3.4, the countries of origin were broadly similar, with Pakistan (16 per cent), Nigeria (13 per cent), Zimbabwe (11 per cent), Albania (9 per cent) and Malawi and Algeria (tying on 8 per cent) the top countries of origin.[108]

104 Refugee Applications Tribunal (2017), p. 22.
105 Ibid., p. 38.
106 Ibid., p. 32.
107 Ibid., p. 33.
108 Ibid., p. 34.

FIGURE 3.4 SUBSIDIARY PROTECTION APPEALS LODGED BY NATIONALITY, 2016



Source: *RAT Annual Report 2016.*

A total of 532 persons were granted leave to remain under section 3 of the *Immigration Act 1999* in 2016, and, of these, 467 persons were rejected asylum seekers.[109] This compares with 1,282 permissions of leave to remain in 2015, of which 1,196 persons were rejected asylum seekers.[110]

There was an increase of 32 per cent in 2016 in the number of applications submitted to ORAC for family reunification. 358 applications for family reunification were submitted during the year. The top five countries of origin of applicants were Syria, Somalia, Iraq, Afghanistan and Sudan.[111]

3.1.1 Judicial review

During 2016, 458 judicial review applications were submitted to the High Court on the 'asylum list', a substantial increase over the 164 applications in 2015. It should be noted that cases on the asylum list include not only asylum-related cases but also judicial reviews against Ministerial decisions in other immigration matters; for example, naturalisation, EU Treaty rights and family reunification. According to the Courts Service, many of the applications in 2016 related to 'a review of visa decisions or to compel a decision on a visa application in existing cases'. Some 258 judicial reviews on this list were resolved by the High Court in 2016, with 122 cases settled out of court.[112] Orders were made in a total of 675

[109] Response to Parliamentary Question 24567/17 of 23 May 2017.
[110] Sheridan and Whelan (2016), p. 101.
[111] Office of the Refugee Applications Commissioner (2017), p. 7.
[112] Courts Service of Ireland (2017), p. 46.

cases.[113] The proportion of judicial reviews on the asylum list before the High Court increased substantially in 2016 over 2015, at 48 per cent of the total number of judicial review applications[114] (23 per cent in 2015).[115]

The Court of Appeal received 22 new asylum list judicial review appeals during 2016, with 15 cases determined and two withdrawn during the year.[116] The Court of Appeal also had 35 asylum list 'Article 64'[117] appeals pending before it which had been transferred from the Supreme Court. The Supreme Court received three new asylum list judicial review cases on appeal from the High Court and Court of Appeal (following grant of leave to appeal to the Supreme Court). One case was determined during the year.[118] The Supreme Court also determined six asylum list legacy appeals in 2016 (legacy cases prior to the establishment of the Court of Appeal).[119]

3.2 LEGISLATIVE, ADMINISTRATIVE AND INSTITUTIONAL CHANGES

3.2.1 Legislative changes

The *International Protection Act 2015* came into operation from 31 December 2016. The Act replaces the former sequential international protection application process with a single application procedure, bringing Ireland into line with the procedures applied in other EU Member States. The 2015 Act provides for applications for international protection (refugee status and subsidiary protection) as well as permission to remain cases to be processed as part of a single procedure. This compares to the previous multilayered process which involved multiple bodies and procedures.[120] From 31 December 2016, all applications for international protection are dealt with under the new provisions and, where applicable, the relevant transitional provisions contained in sections 70 and 71 of the *International Protection Act 2015*.[121] UNHCR Ireland has published an information booklet on the procedure.[122]

Under the new Act, the ORAC is replaced by the International Protection Office (IPO), established within the INIS of the Department of Justice and Equality for

113 Ibid., p. 47.
114 Ibid., p. 46.
115 Sheridan and Whelan (2016), p. 27.
116 Courts Service of Ireland (2017), p. 67.
117 These cases had been initiated before the Supreme Court prior to the establishment of the Court of Appeal on 28 October 2014 but had not yet been fully or partly heard prior to the Court of Appeal establishment date and were transferred to the Court of Appeal for determination. These cases are known as Article 64 cases.
118 Courts Service of Ireland (2017), p. 68.
119 Ibid., p. 70.
120 Department of Justice and Equality: Irish Naturalisation and Immigration Service, International Protection Policy Division, February 2017.
121 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016a).
122 UNHCR Ireland (2017).

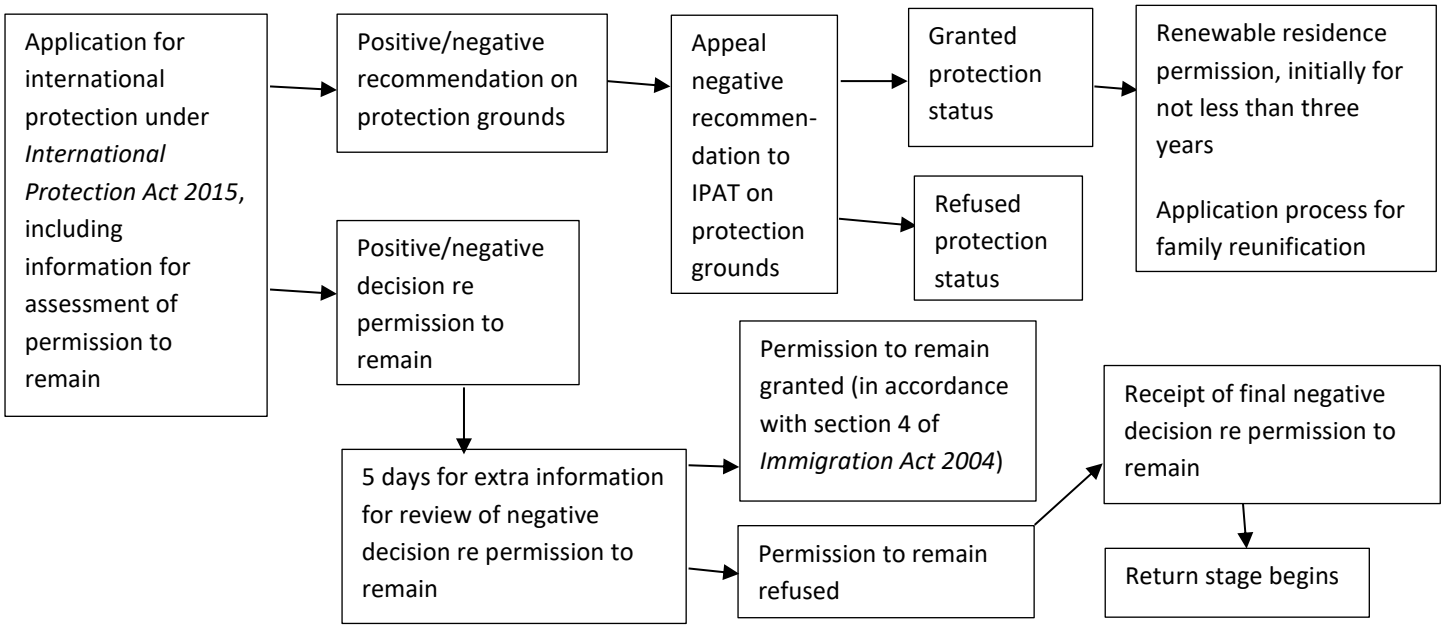
the purposes of the Act. The Act also provides for the establishment of an independent International Protection Appeals Tribunal (IPAT), replacing the RAT.

The *International Protection Act 2015* contains transitional provisions regarding (i) applications for refugee status and subsidiary protection lodged with the Office of the Refugee Applications Commissioner and (ii) appeals lodged with the RAT before 31 December 2016. A preliminary information note for both new applicants and those with applications made prior to 31 December 2016 was published by the IPO on 3 January 2017. An information booklet on the new application process has been made available in a number of languages on the IPO website, www.ipo.gov.ie.[123,124]

The new international protection application process is set out in Figure 3.5. An interactive flowchart of the new international protection process is also available on the European Migration Network (EMN) Ireland website at www.emn.ie.

[123] International Protection Office (2017a).
[124] International Protection Office (2017b).

FIGURE 3.5 APPLICATION PROCESS FOR INTERNATIONAL PROTECTION UNDER *INTERNATIONAL PROTECTION ACT 2015*



As well as overhauling the international protection process, the Act revises and updates provisions from earlier legislation.

For example, section 20 sets out certain circumstances in which an applicant for international protection may be detained, including if the person poses a threat to public security or public order, has committed a serious non-political crime outside the State, has not made reasonable efforts to establish their identity, has destroyed identity/travel documents without reasonable excuse, or is in possession of forged or fraudulent identity documents.[125] These provisions update similar provisions from the *Refugee Act 1996* (as amended).

The applicant may be detained for a maximum (but renewable) period of 21 days or released under certain conditions (such as residing in a particular place, reporting at regular intervals or surrendering a passport or travel document).[126]

[125] Section 20(1)(a)–(f) of the *International Protection Act 2015.* 'An immigration officer or a member of the Garda Síochána may arrest an applicant without warrant if that officer or member suspects, with reasonable cause, that the applicant (a) poses a threat to public security or public order in the State, (b) has committed a serious non-political crime outside the State, (c) has not made reasonable efforts to establish his or her identity, (d) intends to leave the State and without lawful authority enter another State, (e) has acted or intends to act in a manner that would undermine—(i) the system for granting persons international protection in the State, or (ii) any arrangement relating to the Common Travel Area, or (f) without reasonable excuse—(i) has destroyed his or her identity or travel document, or (ii) is or has been in possession of a forged, altered or substituted identity document.'

[126] Sections 20(3) and 20(12), *International Protection Act 2015.*

Applicants under the age of 18 years are not subject to detention.[127] However, a person may be detained if two immigration officers or two members of An Garda Síochána, or an immigration officer and a member of An Garda Síochána, have reasonable grounds to believe that the person has attained the age of 18 years.[128] The reasonable assumption that the person has reached the age of 18 years can also be reached on the opinion of one immigration officer or member of An Garda Síochána where an opinion is reached by a person conducting an age assessment examination that the person has attained 18 years of age or where the persons refuses to undergo such an examination.[129]

Applicants may also be detained due to not abiding by conditions of release. In these circumstances, the period of detention may be extended by a District Court Judge for further periods of 21 days pending the outcome of the application for international protection. Applicants detained may indicate that they wish to return to their country of origin and in such cases the application for international protection is withdrawn. If a detained applicant so indicates, they are brought before a District Court Judge. If the Judge is satisfied that the applicant wishes to withdraw the application and leave the State and has obtained, or been given the opportunity to obtain, legal advice on the consequences of the decision not to proceed with the application, the Judge shall order the Minister for Justice and Equality to remove the applicant from the State.[130]

The *International Protection Act 2015 (Places of Detention) Regulations 2016* (S.I. No. 666 of 2016) set out the places of detention for the purposes of section 20 of the *International Protection Act 2015*.

Section 54 of the *International Protection Act 2015* provides that a residence permission of not less than three years is to be given to beneficiaries of international protection. Family members who qualify to join the beneficiary of international protection are given residence permission of not less than one year, and of not less than two years on renewal. Residence permissions are renewable, other than on grounds of national security or public order. These provisions update similar provisions in the *Refugee Act 1996* (as amended).

Section 72 provides that the Minister for Justice and Equality may designate safe countries of origin. To date no countries have been designated as safe countries of origin under the 2015 Act. South Africa is designated as a safe country of origin under the *Refugee Act 1996 (Safe Countries of Origin) Order 2004* (S.I. No. 714 of

127 Section 20(6), *International Protection Act 2015.*
128 Section 20(7)(a), *International Protection Act 2015.*
129 Under Section 25 of the *International Protection Act 2015.*
130 Section 20(13), *International Protection Act 2015*.

2004), which remains in force.[131]

Section 51 provides that the Minister shall make a deportation order against an applicant who has been unsuccessful in applications for refugee status, subsidiary protection and permission to remain, subject to the prohibition of refoulement in section 50. Section 48 provides for the option to return voluntarily to the country of origin. For further discussion of return, see Chapter 8.

Regarding appeals, section 21(6) provides for a new appeal from a decision that an application is inadmissible and section 22(8) provides for a new appeal from a refusal to permit a subsequent application for protection.[132]

Table 3.1 sets out the commencement schedule and regulations that were made during 2016 to facilitate commencement of the *International Protection Act 2015*.

TABLE 3.1 COMMENCEMENT OF *INTERNATIONAL PROTECTION ACT 2015*

Statutory Instrument	Purpose
International Protection Act 2015 (Commencement) Order 2016[133]	This Order commenced section 1 (an enabling provision regarding commencement) and certain repeals under the *International Protection Act 2015* from 11 January 2016.
International Protection Act 2015 (Commencement) (No. 2) Order 2016[134]	This Order commenced certain stand-alone provisions regarding immigration and deportation from March 2016. See Chapter 8 for further details.
International Protection Act 2015 (Commencement) (No.3) Order 2016[135]	This Order provided for the commencement of the *International Protection Act 2015* from 31 December 2016.[136] This Order also facilitates the commencement of the instruments listed below.
International Protection Act 2015 (Application for International Protection Form) Regulations 2016[137]	These Regulations prescribe the application form for the purposes of section 15 of the *International Protection Act 2015*. These Regulations replace the *Refugee Act 1996 (Application Form) Regulations 2000*.
International Protection Act 2015 (Establishment Day) Order 2016[138]	This Order provides for the establishment of the IPAT to hear appeals against recommendations of an international protection officer under the *International Protection Act 2015*.

131 Department of Justice and Equality: INIS, International Protection Policy Division, February 2017.
132 Refugee Appeals Tribunal (2017), p. 10.
133 S.I. No. 26 of 2016.
134 S.I. No. 133 of 2016.
135 S.I. No. 663 of 2016.
136 Other than paragraphs (b), (f), (i), (j), (l), (m) and (p) of section 6(2). The sections not commenced refer to various repeals.
137 S.I. No. 660 of 2016.
138 S.I. No. 661 of 2016.

Statutory Instrument	Purpose
International Protection Act 2015 (Temporary Residence Certificate) (Prescribed Information) Regulations 2016[139]	These Regulations set out the information to be included on the Temporary Residence Certificate issued to protection applicants under the *International Protection Act 2015*. They replace the *Refugee Act 1996 (Temporary Residence Certificate) Regulations 2000*.
International Protection Act 2015 (Permission to Remain) Regulations 2016[140]	These Regulations set out the time period for the provision of information following receipt by an applicant of a decision of the IPAT for the purposes of section 49(9) of the *International Protection Act 2015*. Section 49(9) concerns consideration of permission to remain for applicants unsuccessful in obtaining a declaration of refugee status or subsidiary protection status.
International Protection Act 2015 (Voluntary Return) Regulations 2016[141]	These Regulations set out the procedure and forms to be issued in cases where an applicant for international protection opts to voluntarily return to their country of origin in line with section 48 of the *International Protection Act 2015*.
International Protection Act 2015 (Places of Detention) Regulations 2016[142]	These Regulations prescribe the places of detention for the purposes of section 20 of the *International Protection Act 2015*. These Regulations replace the *Refugee Act 1996 (Places and Conditions of Detention) Regulations 2000*.
International Protection Act 2015 (Travel Document) Regulations 2016[143]	These Regulations prescribe the fee, the application form to be completed and additional information required when applying for a travel document under section 55 of the *International Protection Act 2015*. They also prescribe the form of the travel document to be issued. These Regulations replace the *Refugee Act 1996 (Travel Document) Regulations 2000 and 2011*.
International Protection Act 2015 (Deportation) Regulations 2016[144]	These Regulations prescribe the deportation order to be issued under section 51(1) of the *International Protection Act 2015*

Family reunification

The *International Protection Act 2015* brings into effect revised rules for family reunification for beneficiaries of international protection.[145] The Act introduces certain key changes over the provisions in the *Refugee Act 1996* and the

[139] S.I. No. 662 of 2016.
[140] S.I. No. 664 of 2016.
[141] S.I. No. 665 of 2016.
[142] S.I. No. 666 of 2016.
[143] S.I. No. 667 of 2016.
[144] S.I. No. 668 of 2016.
[145] Sections 56 and 57 of the *International Protection Act 2015.*

Subsidiary Protection Regulations 2013 (as amended). The definition of a family member covers spouses, civil partners, children (under 18) of the sponsor and parents/siblings of the sponsor (if sponsor and siblings are under age 18). The discretionary power of the Minister to allow other dependent family members to enter the State under section 18(4) of the Refugee Act 1996 was not included under the new Act. Such persons can make applications for family reunification under the terms of the INIS *Policy Document on non-EEA Family Reunification.*[146]

Time limits for family reunification applications have been introduced. Applications must be made within 12 months of the granting of a declaration for international protection. A permission for family reunification for a person entering the State to be united with a family member will cease to be valid if the person does not enter the State by the date specified by the Minister when making the declaration.[147] There is no provision for extending these time limits in the 2015 Act. The Department of Justice and Equality has commented that:

> *the new provisions provide specific rights to family reunification and a path to reunification for family members of those granted international protection which is less restrictive both in terms of application of those limits and economic conditions than many other EU Member States. It is expected that the single procedure will lead to decreased processing times for applications for international protection and subsequent applications for family reunification.*[148]

Nasc, the Irish Immigrant Support Centre, made a presentation in November 2016 to the Joint Oireachtas Committee on Justice and Equality regarding family reunification, and presented its policy proposals for using family reunification as a tool in Ireland's response to the refugee and migration crisis.

Nasc informed the Committee that one of its key areas of work is family reunification and it is working mainly with Syrians but also with Iraqis and Yemenis. Nasc outlined to the Committee its policy proposals which it had launched as its Safe Passage campaign in June 2016.[149] The proposals are for the Irish Government to provide 'safe passage' to reunite families via an extension of the Syrian Humanitarian Assistance Programme (SHAP) introduced by the Department of Justice and Equality in 2014 and the introduction of a sponsorship

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[146] Irish Naturalisation and Immigration Service (2016). This policy document was originally published in December 2013 and updated in December 2016 to take account of *inter alia* the *International Protection Act 2015*. The scope of the policy document excludes applications for residence for family members of EU citizens exercising EU free movement rights, and family reunification applications by beneficiaries of international protection which fall under the scope of sections 56 and 57 of the *International Protection Act 2015*.

[147] Section 58 of the *International Protection Act 2015* provides that due regard shall be had to the specific situation of vulnerable persons and the best interests of the child shall be a primary consideration in the application of sections 53–57 of the Act (content of international protection, including family reunification).

[148] Department of Justice and Equality: INIS, International Protection Policy Division, February 2017.

[149] See *Safe Passage*, available at http://www.nascireland.org/campaigns-for-change/safe-passage.

scheme to allow Irish people to act as sponsors for applicants. Such schemes need not be restricted to Syrian applicants. Nasc was concerned about the new legislative provisions for family reunification under the *International Protection Act 2015*, in particular that applications for family members of refugees, outside those defined under the Act, would now be processed under the immigration family reunification framework, i.e. the *Policy Document on non-EEA Family Reunification*. Nasc expressed concerns about the discretionary nature of decisions made under that framework.[150]

3.2.2 Administrative changes

The ORAC states that it continued to give priority in 2016 to reviewing its procedures and addressing the training and development needs for staff, to ensure that processing procedures are in line with international best practice.[151] Throughout 2016, these activities took account of the new requirements due to enter into force under the *International Protection Act 2015*.

With the assistance of UNHCR, ORAC reviewed and revised its refugee status determination report template and guidance notes, and all procedures and practices were examined to ensure they met the requirements of the *International Protection Act 2015*. The UNHCR also supported the delivery of comprehensive training programmes for Case Processing Panel members and ORAC staff in relation to the introduction of the *International Protection Act 2015*.[152]

ORAC states that its enhanced procedures, quality review and training programmes resulted in a reduction in the number of successful judicial reviews taken against ORAC. In 2016, 12 ORAC cases were determined, with only two in favour of the applicant.[153]

In 2016, ORAC secured the services of a new international language analysis company following a competitive tendering process. ORAC states that the language analysis report is considered in conjunction with all other aspects of the claim. Every applicant is given the opportunity of presenting his/her claim at substantive interview, regardless of the result of the language analysis report.[154]

A new fingerprinting software suite was installed in November 2016 to provide

[150] Joint Committee on Justice and Equality (16 November 2016), *Migrant Crisis: Discussion*, available at http://oireachtasdebates.oireachtas.ie.
[151] Office of the Refugee Applications Commissioner (2017), p. 6.
[152] Ibid., p. 6.
[153] Ibid., pp. 7–8.
[154] Ibid., p. 8.

better technical support in the operation of the EU Dublin Regulation.[155]

Two meetings of ORAC's Customer Service Liaison Panel took place during 2016. The second of these concentrated on briefing civil society groups on preparations for the commencement of the *International Protection Act 2015*.[156]

ORAC undertook work during 2016 related to the transition to the new single application procedure and to transitioning to the IPO under the *International Protection Act 2015*. Asylum interviews were suspended from October 2016 onwards to allow for transitional work to be undertaken. Some of the preparatory activities were:

- a mailshot to applicants in December 2016 giving them provisional notification of how the new legislation would impact on their cases;
- preparation of new information material and documentation;
- involvement in planning for necessary IT support for the new single procedure;
- development of training programmes in co-operation with the UNHCR and delivery of training to staff and case processing panel members;
- researching and devising procedures for the new work area of Permission to Remain which would fall to the IPO under the new legislation.[157]

As noted in Section 3.1, median processing time for cases in ORAC and processing appeals in RAT increased in 2016 compared to 2015. Commentators expressed concerns during the year at the increase in processing times. This was one of the concerns expressed at a meeting held in June 2016 between civil society organisations who had taken part in the Working Group on the Protection Process[158] and Ministers and officials at the Department of Justice and Equality, on the implementation of the recommendations of the *Report to Government on Improvements in the Protection Process* (McMahon Report). At the meeting UNHCR expressed concern that processing times had increased since the publication of the report:

> *UNHCR very much welcomes the strong commitment of Tánaiste Fitzgerald and her officials that all necessary resources are being allocated to the asylum determining bodies to ensure that recent trends are reversed …. This is essential to ensure that the new single procedure,*

[155] Ibid., p. 7.
[156] Ibid., p. 10.
[157] Ibid., p. 11.
[158] Core Group of Asylum Seekers, Children's Rights Alliance, Jesuit Refugee Service, Nasc, Spirasi and UNHCR.

> *when it is commenced later this year, does not begin with a substantial legacy of old cases.*[159]

ORAC reports that every effort was made to finalise as many cases as possible under the *Refugee Act 1996* before the end of 2016 to ease the transition of processing to the new procedure. Asylum cases on hand decreased by 40 per cent across the year.[160]

3.2.3 Institutional changes

From 31 December 2016, the ORAC is replaced by the International Protection Office (IPO). The IPO is an office within the INIS responsible for processing applications for international protection under the *International Protection Act 2015*. It also considers, as part of a single procedure process, whether applicants should be given permission to remain. The IPO comprises, *inter alia*, a chief international protection officer and international protection officers who are independent in the performance of their international protection functions.[161] Section 75 of the *International Protection Act 2015* provides that the functions of the chief international protection officer include the allocation of cases to be examined by international protection officers under the Act. The chief international protection officer also has functions under section 70(21) of the Act, which sets out transitional provisions in relation to pending legal proceedings to which the refugee applications commissioner was a party. A new website has been set up for the Office at www.ipo.gov.ie.

Under transitional provisions, an application for refugee status which was made prior to the commencement date of the new Act, and in respect of which a report had not been prepared, is deemed to be a fresh application for international protection under section 15 of the *International Protection Act 2015*.

From 31 December 2016, the first instance appeals body, formerly the RAT, is replaced by the International Protection Appeals Tribunal (IPAT), which is independent in the performance of its functions under the *International Protection Act 2015*.[162] A new website has been set up for the Tribunal at www.protectionappeals.ie.

Under transitional provisions, appeals from a recommendation to refuse refugee status that were pending before the RAT on the date of commencement, and had not been determined, are transferred to the IPO, as new applications for international protection under section 15 of the *International Protection Act*

[159] Core Group of Asylum Seekers et al. (2016).
[160] Ibid., p. 5.
[161] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016a).
[162] *International Protection Act 2015 (Establishment Day) Order 2016* (S.I. No. 661 of 2016).

2015, with certain modifications.[163] Pending subsidiary protection and Dublin III, appeals are retained and will be decided by the IPAT.[164]

The IPAT decides appeals from negative determinations of international protection made by the IPO and also appeals under the Dublin Regulations. It also decides appeals under sections 21 and 22 of the *International Protection Act 2015* in relation to inadmissible applications and subsequent applications.

The RAT participated in judicial reviews via its Judicial Review Unit and, during 2016, 96 judicial reviews were determined. The RAT reports that, as and from the commencement of the *International Protection Act 2015*, it was decided with the agreement of the Department of Justice and Equality that the IPAT would no longer participate in judicial reviews save in exceptional circumstances.[165] The IPAT continues to participate in any matter that was pending prior to the commencement of the Act.[166]

The IPAT consists of a Chairperson, two Deputy Chairpersons, and a number of ordinary members appointed on either a whole-time or a part-time capacity by the Minister for Justice and Equality, with the consent of the Minister for Public Expenditure & Reform. There were no whole-time members of the RAT in 2016 and the first Deputy Chairperson was appointed with effect from 31 December 2016.[167] Staff are assigned to the Tribunal by the Department of Justice and Equality.[168]

The *International Protection Act 2015* requires that the members of the IPAT have had not less than five years' experience as a practising barrister or solicitor prior to their appointment as a member.[169] The Act introduces a requirement that appointments are made following a competition run by the Public Appointments Service.[170]

The Chairperson and Deputy Chairpersons are appointed for a term of five years, which may be renewed for a term not exceeding five years. Ordinary members are appointed for a term of three years, which may be renewed for a term not

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163 Section 70(2) of the *International Protection Act 2015* provides that these are deemed to be an application under the *International Protection Act 2015*. Where the international protection officer makes a recommendation under section 39 of the *International Protection Act 2015*, the pending appeal originally made under section 16 of the *Refugee Act 1996* is deemed to be an appeal under section 41(1) of the *International Protection Act 2015* and the provisions of the *International Protection Act 2015* apply accordingly (section 70(2) (d(i) and (ii))).

164 Refugee Appeals Tribunal (2017), p. 10.

165 Ibid., p. 14.

166 IPAT, October 2017.

167 Ibid.

168 Sections 61 and 62, *International Protection Act 2015.*

169 Section 62(2), *International Protection Act 2015.*

170 Irish Naturalisation and Immigration Service: International Protection Policy Division, February 2017.

exceeding three years.[171]

3.3 RECEPTION

3.3.1 *Report to Government on Improvements to the Protection Process*

As reported for 2015, the *Report to Government on Improvements to the Protection Process, including Direct Provision and other Supports for Asylum Seekers* was published in June 2015. [172] Progress was made during 2016 on implementation of the 173 recommendations in the Report.

In June 2016, the Department of Justice and Equality published a summary of the status of the Working Group recommendations.[173] The progress audit stated that, at that stage, 91 recommendations had been implemented, 49 had been partially implemented and the balance remained under consideration.[174,175]

The Minister for Justice and Equality highlighted that one of the main recommendations of the Report had been the enactment of the *International Protection Act 2015*. She said that the Act 'can be expected to positively address the crucial issue of the length of time that applicants spend in the process and in the direct provision system'. In addition, by June 2016, an estimated two-thirds of people who had been in the direct provision system for five years or more had had their cases processed to completion.[176]

Concerns were expressed during 2016 in relation to progress on the implementation of the recommendations. In April 2016, the former chairperson of the Working Group expressed disappointment at the slowness of the implementation of the key recommendations. Speaking at a launch of *The Search for Refuge* (a publication of the Jesuit Centre for Faith and Justice), he said:

> *Ten months on, implementation of key recommendations has been slow and inadequately resourced. The progress in resolving the situation of those more than 5 years in the system is most welcome yet considerable work remains to be done to ensure all who could benefit will. Most*

[171] Section 62, *International Protection Act 2015.*
[172] Direct provision: the system of reception for asylum seekers in Ireland, whereby all government services are offered directly to asylum seekers including an offer of accommodation on a full-board basis in a reception centre and a small weekly allowance.
[173] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016b).
[174] This second Progress Audit was published on 23 February 2017 and found that 92 per cent of the Report's 173 recommendations had been implemented, partially implemented or were in progress. Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017a).
[175] A further progress audit was published in February 2017.
[176] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016b).

worryingly delays are again growing significantly at the earlier stages in the protection process.[177]

A number of organisations from the non-governmental sector that had taken part in the Working Group on the Protection Process met with the Minister and Minister of State at the Department of Justice and Equality and officials in June 2016 in order to discuss progress on implementation of the McMahon Report recommendations. The organisations strongly welcomed the progress that had been made over the year since the publication of the report, but stressed that implementation of the key recommendations would *require the full allocation of resources identified by the Working Group.*[178]

Some of the recommendations that were addressed related to reception conditions. The direct provision weekly allowance for children was increased by €6 to €15.60 per week per child in January 2016.[179] The recommendation in the McMahon Report had been for an increase to €29.80 per week.[180] The weekly allowance for adults of €19.10 per week was not changed in 2016. Prescription charges[181] for all direct provision residents were waived from September 2015.

Preparations were underway by the Reception and Integration Agency (RIA) in 2016 to implement the recommendation to provide home-cooking facilities for families resident in State-provided accommodation centres. These arrangements were set for commencement in the Mosney centre in early 2017.[182]

There continued to be criticism of conditions related to the direct provision system. For example, the *Irish Times* reported in November 2016 that the level of the 'Christmas bonus' for asylum seekers in direct provision was €16.23 for adults and €13.23 per child.[183] The Children's Rights Alliance argued that families in direct provision were 'effectively unable to participate in Christmas'.[184] In November 2016, the *Irish Times* also reported on a pop-up café, set up to highlight the lack of opportunity for asylum seekers to cook their own food in accommodation centres, and to provide work experience for refugees who had been granted status.[185]

177 Jesuit Centre for Faith and Justice (2016).
178 Core Group of Asylum Seekers et al. (2016).
179 Department of Social Protection (2016).
180 Working Group to Report to Government on Improvements in the Protection Process including Direct Provision and Supports to Asylum Seekers (2015), Recommendation 5.30.
181 Residents of direct provision centres are given a medical card which provides free access to public health services. In general, medical card holders are subject to a fee for medications issued on a prescription.
182 Department of Justice and Equality (2017a), p. 4.
183 The Christmas bonus is payable at a percentage rate related to social welfare payments. In 2016 the rate was 85 per cent.
184 *Irish Times* (28 November 2016).
185 *Irish Times* (9 November 2016).

The Minister for Justice and Equality committed to extending the remit of the Offices of the Ombudsman and the Ombudsman for Children to residents of direct provision centres. The type of complaints that will be accepted will be those relating to the services provided to protection applicants in their State-provided accommodation centre. This change required amending legislation.

As of December 2016, the Minister for Justice and Equality said that she was optimistic that this process could be 'concluded speedily to allow residents in State provided accommodation access to the independent Offices of the Ombudsman and the Ombudsman for Children at the earliest opportunity'.[186,187] Throughout 2016, the working arrangement between RIA and the two Ombudsman Offices continued to manage complaints informally.[188]

During 2016, 21 written complaints were made to centre managers by residents, of which five were upheld, five were partially upheld and eleven were not upheld.[189]

In June 2016, the Minister for Education and Skills announced that the pilot scheme for access to student supports for school leavers in the protection system would continue for the academic year 2016/2017. This scheme is for applicants in the protection system who wish to be supported to pursue certain courses in further education or at undergraduate level in higher education. It provides supports in line with the national Student Grant Scheme. The scheme opened for applications on 3 June 2016. Applicants were required to meet certain criteria:

- meet the definition of a protection applicant or a person at leave-to-remain stage (other than those at the deportation order stage);
- have obtained their Leaving Certificate (Irish school-leaving examination);
- have been accepted on an approved Post Leaving Certificate course or an approved undergraduate course;
- have attended a minimum of five academic years in the Irish school system, as at 31 August 2016;
- have been part of an application for protection or leave to remain for a combined period of five years at 31 August 2016.[190]

The Irish Refugee Council (IRC) noted criticism expressed at the 'onerous' nature

186 Response to Parliamentary Question 40428/16 of 16 December 2016, available at www.justice.ie.
187 Both Ombudsman offices were in a position to receive complaints from 3 April 2017. Response to Parliamentary Question 20321/17 of 2 May 2017, available at www.justice.ie.
188 Department of Justice and Equality (2017a), p. 41.
189 Ibid.
190 Department of Education and Skills (2016a).

of the qualification criteria for the scheme[191] and that there had been only two successful applicants in 2015.[192] The IRC argued that the main reason for unsuccessful applications in 2015 had been the requirement to have attended school in Ireland for the previous five years.[193]

The National University of Ireland at Galway (NUIG) announced an 'Inclusive Centenaries Scholarship Scheme' targeted at applicants for and beneficiaries of international protection and for permission to remain, and who met certain other eligibility conditions, on 17 June 2016. Four scholarships were available in 2016.[194] In December 2016, Dublin City University announced that 15 academic scholarships, at undergraduate or postgraduate level, would be available to applicants in Ireland as either asylum seekers or refugees commencing their studies in September 2017.[195]

3.3.2 RIA accommodation

Over the course of 2016, the number of persons in RIA accommodation centres decreased from 4,696 to 4,425. According to RIA, this slight drop masks a significant variation in numbers, with approximately 1,700 persons leaving and slightly more entering RIA accommodation over the year.[196]

At the end of 2016, RIA's accommodation portfolio consisted of 33 accommodation centres across 16 counties with a contracted capacity of 5,230.[197] Two centres closed during the year and total capacity decreased by 219 places in total by year end.[198] Over the period 2010 to 2016, the average occupancy rate as a percentage of capacity was 86 per cent.[199]

A total of 104 inspections of centres contracted to RIA were conducted in 2016, 67 by RIA staff and 27 by the independent inspection company, QTS.[200]

In May 2016, the Department of Justice and Equality produced a *Guide to Living Independently*[201] for persons with status due to move out of State accommodation. The guide is available on the RIA website in a number of languages, and in all accommodation centres.

191 ECRE (2016), p. 94.
192 *Irish Examiner* (27 August 2016).
193 Ibid.
194 NUI Galway (2016).
195 Dublin City University (2016).
196 Department of Justice and Equality (2017a), p. 4.
197 Ibid., p. 30.
198 Ibid., p. 8.
199 Ibid., p. 23. This figure represents a 'snapshot' of occupancy data on the evening of the last Sunday of each month.
200 Ibid., p. 8.
201 Department of Justice and Equality (2016d).

3.4 RESETTLEMENT AND RELOCATION

As reported for 2015, the Irish Refugee Protection Programme (IRPP) was approved by Government decision on 10 September 2015 in response to the migration crisis. The Government confirmed that Ireland will take in a total of 4,000 persons, primarily through a combination of relocation under the EU relocation mechanism and the UNHCR-led programme currently focused on resettling refugees from Lebanon, with the two main mechanisms to be given effect by the end of 2017 based on the timelines set out in the relevant commitments.[202]

Ireland has opted into the two EU decisions on Relocation – Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015.

In November 2016, further to an Oireachtas motion passed on 10 November 2016,[203] the Irish Government decided to allocate up to 200 places for unaccompanied minors who had previously been living in the migrant camp in Calais, and who expressed a wish to come to Ireland. These 200 places are part of the overall total of 4,000 persons (see also Chapter 4).

The breakdown of the total Government commitment of 4,000 persons under the IRPP is set out in Table 3.2.

TABLE 3.2 BREAKDOWN OF GOVERNMENT COMMITMENT UNDER IRISH REFUGEE PROTECTION PROGRAMME

Total relocation	2,622
Total resettlement	1,040
Government Decision of 10 November 2016 regarding unaccompanied minors previously in Calais	200
Mechanism undecided	138
Grand total	**4,000**

Source: Department of Justice and Equality. Parliamentary Question 40430/16 of 14 December 2016.

A total of 356 persons were resettled to Ireland in 2016, of Syrian, Syrian Palestinian and Iraqi origin.[204] By end 2016, 519 persons out of the original Irish commitment of 520 under the EU Resettlement Programme had arrived in Ireland. In July 2016, the Minister for Justice and Equality announced that a further 260 persons would be accepted on resettlement,[205] and refugees were

202 Department of Justice and Equality, October 2017.
203 Dáil Éireann (10 November 2016), 'EU Migration Crisis: Motion', available at https://beta.oireachtas.ie.
204 Office for the Promotion of Migrant Integration (2017).
205 Department of Justice and Equality (2016e).

selected to fill these places on a selection mission in October 2016. These 260 were expected to arrive in Ireland in spring 2017.[206] In November 2016, the Minister for Justice and Equality announced a further mission to Lebanon to select a further 260 refugees.[207]

By 16 December 2016, 240[208] asylum seekers under the relocation programme from Greece had arrived in Ireland. In December 2016, the Minister for Justice and Equality indicated that over 400 persons, mostly families with young children, would have either arrived in Ireland or been cleared for arrival by the end of 2016.[209] The countries of origin of the arrivals were Syria and Iraq.

Throughout 2016, a schedule of monthly visits to Athens took place, by a multidisciplinary team comprising officials from ORAC, the IRPP and An Garda Síochána. This team met all of the relocation applicants for Ireland and delivered a cultural orientation, general needs assessment and security assessment.[210]

Arrivals under the relocation programme were from Greece. There were no relocations from Italy, due to difficulties between the Irish and Italian authorities relating to security assessments on Italian soil by An Garda Síochána of applicants for relocation. Efforts were made during 2016 to resolve this issue, including a bilateral intervention by the Minister of State at the Department of Justice and Equality with his Italian counterpart.[211]

Table 3.3 shows the breakdown of the 2016 arrivals on relocation.

TABLE 3.3 BREAKDOWN OF ARRIVALS TO IRELAND FROM GREECE UNDER EU RELOCATION PROGRAMME IN 2016

Adults (male)	73
Adults (female)	59
Married and under 18 (female)	5
Minors (male)	54
Minors (female)	49
Total	**240**

Source: Irish Refugee Protection Programme, August 2017.

Unaccompanied minors are included in the totals of minors. Using the definition

[206] Response to Parliamentary Question 40309/16 of 16 December 2016, available at www.justice.ie.
[207] Department of Justice and Equality (2016f). This mission took place in late March/early April 2017. Response to Parliamentary Question 22835/17 of 16 May 2017, available at: www.justice.ie.
[208] Department of Justice and Equality: Irish Refugee Protection Programme, February 2017.
[209] Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40430/16.
[210] Office of the Refugee Applications Commissioner (2017).
[211] Response to Parliamentary Question 40309/16 of 16 December 2016, available at www.justice.ie.

of an unaccompanied minor applied by Greek officials – that an unaccompanied minor is anyone under 18 who is not accompanied by an adult member of the immediate family[212] – Ireland took in 12 unaccompanied minors from Greece up to 16 December 2016.[213]

The Minister for Justice and Equality, on a visit to Greece in December 2016, committed that Ireland would receive at least 1,100 persons from hotspots in Greece (including those already arrived in Ireland) by September 2017.[214]

The Minister commented that she had also asked her

> *officials to examine the possibility of increasing these numbers further in light of the difficulties in vetting asylum seekers in Italy which is hampering our efforts to accept migrants from there.*[215]

NGOs called during the year for increased participation by Ireland in the EU relocation and resettlement schemes. In an open letter addressed to all TDs, a group of NGOs, the Refugee and Migrant Coalition,[216] called for the implementation of the Government commitment to accept 4,000 refugees under the IRPP to be stepped up. In addition, they called for an increase in available places for resettlement of refugees. The open letter drew attention to Ireland's co-hosting of the United Nations General Assembly Summit on Migration and Refugees in September 2016, and called for Ireland's international good standing not to be undermined in this area by failure to participate fully in relocation and resettlement.[217]

The IRC published proposals regarding safe and legal pathways to Ireland to coincide with World Refugee Day in June 2016, which were updated in November 2016. In addition to calling for additional places to be made available under the relocation and resettlement programmes, these proposals suggested use of humanitarian visas and various options linked to family reunification to provide pathways for refugees to Ireland, such as private sponsorship schemes (including an extension of the 2014 Syrian Humanitarian Admission Programme (SHAP)), a more flexible approach to existing family reunification rules and procedures, and use of family criteria under the Dublin system, and family tracing systems, to enable refugees to reunite with family members. The proposals also suggested use of other legal channels of migration such as education sponsorship

212 Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40430/16.
213 Department of Justice and Equality: Irish Refugee Protection Programme, February 2017.
214 Department of Justice and Equality (2016g).
215 Ibid.
216 Action Aid, Comhlámh, Community Work Ireland, Conference of Religious in Ireland, Cultúr, Doras Luimní, Immigrant Council of Ireland, Irish Missionary Union, Irish Refugee Council, Mercy International Association, Migrant Rights Centre Ireland.
217 Refugee and Migrant Coalition (2016).

schemes.[218] As discussed at Section 3.2.1, Nasc, the Irish Immigrant Support Centre, also called for safe and legal pathways to Ireland and the use of family reunification channels through its Safe Passage campaign.[219]

The Immigrant Council of Ireland (ICI) held a conference, 'A Call to Action and Unity: Forming Ireland's Response to the Refugee and Migration Crisis', in June 2016.[220] It was opened by President Michael D. Higgins. In his opening address, the President emphasised the importance of solidarity and responsibility at the global, EU and national levels in addressing the crisis. He also highlighted his experience of the dialogue at the World Humanitarian Summit in Istanbul in May 2016, which focused on the human dimension of the crisis and looked at the link between development goals and humanitarian action to address humanitarian emergencies (see Chapter 6 for further discussion).[221]

UNHCR Ireland hosted a conference on refugee sponsorship programmes and student scholarship schemes in September 2016. The aim of the conference was to examine examples of creating safe and legal pathways for refugees. Speakers outlined private sponsorship schemes in Canada and their experience of refugee student scholarships. The conference was opened by the Minister for State at the Department of Justice and Equality with responsibility for immigration issues, David Stanton TD. In relation to student scholarships, the Minister said:

> *If Irish third level institutions were to offer places to displaced students from conflict areas, with the necessary educational standards to cope with English language tuition, then they are entitled to apply for student visas. I expect that any such applications will be successful. This is current practice and student visas also include certain rights to access the labour market. Such initiatives from third level institutions would be of great benefit to displaced students and I assure you we already have measures in place to process any applications that would arise.*[222]

EMN Ireland, the Irish NCP of the European Migration Network located within the ESRI, hosted a conference on 'Responding to the Refugee Crisis' in December 2016. The aim of the conference was to bring together a range of speakers to address current responses to the refugee crisis. Speakers from Oxfam Ireland, UNHCR, the Department of Justice and Equality, the Office of the Refugee Applications Commissioner, the European Commission, the IRC and other EU Member States – Sweden, Portugal and Germany – spoke over three thematic

218 Irish Refugee Council (2016a).
219 *Campaigns for Change – Safe Passage.* See www.nascireland.org.
220 Immigrant Council of Ireland (2016), 'A Call to Action and Unity: Forming Ireland's Response to the Refugee and Migration Crisis', 9 and 10 June, Trinity College Dublin.
221 President of Ireland (2016a).
222 UNHCR Ireland (2016a).

sessions: 'Context and Policy Framework', 'State and Local Level Response in EU Member States' and 'Ireland's Response to the Refugee Crisis'. The final session was closed by a presentation of a personal experience of resettlement and integration in Ireland, from business person and former programme refugee Abbas Ghadimi. The opening address was given by the Minister of State at the Department of Justice and Equality. The Minister addressed Ireland's direct response to the migration crisis in his speech but also highlighted the longer term challenge of integration into communities.[223]

3.4.1 Emergency Reception and Orientation Centres

Among the measures agreed under the IRPP was the establishment of Emergency Reception and Orientation Centres (EROCs), which are used to provide initial accommodation in order to meet the basic needs of asylum seekers relocated from the hotspots while their applications for refugee status are processed. EROCs are also used to provide temporary initial housing for refugees arriving under the resettlement element of the IRPP. The two streams are accommodated separately.

The Minister of State at the Department of Justice and Equality explained the main aim behind establishment of the EROCs:

> *The principal aim of the Government in establishing such centres is to provide a safe and calm environment where these migrants, mostly young families who have endured unimaginable loss and suffering, can take time to reflect on their journey, recover physically and mentally, acclimatise themselves to Irish society, learn English, and start planning for their future.*
>
> *The centres act as hubs for the important range of services that need to be delivered to these particularly vulnerable persons, including medical services, language training, education, cultural orientation and social protection services.*[224]

Two EROCs became operational in 2016 – in Counties Kildare (Monasterevin) and Waterford (Clonea Strand, Dungarvan). In addition, accommodation for approximately 230 people was temporarily set aside as an EROC in the asylum seeker accommodation centre in Mosney, Co. Louth pending the opening of future EROCs.[225] The facilities and services provided include onsite education, health and social protection services, orientation classes and weekly IRPP

[223] EMN Ireland (2016a).
[224] Seanad Commencement Matter (26 January 2017), Immigration Support Services, available at www.oireachtasdebates.oireachtas.ie.
[225] Department of Justice and Equality: Irish Refugee Protection Programme, February 2017.

clinics.[226]

In May 2016, the Minister for Health welcomed a funding allocation from the Dormant Accounts Fund[227] to the Department of Health. The projects supported included an allocation of €450,000 for a two-year Intercultural Health Project for Refugees to support the delivery of a range of health services to meet the emerging needs of the new residents of the EROCs established in Clonea Strand and Monasterevin. According to the Department of Health:

> *the main objectives of the programme are to identify the health needs of residents of the EROCs, provide health service information and access routes, deliver intercultural awareness training to health and social care staff and to provide a mental health support service as part of an outreach/satellite service. The services provided will include screening and public health services, interpreting services, GP services and out of hours, dental services, mental health including post-traumatic stress and transport to hospital appointments.*[228]

3.5 EU–TURKEY STATEMENT

The EU–Turkey Statement was agreed at the European Council on 18 March 2016. According to the European Commission, the aim of the agreement was

> *to replace disorganised, chaotic, irregular and dangerous migratory flows by organised, safe and legal pathways to Europe for those entitled to international protection in line with EU and international law.*[229]

It was agreed that, from 20 March 2016, all new irregular migrants and all new asylum seekers who had their claims declared as inadmissible coming from Turkey to the Greek Islands would be returned to Turkey. The legal basis for the returns is the bilateral readmission agreement between Greece and Turkey and the EU–Turkey Readmission Agreement. In relation to persons who apply for asylum in Greece, claims are assessed on a case-by-case basis. The applications can be found inadmissible under the EU Asylum Procedures Directive if the applicant is from a first country of asylum or a safe third country.[230] Turkey is considered to be a safe third country or country of asylum for the purposes of the

[226] EMN Ireland (2016a).
[227] The Dormant Accounts Fund is a scheme for the disbursement of unclaimed funds in credit institutions. See www.pobal.ie.
[228] Department of Health (2016).
[229] European Commission (2016a).
[230] Ibid. Article 35 of the Asylum Procedures Directive (2013/32/EU) – first country of asylum – where the person has already been recognised as a refugee in that country or otherwise enjoys sufficient protection there. Article 38 of the Asylum Procedures Directive (2013/32/EU) – safe third country – where the person has not already received protection in the third country but the third country can guarantee effective access to protection to the readmitted person.

statement. Actual returns are suspended pending a first-level appeal, but further judicial appeal does not have suspensive effect.

As part of the agreement, it was agreed that for every Syrian returned to Turkey from the Greek islands, another Syrian would be resettled to the EU directly from Turkey.[231]

According to the Fourth Progress Report on implementation of the EU–Turkey Statement published on 8 December 2016, a total of 748 migrants were returned from the Greek Islands to Turkey from the date of the implementation of the agreement. This included 42 Syrians and other nationalities including Pakistanis, Afghans, Algerians, Iraqis, Bangladeshis, Iranians, Sri Lankans and Moroccans.[232] In December 2016, average arrivals from the Greek islands to Turkey were 81 persons a day, in contrast with the 1,700 a day average preceding the agreement.[233] By 5 December 2016, 2,761 Syrians had been resettled from Turkey to the EU and Norway under the '1 for 1' arrangements.[234]

Statements on the outcome of the European Council of March 2016 were taken in Dáil Éireann on 22 March 2016, at which the Taoiseach outlined the agreement of the European Council to the EU–Turkey Statement.

In his statement to the Dáil, the Taoiseach said that the core aim of the EU–Turkey Statement was to break the business model of people smugglers and to stop people from attempting the treacherous journey across the Aegean to Greece. The Taoiseach stated that the agreement

> *alone will not resolve the crisis. It will not stop people leaving Syria and it will not prevent people from wanting to come to Europe. But it should help us to manage the flow of asylum seekers more effectively, more humanely and more fairly.*[235]

Opposition to and concerns about the agreement were voiced by a number of TDs. These were mainly about Turkey's human rights record, and whether or not it could be considered a safe country to which to return migrants. The need for safeguards and monitoring for returnees to Turkey was pointed out and concerns were also expressed about the capacity of Greece to cope with the volume of processing that would be required. Criticism of Ireland's overall level of response

231 Ibid.
232 European Commission (2016b), p. 5.
233 Ibid., p. 2.
234 Ibid., p. 9.
235 Department of An Taoiseach (2016).

to the refugee crisis was also voiced.[236]

The Refugee and Migrant Coalition published an open letter to all TDs on the EU deal with Turkey on 22 March 2016. The letter questioned the legality of the deal in terms of obligations under international law and undermining the fundamental right to asylum. It also argued that the deal was unworkable – highlighting the large numbers already in Greece and the resources and personnel that Greece would need to determine admissibility and process claims. The letter also argued that the '1 for 1' resettlement element of the agreement would have very little chance of success, given that the EU resettlement scheme was already below target. In addition, it argued that the emphasis in the selection for resettlement on refugees who had previously not tried to enter the EU was punitive.[237]

Ireland has not participated in the '1 for'1' resettlement scheme, as its resettlement activities have remained focused on Lebanon.[238] In March 2016, the European Commission presented a proposal to amend EU Council Decision 2015/601 to transfer 54,000 places from the relocation scheme to the '1 for 1' scheme and to allow States to meet their relocation commitments via resettlement from Turkey. This proposal was adopted on 29 September 2016.[239] Ireland did not opt into this Council Decision.

3.6 CO-OPERATION WITH EASO

In 2016, Ireland deployed 12 experts to support the work of EASO in Greece (10) and Italy (2). Irish experts provide support to EASO for the implementation of the admissibility procedure by conducting admissibility interviews and recommending decisions. Some of the experts have also been assigned to carry out vulnerability assessments in order to prioritise cases (especially cases involving unaccompanied minors) and to refer them to the appropriate procedure.[240] Two experts were deployed to the Dublin Unit of the Italian Ministry of the Interior in Rome to support the Unit in implementing the Dublin III Regulation in the context of the relocation process.[241]

The Refugee Applications Commissioner continued in his role as Deputy Chairperson of the EASO Management Board in 2016, and attended three board

[236] Dail Éireann (22 March 2016) 'European Council Meeting: Statements', available at http://oireachtasdebates.oireachtas.ie.
[237] Refugee and Migrant Coalition (2016).
[238] UNHCR, October 2017.
[239] *Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*.
[240] Department of Justice and Equality: Irish Naturalisation and Immigration Service: International Protection Policy Division, February 2017.
[241] Office of the Refugee Applications Commissioner (2017).

meetings throughout the year.[242]

The RAT participated in several projects being run by the European Asylum Support Office including the Guide to ending protection[243] and the Guide to exclusion.[244] Tribunal members have also been involved in the provision of judicial training on exclusion from international protection to members of the judiciary and tribunal members from other EU/EEA Member States organised by EASO.[245]

3.7 NAVAL OPERATIONS

As reported for 2015, following a Government decision, the first Irish naval vessel, the LÉ *Eithne*, was deployed to the Mediterranean to assist in the search-and-rescue effort, on the basis of a bilateral agreement with the Italian navy. This co-operation continued throughout 2016 with the deployment of three Irish naval vessels – the LÉ *Róisín*, the LÉ *James Joyce* and the LÉ *Samuel Beckett* – in the period May to November 2016.[246] On 20 July 2016, the Minister for Defence announced that the Irish navy had rescued over 10,000 migrants in the Mediterranean since its initial deployment in May 2015.[247] Subsequently, the LÉ *James Joyce* rescued 453 people in one operation on 21 July.[248]

RTÉ made a TV documentary, *The Crossing*, to document one month in the work of the LÉ *Samuel Beckett* during its three-month mission in the Mediterranean from September 2016. The documentary was aired in December 2016.[249]

Ireland's participation in search-and-rescue operations in 2016 was on the basis of a bilateral agreement with the Italian navy rather than the EU's Operation Sophia.

The Taoiseach outlined to the Dáil in June 2016 that:

> *The role of the Irish Naval vessel is to provide a search and rescue capability and to undertake humanitarian search and rescue operations at sea in the Mediterranean. Assistance to persons in distress at sea will be provided in accordance with the applicable provisions of international conventions governing search and rescue situations. Co-ordination of*

242 Ibid.
243 European Asylum Support Office (2016a).
244 European Asylum Support Office (2016b).
245 Refugee Appeals Tribunal (2017), p. 41.
246 Department of Defence (2016a, 2016b).
247 Department of Defence (2016c).
248 Department of Defence (2016d).
249 RTÉ (2016).

search and rescue efforts and the provision of humanitarian assistance is being achieved through close co-operation with the relevant Italian authorities.

The Taoiseach further outlined that the objectives of the EU Mission Operation Sophia are 'to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers'.

The Taoiseach indicated that there were no plans to deploy navy vessels or personnel to the EU mission at that time and any participation by Ireland in Operation Sophia would be subject to the applicable national statutory requirements.[250,251]

3.8 STATELESSNESS

EMN Ireland and UNHCR Ireland jointly hosted a seminar on 'Statelessness Determination Procedures: Policy Options, Practical Experiences and Challenges' on 5 May 2016.[252] In December 2015, Council Conclusions agreed under the Luxembourg Presidency of the EU invited the European Commission to launch exchanges of good practices among Member States, using the EMN as a platform to do so.[253] UNHCR launched a ten-year campaign to eradicate statelessness, #IBelong, in 2014.[254]

The seminar consisted of an overview of the applicable international law and the Irish legal framework relevant to statelessness by EMN Ireland, and a presentation on global trends on statelessness by UNHCR Ireland. The ICI gave a description of some of the experiences of stateless people attempting to regularise their status in Ireland. Two models of statelessness determination procedures from France and the UK were presented. The panel discussion offered an opportunity to consider the challenges and advantages associated with establishing a statelessness determination procedure in Ireland.

3.9 RESEARCH

The IRC participated in the European Council for Refugee and Exiles (ECRE) Asylum Information Database (AIDA) in 2016. The IRC prepared a 2016 update to the Country Report for Ireland. This was the fifth update of the report.[255] The report provided a detailed update on new legislation and procedures under the

[250] Response to Parliamentary Question 17272/16 of 21 June 2016, available at http://oireachtasdebates.oireachtas.ie.
[251] Dáil Éireann passed a motion for Ireland to participate in Operation Sophia in July 2017. See Dáil Debates, 'Defence Forces Operations (resumed)', 13 July 2017, available at http://oireachtasdebates.oireachtas.ie.
[252] EMN Ireland (2016b), UNHCR Ireland (2016b).
[253] Council of the European Union (2016).
[254] Available at http://www.unhcr.org/en-ie/ibelong-campaign-to-end-statelessness.html.
[255] It contains relevant information up to March 2017 when it was published.

International Protection Act 2015, on reception conditions for asylum seekers in Ireland, and on the content (rights and entitlements) of international protection for beneficiaries.[256]

The report *Transition from Direct Provision to Life in the Community* was published in June 2016. This study was conducted as a partnership between University College Dublin, Trinity College Dublin and the IRC, and was funded by the Irish Research Council. The report was based on interviews with 22 former asylum seekers who had resided in accommodation in the direct provision system and now had status and had moved out or were in the process of making the transition. The length of time that the participants had spent living in direct provision accommodation ranged from 11 months to 11 years. The purpose of the research was to fill a gap in the existing literature about the experiences of people who had moved beyond the direct provision system.[257]

The report concluded that people moving from direct provision face many challenges in accessing education and employment, rental accommodation and services, as well as living independently. It argued that a comprehensive resettlement plan is needed and people need clear information and supports on how to navigate life outside of direct provision. The report made a series of detailed recommendations in relation to transitioning out of direct provision and settling into the community, including financial and other supports and better access to education and training.[258]

The Faculty of Public Health Medicine of the Royal College of Physicians of Ireland published a position paper in June 2016 on the health of asylum seekers, refugees and relocated individuals.[259] It called on the Government to provide adequately for the healthcare needs of asylum seekers and refugees arriving to Ireland directly and through the resettlement programme and the relocation strand of the IRPP. The report noted that refugees and asylum seekers share health needs with the general population and also have different healthcare needs, including greater exposure to certain infectious diseases, vaccination requirements and complex mental health needs as a result of trauma suffered by people fleeing war and persecution. For example, the paper noted that rates of post-traumatic stress disorder (PTSD) are up to ten times higher among asylum seekers than in the indigenous population.[260] The paper also made the point that a 'life course approach to health' is needed, addressing cross-sectoral factors that impact on long-term health and wellbeing, including housing, education and employment

256 Asylum Information Database (2016).
257 Irish Refugee Council, Trinity College Dublin and University College Dublin (2016), pp. 18–19.
258 Ibid., pp. 60–70.
259 Royal College of Physicians of Ireland (2016a).
260 Ibid., pp. 8–9.

needs.[261]

The paper made several recommendations, including:

- early screening for chronic diseases, mental health issues and infectious diseases and the adequate resourcing of medical/nursing and other required services to meet current and projected requirements;
- immediate access to primary care, sexual and reproductive health and mental health services that are culturally and linguistically competent;
- funding for additional vaccinations for asylum seekers and refugees should be ring-fenced so that all necessary vaccines can be administered in a timely manner.

In launching the position paper, a co-author of the report commented that:

> *We welcome the government's approach to accepting those fleeing war in the Middle East. However, the complicated physical and mental healthcare needs of these people must be met in an appropriate fashion, with adequate interpretation and social supports to encourage full integration into Irish society in the long term.*[262]

EMN Ireland published *Resettlement of Refugees and Private Sponsorship in Ireland* in December 2016.[263] This study was the Irish national report of the EMN study *Resettlement and Humanitarian Admission Programmes in Europe – What Works?*. The study investigated resettlement and private sponsorship programmes operational in Ireland between 2011 and 2016, focusing both on the 'traditional' Irish Refugee Resettlement Programme and on the recent once-off SHAP, a private sponsorship scheme. A comprehensive overview of both programmes including some of the associated challenges and successes was provided in the study.

The study noted that, in the global context of record high populations of refugees and displaced persons, the number of refugees resettled to Ireland and to other EU Member States is very low. The overall EU response, as well as the global response to the migrant and refugee crisis, has been heavily criticised by NGOs.

The study also noted that Ireland voluntarily pledged more places than recommended under the EU Resettlement Programme. As of November 2016, Ireland had resettled 98 per cent of the 520 refugees pledged under that programme, ahead of schedule. The majority of those resettled were of Syrian origin.

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261 Ibid., pp. 12–13.
262 Royal College of Physicians of Ireland (2016b).
263 Arnold and Quinn (2016).

3.10 CASE LAW

3.10.1 Supreme Court

ED v Refugee Appeals Tribunal [2016] IESC 77

See Chapter 4 for case summary.

3.10.2 Court of Appeal

NM (DRC) v Minister for Justice, Equality and Law Reform [2016] IECA 217

The applicant was from the Democratic Republic of Congo. She arrived in Ireland and claimed asylum in 2008. Having been refused refugee status, she was issued with a deportation order. The applicant subsequently applied to the Minister for Justice for readmission to the asylum process pursuant to s.17(7) of the *Refugee Act 1996* (as amended) on the grounds that she was a refugee sur place. She was refused readmission but was told that she was entitled to a review of that decision. She applied for a review, which was refused by the Ministerial Decisions Unit of the Department of Justice. The applicant wrote to the Minister stating that her review process did not accord with the right to an effective remedy pursuant to the provisions of Art. 39 of Council Directive 2005/85/EC (the Procedures Directive). The applicant then challenged the review procedure by way of judicial review proceedings.

The High Court (Barr J.) found that judicial review did not provide for a remedy which was capable of reversing the first instance refusal and held that this was incompatible with the effective remedy requirements of Art. 39 of the Procedures Directive. The Minister appealed.

The Court of Appeal allowed the Minister's appeal, holding that modern judicial review does satisfy the effective remedy requirements of Art. 39(1) of the Procedures Directive. The Court of Appeal stated that in order to amount to an effective remedy within the meaning of Art. 39, it is necessary that the reasons which led that authority to examine the merits of the application under such a procedure can in fact be subject to judicial review. It was clear that the decision of the Minister must satisfy the requirements of factual sustainability and the reasons for that decision could furthermore be fully scrutinised within the parameters of the judicial review procedure. The Court of Appeal referred to well-established case law which established that the court in judicial review proceedings can quash a decision for material error of facts. It was accepted that while the judicial review court cannot review the merits of the decision, the Court of Appeal pointed out that it can nonetheless quash for unreasonableness or lack of proportionality or where the decision simply strikes at the substance of constitutional or EU rights. The court can further examine the conclusions reached and ensure that they follow from the decision-maker's premises.

The Court of Appeal also said that Art. 39(1) of the Procedures Directive does not require an appeal simpliciter, and each Member State remains free to organise its own supervisory procedures. Article 39 was not, therefore, prescriptive regarding the choice of remedy and it was open in principle, therefore, to each Member State to choose as between some form of appeal on the one hand and judicial review on the other. The Court of Appeal said that Art. 39 imposes only one – albeit critical – requirement, namely that the remedy in question must remain an effective one. This means that the supervisory jurisdiction of the High Court must be ample enough to ensure that the reasons which led the competent authority to reject the application for asylum as unfounded may be the subject of a thorough review by the national court. The Court of Appeal stated that the High Court fell into error in concluding that the remedy of judicial review was in itself an ineffective remedy for the purposes of Art. 39. While the remedy of judicial review has inherent limitations such as no power to substitute findings of facts for those of the decision-maker and a power of annulment only, these do not otherwise deprive judicial review of the character of an effective remedy. What is critical is that the judicial review court can subject the reasons of the decision-maker to thorough review. The Court of Appeal stated that this task can be performed by the High Court using contemporary judicial review standards.

Principles: The decision in NM is significant as it establishes that there is no requirement for an appeal against a decision to refuse readmission to the asylum process pursuant to section 17(7) of the Refugee Act 1996*, as the applicant's ability to seek judicial review will constitute an effective remedy.*[264]

NHV v Minister for Justice and Equality [2016] IECA 86

The appellant was a Burmese national who arrived in Ireland on 16 July 2008 and applied for refugee status on the following day. By May 2013, his application for a declaration of refugee status had not been determined. There had been decisions which had been the subject of successful judicial review applications and the matter was remitted back to the Refugee Appeals Tribunal. The appellant was experiencing distress and demoralisation being obliged to remain living in direct accommodation. He obtained a potential offer of employment and through his solicitor applied to the Minister for temporary permission to reside and work in the State pursuant to either s.4 of the *Immigration Act 2004* or s.9(11) of the *Refugee Act 1996* (as amended) or by exercise of executive discretion. This was refused and the Minister indicated that he was precluded from granting permission by virtue of s.9(4) of the *Refugee Act 1996* (as amended).

The appellant instituted judicial review proceedings challenging the refusal of

[264] However, sections 22(6) and 77 of the *International Protection Act 2015* provide for an appeal to the International Protection Appeals Tribunal against a refusal to access the protection process as a subsequent application.

temporary permission to reside and work in the State, and leave to seek judicial review was granted by the High Court (Mac Eochaidh J) on 29 July 2013. The appellant argued that the respondent had fettered his discretion and had wrongly applied s.9 of the *Refugee Act 1996*. It was also argued that to continue to prohibit the appellant from working after such a long period of lawful residence in the State was in breach of the appellant's rights under Art. 40.3 of the Constitution, Arts 7 and 15 of the Charter of Fundamental Rights and Arts 8 and 14 of the European Convention on Human Rights.

By judgment of 17 April 2015 the High Court (McDermott J) ([2015] IEHC 246) rejected each of the grounds relied upon and dismissed the application. The appellant appealed on all grounds and the issues on appeal were as follows.

1. Does the Minister have a discretion under s.9 of the *Refugee Act 1996* as amended to grant a work permit to a person in the position of the appellant?
2. If the Minister has no discretion under s.9 of the 1996 Act, does she enjoy an inherent executive discretion to grant such a permit?
3. If the answers to the first two questions are in the negative, is s.9(4) of the 1996 Act in breach of the EU Charter of Fundamental Rights?
4. Does the appellant have a personal right to work or earn a livelihood in the State protected by Art. 40.3 of the Constitution and if so is s.9(4) of the 1996 Act repugnant to the Constitution?
5. Does the appellant have a right to work in the State pursuant to Art. 8 of the European Convention on Human Rights and if so is s.9(4) of the 1996 incompatible with the European Convention on Human Rights (ECHR)?

A majority of the Court of Appeal (Ryan P and Finlay Geoghegan J) dismissed the appeal (Hogan J dissenting). The court held that where it is contended that a non-citizen has a right in the State which is claimed to be a fundamental right or a personal right protected by Art. 40.3, it is necessary to look at both the status of the non-citizen and also the nature of the particular right being contended for. The court stated that central to the assessment of whether or not a person in the position of the appellant had a constitutionally protected personal right to work or earn a livelihood was his current status in the State. The court noted that the appellant was in the State as an applicant for asylum who had been given leave to enter and remain in the State pursuant to s.9 of the 1996 Act. The Court of Appeal held that it could not be concluded that a person who is in the State for one purpose only, namely to have his application for refugee status decided and does not have any right to reside in the State as an immigrant, had a personal right protected by Art. 40.3.1° to work or earn a livelihood within the State. The right to work or earn a livelihood within the State was inextricably linked to a

person's status within the State.

The Court of Appeal said that the power of the State to control non-citizens in their activities within the State reflects an inherent element of State sovereignty over national territory long recognised in both domestic and international law. One activity that is and was consistently restricted or controlled is the right to work or earn a livelihood. While work or earning a livelihood may not be solely concerned with an economic activity, but may also contribute to a person's sense of dignity or wellbeing, nevertheless the inextricable link between a person's status in the State and their right to work in the State was held to be such that Art. 40.3 could not be construed as giving to an applicant for asylum a constitutionally protected right to work or earn a livelihood within the State. Insofar as such a right forms part of the personal rights of a citizen protected by Art. 40.3 capable of enforcement against the State, the court said that such a constitutionally protected right must be considered as flowing from the social contract between the citizen and the State and was intimately connected with the citizen's entitlement to live in the State.

The Court of Appeal held that the trial judge was correct in concluding that the appellant did not have a constitutionally protected personal right to work or earn a livelihood within the State. It was therefore not necessary to consider the further question as to whether s.9(4) of the 1996 Act, as amended, was repugnant to the Constitution. In the absence of the appellant having a right to work or earn a livelihood protected by Art. 40.3, there was no basis for an alleged repugnancy.

Principles: This decision establishes that asylum seekers do not have a constitutionally protected right to work and earn a livelihood in the State, and that the Minister is therefore entitled to exclude people in the asylum process from seeking or entering employment. This decision was appealed to the Supreme Court and was overturned in the 2017 judgment NVH v Minister for Justice and Equality and the Attorney General and the Irish Human Rights and Equality Commission (notice parties) 2017 [IESC] 35.

SJL v Refugee Appeals Tribunal [2016] IECA 47

The applicants were a Chinese husband and wife from Fujian province. The wife was born in 1975 and the husband in 1977. She gave birth to a son in August 1998, in secret, because the father was not then at the minimum age to marry, which was 22 years. They married in January 1999, when he had reached the minimum age. On registering the marriage, it was discovered that the wife was again pregnant and the Family Planning Commissioner informed them that the child must be aborted. They went into hiding and their second son was born on 1

August 1999, following which the wife returned home. On 24 August 1999, the wife was forcibly taken to hospital and was permanently sterilised by cutting her fallopian tubes. The couple were also charged in relation to the births and fined 8,500 yuan in respect of the unplanned birth before the legal permitted age and 16,600 yuan in respect of the second birth which was contrary to legal permission. The Family Planning authorities returned, seeking to take the husband for sterilisation, whereupon the couple fled to Fuzhou city. They could not register with the authorities there without the required documentation and were unable even to return to the husband's area to procure the documents. They left their children in the care of the husband's parents. The applicants fled China on 15 February 2000 and arrived in Ireland in April 2000. They lived and worked in Ireland until detected by gardaí in November 2005 when they applied for asylum. They claimed that if they were returned to China, the authorities would make an example of them because of their early marriage and early birth of children, they would be exposed to wide publicity and regarded as outcasts, the husband would be forcibly sterilised and their children would be adversely affected.

Their applications for asylum were refused at first instance by the Refugee Applications Commissioner on the basis that applications lacked credibility and the country of origin information did not support the claims. There was a finding in each case pursuant to s.13(6)(c) of the *Refugee Act 1996*, that the husband and wife had not applied for asylum on arrival in Ireland, and in the wife's case, there was an additional point that she had previously applied for asylum in the United Kingdom. They appealed to the Refugee Appeals Tribunal. By decisions dated 27 January 2009, the Refugee Appeals Tribunal refused their appeals. It repeated and upheld the credibility findings of the Commissioner. It did not accept that the husband's stated fear that he would be forcibly sterilised, if returned, was well founded by reference to country of origin information relating particularly to his home province and also generally in regard to the position in China. The Tribunal also held that the applicants could not be considered members of a particular social group within the meaning of s.2 of the *Refugee Act 1996* as amended, and they had therefore failed to establish a Convention reason on which they could rely on claiming asylum.

The applicants instituted judicial review proceedings challenging the decision of the RAT. By judgments of 1 October 2014 (in respect of *LRC*) and 10 October 2014 (in respect of *SJL*), Barr J. quashed the decisions of the Refugee Appeals Tribunal. Barr J also certified that the cases raised questions of exceptional public importance such that it was in the public interest that an appeal be brought, and certified the following questions for appeal by the Tribunal.

1. Whether people who, contrary to the one child policy in China, have had more than one child without permission, are members of a 'particular social group' for the purposes of s.2 of the *Refugee Act 1996* and/or Article 10 of the *European Communities (Eligibility for Protection) Regulations 2006* and/or Article 10 of the Qualification Directive.

2. Whether the fact that a person is a parent of more than one child born in China without official permission is a 'shared characteristic' for the purposes of Article 10.1(d) of the Qualification Directive or Article 10(1)(d)(i) of the *European Communities (Eligibility for Protection) Regulations 2006*.

3. Whether the breach of a law of general application, and in particular the law providing for the 'one child policy' in China, constitutes a 'common background that cannot be changed' or a 'characteristic that is so fundamental to identity or conscience that a person should not be forced to renounce it' within the meaning of Article 10 of the Qualification Directive and/or Regulation 10 of the *European Communities (Eligibility for Protection) Regulations 2006*.

The Court of Appeal (Ryan P, Peart and Hogan JJ) dismissed the Tribunal's appeal, rejecting the Tribunal's argument that a strict and narrow definition of the concept of a particular social group should be adopted. The Court of Appeal said that this provision was not intended to be restrictive, but rather the opposite. That did not mean that it was to be expanded beyond its proper meaning, but it did justify the court in choosing a broader and more generous interpretation as between meanings that were equally legitimate. The Court of Appeal said that the applicants could not be excluded from consideration of membership of a particular social group because of impossibility of compliance with the definition. In regard to the perception of the group by surrounding society, the court said that that was a matter for evaluation of the relevant evidence and it is not susceptible of an exclusionary a priori judgment.

The Court of Appeal said that a particular social group may be defined as comprising persons who breach an unjust law and are exposed to punishment or to social pariah status by the surrounding society. There are crucial factual issues as to whether and how the law is enforced which must also be considered. The court held that the applicants made out a sufficient case that their applications did not receive the detailed careful consideration that they deserved. The story advanced by the applicants did not have to be accepted, but it was not simply a bald story that was wholly unconfirmed or uncorroborated and the material they produced and their explanations required a more elaborate review and an explanation as to how and why it was to be rejected.

Principles: The decision in SJL is significant because it rejects the narrow or strict interpretation of the concept of 'membership of a particular social group' in favour of a broader and more generous interpretation.

3.10.3 High Court

GB v Refugee Appeals Tribunal [2016] IEHC 517

The applicant was a member of the social liberal party in Moldova, which was an opposition party to the ruling communist party. The applicant was elected mayor of his area. In that capacity he was accused of corruption in 2004 as part of a series of measures that were taken against opposition politicians in Moldova. He was provisionally suspended from his position as mayor and replaced by a member of the communist party. He was then prosecuted for recording false data in official documents. He challenged the prosecution on the basis that he had not engaged in any criminal activity. However, his suspension was affirmed by court order in 2004, at a hearing at which he and his lawyer were not present. An appeal against that decision was refused on the grounds that only the prosecutor could appeal a decision of an examining magistrate. The applicant submitted complaints to the general prosecutor and also the Council of Europe, but ultimately he left Moldova in 2006 and arrived in Ireland, where he claimed asylum. A Moldovan court subsequently issued a warrant for the applicant's arrest and declared him wanted internationally. The applicant was charged and convicted in his absence and sentenced to a six-year term of imprisonment.

The applicant's claim for asylum was rejected by both the Refugee Applications Commissioner and the Refugee Appeals Tribunal and he subsequently challenged the decision of the Tribunal in judicial review proceedings. The High Court (Humphreys J) described the central issue arising from the Tribunal's decision as 'when does prosecution become persecution?'. The court referred to reg. 9 of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*, reflecting Art. 9 of the Qualification Directive 2004/83/EC, and held that there was an essentially three-part test for determining when prosecution becomes persecution. Firstly, the court must ask itself pursuant to Art. 9(2) whether the act alleged to have occurred comes within the specific types of persecution enumerated – in this case whether prosecution is 'disproportionate or discriminatory'. If so, this is a matter to which the court can have regard, although satisfying this test is neither in itself necessary nor automatically sufficient for a finding of persecution. The second limb of the test was whether there was, in essence, a 'severe violation of basic human rights' amounting to persecution as defined by Art. 9(1)(a). In determining this, the decision-maker should have regard to a holistic view of the circumstances in the country concerned in terms of its legal system overall. The third leg of the test is, even if Art. 9(1)(a) was not satisfied, whether there was an accumulation of measures such as to affect an individual in a similar manner, in accordance with Art. 9(1)(b).

The High Court was not satisfied that the decision of the Tribunal applied this three-part test. Humphreys J stated that given that the prosecution of the applicant was discriminatory, it was unclear why that did not lead to a finding that he was being persecuted. Furthermore, the High Court noted there was no

analysis of whether the applicant had suffered a severe violation of his basic human rights as required by reg. 9(1). Humphreys J noted that the analysis of the RAT member came to a somewhat abrupt conclusion in the decision by making a series of findings, some of which were favourable to the applicant and some of which were unfavourable. At the end of the listing of these factors, it was simply asserted by the Tribunal that the prosecution did not amount to persecution. Humphreys J noted that no clear reason was articulated or even discernible as to why this was so, or why the conclusions unfavourable to the applicant rectified and outweighed those favourable to him. Under those circumstances Humphreys J held that the Tribunal did not in fact apply the correct test, and that there was a lack of clear reasoning in the decision. Humphreys J also held that the Tribunal's finding that due process on an appeal rectified a discriminatory prosecution was irrational, and that such a matter could only be rectified by acquittal on appeal. Humphreys J concluded that the discriminatory prosecution of the applicant on political grounds and the imposition of a six-year sentence arising by virtue of his membership of an opposition party was clearly a severe violation of his human rights for Convention reasons and therefore quashed the decision of the Tribunal.

Principles: The decision in GB is significant as it sets out the three-part test that must be applied by protection decision-makers in deciding whether prosecution amounts to persecution. The decision also finds that due process on an appeal cannot remedy the fact that the initial prosecution was discriminatory.

TM v Refugee Appeals Tribunal [2016] IEHC 469

This case concerned transfers pursuant to the Dublin III Regulation, and whether an applicant could challenge a decision to make a transfer order on the basis that (1) the transfer decision was invalid because the information request failed to state the grounds on which it was based contrary to Art. 34 of the Dublin III regulation; (2) the transfer decision was invalid because the fingerprint data provided did not comply with Art. 34(2)(c) of the regulation; and (3) the transfer decision was invalid because it did not comply with the time limits stipulated in the regulation.

The High Court (Humphreys J) rejected each of these grounds of challenge. On the first point, it was held that Art. 34 was part of a series of provisions directed towards Member States rather than applicants. Humphreys J held that a breach of Art. 34 by failing to state the grounds of a request was not an infringement of the rights of an applicant, but rather was to be regarded as an inconvenience to the requested Member State, who is being asked to provide information without having been given a more full and complete statement of the reasons why it is sought. However, the court was satisfied that that did not give rise to any cause of action on the part of an applicant.

On the second point, Humphreys J held that there was in fact no breach of Art. 34, because it was a matter for the receiving State to decide what information to

furnish. The court noted that Art. 34(2)(c) only permits the furnishing of information 'including' fingerprints processed under the Eurodac system but stated that that did not preclude other information being furnished, such as fingerprints taken outside of the Eurodac process. Humphreys J also held that even if there was a breach of Art. 34, which was not accepted, this did not confer any rights on the applicant. The court again pointed out that Art. 34 was located in the 'administrative preparation' chapter of the regulation and was addressed to relationships between states. Therefore, it was held that any breach of the provision did not invalidate a transfer decision.

On the third question, Humphreys J held that the time limits set out in the Dublin III Regulation are designed to protect the Member States on a purposive interpretation, and not the applicant. This meant that a receiving Member State could voluntarily agree to take back an asylum applicant even after the expiry of the periods referred to in the regulation. Humphreys J held that an applicant can only challenge a breach of the criteria for transfer under the Dublin III Regulation, and that the other provisions of the regulation are clearly addressed to Member States. Accordingly, he dismissed the applicants' challenge to the transfer orders made against them.

Principles: This decision is significant because it limits an applicant's right to challenge a transfer order pursuant to the Dublin III Regulation to alleged breaches of the criteria for transfer. All other provisions of the Regulation such as provision of information or time limits for requests are addressed to the Member States and an applicant is therefore not entitled to challenge a transfer on those grounds. (This decision was under appeal.)[265,266]

TSS v Refugee Appeals Tribunal [2016] IEHC 491

The applicant was born in Zimbabwe in 1987. He was the victim of a kidnapping and beatings by Government supporters in the Misulongo area. He came to Ireland in June 2008 and applied for asylum. This was refused by the Refugee Applications Commissioner and on appeal by the Tribunal. He then applied for subsidiary protection, which was refused by the Commissioner and on appeal by the Tribunal. The Tribunal accepted the applicant's credibility but found that there was no sufficient forward-looking risk of serious harm, internal relocation to Bulawayo was available, State protection did not need to be considered and there were no compelling reasons arising from past serious harm such as to warrant the grant of subsidiary protection.

The applicant challenged the Tribunal decision by way of judicial review, and in the High Court the Tribunal did not stand over the finding of no risk of serious harm. However, it was argued that because the Tribunal found that internal

[265] Judgment in CJEU case C-63/15 Ghezelbash from June 2016 found that Dublin Regulation decisions can be challenged based on an incorrect application of criteria – 'an asylum seeker is entitled to plead […] the incorrect application of one of the criteria for determining responsibility laid down in Chapter III of the Regulation'.

[266] The Court of Appeal issued judgment on the appeal in June 2017 in *RS and BS v Refugee Appeals Tribunal [IECA] 179.*

relocation was available, that constituted a free-standing ground on which the application was properly refused. The decision of the High Court therefore focused on the validity of the internal relocation finding. Humphreys J held that a valid finding that internal relocation is available must consist of a two-step process. Firstly, in a case where the question of State action could arguably arise, it must identify whether the risk of future harm which exists (or in the case of an alternative finding, is alleged to exist) in fact arises from the State or from non-State actors ('State' actors in this sense including political, military, police or factional entities in power at national level rather than merely State institutions in the strict sense). If the harm emanates from the State, it is to be presumed that the risk will exist throughout the country unless the authority of the State does not run throughout the country. The second step depends on the answer to the first question. If such a presumption arises due to State-sponsored risk, the decision must go on to consider whether it is rebutted in the particular circumstances of the case. For example, persecution by a local branch of a national ruling party may not be likely to be repeated if the person relocates to the capital city, for example. Alternatively, if the presumption does not arise, because the case relates to non-State action or State action where the State does not control the whole territory, the decision-maker must still be satisfied that the risk will not arise in an identified area of the country to which it is reasonable for the applicant to relocate.

As the Tribunal decision in this case did not comply with this two-step test, Humphreys J concluded that it must be quashed.

Principles: The decision in TSS is significant as it provides guidance to decision-makers on the two-step test that must be applied in protection decisions based on a finding that there is an internal protection alternative.

BDR v Refugee Appeals Tribunal [2016] IEHC 274

The applicant was born in Bhutan to parents of Nepalese ethnicity. He claimed he had been denied citizenship of Bhutan because of his ethnicity and that his family home had been attacked and his parents killed. He subsequently left Bhutan and went to live in India for a number of years before arranging with a trafficker to get him out of India. He arrived in Ireland in 2007 and claimed asylum. His asylum claim was refused at first instance by the Refugee Applications Commissioner and on appeal by the Refugee Appeals Tribunal. The first decision of the Tribunal was quashed by the High Court and his refugee appeal was remitted to the Tribunal for reconsideration. At the rehearing of his appeal, the Tribunal Member requested written legal submissions on the issue of the correct approach to the determination of a refugee application from a stateless person with more than one country of former habitual residence. Written legal submissions on this issue were duly filed, and the Tribunal Member subsequently dismissed the applicant's appeal. Although the Tribunal Member accepted that the applicant was stateless, the Tribunal found that because he would be unable to return to his country of

former habitual residence (Bhutan) and that there was therefore no requirement to consider whether he had a well-founded fear of persecution there. The applicant challenged this decision by way of judicial review.

The High Court (Faherty J) quashed the decision of the Tribunal. Faherty J held that the Tribunal Member had erred in law in failing to consider whether the applicant had a well-founded fear of persecution in his country of former habitual residence on the grounds that he would not be able to return there, holding that this ran counter to the weight of judicial and academic authority on the issue, and indeed the Convention itself.

On the issue of the assessment of refugee claims by stateless persons with more than one country of former habitual residence, Faherty J endorsed the test set out in the Canadian case of *Thabet v Canada (Minister of Citizenship and Immigration)* [1996] 1 F.C. 685. The *Thabet* test states where a stateless asylum seeker has been resident in more than one country it is not necessary to prove that there was persecution at the hands of all those countries. But it is necessary to demonstrate that one country was guilty of persecution, and that the claimant is unable or unwilling to return to any of the states where he or she formerly habitually resided.

Faherty J therefore quashed the decision of the Tribunal and remitted the appeal to the Refugee Appeals Tribunal for reconsideration by a new Tribunal Member.

Principles: The decision in BDR establishes that a stateless asylum seeker with more than one country of former habitual residence is not required to prove a well-founded fear of persecution in every country of former habitual residence in order to be recognised as a refugee. It is sufficient that the asylum seeker has a well-founded fear in one country of former habitual residence and that the asylum seeker is unable or unwilling to return to any of the other countries of former habitual residence.

AON v Refugee Appeals Tribunal [2016] IEHC 465

The applicant was a Ugandan national who applied for refugee status in the State. She claimed that she was detained in 2007 and 2011 because of her involvement in politics, and that while in detention she was physically abused and sexually assaulted. She submitted a medical report in support of her claim which noted that she exhibited scars typical of burns and that she had diffuse bruising on her lower limbs which was consistent with a history of being beaten with a baton.

The applicant's application for asylum was refused at first instance on credibility grounds. Her refugee appeal was dismissed by the Refugee Appeals Tribunal. The Garda Technical Bureau had examined an identity card she submitted and concluded that it was not genuine. In relation to the medical report, the Tribunal Member noted that while it recorded the applicant's injuries as being consistent with her account, it was not possible to say how the injuries were inflicted or by whom. The Tribunal Member also rejected the applicant's credibility on the basis

of her demeanour, on the grounds that the manner in which she gave her evidence strongly suggested she was recounting a 'learned off' version of events. The Tribunal Member noted that when the applicant was asked a question which interrupted her account she became confused; this was described as 'a typical indicator of recital of memorized version of events as opposed to a spontaneous recall and recounting of experienced events'. Having rejected the applicant's credibility comprehensively the Tribunal Member, in relation to the medical evidence, concluded that she was not rejecting the medical evidence, but simply pointing out its limitations in terms of constituting corroboration of events alleged to have occurred in another country, or constituting events of the reason for the infliction of wounds that have since healed but have left scars.

The applicant brought judicial review proceedings challenging the legality of the decision, arguing that the Tribunal Member had failed to have proper regard to the medical report and failed to give adequate reasons for rejecting the report. The applicant also complained at the manner in which her credibility was rejected, and that the Tribunal Member had failed to consider the 'compelling reasons' test in Regulation 5(2) of the European Communities (Eligibility for Protection) Regulations 2006.

The court dismissed the complaint that the Tribunal Member failed to have proper regard to the medical report. The court was satisfied that that report was fully considered and reasons given for why the Tribunal Member rejected the report.

In relation to the assessment of credibility, the court held that it was not incumbent upon the decision-maker to comment upon each factual allegation or assertion made by the applicant. Mac Eochaidh J held that the Tribunal Member was entitled to form an overall assessment of credibility and reject it provided the rejection was explained, and was satisfied that this was precisely what happened in this case. The decision-maker was entitled to make findings as to credibility based on demeanour provided these were fully explained and based on accurate observation. The court was satisfied that there was no conjecture or speculation about factual events as recounted by the applicant. Mac Eochaidh J stated:

No illegality attaches to a decision which accepts that a person is scarred but suggests that events other than those described by the applicant caused these injuries. Such reasoning does not constitute unlawful speculation or conjecture where the reason for the rejection of the applicant's account is given.

The court said that once the Tribunal Member decided that the applicant was not telling the truth, but nonetheless displayed emotion such as crying and distress, she was entitled to attribute these expressions to matters other than those in the applicant's narrative, which was decided to be a false claim for asylum.

The court held that the duty on the decision-maker to make inquiry and to apply the counter exception in Regulation 5(2) only arose in circumstances where there

was proof of past persecution or serious harm, as defined in the Directive and the Regulations. The court noted that the only evidence of past persecution or serious harm in this case was that offered by the applicant, which was rejected on credibility grounds. In those circumstances, Mac Eochaidh J was satisfied that there was no acceptable evidence of past persecution or past serious harm and, therefore, the obligation to consider the counter exception in Article 5(2) did not arise.

In relation to the medical report, the court held that the report was not evidence of past persecution or past serious harm. Mac Eochaidh J noted that a medical report can only describe the injury and while such a report may be evidence as to whether the injury observed is consistent with the narrative of the patient and description of how the injury was inflicted, in a case where credibility was rejected, as it was here, mere consistency between the applicant's claim as to the circumstances in which the injury was inflicted and the injury as observed by the doctor was not a circumstance which would trigger an inquiry under Regulation 5(2) of the Protection Regulations.

Application for leave to challenge the decision of the Refugee Appeals Tribunal was dismissed.

Principles: A refugee decision-maker is entitled to make findings as to credibility based on demeanour provided these are fully explained and based on accurate observation. A medical report is not evidence of past persecution or past serious harm; such a report can only describe the injury and whether the injury observed is consistent with the narrative of the claimant.

CHAPTER 4

Unaccompanied minors and other vulnerable groups

4.1 UNACCOMPANIED MINORS

As reported in previous reports in this series, Tusla, the Child and Family Agency, was established under the *Child and Family Agency Act 2013* as an independent legal entity. The Agency, which is overseen by the Department of Children and Youth Affairs, brings together key services relevant to children and families including child protection and welfare services previously operated by the Health Services Executive (HSE), the Family Support Agency and the National Educational Welfare Board. The Social Work Team for Separated Children Seeking Asylum sits under Tusla.

The Social Work Team for Separated Children Seeking Asylum provides support, assessment and care to children arriving alone into Ireland. The Minister for Children and Youth Affairs informed the Dáil in 2016 that over the previous five years, Tusla had taken an average of 100 referrals of unaccompanied children seeking asylum per year. Approximately 70 children annually are received into care, with the others reunited with family members or found to be over 18 years of age.[267]

The Minister also explained the procedure pertaining to unaccompanied minors arriving in Ireland:

> *When a child arrives into Ireland without their parents or customary care providers, contact is made with Tusla's dedicated Social Work Team for Separated Children Seeking Asylum (SCSA) and the child is placed in the care of the State. Each unaccompanied minor is allocated a social worker. They are accommodated initially in one of three short term residential intake units while they continue their needs assessment, health, educational and language needs. Following, children are placed according to their needs either with registered foster carers, in community based residential settings or in supported lodgings. Children are provided with intensive language and educational supports.*[268]

4.1.1 Statistics

There were 34 applications for refugee status made to the Office of the Refugee

[267] Department of Children and Youth Affairs (1 December 2016), Response to Parliamentary Question 38224/16, available at www.kildarestreet.com.
[268] Department of Children and Youth Affairs (14 December 2016), Response to Parliamentary Question 40182/16, available at www.kildarestreet.com.

Applications Commissioner (ORAC) by unaccompanied minors in 2016. These applications were processed by ORAC within a median processing time of 28 weeks.[269]

A total of 126 referrals were made to the Social Work Team for Separated Children Seeking Asylum (Tusla) in 2016.[270] This compared with 109 referrals in 2015.[271] A total of 82 unaccompanied minors were placed in statutory care. Completed family reunification services were provided to 47 children.

4.1.2 Government decision regarding unaccompanied minors from migrant camp in Calais

Concerns about the situation of unaccompanied minors who had been living in the unofficial migrant camp in Calais were expressed in Dáil Éireann, following the announcement by the French authorities that the camp would be dismantled by the end of 2016. Several parliamentary questions were put to the Minister for Justice and Equality and the Minister was initially reluctant to intervene, stating that

> *We need to bear in mind that a defining characteristic of the people in Calais, including unaccompanied minors, has been their very strong desire to go to the UK as their ultimate destination and that this is unlikely to change. In that respect I do not see that a unilateral initiative from Ireland would be appropriate in this case, not least given the fact that this is a delicate situation involving the borders between two other Member States.*[272]

However, the Minister did share concerns in relation to unaccompanied minors as an especially vulnerable group.[273]

A debate on the issue took place in Dáil Éireann on 2 November 2016. Deputies highlighted the vulnerable situation of unaccompanied children left after the dismantling of the Calais camp, and called for the Irish Government to take in 200 children from Calais. In addressing the debate, the Minister for Justice and Equality said:

> *If it emerges from Calais over the coming weeks that Ireland is a genuine location of choice for some of these young people, and our assistance is*

[269] Office of the Refugee Applications Commissioner (2017), p. 6.
[270] Tusla, September 2017.
[271] Sheridan and Whelan (2016), p. 53.
[272] Department of Justice and Equality (5 October 2016), Response to Parliamentary Question 28819/16, available at www.justice.ie.
[273] Ibid.

required, we can of course respond in a humanitarian and proactive way.[274]

The Not on Our Watch campaign, backed by NGOs including the Immigrant Council of Ireland, the Children's Rights Alliance and the Irish Refugee Council, and the Irish Congress of Trade Unions, as well as volunteer activists who had spent time in Calais, held a vigil outside Dáil Éireann on 2 November 2016 to support the call for Ireland to accept 200 unaccompanied children from Calais. [275]

An all-party motion, moved by the Minister for Justice and Equality, was agreed in the Dáil on 10 November 2016.[276] The Irish Government approved this motion and agreed to work with the French authorities and the Irish volunteers to identify up to 200 unaccompanied minors previously living in the unofficial migrant camp at Calais and who had expressed a desire to relocate to Ireland. The Minister for Justice and Equality said on 6 December 2016 that her Department was working with the Department of Children and Youth Affairs and the Department of Foreign Affairs and Trade on matters relating to the implementation of the Dáil motion, and that the French and British authorities and relevant NGOs had been contacted. [277] The figure of 200 is to be included within the Government decision of September 2015 to take in a total of 4,000 refugees through a combination of the EU relocation mechanism from Italy and Greece and the UNHCR-led refugee resettlement programme currently focused on resettling refugees from camps in Lebanon.[278]

In December 2016, the Minister for Children and Youth Affairs informed the Dáil that she was examining a possible doubling of the size of the Separated Children Seeking Asylum team within Tusla and establishing a project office within Tusla to co-ordinate the Government's response.[279]

A first mission to meet unaccompanied minors in France took place in January 2017 and included officials from Tusla. The Tusla officials were accompanied by a member of staff from the Irish Refugee Protection Programme (IRPP) Office of the Department of Justice and Equality and members of An Garda Síochána who carried out security screenings.[280]

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274 Dáil Éireann (2 November 2016), 'Calais Migrant Camp: Statements', available at http://oireachtasdebates.oireachtas.ie
275 Irish Refugee Council (2016b).
276 Dáil Éireann (10 November 2016), 'EU Migration Crisis: Motion', available at www.justice.ie.
277 Department of Justice and Equality (6 December 2016), Response to Parliamentary Question 38815/15, available at www.justice.ie.
278 Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40430/16, available at www.justice.ie.
279 Dáil Éireann (14 December 2016), Priority Questions (39976/16): Unaccompanied Minors and Separated Children, available at: www.kildarestreet.com.
280 Department of Justice and Equality (25 January 2017), Parliamentary Question 3289/17, available at www.justice.ie.

4.1.3 Relocation

Ireland also took in unaccompanied minors during 2016, as part of the relocation programme from Greece. Using the definition of an unaccompanied minor applied by Greek officials – that an unaccompanied minor is anyone under 18 who is not accompanied by an adult member of the immediate family[281] – Ireland took in 12 unaccompanied minors from Greece up to 16 December 2016.[282] Tusla took four into State care in 2016.[283]

The Minister for Children and Youth Affairs also indicated that Tusla had made an initial commitment to receive 20 unaccompanied minors from Greece, under the IRPP, in 2016/17.[284]

4.1.4 Research

As reported for 2015,[285] the Social Work Team for Separated Children (Tusla) was a lead partner in the SUMMIT project 'Safeguarding Unaccompanied Migrant Minors from Going Missing by identifying Best Practices and Training Actors in Interagency Cooperation',[286] which was funded by the European Commission and ran for 18 months from October 2014.

The final report of the project was published in February 2016.[287] The aim of the research was to identify good practices and key challenges in inter-agency co-operation in the prevention of and response to vulnerable unaccompanied children going missing from reception centres and other types of care. Four areas of action were explored in the research – prevention of disappearances; response to disappearances; aftercare of an unaccompanied child who returned or was found after disappearing; and training. The research focused on co-operation between law-enforcement agencies, carers (guardians, social services and reception centre workers) and hotlines for missing children.

Seven key countries took part in the study – Belgium, Cyprus, Greece, Ireland, Italy, Spain and the United Kingdom – and data were collected via 41 online surveys and 17 phone calls or face-to-face interviews in the period February to March 2015.

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281 Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40430/16, available at www.justice.ie.
282 Department of Justice and Equality: Irish Refugee Protection Programme, February 2017.
283 Tusla, September 2017.
284 Department of Children and Youth Affairs (1 December 2016), Response to Parliamentary Question 38234/16, available at www.kildarestreet.com.
285 Sheridan and Whelan (2016), p. 54.
286 See Missing Children Europe – Summit, available at http://missingchildreneurope.eu/summit.
287 Missing Children Europe (2016).

4.2 OTHER VULNERABLE GROUPS

4.2.1 Migrant children

The annual Children Rights Alliance (CRA) Report Card covering 2016[288] marked the developments for refugee and asylum-seeking children as a 'D–' – the same grade for this category as for migrant children in 2015.[289]

This report card was the first since the adoption of the Programme for a Partnership Government 2016–2020 and based its grading on Government commitments in relation to offering a safe haven for refugees and reforming the direct provision system.[290]

In assessing the developments in relation to refugee and asylum-seeking children, the report card referred to provisions in the UN Convention on the Rights of the Child (UNCRC) and to the concluding observations of the Committee on the Rights of the Child in relation to Ireland from January 2016. It noted that the Convention on the Rights of the Child provides that children outside their country seeking refugee protection are entitled to protection whether accompanied or unaccompanied, and that family reunification should be facilitated where possible, and where that is not possible the State must give the same protection to the unaccompanied minor as it would to any other child separated from their family or in the care of the State.[291] It noted the concluding observation of the UNCRC Committee in January 2016 that asylum-seeking and refugee children should be allowed 'the same standards and access to support services as Irish children'.[292]

In relation to relocation and resettlement, the report card welcomed the fact that real progress had begun to be made in relation to the Government's commitments by the end of 2016. While welcoming the Government's commitments in relation to relocation and relocating unaccompanied children from Calais, the report card found that the Government's response was inadequate in the context of more than 10,000 young people arriving in the hotspots of Greece and Italy in the first half of 2016. The report card also looked at integration of refugees and recommended that in order to ensure that all refugee and asylum-seeking children are integrated into their local communities, 'a needs assessment should be carried out to identify the gaps and whether

288 Children's Rights Alliance (2017). The 2017 report card covers 2016 developments.
289 Sheridan and Whelan (2016), p. 55.
290 Children's Rights Alliance (2017), p. 75.
291 The Minister for Children and Youth Affairs addressed this in response to Parliamentary Question 40182/16 of 14 December 2016: 'Under Tusla's Equity of Care principle, unaccompanied minors receive the same level of protection and care as any other child in State care, and ensures that there is no differentiation of care provision, care practices, care priorities, standards or protocols.'
292 Children's Rights Alliance (2017), p. 75.

existing structures such as Children and Young Peoples' Services Committees (CYPSC) can address the integration issues'.[293]

In relation to direct provision supports, the report card focused on the direct provision allowance for children, the availability of self-catering facilities in accommodation, child protection and welfare policy in direct provision accommodation centres,[294] the development of national standards for direct provision centres and the extension of the remit of the Ombudsman for Children to direct provision residents. With regard to the direct provision allowance, the report card found that the increase in the allowance for children to €15.60 in 2016 fell short of the recommendation in the McMahon Report[295] and argued that children in direct provision should be treated equally to other children whose parents are in receipt of a social welfare payment, particularly given that these parents do not receive the Child Benefit payment. The report card acknowledged that access to self-catering facilities in direct provision centres had improved but criticised the fact that the number of self-catering centres had not increased in 2016. Regarding the remit of the Ombudsman for Children, the report card criticised the fact that the legislation to extend the remit of that office to complaints from children in direct provision had not been enacted in 2016. It acknowledged, however, that progress was expected on this in early 2017.[296]

Children in Reception and Integration Agency (RIA) accommodation

At end 2016, 25 per cent of residents in RIA accommodation were children. Some 39 per cent of the children were pre-school age, 14 per cent were in the primary school age group and 47 per cent were post-primary school age.[297]

In December 2016, the role of Manager of RIA's Child and Family Services Unit was filled by a staff member seconded from the Child and Family Agency – Tusla.[298]

In 2016, 83 child protection and welfare incidents were reported to RIA's Child and Family Services Unit. Of these, 66 were notified to Tusla as child protection/welfare referrals for assessment and follow-up. Some 17 cases were

[293] Ibid., p. 78

[294] Reference was made to the HIQA 2015 *Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection of Children and section 8(1)c of the Health Act 2007.* See Sheridan and Whelan (2016), pp. 56–7 for further detail.

[295] The allowance was increased to €21.60 in June 2017.

[296] The Ombudsman for Children was in a position to accept these complaints from 3 April 2017. See response to Parliamentary Question 20321/17 of 2 May 2017, available at www.justice.ie.

[297] Department of Justice and Equality (2017a), p. 38.

[298] Ibid., p. 44.

family reunification cases for the Tusla Separated Children Seeking Asylum Team.[299]

Undocumented migrant children

In May 2016, the Migrant Rights Centre of Ireland (MRCI) published research on undocumented migrants in Ireland, *Ireland Is Home* (see Chapter 7 for full discussion of undocumented migrants). MRCI estimates that 2,000–6,000 of the undocumented migrants in Ireland are children.[300] In a response to a parliamentary question in December 2016, the Minister for Justice and Equality said that while she was aware of estimates from the NGO community, it was difficult to be precise on numbers, which was influenced by the fact that persons under 16 years of age are not required to register for immigration permission.[301]

On 30 November 2016, the Joint Oireachtas Committee on Children and Youth Affairs held a discussion on undocumented children, at which MRCI presented on undocumented children in Ireland and the 'Young, Paperless and Powerful' campaign.[302] MRCI made some points to the Committee that specifically related to undocumented children, such as the legislative change in the Irish Nationality and Citizenship Acts from 2004 that applies certain conditions in relation to the entitlement to citizenship for children born to certain non-nationals in the State,[303] and the fact that children do not register independently for immigration status until they are 16 and are thus effectively tied to their parents' immigration status. This leads to issues for children including fear and stigma, a consequent impact on their mental health and uncertainty about their future, which impacts when they finish secondary school. MRCI pointed to the concluding observations to Ireland from the UN Committee on the Rights of the Child that all children are entitled to protections under the Convention, regardless of their parents' legal status. MRCI referred the Committee to its proposal for a once-off regularisation scheme which it had presented to the Justice and Equality Committee earlier in November 2016 (see Chapter 7 for detail).

The Council of Europe Commissioner for Human Rights visited Ireland in November 2016. In his report of the visit, published in March 2017, the Commissioner recommended that

> *the Irish authorities envisage the implementation of a regularisation programme addressing the situation of undocumented children and*

[299] Ibid. The RIA Child and Family Services Unit works with the Separated Children Seeking Asylum Team from Tusla to provide appropriate accommodation and linkages to State services, in cases where unaccompanied children arrive in the State in order to join a family member living in RIA accommodation.

[300] Migrant Rights Centre of Ireland (2016a).

[301] Department of Justice and Equality (16 December 2016), Response to Parliamentary Question 40749/16, available at www.justice.ie.

[302] Joint Committee on Children and Youth Affairs (30 November 2016), 'Undocumented children: discussion', available at http://oireachtasdebates.oireachtas.ie.

[303] Section 6A, *Irish Nationality and Citizenship Act 1956*, as inserted by *Irish Nationality and Citizenship Act 2004*.

> *young people and their families, notably by giving consideration to the regularisation scheme proposed by NGOs specialised in the field.*[304]

Research

The Immigrant Council of Ireland (ICI) published the report *Child Migration Matters*[305] in December 2016. The project was funded with support from the Free Legal Advice Centre (FLAC) Public Interest Law Fund.[306]

The backdrop to the research was the recommendation of the United Nations Committee on the Rights of the Child to Ireland in January 2016 to adopt a legal framework to address the needs of migrant children (see Chapter 2 for discussion of Ireland's examination by the Committee in January 2016). The ICI had dealt with issues that impacted on children through its casework over the years, and found that

> *many young people had arrived in Ireland as children but had reached adulthood without the appropriate steps being taken to secure their immigration status or apply for naturalisation as Irish citizens.*[307]

The ICI also found that research to date had focused on unaccompanied minors and there needed to be a broader consideration of the needs of all migrant children in order for policy to be formulated to address their needs.[308]

The research included 32 case studies of young adult migrants who had arrived in Ireland as children.[309] The methodology also included examination of case files from the ICI's Independent Law Centre, and interviews with professionals who work with children and the gaps they identified in protections for migrant children.

Many of the challenges identified in the report related to difficulties encountered by children and professionals working with them in navigating the immigration system – including registration, the type of immigration stamp received, family reunification rules, difficulties with proving identity due to not having a passport from the country of origin,[310] and assistance with immigration matters while in care, including difficulty in accessing information by migrant children and their care workers.[311] One finding was that social workers reported 'that they had received advice to wait until a child reached 18 years to address their immigration status or apply for Irish citizenship'.[312]

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304 Council of Europe (2017a).
305 Immigrant Council of Ireland (2016b).
306 Ibid., p. 21.
307 Ibid., p. 22.
308 Ibid., p. 23.
309 Ibid., p. 24.
310 Ibid., p. 43.
311 Ibid., pp. 26–35.
312 Ibid., p. 29.

The report argued that 'children in Ireland are directly affected by the absence of a comprehensive legal framework on immigration in Irish primary law'.[313] The report also highlighted the recommendation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) committee in 2013 that Ireland 'set up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists and ensures that the best interests of the child are the primary consideration'.[314]

Difficulties in accessing citizenship and the naturalisation process and the particular difficulties faced by stateless children were also covered in the research.[315]

4.2.2 Migrant women

Female genital mutilation (FGM)

In 2016, Akina Dada wa Africa (AkiDwA) published *Towards a National Action Plan to combat female genital mutilation 2016–2019*.[316]

The plan was developed in conjunction with a National Steering Committee established in 2014, comprising Action Aid Ireland; AkiDwA; Concern Worldwide; Dice Network; HSE; Immigrant Council of Ireland; the Irish Consortium on Gender Based Violence; ISPCC; New Communities Partnership; Tusla; UNHCR; Wezesha; and Youth United of Ireland.

The plan is produced by civil society groups, with the aim of securing a Government-led action plan during its lifespan.[317]

The plan is in line with the framework of the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (the 'Istanbul Convention'). As reported for 2015, Ireland was a signatory of this convention in 2015, and there are provisions relating to FGM under Article 38 of the convention.[318] The national steering committee intends to use the plan to lobby for a Government-led national action plan on FGM and to ratify the Istanbul Convention.[319,320]

The plan is based around four strands of action:

- prevention, including awareness raising and education;

313 Ibid., p. 26.
314 Ibid., p. 33.
315 Ibid., pp. 37–40.
316 AkiDwA (2016).
317 Ibid., p. 16.
318 Sheridan and Whelan (2016), p. 59.
319 AkiDwa (2016), p. 6.
320 In a Parliamentary Question response (40595/16), the Minister for Justice and Equality said that 18 outstanding actions are necessary to fully ratify the Istanbul Convention. and progress on the Domestic Violence Bill and Victims of Crime Bill would bring Ireland closer to ratification. Available at www.justice.ie.

- protection – safeguarding girls at risk, including training and risk assessments;
- provision and support for survivors of FGM;
- prosecution – including a recommendation for FGM to have a specific Irish Crime Classification System (ICCS) code, to enable it to be recorded as a specific crime in CSO statistics.[321]

The plan includes a monitoring and evaluation framework, including indicators. It proposes setting up a monitoring group, with Government and NGO representatives, with an external evaluation to be carried out at the three-year point.[322]

4.3 CASE LAW

ED v Refugee Appeals Tribunal [2016] IESC 77

The applicant was a child who applied for asylum on the basis of a well-founded fear of persecution if returned to Serbia on the basis of his Ashkali ethnicity. His application was rejected at first instance by the Refugee Applications Commissioner and on appeal to the Refugee Appeals Tribunal. Although it was accepted that the applicant would in all likelihood face discrimination if returned to Serbia, the RAT was not persuaded on the evidence that such discrimination would rise to the level of persecution. The fact that the applicant might not receive a full or even basic education was held to be insufficient to conclude that the statutory persecution requirement was met. The applicant sought to quash the Tribunal decision, claiming that the Tribunal erred in law by misinterpreting the concept of persecution under s.2 of the *Refugee Act 1996* and in failing to recognise that discrimination amounted to persecution if it led to consequences of a substantially prejudicial nature for the person concerned, such as serious restrictions on access to normally available education facilities.

The High Court (Hogan J) held that the Tribunal erred in its view as to what constitutes persecution in that there was a sufficient level of educational discrimination established to amount to persecution for the purposes of the statutory threshold in accordance with s.2 of the *Refugee Act 1996*. The High Court also granted the Tribunal a certificate of leave to appeal pursuant to s.5 of the *Illegal Immigrants (Trafficking) Act 2000* on the following grounds.

> *(a) Whether discrimination against the group to which a child belongs giving rise to a risk that the child would not get a basic education if returned to his country of origin must be found to amount to persecution within the meaning of s.2 of the Refugee Act, 1996?*

321 AkiDwa (2016), pp. 10–14.
322 Ibid., pp. 16–24.

(b) Whether the High Court on an application for judicial review can substitute its own assessment of whether the contended for infringements of basic civil liberties amounted to 'persecution' within the meaning of s.2 of the 1996 Act for that of the Tribunal Member?

(c) Whether the potential denial of a basic education is capable of constituting its sufficiently severe violation of basic human rights so as to amount in law to persecution?

The Supreme Court allowed the Tribunal's appeal, noting that the court's function in judicial review proceedings was to determine whether on the materials before the decision-maker, only one decision in respect of a particular fact would have been lawfully open to the decision-maker concerned. In such case, any other view of the facts would necessarily be 'irrational' in the sense in which that term had come to be used in judicial review. It was not for the court to substitute its own view of that assessment for that of the decision-maker. Clarke J stated that there was an added obligation of care on decision-makers who were charged with decisions which, if wrongly made, could have very serious consequences for the rights of any individuals affected. The Supreme Court accepted that, at the level of general principle, it was possible that a sufficiently severe and persistent denial, by virtue of discrimination, of important social rights, including the right to access normally available education facilities, could amount to persecution within the meaning of s.2 of the *Refugee Act 1996* for the purposes of refugee status, especially where that discrimination was carried out by the State or condoned by the State by reason of lack of appropriate action. However, the court stated that an overall assessment of the elements of discrimination asserted was required in order to determine whether they cumulatively could be said to be sufficiently serious so as to amount to persecution. That assessment involved a consideration, among other things, of the range of rights in respect of which discrimination could be shown to apply, the importance of those rights, the extent of the discrimination, its persistence, the extent to which the State concerned could be said to have itself carried out the relevant discrimination, or the extent to which it could properly be determined that the State in question had condoned or materially contributed to the discrimination concerned by inaction. The assessment involved a consideration of the cumulative effect of all such matters on persons of the relevant group.

Principles: This decision establishes that discrimination can amount to persecution for the purposes of refugee status, especially where that discrimination was carried out by the State or condoned by the State by reason of lack of appropriate action. An overall assessment of the elements of discrimination is required in order to determine whether they cumulatively could be said to be sufficiently serious so as to amount to persecution.

CHAPTER 5

Legal migration

5.1 ECONOMIC MIGRATION

5.1.1 Statistics

Provisional end-of-year figures for 2016 show approximately 115,000 non-EEA nationals with permission to remain in Ireland compared to 114,000 at the end of 2015. The top five nationalities, accounting for 48.5 per cent of all persons registered, were Brazil (13.2 per cent), India (12.2 per cent), China (9.2 per cent), USA (7.9 per cent) and Pakistan (6 per cent).[323]

9,373 employment permits were issued during 2016: 7,691 new permits and 1,682 renewals. This was an increase over the 2015 total of 7,253 permits issued.[324] As for 2015, the top nationality was India with 2,990 permits[325] and the top three sectors were the service industry (3,541 permits), medical and nursing (2,232 permits) and industry (1,409 permits).[326]

5.1.2 Legislation

The *Employment Permits (Amendment) Regulations 2016*,[327] the *Employment Permits (Amendment) (No. 2) Regulations 2016*[328] and the *Employment Permits (Trusted Partner) (Amendment) Regulations 2016*[329] came into operation on 1 February and 2 and 3 August 2016 respectively.

The new regulations brought in changes to the Highly Skilled Eligible Occupations List (HSEOL) and the Ineligible Categories of Employment List (ICEL) to address skills shortages in the Irish economy. They also provided for the roll-out of the Employment Permits Online System (EPOS). The regulations also brought in a range of other changes to existing employment permits legislation, including that the minimum period a trainee under the Intra-Company Transfer Employment Permit Scheme is required to be in the employment of a foreign employer is reduced from six months to one month.[330]

323 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017b), p. 5.
324 Department of Jobs, Enterprise and Innovation (2016a).
325 Department of Jobs Enterprise and Innovation (2017a).
326 Department of Jobs Enterprise and Innovation (2017b).
327 S.I. No. 33 of 2016.
328 S.I. No. 363 of 2016.
329 S.I. No. 403 of 2016.
330 Department of Jobs, Enterprise and Innovation (2016b).

The *European Community (Free Movement of Persons) Regulations 2015*[331] came into operation on 1 February 2016. These regulations were made for the purpose of giving further effect in Irish law to the *Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States* (Directive 2004/38/EC).

5.1.3 Review of HSEOL and ICEL

On 22 March and 13 September 2016, the Economic Migration Policy Unit of the Department of Business, Enterprise and Innovation (then the Department of Jobs, Enterprise and Innovation) made calls for submissions as part of a biannual review process of the HSEOL and the ICEL. These lists are used in relation to the grant of employment permits. Occupations on the HSEOL are eligible for Critical Skills Employment Permits. Occupations not included on either the HSEOL or the ICEL are considered eligible occupations and are subject to a labour market needs test (i.e. jobs advertisement)

These reviews were conducted in order to ensure the continued relevance of these lists of occupations to the skills needs of the Irish economy. The rationale underpinning the inclusion on or omission from the lists of any particular occupation is based on, in the first instance, research undertaken by the Expert Group on Future Skills Needs (EGFSN), which is subsequently augmented by a consultation process that included these calls for submissions.

An occupation may be considered for inclusion on the HSEOL or removal from the ICEL provided that:

- there are no suitable Irish/EEA nationals available to undertake the work;
- development opportunities for Irish/EEA nationals are not undermined;
- a genuine skills shortage exists and that it is not a recruitment or retention problem;
- the Government education, training, employment and economic development policies are supported;
- the skill shortage exists across the occupation, despite attempts by industry to train and attract Irish/EEA nationals to available jobs.[332]

5.1.4 Employment Permits Online System (EPOS)

The EPOS was launched by the Department of Business, Enterprise and

[331] S.I. No. 548 of 2015.
[332] Department of Jobs, Enterprise and Innovation (2016c).

Innovation on 5 September 2016.[333] The new electronic system offers the following benefits:

- easier, online submission of supporting documentation;
- secure online fee payments (where applicable) by credit/debit card;
- fewer errors and rejected applications as the new system continuously validates data and supporting documentation;
- intuitive user experience with help information and relevant mandatory fields;
- faster turnaround of applications.

A User Guide has also been published to assist applicants in using the system to apply for the various employment permit types.[334] The Department of Business, Enterprise and Innovation encourages applicants to take advantage of the new electronic system. A 95 per cent take-up rate was achieved within two weeks of the online system being made available, and continues to be achieved.[335]

The Immigrant Council of Ireland (ICI) published an information leaflet on the employment permits schemes in April 2016.[336]

5.1.5 Review of Minimum Annual Remuneration (MAR) thresholds

The Department of Business, Enterprise and Innovation commenced a review of MAR thresholds (originally introduced in 2006) for the employment permit system in Quarter Four 2016. A public consultation to inform the review was held in January 2017. Stakeholders were invited to submit their views on the impact of possible increases in the MAR thresholds on use of the employment permit system for recruitment, and on the criteria used to set the thresholds.[337] The review is focused on four employment permit types – the Critical Skills Employment Permit, the General Employment Permit, the Intra Corporate Transferee Employment Permit and the Contract for Services Employment Permit.[338] The work of the review has been completed and its conclusions are expected by end 2017.[339]

According to the Department of Business, Enterprise and Innovation:

[333] Department of Business, Enterprise and Innovation website, 'How can we help you? Apply for an Employment Permit online', available at https://epos.dbei.ie/EPOSOnlineportal#/app/welcome.
[334] Department of Business, Enterprise and Innovation (2016).
[335] Department of Business, Enterprise and Innovation, February 2017.
[336] Immigrant Council of Ireland (2016c).
[337] See Department of Jobs, Enterprise and Innovation (2017c).
[338] Note: For certain ancillary or non-economic type employment permits, e.g. the Reactivation Employment Permit or the Sport and Cultural Employment Permit, the minimum threshold is set at National Minimum Wage.
[339] Department of Business, Enterprise and Innovation, October 2017.

> *Setting the minimum remuneration level for an employment permit is a delicate balancing act. The goal is that, so far as possible, economic migration serves the skills need of the economy without disruptively depressing or inflating wage levels in the wider labour market.*[340]

5.1.6 Atypical Working Scheme

During 2016, the number of applications approved under the Atypical Working Scheme, which streamlines entrance into the State for non-EEA nationals for work not covered by normal arrangements under the Employment Permits schemes, continued to expand significantly. 3,000 applications were approved in 2016, compared to 2,000 in 2015. The greatest increase in applications continues to be in the categories of contracts for services and medical applicants.[341]

As reported in 2015, the Atypical Working Scheme was expanded to include permission for non-EEA workers to work in the Irish fishing fleet in December 2015. This followed recommendations made in December 2015 by the Government Task Force regarding non-EEA workers in the Irish fishing fleet. The task force was established following media allegations of labour exploitation in the Irish fishing fleet.[342] The number of permissions under this category is capped at 500. Applications have been accepted in respect of this category since 15 February 2016 and 187 applications were granted in 2016.[343] Applications from fishermen currently working in Irish fisheries were due to close on 15 May 2016 but the application deadline for this group was extended to 1 July 2016. Thereafter applications have to be made from outside the State.[344]

The Migrant Rights Centre of Ireland (MRCI) welcomed the extension of the application period, affording more fishermen time to apply. While expressing concerns about the lack of co-operation of some employers with the scheme, MRCI considered that, overall, the scheme 'was a very positive step towards better and safer working practices'.[345]

5.1.7 Au pairs

In March 2016, the Workplace Relations Commission awarded a Spanish[346] au pair €9,229 when the family for which she was working was found to have breached aspects of the National Minimum Wage Act, the Organisation of

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340 Department of Jobs, Enterprise and Innovation (2017d).
341 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
342 Sheridan and Whelan (2016), p. 65.
343 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
344 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017c).
345 Migrant Rights Centre of Ireland (2016b).
346 MRCI research based on a survey of 554 au pairs found that 48 per cent were Brazilian and 28 per cent Spanish. See Migrant Rights Centre of Ireland (2016c).

Working Time Act and the Terms of Employment (Information) Act.[347,348]

The MRCI supported the woman in taking the case and welcomed the decision. It considered this a landmark decision, which sent a clear message *that au pairs are workers and any family employing an au pair must abide by employment laws.*[349]

Media reports indicated that the ruling caused controversy in the au pair sector, with au pair agencies concerned about equating au pair services with domestic work, and that the family-based cultural exchange aspect of the au pair tradition would be eroded.[350]

Fianna Fáil introduced a Private Members Bill, the *Au Pair Placement Bill 2016*, in June 2016.

The Bill proposed to place au pair placements on a legal footing; these were defined as:

> *a cultural, learning and educational exchange to include no more than 30 hours per week or 7 hours per day light domestic duties in exchange for hospitality, lodgings and pocket money.*[351]

The Bill was discussed at second stage in the Dáil in July 2016, and was strongly opposed by both Government and opposition TDs. In his speech to the Dáil at the Second Stage debate, the Minister for Employment and Small Business emphasised that Ireland's employment rights policy was to avoid creating categories of vulnerable workers who would not be able to access the protections of employment law. This was the motive behind Ireland's ratification of the ILO Domestic Workers Convention in July 2014. He said that while the Bill was silent on employment law *it is clearly intended in the Bill to remove au pairs as defined in the Bill from the protections of employment law.*[352] In addition, the content of the Bill was not felt to cohere with the Government's approach to the affordability of quality childcare, as the Minister for Children and Youth Affairs pointed out during the debate.[353]

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347 Ibid.

348 This case was lodged for hearing by a Rights Commissioner prior to the introduction of the *Workplace Relations Act 2015* and as such the decision is confidential to the parties; Department of Business, Enterprise and Innovation, October 2017.

349 Migrant Rights Centre of Ireland (2016c).

350 *Irish Times* (10 March 2016).

351 *Au Pair Placement Bill 2016* (No. 54 of 2016), available at www.oireachtas.ie.

352 Irish Government News Service (2016b).

353 Department of Employment Affairs and Social Protection, October 2017.

The MRCI welcomed the cross-party opposition to the Bill.[354]

5.1.8 Research

Doras Luimní, a Limerick-based NGO, published research in 2016 on the uptake of trade union membership among migrant workers.[355] The research was supported with funding received from the Dormant Accounts Fund. The purpose of the survey was to identify uptake of trade union membership among migrant workers in low-paid jobs, to understand how trade unions support migrant workers and to engage unions in discussing findings and proposing possible actions.

The survey was conducted in September 2015, and had a total of 83 respondents from 34 countries. The highest proportion of respondents was EU citizens (23 per cent), followed by naturalised Irish citizens (21 per cent) and student Stamp 2 holders (19 per cent). 90 per cent of respondents said that they did not belong to any trade union. 73 per cent of those surveyed were in some form of employment, and employment varied across a number of low-paid sectors including cleaning, hospitality, security, domestic work, retail and agricultural work. Responses indicated that half of those who were not trade union members did not know about trade unions or were not informed about trade unions in their workplace.

The research concluded that the *lack of visibility or membership of trade unions is at odds with the number of migrants working in low-paid sectors.* Doras Luimní made recommendations including that trade unions should reach out in a targeted way to all work sectors to ensure membership of migrants and that neglected work sectors, in particular domestic or au pair work, need to be addressed by trade unions more generally.

5.2 STUDENTS AND RESEARCHERS

5.2.1 *International Education Strategy*

On 7 October 2016, the Minister for Education and Skills published the *International Education Strategy for Ireland 2016–2020.*

The key aims of the strategy are to increase the economic value of the international education sector by €2.1bn per annum by 2020, which will involve over 37,000 additional higher education and English language training students coming to Ireland.[356] Funding will be directed at promotional and marketing

[354] Migrant Rights Centre of Ireland (2016d).
[355] Doras Luimní (2016).
[356] The Strategy covers both EU and non-EU students in the higher education sector and adult non-EEA national students in the English language training sector. Department of Education and Skills (2016b).

campaigns in 'key target markets such as the US, China, India, Brazil, Malaysia and the Gulf Region' and there will be an increased focus on 'high potential market opportunities such as Canada, South Korea, Vietnam, Indonesia, Mexico, Chile, Argentina and Nigeria'.[357]

The Department of Education and Skills has stated that implementation of the Strategy will:

- increase the number of international students studying in Ireland;
- attract outstanding researchers to our institutions and to build research capacity and commercialisation of research;
- build world-class networks of learning and innovation that can attract funding from outside the Irish education system;
- equip Irish learners with the skills and experience to compete internationally;
- have more Irish students integrate overseas experience into their study through maximising mobility opportunities for all;
- connect the benefits gained from internationalisation in education with enterprises to support the achievement of national economic ambitions;
- enhance our international alumni networks to build global connection for greater social and economic outcomes for Ireland at home and abroad.[358]

The implementation of reforms to the student immigration sector is linked with the objectives of the Strategy. The Departments of Education and Skills and Justice and Equality have worked closely on a reform agenda aimed at ensuring that the sector operates to a set of agreed standards, including in student protection and in immigration compliance.[359]

Education in Ireland information campaigns

Information campaigns for non-EEA student recruitment under the Education in Ireland[360] umbrella continued in 2016. Education in Ireland and participating colleges participated at several international education fairs throughout the year – including in Malaysia,[361] Vietnam,[362] China[363] and India.[364]

[357] Department of Education and Skills (2016c).
[358] Ibid.
[359] Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017. See also Department of Education and Skills (2016b), p. 13.
[360] Enterprise Ireland manages the Education in Ireland national brand under the authority of the Minister for Education and Skills. Enterprise Ireland is responsible for the promotion of Irish higher education institutions overseas. See www.educationinireland.com.
[361] http://www.educationinireland.com/en/News/EHEF-Malaysia.html.
[362] http://www.educationinireland.com/en/News/BMI-Higher-Education-Fair-Vietnam-2016.html.

These fairs enabled prospective international students to meet representatives of Education in Ireland and of Irish universities and higher education institutions.

Pre-departure briefings for students were also held during 2016 in India[365] and China.[366] The purpose of these briefings was to help students prepare for their studies in Ireland; information provided included what to prepare and pack before leaving, immigration on arrival, Irish culture and living in Ireland.

5.2.2 Reform of student immigration regime

Interim List of Eligible Programmes (ILEP)

As reported in 2015, reforms restricting the list of eligible educational programmes for immigration purposes (and other related reforms) were announced in May 2015.[367] Included in these reforms was the replacement of the former Internationalisation Register with the ILEP. Three cycles of the ILEP were published in 2016 – in January, May, and August.

The list that was published on 20 January 2016 concluded the second phase of the introduction of the ILEP[368] and included English language providers who had applied to have their programme included on the list. The January 2016 phase involved applications from 84 English language providers totalling more than 520 English language training (ELT) programmes in all.[369]

The May and August 2016 ILEP cycles involved applications from a mixture of higher education and ELT providers. The applications included both new providers wishing to be added to the list and existing providers wishing to add new programmes. In the May 2016 cycle, 326 higher education programmes and 37 ELT programmes were added to the list. The August 2016 cycle resulted in the addition of a further 576 higher education programmes and 16 ELT programmes.[370]

The Government Policy Statement of May 2015 stated that an International Education Mark (IEM) was 'currently in development and is planned to come onstream in January 2016'.[371] However, the IEM was not introduced in 2016 as originally anticipated and, as a result, the lifespan of the ILEP has had to be prolonged for an extended period.[372] The *International Education Strategy* states

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363 http://www.educationinireland.com/en/News/Education-in-Ireland-@China-Education-Expo-2016.html.
364 http://www.educationinireland.com/en/News/Education-in-Ireland-Fairs-India-February-2016.html.
365 Education in Ireland (2016a).
366 Education in Ireland (2016b).
367 See 'Reform of the international education sector and student immigration system, Government Policy Statement May 2015', available at: www.inis.gov.ie
368 The ILEP was introduced in two phases – firstly, removal of further education programmes below NFQ Level 6 and overseas accredited vocational and training programmes from the list, and secondly, the inclusion of English language providers on the list (after a vetting process involving compliance with certain requirements).
369 Department of Justice and Equality: Irish Naturalisation and Immigration Service, March 2016.
370 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
371 *Reform of the International Education Sector and Student Immigration System Government Policy Statement, May 2015*, p. 1. Available at www.inis.gov.ie.
372 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.

that 'the IEM is being developed and the required legislation will be brought forward at the earliest opportunity'.[373] A timeframe of 2018 is associated with this commitment in the strategy, and responsibility for its implementation is allocated to the Department of Education and Skills, the Department of Justice and Equality, and Quality and Qualifications Ireland (QQI).[374]

The ILEP guidelines were reviewed during 2016 and updated criteria and application forms for both higher education and ELT providers were published in December.[375] The requirements for learner protection were further articulated in the revised guidelines, viz. for those using the insurance model, the learner protection insurance put in place by the provider must be with an insurance provider registered with the Central Bank of Ireland and the individual student must be insured.

The Government Policy Statement of May 2015[376] committed that overseas accredited higher education programmes would be phased out of the ILEP. The updated guidelines take another step in this regard and new overseas accredited higher education programmes will no longer be accepted for inclusion on the list in ILEP cycles from December 2016.[377]

Revised work concession

A change to the student work concession was introduced in September 2016. From 1 September 2016, the holiday periods during which students holding immigration permission Stamp 2 can work up to 40 hours per week are June, July, August and September and from 15 December to 15 January inclusive. At all other times students holding immigration permission Stamp 2 are limited to working 20 hours per week.[378]

Change in length of immigration permission for English language students

From 1 January 2016, a student undertaking a full-time English language course included on the ILEP may be granted immigration permission Stamp 2 for 8 months (previously 12 months). Immigration permission may be granted for a maximum of three English language courses and for a maximum period of two years (i.e. 3 × 8 months). If a student had held one or two 12-month permissions under the old rules, the student can still apply for up to a total of three permissions. A full-time English language course is defined as one which provides a minimum of 25 weeks' tuition and a minimum of 15 hours' tuition per week.

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373 Department of Education and Skills (2016b), p. 29.

374 Strategic Priority 1.2 states: 'Ensure Ireland's International Education offering is underpinned by a robust regulatory environment in order to safeguard Ireland's reputation internationally. The International Education Mark will be developed and legislation enacted to enhance our quality framework for international education in this regard.' Ibid., p. 42.

375 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016c).

376 See *Reform of the International Education Sector and Student Immigration System Government Policy Statement May 2015*, available at: www.inis.gov.ie.

377 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.

378 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016d).

Classes must be held Monday–Friday between 9 a.m. and 5 p.m. and on at least three days of the week.[379]

Revised requirements regarding evidence of finances for non-EEA students

Students must be able to demonstrate access to sufficient funds to support themselves while living and studying in Ireland. Revised requirements regarding evidence of finances for non-EEA students were introduced from 1 September 2016. Students coming from countries that are visa-required for entry to Ireland must provide evidence of access to €7,000 at the time of their visa application.

However, not all non-EEA students coming to Ireland are from visa-required countries. Students who do not require an entry visa can avail of a number of options to demonstrate access to finances on first registration with the Garda National Immigration Bureau.[380]

Stamp 1G

The Stamp 1G immigration stamp for graduates on the Third Level Graduate Scheme was introduced from 1 February 2016. The Graduate Scheme is intended to allow graduates to work while remaining in Ireland to seek employment and to apply for an employment permit. Previously beneficiaries of the Graduate Scheme held an Immigration Stamp 2 like other non-EEA students. The Stamp 1G was introduced for the purpose of clarity, to help employers to differentiate graduates from other non-EEA students, as beneficiaries of the Graduate Scheme have different work concession entitlements. The conditions of the Graduate Scheme – that graduates with an honours bachelor's degree can work for up to 40 hours per week for 12 months and graduates with an ordinary-level bachelor's degree can work for up to 40 hours per week for 6 months upon receipt of their final college exams – remained unchanged.[381]

Planned amendment to Graduate Scheme

The International Education Strategy provides that:

> *The current 12 month stay back permission for international students will be amended to further incentivise high performing students to come to Ireland and to remain on after their studies, to meet the present skills and language needs as identified by business.*[382]

One change which has been agreed is that the duration of the Graduate Scheme will be increased to 24 months for graduates at National Framework of Qualifications (NFQ) Level 9[383] and above. The arrangements to bring this change

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379 Department of Justice and Equality: Irish Naturalisation and Immigration Service (n.d.), 'Overview of conditions for language programme students', available at: www.inis.gov.ie.

380 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016e).

381 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016f).

382 Department of Education and Skills (2016b), Strategic Priority 1 – A supportive national framework – Action 5, p. 42.

383 Level 9 – Qualifications at postgraduate diploma/master's degree; Level 10 – doctoral degree.

to the scheme into operation are currently being worked out by the Department of Justice and Equality and the Department of Education and Skills.[384]

5.2.3 Revised immigration arrangements for trainee accountants – Stamp 1A

Revised immigration arrangements for trainee accountants on Stamp 1A immigration permission[385] were published in June 2016, and became applicable to all non-EEA national trainee accountants from 1 September 2016.[386] The new arrangements seek to make arrangements for non-EEA national trainee accountants as consistent as possible with the arrangements for other non-EEA national students. The maximum time allowable for trainee accountants on Stamp 1A permission is limited to four years and six months.

The revised rules recognise that professional accountancy training requires work experience in a full-time accounting role. The immigration authorities require employers to submit a letter verifying that the work experience is directly related to the qualification being pursued, unless the employment is with an ACCA Approved Employer.

The revised rules confirm the existing rule that training as an accounting technician is not eligible for stamp 1a permission and that students pursuing an accounting technician qualification must do so on general Stamp 2 student permission.[387]

5.3 IMMIGRANT INVESTOR AND ENTREPRENEUR PROGRAMMES

During 2016, 43 applications were approved under the Start-Up Entrepreneur Scheme (STEP). The purpose of this scheme is to enable non-EEA nationals and their families who commit to a high-potential start-up business in Ireland to acquire a secure residency status in Ireland.[388]

An additional 273 applications for residence were approved under the Immigrant Investor Programme (IIP) in 2016 (64 in 2015), bringing the total number of applications approved since the launch of the IIP in 2012 to 380.[389] This has resulted in an investment of approximately €142 million.[390]

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384 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
385 Stamp 1A is an immigration permission granted specifically for the pursuit of accountancy studies.
386 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016g).
387 Ibid.
388 Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
389 Ibid.
390 Department of Justice and Equality (16 February 2017), Response to Parliamentary Question 7719/17, available at www.justice.ie.

The upsurge in applications for the programme in 2016 was addressed by the Minister for Justice and Equality in a recent parliamentary question where she noted that when the programme was introduced in 2012, the original level of investment required was €1 million. This was reduced to €500,000 to stimulate interest in the programme. In total 450 IIP applications have been made since April 2012, with some 40 per cent being submitted between July and November 2016. This upsurge in applications was considered by an independent Evaluation Committee who recommended the restoration of the minimum investment threshold to its original level. This recommendation was approved by the Minister for Justice and Equality after the Minister brought it to the attention of Cabinet.[391] The amended qualifying criteria are brought to the attention of prospective applicants on the Irish Naturalisation and Immigration Service (INIS) website.[392] The Minister also noted that an economic evaluation of the programme has commenced.[393]

5.4 ONLINE APPOINTMENTS SYSTEM – BURGH QUAY REGISTRATION OFFICE

The Immigration Registration Office in Dublin transferred from the Garda National Immigration Bureau to the INIS during summer 2016.[394] Persons registering outside Dublin continue to do so in regional immigration offices run by An Garda Síochána.[395]

An online appointments management system was launched for the Dublin Registration Office on 8 September 2016. The appointments system replaces the former queuing and ticketing system in place at the office. From 15 September 2016, customers can log on to the new system and make an appointment in a one-hour time slot. The link can be accessed from the INIS website.[396]

The transfer of the registration function to INIS and the introduction of the new online appointment system forms part of the wider reform programme of immigration services.[397]

This development relates to all migrants required to register for immigration permission – including economic migrants and students.

391 Ibid.
392 See Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016h).
393 Department of Justice and Equality (16 February 2017), Response to Parliamentary Question 7719/17, available at www.justice.ie.
394 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016i).
395 See 'Contact Registration', www.inis.gov.ie.
396 https://burghquayregistrationoffice.inis.gov.ie.
397 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016i).

5.5 FAMILY REUNIFICATION

In December 2016, the INIS published an update to the *Policy Document on Family Reunification*,[398] which had been originally published in 2013, to take account of certain factual developments including the *International Protection Act 2015.* The policy document points out that Ministerial discretion applies in most cases of family reunification and the policy document guidelines only apply in areas where Ministerial discretion is retained. Therefore, the scope of the policy document excludes applications for residence for family members of EU citizens exercising EU free-movement rights, and family reunification applications by beneficiaries of international protection which fall under the scope of sections 56 and 57 of the *International Protection Act 2015*.[399] These cases are excluded because the right of family reunification under that legislation is essentially automatic once certain conditions are met.[400]

The legislative reform regarding family reunification entitlements for beneficiaries of international protection (refugee and subsidiary protection statuses) is covered in Chapter 3.

5.6 POLICY ON NON-EEA RETIREES

In September 2016, the INIS launched a public consultation on a review of Ireland's immigration guidelines for non-EEA persons wishing to retire to Ireland.[401] INIS had received a steady stream of applications from such persons over a number of years – approximately 100 applications were received in 2015, with an additional 150 renewals of permissions granted in previous years. INIS conducted an internal review of the existing guidelines, which had been published in March 2015, and published a public consultation document which set out policy choices to be considered in drawing up a policy that would balance the interests of prospective retirees and of the Irish State, taking account of some of the economic issues involved.[402]

Proposed changes to the existing policy included the following.

- The introduction of a requirement to demonstrate a connection to Ireland. The proposals set out how this should be demonstrated:

[398] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016j). This Policy Document was originally published in December 2013 and updated in December 2016 to take account of, *inter alia*, the *International Protection Act 2015*.
[399] The definition of a family member in the International Protection Act covers spouses, civil partners, children (under 18) of the sponsor and parents/siblings of the sponsor (if sponsor and siblings are under age 18).
[400] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016j).
[401] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016k).
[402] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016l).

A person should outline, on affidavit, their links to this country when applying. This should include an outline of their connection to Ireland through ancestry, involvement in Irish Community activities and any travel and visits undertaken to Ireland. Claimed ancestry must be accompanied by genealogical evidence. The closer the connection with Ireland the more weight it will carry in any assessment. It should be noted that having a son or daughter naturalised as an Irish citizen does not qualify. In such cases the Policy document on family reunification would address the issue.[403]

- The introduction of a quota of 200 permissions granted per year.
- A reduction in the income threshold which applicants would be required to show in order to demonstrate sufficient financial resources – the proposed income threshold is €40,000 per annum net income for an individual and €60,000 for a couple. In addition, applicants would be required to demonstrate access to net assets to the value of €100,000, or €150,000 for a couple.
- Pre-clearance to be introduced for all applications. No applications permitted from within the State.
- The scheme would be open to all non-EEA nationals, not just those who do not require a visa to come to Ireland.
- A prior health check would be required.
- The introduction of an age limit of 60–75 years at application.

The proposals retain the existing prohibition on family reunification for this category, other than an accompanying spouse or partner of the retiree. Persons wishing to join children already resident in Ireland or naturalised in Ireland can apply to do so under the existing family reunification guidelines.[404]

5.7 VISA POLICY

5.7.1 Visa statistics

Provisional figures indicate that approximately 124,200 entry visa applications for both short and long stays were received in 2016, an increase of 7 per cent on 2015, and a cumulative increase of 41 per cent since 2012. The approval rate for entry visa applications was 90 per cent. The top five nationalities applying for visas in 2016 were India (20 per cent), Russia (19 per cent), China (13 per cent),

[403] Ibid., p. 5.

[404] Department of Justice and Equality: Irish Immigration and Naturalisation Service, February 2017.

Pakistan (8 per cent) and Turkey (5 per cent).[405]

A total of 104,572 visas were issued during 2016: 87,045 short-stay 'C' visas and 17,527 long-stay 'D'visas.[406] The five countries in which the highest numbers of visa applications were lodged for 2016 were India, China, Russia, UK and Pakistan.[407]

5.7.2 Extension of Short Stay Visa Waiver Programme

The Irish Short Stay Visa Waiver Programme was extended in October 2016 for a further five years until 31 October 2021. Under the programme, which was commenced on 1 July 2011, tourists or business people who have lawfully entered the UK, including Northern Ireland, on a valid UK visa will be able to travel on to Ireland without the requirement to obtain an Irish visa. They will be allowed to stay in Ireland for up to three months or until their UK visa runs out, whichever is shorter.

The *Immigration Act 2004 (Visas) (Amendment) Order 2016* provided the legal basis for the change.[408]

Nationals of 18 countries are included in the programme: India, Kazakhstan, People's Republic of China, Uzbekistan, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Belarus, Bosnia and Herzegovina, Montenegro, Russian Federation, Serbia, Thailand, Turkey and Ukraine.

On announcing the extension of the programme, the Minister for Justice and Equality noted that:

> *The scheme has been regarded by all tourism promotion agencies as a success since its inception and has contributed to ongoing increases in tourism. In this regard it is noted that tourism figures have risen year on year with Dublin Airport having its busiest year to date in 2015 with a record 25 million passengers travelling through the airport last year. It is expected that the extension will continue to provide a significant boost to efforts to attract more visitors to Ireland from these countries.*[409]

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405 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016l), p. 5.
406 Irish Naturalisation and Immigration Service, May 2017.
407 Irish Naturalisation and Immigration Service, August 2017. See *Country Factsheet: Ireland 2016*, available at www.emn.ie.
408 S.I. No. 502 of 2016.
409 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016m).

5.8 BORDER MANAGEMENT

5.8.1 Refusals of leave to land

Provisional figures show that 4,127 persons were refused leave to land in Ireland in 2016. Of these, 396 were subsequently admitted to pursue a protection application.[410]

In August 2016, NGOs expressed concern about the trend towards a high number of persons being refused leave to land at the border in 2016. The MRCI expressed concern that there was a 'lack of transparency and accountability' at ports, while the Irish Refugee Council (IRC) had concerns about the potential number of people who could be refused leave to land from refugee-generating countries. The IRC said that 253 people from refugee-generating countries, such as Afghanistan, Eritrea, Iran and Syria, had been refused leave to land in 2015.[411]

5.8.2 Legislative changes

International Protection Act 2015

Section 5 of the *Immigration Act 2003* provides for the removal from the State of persons refused leave to land.

Section 80 of the *International Protection Act 2015* amends section 5 of the *Immigration Act 2003* to allow for detention for a period of up to 12 hours in a port from where the person is to be removed or in a vehicle bringing a person to a port for the purpose of removal. This amendment was commenced from March 2016 via the *International Protection Act 2015 (Commencement) (No. 2) Order 2016*.[412] A similar amendment is made to section 5 of the *Immigration Act 1999* (see Chapter 8).

The Minister for Justice and Equality reported in a parliamentary question response in July 2016 that plans were being progressed for the provision of a dedicated immigration facility at Dublin Airport. According to the Minister, the redevelopment was to be completed

> *as soon as possible within the next 12 months and would replace the existing Garda station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility.*[413]

Section 81 of the *International Protection Act 2015* amends section 4 of the *Immigration Act 2004* to further extend criteria for refusal of leave to land. This section was also commenced via the *International Protection Act 2015 (Commencement) (No. 2) Order 2016*.

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410 Response to Parliamentary Question 2745/17 of 24 January 2017, available at: www.justice.ie.
411 *Irish Times* (4 August 2016).
412 S.I. No. 133 of 2016, available at www.irishstatutebook.ie.
413 Response to Parliamentary Question 20169/16 of 7 July 2016, available at: www.justice.ie.

Advance Passenger Information (API)

New regulations to give a legal basis in accordance with Irish data protection law for the transfer of API[414] data by Irish carriers to the UK, for journeys which take place within the Common Travel Area (CTA), were signed on 30 March 2016.[415] The *Data Protection Act 1988 (Section 2A) Regulations 2016*[416] are part of measures to enhance Ireland–UK co-operation in relation to the CTA, and apply to both air and sea carriers. The Minister for Justice and Equality said:

> *Clearly we cannot allow this facility [the CTA], which is of critical, national, strategic importance, to be abused by anybody who would seek to inflict harm on our peoples and countries. It is a critical issue, not just for Ireland, but for all Member States that they are in a position to strengthen border controls through the sharing of information on suspect passengers prior to their travel from one jurisdiction to another.*[417]

In April 2016, this development was reported in media as a counterterrorism measure.[418]

During 2016, preparations were also advanced to enable the Irish immigration authorities to process Advance Passenger Information on flights into the State from outside the European Union. The legislative framework for this is the *European Communities (Communication of Passenger Data) Regulations 2011*, which transpose the EU API Directive (Directive 2004/82/EC) into Irish law.

In 2017, the Irish immigration authorities will begin to process API on flights into the State from outside the EU and preparations are also underway to implement the EU Directive on Passenger Name Records (PNR). According to the INIS: 'these systems, and other measures, will provide further protection for our borders against crime, terrorism and illegal immigration threats'.[419]

5.8.3 SIS II

In 2001, Ireland asked the Council to take part in limited aspects of the Schengen *acquis. Council Decision 2002/192/EC* on Ireland's participation in the *acquis* was published on 28 February 2002. Ireland will not take part in the border-related aspects of the *acquis* but will, subject to Schengen evaluation, participate in certain horizontal aspects including police co-operation provisions and the Schengen Information System (SIS II).

As reported for 2015, the Minister for Justice and Equality announced in

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414 API data are the data in the machine-readable zone of the passport.
415 The Regulations were made to fulfil the legitimate interest condition for processing personal data under section 2A of the *Data Protection Act 1988*.
416 S.I. No. 220 of 2016.
417 Department of Justice and Equality (2016h).
418 *Irish Examiner* (7 April 2016).
419 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017b), p. 13.

December 2015 that she had secured capital funding of €4 million in 2016 to allow Ireland to advance its national SIS II project.[420] Ireland is progressing its implementation of the national SIS II project. The total timeframe to implement the necessary systems and structures in An Garda Síochána to support the integration with SIS II is expected to be 18–24 months.[421]

5.8.4 Civilianisation of border control

As reported for 2015, a priority project to civilianise border control functions at Dublin Airport and to transfer these responsibilities from An Garda Síochána to the INIS was progressed during 2015.[422] The first phase of the project was completed in June 2015 with civilian staff of INIS operating border controls in Terminal 1 Dublin Airport on a 24/7 basis. In 2016, a recruitment competition for Immigration Control Officers was run by the Public Appointments Service in order to sustain the staffing levels required to undertake immigration control functions and to move to a 24/7 civilian operation in Terminal 2, Dublin Airport. Initial appointments were expected to be made in Quarter 1 of 2017.[423]

5.8.5 Automated connection to Interpol Lost and Stolen Travel Documents Database

In November 2016, Ireland launched an automated connection to Interpol's Lost and Stolen Travel Documents Database. According to the Department of Justice and Equality:

> *In the first 8 weeks of operating systematic checks against this Database over 700,000 documents were searched, with a number of people having been refused entry to Ireland on the basis of an alert on the system having been triggered.*[424]

5.8.6 Brexit referendum

In June 2016, the people of the United Kingdom voted to exit the European Union in the Brexit referendum. This prompted discussions on the impact of the referendum result on the Common Travel Area (CTA) between Ireland and the UK. In a response to a parliamentary question in late 2016, the Minister for Justice and Equality stated that:

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420 Sheridan and Whelan (2016), p. 79.
421 Department of Justice and Equality, February 2017.
422 Sheridan and Whelan (2016), p. 79.
423 Department of Justice and Equality (13 December 2016), Response to Parliamentary Question 39985/16, available at www.justice.ie.
424 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017b), p. 13.

> *It has always been the case that Ireland and the United Kingdom cooperate closely on immigration matters, in particular as they relate to securing the Common Travel Area (CTA) and we will continue to cooperate and to strengthen that cooperation in the future. Both Governments have publicly declared their commitment to ensuring no return to a so-called 'hard border' on the island of Ireland. There are excellent relations at official and political level in relation to enhancing the operation of the Common Travel Area and we are committed to that continuing.*[425]

5.9 INTEGRATION

5.9.1 Integration strategy

Work on the development of an updated integration strategy was at an advanced stage during 2016. The Office for the Promotion of Migrant Integration (OPMI), an office of the Department of Justice and Equality, has a cross-departmental mandate to develop, lead and co-ordinate migrant integration policy across other Government departments, agencies and services. As reported for 2015, a Cross-Departmental Group on Integration was established in March 2014 with a mandate to review the activities being undertaken by Government departments and agencies directed to promoting the integration of migrants, preparing a draft integration strategy taking account of the policies and actions already being implemented, and undertaking consultation with key stakeholders. A public consultation process was subsequently launched as part of the review. The group also held a number of thematic meetings focusing on key policy areas relevant to the integration of migrants, including education, access to public services and social inclusion, and the promotion of intercultural awareness and combating racism.[426] The new *Migrant Integration Strategy*, which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.[427,428]

Funding and integration projects

A call for proposals for funding under the Asylum, Migration and Integration Fund (AMIF) and the European Social Fund (ESF) in relation to migrant integration and gender equality projects was launched by the Department of Justice and Equality

[425] Department of Justice and Equality (15 November 2016), Response to Parliamentary Question 34657/16, available at www.justice.ie.
[426] Sheridan and Whelan (2016), pp. 81–2.
[427] Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017d).
[428] The Communities Integration Fund to fund actions by community organisations to promote integration in their local communities was launched alongside the *Migrant Integration Strategy.* A total of €500,000 will be made available in 2017 to local community-based groups, for example local sporting clubs, faith-based groups, and theatrical and cultural organisations.

on 22 September 2016.[429]

Under the AMIF, up to €4.5 million has been made available over three years for projects to support the integration of third-country nationals into Irish communities.

Under the ESF, €3.3 million has been made available for projects aimed at improving migrants' access to the labour market.

With regard to the AMIF, the Minister for State at the Department of Justice and Equality said that the aim is to

> *support actions that target the most vulnerable of our migrants. Interventions at the local level can make a real difference in the day-to-day reality of vulnerable groups; it can protect them from isolation and its effects, and can help to build real social cohesiveness among diverse communities. Efforts to counteract exclusion and isolation among vulnerable groups are important for all Irish society, helping to ensure that our communities are both stronger and safer. This is the type of effort we want to support.*[430]

As reported for 2015, Business in the Community Ireland (BITC) manages the Employment of People from Immigrant Communities (EPIC) programme on behalf of OPMI. The EPIC programme aims to assist EEA nationals and immigrants who can work in Ireland without a work permit to find employment and/or further training and education in Ireland. The training programme includes workplace language and social skills training, CV preparation, one-on-one coaching, interview skills, working in Ireland and IT.

Over 100 participants in the programme graduated at an event held in September 2016. The EPIC programme announced that, since 2008, EPIC has worked with over 2,600 unemployed people from 101 countries, building their skills and confidence and helping them integrate in Ireland.[431]

Funding was provided to the following organisations in 2016 for migrant integration projects: eight local authorities, the Economic and Social Research Institute, Holocaust Educational Trust Ireland, Localise, HSE Community Games, New Communities Partnership, Polish Educational Society in Ireland, Sport

[429] Department of Justice and Equality (2016i).
[430] Department of Justice and Equality (2016j).
[431] Department of Justice and Equality: Office for the Promotion of Migrant Integration (2016).

Against Racism Ireland, Third Age Foundation Ltd and UNHCR.[432]

The International Organization for Migration (IOM) Ireland participated in the IOM-led and EU co-funded *Skills2Work* project to promote labour market integration of beneficiaries of international protection, which runs from January 2016 to December 2017. Participating locations are Belgium, Hungary, Ireland, Italy, the Netherlands, Slovakia, Slovenia, Spain and the United Kingdom. The project is managed by IOM Netherlands with the support of IOM offices in the participating locations and in conjunction with the project partners. The purpose of the project is to promote earlier and more sustainable employment for beneficiaries of international protection, through better skills recognition and skills-based job-matching. One of the key activities of the project is the development of an interactive online tool as a virtual tool to serve three key target groups:

1. integration service providers;

2. asylum seekers and refugees;

3. potential and actual employers

with the purpose of aiding information exchange on the European labour market and the position of migrants therein.[433] The project will also gather information on European approaches regarding migrant skills recognition through national stakeholder consultations.[434]

5.9.2 Non-discrimination

National Traveller and Roma Inclusion Strategy

As reported for 2015, the Department of Justice and Equality, in 2015, invited interested parties to make submissions in relation to a revised *National Traveller and Roma Inclusion Strategy* to replace the *National Traveller/Roma Integration Strategy 2011*. The strategy is being developed in response to the EU Framework for National Roma Integration Strategies.

Phase 2 of the development of the new strategy – the identification and agreement of high-level objectives under each agreed theme – took place in February 2016.[435] The final phase, Phase 3 (identification of detailed actions to achieve each agreed objective, with associated timescales, key performance indicators, institutional responsibilities and monitoring arrangements) was

[432] Office for the Promotion of Migrant Integration, October 2017.
[433] IOM Ireland, October 2017.
[434] International Organization for Migration (2016).
[435] Sheridan and Whelan (2016), p. 83.

underway in September 2016. As part of this phase, regional public consultations took place from 22 to 27 September 2016.[436]

In January 2017, the Minister for State at the Department of Justice and Equality indicated that the consultation process to develop the new strategy was nearing completion and would provide 'a new set of specific, cross-Departmental actions that need to be taken to bring about a real improvement in quality of life for Travellers and Roma'. He also indicated that he and the Minister for Justice and Equality had been successful in gaining sanction for €1 million in additional funding for Traveller and Roma initiatives related to the new inclusion strategy.[437]

Racism

As reported for 2015, the OPMI is the focal point for the Irish Government's commitment on anti-racism as a key aspect of integration, diversity management and broader national social policy.[438]

The Garda Racial Intercultural and Diversity Office (GRIDO) has responsibility for co-ordinating, monitoring and advising on all aspects of policing Ireland's diverse communities. GRIDO monitors the reporting and recording of hate crime and racist crime on a continual basis.[439]

OPMI continued in 2016 to publish statistics on racially motivated crime on its website www.integration.ie. By the end of Q2 2016, a total of 98 racially motivated crimes (including anti-Semitism) had been reported.[440]

Islamophobia

The ICI held a seminar on 'Muslims in the Media: Challenging Misconceptions' in October 2016. The aim of the seminar was to challenge misconceptions of Muslims in the Irish media and the representation of the Muslim community as a homogenous one. The seminar was the culmination of a capacity-building programme with young Irish Muslims, aimed at enhancing their media relations skills.[441]

5.9.3 Engagement of diaspora communities

Africa Day Celebrations 2016

Annual celebrations for Africa Day took place on 29 May 2016, including a flagship event on the Farmleigh Estate in Dublin's Phoenix Park and regional events in Cork, Galway, Limerick and Waterford. The Africa Day celebrations are supported by Ireland's Development Aid agency, Irish Aid. The Department of

[436] Department of Justice and Equality (28 September 2016), Response to Parliamentary Question 27438/16, available at www.justice.ie.
[437] Department of Justice and Equality (2017b).
[438] Sheridan and Whelan (2016), p. 83.
[439] Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40207/16, available at www.justice.ie.
[440] Central Statistics Office (CSO) statistics. See www.integration.ie.
[441] Immigrant Council of Ireland (2016d).

Foreign Affairs stated that Africa Day events highlight the scope and benefits of Ireland's engagement with Africa by:

- raising awareness of the Official Development Assistance programme managed by Irish Aid and its central focus on sub-Saharan Africa;
- increasing public understanding of Africa by highlighting the diversity and potential of the continent;
- raising awareness of the potential for bilateral trade and investment linkages between Ireland and African countries.[442]

Africa Day events are promoted on the website www.africaday.ie.

India Day 2016

The second India Day celebration at the Farmleigh Estate was held on 20 August 2016. One of the aims of the event was to celebrate the integration of over 30,000 members of the Indian diaspora in Irish society, culture and economy. India Day was organised by the Federation of Indian Communities in Ireland (FICI) and supported by the Indian Embassy in Ireland, the Office of Public Works, Dublin City Council, Dublin City Arts Office and various other Government and non-government organisations.[443]

5.9.4 Research

The ICI published *Islamophobia in Dublin: Experiences and How to Respond* in February 2016.[444] The report was based on fieldwork with Muslim communities in Dublin – in all 66 Muslim men and women took part in focus groups or interviews. The aim of the study was firstly to gather experiences of anti-Muslim hostility and discrimination against the Muslim community in Dublin, and secondly, to identify actions and supports in the face of anti-Muslim racism and to identify how the Immigrant Council could work with Muslim communities in order to effect change.[445]

Participants in the study identified instances of anti-Muslim verbal abuse, often linked with stereotypes associating Islam with terrorism. The report showed that 'identifiers of Muslimness' such as the hijab are central to experiences of anti-Muslim hostility. The report also looked at the participants' reported experience of discrimination in schools, accessing employment and accessing services, in particular public transport. This discrimination included anti-Muslim abuse and commentary and exclusionary practices such as restricting wearing of the hijab.[446] The study also looked at interaction with An Garda Síochána and media discourse

442 Department of Foreign Affairs and Trade (2016b).
443 See www.farmleigh.ie and www.integration.ie.
444 Immigrant Council of Ireland (2016e).
445 Ibid., p. 5.
446 Ibid., p. 7.

in relation to Muslim communities. Participants identified instances of good practice and positive experiences in the education and employment spheres.[447]

The report made a number of recommendations to effect change, based on participants' suggestions. The recommendations covered awareness raising; media training on media engagement by the Muslim community; media inclusion to encourage a greater awareness of diversity; engaging employers to tackle discrimination in the workplace, including drafting a good practice guide for employers; inclusive policing; scoping diversity issues in relation to Islam in education; combating discrimination in education and lobbying for the implementation of hate-crime legislation.[448] The report was launched at a conference in Dublin on 22 February 2016.[449]

The ICI also published *Taking Racism Seriously: Experiences of Racism and Racially Motivated Anti-Social Behaviour in Social Housing* in 2016.[450] The aim of the study was to analyse racism and racially motivated antisocial behaviour in social housing in Ireland.

The research analysed data gathered over 2013–2014 through the ICI's Racist Incidents Support and Referral Service. It was conducted in partnership with Dublin City Council, and interviews were conducted with Council staff members to gather their experience of dealing with racism in social housing.[451]

The research found that verbal harassment was the most prevalent category of racially motivated harassment reported (60 per cent), followed by property damage and racist graffiti (30 per cent) and physical violence (25 per cent). ICI statistics of all racist incidents showed that people subject to racial harassment in social housing were *almost twice as likely to suffer from property damage and twice as likely to experience physical assault compared to the ICI statistics of all racist incidents.* Black Africans (46 per cent) were the largest group of victims, followed by central and eastern European (24 per cent) and then Asian persons (12 per cent).[452]

Interviews conducted for the research with staff from Dublin City Council and the Irish Council for Social Housing showed that the experience of the interviewees was that racism was not seen as a major issue in social housing, due to small numbers of non-Irish persons living in social housing. The study noted that there

447 Ibid., p. 9.
448 Ibid., pp. 9–12.
449 Immigrant Council of Ireland (2016f).
450 Immigrant Council of Ireland (2016g).
451 Ibid., p. 7.
452 Ibid., p. 7.

are no official data in terms of nationality or ethnicity in relation to social housing allocations. The report argued that underreporting of racist incidents could explain why racism is not seen as a major issue in social housing and noted that racism is absent from Dublin City Council's definition of antisocial behaviour, which is derived from the *Housing (Miscellaneous Provisions) Act 2009*.[453]

Another challenge identified was the *lack of adequate legislation to pursue racism as a crime in wider Irish society.* One of the recommendations of the report, as with the Islamophobia report, was the introduction of up-to-date hate-crime legislation.[454]

In a response to a parliamentary question in December 2016, the Minister for Justice and Equality said that mechanisms were in place to deal with hate speech and hate-motivated crimes including the *Prohibition of Incitement to Hatred Act 1989* and the wider criminal law in the case of criminal offences such as assault, criminal damage or a public order offence committed against a person based on their race, religion, colour, ethnicity or some other ground. The Minister said, however, that

> *in light of reports by civil society, the experience of other jurisdictions, changes in Irish society and the use of the internet and social media, I have requested that this area of the criminal law be examined with a view to considering whether further legislative proposals are needed to strengthen the law.*[455]

The *Monitoring Report on Integration 2016* was jointly published by the Economic and Social Research Institute (ESRI) and the Department of Justice and Equality in March 2017.[456] The report examined migrant integration in Ireland in the areas of employment, social inclusion and active citizenship and included a special theme on migrant skills and competencies. This special theme focused on original analysis of the OECD Survey of Adult Skills (PIACC) and compared the skills of immigrants in Ireland with the native-born population in terms of literacy, numeracy and problem solving.[457]

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[453] Ibid., p. 8.
[454] Ibid., p. 9.
[455] Department of Justice and Equality (14 December 2016), Response to Parliamentary Question 40208/16, available at www.justice.ie
[456] Barrett et al. (2017).
[457] Economic and Social Research Institute (2017).

5.10 CITIZENSHIP AND NATURALISATION

5.10.1 Citizenship statistics

A total of 10,044[458] certificates of citizenship were issued in 2016. The top third-country nationalities awarded citizenship were India (1,028), Nigeria (777) and Philippines (730).[459]

There were nine citizenship ceremonies throughout the year. INIS notes that 2016, as the 100th anniversary of 1916, marked a special year for all the people of Ireland. INIS stated that:

> *The citizenship ceremonies were introduced in 2011. Since then, approximately 90,000 new citizens of Ireland have been welcomed. The citizenship ceremonies are a wonderful celebration of the diversity of culture, vibrancy of spirit and new ideas which these new citizens bring to our country. These new citizens will help to shape Ireland for the next 100 years.*[460]

A special ceremony was held in Waterford City Hall in March 2016, as part of the 1848 Tricolour Celebrations for 2016, where 100 applicants received their citizenship certificates.[461]

While the scope of this report refers to third-country nationals, it is interesting to note the impact of the Brexit vote in the UK in June 2016 on the volumes of Irish citizenship applications and applications for Irish passports. The *Irish Times* reported in October 2016 that there was a surge in citizenship applications, foreign birth registrations and passport applications since the June referendum. According to the article, there had been 10 Irish citizenship applications from British nationals in June 2015, and 117 in the same month in 2016.[462]

5.10.2 Dual nationalities

Statistics released by the Central Statistics Office from Census 2016 indicate that 104,784 persons resident in Ireland have dual nationality, almost a doubling from 55,905 in 2011. This figure includes dual Irish–EU nationalities. The top four dual nationalities were Irish–American (17,552); Irish–UK (15,428); Irish–Polish (9,273)

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458 This figure included certificates of citizenship issued to all nationalities – EEA citizens and third-country nationals. The top nationality for award of citizenship certificates was Poland.
459 Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017b), p. 9.
460 Ibid., p. 10
461 Ibid., p. 10.
462 *Irish Times* (21 October 2016).

and Irish –Nigerian (6,995).[463]

5.11 CASE LAW

5.11.1 Change of immigration status

Luximon v Minister for Justice [2016] IECA 382 & Balchand v Minister for Justice [2016] IECA 383

The scope of the Minister's discretion to grant a change of immigration status, and in particular the extent to which regard must be had to family rights or private life rights (such as the right of the individual to establish and develop relationships with other human beings, including the actual social ties) in deciding whether to grant a change of status, was considered by the Court of Appeal in *Luximon v Minister for Justice* [2016] IECA 382 and *Balchand v Minister for Justice* [2016] IECA 383. The High Court in *Luximon v Minister for Justice* [2015] IEHC 227 held that where family and private life rights were engaged under the Constitution or the ECHR, the Minister was obliged to consider them in the context of an application for change of status under section 4(7) of the *Immigration Act 2004*. The High Court also said that the Minister should have published guidelines as to what criteria she would take into account when considering an application under section 4(7) for a change to a Stamp 4 permission from someone in the applicant's position.

A related issue that arose in both the *Luximon* and *Balchand* cases was the extent to which a person who was granted permission to enter the State on a specific or limited basis could be said to have acquired constitutional and/or ECHR rights which could then be relied upon in an application for a change of status. The most common example, as in the *Luximon* case itself, was private life – to what extent can a non-Irish national who is present in the State on specific or limited residence permission establish a right to private life in the State? The High Court in *Balchand v Minister for Justice* [2016] IEHC 132 held that students fall into the category of people with 'precarious residence', and said that this meant that, in general, their private and family rights to remain in the State were minimal to non-existent and did not need to be considered by the Minister in an application for change of status, because they did not reach the level of significance required to engage such consideration. The Court of Appeal heard the appeal in *Balchand* alongside the appeal in *Luximon* in June 2016.

In December 2016, the judgments in respect of the appeals in the *Luximon* and *Balchand* cases were issued by the Court of Appeal. On the point of whether the Minister must act in accordance with the Constitution when exercising her discretion under section 4(7) of the *Immigration Act 2004*, Finlay Geoghegan J, giving the judgment of the court in *Luximon*, stated at para. 43 that the 'Minister

[463] Central Statistics Office (2017b).

must exercise the discretion given her by section 4(7) in a manner which would be in conformity with the Constitution.' Finlay Geoghegan J considered the provisions of section 3(1) of the *European Convention on Human Rights Act 2003* and held that the Minister, in exercising her discretion under section 4(7) of the *Immigration Act 2004*, must do so, *inter alia*, in a manner compatible with the State's obligations under Article 8 of the ECHR. Finlay Geoghegan J also held that because of the nature of the decision to be taken, the applicant was entitled to an assessment of whether or not to renew the residence permission would have consequences of such gravity for the applicant's private or family law rights.

In relation to the question of whether 'respect' for family or private life rights under Article 8 imposes a positive obligation on the State i.e. to grant a renewal of permission under section 4(7) of the *Immigration Act 2004*, Finlay Geoghegan J held that the weight which is to be attached to Article 8 private and family life rights is a matter for the Minister subject only to judicial review by the courts. However, in *Balchand*, Finlay Geoghegan J held that the High Court judge was incorrect in applying the jurisprudence on persons with precarious immigration status to students who had been granted an express permission under section 4 of the *Immigration Act 2004*.

The Court of Appeal also held that the Minister could not require the applicants to leave and apply for permission from outside of the State. It was noted that section 4(7) of the 2004 Act expressly entitled an application to be made by a person to renew a permission to be in the State and empowered the Minister to consider and if appropriate grant such a renewal of permission. In the context of s.4 this clearly envisaged an application being made from a person who was within the State.

Finally, the Court of Appeal held that there was no obligation on the Minister to publish a policy or criteria according to which an application from a timed-out non-EEA student pursuant to s.4(7) of the 2004 Act for change of immigration status to 'Stamp 4' conditions would be determined. Rather, the court noted, section 4(7) granted a discretionary power to the Minister which must be exercised on the basis of the individual facts and circumstances advanced by the applicant, in accordance with constitutional principles and pursuant to s.3 of the *European Convention on Human Rights Act 2003* in a manner consistent with the State's obligations under the Convention.

Accordingly, in both cases the Court of Appeal granted an order of certiorari quashing the Minister's original decisions and remitted the applications for reconsideration by the Minister. The Minister has sought a further appeal to the Supreme Court against the decisions of the Court of Appeal in *Luximon* and

Balchand. In June 2017, the Supreme Court granted the Minister leave to appeal.[464]

Principles: The decisions in Luximon *and* Balchand *confirm that the provisions of the Irish Constitution regarding private and family life rights and similar rights under Article 8 of the European Convention of Human Rights must be considered by the Minister when assessing an application for change of immigration status under section 4(7) of the* Immigration Act 2004.

5.11.2 Derivative rights of residence under EU law

Bakare v Minister for Justice and Equality [2016] IECA 292

In *Bakare v Minister for Justice* the Court of Appeal considered the applicability of the *Zambrano* case in situations where it is proposed to deport only one parent of an Irish citizen child. The applicant was a Nigerian citizen who arrived in the State in February 2002 when he applied for asylum on grounds of his ethnicity and his political views. That application was refused at first instance and on appeal. A deportation order was subsequently made by the Minister in respect of the applicant in September 2003. The applicant then married, and in March 2004 his wife had a child who was an Irish citizen. The applicant's wife subsequently naturalised as an Irish citizen. Following the making of the deportation order in 2003 the applicant did not present to the immigration authorities and he was then classified as an evader. The applicant was arrested and ultimately deported to Nigeria in December 2009. He returned illegally to the State in March 2014. In June 2015 he applied for residency based on his parentage of an Irish citizen child and the decision of the Court of Justice in *Case C-34/09 Ruiz Zambrano* [2011] E.C.R. I-1177. The Minister requested full details of the extent to which the applicant's Irish citizen child was emotionally and legally dependent on him. The applicant responded with a short handwritten letter in July 2015 in which he claimed that he played a 'major role' in the lives of his two children by taking them to the school and to the doctor as well as to hurling training. He also claimed that he had remained in regular contact with his family after his deportation. His wife wrote a similar letter in which she maintained that he regularly helped them with their school homework and that he had been a good father to the children.

The Minister refused the applicant's application in January 2016 on the basis that the *Zambrano* principle was not applicable in the applicant's case, because there was no evidence that his Irish citizen child would be forced to leave the State or the territory of the European Union in circumstances where the child's mother was an Irish citizen with the right to reside and move freely within the territory of the Member States of the European Union. The applicant applied to the High Court for leave to seek judicial review of this decision in March 2016. The High

[464] *Luximon and anor v Minister for Justice and Equality* [2017] IESCDET 55.

Court refused the application for leave, and the applicant appealed to the Court of Appeal.

The Court of Appeal upheld the decision of the High Court and dismissed the appeal. Hogan J gave the judgment of the Court of Appeal, and confirmed that the core of the test in *Zambrano*, as clarified by subsequent decisions of the CJEU in *Case C-256/11 Dereci* [2011] E.C.R. I-11315, *Case C-356/11 and Case C-357/11 O and S* [2012] E.C.R. I-000 and *Case C-156/13 Alfredo Rendón Marin* [2016] E.C.R. I-000 is whether the denial of residency or similar rights to one or both third-country nationals who are the parents of EU citizen children is likely to bring about a situation where those children are in practice compelled to leave the territory of the Union. Applying that test in the *Bakare* case, Hogan J found that there was no appreciable risk that the children would be obliged to leave the territory of the State by reason of the decision of the Minister to refuse to grant residency to the applicant, and confirmed that the case therefore did not come within the scope of *Zambrano.* Hogan J accepted that there was no doubt that, viewed from the perspective of the family and, indeed, the best interests of the children, it would be desirable that the applicant would continue to reside with his wife and children. However, Hogan J noted that the Court of Justice made clear in both *Dereci* (para.68) and *O and S* (para. 68) that these considerations in themselves were not decisive; these cases made it clear that it was necessary to go further in order to demonstrate that the practical effect of the denial of residency would be that the children would be obliged to leave the territory of the Union. The available evidence in the present case suggested that there was no such risk of any appreciable kind, given that the children's mother was a naturalised Irish citizen and that she had not moved from Ireland to Nigeria following her husband's deportation in 2009. Accordingly, the Court of Appeal dismissed the appeal.

Principles: The decision of the Court of Appeal in Bakare *confirmed that* Zambrano *is only applicable in cases where the denial of residency or similar rights to one or both third-country nationals who are the parents of EU citizen children is likely to bring about a situation where those children are in practice compelled to leave the territory of the Union. The rule in* Zambrano *does not apply to decisions to deport one parent of an Irish citizen child where the other parent is residing in Ireland and there is no appreciable risk that the deportation of one parent will force the child to leave.*[465]

5.11.3 Visa applications in context of EU Directive 2004/38/EC

During 2016, two cases concerning processing times for visa applications lodged for the purpose of accompanying or joining EU family members pursuant to

[465] While this summary is correct, the overall correctness of the *Bakare* decision may have to be revisited in the light of the subsequent decision of the CJEU in *Chavez-Vilchez* (Case C-133/14), which has not yet been considered by the Irish courts. EMN Legal Consultant, October 2017.

Article 5(2) of Directive 2004/38/EC, *Mahmood v Minister for Justice and Equality* [2016] IEHC 600 and *Ahsan v Minister for Justice and Equality* [2016] IEHC 691 were heard before the High Court. Case summary for *Mahmood* is included below. The reasoning of the judgment is the same in both cases.

Mahmood v Minister for Justice and Equality [2016] IEHC 600

The applicant was an EU citizen who intended to move to the State and wanted a visa for his wife to allow her to accompany him. The rights asserted by the applicants arose pursuant to Directive 2004/38/EC ('the Citizens' Directive') and in particular Article 5(2), which provided that such visas should be issued 'as soon as possible and on the basis of an accelerated procedure'. The applicants complained of delays of several months in the issuing of visas, which they said was in breach of EU law. The applicants instituted judicial review proceedings seeking declarations that they were entitled to a decision on their visa applications, and if necessary an order compelling the Minister to determine the applications.

The Minister sought to explain the delay with reference to 'an unprecedented surge' in the number of applications for visas from non-national family members of EU citizens, and also the need to verify the details of the applications including whether the applicants were in fact entitled to invoke EU Treaty rights in circumstances where there was concern as to possibly fraudulent applications and the potential for abuse of Ireland's immigration law and policy occasioned by applications for short-stay visas for third-country national family members of EU citizens. In particular, the Minister was concerned that some applications amounted to abuse of rights by seeking to utilise the principle in *Surinder Singh*, whereby a British citizen might seek to exercise EU Treaty Rights in Ireland for a short period and then return to the United Kingdom and claim the protection of EU law upon their return, thus allowing them to bring their non-national family members with them.

Faherty J held that while no specific time limit is set out in Article 5(2) for decisions on visa applications, the language of this article had been interpreted as importing into the provision a 'certain urgency in the issuing of visas', of which the court must be mindful. Faherty J was satisfied that in each case the Minister was in breach of the requirement to issue such visas as soon as possible on the basis of an accelerated procedure, and rejected the Minister's suggestion that any period of delay prior to the actual examination of the application should be disregarded by the court.

The High Court acknowledged the Minister's 'considerable concerns' regarding possible abuse of the Directive as well as the logistical difficulties caused by the very significant increase in the number of visa applications by non-national family members of EU citizens. While Faherty J considered that the Minister had raised a number of compelling *prima facie* arguments to justify the delays, such delays

were nonetheless in breach of Article 5(2) of the Directive and the requirement to issue visas as soon as possible in accordance with an accelerated procedure. Furthermore, Faherty J noted that the Minister did not allege abuse of rights in the cases before the court as these applications had not yet been considered; rather, the Minister's concerns arose in general as a result of the 'maelstrom of visa applications', and this was held to be insufficient to justify the delays. Faherty J was also satisfied from her reading of Article 5 that the framers of the Directive had in mind 'a considerably shorter time span than six months for the issuing of visas to qualifying family members of EU citizens who have or intend to exercise their free movement rights, given the urgency which informs the language used in the provision'.

Accordingly, the court held that in circumstances where no time span for even the commencement of the examination of the applications was forthcoming from the Minister, and no indication as to when a decision might be expected, the applicants were entitled to treat the delay as so unreasonable and egregious as to constitute a breach of the Directive and to justify the application for mandamus. The High Court therefore directed the Minister to take a decision on the applicants' visa applications within six weeks of perfection of the order. The decision in *Mahmood* is under appeal.

The court granted order of mandamus compelling the Minister to determine the visa applications.

Principles: The decision in Mahmood *establishes that delays of several months in the determination of visa applications by non-national family members of EU citizens to allow them to accompany the EU nationals to the State are in breach of EU law, notwithstanding the unprecedented surge in the numbers of such applications, which poses logistical difficulties for the Minister. Generalised concerns as to potential abuse of EU Treaty Rights are not sufficient to justify such delays.*

CHAPTER 6

Migration, development and humanitarian aid

6.1 'MIGRATION COMPACTS' UNDER THE EUROPEAN AGENDA ON MIGRATION

In June 2016, the European Commission published its Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration. According to the Communication, the purpose of the Partnership Framework model is

> *a coherent and tailored engagement where the Union and its Member States act in a coordinated manner putting together instruments, tools and leverage to reach comprehensive partnerships (compacts) with third countries to better manage migration in full respect of our humanitarian and human rights obligations.*[466]

Five priority countries were identified for launching of tailor-made migration compacts as a first stage – Niger, Nigeria, Senegal, Mali and Ethiopia.[467]

Funding options for targeted engagement were identified by the Commission, including the EU Trust Fund for Africa, agreed at the Valletta Summit on Migration in 2015, and aid flows from the EU and its Member States. The Communication argued that 'programming of aid by the EU and its Member States should be even more targeted, with the exception of humanitarian aid which is purely needs-based'.[468] Progress on implementation of the Valletta Action Plan was also identified by the Commission as essential to the process. The Department of Foreign Affairs notes that Ireland has consistently argued in EU fora that development assistance allocations should also be based on need and that the EU's response to the migration crisis should not result in a diminution of aid flows to countries and regions not currently contributing to irregular migratory flows into the EU.[469]

Speaking in December 2016, the Minister for Foreign Affairs said:

> *The ongoing migration crisis is an example of one of the challenges facing both Africa and the EU. The most effective way of addressing this is by tackling its root causes – war and political upheaval as well as*

[466] European Commission (2016c), p. 6.
[467] Increased co-operation with Tunisia and Libya was also identified as a priority. The Communication also highlighted existing cooperation with Jordan and Lebanon.
[468] Ibid., p. 10.
[469] Department of Foreign Affairs and Trade, October 2017.

> *economic hardships brought about by factors such as climate change and endemic corruption and mismanagement. The work on the Migration Compacts and implementation of the Valletta Action Plan are important in this regard.*[470]

Ethiopia has been a partner country for Ireland's Official Development Assistance Programme since 1994.[471] Some projects benefiting Ethiopia, funded by Irish Aid in 2016, are set out hereunder.

6.1.1 Irish Aid Fellowship Training Programme

Irish Aid's Fellowship Training Programme is open to Irish Aid's partner organisations in Ethiopia including Government ministries and Civil Society Support Programme beneficiaries.

The purpose of the programme is to support capacity development in Irish Aid's partner countries, in particular in Africa, by funding students to undertake postgraduate study. In Ethiopia, this programme is open to candidates drawn from partner organisations (including Government ministries and NGOs) working in the key sector areas in which Irish Aid also works, and not an open-call scholarship programme.

The Fellowship Training Programme began in 1974. Since that time, it has brought suitably qualified candidates from developing countries to Ireland to undertake Master's degrees at universities and colleges here. There is also an in-region dimension where students are supported for similar courses in-country or in their own region. Courses undertaken include development studies, rural development, health care, education and law as fellowship eligibility requirements aim to ensure close alignment with Irish Aid's programmatic approach. The scholarship award covers course fees, required flights, accommodation (for out-of-country study), monthly allowances, insurance and other incidental expenses. Eligible Master's programmes in Ireland commence in the period August to September each year and, depending on the course, scholarships will run for between 10 and 16 months.[472]

6.1.2 Countering smuggling and human trafficking in Ethiopia

Ireland supported information-awareness-raising campaigns targeted at prevention of illegal migration and human trafficking through its bilateral aid programme in Ethiopia in 2016, set out in Table 6.1. Implementing partners are local civil society organisations.

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[470] Department of Foreign Affairs and Trade (2016c).
[471] https://www.irishaid.ie/what-we-do/countries-where-we-work/our-partner-countries/ethiopia/
[472] Department of Foreign Affairs and Trade, Development Cooperation Division, June 2017.

TABLE 6.1 INFORMATION-AWARENESS-RAISING CAMPAIGNS ON ILLEGAL MIGRATION AND HUMAN TRAFFICKING IN ETHIOPIA – 2016

Prevention of Illegal Migration and Human Trafficking in Selected Sub-Cities and Districts of Addis Ababa[473]	
Time period	January 2016 to August 2017
Cost	€34,579
Direct beneficiaries	Illegal migrant and domestic worker returnees between the ages of 17 and 35 Children of returnees Selected members of the community and local government structures
Indirect beneficiaries	Community at large where the project is implemented (schools, religious leaders, elders, families from victims of migration, etc.).
Objectives, intended results and key messages	Many rural and urban poor Ethiopians migrate to work in the Gulf in household service jobs. Civil Society Organisations (CSOs) have sought to equip would-be migrants with knowledge of the risks inherent in migration through informal and formal channels and recourse routes in the event of problems occurring. They continue to work with groups at risk of precarious/irregular migration into service jobs, especially young women. Specific results*:* 1. Improve livelihoods and access for the social wellbeing of 189 returnees through the provision of marketable/demand based formal and/or non-formal technical and vocational skill training. 2. Enhance the knowledge and awareness of 105 community members of the project area through information/awareness creation, training and workshops on the negative effects of illegal migration and human trafficking. 3. Provide Basic Business Development training and start-up capital/tools for 70 returnees to start small businesses. 4. Strengthen the role of three CSOs/local community institutions in the targeted districts on sustainable partnerships against illegal migration and human trafficking; establish and strengthen three community-based project support committee structures to work against illegal migration and human trafficking. 5. Establish and strengthen new/existing structures and strategies which work against illegal migration and human trafficking at national and regional levels. The communication channels and tools used are: • awareness raising workshops on illegal migration and human trafficking for key stakeholders and community representatives • outreach programme for communities in the sub-city district during public holidays • panel discussion with local communities, sector representatives on migration • conducting quarterly review meetings and Training of Trainers (ToT) for community groups on illegal migration • organisation of policy dialogue sessions on migration and how to

[473] Department of Foreign Affairs and Trade: Development Cooperation Division, February 2017.

	maximise benefits from safe migration; familiarisation with the new Ethiopian Overseas Employment Proclamation.
Outcomes	The project is ongoing, with 2286 people benefiting directly (from awareness and information, outreach activities, panel discussions, ToTs) – of these about half are women and girls. Other results: • The participants acquired knowledge and skills on illegal migration and its effects. • The community representatives share information on illegal migration and its effects through different community programmes. • Increased participation of the targeted community members in the prevention of illegal migration. • Accelerated action plans developed to conduct community outreach programmes/campaigns. About 200,000 Ethiopians were reached through campaign messages.

Celebration of Zonal Day for Curtailing Child and Girls and Women Trafficking Robe Woreda of Bale Zone Oromia Region.[474]	
Time period	15 February 2016 to 15 June 2016
Cost	€15,000
Direct beneficiaries	Vulnerable youth, women and girls over the age of 15
Indirect beneficiaries	The community at large through the awareness-raising activities
Objectives, intended results and key messages	The objectives of the project were: • to create awareness of the community members and Government officials in Bale Zone on the prevalence of the illicit trafficking of children, girls/women and young people in Bale Zone; • to provide a forum for the people of the zone to stand together and demand actions in the fight against illicit trafficking of children, girls, women and young people; • to mobilise support for children, girls, women and young people vulnerable to trafficking.
Outcomes	The project was successful and had the following outcomes. • The community were motivated to mobilise resources and to support those vulnerable to trafficking. • Improved awareness among community members of the risks in irregular migration • Proactive engagement of main actors and Government to address the issues. • More community-based organisations have begun working on this. Existing networks of irregular migration have been negatively impacted as community members became more informed of their methods and the attendant risks.

Source: Department of Foreign Affairs and Trade, Development Cooperation Division.

6.2 AID TO REFUGEE CRISES

Ireland is the ninth largest humanitarian donor in terms of gross national income

[474] Department of Foreign Affairs and Trade: Development Cooperation Division, February 2017.

(GNI) per capita. Ireland provided €194m of humanitarian assistance in 2016, which accounted for 27 per cent of total Official Development Assistance (ODA). During 2016, Ireland continued to respond to the Syrian crisis by providing assistance to those displaced within Syria and to Syrian refugees and vulnerable host communities in neighbouring countries, in particular Jordan, Lebanon and Turkey. From 2012 to 2016, Ireland provided €67.5 million in humanitarian assistance to Syria and the region, in addition to our core support to many of the organisations responding to the crisis. In 2016, Ireland provided €25 million in humanitarian assistance on foot of the Syrian crisis.[475]

Ireland announced €500,000 in funding to UNICEF specifically for the development of water and sanitation facilities in Azraq camp in Jordan in 2015. The UNICEF project worked on expanding and improving the water and sanitation services in Azraq, drilling a borehole and piping this water to tap stands in the camp, creating disabled access to washrooms and providing waste-water treatment.

The initial work of this project was completed in April 2016, with 1,000 residents benefiting from reliable, clean water supplies, and 250 residents with new waste water connections from their shelters. A second phase continued until October 2016, providing water points within 100 m of any shelter in Azraq, treating waste water for reuse in agriculture, and providing access to sanitation facilities for those with restricted mobility.[476]

Throughout 2016, Ireland continued its supports to refugees in crisis situations. Ireland's ongoing assistance to UNICEF, UNHCR, the Red Cross and Red Crescent and various partner NGOs supported responses to the needs of Syrian refugees in Jordan, Lebanon and Turkey, South Sudanese refugees in Ethiopia and Uganda, Burundian refugees in Tanzania, and Central African refugees in Chad and the Democratic Republic of Congo.[477]

In 2016, Ireland provided almost €29 million to support humanitarian need in South Sudan, Sudan, Somalia, Ethiopia and Eritrea. This brought its total humanitarian assistance to the Horn of Africa region to over €100 million over the five-year period from 2012 to 2016. Ireland focused on meeting the immediate and most basic needs of the people: treating acute malnutrition; providing food, clean water and shelter; and access to health care and education.[478]

A central feature of Ireland's overseas humanitarian assistance programme is the

[475] Department of Foreign Affairs and Trade, October 2017.
[476] Department of Foreign Affairs and Trade (2016d).
[477] Department of Foreign Affairs and Trade (2017a).
[478] Department of Foreign Affairs and Trade, October 2017.

Rapid Response Initiative, which includes the Rapid Response Corps. As reported in 2015, the Rapid Response Initiative is an operational tool designed to contribute to Ireland's overarching humanitarian goal of saving and protecting lives in crisis situations by deploying highly skilled personnel into crises and by sending in emergency relief supplies.[479] In 2016, Irish Aid deployed six Rapid Responders to the East Africa Region.[480]

6.3 AFRICA–IRELAND ECONOMIC FORUM

The fifth Africa Ireland Economic Forum was held in Dublin in June 2016. The Forum is organised by the Department of Foreign Affairs and Trade with African ambassadors resident in Ireland, and it is a flagship event of the Department of Foreign Affairs and Trade's Africa Strategy, launched in 2011. The 2016 forum brought together over 300 participants representing business, Government, policy-makers and civil society. The Minister for Jobs, Enterprise and Innovation said:

> *We realise more than ever in 2016 that Africa is Europe's neighbourhood and that the challenges it faces and the opportunities it presents are vital to our wellbeing and prosperity, and will be for decades to come. Since the first Forum was held in 2011, merchandise trade with Africa has grown strongly, from €1.7 billion in 2010 to €2.3 billion in 2015.*
>
> *The Enterprise Ireland strategy for the Africa region envisages a growth in Irish-owned exports to the Africa region from €550 million in 2014 to €1 billion in 2018. Irish companies aren't just exporting, they are also investing. They are contributing to the job creation which is so crucial to meeting the needs of a rapidly growing youth population.*

The 2016 Forum focused on agri-business, energy/cleantech and aviation/aerospace. These sectors were chosen because of their significant potential to contribute to lasting economic development in Africa and because of particular Irish expertise in these areas.[481]

6.4 WORLD HUMANITARIAN SUMMIT 2016

Ireland was represented at the World Humanitarian Summit in Istanbul in May 2016 by President Michael D. Higgins and Minister of State at the Department of Foreign Affairs and Trade Joe McHugh TD. The Summit was called by the United Nations Secretary General Ban Ki-moon to seek solutions to address increasing

[479] Sheridan and Whelan (2016), p. 41.
[480] Department of Foreign Affairs and Trade (2017b).
[481] Department of Foreign Affairs and Trade (2016e).

humanitarian needs globally.[482]

The President supported the core themes in the Secretary General's report *Agenda for Humanity*, and made particular interventions in roundtables on gender equality and humanitarian financing. In his intervention on humanitarian financing, the President emphasised that humanitarian assistance must enable long-term sustainable development and not be just short-term responses. The President announced that

> *Ireland is committed to adapting our development funding to support fragile and crisis affected contexts, reinforcing national leadership and accountability where possible. Starting from this year, Ireland commits to providing at least 30 per cent of its humanitarian funding as non-earmarked. Ireland will also seek to channel more of our support to local and national humanitarian actors, through our support for the UN pooled funds and the vital UN Central Emergency Response Fund.*[483]

The President reflected on his experience at the Summit in his opening address to the Immigrant Council of Ireland conference *A Call to Action and Unity: Forming Ireland's Response to the Refugee and Migration Crisis* in June 2016. He highlighted the discussion that took place at the Summit on the connection between development goals and humanitarian action, in order to foster greater resilience among States to be able to cope with future crises while, at the same time, being careful not to allow development goals to dilute the urgent need to resource humanitarian action.[484]

Ireland prepared for the Summit by conducting a two-year consultation process involving stakeholders involved in humanitarian action in Ireland.[485]

[482] Department of Foreign Affairs and Trade – Irish Aid (2016).
[483] President of Ireland (2016b).
[484] President of Ireland (2016a).
[485] Department of Foreign Affairs and Trade – Irish Aid (2016).

CHAPTER 7

Irregular migration

7.1 LEGISLATION

The *European Communities (Free Movement of Persons) Regulations 2015* came into operation on 1 February 2016.[486] As reported for 2015, these regulations were made for the purpose of giving further effect in Irish law to the Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC). According to the Irish Naturalisation and Immigration Service, one of the more significant changes related to extensive updating of the provisions dealing with abuse of rights (including marriages of convenience) which are complementary to the *Civil Registration (Amendment) Act 2014*. The new provisions in the Regulations allow the Minister to disregard a marriage or certain other relationships for the purposes of a determination under the Regulations where they can be deemed to be a family relationship of convenience.[487]

7.2 UNDOCUMENTED MIGRANTS

7.2.1 Migrant Rights Centre of Ireland (MRCI) research and proposed regularisation scheme for undocumented migrants

The MRCI published new research in May 2016 on undocumented migrants in Ireland. The research, conducted by MRCI and the Justice for the Undocumented Group, was based on a survey of 1,008 migrants. Key findings of the research were:

- 84 per cent have lived in Ireland for over 5 years;
- 21 per cent have lived in Ireland for over 10 years;
- 89 per cent are working;
- 31 per cent have been in the same job for over 5 years;
- 52 per cent are female.[488]

MRCI presented to the Joint Oireachtas Committee on Justice and Equality on 16 November 2016. As reported for 2015, the Joint Committee had made a recommendation to the Minister for Justice and Equality on the introduction of a

[486] *European Communities (Free Movement of Persons) Regulations 2015* (S.I. No. 548 of 2015).
[487] Sheridan and Whelan (2016), p. 96.
[488] Migrant Rights Centre of Ireland (2016a).

one-off time-bound regularisation scheme for undocumented migrants resident in the State for more than four years (or three years with children), and conforming to certain other criteria.

As the Dáil dissolved in February 2016, the matter had not progressed during 2016. At this hearing, an undocumented person presented her experience and that of her children to the Committee. The presenter spoke of the pressures of undocumented status, in particular in relation to educational opportunities and a future for her children in Ireland. MRCI presented its 2016 research *Ireland is Home*, and outlined to the Committee its view that its proposed administrative regularisation scheme would bring economic benefits to the State, enable Ireland to fulfil its obligations under the UN Convention on the Rights of the Child and provide a humanitarian response to the situation, in particular in relation to children. A regularisation scheme would help address integration barriers for all.

As was reported for 2015, the Minister for Justice and Equality indicated in parliamentary questions that she had no plans to implement a general regularisation scheme for undocumented migrants. The reasons for this were cost across the full range of public and social services; implications for the Common Travel Area; and the commitment in the European Pact on Immigration and Asylum on case-by-case regularisations rather than general regularisation schemes. The Minister also noted that it was open to an undocumented person to apply for permission to remain and cases would be carefully considered. The Minister also recalled the scheme for undocumented migrants, prior holders of an employment permit, who had become undocumented through no fault of their own.[489] Such cases would be examined on an individual basis.[490]

In December 2016, the Minister of State at the Department of Justice and Equality spoke to the Joint Committee on Justice and Equality on the issue. He reiterated the Minister's arguments against a general regularisation scheme. He also underlined that individual cases would be considered:

> *It is also important to note that there is a long-standing policy and practice whereby an illegal immigrant comes forward and makes a reasonable cause for regularisation, that case is invariably considered in a fair and humanitarian way, subject to public policy considerations. If Deputies and Senators are aware of such and want to make that fact*

[489] Reactivation Employment Permit, Irish Naturalisation and Immigration Service, October 2017.

[490] Department of Justice and Equality (21 June 2016), Response to Parliamentary Questions 17330/16 and 17332/16, available at www.justice.ie.

known or if there are particular cases, they can be looked at, as happened in the past, on a case-by-case basis.[491]

7.2.2 Private Members Immigration (Reform) (Regularisation of Residency Status) Bill 2016

A private members' Bill was introduced in the Seanad by Senator David Norris in June 2016. The *Immigration (Reform) (Regularisation of Residency Status) Bill 2016* proposed a regularisation scheme for persons in the international protection system still awaiting a decision after four years or more, and for persons in respect of whom a deportation order had been issued but not effected after a period of one year, and with no reasonable prospect of being effected within a further six months. In both cases, the Bill proposed a renewable three-year residence permission.[492] This Bill had previously been introduced in 2014. It was heard at Second Stage in the Seanad on 29 June 2016.

In his address to the Seanad at second stage, the Minister of State at the Department of Justice and Equality outlined concerns about the implications of the Bill for the immigration system. The Minister first made the point that the Bill had originally been proposed in 2014, at a time when approximately 3,700 protection applications were pending. The Minister said that at that time there had been a 'shared acknowledgement' that there was a need for an efficient and resourced single application procedure. Since that time, the Minister pointed that the Working Group on the Protection Process had made its recommendations for improvement to the protection process and the *International Protection Act 2015* had been passed by both Houses.

The Minister highlighted a number of potential risks arising from the proposed legislation. These included that it could be *a potential magnet for false protection claims and irregular migration*; that it could incentivise the evasion of deportation orders; that it made persons seeking international protection comparable to 'irregular migrants' when persons seeking international protection are legally present until their claim is finalised; and the unpredictable and costly impacts of a broad regularisation programme.[493]

An amendment was put to the Seanad to read the Bill again in a further 18 months' time in order to take account of changed circumstances and to ensure that no serious unintended consequences would arise. This included ensuring that there would be no changes that could compromise Ireland's negotiation position regarding the Common Travel Area in the light of the UK's negotiations

[491] Joint Committee on Justice and Equality (2016).
[492] *Immigration (Reform) (Regularisation of Residency Status) Bill 2016*, Explanatory Memorandum, available at www.oireachtas.ie.
[493] Department of Justice and Equality (2016k).

to leave the EU. The delay was also to allow time for the finalisation of the implementation of the recommendations of the McMahon Report and the commencement of the *International Protection Act 2015*. The amendment was carried.[494]

[494] Seanad Éireann (29 June 2016), *Immigration Reform (Regularisation of Residency) Status Bill 2016*, available at oireachtasdebates.oireachtas.ie.

CHAPTER 8

Return

8.1 DEPORTATION ORDERS, TRANSFERS AND REMOVAL FROM THE STATE

There were 428 persons deported from Ireland in 2016. Of these, 367 were failed asylum seekers and 61 were illegally present in the State. In addition, provisional figures show that 4,127 persons were refused entry to Ireland in 2016. Of these, 396 were subsequently admitted to pursue a protection application.[495]

A total of 532 persons were granted leave to remain under section 3 of the *Immigration Act 1999* in 2016; of these, 467 persons were rejected asylum seekers.[496]

During 2016, 428 persons were returned as part of forced return measures, and 187 persons returned voluntarily through the IOM-assisted Voluntary Return Programme (VARRP/IVARRP), of whom 143 were assisted by the International Organization for Migration (IOM).

8.2 LEGISLATIVE DEVELOPMENTS

The *International Protection Act 2015*, which came into operation from 31 December 2016, updates certain legislative provisions in relation to the return of unsuccessful applicants for international protection.

Prior to the commencement of the *International Protection Act 2015*, all forced returns, in respect of both rejected protection applicants and persons illegally present in the State, were made under the *Immigration Act 1999*.

8.2.1 Forced return

Subject to the prohibition on refoulement contained in section 50 of the *International Protection Act 2015*, section 51 of the Act provides that the Minister for Justice and Equality may make a deportation order against an applicant who has been unsuccessful in applications for refugee status, subsidiary protection and permission to remain.

Section 51 of the *International Protection Act 2015* provides that a deportation

[495] Department of Justice and Equality (24 January 2017), Parliamentary Question 2745/17, available at www.justice.ie.
[496] Department of Justice and Equality (23 May 2017), Response to Parliamentary Question 24567/17, available at www.justice.ie.

order made under that section will be deemed to be a deportation order made under the *Immigration Act 1999* and certain relevant provisions in that Act will apply to the deportation order.

The format of the deportation order under the *International Protection Act 2015* is set out in the *International Protection Act 2015 (Deportation) Regulations 2016*.[497]

8.2.2 Voluntary return

Section 48 of the *International Protection Act 2015* provides for the option to return voluntarily to the country of origin. This can apply to applicants who have not yet had their applications or first-instance appeals determined, or to applicants who have been unsuccessful in their application for protection and permission to remain. The Minister sets out the option to both categories in writing. The format of the notices is set out in the *International Protection Act 2015 (Voluntary Return) Regulations 2016*.[498] The notices explain the benefits of voluntary return over a deportation order (i.e. that the person may be eligible to return to the State at a later date if they leave voluntarily and qualify under a legal scheme, but that a deportation order means that the person is permanently excluded from the State).

The notice also explains that assistance in return, including payment of travel and the possibility of a small reintegration grant, may be available from IOM, and that administrative and other supports are available from the Voluntary Return Unit of the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality.

Voluntary return does not apply to persons who are deemed to be a danger to the security of the State or have been convicted of a particularly serious crime. A deportation order will still issue in such cases, even if the person expresses a wish for voluntary return.

8.2.3 Other legislative developments

Certain stand-alone provisions of the *International Protection Act 2015* regarding immigration and deportation were commenced in March 2016 via the *International Protection Act 2015 (Commencement) (No. 2) Order 2016*.[499]

One of these new powers[500] involves an amendment to the *Immigration Act 1999*

[497] S.I. No. 668 of 2016, available at www.irishstatutebook.ie.
[498] S.I. No. 665 of 2016, available at www.irishstatutebook.ie.
[499] S.I. No. 133 of 2016, available at www.irishstatutebook.ie.
[500] Section 78 of the *International Protection Act 2015* amending section 5 of the *Immigration Act 1999*.

to enable a member of the Garda National Immigration Bureau (GNIB) to enter a residential address for the purpose of arresting someone subject to a deportation order and removing them from the State. This legislative amendment was in response to the case *Omar v Governor of Cloverhill Prison*[501] which had ruled that there was no power of entry to a private dwelling to enforce a deportation order.

Section 5(2) of the *Immigration Act 1999* (as inserted by section 78 of the *International Protection Act 2015*) provides that a person who is serving a term of imprisonment, and is also subject to a deportation or removal order, may be arrested and detained immediately on completion of the term of imprisonment, pending removal. The *Immigration Act 1999 (Deportation) (Amendment) Regulations 2016*[502] amend the *Immigration Act 1999 (Deportation Order) Regulations 2005* to take these changes into account.

The amendments to section 5 of the *Immigration Act 1999* brought in via section 78 of the *International Protection Act 2015* also include an amendment to allow for detention for a period of up to 12 hours in a port from where the person is to be returned or a vehicle bringing a person to a port for the purpose of being returned. This amendment was commenced from March 2016 via the *International Protection Act 2015 (Commencement) (No. 2) Order 2016*.[503] A similar amendment is made to section 5 of the *Immigration Act 2003* (see Chapter 5, Section 5.8.2).

The Minister for Justice and Equality reported in a parliamentary question response in July 2016 that plans were being progressed for the provision of a dedicated immigration facility at Dublin Airport. According to the Minister, the redevelopment was to be completed

> *as soon as possible within the next 12 months and would replace the existing Garda station at the airport, provide office accommodation for Gardaí and civilians as well as providing a modern detention facility.*[504]

As reported for 2015, section 24 of the *Prison Act 2015* provides that where a person is serving a sentence of imprisonment, and is also subject to a deportation or removal order, the Minister for Justice may direct that the person can be taken from the prison in order to facilitate the person's deportation or removal from the State, before the term of imprisonment is completed (provided that there is not more than one year of the term of imprisonment remaining to be served).[505]

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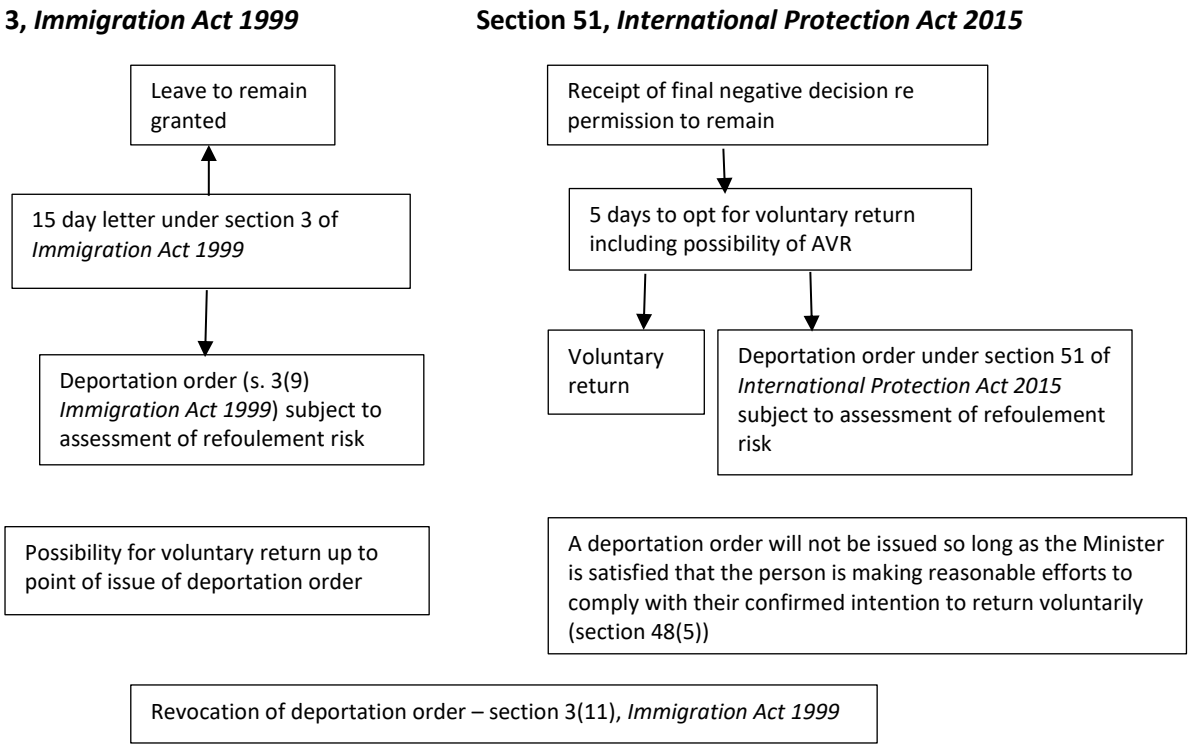
501 *Omar v Governor of Cloverhill Prison* [2013] IEHC 579.
502 S.I. No. 134 of 2016, available at www.irishstatutebook.ie.
503 S.I. No. 133 of 2016, available at www.irishstatutebook.ie.
504 Response to Parliamentary Question 20169/16 of 7 July 2016, available at www.justice.ie.
505 Sheridan and Whelan (2016), p. 102.

The *Prisons Act 2015 (Section 24) Regulations 2016*[506] were signed by the Minister for Justice and Equality in February 2016 and set out the form of the notice to be provided to the person whom the Minister is proposing to deport.

Section 3 of the *Immigration Act 1999* (as amended) continues to apply to the return of other persons illegally present in the State.[507] Persons illegally present, who are notified of the intention to deport, can continue to apply for leave to remain under the *Immigration Act 1999*. Deportation orders for persons illegally present continue to be made under section 3(9) of the *Immigration Act 1999* and to issue in the format set out by the *Immigration Act 1999 (Deportation) Regulations 2005*.[508]

Figure 8.1 sets out the return procedure under the *Immigration Act 1999* and the *International Protection Act 2015*.

FIGURE 8.1 RETURN PROCEDURES UNDER *IMMIGRATION ACT 1999* AND *INTERNATIONAL PROTECTION ACT 2015*



8.3 ASSISTED RETURN

A total of 187 persons chose to return home voluntarily in 2016. Of that number,

[506] S.I. No. 52 of 2016, available at www.irishstatutebook.ie.
[507] Department of Justice and Equality: Irish Naturalisation and Immigration Service, February 2017.
[508] S.I. No. 55 of 2005, available at www.irishstatutebook.ie.

143 applicants were returned through IOM Assisted Voluntary Return.[509]

The INIS, in conjunction with the IOM, offers voluntary assisted return and reintegration programmes for asylum seekers, rejected asylum seekers and other illegally present migrants.

Asylum seekers or asylum seekers who have failed in their claim and who have not had a deportation order made against them are returned under the Voluntary Assisted Return and Reintegration Programme (VARRP). Other illegally present migrants are returned under the Voluntary Assisted Return and Reintegration Programme for Vulnerable Irregular Migrants (IVARRP), which is co-funded by the EU on a 75/25 basis.

Under these programmes, the flights home for such persons are paid and, where required, the IOM will assist in securing travel documents and give assistance at the airport at departure and arrival. Persons availing of these programmes can apply for reintegration assistance to allow them to start up a business or enter further education or training when they are back in their country of origin. This takes the form of an 'in-kind' rather than a cash payment.

In addition to the two IOM programmes referred to above, the Department of Justice and Equality assists people who are illegally present in the State and wish to return home voluntarily by covering the cost of the flight, if necessary, and assisting in securing travel documents.[510]

The main target group of the combined VARRP/IVARRP is non-EEA nationals who are currently seeking asylum, or who have been refused asylum, with an additional target group of needy irregular migrants who meet specific vulnerability criteria. In addition, IOM provides assistance to both EU and third-country nationals who are victims of trafficking.[511]

The top countries for which IOM Ireland provided assisted return in 2016 were Bangladesh, Botswana, Brazil, India, Malawi, Mauritius, Pakistan, Romania and South Africa.[512]

509 European Migration Network (2017), Table 13.
510 Department of Justice and Equality: Irish Naturalisation and Immigration Service, July 2017.
511 Sheridan and Whelan (2016), p. 103.
512 IOM Ireland, October 2017.

8.4 CASE LAW

Charles v Minister for Justice and Equality [2016] IESC 48

The applicants were a family of Malawian nationals comprising the father, mother and two minor children. They had applied for refugee status and subsidiary protection and each of these applications was unsuccessful. They then brought judicial review proceedings seeking to challenge the refusal of subsidiary protection. On 19 April 2012 the High Court (Cooke J) refused the application for leave, and the applicants then sought to appeal that decision. They then went 'off the radar' of the immigration authorities until 2015. They sought an undertaking from the Minister not to deport them pending their appeal which had been, by that stage, transferred to the Court of Appeal. No such undertaking was forthcoming so an application for an injunction was then brought before the Court of Appeal. On 27 July 2015 the Court of Appeal ([2015] IECA 167) granted the injunction sought, applying the principles set out by the Supreme Court in respect of injunctions in *Okunade v Minister for Justice and Equality* [2012] IESC 49; [2012] 3 IR 152; [2013] 1 ILRM 1. The test set out by the Supreme Court in *Okunade* on whether to grant an injunction was as follows:

(a) the court should first determine whether the applicant has established an arguable case; if not the application must be refused, but if so then

(b) the court should consider where the greatest risk of injustice would lie. But in doing so the court should

(i) give all appropriate weight to the orderly implementation of measures which are *prima facie* valid;

(ii) give such weight as may be appropriate (if any) to any public interest in the orderly operation of the particular scheme in which the measure under challenge was made; and

(iii) give appropriate weight (if any) to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending resolution of the proceedings;

but also

(iv) give all due weight to the consequences for the applicant of being required to comply with the measure under challenge in circumstances where that measure may be found to be unlawful.

(c) in addition the court should, in those limited cases where it may be relevant, have regard to whether damages are available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and,

(d) in addition, and subject to the issues arising on the judicial review not involving detailed investigation of fact or complex questions of law, the court can place all due weight on the strength or weakness of the applicant's case.

The State applied to the Supreme Court for leave to appeal that decision of the Court of Appeal. On 20 January 2016 ([2016] IESCDET 8) the Supreme Court granted leave to appeal on the following grounds:

> *1. That the Court of Appeal erred in identifying the test in* Okunade *as being applicable to a post-leave decision upholding the decision determining that the respondents were not eligible for subsidiary protection and upholding the validity of the deportation orders.*
>
> *2. That the Court of Appeal erred in identifying the appropriate test to be applied.*

It was argued that *Okunade* was concerned with the criteria that should be applied in deciding whether an injunction restraining deportation should be granted at a time when the applicants had brought a case before the High Court but where that case had not been determined. In the *Charles* case the applicants had failed in their application before the High Court, had appealed to the Court of Appeal and had brought an application before the Court of Appeal seeking an injunction restraining their deportation pending the hearing of their appeal to that court. In substance, the State invited the Supreme Court to review *Okunade* insofar as it applied to a case where the applicant had failed in their challenge before the High Court but sought to appeal that decision and wanted to restrain deportation pending the determination of the appeal.

The Supreme Court rejected the State's argument that a different test should apply to the grant of an injunction restraining deportation pending appeal. Clarke J stated at para. 5.8 that

> *there is no general rule which applies a different standard in the case of the grant or refusal of a stay or injunction pending appeal to that which applies pre-trial. The principle is the same. The test is the same.*

It was accepted that there may be some cases where the fact that there has been a trial with findings of fact and/or law that may impact on how the *Okunade* test is to apply pending appeal. For example, in cases where there has been a trial, the process of trial may lead to a significant narrowing and refinement of the kind of issues that remain open on an appeal such that it may well be possible for a court to place much greater weight on the strength or weakness of the potential appeal compared to the situation that would have applied were the court attempting to assess the strength or weakness of the underlying case pre-trial. But the Supreme Court emphasised that such issues are case-specific, and that this does not mean that a different rule is applicable at those respective stages. In this case, the Court of Appeal had correctly identified that the *Okunade* test was to be applied. The

Supreme Court was satisfied that this was correct, and that no different or refined test was required to be applied in the circumstances of this case simply because the Court of Appeal was considering an injunction pending appeal as opposed to an injunction pending trial. Accordingly, the State's appeal was dismissed.

Principles: The decision in Charles v Minister for Justice *clarifies that the test for whether a court should grant an injunction restraining deportation is the same regardless of whether the applicants are awaiting a hearing on their case in the High Court, or whether they have failed in the High Court and are seeking an injunction pending appeal.*

AB v Minister for Justice and Equality [2016] IECA 48

The applicant was a Pakistani national. Her daughter and son-in-law lived lawfully in Cork with their two Irish citizen daughters who were born, respectively, in 2010 and 2011. She came to Ireland on a visitor visa lasting for 90 days from the date of issue in April 2011 and was here for the birth of her daughter's second child. Further permissions were granted enabling her to remain lawfully in the State up to 31 October 2012. During the currency of the first visa period, she went back to Pakistan but she returned to the State on 17 November 2011 and remained in the State thereafter.

After her arrival in November 2011, the applicant applied for a number of extensions of her permission to be in the State, which were granted by the Minister until October 2012. Following another application by the applicant's solicitors in February 2013, the Minister responded in a formal memorandum dated 20 March 2013. In this memorandum, the Minister set out the history of the applicant's immigration status in the State and the submissions that were made on her behalf. The Minister refused the application to renew and instructed the applicant to make arrangements to leave the State since her visitor's permissions had expired in October 2012. The letter stated that the applicant should provide the Minister with evidence of her departure which should be done by April 2013, and that if that was not done, it was the intention of the Minister to issue a notification under s.3(4) of the *Immigration Act 1999*, i.e. a proposal to deport. The applicant did not leave the State, and in April 2013 the Minister issued a proposal to deport under s.3 of the 1999 Act on the basis that the applicant's permission had expired in October 2012, that she had remained in the State since that date without permission and that she was consequently unlawfully present in the State. The letter outlined the three options open to the applicant under s.3(4), namely that she could make representations in writing to the Minister within 15 days; that she could leave the State before the Minister decided the matter; or that she could consent to the making of the deportation order. The applicant did not opt for any of the choices offered to her, but instead instituted judicial review proceedings seeking reliefs including an order quashing the Minister's proposal to make a deportation order and a declaration that the

Minister was obliged to put in place a procedure whereby the applicant could make representations that she is entitled to reside in the State on the basis of her rights under the Constitution and the European Convention on Human Rights without risking being permanently excluded from the State should those representations be unsuccessful.

The High Court (Barr J) rejected the applicant's claims in a judgment delivered on 1 October 2014 ([2014] IEHC 508). Barr J accepted that the applicant had a constitutional right to make representations to the Minister against the proposed deportation and to have her circumstances considered against the background of Article 41 of the Constitution and Article 8 of the Convention. However, it was held that such rights were provided by s.3 of the 1999 Act. It was held that the fact that the Minister would proceed in the case of rejection to make a deportation order was not an impediment to the applicant's right to make representations, notwithstanding that it might operate as a deterrent to her or to other potential applicants. The High Court therefore held that s.3 of the 1999 Act was not unconstitutional or unlawful. The applicant appealed to the Court of Appeal.

The Court of Appeal dismissed the appeal and rejected the applicant's argument that she should be able to make a free-standing application to the Minister without fear that in case of rejection there would be an immediate deportation order. Ryan P gave the judgment of the court, noting that the question raised in the proceedings was not whether the applicant had or did not have constitutional or ECHR rights or an entitlement to put forward a humanitarian case against deportation. Rather, the only question was one of procedure. Ryan P held that the applicant did not have a right to insist on a particular procedure or to impose on the Minister an obligation to consider her application and circumstances in advance of the same considerations being brought into play when the Minister has to address them in the context of deportation consideration. Ryan P noted that a person is in the State either with permission or without permission, and where a person is in the State without permission the Minister may issue a proposal to deport, and as part of that process the Minister will consider any legal, constitutional, ECHR or humanitarian grounds raised. Such consideration, however, takes place in the context of a proposed deportation order and not otherwise. The Court of Appeal was satisfied that if the applicant was correct that there was a freestanding application before the deportation process was commenced,

> *such proposed rulings in advance of any deportation consideration would create another layer of administration, not only for the Minister in preparing a mode of dealing with these claims and with all the necessary additional resources that would be deployed in dealing with those applications, but also for the courts which would have to cope with an influx of claims that arose upstream from the deportation order.*

Ryan P was satisfied that this would be contrary to the scheme of the legislative apparatus to deal with immigration and asylum claims, which consists of a body of legislation and a large number of cases decided by the Supreme Court and the High Court dealing with various aspects of the administration of this system. The Court of Appeal held that there was no justification for adding a new stage in the process.

It was also noted that the presumption of constitutionality applies to s.3 of the 1999 Act so the onus of proof was on the applicant to establish disproportion and not on the State to establish that its regime is reasonable. The applicants were held not to have done so. It was not tenable to propose that there was an inhibition on making a case because of the consequence of a deportation order in the event of refusal. It was not that the person was inhibited from putting forward a case. If the person had rights, the Minister would be obliged to respect them. If the applicant was disappointed, he or she could seek judicial review of the Minister's decision. The Court of Appeal was satisfied that there was nothing in the scheme of deportation under s.3 of the 1999 Act to inhibit any claim being put forward by the applicant or any other applicant. Accordingly, the Court of Appeal dismissed the appeal. The applicant sought a further appeal to the Supreme Court, but this request was refused by the Supreme Court ([2016] IESCDET 65).

Principles: The decision of the Court of Appeal in AB v Minister for Justice *confirms that a person who is unlawfully in the State has no right to make a freestanding application for permission to be in the State outside of section 3 of the* Immigration Act 1999.

STE v Minister for Justice and Equality [2016] IEHC 379

In *STE v Minister for Justice and Equality* the High Court considered whether the Minister for Justice, when considering whether to deport a group of family members, is entitled to make a deportation order against one family member while granting leave to remain to others, resulting in the separation of the family.

The first named applicant arrived in the State from Cameroon in October 2003. He applied for asylum, which was refused by the Minister in July 2005. A deportation order was made in July 2006, and subsidiary protection was also refused at that time. The deportation order was notified to the first named applicant in September 2006. The second named applicant arrived in the State from Morocco in September 2007. In 2008, she was refused asylum and in 2011 she was refused subsidiary protection. The first and second named applicants formed an intimate relationship in 2012 and their son, the third named applicant, was born in March 2013. The second named applicant was granted leave to remain in August 2013. The first named applicant subsequently applied for revocation of the deportation order in July 2014 on the basis that his partner and child had permission to reside in the State. The Minister refused that application

in February 2015 and the applicants subsequently brought judicial review proceedings challenging that decision.

Humphreys J held that the Minister's refusal to revoke the deportation order should be quashed by reason of the failure to consider the applicants as a collective family unit when considering whether to revoke the deportation order in respect of the first named applicant. Although the parents are not a 'family' in the limited sense in which that term was originally understood at the time of enactment of the Constitution in 1937, Humphreys J was satisfied that they were a family in the sense in which that term is used in modern Irish society, and that they had family rights under Art. 8 of the European Convention on Human Rights. Humphreys J noted that in the present case, the Minister made a decision giving the mother permission to remain, as if that were a unilateral and stand-alone matter, while requiring the father to be expelled from the State. Humphreys J was satisfied that in so doing, the Minister had failed to rationally treat the family unit collectively. Even if could be said that their rights under Art. 8 of the ECHR (or Article 40.3 of the Constitution) were not extensive, they did have the right to have significant weight to be attached to the desirability of keeping the family together. Humphreys J held that on the facts of this case, the Minister had failed in that duty. A decision was made on permission for the mother in isolation from a decision on the father's situation. The court held that unless there was a significant reason to the contrary, the Minister was required to take a holistic view of the position of a family unit, and to decide on the fate of its members in a coherent and collective manner. It was accepted that a compelling reason might be presented as to why one of two equally unlawful parties to a relationship should be allowed to stay and the other be required to leave, but in the present case no such reason had been put forward. Humphreys J stated that

> *to select between two equally precarious parties to a relationship and decide that one can stay and the other must leave, without compelling justification, is to actively break up the family by State action.*

Humphreys J distinguished this from a situation involving the deportation of the spouse or partner of a person with a right to remain independently of the Minister's decision (such as an Irish or EU citizen) on the basis that it was the nature of the situation and the illegality of the other party's presence rather than any ministerial decision as such that gave rise to a parting of the ways.

Accordingly, Humphreys J. quashed the Minister's refusal of the application to revoke the deportation order in respect of the first applicant and directed the Minister to reconsider the application. In *STE v Minister for Justice and Equality (No.2)* [2016] IEHC 544, Humphreys J granted the Minister a certificate of leave to appeal to the Court of Appeal; that appeal remains pending.

Principles: The decision of the High Court in STE (No.1) *establishes that the Minister must consider the collective rights of a family when deciding whether to*

deport one of the members of the family, when all members of the family have an equally precarious immigration status, unless there are compelling reasons to the contrary. It is unlawful to select between two equally precarious parties to a relationship and decide that one can stay and the other must leave, without compelling justification, in circumstances where this would actively break up the family by State action.

IRM v Minister for Justice and Equality (No.2) [2016] IEHC 478

In *IRM (No.2)* the High Court considered the obligation on the Minister to consider the rights of an unborn child when deciding whether to revoke a deportation order in respect of the father of the child. The applicant was a Nigerian citizen who was refused asylum; a deportation order was subsequently issued but he remained unlawfully in the State. He subsequently formed a relationship with an Irish citizen who became pregnant in late 2014. In May 2015 they applied to the Minister to revoke the deportation order in order to allow the applicant to remain in the State for the birth of his child. The applicants subsequently instituted judicial review proceedings seeking *inter alia* an injunction to restrain the deportation of the applicant. The key issue that arose in the proceedings was whether, when the Minister was considering a revocation application prior to the birth of a child, the consideration was limited to the right to life of the unborn child or whether there was also an obligation to consider the substantive prospective family rights as between all of the applicants that would arise on the birth of the child.

Humphreys J commenced by summarising the matters that the Minister must consider in the context of a section 3(11) application, namely:

(i) any representations by the applicant; and

(ii) any change of circumstances since the original decision which engages a legal provision which would have the effect of rendering the deportation unlawful by reason of an actual or prospective breach of rights. Such unlawfulness could arise under one of the following headings:

(a) a change in the legal status of the person so as to deprive the Minister of jurisdiction to effect deportation (for example, the acquisition of EU citizenship or other EU rights);

(b) an actual or prospective threat to the life of freedom of the person, either on Convention grounds under s.5 of the *Refugee Act 1996* or in a manner that would infringe Art. 2 or 5 of the ECHR;

(c) an actual or prospective risk of torture or inhuman or degrading treatment under s.4 of the *Criminal Justice (United Nations Convention Against Torture) Act 2000* and Arts 2 and 3 of the ECHR;

(d) any other actual or prospective breach of the rights (whether legal, constitutional, EU or ECHR) of the applicant or another person that would arise if the deportation was effected.

Humphreys J noted that there was no reason in logic, consistency or principle as to why an analysis of any other threat to the rights of an applicant should not also be forward-looking. In particular, it was held that there was no reason to hold that forward-looking threats to the prospective position of the applicant such as those of persecution, torture or inhuman or degrading treatment must be considered but this doctrine does not apply to the prospective position of the unborn, and the unborn alone.

The court clarified that there is no constitutional right to have one's partner present in the State for a birth if the partner has no legal entitlement to be present in the State at all, and while it was accepted that deportation of a partner in the final days of pregnancy might raise humanitarian considerations, that was a matter for the Minister and not the court. However, the court held that the Minister had erred in law in the consideration of the revocation application that the only right arising in respect of the unborn child was the right to be born. Humphreys J considered a number of different contexts in respect of which an unborn child has rights beyond the right to be born, such as succession, property, and health and welfare, before concluding that 'organs of the State must take rights seriously and address the reality and substance of the human situation of both citizens and other persons within the State'. Humphreys J held that for the Minister to decline to consider the wider rights of the unborn child was to deliberately shut her eyes to reality and to future situations which were likely to exist and therefore should properly be considered as a matter of rationality. Accordingly, Humphreys J held that when the Minister is presented with an application based on the prospective parentage of an Irish child who is unborn at the date of the making of the application, the Minister must address the application on the basis that appropriate consideration should be given to the rights which that child will probably enjoy into the future in the event of being born, insofar as such prospective rights are relevant to the deportation issue. This decision is under appeal.

Principles: The decision in IRM *establishes that the prospective legal rights and (where raised in submissions) interests that a child will acquire on birth are matters that the Minister must consider when an application is made under s.3(11) by reference to an unborn child.*

ABM v Minister for Justice and Equality [2016] IEHC 489

The applicants were a married couple; the husband was a failed asylum seeker in respect of whom a deportation order was made in June 2008. The wife became an Irish citizen, and in January 2014 they applied for revocation of the deportation order. That application was refused in July 2015 and the husband

was deported in September 2015. The applicants brought judicial review proceedings challenging the refusal to revoke the deportation order on the basis of a failure to have regard to the rights of the applicants as a marital family pursuant to Article 41 of the Constitution, relying on the decision of the High Court in *Gorry v Minister for Justice* [2014] IEHC 29. In *Gorry*, Mac Eochaidh J held that 'The starting point in any consideration where a mixed Irish and non-Irish nationality couple seeks to live in Ireland is that they have a *prima facie* right to do so by virtue of Article 41 of the Constitution.' The applicants argued that the Minister's proportionality analysis in the revocation decision failed to begin from a recognition of that *prima facie* right and, accordingly, the analysis was flawed.

Humphreys J disagreed with the key finding in *Gorry* that there was any such *prima facie* right of a marital family to live in Ireland. Humphreys J stated that it was unquestionable that the State has an entitlement to give effect to the immigration control system; while in particular circumstances, applicants may have rights under Article 41 of the Constitution or Article 8 of the ECHR to which the Minister should have regard, it was for the Minister in the first instance to put those rights into the balance against the State's legitimate entitlement to enforce the immigration control system in a reasonable and proportionate manner. It was held that the court should only intervene if the Minister's assessment was clearly unlawful. On the facts of this case, Humphreys J was satisfied that the Minister had balanced the interests involved and that her decision was not unlawful or disproportionate. Accordingly, Humphreys J dismissed the application. This decision is under appeal.

Principles: The decision in ABM v Minister for Justice *creates uncertainty as to whether an Irish citizen has a* prima facie *right to reside in the State with his or her non-Irish citizen spouse. The decisions in* ABM *and* Gorry *are under appeal and the Court of Appeal heard these appeals on 2 May 2017.*

KRA v Minister for Justice [2016] IEHC 289

In *KRA v Minister for Justice* the applicants were a family of Nigerian citizens in respect of whom deportation orders were made by the Minister. They subsequently sought revocation of the deportation orders on the basis that the deportation of their child to Nigeria would violate the child's right to education having regard to the inadequate educational system in Nigeria. The Minister refused to revoke the deportation orders and the applicants subsequently instituted judicial review proceedings seeking to quash that refusal.

Humphreys J dismissed the proceedings. It was held that while the right to education including to free primary education is a natural and imprescriptible right of the child to be enjoyed without discrimination on grounds such as nationality, legal status or marital status of parents by any child within the jurisdiction, this right only applies while the child is present in the State and does not confer any right not to be removed, even to a country with an inferior social

or educational system. Furthermore, Humphreys J held that the right of a non-national child to be or remain in the State was not a natural and imprescriptible right and therefore did not fall within the scope of Article 42A.1 of the Constitution. Insofar as it related to social or educational rights (leaving aside family rights), Humphreys J held that Article 42A did not represent an obstacle to deportation of a child and did not require express consideration by the Minister for Justice and Equality. In any event, Humphreys J held that it was rationally open to the Minister to conclude that Nigeria has a functioning educational system. It was also held that there is no obligation on the Minister to consider the deportation of a child (or revocation of a deportation order) separately from that of a parent, disagreeing with the decision of Eagar J in *COO v Minister for Justice and Equality* [2015] IEHC 139. The decision in *KRA* is under appeal.

Principles: The decision in KRA v Minister for Justice and Equality *establishes that the Minister is not prohibited from deporting a non-citizen child to a country with an inadequate education system.*

AW v Minister for Justice (No.2) [2016] IEHC 111

In *AW v Minister for Justice (No.2)* the applicant was a failed asylum seeker from Democratic Republic of Congo (DRC) who challenged the Minister's refusal to revoke a deportation order against her. The applicant claimed that she would be at risk of torture and inhuman and degrading treatment if she was deported to DRC and that her deportation was therefore in breach of the principle of non-refoulement. The applicant relied on country-of-origin information which supported the proposition that many or even all DRC returnees who are failed asylum seekers are detained for a short period on arrival.

The High Court noted that a deportation decision must comply with section 5 of the *Refugee Act 1996*, which prohibits refoulement. Humphreys J commented in relation to refoulement that what Article 33 of the Refugee Convention, Article 3 of the Convention Against Torture and Article 3 of the European Convention on Human Rights have in common is the setting, expressly or by implication, of a threshold for the severity of treatment likely to be visited upon the person returned. Putting section 5 of the 1996 Act in the context of these international instruments, Humphreys J held that it was not the intention of the Oireachtas to provide that any detention, however short, likely to be visited upon a deportee would constitute a bar to return pursuant to the section. Humphreys J noted that there was strong support in the country-of-origin information for the proposition that only certain categories of deportees to the DRC would be likely to have been subjected to treatment of the appropriate severity; for example, dissidents or convicted criminals. It was held that it was open to the Minister to hold that refoulement did not arise if this applicant did not personally come within those categories, and that even if a routine practice of relatively short detention of most or all deportees was in place, this practice did not reach the appropriate threshold of severity in order to engage s.5. Humphreys J refused to grant a

certificate of leave to appeal in *AW v Minister for Justice and Law Reform (No.3)* [2016] IEHC 422.

Principles: The decision in AW v Minister for Justice (No.2) *clarifies the threshold to be applied by the Minister in assessing whether deportation of a person would be in breach of the principle of non-refoulement by specifying a minimum level of gravity required for the alleged breach.*

CHAPTER 9

Countering trafficking in human beings

9.1 STATISTICS

Table 9.1 gives a breakdown of trafficking data for 2016. In total, 95 alleged[513] trafficking victims were identified during 2016, compared to 78 in 2016.

TABLE 9.1 TRAFFICKING DATA IRELAND 2016

Gender	50 were female and 45 were male
Nationalities	39 were from Romania; 19 were Irish children; 10 were from Nigeria and the remainder were from Eastern Europe, Africa, South Asia and South America. 70 per cent of victims were EU nationals.
Type of exploitation	52 were exploited in sex trafficking, 38 in labour trafficking, one in both sex and labour trafficking and four in forced criminality in the selling of heroin.

Source: Trafficking in Persons Report, 2017.[514]

Twenty-eight of the victims were third-country nationals (TCNs). Of the 28 TCN alleged victims, those from Nigeria, Brazil and Pakistan/Zimbabwe were the largest discernible groups.[515]

Two reflection periods to TCN victims were granted under national provisions and 63 residence permits were issued.[516]

A total of 35 traffickers were arrested or otherwise involved in a trafficking-related criminal proceeding during 2016 and seven were convicted of human trafficking related crimes.[517] All of these cases relate to charges under section 3 of the *Criminal Law (Human Trafficking) Act 2008*.[518]

In 2016, prosecutions were initiated against three individuals under section 4 of the *Criminal Law (Human Trafficking) Act 2008*. Significantly, these were the first

513 'Alleged victims' refers to both potential and suspected victims of human trafficking. Department of Justice and Equality, Anti-Human Trafficking Unit, September 2016.
514 US State Department (2017).
515 Department of Justice and Equality, Anti-Human Trafficking Unit, May 2017. See European Migration Network (2017), Table 14.
516 Department of Justice and Equality, Anti-Human Trafficking Unit, May 2017. Figures refer to the number of permits issued in 2016 under the Administrative Immigration Arrangements. Along with long term '2 year' permissions, these figures also include '6 month' temporary permission to remain, therefore a victim may be issued more than one permission in the reference year. Hence these figures refer to 'permits issued' rather than 'persons issued with permits'. See European Migration Network (2017), Table 15.
517 Department of Justice and Equality, Anti-Human Trafficking Unit, May 2017. See European Migration Network (2017), Table 16.
518 Department of Justice and Equality, Anti-Human Trafficking Unit, October 2017.

charges in connection with trafficking offences involving adult victims under the 2008 Act. In another significant case, one individual was prosecuted under the *Criminal Law (Human Trafficking) Act 2008* as amended by the *Criminal Law (Human Trafficking) (Amendment) Act 2013*, the first forced-labour case to proceed to prosecution under this legislation.[519]

A total of 90 trafficking-related investigations were initiated in 2016, compared to 91 cases in 2015. Of the 90 cases, 61 involved sexual exploitation, 17 were labour exploitation, four were forced criminality, two were for both sexual and labour exploitation and six were uncategorised.[520]

9.2 *TRAFFICKING IN PERSONS REPORT*

According to the *US State Department 2017 Trafficking in Persons (TIP) Report*, Ireland remains a Tier 1 country which fully meets the minimum standards for the elimination of trafficking. The 2017 report reviews developments in 2016. The report noted that Ireland is a destination and source country for women, men and children subjected to sex trafficking, forced labour and forced criminal activity. The authorities had reported an increase in suspected victims from Nigeria, Romania, Brazil and Pakistan. Forced labour was reported by the authorities as a growing problem – victims have been identified in domestic work, the restaurant industry, waste management, fishing, seasonal agriculture and car-washing services. Regarding forced criminal activity, the report noted that Vietnamese and Chinese men who had been prosecuted and sentenced for cannabis cultivation reported indicators of forced labour.

The TIP Report awarded the continued Tier 1 rating because the Government continued to demonstrate serious and sustained efforts by implementing its second national action plan, significantly increasing its prosecutions, including prosecuting the country's first case of forced labour under the trafficking law and increasing funding for victim services. The report criticised Ireland, however, in relation to certain deficiencies in victim identification, the type of accommodation provided to victims and avenues for victims to obtain compensation. The report noted the critiques of NGOs in relation to these aspects. The report also stated that Ireland had not obtained a trafficking conviction since 2013.

As in previous reports, the 2017 TIP Report noted that Irish legislation[521] includes the sexual exploitation of children within the definition of sexual exploitation and *conflates possession of or creation of child pornography with human trafficking.*

519 Ibid.
520 US State Department (2017).
521 *Criminal Law (Human Trafficking) Act 2008*.

The reports consider that this makes the Irish legislation inconsistent with the 2000 UN TIP Protocol. In this regard, the report stated that Ireland had not reported a trafficking conviction in relation to sex trafficking or forced labour under anti-trafficking law since 2013.

The report noted the concerns of NGOs about the national victim identification systems and the national referral mechanism, including that only non-EU national victims are officially recognised as suspected trafficking victims and that the system does not capture trafficking victims who are asylum seekers. The report noted that the Government had continued to review the current system to identify areas for improvement and planned to examine a new model for victim identification and issue a revised national referral mechanism in 2017.[522]

9.3 GRETA – SECOND EVALUATION ROUND OF IRELAND

The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) conducted an evaluation visit to Ireland in December 2016. The purpose of the visit was to assess developments for GRETA's second evaluation of Ireland's implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings.* The Government response to GRETA's list of questions in relation to the second evaluation round was submitted in July 2016.[523]

The delegation met a wide range of stakeholders from Government and civil society during the visit. These included the Department of Justice and Equality Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality, the Human Trafficking Investigation and Coordination Unit of An Garda Síochána (national police force), the Health Service Executive (HSE), the Reception and Integration Agency (RIA), the Legal Aid Board, Tusla, the Office of the Director of Public Prosecutions, the Workplace Relations Commission (WRC), the Department of Foreign Affairs and Trade, the Irish Human Rights and Equality Commission (IHREC), local offices of the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and representatives of NGOs, trade unions, researchers and lawyers.

As part of the visit, the delegation visited a Tusla-run residential unit for unaccompanied minors and two accommodation centres for asylum seekers, Mosney and Hatch Hall, which also provide accommodation for victims of human trafficking.[524]

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522 US State Department (2017).
523 Council of Europe (2016a).
524 Council of Europe (2016b).

IHREC, as well as other civil society organisations,[525] made a submission to GRETA in advance of the second evaluation. The IHREC submission, submitted to the committee in September 2016, made recommendations in relation to improvements to the State's response to combating human trafficking and providing support to victims. Some of the recommendations were: to place assistance and protection of victims of trafficking on a statutory basis; to develop a tailored mechanism for identification of child victims of trafficking; that a clear timeline be put on the review of the formal identification process signalled in the draft *Second National Action Plan to Prevent and Combat Trafficking in Human Beings*;[526] and that appropriate single-gender accommodation facilities be provided for victims of trafficking as accommodation in the direct provision system is not appropriate.[527]

The GRETA Second Evaluation Round report was published in September 2017.[528]

9.4 LEGISLATION

As reported for 2015, the *Criminal Law (Sexual Offences) Bill 2015*[529] was published in September 2015. Early enactment of the Bill was a priority for the Government. The Department of Justice and Equality has said that the Bill

> *is the most comprehensive and wide ranging piece of sexual offences legislation to be introduced in almost a decade. It strengthens existing law to combat child pornography, the sexual grooming of children, incest, exposure and other offensive conduct of a sexual nature. Under the Bill it will be an offence for a person to pay to engage in sexual activity with a prostitute or a trafficked person, regardless of nationality. The person providing the sexual service – the prostitute – will not be subject to an offence. The purpose of introducing these provisions is primarily to target the trafficking and sexual exploitation of persons through prostitution.*[530]

The Bill, which had cross-party support in the Oireachtas, cleared all stages in the Seanad and second stage in the Dáil during 2016, and was signed into law on 22 February 2017.[531] A coalition of NGOs, the Turn Off the Red Light campaign, supported the draft Bill throughout its passage into law, welcoming its passage through second stage in the Dáil in November 2016, and urging its speedy

525 Immigrant Council of Ireland, October 2017.
526 The Second National Action Plan had not been published at the time of this submission.
527 Irish Human Rights and Equality Commission (2016).
528 Council of Europe (2017b).
529 http://www.justice.ie/en/JELR/Pages/Criminal_Law_(Sexual_Offences)_Bill_2015.
530 Department of Justice and Equality: Anti-Human Trafficking Unit, February 2017.
531 *Criminal Law (Sexual Offences) Act 2017* (No. 2 of 2017). The Act was partially commenced on 27 March 2017 via the *Criminal Law (Sexual Offences) Act 2017 (Commencement) Order 2017* (S.I. No. 112 of 2017).

enactment. The Turn Off the Red Light campaign supported the Bill's approach of criminalising the purchase of sex, along the lines of the approach taken in Sweden, France, Northern Ireland and Canada.[532]

The Sex Workers Alliance Ireland (SWAI) expressed concerns about the Bill, and argued that criminalising the purchase of sex would marginalise sex workers and force them into unsafe situations. In October 2016, SWAI released a legal opinion on Part 4 of the Bill, which argued that the provisions would expose sex workers to unsafe working conditions. [533] SWAI welcomed other measures of the Bill, such as those on child protection, consent and the rights of people with disabilities.[534]

In January 2016, the Minister for Justice and Equality launched the *Second National Strategy on Domestic, Sexual and Gender-Based Violence*. Contained in the Strategy was a commitment to introduce a specific offence of forced marriage into Irish legislation. The AHTU drafted measures to criminalise forced marriage for inclusion in the Domestic Violence Bill.

According to the AHTU, the new offence will also criminalise conduct that causes others to enter into forced marriages, including removing or luring someone from the State. The legislation will also aim to cover cases where a forced marriage takes place outside the State, and will set out the penalties for committing the offence. This Bill was approved by Cabinet in December 2016 and is expected to be made law in 2017.[535]

9.5 NATIONAL DEVELOPMENTS

9.5.1 Review of the victim identification process

The Department of Justice progressed the review on the victim identification process during 2016. This review is being carried out with the support of the Council of Europe, and in October 2016 involved a study visit to the UK, as the nearest jurisdiction and one which is piloting changes to its National Referral Mechanism for victims of trafficking. Representatives from the AHTU, An Garda Síochána, the HSE and associated NGOs met with officials from the Home Office and National Crime Agency and the victim care service providers – the Salvation Army. Findings from the visit were shared with all stakeholders through AHTU's established consultative structures as part of this ongoing re-examination of the

[532] Immigrant Council of Ireland (2016h).
[533] PILA Bulletin (2016).
[534] *Irish Times* (14 September 2016).
[535] Department of Justice and Equality, Anti-Human Trafficking Unit, October 2017.

victim identification process in Ireland.[536]

The Office of the Refugee Applications Commissioner (ORAC) monitored its process for applicants who might have been subjected to human trafficking. Such cases were reported to the AHTU as well as the Garda National Protective Services Bureau (GNPSB).[537]

Trafficking-related training materials were developed for staff of the Reception and Integration Agency by a consortium of NGOs with Government funding.[538]

9.5.2 *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*

The Minister for Justice and Equality launched Ireland's *Second National Action Plan to Prevent and Combat Human Trafficking*[539] on 17 October 2016, at an event that included participation from relevant State actors (including An Garda Síochána) and NGOs active in the field. The Plan covers both third country national victims and other victims of trafficking.

In her speech at the launch, the Minister welcomed the co-operation that had existed between the governmental and non-governmental sector to date and looked forward to its continuation. She emphasised the hidden nature of trafficking and the need to raise public awareness:

> *Our experience to date in Ireland has shown that trafficking is not confined to the sex trade and is taking place in a range of legitimate industries, under the guise of genuine employment. This is unacceptable. Even one victim of human trafficking is one too many. I want to raise awareness of the issue among the general public and to encourage anyone who suspects that trafficking may be taking place, to report their suspicions to the Gardaí.*[540]

The plan builds on the framework set up under the first National Action Plan in 2008, and contains 65 actions to combat the crime of trafficking, covering criminal enforcement, victim support, raising public awareness and enhanced training for those likely to encounter victims.[541] The actions are clustered under the thematic headings of: Prevention; Protection; Criminal justice response/prosecution; Partnership; Response to child trafficking; and Monitoring

536 Ibid.
537 Office of the Refugee Applications Commissioner (2017), p. 6.
538 US State Department (2017).
539 Department of Justice and Equality (2016l).
540 Department of Justice and Equality (2016m).
541 Ibid.

and evaluation.

The goals of the Second National Action Plan are to:

- prevent trafficking in human beings;
- identify, assist, and protect and support victims of trafficking in human beings;
- ensure an effective criminal justice response;
- ensure that Ireland's response to human trafficking complies with the requirements of a human rights based approach and is gender sensitive;
- ensure effective co-ordination and co-operation between key actors, both nationally and internationally;
- increase the level of knowledge of emerging trends in the trafficking of human beings;
- continue to ensure an effective response to child trafficking.[542]

As reported for 2015, a consultation process on the draft plan was undertaken with civil society organisations active in this field. This included a roundtable meeting held with NGOs active in the field in October 2015, to discuss priorities for implementation in this National Action Plan.[543]

The plan also sets out goals in relation to international co-operation, including law enforcement co-operation, in the fight against transnational trafficking.

With regard to the National Reporting or Equivalent Mechanism (NREM) function currently carried out by the AHTU, the plan provides that:

> *An examination of domestic measures to support the oversight and monitoring activities in this area will be undertaken; the question of the appointment of a National Rapporteur and other monitoring mechanisms in respect of reviewing the implementation of this Plan will be specifically considered.*[544]

9.5.3 Labour exploitation in the Irish fishing industry

As reported for 2015, new rules regarding the employment of non-EEA fishermen in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by a number of relevant Government departments and agencies, including changes to the Atypical Worker

542 Department of Justice and Equality (2016l), p. 34.
543 Sheridan and Whelan (2016), p. 117.
544 Department of Justice and Equality (2016l), p. 81.

Permission Scheme to provide permission for non-EEA fishermen to work in the Irish fishing fleet, and a memorandum of understanding (MOU) on enforcement agreed between bodies having oversight in the industry.[545]

In October 2016, a 'Day of Action' under An Garda Síochána's 'Operation Eggshell' took place in two Irish fishing ports, where inspections were carried out by officers from the Human Trafficking Investigation and Coordination Unit of the Garda National Protective Services Bureau, the Garda National Immigration Bureau and a number of other Government agencies including the Workplace Relations Commission Inspectorate. The 'Day of Action' was part of the North Atlantic Fisheries Project,[546] which is led by Ireland, the United Kingdom, Spain and Portugal, to prevent human trafficking and labour exploitation in the fisheries industries of the North Atlantic.

In Ireland, Operation Eggshell is co-ordinated by An Garda Síochána, the Revenue Commissioners, the Workplace Relations Commission Inspectorate, the Irish Navy and the Sea Fisheries Protection Authority.

The 'Day of Action' focused on investigating for indicators of trafficking among, in particular, members of fishing crew and also had a range of other objectives including:

- identifying offences under the Atypical Work Permit Scheme for non-EEA crew in the Irish fishing fleet;
- breaches of employment legislation;
- immigration offences;
- identifying and supporting any suspected victims of human trafficking that might be found.

No evidence of human trafficking or labour exploitation was found. A number of suspected breaches of the atypical permit scheme for non-EEA fishing crew, immigration law, employment law and tax law were found. These suspected breaches are being followed up by the Garda National Immigration Bureau and the WRC Inspectorate.[547]

Since February 2016, the WRC reported that it had:

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[545] For further details see Sheridan and Whelan (2016), pp. 113–14.

[546] 'Operation Eggshell' was carried out as part of the North Atlantic Maritime Project of the Santa Marta Group. The Santa Marta Group is a global alliance of international Police Chiefs and Bishops working together with Civil Society to eradicate human trafficking and modern-day slavery. See Department of Justice and Equality (2 November 2016), Parliamentary Questions 32570/16–32574/16, available at www.justice.ie.

[547] Ibid.

- signed a MOU with other agencies to support co-operation in relation to enforcement and associated information sharing;
- delivered an educational and awareness campaign within the whitefish sector;
- engaged with industry stakeholders to enhance compliance;
- trained ten WRC inspectors at the National Fisheries Training College for deployment on fisheries inspections;
- undertaken 208 inspections of the whitefish fleet, involving 150 of the 176 whitefish vessels over 15 metres in length,
- detected almost 200 contraventions, relating to 110 vessels, to the end of June 2017;
- initiated five prosecutions where compliance by other means was not secured.[548]

A *Report on WRC Enforcement of the Atypical Worker Permission Scheme in the Irish Sea Fishing Fleet* was published in June 2017, detailing the WRC's enforcement of the sector since February 2016.[549]

9.5.4 REACH app

One of the outputs of the EU-funded all-Ireland REACH project was the development of an app entitled *Know Sex Trafficking* aimed at frontline professionals working with vulnerable persons, who are not experts in the area of human trafficking, including those in health, social work, law enforcement and immigration. The app was designed to equip professionals

> *to respond to disclosures/signs of trafficking or exploitation in an appropriate manner and guide potential victims to the relevant services and supports available.*[550]

The app was made available for download on Android devices from March 2016,[551] with an accompanying booklet available entitled *Know Sex Trafficking: A Guide for Professionals*.[552]

9.5.5 TRACKS project

The Immigrant Council of Ireland (ICI) has been an implementing partner in the TRACKS – Identification of Trafficked Asylum Seekers' Special Needs project since 1 January 2016. The project will conclude in December 2017. The project is co-ordinated by a French lead partner, Forum refugies–Cosi, and the implementing

548 Workplace Relations Commission (2017), p. 3.
549 Ibid.
550 Reach Project, available at www.blueblindfold.gov.ie.
551 Ibid.
552 Department of Justice and Equality: Anti-Human Trafficking Unit, February 2017.

partners are the British Red Cross (BRC), Churches' Commission for Migrants in Europe (CCME), Spanish Commission for Refugees (CEAR), Italian Red Cross (ItRC) and Action for Equality, Support, Antiracism (KISA). There are also a number of associate partners.

The purpose of the project is to explore the nexus between asylum and trafficking in human beings, which is of concern in particular in relation to identification of victims of human trafficking in the asylum procedure.

The project activities include researching and mapping national legislations, case law, good practices and gaps; networking and raising awareness with national stakeholders through holding focus groups; identifying needs via a victim-centred approach; and supporting national practitioners by producing a handbook.[553]

9.5.6 Funding

The AHTU is one of the main sources of funding for anti-human trafficking NGOs in Ireland. In 2016, €275,000 was provided to Ruhama to provide assistance and support to victims of human trafficking. This represented an increase of 22 per cent on 2015 funding. AHTU also provided €41,428 to the Migrant Rights Centre of Ireland (MRCI) during the reporting period, a substantial increase on the funding provided in previous years.

AHTU facilitated additional funding of €200,000 to five organisations (Ruhama, Doras Luimni, ICI, Sexual Violence Centre Cork and MRCI) under the Dormant Accounts Funding Scheme targeting specific educational/development opportunities for disadvantaged persons in 2016.

In Autumn 2016, AHTU commenced discussions with a third-level institution regarding the possibility of providing funding for postdoctoral research in the area of human trafficking. Development of this initiative is currently underway.[554]

9.6 INTERNATIONAL CO-OPERATION

9.6.1 Santa Marta Group

Ireland's involvement in the Santa Marta Group continued in 2016. This is an alliance of international police chiefs and bishops from around the world working together with civil society to eradicate human trafficking and modern-day slavery.[555] To date a number of Santa Marta Conferences have taken place. Under

[553] Immigrant Council of Ireland (2016i).
[554] Department of Justice and Equality, Anti-Human Trafficking Unit, October 2017.
[555] http://santamartagroup.com/.

the auspices of the Santa Marta Group, Ireland is leading in the North Atlantic Maritime Project. In May 2016, Ireland hosted an international conference in Limerick. The focus was on awareness raising of the phenomenon of modern slavery/human trafficking and working in partnership with Northern Ireland, United Kingdom, Spain and Portugal in looking at human trafficking and modern slavery in the fisheries industry. At the most recent Santa Marta Group Conference, held in Rome on 25–27 October 2016, at which An Garda Síochána and the Department of Justice and Equality were represented, the Assistant Commissioner, Serious Crime Operations (SCO) gave a presentation on the work of An Garda Síochána as part of the North Atlantic Maritime Project. As part of the Santa Marta Group, a project with a third-level institute is under development to carry out in-depth research into this area.[556]

9.6.2 Police co-operation

Ireland co-operates with third countries through Interpol and Europol in relation to criminal justice issues. Ireland continues to be a member of, and contribute to, the Interpol Task Force on Human Trafficking (ITHT). The 4th Global Interpol Conference on Human Trafficking was held on 19–21 October 2016. The Irish Assistant Commissioner (Special Crime Operations) delivered a presentation to this conference on the 2015 High Court Judgment *P v Ireland*[557] regarding cannabis grow-houses and the challenges faced by Ireland. During 2016, Ireland regularly exchanged information through the Interpol channel with other Interpol members in the field of human trafficking.

Ireland continues to be a member of the EMPACT Group for Human Trafficking, which meets at Europol in The Hague and is the Multidisciplinary Platform against Criminal Threats. It is part of the intelligence-led policing approach to tackling organised crime, identifying priorities and establishing an international teamwork approach to bring down criminal groups that threaten the security of the European Union. During the course of 2016 Ireland participated in Joint Action Days as part of Operation Etutu and Operation Ciconia Alba (Sexual Exploitation and Child Trafficking).[558,559]

9.7 RESEARCH

The ICI published *Exploitative Sham Marriages and Human Trafficking in Ireland* in November 2016.[560] The report was part of the EU-funded HESTIA project

[556] Department of Justice and Equality: Anti-Human Trafficking Unit, February 2017.
[557] *P v Chief Superintendent of the Garda National Immigration Bureau, DPP, Ireland and the Attorney General* [2015] IEHC 22. For case summary see Sheridan and Whelan (2016), p. 125.
[558] https://www.europarl.europa.eu/newsroom/news/global-operation-ciconia-alba-delivers-major-blow-to-organised-crime.
[559] Department of Justice and Equality, Anti-Human Trafficking Division, April 2017.
[560] Immigrant Council of Ireland (2016j).

against human trafficking. The study was carried out under the guidance of the European Institute for Crime Prevention and Control in Finland and was co-funded by the Prevention of and Fight against Crime Programme of the European Union. It was one of five reports conducted by the project's participating countries – Lithuania, Slovakia, Latvia, Estonia and Ireland. The AHTU was an associate partner on the Irish project.[561] The research was conducted throughout 2015 and reflects the position in Ireland up to December 2015.[562]

The research examined the phenomenon of marriages of convenience, or sham marriages, between third-country nationals and EU nationals for immigration advantage, and the nexus between the sham-marriage problem and human trafficking. The study found that in general the term 'sham marriage' is understood to mean *a consensual business marriage between an EU citizen and a TCN, in which one party gains residency in a desired state and the other party benefits financially*.[563] The study reported that the use of sham marriages for immigration advantage has been very topical in Ireland, but that the link to human trafficking has only emerged in recent years. In the study the term 'exploitative sham marriage' was used to capture the potential for or presence of exploitation in the sham marriage.

The study reported that since 2010, the Latvian embassy in Dublin had expressed concerns about the large numbers of young Latvian women marrying third-country national men (Pakistani or Indian) and said that there were clear indicators of trafficking. The Estonian embassy in Dublin expressed similar concerns about its nationals. After the launch of Operation Vantage,[564] and the trend identified of men from the Asian sub-continent (Pakistan, India and Bangladesh) marrying EU national women from Portugal and eastern European countries in a sample of registered marriages, the Portuguese embassy voiced concerns about the potential for exploitation of these women.[565]

The study was based on 13 case studies and one interview with a woman who had been exploited in a sham marriage. Some case studies were provided by the Latvian and Lithuanian embassies and some by NGOs.[566]

The study examined the case studies for risk and vulnerability factors, patterns of targeting and recruitment and the experiences of women in sham marriages. It

561 Ibid., p. 4.
562 Ibid., p. 6.
563 Ibid., p. 13.
564 Operation Vantage is an operation by the Garda National Immigration Bureau to investigate illegal immigration and identify marriages of convenience as defined under the *Civil Registration Act 2014*. For further information see Sheridan and Whelan (2016), p. 96.
565 Immigrant Council of Ireland (2016j), pp. 14–15.
566 Ibid., p. 13.

concluded that there were clear indicators of trafficking. It also identified failings in the State response to the women and a failure to recognise indicators of trafficking in sham marriages, apparently exacerbated by the fact that sham marriage is not specifically referenced in trafficking legislation.

The report made a number of recommendations, including: reform of the identification process for victims of trafficking in Ireland; provision of supports where other crimes against the person are identified (including a waiver of the habitual residence condition for access to welfare supports); resources for first responders and training for marriage registrars and immigration officials to recognise indicators of trafficking; and more effort at inter-governmental and EU levels to gather better information and understanding of emerging trends in trafficking to allow for better responses.[567]

The Department of Justice and Equality has noted that

> *the period under scrutiny (2009–2015) was largely prior to both the launch of Operation Vantage in August 2015 and the coming into effect of new regulations in August 2015 under the Civil Registration (Amendment) Act 2014, and updated Free Movement Regulations which came into effect in February 2016 (although they are referenced in the Report). Thus, the report does not reflect the much improved situation in the response to sham marriage since then, in particular the disruptive effect on the organisers and facilitators.*[568]

[567] Ibid., pp. 18–19.
[568] Department of Justice and Equality, Anti-Human Trafficking Unit, October 2017.

REFERENCES

AkiDwA (2016). *Towards a National Action Plan to combat female genital mutilation 2016–2019*, available at www.akidwa.ie.

Arnold, S. and E. Quinn (2016). *Resettlement of refugees and private sponsorship in Ireland*, available at www.emn.ie and www.esri.ie.

Asylum Information Database (2016). *Country report: Ireland 2016 update*, available at www.irishrefugeecouncil.ie.

Barrett, A., F. McGinnity and E. Quinn (editors) (2017) *Monitoring report on integration 2016*, available at www.esri.ie.

Central Statistics Office (2017a). *Population and migration estimates April 2017*, available at www.cso.ie.

Central Statistics Office (2017b). *Census of Population 2016 – Profile 7 – Migration and Diversity*, available at: www.cso.ie.

Children's Rights Alliance (February 2017). *Children's Rights Alliance report card 2017*, available at www.childrensrights.ie.

Committee on Migrant Workers (n.d.). *CMW–CRC – Call for submissions on its Joint General Comment on the human rights of children in the context of international migration*, available at http://www.ohchr.org/EN/HRBodies/CMW/Pages/JointGeneralCommentonChildren.aspx.

Committee on the Rights of the Child (2016). *Concluding observations on the combined third and fourth periodic reports of Ireland*, advance unedited version, available at www.ochr.org.

Core Group of Asylum seekers; Childrens' Rights Alliance; Jesuit Refugee Service; Nasc; Spirasi; and UNHCR (2016). *Commitment to implement the recommendations of the McMahon report welcomed by Working Group organisations*, press release, available at www.nascireland.org.

Council of Europe (2016a). *Reply from Ireland to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second evaluation round (Reply submitted on 20 July 2016)*, available at https://rm.coe.int.

Council of Europe (2016b). *GRETA's second evaluation visit to Ireland*, press release, available at www.coe.int.

Council of Europe (2017a). *Report by Nils Muiznieks Commissioner for Human Rights of Council of Europe following his visit to Ireland from 22 – 25 November 2016,* paragraph 167. Document: CommDH (2017) 8, available at https://wcd.coe.int.

Council of Europe (2017b). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland – Second Evaluation Round.* GRETA (2017)28, available at https://rm.coe.int.

Council of the European Union (2016). *Council adopts conclusions on statelessness*, press release, available at www.consilium.europa.eu.

Courts Service of Ireland (2017). *Courts Service annual report 2016*, available at www.courts.ie.

Department of An Taoiseach (2016). *Statement by the Taoiseach following the March meeting of the European Council, Dáil Éireann, 22 March 2016*, available at www.taoiseach.gov.ie.

Department of Business, Enterprise and Innovation (2016). *User guide for Employment Permits Online System*, available at https://epos.djei.ie/EPOSOnlinePortal/UserGuide.pdf.

Department of Defence (2016a). *Naval vessel L.É. James Joyce departs Cork to assist in the Humanitarian Crisis in the Mediterranean*, press release, available at www.defence.ie.

Department of Defence (2016b). *Minister with responsibility for Defence, Paul Kehoe, T.D., welcomes home L.É. James Joyce*, press release, available at www.defence.ie.

Department of Defence (2016c). *Over 10,000 people rescued in the Mediterranean by the Irish Naval Service*, press release, available at www.defence.ie.

Department of Defence (2016d). *Update on Humanitarian Migrant Rescue Operation in the Mediterranean involving LÉ James Joyce*, press release, available at www.defence.ie.

Department of Education and Skills (2016a). *Supports for students in the protection system to continue*, press release, available at www.education.ie.

Department of Education and Skills (2016b). *International Education Strategy for Ireland 2016–2020* available at www.education.ie.

Department of Education and Skills (2016c). *Minister Bruton launches international education strategy*, press release, available at www.education.ie.

Department of Foreign Affairs and Trade (2016a). *Minister Flanagan to address United Nations General Assembly in New York*, press release, available at www.dfa.ie.

Department of Foreign Affairs and Trade (2016b). *Minister Flanagan invites the public to attend Africa Day events*, press release, available at www.dfa.ie.

Department of Foreign Affairs and Trade (2016c). *Minister Flanagan to attend EU Foreign Affairs Council in Brussels today*, press release, available at www.dfa.ie.

Department of Foreign Affairs and Trade (2016d). *Jordan: Irish Aid improves water services to Syrian refugees in Azraq camp*, press release, available at www.irishaid.ie.

Department of Foreign Affairs and Trade (2016e). *Africa Ireland Economic Forum opens in the Convention Centre Dublin*, press release, available at www.dfa.ie.

Department of Foreign Affairs and Trade (2017a). *World Refugee Day*, press release, available at www.irishaid.ie.

Department of Foreign Affairs and Trade (2017b). *Ireland responding to the crises in East Africa*, press release, available at www.irishaid.ie.

Department of Foreign Affairs and Trade – Irish Aid (2016). *Ireland and the World Humanitarian Summit*, press release, available at www.irishaid.ie.

Department of Health (2016). *Minister Varadkar welcomes the announcement of the disbursement of €2.96m from the Dormant Accounts Fund*, press release, available at www.health.gov.ie.

Department of Jobs, Enterprise and Innovation (2016a). *Employment Permits Statistics 2015: permits issued by nationality 2015*, available at www.dbei.ie.

Department of Jobs, Enterprise and Innovation (2016b). *New Employment Permits (Amendment) (No. 2) Regulations 2016 – S.I. No 363 of 2016 and New Employment Permits (Trusted Partner) (Amendment) Regulations 2016 – S.I. No. 403 of 2016*, available at www.dbei.ie.

Department of Jobs, Enterprise and Innovation (2016c). *Call for submissions to the review of the Highly Skilled Eligible Occupations List (HSEOL) and the Ineligible Categories of Employment List (ICEL)*, available at www.dbei.gov.ie.

Department of Jobs, Enterprise and Innovation (2017a). *Employment Permits Statistics 2016: permits issued by nationality 2016*, available at www.dbei.gov.ie.

Department of Jobs, Enterprise and Innovation (2017b). *Employment Permits Statistics 2016: permits issued by sector 2016*, available at www.dbei.gov.ie.

Department of Jobs, Enterprise and Innovation (2017c). *Review of Minimum Annual Remuneration (MAR) Thresholds Submission Form*, available at www.dbei.gov.ie.

Department of Jobs, Enterprise and Innovation (2017d). *Call for Submissions to Minimum Annual Remuneration (MAR) Thresholds for the Irish Employment Permit System*, available at https://www.djei.ie/en/Consultations/Call-submissions-review-MAR-Thresholds-Irish-Employment-Permit-System.html.

Department of Justice and Equality (2016a). *Report of issues raised at CEDAW consultation*, available at www.justice.ie.

Department of Justice and Equality (2016b). *Response of Ireland to list of issues and questions prior to reporting*, available at www.upr.ie.

Department of Justice and Equality (2016c). *Speech by Tánaiste at the UN Summit on Large Movements of Refugees and Migrants*, press release, available at www.justice.ie.

Department of Justice and Equality (2016d). *Guide to living independently*, available at www.ria.gov.ie.

Department of Justice and Equality (2016e). *Tánaiste confirms plans to accept 260 more refugees on resettlement*, press release, available at www.integration.ie.

Department of Justice and Equality (2016f). *Tánaiste confirms plans to welcome a further 260 refugees from Lebanon under resettlement programme*, press release, available at www.inis.gov.ie.

Department of Justice and Equality (2016g). *Tánaiste tells Greek PM that Ireland will accept at least 1,100 asylum seekers from Greece by September 2017*, press release, available at www.inis.gov.ie.

Department of Justice and Equality (2016h), *Minister Fitzgerald conveys the sympathies and condolences of the Irish Government and People to the Belgian Government and People*, press release, available at www.justice.ie.

Department of Justice and Equality (2016i). *Launch of Call for Proposals EU Funding for Migrant Integration and Gender Equality Projects,* available at www.justice.ie.

Department of Justice and Equality (2016j). *Speech by Mr. David Stanton T.D., Minister of State for Justice at the Department of Justice and Equality with responsibility for Equality, Immigration and Integration – Launch of Calls for Proposals for EU Funded Migrant Integration and Gender Equality Projects*, available at www.justice.ie and www.integration.ie.

Department of Justice and Equality (2016k). *Speech by Minister of State David Stanton TD on Private Members Immigration (Reform) (Regularisation of Residency Status) Bill 2016*, available at www.justice.ie.

Department of Justice and Equality (2016l). *Second National Action Plan to Prevent and Combat Human Trafficking*, available at www.justice.ie.

Department of Justice and Equality (2016m). *Tánaiste publishes new 2nd National Action plan to Prevent and Combat Human Trafficking,* press release, available at www.inis.gov.ie.

Department of Justice and Equality (2017a). *Reception and Integration Agency Annual Report 2016*, available at www.ria.gov.ie.

Department of Justice and Equality (2017b). *Speech by Minister Stanton at the launch of the ESRI research paper: 'A social portrait of Travellers in Ireland'*, press release, available at www.justice.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016a). *Notice – Commencement of the International Protection Act 2015*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016b). *Tánaiste and Minister Stanton welcome significant progress on direct provision and supports for asylum seekers*, press release, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016c). *Department of Justice and Equality Irish Naturalisation and Immigration Service (INIS) Interim List of Eligible Programmes for Student Immigration Permission Arrangements Applying to English Language Programmes from 1 October 2015* (updated 9 December 2016), available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016d). *Changes to the employment entitlements of non-EEA students holding Immigration Stamp 2*, Student Notices, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016e). *Notice Regarding Evidence of Finances for all non-EEA Students*, Student Notices, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016f). *Stamp 1G for Third Level Graduate Scheme*, Student Notices, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016g). *Notice regarding Revised Immigration Rules for non-EEA Stamp 1A Trainee Accountants*, *Student Notices*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016h). *Investor and Entrepreneur Schemes*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016i). Appointment Management System for Burgh Quay Immigration Office to launch Thursday 8 September at 11 am. *Notice* available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016j). *Policy Document on non-EEA Family Reunification*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016k). *Tánaiste and Minister for Justice and Equality announces a public consultation on a review of Ireland's immigration policy for non-EEA retirees who wish to retire in Ireland*, press release, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016l). *Public Consultation on a Review of Ireland's Immigration Policy for non-EEA retirees who wish to retire to Ireland*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2016m). *Extension of the Irish Short Stay Visa Waiver Programme*, press release, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017a). *Tánaiste and Minister Stanton announce further significant progress on the McMahon Report, Direct Provision and supports to asylum seekers*, press release, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017b). *Immigration in Ireland: Annual Review 2016*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017c). *Atypical Working Scheme: Non-EEA crew in Fishing Fleet*, available at www.inis.gov.ie.

Department of Justice and Equality: Irish Naturalisation and Immigration Service (2017d). *Tánaiste and Minister Stanton launch the Migrant Integration Strategy and the Communities Integration Fund*, press release, available at www.integration.ie and www.inis.gov.ie.

Department of Justice and Equality: Office for the Promotion of Migrant Integration (2016). *EPIC programme announces that it has assisted over 2,600 people from 101 countries to find employment or enter further education and training*, press release, available at www.integration.ie.

Department of Social Protection (2016). *Government announces increase to the direct provision allowance for children*, press release, available at www.welfare.ie.

Doras Luimní (June 2016). *Migrant workers and trade union membership: survey findings*, available at www.dorasluimni.org.

Dublin City University (2016). *Dublin City University designated as a University of Sanctuary*, press release, available at www.dcu.ie.

Economic and Social Research Institute (2017). *New research monitors the integration of immigrants into Irish society*, press release, available at www.esri.ie.

ECRE (2016). *AIDA Country Report: Ireland Update 2016*, available at www.irishrefugeecouncil.ie.

Education in Ireland (2016a). *Pre-departure briefings*, available at www.educationinireland.com/en/News/Pre-departure-briefings.html.

Education in Ireland (2016b). *Pre-departure briefings for international students 2016 – Asia*, available at www.educationinireland.com/en/News/Pre-departure-Briefings-for-International-Students-2016-Asia.html.

EMN Ireland (2016a). *Responding to the Refugee Crisis: conference summary*, available at www.emn.ie.

EMN Ireland (2016b). *Notice – Seminar on Statelessness Determination Procedures: Policy Options, Practical Experiences and Challenges*, available at www.emn.ie.

European Asylum Support Office (2016a). *Ending international protection: Articles 11, 14, 16 and 19 Qualification Directive (2011/95/EU), a judicial analysis*, available at www.easo.europa.eu.

European Asylum Support Office (2016b). *Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU), a judicial analysis*, available at www.easo.europa.eu.

European Commission (2016a). *Implementing the EU–Turkey Statement – questions and answers*, press release, available at http://europa.eu.

European Commission (2016b). *Fourth Report on the Progress made in the implementation of the EU–Turkey Statement* COM 2016 (792) final, available at www.refworld.org.

European Commission (2016c). *Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, available at http://eur-lex.europa.eu.

European Migration Network (2017). *Annual Report 2016 on Migration and Asylum – statistical annex*, available at www.emn.ie.

Human Rights Council (2011). *Resolution 16/21: Review of the work and functioning of the Human Rights Council*, available at www.ochr.org.

Human Rights Council (2016a). *Report of the Working Group on the Universal Periodic Review: Ireland*, available at www.ochr.org.

Human Rights Council (2016b). *Report of the Working Group on the Universal Periodic Review: Ireland Addendum*, available at www.ochr.org.

Immigrant Council of Ireland (2016a). *Submission to the Migrant Workers' Committee and Committee on the Rights of the Child Joint General Comment on the Human Rights of Children in the Context of International Migration*, available at www.ochr.org.

Immigrant Council of Ireland (2016b). *Child migration matters: children and young people's experiences of migration*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016c). *Factsheet 3: Employment Permits*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016d). *Seminar to highlight misrepresentation of Muslims in Irish media*, press release, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016e). *Islamophobia in Dublin: experiences and how to respond*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016f). *Islamophobia in Dublin: conference and research findings*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016g). *Taking racism seriously: experiences of racism and racially motived anti-social behaviour in social housing*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016h). Sex buyer laws one step closer as Sexual Offences Bill passes second stage in Dáil Éireann, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016i). TRACKS project information, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2016j). *Exploitative sham marriages and human trafficking in Ireland*, available at www.immigrantcouncil.ie.

International Organization for Migration (2016). *Skills2Work: valuing skills of beneficiaries of international protection information leaflet*, available at www.iom-nederland.nl.

International Protection Office (2017a). *Investigation of applications for international protection and consideration of permission to remain after 31 December 2016*, preliminary information note, available at www.ipo.gov.ie.

International Protection Office (2017b). *Information booklet for applicants for international protection*, IPO 1, available at www.ipo.gov.ie.

Irish Civil Society Coalition (2015). *Universal periodic review: reviewing human rights in Ireland; your rights, right now*, available at www.rightsnow.ie.

Irish Examiner (7 April 2016). 'Ireland and Britain share passenger data in response to Europe attacks', available at www.irishexaminer.com.

Irish Examiner (27 August 2016). 'Irish Refugee Council: Reform aid scheme for asylum seeker students', available at www.irishexaminer.com.

Irish Government News Service (2016a). *A Programme for a Partnership Government*, available at www.merrionstreet.ie.

Irish Government News Service (2016b). *Speech by Minister for Employment and Small Business Pat Breen T.D., on the Au Pair Placement Bill 2016*, available at www.merrionstreet.ie.

Irish Human Rights and Equality Commission (2016). *IHREC Submission to GRETA in advance of its Second Evaluation Round of Ireland*, available at www.ihrec.ie.

Irish Human Rights and Equality Commission (2017). *Ireland and the Convention on the Elimination of all Forms of Discrimination Against Women: Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland's combined sixth and seventh periodic reports*, available at www.ihrec.ie.

Irish Naturalisation and Immigration Service (2016). *Policy Document on non-EEA Family Reunification*, available at www.inis.gov.ie.

Irish Refugee Council (2016a). *Safe and legal pathways to protection: the opportunities and challenges for Ireland*, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2016b). *Not On Our Watch Vigil*, available at www.irishrefugeecouncil.ie.

Irish Refugee Council, Trinity College Dublin and University College Dublin (2016). *Transition from direct provision to life in the community*, available at www.irishrefugeecouncil.ie.

Irish Times (10 March 2016). 'Wage ruling could end au pair tradition, agencies warn', available at www.irishtimes.com.

Irish Times (4 August 2016). 'The number denied entry into Ireland rises significantly', available at www.irishtimes.com.

Irish Times (14 September 2016). 'Former sex workers seek change in legislation', available at www.irishtimes.com.

Irish Times (21 October 2016). 'Applications for Irish citizenship continue to surge post-Brexit', available at www.irishtimes.com.

Irish Times (9 November 2016). 'New café addresses direct provision's cooking ban', available at www.irishtimes.com.

Irish Times (28 November 2016). 'Christmas bonus for asylum seekers in direct provision is €16', available at www.irishtimes.com.

Jesuit Centre for Faith and Justice (27 April 2016), *Criticism directed at asylum process at launch of 'Search for Refuge'*, press release, available at http://jcfj.ie.

Joint Committee on Justice and Equality (2016), *Migrant and refugee crisis*, available at http://oireachtasdebates.oireachtas.ie.

Migrant Rights Centre of Ireland (2016a). *Ireland is Home 2016: infographic*, available at www.mrci.ie.

Migrant Rights Centre of Ireland (2016b). *MRCI welcomes extension of scheme for undocumented fishermen*, press release, available at www.mrci.ie.

Migrant Rights Centre of Ireland (2016c). *Au pair awarded almost €10k by Irish employment courts in 'landmark' decision*, press release, available at www.mrci.ie.

Migrant Rights Centre of Ireland (2016d). *MRCI welcomes strong opposition to 'dangerous' au pair bill in Dáil*, press release, available at www.mrci.ie.

Missing Children Europe (2016). *Summit Report: Best practices and key challenges on interagency cooperation to safeguard unaccompanied children from going missing*, available at http://missingchildreneurope.eu.

National Women's Council of Ireland (2017). *Shadow Report in advance of the examination of Ireland's combined sixth and seventh periodic reports under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, available at www.nwci.ie.

NUI Galway (2016). *Inclusive Centenaries Scholarship Scheme – announcement*, available at www.nuig.ie.

Office for the Promotion of Migrant Integration (2017). *Origin of refugees resettled to Ireland since 2010*, available at www.integration.ie.

Office of the Refugee Applications Commissioner (2017). *Summary report of key developments in 2016*, available at www.orac.ie.

PILA Bulletin (2016). *SWAI releases legal opinion finding Sexual Offences Bill 'likely to violate the human rights of sex workers'*, available at www.pila.ie.

President of Ireland (2016a). *Speech at the Immigrant Council of Ireland conference: A Call to Unity*, available at www.president.ie.

President of Ireland (2016b). *High Level Leaders' Roundtable 4: Humanitarian Financing – Investing in Humanity,* available at www.president.ie.

Quinn, E. (2009). *The organisation of asylum and migration policies in Ireland: 2009*, available at www.emn.ie and www.esri.ie.

Refugee and Migrant Coalition (2016). *Open letter to all TDs on the European Council deal with Turkey*, available on www.irishrefugeecouncil.ie.

Refugee Appeals Tribunal (2017). *Annual report*, available at www.refappeals.ie.

Royal College of Physicians of Ireland (2016a), *Migrant health – the health of asylum seekers, refugees and relocated individuals*, available at www.rcpi.ie.

Royal College of Physicians of Ireland (2016b). *Faculty of Public Health Medicine calls on Government to address health needs of asylum seekers and refugees*, press release, available at www.rcpi.ie.

RTÉ (2016). *'The Crossing' explores human face of crisis*, available at www.rte.ie.

Sheridan, A. and S. Whelan (2016). *Annual Report on Migration and Asylum 2015: Ireland*, available at www.emn.ie and www.esri.ie.

UN General Assembly (2016a). *New York Declaration for Refugees and Migrants*, available at www.un.org.

UN General Assembly (2016b). *New York Declaration for Refugees and Migrants adopted by all Member States at historic UN Summit*, press release, available at www.unhcr.org.

UNHCR Ireland (2016a). *Dublin conference hears calls for more safe and legal routes for refugees*, press release, available at www.unhcr.org/en-ie.

UNHCR Ireland (2016b). *Seminar on Statelessness Determination Procedures*, available at www.unhcr.org/en-ie.

UNHCR Ireland (2017). *Guide to the International Protection Procedure in Ireland*, available at www.unhcr.org/en-ie.

US State Department (2017). *2017 Trafficking in Persons Report Country Narrative: Ireland*, available at www.state.gov.

Working Group to Report to Government on Improvements in the Protection Process including Direct Provision and Supports to Asylum Seekers (2015). *Final Report*, available at www.justice.ie.

Workplace Relations Commission (2017). *Report on WRC Enforcement of the Atypical Worker Permission Scheme in the Irish Sea Fishing Fleet*, available at www.workplacerelations.ie.

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