



# EUROPEAN MIGRATION NETWORK

## ILLEGALLY RESIDENT THIRD COUNTRY NATIONALS IN IRELAND: STATE APPROACHES TOWARDS THEIR SITUATION

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2005

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## ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, Lower House
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
ICI	Immigrant Council of Ireland
ICCL	Irish Council for Civil Liberties
ICLMD	<i>Irish Current Law Monthly Digest</i>
ILRM	Irish Law Reports Monthly
IR	Irish Reports
IRC	Irish Refugee Council
JHA	Justice and Home Affairs
MRCI	Migrant Rights Centre Ireland
NCCRI	National Consultative Committee on Racism and Interculturalism
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
RAT	Refugee Appeals Tribunal
SIPTU	Services, Industrial, Professional and Technical Union
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UN	United Nations

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## Introduction

The current report is the Irish contribution to an EU-wide investigation of illegal immigration and State approaches to illegally resident immigrants. The study is being undertaken by the National Contact Points of the European Migration Network (EMN) – a network formed to collate, provide access to and facilitate the exchange of information on migration and asylum. The EMN also analyses such information and undertakes its own research projects. Through the comparison of country studies such as this one, it is intended that similarities and differences in EU State approaches towards illegal immigrants will be identified and lead to information exchange, improved understanding and more informed policy making.

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## Executive Summary

Ireland has been experiencing increased immigration since the mid 1990s. Much of the immigration and asylum related policy has been developed in reaction to rapidly changing circumstances. Traditionally a country of emigration, Ireland experienced an economic boom at the end of the 1990s which resulted in significantly increased immigration flows.<sup>1</sup> Until recently the legislation governing the entry and residence of non-nationals in Ireland was the Aliens Act 1935 and the Aliens Order 1946 as amended. Basic immigration controls had to be formally codified in primary legislation in the form of the Immigration Act 2004 following a court case which challenged the legality of the early legislation.<sup>2</sup> The Immigration Act 1999 was introduced following a court challenge to the Minister for Justice, Equality and Law Reform's right to make deportation orders.<sup>3</sup> The Refugee Act 1996 was issued in response to steeply increasing numbers of people claiming asylum in Ireland. The number of applications grew from less than 100 in 1992 to about 4,000 applications in 1997 and to a peak of 11,600 in 2002.

More comprehensive and broadly based immigration and residence legislation has been in preparation since 2002 and the discussion document *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005) has recently been published. The current study is timely as the issue of illegal immigration is emerging as a subject for discussion in Ireland in the context of the new Immigration and Residence Bill, which is expected later this year, and indirectly in relation to proposed new employment permits legislation. Recent changes to the Irish Constitution whereby children born in Ireland to non-national parents no longer have an entitlement to Irish citizenship are also part of the effort to create a more structured immigration system.

The proposed definition of an 'illegal' immigrant used by the European Commission is "...any person who does not, or no longer, fulfils the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union" (See *Green Paper on a Community Return Policy of Illegal Residents*, European Commission, 2002, p.26). There are two categories of illegal immigrant discussed in the current report: persons who enter the State illegally and continue to reside illegally and persons who enter legally and whose residence status later becomes irregular. Data supplied by the Immigrant Council of Ireland show that of the illegally resident migrants it deals with the breakdown between these two categories is approximately 23 and 77 per cent respectively. (A third type of irregular migrant has valid residence status but is in contravention of certain employment conditions. The latter category does not fall within the remit of this report.)

<sup>1</sup> See Hughes and Quinn (2004) for a more detailed discussion of population and migration flows between World War II and the present.

<sup>2</sup> *Leontjava and Chang* [2005] 1 ILRM (Supreme Court, 24<sup>th</sup> June 2004). Most of the finding of the High Court were later overturned by the Supreme Court but the Immigration Act 2004 remained in place. See Quinn and Hughes (2005) for more information.

<sup>3</sup> *Laurentiu V. Minister for Justice, Equality and Law Reform* ([[2000] 1 I.L.R.M.1)



The issue of illegal immigration is politically sensitive. Unregulated immigration undermines state sovereignty and may put the welfare system and national security at risk. Almost no statistics exist on stocks of illegally resident immigrants beyond the number of outstanding deportation orders (8,902). Data on the number of persons refused leave to land (4,477 in 2004) may be indicative of flows of illegal immigrants to Ireland, however, it should be noted that permission to enter Ireland may be refused for a range of reasons.

A major source of illegal immigration to Ireland is a result of movements from within the Common Travel Area that Ireland shares with Britain. People who enter illegally may be victims of traffickers, may be smuggled or may simply make their own way over the land border with Northern Ireland. Very little is known about trafficking to Ireland and there are different views over whether or not Ireland is a destination for traffickers. As is discussed in Section 3.1.1.2 this debate centres on different interpretations of the 'evidence' required by the police and that observed by NGOs working in the area. The Illegal Immigrants (Trafficking) Act which was enacted in 2000, addresses the problem of smuggling as well as elements of trafficking but it does not distinguish between them. The area of trafficking will be specifically addressed in the forthcoming Immigration and Residence legislation.

In relation to the prevention of illegal immigration, border controls have been tightened in recent years with the introduction of carrier liability in the Immigration Act 2003. The Garda National Immigration Bureau has enhanced its Information System and has developed links with the Office of the Refugee Applications Commissioner, the Department of Enterprise, Trade and Employment; the Department of Social and Family Affairs and the Department of Foreign Affairs. Security around a variety of immigration documents has been improved and fingerprinting was extended to all asylum seekers under the Refugee Act 1996 as amended by the Immigration Act 2003. The issue of including biometrics on some documents is under discussion. Ireland has also concluded Readmission Agreements with Poland, Romania, Nigeria and Bulgaria.

The response, by State actors and NGOs alike, to illegally resident immigrants in Ireland is just beginning to be developed. Access of illegally resident immigrants to public services or to the Courts is often assumed to be similar to that of legally resident nationals in the absence of any legislation to the contrary (see Section 3.4). Such default positions on access have been tightened up in recent years with the introduction in the Immigration Act 2003 of an obligation on State departments to share information on non-nationals for the purposes of administering immigration law. The importance of such co-operation and co-ordination across the public service is stressed in the discussion document for the proposed new Immigration and Residence Bill as a means of ensuring that access to public services by persons illegally in the State is limited to emergency services (Department of Justice, Equality and Law Reform, 2005, p.103). Deportation and voluntary return programmes are discussed in Section 3.3.

Section 4 summarises information on the social and economic situation and political participation of immigrants. Unfortunately, relatively little information is available. The few research studies in existence point to the isolation, and resulting vulnerability to exploitation, of illegally resident immigrants. The economic situation of undocumented and illegally resident workers is discussed at Section 4.2. The implications of the current work permit system for illegal immigration are discussed in Section 3.4.4.

Section 5 is concerned with assessing the impact of illegal immigration on Irish society. To date the impact has been limited. The main actors addressing the issue of illegal immigration in Ireland are identified.

The issue of illegally resident immigrants is only beginning to be addressed in Ireland. One of the main sources of information on State approaches is the recently published discussion document *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005). Government departments' press releases and various Garda (police) documents were used to track the recent developments in the State's efforts to prevent illegal immigration.

Press reports and Dáil (parliamentary) debates were important sources of information. The latter were relied on for most of the official statistics presented here. Relevant domestic, EU and UN legislation are discussed in the report. The various pieces of legislation are listed in Annex V. References are also included to domestic case law where relevant.

A large number of sources were drawn on in the preparation of this report. The following were particularly important as they are partly based on the experiences of illegally resident immigrants themselves:

- Migrant Rights Centre Ireland (2005), *Private Homes a Public Concern* investigates issues around domestic workers in Ireland.
- The Immigrant Council of Ireland commissioned Kelleher Associates (2004) to compile *Voices of Immigrants: The Challenges of Inclusion* which presents case studies of immigrants some of whom are residing illegally in Ireland.
- The International Organisation of Immigration commissioned *Trafficking in Unaccompanied Minors in Ireland* (Conroy, 2003a) and the Irish Refugee Council report *Separated Children Seeking Asylum in Ireland* (Veale, A., L. Paludaries, and C. Gibbons, 2003) investigate issues around children and illegal immigration.
- The Immigrant Council of Ireland and Migrant Rights Centre Ireland held a roundtable on the issue of irregular migration earlier in 2005 the minutes of which helped to inform this report.
- The NGO Ruhama has recently published research into prostitution in Ireland: *The Next Steps Initiative: Research report on barriers affecting women in prostitution* (Ruhama, 2005b). Some of the issues raised are relevant to trafficked women.

The authors also held meetings with the Department of Justice, Equality and Law Reform Immigration Policy Unit; the Garda National Immigration Bureau; the Migrant Rights Centre Ireland and the Immigrant Council of Ireland. They also received comments on an earlier draft from the International Organization for Migration.

# 1. LEGAL FRAMEWORK AND POLICY DEVELOPMENTS

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## 1.1 Definition of an Illegally Resident Immigrant

An illegal immigrant is explicitly defined in the Illegal Immigrants (Trafficking) Act 2000, as "...a non-national who enters or seeks to enter or has entered the State unlawfully" (Illegal Immigrants (Trafficking) Act, Section 1(1)). Under this Act it is made an offence for someone to organise or knowingly facilitate for profit "...the entry into the State of a person whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum" (Illegal Immigrants (Trafficking) Act, Section 2(1)).<sup>1</sup> The emphasis is on *entry* to the State by smuggling/trafficking and is, therefore, not always relevant to 'undocumented' or 'irregular' immigrants. The Immigration Act 2004 provides at Section 5 that all non-national persons who are in the State without the necessary permission are unlawfully present, except for asylum seekers, convention refugees and their families and programme refugees.<sup>2</sup> In an information note in 2002 the Irish Refugee Council called for a clear distinction between illegal migrants and asylum seekers who enter by illegal means in any future Irish legislation (Irish Refugee Council, 2002).

In the recently published *Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005) it is suggested that the definition of an 'illegal immigrant' be extended beyond conditions of entry to include unsuccessful asylum applicants:

...it must be recognised that persons who are not deemed to require protection in the State on foot of [an asylum] claim are (unless they have an alternative legal basis for being in the State) illegally present in the State and must be dealt with as such. (Department of Justice, Equality and Law Reform, 2005, p.23).

'Irregular' and 'undocumented' immigrants as distinct from illegal immigrants are mentioned only briefly in the *Outline Policy Proposals* in relation to carrier sanctions. Work in the area of illegal migration is in its infancy in Ireland and a full debate on terms and concepts has not yet taken place. The Immigrant Council of Ireland and the Migrant Rights Centre Ireland hosted a round table on the issue in early 2005 and chose to focus on 'irregular and undocumented immigrants'. A distinction was made between illegal, irregular and undocumented migrants and it was argued that for many NGOs who work in the field the latter term is most relevant. It was also argued that language chosen closely reflects the conceptual frameworks within Nation States and the

<sup>1</sup> All legislation cited in the text is listed at Annex V.

<sup>2</sup> A convention refugee is recognised as a refugee under the 1951 Geneva Convention. A programme refugee is invited to Ireland by the Irish government as part of a humanitarian programme run through the UNHCR.

term ‘illegal immigrant’ was deemed to criminalise people unfairly (Immigrant Council of Ireland, 2005).

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## 1.2 Basic Rights of Illegally Resident Immigrants

Illegally resident immigrants in Ireland do not have formal legal entitlements as such. However, any person in Ireland can expect to have their basic human rights protected by the Irish courts. Irish equality and human rights legislation is relatively strong. Relevant measures include the European Convention on Human Rights Act 2003; Equality Act 2004; Equal Status Acts 2000 and 2004; and the Employment Equality Act 1998. The Equality Authority and the Office of the Director of Equality Investigations are two independent statutory agencies set up to implement equality legislation. The Human Rights Commission was established under the Human Rights Commission Act 2000 and the work of the National Consultative Committee on Racism and Interculturalism (NCCRI) is also relevant in terms of protecting the rights of all non-nationals in Ireland.

The Migrant Rights Centre Ireland (MRCI) believes that access of illegally resident immigrants to the Irish courts has not yet been fully tested. The issues around employment rights are of particular relevance to illegally resident or undocumented migrants. Until recently the legal status of migrant workers was not an issue in cases brought to the Labour Relations Commission.<sup>3</sup> The MRCI report that the situation is changing regarding labour relations cases involving immigrant workers; the legality of the residence status of the applicant is beginning to become relevant. The Employment Permits Act 2003 introduced penalties for employers and employees who do not hold the necessary documentation.

Until recently all children born in Ireland, whether their parents were in Ireland legally or illegally, had an entitlement to Irish citizenship and therefore all the entitlements associated with citizenship.<sup>4</sup> This is no longer the case. The Irish Nationality and Citizenship Act 2004 provides that any person born in Ireland after 1<sup>st</sup> January 2005 to non-Irish parents will not be entitled to be an Irish citizen unless one of the parents was legally resident in Ireland for at least three out of the four years preceding the child's birth. Periods lawfully spent in the State as an asylum-seeker or student do not count towards reckonable residence.

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## 1.3 Legislative and Policy Developments Affecting the Status of Illegally Resident Immigrants

There have been several legislative and policy developments that affect the status of illegally resident immigrants in Ireland to date. Historically, levels of migration to Ireland were low and legislation and policy around immigration only began to emerge in the late 1990s. Regarding illegal immigration the emphasis to date has been on smuggling of immigrants rather than their status in the State. The Irish legislation that is relevant to the trafficking and smuggling of immigrants includes the Criminal Law (Sexual Offences) Act, 1999 – Sections 6-11; the Child Trafficking and Pornography Act, 1998; the Illegal Immigrants (Trafficking) Act, 2000; and the Children’s Act, 2001 – Part 12: Protection of Children.

The relevant international instruments include the United Nations Convention against Transnational Organised Crime 2000; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and

<sup>3</sup> The statutory body tasked with promoting the improvement of industrial relations in Ireland.

<sup>4</sup> Since the foundation of the Irish State citizenship has been granted to all persons born on the territory. Prior to the 1998 Belfast Agreement this right was provided for in legislation only. By way of the Belfast Agreement Article 2 was inserted into the Constitution, which stated that any person born on the island of Ireland (Northern Ireland and the Republic) was entitled to Irish citizenship.

Children; the Protocol Against the Smuggling of Migrants by Land, Sea and Air; and the Council of Europe Convention on Action Against Trafficking in Human Beings. European Union Instruments include the Communication from the Commission to the Council and the European Parliament on a Common Policy on Illegal Immigration 2001 and the Council Framework Decision of 19 July 2002 on combating trafficking in human beings.

The Immigration Act 2004 is the key piece of domestic legislation regarding the monitoring of immigrants in general and their compliance with immigration law. This Act empowers immigration officers to ask non-nationals to produce documents and to search such non-nationals and their luggage. The arrest and detention of illegally resident, undocumented and irregular immigrants is facilitated under this Act. The Employment Permits Act 2003 incorporates a provision whereby, for the first time, the requirements for employment permits in respect of non-nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance by both employers and employees.

A small number of measures have indirectly impacted on the status of illegally resident immigrants. As discussed above the enactment of the Irish Nationality and Citizenship Act 2004 has meant that the children of illegally resident immigrants are no longer entitled to Irish citizenship. The development of this policy has also had the effect that illegally resident immigrant parents of Irish children born in Ireland after 1<sup>st</sup> January 2005 no longer have family-related grounds on which to claim legal residency status in Ireland.<sup>5</sup>

Ireland has implemented, or is in the process of implementing, a number of EU measures designed to prevent illegal immigration and to facilitate the return of offenders. The application of the new Title IV of the EC Treaty to Ireland and the UK is subject to the provisions of a fourth Protocol to the Treaty of Amsterdam. This fourth Protocol means that Ireland has three months from the date a proposal or initiative is presented to the Council by the Commission to notify the President of the Council in writing of its wish to take part. The table at Annex III shows the decisions Ireland has taken on relevant EU measures. In the recently published *Outline Policy Proposals* for new immigration legislation the Department of Justice, Equality and Law Reform (2005, p.10) observed that it is possible that Ireland and the UK would in the future become fully involved in the immigration area of the EU *acquis* and that Irish legislation in the area should be as closely aligned as possible to current EU developments.

In general Ireland has opted into, or intends to opt into, all expulsion related measures; ARGO<sup>6</sup> measures; introduction of a uniform format for visas and residence permits for third-country nationals and carrier obligations. As discussed at Section 3 EURODAC<sup>7</sup> was implemented in full in January 2003. Visa and border proposals are frequently not relevant to Ireland as they are often measures designed to develop the Schengen Acquis.<sup>8</sup> Ireland has not

<sup>5</sup> The background to this development is presented later in this section.

<sup>6</sup> ARGO is a new programme for administrative co-operation at European Union level in the fields of asylum, visas, immigration and external borders. It replaces in part the Odysseus programme.

<sup>7</sup> The EURODAC system was established by the EU for the comparison of fingerprints of asylum applicants and illegal immigrants.

<sup>8</sup> The Schengen system involves the abolition of border controls between participating States. All internal border checks have been abolished and transferred to the external borders of the participating States. Schengen also involves a series of measures designed to strengthen external borders and address participants' security concerns. All EU Member States, with the exception of Ireland and the UK, are full participants in the system, as are Iceland and Norway. Swiss voters recently passed a referendum on the matter of participating in Schengen in the future, probably from about 2007.

opted to participate in the Council directive dealing with the issuing of residence permits to victims of trafficking. However, the Minister for Justice, Equality and Law Reform has signalled that a similar regime can be implemented under Irish legislation.<sup>9</sup>

In the *Outline Policy Proposals* the Department of Justice, Equality and Law Reform comment that the future Immigration and Residence Bill must "...reflect developments at European level in tackling the problem of illegal immigration and trafficking in human beings and the control measures which have been introduced to combat threats in this area. The Bill must also have regard to relevant judgments of the European Courts in this area" (Department of Justice, Equality and Law Reform, 2004, p.24).

## 1.4 Legal Routes to Acquisition of a Residence Permit

Illegally resident immigrants may be issued with 'leave to remain' on the basis of refugee status, on humanitarian grounds, on marriage to an Irish national, as a dependent of an EEA national, or on the basis of parentage of an Irish citizen.

*Refugee Status:* Illegally resident immigrants may obtain a residence permit in Ireland if they apply for asylum and are recognised as a refugee, in accordance with the provisions of the Refugee Act 1996 (as amended), which gives effect to the provisions of the 1951 Geneva Convention.<sup>10</sup> Asylum applicants are not illegally resident. Some applicants may be illegally resident for a period but there is no way of ascertaining how many have been in that situation. The 1996 Act (as amended) stipulates that an immigrant who arrives in the State and then delays, without an acceptable reason, before lodging an asylum application will be subject to an accelerated appeals procedure in the event of a negative finding by the Office of the Refugee Applications Commissioner (ORAC). Table 1 shows the number of asylum applications that were granted between 2002 and 2004.

**Table 1: Number of Asylum Applicants Granted Refugee Status and Humanitarian Leave to Remain**

Year	No. Persons Granted Refugee Status*	No. Persons Granted Humanitarian Leave to Remain**
2002	1,890	159
2003	1,174	83
2004	1,132	42 <sup>†</sup>

\*Source: Irish Refugee Council (figures represent the number of first instance decisions plus the number of appeals upheld in the year).

\*\*Source: Minister Michael McDowell. Written Answers. Dáil Éireann 3rd November 2004.

†January to end September 2004.

*Humanitarian Leave to Remain:* Section 3 of the Immigration Act 1999 establishes that in determining whether to make a deportation order the Minister must have regard to "humanitarian considerations". Ireland does not yet have a formal system of 'complementary' or 'subsidiary' protection for asylum seekers who do not fulfil the criteria for refugee status set out in the Geneva Convention.<sup>11</sup> All immigrants who are to be the subject of deportation orders

<sup>9</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Thursday 12<sup>th</sup> May 2005.

<sup>10</sup> A refugee is defined as a "...person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it..." (Refugee Act 1996 Section 2).

<sup>11</sup> The Government has signalled that a system of subsidiary protection will be introduced by October 2006, the transposition deadline for the Council Directive 2004/83/EC on the

(including unsuccessful asylum applicants) are automatically entitled to consideration of a range of factors including humanitarian grounds by the Minister. All such persons have 15 working days to make representations to the Minister before a deportation order is issued. The Minister is entitled to take into account a wide range of factors in making a decision on leave to remain including duration of residence, employment prospects and the character and conduct of the person in question. Table 1 shows the number of asylum applicants granted humanitarian leave to remain between 2002 and 2004. The Irish Refugee Council has stated that 437 unsuccessful asylum seekers had been granted leave to remain in Ireland between 1999 and November 2004 (O'Mahony, 2004).

Table 2 shows how many residence permits were issued to non-nationals on the basis of marriage to an Irish national, dependency on an EEA national, or parentage of an Irish citizen in the last few years. Again there is no way of knowing how many, if any, of these people were illegally resident immigrants at any stage.

**Table 2: Permission to Remain Granted to Non-Nationals 2002-2004**

Year	Marriage to an Irish National	Dependant of EEA National	On basis of an Irish Citizen Child	Total
2002	109	211	4,071	4,391
2003	181	176	183	540
2004	255	251	45	551

*Source:* Data supplied by the Department of Justice, Equality and Law Reform.

*Marriage and Family:* The Department of Justice, Equality and Law Reform, through its administrative arrangements, considers applications for residency made by the spouses of Irish nationals or by legally resident non-nationals. The Department has also considered applications received from the unmarried partners of Irish nationals, whether in same-sex or opposite-sex relationships, although if the application is granted the partner is not ordinarily granted full residency entitlements. Irish law does not specifically provide for family reunification/unity applications made by the family members of Irish nationals or legally resident non-nationals. Provision is made under EC law as incorporated into Irish domestic law for the family members of EU nationals to reside in Ireland. Applications made by non-EEA nationals for a residence permit based on their dependency on an EU national are processed by the Department of Justice, Equality and Law Reform. Figures are supplied in Table 2.

The Minister for Justice, Equality and Law Reform recently commented on an increase in 'convenience' marriages which have as their purpose the circumvention of immigration controls. Such arrangements may begin as holiday or internet relationships and may or may not involve complicity on the part of the Irish citizen. As a result in order to determine whether the spouse of an Irish national should be granted a residence permit the immigration department assesses "...the context in which the marriage took place, the evident relationship history that existed prior to the marriage, the validity of the marriage, whether the couple are residing in a family unit and the means of support of the non-EEA national spouse whilst in the State. This may involve requesting supporting documentation as evidence of the relationship or an interview by the immigration authorities of either or both parties".<sup>12</sup>

minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive).

<sup>12</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Wednesday 27<sup>th</sup> April 2005.

Irish courts do not tend to view marriage as a reason to grant residency to an illegally resident non-national. Most legal cases of this type relate to asylum seekers who have received a negative determination of their claim. The cases of *Ayeni v Minister for Justice, Equality and Law Reform*<sup>13</sup> and *F (P) and F (C) v Minister for Justice, Equality and Law Reform*,<sup>14</sup> provide examples of how the courts have refused to quash deportation orders despite the marriage of the subject to an Irish national. In the case of *Pok Sun Shun v Ireland*<sup>15</sup> the Judge noted that the rights of the family were not absolute. In the case of *Osheku v Ireland* the Judge again observed that:

...There are fundamental rights of the State itself as well as fundamental rights of the individual citizens, and the protection of the former may involve restrictions in circumstances of necessity on the latter.<sup>16</sup>

There have, however, been instances of the courts acknowledging the marriage of unsuccessful asylum applicants to Irish nationals. In the case of *Parolya and O'Sullivan v Minister for Justice, Equality and Law Reform*<sup>17</sup> the Judge ruled that the Minister for Justice, Equality and Law Reform must 'have regard' of the marriage of the two applicants before enforcing a deportation order issued in respect of the non-national spouse. The Judge noted that the evidence pointed to the fact that the marriage in question was *bona fide*.

*Parentage of an Irish Citizen*: A Supreme Court ruling in 1989 found that the Irish-born, and therefore Irish citizen, child of a non-national couple had a right to the "care, company and parentage" of his or her family in the State.<sup>18</sup> Following this judgment it was the practice of the Department of Justice, Equality and Law Reform to grant residency to the parents of Irish citizens. In some cases asylum seekers withdrew their asylum applications in order to apply for residency on the basis of their Irish citizen child. As a result of a further Supreme Court ruling in January 2003 the administrative practice was altered and non-EU parents to Irish children ceased to automatically gain residency entitlements.<sup>19</sup>

Even following this judgment, the Government had serious concerns about the abuse of the existing citizenship provisions, where all persons born in Ireland were entitled to Irish citizenship, by non-national parents seeking to

<sup>13</sup> [2002] 10 ICLMD 61

<sup>14</sup> (Unreported, High Court, 23/01/2004).

<sup>15</sup> [1986] ILRM 593

<sup>16</sup> [1986] IR 733.

<sup>17</sup> Unreported, High Court, 17/06/2004. Accessible at subscription only website: [www.firstlaw.ie](http://www.firstlaw.ie).

<sup>18</sup> *Fajujonu v. The Minister for Justice* [1990] 2 I.R. 151.

<sup>19</sup> *Lobe v. Minister for Justice, Equality and Law Reform* [2003] IESC 1 (Supreme Court, 23 January 2003).



establish a right to residence by virtue of the birth of their child in Ireland. Because of these concerns a referendum on citizenship was held in 2004, in which 79 per cent of those voting approved a change in the citizenship provisions of the Constitution. This led to the enactment of the Irish Nationality and Citizenship Act 2004 which changed the entitlement to Irish citizenship from 1<sup>st</sup> January 2005.

Non-national parents of Irish children who were born in Ireland prior to 1<sup>st</sup> January 2005 were able to apply for residency in Ireland between January and March 2005. Approximately 18,000 such applications were made before the 31<sup>st</sup> March deadline and by April 12<sup>th</sup> approximately 3,000 of that number had been granted leave to remain.<sup>20</sup>

<sup>20</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Tuesday 12th April 2005.

## 2. STOCKS AND PROFILE

The Garda National Immigration Bureau provides some statistics on illegal immigration. NGOs such as the Immigrant Council of Ireland hold some data on illegally resident immigrants who use their support services (see below).

There were 11,270 deportation orders issued in Ireland since the commencement of the Immigration Act 1999 and of these 8,902 are currently outstanding. It is not known how many persons evading a deportation order remain in the State.<sup>21</sup> Due to the fact that Irish immigration does not incorporate exit controls, data on stocks of illegally resident immigrants are non-existent. The *Outline Policy Proposals* (2005, p.51) for a new Immigration and Residence Bill indicates that the introduction of exit controls is not a priority due to concerns regarding the Common Travel Area and the cost implications of such a system. It is recommended, however, that the forthcoming legislation should contain provisions that would empower the Minister for Justice, Equality and Law Reform to introduce exit controls in the future where deemed necessary.

The Immigrant Council of Ireland's records provide an indication of the proportion of undocumented migrants to migrants who entered illegally. Of 231 cases of undocumented migrants accessing the services of the Immigrant Council 179 cases, or 77 per cent had entered Ireland legally and later became undocumented. A further 52 cases or 23 per cent had entered illegally (Immigrant Council of Ireland, 2005).

No official source has estimated the number of illegally resident immigrants. Data regarding apprehended and removed aliens supplied by the Department of Justice, Equality and Law Reform to Eurostat is supplied in Table 3 below. The information was produced for the *Annual Report on Statistics on Migration, Asylum and Return* 2002.<sup>22</sup> A 2003 report is expected later this year.

**Table 3: Annual Totals of Apprehended Non Nationals Illegally Present and Removed Aliens 1999-2002**

	1999	2000	2001	2002
Number of apprehended aliens	24	25	52	115
Number of removed aliens	6	186	364	521

Source: Hughes (2005)

A potential source of information is held by the Department of Social and Family Affairs. Information is held on allocations of Personal Public Service Numbers (PPSNs). PPSNs are allocated to all people who seek work or make a social welfare application in Ireland. One way of deriving an estimate of the number of people who have overstayed their permission to remain in the State would be to check active PPSNs against GNIB information. The Minister for Justice, Equality and Law Reform has interpreted the number of people refused leave to land as indicative of the number of migrants attempting to

<sup>21</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Tuesday, 12th April, 2005.

<sup>22</sup> Unpublished report. Results available at DG Justice and Home Affairs: [http://www.europa.eu.int/comm/justice\\_home](http://www.europa.eu.int/comm/justice_home).

come to Ireland illegally.<sup>23</sup> Leave to land was refused to 4,477 persons in 2004 (Irish Refugee Council, April 2005) and 9,000 persons in the period 2002 to end 2003.<sup>24</sup>

There is no information available on the countries of origin of illegal resident immigrants in Ireland, their age, gender, family status or regional concentration. Consequently, there is no information available on the trend in the number of illegally resident immigrants over time.

<sup>23</sup> The reasons for refusing a person leave to land are set out in the Immigration Act 2004 and include: that the non-national is not in a position to support himself or herself, does not have the requisite documents, has been convicted of a crime or is the subject of a deportation or exclusion order. Non-nationals may also be refused leave to land if the immigration officer believes that they intend to travel on to Great Britain or Northern Ireland and would not qualify for admission there. Persons may be refused leave to land if it is believed their presence could pose a threat to national security or be contrary to public policy or that they are entering for reasons other than those they have stated.

<sup>24</sup> Vol. 578 No.4 Written Answers – Garda Operations. Tuesday 27 January 2004.

# 3. STATE APPROACHES

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## 3.1 Measures to Prevent Illegal Immigration

### 3.1.1 THE MAIN WAYS OF ENTRY TO IRELAND

The Republic of Ireland is on an island with a land border with the United Kingdom. It is in a Common Travel Area (CTA) arrangement with the UK and in terms of immigration controls this complicates matters considerably. The CTA that exists between Ireland and the UK also includes the Channel Islands and the Isle of Man.<sup>25</sup> National policy within the CTA must be complementary and this is the reason why the application of the new Title IV of the Amsterdam Treaty to Ireland and the UK is subject to the provisions of a fourth Protocol whereby Ireland and the UK may opt in or out of certain measures.

The CTA means that there are relatively few internal travel restrictions and involves some co-operation on matters relating to immigration. An alien, for example, may be refused permission to enter Ireland if it is his or her intention to travel onwards to the UK and he or she would not qualify for admission to the UK. Prior to 1997 all persons travelling within the CTA did not encounter any immigration controls. The Aliens (Amendment) (No.3) Order, 1997 empowered immigration officers to carry out checks on persons who are not Irish or British arriving from within the CTA. Irish and UK citizens still do not need to carry passports when travelling between Ireland and the UK. However, transport carriers may require them to carry acceptable photo ID. While Irish immigration officers have the right to carry out checks and refuse entry to visitors to Ireland from the UK the majority are subject to minimal immigration controls. This is particularly true on the land border with Northern Ireland.

As the Central Statistics Office (CSO) estimates of travel and tourism provided in Annex IV indicate the majority of people who travel to the Republic of Ireland do so from the UK. The Table at Annex 4 shows that there were 6,574,000 overseas visitors to Ireland in 2004 and 70 per cent of these originated in the UK. It can be assumed that some of the traffic from the UK is illegal but the full extent of the problem is unknown. Our understanding is that the majority of illegal migration into the Republic of Ireland comes from within the Common Travel Area often via Northern Ireland. Media reports indicate that in the first six months of 2005, 477 people were refused permission to cross the land border from Northern Ireland into the Republic of Ireland. In the same period in 2004, 194 people were refused. In total 366 people were refused during 2004. It is reported that the Gardaí believe that most people prevented from crossing the land border want to work in the undeclared work sector in Ireland rather than claim asylum. Of the 477 people stopped in 2005 6 intended to claim asylum. Personnel from the Garda Immigration Border Control Unit based in Dundalk, established in 2004, check

<sup>25</sup> The CTA is maintained through arrangements, rather than an agreement, which do not have a formal basis in the international arena. The existence and importance of the CTA is however recognised internationally, most notably in the context of the special protocol to the Amsterdam Treaty which permits Ireland to remain outside the main provisions of the Schengen acquis so that the CTA arrangements can be maintained (Ingoldsby, 2004, p. 3).

all modes of public transport that cross the border including taxis.<sup>26</sup> The fact that there are no direct flights from Nigeria to Ireland, yet a large proportion of asylum seekers in Ireland are Nigerian, is illustrative of the significance of the CTA in facilitating immigration to Ireland.

Returns of migrants under the Dublin Convention give some indication of migration routes to Ireland from within the EU.<sup>27</sup> In 2002, 70 persons were removed under the Dublin Convention to EU countries. Of that total 54 people were removed to the UK; 5 to Austria; 4 to Belgium; and 2 to France. Germany, Greece, Holland, Netherlands and Spain received 1 returnee each.<sup>28</sup> The Minister of Justice, Equality and Law Reform has stated that the UK (including Northern Ireland) and France are major transit points for illegal immigration into Ireland.<sup>29</sup>

The Immigrant Council of Ireland data presented in Section 2 show that the majority of illegal/irregular/undocumented migrants presenting at their services enter the country legally and later become illegal. Sometimes their status may change from legally resident to illegally resident through no fault of their own, for example in the case of domestic workers whose employers do not renew the work permit.

### **3.1.1.1 Legal Entry**

Asylum seekers are not illegally resident immigrants, however, the asylum system can provide a means by which illegal immigrants enter the State. The issue of non-participation in the asylum process illustrates this problem. In February 2003 the Minister for Justice, Equality and Law Reform commented that 50 per cent of asylum claims lodged were not being pursued to finality.<sup>30</sup> The people concerned may still be living in Ireland, or may have travelled to the UK or further afield. Amendments to the Refugee Act introduced in the Immigration Act 2003 allow the ORAC to more easily conclude cases and if necessary issue deportation orders in cases where there is unsatisfactory participation in the asylum application process.

Since mid-2003 the government has expressed growing concern that English language schools were offering immigrants, the majority of whom were Chinese, a means of circumventing Irish immigration law. In the period between April 2000 and December 2004 all non-EEA students in Ireland could work 20 hours per week during term and work full-time during vacation. Media reports suggested that there were some bogus English language schools which took fees in exchange for false attendance records from non-nationals who wished to work rather than to study<sup>31</sup>. In December 2004 the Minister for Justice, Equality and Law Reform introduced new restrictions on the access of non-EEA students to the Irish labour market which came into effect in April 2005. Now only students who are pursuing courses which are of at least one

<sup>26</sup> *The Irish Times*, August 4<sup>th</sup> 2005, "Gardaí refused entry to 477 from North".

<sup>27</sup> The Dublin Convention was the instrument which provides the legal basis for determining which EU Member State is responsible for examining an asylum application. On 1 September 2003 the Dublin II Regulation succeeded the Dublin Convention. All Member States plus Norway and Iceland are subject to the new Regulation, with the exception of Denmark (the Dublin Convention remains in force between Denmark and the other Member States).

<sup>28</sup> Dáil Éireann – Volume 564 – 8<sup>th</sup> April, 2003 Written Answers – Deportation Orders.

<sup>29</sup> Vol. 578 No.4 Written Answers – Garda Operations. Tuesday 27 January 2004. See also *The Irish Times*. "Two questioned after stowaways found on ferry. Group of 15 arrived in van at Rosslare". 18<sup>th</sup> September 2002.

<sup>30</sup> Vol. 561 No.12 Written Answers – Migration and Asylum Issues. 12<sup>th</sup> February 2003.

<sup>31</sup> *The Irish Times*. "CAB to investigate finances of language schools". 21<sup>st</sup> July 2003.

year's duration and which lead to a 'recognised qualification'<sup>32</sup> may enter the Irish labour market. (See Department of Justice, Equality and Law Reform, December 2004).

### ***3.1.1.2 Illegal Entry***

**Smuggling and Trafficking:** The discovery in December 2001 of the bodies of eight Turkish immigrants in a container lorry at the port of Rosslare, County Wexford added to the evidence that Ireland had become a destination for people smugglers. Seven men, believed to be members of an Albanian gang, were convicted in 2003 and received jail terms from a court in Brugge, Belgium for their part in the tragedy. The migrants began their journey in Zeebrugge and it is believed that they intended to travel to the UK, a much shorter crossing than the 53-hour journey between Zeebrugge and Ireland.<sup>33</sup>

There is some discussion, however, over whether Ireland is a target for people traffickers as well as smugglers. Trafficking is frequently associated with the sex industry. However, the Migrant Rights Centre Ireland (MRCI) has drawn attention to the less obvious problem of trafficking in forced labour to Ireland. MRCI has documented cases which often involve men from Bangladesh, India or Romania. As Conroy (2003a) and Wylie (2003) comment 'evidence' in a strict sense of trafficking as opposed to smuggling is lacking in Ireland.<sup>34</sup> It is commonly accepted, however, that Ireland is a transit country and as a result, the MRCI argue, it is unlikely that there is no trafficking into Ireland.<sup>35</sup>

The joint Garda Síochána/Police Service of Northern Ireland (PSNI) report (An Garda Síochána, 2004, p.11) *Cross Border Organised Crime Assessment* states that there is no evidence of trafficking into any part of Ireland. The standard of evidence required by the Garda Síochána/Police Service of Northern Ireland would, however, need to be sufficient to support a prosecution.

There is also no formal mechanism in place to offer protection to the victims of trafficking. However, we understand that in practice a pragmatic and sympathetic approach to dealing with such victims is adopted by the GNIB and the Department of Justice, Equality and Law Reform. As mentioned above Ireland has not opted to participate in the Council directive dealing with the issuing of residence permits to victims of trafficking. The Minister for Justice, Equality and Law Reform has, however, signalled that a similar regime can be implemented under Irish legislation.<sup>36</sup> In the discussion document for the new immigration and residence legislation it is proposed that protection should be offered to victims in order to secure his or her co-operation in pursuing a

<sup>32</sup> Over 2,800 'recognised qualifications' are listed on the Department of Education and Science's website. Such qualifications arise from courses awarded by an Irish University, the Dublin Institute of Technology, HETAC (Higher Education and Training Awards Council) or FETAC (Further Education and Training Awards Council).

<sup>33</sup> *The Irish Times*, 'Stowaways may have expected to come ashore in Britain', 10<sup>th</sup> December 2001.

<sup>34</sup> Smuggling of migrants is defined by the UN (2001) as "...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident". Trafficking in persons is defined by the UN (2001) as "...the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".

<sup>35</sup> Discussions between the authors and the MRCI.

<sup>36</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Thursday 12<sup>th</sup> May 2005.

trafficking conviction (Department of Justice, Equality and Law Reform, 2005, p.19).

The following is a joint discussion of smuggling and trafficking; where a distinction is possible we make one.

In 2003 a total of 841 persons claiming to be unaccompanied minors attended the Office of the Refugee Applications Commissioner either seeking to make an application for a declaration for refugee status or to be reunited with their families. Of these, 729 were referred to the Health Service Executive<sup>37</sup> and the remaining 112 were judged to be adults (ORAC, 2004, p.41). In a study commissioned by the International Organization for Migration (IOM) (Conroy, 2003b, p.3) it was found that in 2003 approximately 10 per cent of unaccompanied minors coming into Ireland were the subject of investigation in relation to criminal trafficking or smuggling by adults. It was also found that child trafficking investigations deal with children from the former war zones of the Balkans, the coastal countries of West Africa and Romania.

The fate of unaccompanied minors who are later 'claimed' by family members in Ireland is unknown. The Irish Refugee Council has called for follow up and monitoring of 'at risk' separated children reunified with family members in Ireland. In April 2003, 160 asylum seeking children (from a total of 1,213 first instance applications made by children) had not appeared for their first instance interview and were, therefore, deemed to have withdrawn from the asylum process. These children may have been informally reunified with their families, they may have returned to their countries of origin or they may remain in Ireland without protection (see Veale, Palaudaries and Gibbons, 2003).

Conroy also comments on the problem of children who disappear from Health Board care.<sup>38</sup> The Minister of State at the Department of Health and Children has indicated that 68 unaccompanied minors disappeared from care in 2004, and 12 disappeared in the first four months of 2005.<sup>39</sup> In June 2005 there were approximately 210 migrant children in care and around 20 per cent of these were under 16 years of age.<sup>40</sup> Some of the missing children may be 'collected' by an adult from their hostel or centre, sometimes before the State has time to initiate an asylum application on their behalf. Conroy (2003a, p.39) draws attention to the fact that the lack of detailed records (including fingerprints and photographs) at accommodation centres mean that children who 'disappear' cannot easily be traced. The Health Service Executive (East Coast Area) has recently stopped placing children in hostels and has developed a dedicated facility for 12 to 16 year olds.<sup>41</sup>

Children who are accompanied on arrival by an adult may also be at risk and there is a concern that children are being smuggled/trafficked into the State by legally resident individuals. Approximately 95 per cent of separated children who seek asylum in Ireland are not identified by immigration officials at a port of entry, but present themselves later to officials (Irish Refugee Council, 2003, p.86). This suggests that children are being brought through the ports surreptitiously. In the case of Irish passports prior to October 2004 children could be listed on, and travel with, the passports of their parents.

<sup>37</sup> The Health Service Executive decide whether or not to make an application for asylum on the child's behalf. In the event that an application is made, the Health Service Executive then assists the minor throughout the asylum process.

<sup>38</sup> On January 1st 2005 a new Health Service Executive (HSE) replaced the Health Boards in Ireland. The HSE has full operational responsibility for the running of the health services in Ireland.

<sup>39</sup> Mr. B. Lenihan, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Thursday 12th April 2005.

<sup>40</sup> *The Irish Times*, 'Concern for missing children prompts new service', June 20<sup>th</sup> 2005.

<sup>41</sup> See note above.

Since that date all children regardless of age must have their own passport. Passports issued before October 2004 which list the names of children are still valid and children may continue to travel on such passports up to their 16<sup>th</sup> birthday. In the case of non-Irish passports children may be listed on their parent's passports. Conroy found that children are sometimes presented as part of an asylum seeker's extended family, or in cases where a legally resident person has children of their own they may leave the country and return with minors of approximately the same ethnicity, age and sex to their own children (Conroy, 2003a, p.34). Measures to prevent this method of child smuggling/trafficking are discussed below.

NGOs Ruhama and Women's Aid have indicated that in the course of their work with women in the sex industry in Ireland they are encountering increasing numbers of immigrant women. Ruhama is an NGO that provides support including outreach, advocacy and education to women working in the sex industry in Ireland. Ruhama was the lead agency in establishing the programme entitled 'Ireland en route' which brings together agencies, academics and individuals working in the field and which has produced a submission on draft legislation. The organisation also contributes to the annual US State Administration Trafficking in Persons Report (TIP) (Ruhama, 2005a, p.12). Ruhama's website provides a description of how a trafficked woman may arrive in Ireland:

Trafficking involves a woman leaving her home country in search of a job abroad. Generally, the woman is approached by a trafficker who offers to assist her in travelling abroad and securing work. This person could be a friend of the family or could pose as working for a job agency. Sometimes, the trafficker is the woman's 'boyfriend' or 'fiancé'. The woman, however, is deceived and instead is put into prostitution in a foreign country. The trafficker keeps the woman in prostitution through instilling fear into her and using the tactics of violence and rape against her (quotation from Ruhama website <http://www.ruhama.ie>).

Research commissioned by Ruhama (2005, p.6) indicates increasing numbers of women who have been trafficked into Ireland working in prostitution here. In the period 2003/2004 Ruhama had encountered over 100 cases of trafficking. These figures include 70 'presumed trafficked' women and 21 victims of trafficking. By including 'presumed trafficked' cases Ruhama hope to account for the women they work with that are too afraid to reveal their true circumstances.<sup>42</sup> Efforts to estimate the scale of the problem are also hampered by the fact that trafficked women are almost all forced into 'indoor prostitution' i.e. operating out of flats or brothels (Ruhama, 2005a, pp.10-11).

Ruhama also have experience of women who came to Ireland of their own volition to escape traffickers in other countries (see Kelleher Associates, 2004). The Women's Health Project, run by the Eastern Regional Health Authority, indicated that during 2003 its outreach service made contact with 137 women working in prostitution. Of these 26 were Irish, 42 were from the EU and 69 women were from outside the EU.<sup>43</sup> Wylie (2003, p.47) reports that in 2003 Ruhama had encountered 130 Eastern European prostitutes on the streets. Wylie makes the point that not all women working in the sex industry in Ireland entered the country as trafficked women. Some came legally on short-term entertainment visas to work in lap dancing clubs. This visa scheme has since been suspended.

<sup>42</sup> Ruhama uses the following indicators to identify a presumed victim of trafficking: evidence of fear, recent arrival, evidence of control, lack of English language skills and evidence of physical abuse (2005a, p. 11).

<sup>43</sup> *The Irish Times*, 'Exploitation of minor does not surprise experts', May 14<sup>th</sup> 2004.



*Forged documentation:* The Gardaí/PSNI have found clear indicators of the facilitation of illegally resident immigrants by the provision of forged or fraudulent documentation. (Garda Síochána/Police Service of Northern Ireland, 2003, p.11). The methods employed to counteract such fraud are discussed below.

### **3.1.2 MEASURES TO PREVENT ILLEGAL IMMIGRANTS FROM ENTERING IRELAND (BORDER CONTROLS)**

#### ***3.1.2.1 Legislative Controls***

Regarding general immigration controls the Immigration Act 1999 provides for the deportation of immigrants. The Immigration Act 2003 sets out arrangements for people refused permission to land. The introduction of carrier liability in the Immigration Act 2003 was a move designed to prevent illegal immigrants from beginning a journey to Ireland. Carriers are required to check that a person who wishes to travel to Ireland has the requisite travel documents to legally enter the country.

The main legislation governing non-nationals' entry to and residence in Ireland is the Alien's Act 1935 and the Immigration Act 2004. The Immigration Act 2004 was introduced in response to a court challenge in respect of the earlier legislation. The legality of the 1935 Act was upheld and consequently there is a large amount of overlap between it and the Immigration Act 2004.<sup>44</sup> The 1935 and 2004 Acts make provision for the appointment of immigration officers and empowers them to grant or refuse permission to land on behalf of the Minister for Justice, Equality and Law Reform. The grounds for granting or refusing permission to land are set out. Persons landing in the State are required to be in possession of a passport or identity document. The legislation empowers the Minister for Justice, Equality and Law Reform to make orders regarding approved ports for landing and imposes limits on the duration of a non-national's stay. The Act also provides that non-nationals must register with the Gardaí (see Section 3.2).

Regarding smuggling and trafficking the Illegal Immigrants (Trafficking) Act 2000 was introduced in order to criminalise the act of organising or knowingly facilitating for profit the entry of an undocumented immigrant into the State. Notwithstanding its name this Act is mainly concerned with smuggling rather than trafficking.<sup>45</sup> Irish legislation that will address the problem of trafficking directly is expected in the near future to take account of the EU Council Framework Decision on combating trafficking in human beings,<sup>46</sup> the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, and supplementing the UN Convention against Transnational Organised Crime. The legislation will also take account of the Council of Europe convention on action against trafficking in human beings.<sup>47</sup> In addition the Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence<sup>48</sup> and the Council Directive on defining the facilitation of unauthorised entry, transit and residence<sup>49</sup> must be implemented in Irish legislation.

<sup>44</sup> Leontjava and Chang ([2005] 1 ILRM).

<sup>45</sup> See note 34.

<sup>46</sup> 2002/629/JHA, 19th July 2002.

<sup>47</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Thursday 12th May 2005.

<sup>48</sup> 2002/946/JHA of 28 November 2002.

<sup>49</sup> 2002/90/EC of 28 November 2002.

The purpose of the Child Trafficking and Pornography Act 1998 is to strengthen the legislative measures aimed to protect children under 17 years old from sexual exploitation through child trafficking and child pornography. It is made an offence, punishable by up to life imprisonment, to organise or knowingly facilitate child trafficking, i.e., the entry into, transit through or exit from the State of a child for the purpose of his or her sexual exploitation. The detention of a child for such purposes is also made an offence punishable by up to ten years imprisonment. The Act does not extend to child trafficking for the purposes of labour exploitation. To date more prosecutions have been brought under the Act in relation to pornography than to trafficking (See Conroy, 2003a, p.14).

### ***3.1.2.2 Garda National Immigration Bureau Information System***

The Garda National Immigration Bureau (GNIB) is responsible for immigration controls at points of entry into the State. The roll out of the GNIB Information system to all ports of entry was completed in the first quarter of 2003 (An Garda Síochána, 2004a, p.19). The system is linked back to GNIB headquarters at Burgh Quay in Dublin. Data, including photographs, are held on all persons who have been refused leave to land, all those who are the subject of deportation orders and almost all legally resident non-EEA nationals.<sup>50</sup> The Certificate of Registration (residence permit) issued to all third country nationals who reside in Ireland for a period longer than three months now incorporates ‘smart card’ technology whereby a microchip containing the person’s photograph and registration details is included. Steps have also been taken towards the use of biometrics to confirm identity (An Garda Síochána, 2004a and 2004b).

The GNIB Information System has recently been enhanced in a number of other ways that are described in the *Evaluation of An Garda Síochána Policing Plan 2003* (See An Garda Síochána, 2004b). An electronic document tracking system was introduced in May 2003. It is noted that this system has become “...a rich repository of intelligence, facilitating rapid document tracking, and updating of information”. A new area regarding Carriers Liability (which assists with monitoring of offences committed by carriers, as well as the printing of warning, offence and payment notices) was added to the GNIB Information System in September 2003. An interface was developed between the GNIB Information System and that of the Department of Social and Family Affairs in October 2003 (An Garda Síochána, 2004b, p.17). In addition if a person produces a work permit on entry, its validity can be checked via an interface with the Department of Justice, Equality and Law Reform. The GNIB also has an interface with the Office of the Refugee Applications Commissioner (ORAC) and the Department of Foreign Affairs (DFA).

### ***3.1.2.3 Immigration Documents and Biometrics***

The Department of Foreign Affairs announced in October 2004 that all children regardless of age must obtain an individual Irish passport in their own name. Previously children travelled on their parent’s passport and there was no photograph of the child included. It is intended that child smuggling/trafficking will be made more difficult as more identifying information on the child is made available to immigration officials. In December 2004, as part of a major modernisation of the Irish passport production system, the Minister for Foreign Affairs launched a new Irish passport which incorporates advanced security features. This passport does not contain biometric data of the holder yet but it was designed with the intention

<sup>50</sup> Vol. 578 No.4 Written Answers – Garda Operations. Tuesday 27 January 2004.

that that facility would be easily implemented (Department of Foreign Affairs, January 2004, December 2004).

In December 2004 the European Union adopted a regulation which sets security standards for EU passports, including the incorporation of biometric identifiers. Due to the fact that the legal base for this regulation is in the Schengen Section of the Amsterdam treaty, Ireland is not legally bound by the measure. However, the Irish government decided on 14 December 2004 to proceed with the introduction of biometric passports and tenders have been invited for the work. It is expected that the production of biometric passports will commence on a pilot basis by October 2005, with full production following as soon as possible thereafter. The move is also partly in response to new immigration requirements by the US whereby citizens of countries that participate in the visa waiver programme, including Ireland, must present a passport that incorporates biometric identifiers as a condition of entering the United States under the visa waiver programme. This requirement applies to passports issued after the deadline only and does not affect holders of machine-readable passports issued before the deadline. The initial deadline was set at October 2004 but was extended to October 2005.<sup>51</sup>

The Department of Justice, Equality and Law Reform (2005, p.19) have stated that the inclusion of biometric identifiers in immigration documentation (visas and residence permits) should take place as soon as possible. The media have reported some of the measures designed to counteract the circulation of fraudulent documents to date. In early 2003 new work permits were issued containing watermarks and ultra violet features. Details of the employer and employee are now included on the permit including a photograph of the latter.<sup>52</sup>

#### ***3.1.2.4 Fingerprinting***

Under the Refugee Act, 1996 as amended by the Immigration Act, 2003 all asylum applicants may now have their fingerprints recorded, including children under 14 years old under special supervision. In January 2003 the EURODAC<sup>53</sup> fingerprinting system became fully operational. Since then the fingerprints of anyone who applies for asylum in the European Union (except Denmark, for the time being) and in Norway and Iceland, are stored in a database called EURODAC. In relation to Ireland, in the period between 15 January 2003 and 15 January 2004 the information in the First Annual Report to the Council and the European Parliament (Commission Staff Working Paper, 2004) showed:

- 87 sets of fingerprints sent by Ireland matched those of asylum seekers already sent to EURODAC by Ireland;
- 164 sets sent by Ireland matched stored fingerprints from another State;
- 59 sets sent by other States matched stored fingerprints from Ireland.

In their *Annual Report 2004* the Office of the Refugee Applications Commissioner (ORAC) (2005, p.21) commented on the positive effect EURODAC has had on the efficient operation of the Dublin II Regulation. The fingerprints of new asylum applicants are sent to a central database in Luxembourg every day. The results of comparisons with stored records are usually sent back to ORAC electronically within 10 to 15 minutes.

Immigration officers may take the fingerprints of persons refused leave to land under the Immigration Act 2004 and of persons against whom a

<sup>51</sup> Minister Dermot Ahern, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann 12th April 2005.

<sup>52</sup> *The Irish Times*, “Move to curtail forgery of work permits”, December 12<sup>th</sup> 2002.

<sup>53</sup> See note 7.

deportation order has been issued under the Immigration Act 1999. Under the Immigration Act 2004 all non-nationals must provide their fingerprints on registration with the GNIB (see Section 3.2.1).

### **3.1.2.5 Other**

The GNIB have international liaison arrangements with immigration authorities in the UK and France including permanent liaison officers in Irish embassies in London and France.<sup>54</sup> In addition a vehicle scanning truck has been deployed at Rosslare Europort to detect persons concealed inside goods vehicles (An Garda Síochána, 2004a).

The Department of Justice, Equality and Law Reform (2005, p.16) have put forward a number of proposals for the future enhancement of border controls in the *Outline Policy Proposals*. It is stated that there should be provision for exit controls to be implemented where deemed necessary by the Minister. However, the problems of implementing such exit controls given the Common Travel Area with the UK are also discussed.

## **3.1.3 RELEVANT INTERNATIONAL AGREEMENTS**

The Common Travel Area shared with the UK is the primary bilateral arrangement in relation to illegal immigration to Ireland.<sup>55</sup> In the *Outline Policy Proposals for an Immigration and Residence Bill* the Department of Justice, Equality and Law Reform (2005, p.25) also take account of the significance of relations with the EU, as well as obligations under the Council of Europe and United Nations Conventions.

## **3.1.4 INFLUENTIAL STRATEGY PAPERS**

Strategy papers by international organisations have influenced the development of policy on illegal immigration. For example, preparations for a draft Immigration and Residency Bill began in 2002 with the publication of a study commissioned by the Department of Justice, Equality and Law Reform and carried out by the International Organization for Migration (IOM). In the *International Comparative Study of Migration Legislation and Practice* the IOM compiled a review of immigration systems around the world, addressing issues such as visas and pre-entry clearance, entry controls, enforcement measures, residence permits, labour immigration, and integration. The findings of this study are used to provide the international context in the recently published *Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005). During the preparation of the discussion document the Department also used a number of Council of Europe, OECD, Budapest Group and International Labour Organisation sources.<sup>56</sup>

## **3.1.5 INITIATIVES CONCERNING COUNTRIES OF ORIGIN**

Measures are being taken to combat illegal immigration at its source in conjunction with the countries of origin and transit. Ireland has concluded Readmission Agreements with Poland, Romania, and Bulgaria. An agreement with Nigeria was signed in 2001 and subsequently ratified by Ireland. The ratification process is ongoing on the Nigerian side. Nevertheless, the authorities there are 'operating in the spirit of the agreement'.<sup>57</sup> The agreements are designed to provide a structured repatriation procedure for the return of the nationals of these countries who are residing illegally in Ireland. In the case

<sup>54</sup> Vol. 578 No.4 Written Answers – Garda Operations. Tuesday 27 January 2004.

<sup>55</sup> See note 25.

<sup>56</sup> Discussion between the authors and the Department of Justice, Equality and Law Reform.

<sup>57</sup> Minister Michael McDowell, Written Answers, Dáil Éireann 10<sup>th</sup> February 2005.

of Nigeria the diplomatic or consular officers of Nigeria interview returnees within five days of being requested to do so in order to establish identities and prove nationality. If Nigerian nationality is confirmed a Nigerian travel document is issued within four days so that the deportation can be enforced. The agreements with Bulgaria, Romania and Poland list mutually agreed documents as proof of citizenship. (See International Organization for Migration, 2004, p.190).

In addition, personnel from the Irish Department of Justice, Equality and Law Reform are posted at Irish embassies in Moscow and Beijing in an attempt to reduce visa fraud.<sup>58</sup> Participation in an EU wide Immigration Officers Liaison network is under consideration.

The UK is currently developing an e-Borders programme. The aim of the programme is to enable border agencies to work together to 'export the border' from the UK by combining existing carrier information systems with information technology. The Department of Justice, Equality and Law Reform (2005, p.39) say that this will involve "...assessing passengers in advance of arrival, filtering out known threats and creating new opportunities to share information and intelligence between border control, law enforcement and intelligence agencies in the UK and overseas". The Department of Justice, Equality and Law Reform has stated that Ireland must be in a position to keep up with such developments in border control and migration management.

In the recent document *Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005) it is stated that Ireland will look at the role of Irish foreign policy in relation to immigration, including the potential use of development aid to help in tackling poverty and other factors causing illegal migration (Department of Justice, Equality and Law Reform, 2005, p.25).

## 3.2 Measures of Domestic Control

### 3.2.1 BASIC PRELIMINARY CONTROL METHODS

There are relatively few methods available to control illegally resident immigrants in Ireland. The Immigration Act 2004 provides for a register of all legally resident non-nationals. Presently, only non-nationals aged 16 years and over must register, however, the Department of Justice, Equality and Law Reform (2005, p.87) are considering requiring all non-national children to register also. Non-nationals who are registered are also obliged under the Immigration Act to report any co-habiting non-nationals who are not registered. Non-nationals without permission to remain in Ireland may be required to reside in a particular district and report at specified intervals to an immigration officer or Garda. This Act also provides that non-nationals may at any time be required to produce a passport or equivalent document and their registration certificate.

While there are no immediate plans to introduce a national identity card in Ireland, if the UK government proceeds with plans for such a card the Common Travel Area may necessitate similar action in Ireland. The *Outline Policy Proposals* for new immigration legislation state that a public service card may be introduced which would 'take account' of national identity card developments in the UK (Department of Justice, Equality and Law Reform, 2005, p.102).

<sup>58</sup> Minister Michael McDowell, Written Answers, Dáil Éireann 27<sup>th</sup> January 2004.

### **3.2.2 INFORMATION SHARING BETWEEN GOVERNMENT BODIES**

In relation to the control of illegally resident immigrants the Department of Justice, Equality and Law Reform (2005, p.103) repeatedly stress the need for adequate co-operation and co-ordination across the public services to ensure that access to public services by illegally resident immigrants is limited to emergency services so as not to encourage illegal immigration. Section 8 of the Immigration Act 2003 provides that all ‘information holders’<sup>59</sup> must exchange information on non-nationals including asylum applicants for the purposes of administering the law relating to non-nationals. The Department of Foreign Affairs and the Garda Síochána may be excused from this obligation for national security and public policy reasons.

The Department of Social and Family Affairs is most directly involved with access to public services. An interface between the GNIB Information System and that of the Department of Social and Family Affairs was established in October 2003. In the *Evaluation of An Garda Síochána Policing Plan 2003* it is noted that “This sharing of information enables staff of the GNIB to quickly establish the social welfare status of an individual registered in the country, and it enables staff of the Department of Social and Family Affairs to quickly validate the current immigration status of its customers” (An Garda Síochána, 2004b, p.17). The GNIB also has links with the ORAC, the visa section of the Department of Foreign Affairs, the work permits section of the Department of Enterprise, Trade and Employment and the Department of Social and Family Affairs. The GNIB works with the Health Service Executive, in particular the Eastern Region,<sup>60</sup> in relation to immigrant minors.

### **3.2.3 MEASURES TO CURB THE EMPLOYMENT OF ILLEGAL IMMIGRANTS**

Administrative and legislative measures have been developed to curb the employment of illegal immigrants. The Employment Permit Act 2003 introduced penalties starting from €3,000 and/or 12 months in prison for employers and employees for non-compliance with employment permit regulations. In a related development the number of labour inspectors has recently been increased from 21 to 32 and the Minister for Enterprise, Trade and Employment has stated that these inspectors will have a particular focus on sectors where migrant workers are concentrated (see Department of Enterprise, Trade and Employment, 2005a). The Minister was responding to allegations in the media that some immigrant workers were being exploited. In particular, it was alleged in the Dáil that GAMA Construction, a company based in Turkey, was demanding excessive hours of its Turkish workers while paying them less than the minimum wage (Department of Enterprise, Trade and Employment, 2005b). An investigation into this matter is ongoing.

### **3.2.4 INSTRUMENTS AND ACTORS INVOLVED IN TRACKING DOWN ILLEGAL IMMIGRANTS**

The Garda National Immigration Bureau (GNIB) has responsibility for tracking down illegally resident immigrants in Ireland. The Gardaí have conducted a number of raids on lap dancing clubs and brothels in recent years such as Operation Gladiator in 2002 and Operation Quest in 2003 which were launched under the Illegal Immigrant (Trafficking) Act 2000 (Immigrant Council of Ireland, 2005, p.13). Operation Hyphen in 2002 involved

<sup>59</sup> ‘Information holders’ are defined as a Minister of the Government, a local authority, a health board, the Garda Síochána or any other State body.

<sup>60</sup> See note 37.

approximately 200 Gardaí in the Dublin metropolitan region and 400 outside the Dublin region; 294 premises were visited and 140 persons were detained.<sup>61</sup> Until recently the 1935 Aliens Act and the Aliens Orders made thereunder in 1946 and 1975 formed the basic legislation governing the entry and residence of non-nationals in the State. Operation Hyphen would, therefore, have been carried out under these instruments which have since been supplemented by the Immigration Act 2004.

The Alien's Act 1935 empowers District Court judges to issue warrants enabling members of the Garda Síochána to enter premises specified in the warrant. The Garda members may search those premises and any persons found there and may seize items they believe to be evidence of an offence. The 2004 Immigration Act provides for the appointment of immigration officers and enables them to enter or board any vessel and to detain and examine any non-national arriving at or leaving from a port. Immigration officers may also search non-nationals and their luggage for documents and may confiscate any that are found. Immigration officers or Gardaí may arrest without a warrant any person who is suspected of committing an offence under the Immigration Act 2004 or the Employment Permits Act 2003. In addition under the Illegal Immigrants (Trafficking) Act 2000 a Garda may detain vehicles suspected of being used to traffic or smuggle immigrants into Ireland, may enter and search premises and may arrest persons who withhold information or fail to co-operate with the search warrant.

### 3.3 Voluntary and Forced Return

#### 3.3.1 FORCED RETURN

There are two types of forced removal from Ireland in operation: removal and deportation. The Immigration Act 2003 provides the legal basis for issuing removal orders in respect of persons refused entry to Ireland. The Immigration Act 1999 provides the legal basis for the issuing of deportation orders against failed asylum seekers and illegal immigrants. A deportation order is signed by the Minister for Justice, Equality and Law Reform. It requires the deportee to remain outside the State forever. A removal decision, however, can be made by an immigration officer and such a decision does not prohibit the future re-entry to the State of the removed person.

*Deportation:* Where the Minister proposes to make a deportation order requiring an unsuccessful applicant to leave the State, that person is given three options: to make representations to the Minister within 15 working days (commonly referred to as an application for humanitarian leave to remain); to leave the State voluntarily within a short period; or to consent to the making of the deportation order within 15 working days. The majority of persons who seek permission to remain in the State on humanitarian grounds and ultimately in respect of whom deportation orders are issued, are people who have been through the asylum procedure.<sup>62</sup> The Immigrant Council of Ireland and Migrant Rights Centre Ireland believe that most migrant workers who are in contravention of immigration law will avail of a voluntary return scheme before a deportation order is issued.<sup>63</sup>

Table 4 shows that many more deportation orders are signed than are enforced every year. This may be because the subject of the order evades deportation, the person moves on from Ireland to another country or because there is no country willing to accept the subject of the order into its territory.

<sup>61</sup> Dáil Éireann – Volume 555 – 17 October, 2002. Written Answers. – Garda Operations

<sup>62</sup> Vol. 561 No.12 Written Answers – Migration and Asylum Issues. 12<sup>th</sup> February 2003.

<sup>63</sup> Discussions between the authors and Immigrant Council of Ireland and Migrant Rights Centre Ireland.

Furthermore, many deportation orders issued are subsequently challenged in the courts. In November 2004 the Master of the High Court was critical of the fact that 400 applicants for asylum were on the High Court judicial review list.<sup>64</sup> He maintained that the Refugee Appeals Tribunal was not giving sufficient consideration to the credibility of asylum applicants and that such applicants were then challenging negative decisions in the courts.<sup>65</sup> The percentage of deportation orders enforced increased from 6 per cent in 1999 to 20 per cent in 2000 and 24 per cent in 2003 before falling back to 21 per cent in 2004. This trend suggests that the implementation of deportation orders has tightened in the last five years.

**Table 4: Deportation from Ireland, 1999 – 2004**

Year	Deportation Orders Signed	Deportation Orders Enforced
1999	102	6
2000	940	187
2001	2,025	365
2002	2,430	521
2003	2,411	590
2004	2,796	598

Source: Department of Justice, Equality and Law Reform.

Deportees may be escorted by Garda officers or may travel unescorted. Escorts are required in cases where carriers do not accept unaccompanied deportees or when individuals are deemed potentially violent. In order to ensure the unescorted deportee's arrival at the port of destination the GNIB has negotiated agreements with a number of carriers. Under these agreements the deportee is placed on a flight from Ireland to a hub airport (mainly London and Amsterdam) and the immigration authorities at that airport will ensure departure. This method is the preferred one because airline staff will often have a common language with the deportee. (See International Organization for Migration, 2004, p.189).

Between January 2002 and May 2005, 13 aircraft were chartered for deportations at a total cost of €1,628,201. There were 376 people deported on these flights. Of the 13 specially chartered aircraft 6 went to Romania, 5 to Nigeria, 1 to Algeria and 1 to Gambia. Of those that went to Romania, 1 travelled on to Bulgaria and 3 on to Moldova. Of the chartered flights 2 were joint deportation operations – with the Netherlands in November 2003 to Romania and Bulgaria, and with Britain in the same month to Romania and Moldova. The most expensive charter was the most recent, in March 2005, on which 26 adults and 9 minors were deported to Nigeria. The Minister for Justice, Equality and Law Reform stated that although these operations were expensive they were effective. He also drew attention to the fact that the European Council of Ministers adopted a decision in April 2004 facilitating the increased use of joint repatriation flights as a means of "...demonstrating solidarity among member states, increasing the rate of returns and making more effective use of resources".<sup>66</sup> Extensive use is made by Ireland of the EU Removal document which is accepted by Kosovo, Albania, Romania, Bulgaria and the Czech Republic. (See International Organization for Migration, 2004,

<sup>64</sup> The 2000 Illegal Immigrants (Trafficking) Act mandates that certain key decisions or actions taken in the asylum and deportation process may only be appealed to the High Court by way of judicial review. The applicant must also show "substantial grounds" as to why the application for judicial review should be granted and the decision of the High Court may not be appealed to the Supreme Court, except for cases where the High Court is convinced that the issue in question is one of "exceptional public importance".

<sup>65</sup> *The Irish Times*, November 20<sup>th</sup> 2004, "Lawyer criticises assessment of refugees".

<sup>66</sup> Minister McDowell. Dáil Eireann – Unrevised Debates, 17<sup>th</sup> May 2005.



p.190). Some concerns have been expressed about the methods used to effect deportations.<sup>67</sup>

*Removal Orders:* The removal process applies to non-nationals who have been refused admission to the State and may only be invoked within 3 months of the arrival of the non-national in the State. Removals orders may also be issued in respect of a non-national who evades immigration controls or who enters other than through an approved port. Such immigrants may be arrested and detained for the purposes of the removal and arrangements may be made for departure without delay.

The *Outline Policy Proposal* for new immigration and residence legislation proposes extensive reforms to the forced returns procedures in Ireland in the form of two separate mechanisms for removal. A streamlined removals process would exist for persons without a legal basis for remaining in Ireland such as unsuccessful asylum applicants. This procedure would be akin to the removals procedure and should not necessarily preclude that person from returning to Ireland. A second deportation procedure is proposed for more serious immigration offences (Department of Justice, Equality and Law Reform, 2005, p.111).

### 3.3.2 VOLUNTARY RETURN

As mentioned above an immigrant who is deported rather than removed or voluntarily returned is obliged not to return to Ireland. The Immigration Act 1999 sets out that before issuing a deportation order the Minister is obliged to inform the individual of his intention and to invite the person to leave Ireland voluntarily. If the person decides to leave voluntarily he or she must provide details of their proposed departure. Persons who leave voluntarily may apply to return if they wish. The government also provides assistance with travel expenses and some other supports for people who return voluntarily as discussed below.

The International Organization for Migration (IOM) operates voluntary return schemes in co-operation with the Department of Justice, Equality and Law Reform. Other voluntary returns are paid for and organised by the individual concerned. Their departure is supervised at the airport by the GNIB. Table 5 shows the breakdown of independent and assisted voluntary returns effected between 1999 and 2005.

**Table 5: Voluntary Return from Ireland, 1999 – 2004**

Year	IOM Assisted Voluntary Returns*	Independent Voluntary Returns†	Total
1999	n/a	37	37
2000	n/a	248	248
2001	(from Nov 2001) 4	353	357
2002	113	396	509
2003	440	361	801
2004	396	218	614
Total	953	1,613	2,566

\* *Source:* The International Organization for Migration.

† *Source:* Department of Justice, Equality and Law Reform.

The majority of people who participate in IOM programmes were at one time in the asylum application process. Once a deportation order is issued by

<sup>67</sup> *The Irish Times*, 28<sup>th</sup> March 2005, “Principal criticises deportation policy”; *The Irish Times*, November 19<sup>th</sup> 2003, “25 deported in Irish UK operation”; *The Irish Times*, February 13<sup>th</sup> 2004, “Concern at covert deportation of 65 immigrants”.

the Minister an individual no longer qualifies for assisted return. The number of illegally resident immigrants returned on these programme is very low.

The first pilot voluntary return programme was initiated in 2001 for Nigerian and Romanian nationals. It has now been extended to all asylum seekers and irregular migrants from non-EEA countries, without documentation and the necessary financial means. The programme offers assistance in three stages of return: pre-departure, transportation and post arrival. Returning migrants are given assistance in the form of information, counselling, medical assistance, travel allowance, transport assistance, reintegration assistance and limited monitoring. Reintegration support is not in the form of a cash payment, but rather assistance with starting a small business, training, job placements, further education and language courses, as well as the provision of information and referral to local health services, social security systems and other services as appropriate. There are three specific IOM programmes operational in Ireland which are shown in Table 6.

In addition to the IOM programmes, the Reception and Integration Agency of the Department of Justice, Equality and Law Reform is responsible for supporting the repatriation, of nationals of the ten new EU Member States who fail the Habitual Residency Condition attaching to Social Assistance Payments. A Habitual Residence Condition was included ahead of the Accession of ten new Member States in May 2004. The test applies to all persons but was introduced to protect the Irish welfare system as Ireland has a Common Travel Area with Britain, which necessitates having similar regulations for the receipt of welfare benefits by immigrants in the two countries. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare.

**Table 6: Voluntary Assisted Return Programmes (VARPs) in Ireland**

Programme Title	Eligible Beneficiaries	Available Budget € (Including Transportation Costs)
Voluntary Assisted Return Programme (Continuation of previous AVR to Romania and Nigeria but now open to all non-EEA countries)	Individuals from non-EEA countries who have pending asylum claims, have been refused a refugee declaration or who are residing in Ireland illegally.	673,355*
Voluntary Assisted Return and Reintegration Programme for unaccompanied minors living in Ireland	Up to 50 unaccompanied minors who wish to return to their home countries and who will be reunited with their relatives. Minors may be within or outside the asylum process in Ireland and may have irregular status.	131,167*
Voluntary Assisted Return and Reintegration Programme for Nationals of Sub-Saharan African Countries	Individuals from sub-Saharan African countries who have pending asylum claims, have been refused a refugee declaration or who are residing in Ireland illegally.	Budget information not yet available

\*November 2003 – November 2004.

Source: International Organization for Migration (2004, p.195).

### 3.4 Measures of Rectification and Remedy

#### 3.4.1 LEGAL STATUS, REGULARISATION CAMPAIGNS

There has never been a regularisation programme in Ireland. During 2003 and 2004 a group named CADIC (the Coalition Against Deportation of Irish Children) campaigned for the regularisation of the non-national families of Irish citizen children. The National Consultative Committee for Racism and Interculturalism (NCCRI) also supported a regularisation scheme for these families (NCCRI, 2004, p.49). Non-national parents of Irish children who were born before January 2005 were invited to apply for residency in Ireland between January and March 2005. Approximately 18,000 applications were

made and by April 12th 2005 approximately 3,000 of that number had been granted leave to remain.<sup>68</sup>

The NCCRI argues that Ireland is unusual among EU states in that there has never been a regularisation programme here. The authors refer to a proposal in 2000 by the Catholic Bishops to regularise the status of asylum seekers who were experiencing long delays in the processing of their claim. The proposal was rejected by the then Minister for Justice, Equality and Law Reform Mr O'Donoghue who observed: "The reality of the situation is that if you introduce an amnesty people will expect that there will be further amnesties. An amnesty does, in fact reward people who seek to abuse the asylum process" (NCCRI, 2004, p.47).

At a recent round table the positive and negative impacts of general regularisation programmes were discussed. It was argued that regularisation would address the underground economy and its associated problems but that a demand for fraudulent documents might be created unintentionally. However, it was recommended that regularisation should be considered as a necessary instrument to manage migration (see Immigrant Council of Ireland, 2005).

### 3.4.2 SOCIAL SERVICES

The debate around illegally resident immigrants is just beginning in Ireland. The position in relation to their access to public services is unclear and is determined on an *ad hoc* basis by each individual government department. All children in Ireland are entitled to free primary and post primary education and are obliged to stay in school until they are at least 15 years old. Illegally resident immigrants are not entitled to medical cards and therefore cannot access State medical services. However, the Immigrant Council of Ireland reports anecdotal evidence of hospitals treating immigrants without asking questions about residence status. Regarding emergency services illegally resident immigrants would receive treatment if they needed it. Their immigration status could be investigated subsequently although no formal information sharing channels exist between medical services and immigration authorities. The immigration authorities prefer to pursue a deportation first; when that is achieved an attempt is made to cut off access to social services. For example, it is not policy to deny a person with an outstanding deportation order accommodation at a direct provision centre. Since 2004 a Social Welfare liaison officer has been working with the Department of Justice, Equality and Law Reform to close off access to social services by persons subject to deportation orders.<sup>69</sup>

The *Outline Policy Proposals* directly address the issue of access to public services by illegally resident persons:

At present much legislation under which other Departments operate are largely silent as regards non-nationals (other than nationals of other EU or EEA Member States) as they were written at a time when immigration was not a significant issue in Ireland. There may be provisions for universal entitlements which applies to all residents regardless of nationality. While such universal-type provisions have advantages in terms of social equity and simplicity of administration, in recent times it has been clear that they also potentially present attractions to persons entering the State illegally... consideration should be given as to what extent there should be a prohibition on providing public services to non-nationals who are not legally resident in the State and the extent of such a prohibition, e.g. such migrants might be allowed to access emergency

<sup>68</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Tuesday 12th April 2005.

<sup>69</sup> Discussion between the authors and the Department of Justice, Equality and Law Reform.

medical treatment, but not social housing or publicly funded third level education courses. (Department of Justice, Equality and Law Reform, 2005, pp.32-33.)

It is also stated that public service providers need to improve the exchange of information in order to ensure that access to public services by illegal immigrants is limited to emergency services to avoid encouraging illegal immigration (Department of Justice, Equality and Law Reform, 2005, p.19).

### **3.4.3 EDUCATIONAL FACILITIES**

Illegally resident immigrants do not have access to post-compulsory education such as vocational training or third level education.

### **3.4.4 WORK PERMIT SYSTEM**

Illegally resident immigrants may not work legally in Ireland. Under the existing work permit system it is possible for legally resident migrants to become inadvertently illegally resident if their employer fails to renew the work permit and does not keep the employee informed of the change in status.<sup>70</sup> The Migrant Rights Centre Ireland (MRCI) offers supports to immigrant workers and the families of immigrant workers who have or are about to become undocumented. MRCI work in co-operation with the immigration authorities to achieve the temporary regularisation of an individual's residence status in order that a problem with a work permit may be resolved.

### **3.4.5 REGULATION OF ACCESS TO THE LABOUR MARKET**

The Labour Inspectorate, which is part of the Department of Enterprise, Trade and Employment, is responsible for the enforcement of all employment rights legislation including the Employment Permits Act 2003.

The work permit system is mainly employer based; the employer may apply to the Department of Enterprise, Trade and Employment for a permit prior to the entry of the employee into the State. The permit is issued for up to one year, with the possibility of renewal, for a specific job and for a named individual for posts which cannot be filled by Irish or other EEA nationals. The employer holds the work permit at all times. A number of support groups, for example the Immigrant Council of Ireland and the Migrant Rights Centre Ireland, have made calls for the work permit system to be altered to allow the migrant worker to hold the work permit rather than the employer (Immigrant Council of Ireland, October 2003). A Working Visa and Work Authorisation scheme was introduced to facilitate recruitment for designated sectors where skill shortages were particularly acute. Under this scheme the employee must have a job offer before entering Ireland. However, once they are in Ireland they may change employers within the same sector. The Department of Enterprise, Trade and Employment is currently developing new work permit legislation. Some of the implications of the current work permit system are discussed in Section 4.2.1.

<sup>70</sup> The Migrant Rights Centre Ireland noted instances of employers of domestic workers delaying in renewing a work permit and not keeping the domestic employee properly informed of his or her status (Migrant Rights Centre Ireland, 2004, p. 33).

# 4. SOCIAL AND ECONOMIC SITUATION, POLITICAL PARTICIPATION

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## 4.1 Social Situation

### 4.1.1 DAILY LIFE AND SOCIAL SITUATION OF ILLEGALLY RESIDENT IMMIGRANTS

There is very little information available on the social situation of illegally resident immigrants in Ireland. A study compiled for the Immigrant Council of Ireland (ICI) included case studies of 22 immigrants. The authors found that the irregular/illegally resident immigrants they interviewed are isolated and vulnerable to exploitation. One subject entered the country illegally and continues to reside illegally. Three subjects entered the country legally but their status had since become irregular. A composite case study of a young woman trafficked from Moldova is presented as representative of many women trafficked into Ireland. The woman presented had been forced into prostitution, subsequently became pregnant and was therefore told to leave her accommodation. The daily life and social situation of young women who are working under duress in the sex industry in Ireland may be improved if they can make contact with Ruhama or a similar organisation. Ireland has no safe houses provided specifically for trafficked women (with increased security for example) and such women cannot claim Geneva Convention refugee status. They may have been threatened and as a result are afraid to approach the Gardaí. They are, therefore, extremely vulnerable to exploitation (Kelleher Associates, 2004, p.45).

In a research report into prostitution in Ireland commissioned by Ruhama (2005, p.8) the authors quote the Detective Sergeant involved in Operation Quest:<sup>71</sup> "...the clubs controlled them [the women] totally, deciding when and with whom they could communicate and socialise". In contrast the Garda Síochána/Police Service of Northern Ireland (2004, p.11) report that they did not find evidence to suggest that women are working in the Irish sex industry under coercion or duress; all claim to be involved of their own volition as they can earn a reasonable wage. As mentioned previously the standard of evidence required by the Garda Síochána/Police Service of Northern Ireland would need to be sufficient to support a prosecution. Victims of trafficking may be reluctant to speak to members of the police.

A man from Morocco working illegally in a rural area was interviewed for the ICI study. His living conditions were very basic. He worked long hours for as little as €4 per hour. His employer was imposing an emergency tax which the employee strongly suspected does not go to the authorities. The recurrent theme in this case study too is that of isolation, separation from family members abroad and from any support network in Ireland. A weekly bus

<sup>71</sup> A police investigation in 2003 into lap dancing clubs a result of which a large number of non-national women were arrested.

journey into the local town was the highlight of this migrant's week (Kelleher Associates, 2004). The current work permit system allows spouses to join their partners in most cases. The spouse may also work if they have applied for a work permit, or if they are accompanying certain categories of workers<sup>72</sup> (Department of Enterprise, Trade and Employment, February 2004.) If the accompanying spouse is unable to work he or she is left in a very vulnerable position in the event of a marital breakdown. Kelleher Associates interviewed one woman who was legally in Ireland but had left her husband due to domestic violence. This woman now has no legal status in Ireland. The authors observe that immigrant women can often face depression as a result of isolation in the home (Kelleher Associates, 2004, p.43-45).

There is no information available which would indicate if illegally resident immigrants have found alternative ways of providing education and training. Neither is there any information on the consequences for illegal immigrants and their families of living clandestinely in Ireland.

## 4.2 Economic Situation

### 4.2.1 EMPLOYMENT IN NICHES

In a recent parliamentary question the Minister for Justice, Equality and Law Reform addressed the issue of people working in Ireland illegally. He identified the categories of people who could be viewed as illegal workers: persons who never had permission to remain in the State and overstayers whose permission has expired; persons with permission to remain but without permission to work; persons in breach of a condition of their permission to work and students who have permission to work part time but who work longer hours.<sup>73</sup>

The Immigrant Council of Ireland have observed that illegally resident immigrants tend to take up 'the 3-D jobs (dirty, difficult and dangerous) and the 3-B jobs (boring, below standard and badly paid)' (Immigrant Council of Ireland, 2005). At the end of December 2004 Government labour inspectors were investigating over 300 cases of possible exploitation of employees. The majority of these are reported to be immigrant workers and although there is no breakdown of legal and illegally resident workers available it is widely acknowledged that illegally resident immigrants are most at risk of this type of abuse. The majority of the cases being examined were in the hotel (117), catering (85), retail grocery (71) security (44) and agriculture sectors.<sup>74</sup>

*Domestic Work:* Under the current Irish work permit system, which is due to be changed in the near future, the employer holds an employee's work permit. This practice has been criticised for leaving the immigrant worker too dependent on their employer and, therefore, vulnerable to exploitation (see Kelly, 2004; Mac Éinrí and Walley, 2003). The Migrant Rights Centre Ireland (MRCI), an NGO working with immigrants in Ireland, recently produced a report on the situation of non-national domestic workers. The authors reported that of 20 migrant women interviewed 4 had become undocumented because their Irish employers had not renewed expired work permits. All 4 women stayed with their employer because their immigration situation was precarious and they were hopeful that the employer would regularise their status. The interviewees reported feeling stressed and trapped. All 4 women

<sup>72</sup> Under the Spousal Work Permits Scheme the spouses of work visa/authorisation holders, certain intra-company transferees, academics and researchers working for a recognised third level institution or medical professionals, fully registered with the relevant professional body, may more easily take up employment in Ireland.

<sup>73</sup> Minister Michael McDowell, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann 12<sup>th</sup> April 2005.

<sup>74</sup> *The Irish Times*, "Possible mistreatment of foreign workers to be investigated", 30<sup>th</sup> December 2004.

eventually left employment or were dismissed and sought the assistance of the MRCI to regularise their immigration status. By rendering an immigrant worker illegal through non-renewal of work permits employers may wish to increase their control over that worker. Other methods of employers exerting control reported by MRCI were the confiscation of passports and threats of deportation (Migrant Rights Centre Ireland, 2004, p.33, 43).

Some domestic workers are illegally resident in the first place. MRCI comment on the growth in informal recruitment. A potential employer, with contacts through a migrant woman who can organise people in her home country, may organise with friends and neighbours in Ireland to recruit on their behalf. Some recruitment agencies have been known to charge spurious fees, for example for the Irish work permit even though the work permit form explicitly prohibits it. The enactment of the Equality Act 2004 was an important advance in the protection of migrant domestic workers. Prior to its enactment private homes were exempt from employment equality legislation.<sup>75</sup>

*Agri-food industries:* There is evidence from the work permit data that immigrant workers take up employment in meat preparation factories or mushroom farms in Ireland. Some of the immigrant workers in this sector have become illegally resident/irregular due to the expiration of their work permits or visas. In relation to the meat industry a large number of visas were issued under the intra-corporate transfer scheme. The intra-corporate transfer scheme was established in 1999 to enable companies with sister companies abroad to transfer workers for a training period of up to four years without requiring a work permit. The scheme was suspended in October 2002 due to widespread abuse.<sup>76</sup> *The Irish Times* reported that companies recruited workers, often with no experience of the meat industry, from South Africa and Brazil. Visas were usually issued for a period of six months to a year and some workers have remained in employment for a number of years. It is expected that charges will be brought against offending employers.<sup>77</sup>

*Sex industry:* In one of the few research studies in which illegal immigration into Ireland is directly addressed Conroy (2003a) comments on the tendency of illegal/irregular immigrants to be employed in the sex industry. She observes that compared to other European capitals the sex industry in Ireland is relatively new. There is no government policy of tolerance so visible manifestations of the industry are limited mainly to lap dancing clubs, massage parlours and escort agencies. Companies have also rented apartments for use as brothels. These businesses are frequently staffed by young women from outside the EU who are here illegally or on tourist/education visas.

The NGO Ruhama, which provides services to women in prostitution, has called for the closure of lap dancing clubs because their experience shows a strong link between these businesses and prostitution (Kelleher Associates, 2004, p.13). Ruhama (2005, p.61) quotes Gardaí reports on Operation Quest which reported the links between lap dancing and prostitution and described lap dancing as the “gateway drug to prostitution”. In Operation Quest during 2003 the Gardaí conducted raids on lap-dancing clubs looking for undocumented workers. The operation resulted in the arrest of 101 people, the majority of whom were women from Central Europe. None of the women arrested were prosecuted although some did agree to voluntary repatriation

<sup>75</sup> The Equality Act was enacted in July 2004 and has the effect of implementing a number of EU directives in the area. The Act extended equality legislation to domestic workers, self-employed people and persons over 65 years old.

<sup>76</sup> The Non-EEA Trainee Scheme was suspended at the same time for similar reasons.

<sup>77</sup> *The Irish Times*, “Meat factories in North East may face illegal employment charges”, 11<sup>th</sup> October 2004.

(Ruhama, 2005b, p.7). Ten people who operated or managed the clubs appeared in court in February 2005 charged with employing women without work permits, contrary to the Employment Permits Act 2003.<sup>78</sup>

There is no information available on the ethnic dominance of particular employment niches. Regarding the general conditions under which migrants work the Garda Síochána/Police Service of Northern Ireland (2004, p.11) have found cases of organised facilitation of illegally resident immigrants by the provision of forged or fraudulent documentation. The individuals involved will also help to find work for immigrants – often unskilled, low-paid work with little regard to health and safety conditions. There are no reports of highly qualified immigrants entering Ireland illegally or of where they find employment if they do so.

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### 4.3 Political Participation

Illegally resident immigrants have no formal political platform in Ireland. There are very few support groups dealing with the issue of illegal immigration in Ireland and none have yet emerged from illegally resident communities. At a recent round table on the issue of irregular migration a SIPTU<sup>79</sup> trade union official commented on the difficulties associated with representing undocumented workers. Such workers are frequently isolated and the methods of the trade unions are more suited to dealing with collective groups of people. Problems also arise because the undocumented worker's contract is "tainted with illegality." The official referred to the legal principle which translates as "he who comes seeking justice must come with clean hands". He interpreted this to mean that the courts may be reluctant to uphold someone's legal rights in one area if that same person is in breach of the law in other areas (Immigrant Council of Ireland, 2005). NGOs such as Immigrant Solidarity and Residents Against Racism campaign against deportations.

The discussion on the need for a political platform for illegal residents is only beginning in Ireland. Illegally resident immigrants are indirectly represented by a few NGOs such as Immigrant Solidarity, the Anti-Racism Campaign (ARC), Mid-West Against Racism and Residents Against Racism. In terms of representation on matters such as working conditions and abuses, NGOs such as the Immigrant Council of Ireland and the Migrant Rights Centre Ireland offer their services to all immigrants including illegally resident immigrants but with an emphasis on regularising the status of such migrants.

<sup>78</sup> *The Irish Times*, "Ten in court over lap dancers work permits", 5<sup>th</sup> February 2004.

<sup>79</sup> Services, Industrial, Professional and Technical Union.



# 5. THE IMPACT OF ILLEGAL IMMIGRATION ON THE HOST COUNTRY

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## 5.1 The Main Actors Addressing the Issue of Illegal Immigration

The Garda National Immigration Bureau (GNIB) has a special responsibility for addressing the issue of illegal immigration but the Department of Justice, Equality and Law Reform and the Department of Enterprise, Trade and Employment also have responsibilities in this area. The GNIB is responsible for the enforcement of immigration controls in Ireland. The GNIB commenced operations in May 2000 and currently comprises Garda staff of 2 Superintendents, 3 Inspectors, 8 Sergeants and 55 Gardaí. The Garda staff are assisted by 34 civilian support staff. The GNIB works in close co-operation with the Department of Justice, Equality and Law Reform. The GNIB also has links with the Department of Enterprise, Trade and Employment, the visa section of the Department of Foreign Affairs and the Department of Social and Family Affairs

The main NGOs addressing the issue of illegal immigration in Ireland are existing NGOs who have extended their remit as opposed to newly emerging groups. Ruhama is an NGO that works with women involved in prostitution. Ruhama provides a range of services to women in prostitution including outreach on the streets, advocacy and education. Ruhama has worked with women who have been trafficked into Ireland since Spring 2000. The group receives annual funding from the Department of Justice, Equality and Law Reform, Probation and Welfare section, the Department of Health and Children and other voluntary donations. Ireland En-Route is a forum comprising statutory organisations and voluntary groups organised by Ruhama. This forum is conducting research into the extent of the problem of trafficking of women and children into Ireland. The Women's Health Project is a health service under the Health Service Executive, Eastern Region that also provides a range of health services to women involved in prostitution.

Other NGOs providing supports to illegally resident or irregular immigrants include the Immigrant Council of Ireland, Migrant Rights Centre Ireland, the Irish Refugee Council and the Vincentian Refugee Centre. Organisations such as Immigrant Solidarity, the Anti-Racism Campaign (ARC), Mid-West Against Racism and Residents Against Racism campaign on matters of concern to illegally resident immigrants, principally against deportation. The Immigrant Control Platform is an NGO that draws attention to the problem of illegally resident immigrants while campaigning for tighter immigration controls. The International Organization for Migration organises voluntary return programmes for asylum seekers and undocumented migrants that wish to return home.

The Platform for International Co-operation on Undocumented Migrants (PICUM) is an international organisation that is just recently beginning to raise its profile in Ireland. PICUM works to promote respect for the basic social rights of undocumented migrants within Europe through research, information and awareness-raising. The Immigrant Council of Ireland and Migrant Rights

Centre Ireland are members of PICUM and are involved in developing a campaign around undocumented workers in Ireland.

The main national media sources for information on illegal immigration include *The Irish Times*, *The Irish Independent*, RTE (the national radio and television stations) and TG4 (the Irish language television station).

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## 5.2 Perception of Illegal Immigration

The State perceives illegal immigration as a danger to illegal immigrants themselves, and a threat to State services, the economy and society:

Illegal immigration into the underground economy can affect the economy and the labour market and will often lead to exploitation of illegal migrant workers by unscrupulous employers. Immigration procedures can also be exploited by fugitive criminals and by human traffickers. Human trafficking is a particularly insidious crime often forcing women and children into the sex industry. Sometimes, such as in the tragic events of 11 September 2001 in the US, the consequences of weaknesses in immigration procedures can be catastrophic (Department of Justice, Equality and Law Reform, 2005, p.103).

Few other actors have formally articulated a position. The NGO Immigration Control Platform advocates a 'determined' response against illegal immigration. Groups such as the Immigrant Council of Ireland and Migrant Rights Centre Ireland work to help individuals move from the vulnerable position of illegality towards recognised status. Groups such as Residents Against Racism work against the deportation of unsuccessful asylum seekers.

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## 5.3 Impact of Illegal Immigration on the Economy/Welfare System

There is no information available on the relevance of illegal immigration for the regular or the informal economy. The impact of illegal immigration on the social welfare system can be expected to be relatively small. An interface between the GNIB Information System and that of the Department of Social and Family Affairs was established in October 2003 and staff of the Department of Social and Family Affairs may now easily validate the current immigration status of claimants (An Garda Síochána, 2004b, p.17). The Habitual Residency Condition has ensured that new claimants who cannot prove legal residence in Ireland for at least two years will not be able to access social welfare.<sup>80</sup> MRCI and ICI make the point that many migrants who enter the State legally and later become irregular continue to pay tax on their earnings.<sup>81</sup> No more detailed information is available.

There is no information available on the cost of illegally resident migrants for public health, education and public order. Neither is there information available on the tax revenue lost due to the employment of illegally resident immigrants, their involvement in criminal activities, or on their concentration in particular regions of the country.

<sup>80</sup> A Habitual Residence Condition was introduced to protect the Irish welfare system ahead of the accession of 10 States to the EU in 2004. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of 2 years before making an application for social welfare.

<sup>81</sup> Discussions between authors and the ICI and MRCI.

## 6. CONCLUSIONS

The problem of illegally resident immigrants is just beginning to be addressed in Ireland. The economic boom since the 1990s has brought with it much increased immigration, legal and illegal, to Ireland – a country traditionally associated with high levels of emigration. Unregulated immigration undermines State sovereignty and may put the welfare system and national security at risk. An immigrant without a valid legal status is usually in a very vulnerable position, economically and socially.

Due partly perhaps to the fact that increased immigration is a relatively new development there are very few data available from official sources on illegally resident immigrants in Ireland. As shown in Section 2 the data are at best very loosely indicative of stocks, the number of deportation orders evaded, and flows, the number of people refused leave to land. Some NGOs in Ireland have begun to address the humanitarian issues raised by the growth of an ‘illegal’ sector in the Irish population. Such issues include entitlements to basic services, isolation and resulting vulnerability to abuse and exploitation. Research conducted by NGOs has also proved useful in highlighting how existing legal systems such as the work permit system may result in people slipping into illegality.

The absence of exit controls in Ireland, due largely to the Common Travel Area (CTA) shared with the UK, means that statistical information gaps are likely to persist. The report has shown the influence of the CTA on illegal immigration to Ireland. The CTA influences the development of measures to prevent illegal movements and domestic control methods. The CTA also impacts on geographical routes and the methods used, including smuggling, trafficking and in some cases via the asylum system, to enter Ireland illegally.

As was discussed at Section 3.1.1 there are a variety of ways for immigrants to enter Ireland illegally or to become illegally resident after entering. People who are smuggled or trafficked into the State have no legal status but migrants who have work permits may become illegally resident if their employer fails to renew the work permit. The asylum system has come under increasing scrutiny as a potentially ‘abusive’ means of entry to the State. Clearly, not all those who claim asylum have as their objective the circumvention of immigration controls. However, the low rate of recognition (6.2 per cent at first instance in 2004) is interpreted by the government as evidence that a large proportion travel to Ireland with this objective in mind (see Department of Justice, Equality and Law Reform, June 2005). Some of the problems associated with enforcing deportation orders discussed at Section 3.3.1 may indicate abuse of Irish immigration law.

It is necessary, therefore, to recognise that Ireland has a growing problem of illegal immigration. No reliable estimates are available of the size of the illegally resident population nor is very much known about its economic and social situation. However, there are a variety of methods which can be employed to address these issues. Examples of these methods include direct measurement of potential illegal immigration based on information on refusals for entry visas and rejected asylum claims. Potential illegal immigration may be measured indirectly using comparisons of census and immigration data to derive a residual estimate of the illegally resident foreign born population.

Survey methods may be used to estimate the stock of illegal residents in the main cities and to infer the total stock for the country as a whole. These and other methods are evaluated by Pinkerton, McLaughlan and Salt (2004). The authors conclude that a combination of methods may be the best way to estimate the size of the illegally resident migrant population and to provide information on its characteristics and on its economic and social profile.

## **ANNEX I: INSTITUTIONS AND ORGANISATIONS ADDRESSING THE ISSUE OF ILLEGAL IMMIGRATION**

The major governmental and non-governmental institutions and organisations which address the problems of illegal immigrants and the services they offer are discussed in Section 5. This annex provides a list of the most important non-governmental institutions and organisations for the following categories: legal support, health care, labour and political participation.

### ***Legal advice***

- Immigrant Council of Ireland.

The Immigrant Council of Ireland has a legal officer. The legal officer cannot offer legal support to an individual but will offer assistance to a person negotiating a legal process or act on behalf of an individual in certain circumstances.

- Migrant Rights Centre Ireland

The Migrant Rights Centre has a legal panel that in certain circumstances will organise legal representation for individuals.

### ***Health care***

- Ruhama
- Women's Health Project
- Women's Aid

### ***Labour***

- SIPTU

### ***Political participation***

- Immigrant Council of Ireland
- Migrant Rights Centre Ireland
- Integrating Ireland
- Immigrant Solidarity
- Anti-Racism Campaign (ARC)
- Mid-West Against Racism
- Residents Against Racism

## ANNEX II: ANNOTATED BIBLIOGRAPHY

1. Garda Síochána, 2004a, *Annual Report 2003*, Dublin.

The Annual Report of the Garda Síochána provides an overview of activities of the Irish police force during the year. The activities of the various national support services (including the Garda National Immigration Bureau) and the policing situation in six regions are discussed. The majority of the report is comprised of detailed statistics relating to offences recorded during the period.

2. An Garda Síochána, 2004b, *Evaluation of An Garda Síochána Policing Plan 2003*. Dublin.

This is a section of the *Annual Report* of An Garda Síochána 2003 and provides an evaluation of Garda performance *vis-à-vis* the twelve strategic goals An Garda Síochána published in its Policing Plan 2003. Sixty-nine performance indicators or targets were defined in this Policing Plan, relating to the twelve strategic goals. Performance information is presented here for each of these sixty-nine indicators.

3. An Garda Síochána/Police Service of Northern Ireland, 2004, *A Cross Border Organised Crime Assessment*, Belfast and Dublin: Northern Ireland Office and Department of Justice, Equality and Law Reform.

This short report aims to provide an overview of aspects of cross border criminality common to Northern Ireland and the Republic of Ireland. The report focuses on criminal commodities in order to develop a clear understanding of how the border impacts on these areas of criminality. The areas addressed are: alcohol fraud; drugs; immigration crime; intellectual property crime; money laundering and fraud; oils fraud; tobacco fraud; and vehicle crime.

4. Commission Staff Working Paper, 2004, "First Annual Report to the Council and the European Parliament on the activities of the EURODAC Central Unit". Brussels.

5. Conroy, P., 2003a, *Trafficking in Unaccompanied Minors in Ireland*. Dublin: International Organization for Migration.

This report is a small-scale investigative study looking at trafficking in unaccompanied minors in Ireland. It examines the legal framework in Ireland for addressing the trafficking in minors; describes the institutions and services for the protection of unaccompanied minors who are victims of trafficking and identifies the policy responses being implemented in Ireland to combat trafficking in children and protect the victims. The study found that Ireland had a relatively modern and comprehensive legal framework in place to prosecute suspected trafficking in children and related offences, in a range of circumstances. While there was evidence of extensive resources applied to trafficking investigations, this has not manifested itself in successful prosecutions. The legal framework for child protection in cases involving suspected trafficking or smuggling of children was also wide in scope.

6. Conroy, P., 2003b, *Trafficking in Unaccompanied Minors in the European Union Member States – Ireland. Research Summary*. Dublin: International Organization for Migration.

This study is the third phase of a ten country European study coordinated by the International Organization of Migration. The third phase in 2002/3 included the UK, Ireland, and Portugal. A summary is provided here of the Ireland chapter which is a small-scale

investigative study looking at trafficking in unaccompanied minors in Ireland.

7. Cubie, D., F. Ryan, 2004, *Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials*. Dublin: Roundhall.  
*Immigration, Refugee and Citizenship Law in Ireland: Cases and Materials* addresses three distinct concepts of law: (a) Immigration law which concerns the conditions under which persons not being citizens of Ireland may legally enter, remain in and indeed exit the State (b) Refugee law which relates to the legal protection given in this State to non-Irish nationals who harbour a reasonable fear of persecution in their home countries and (c) Citizenship law, the legal framework that informs who may – and who may not – claim to be a citizen of Ireland with all the attendant rights and duties that such status confers.
8. CSO, 2005, *Tourism and Travel 2004*, Dublin: Central Statistics Office.
9. Department of Enterprise, Trade and Employment, 2005a, “Minister Martin Announces 11 Additional Labour Inspectors”. Press release. <http://www.entemp.ie/>. Accessed on 19<sup>th</sup> April 2005.
10. Department of Enterprise, Trade and Employment, 2005b, “Statement by Minister Micheál Martin to Seanad Éireann in relation to Rights of Migrant Workers”. Press release. <http://www.entemp.ie/>. Accessed on 19<sup>th</sup> May 2005.
11. Department of Enterprise, Trade and Employment, February 2004. “Tánaiste introduces new arrangements for the spouses of skilled non-EEA nationals”. Press release. <http://www.entemp.ie/press/index.htm> accessed on June 27<sup>th</sup> 2005.
12. Department of Foreign Affairs, January 2004, ‘Statement by the Department of Foreign Affairs Clarification of the position in relation to Biometrics and Irish Passports’. <http://www.foreignaffairs.gov.ie>. Accessed on 5<sup>th</sup> May 2005.
13. Department of Foreign Affairs, December 2004, ‘Minister Ahern launches new Irish passport and officially opens new Passport Production Facility’. <http://www.foreignaffairs.gov.ie>. Accessed on 5<sup>th</sup> May 2005.
14. Department of Justice, Equality and Law Reform, June 2005, “Statement by the Minister regarding the Real Facts about the Asylum and Deportation Systems”. Available from: <http://www.justice.ie/80256E01003A02CF/vWeb/pcSSTY5UBER3-en>. Accessed 28<sup>th</sup> June 2005.
15. Department of Justice, Equality and Law Reform, 2005, *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill*, Dublin.  
 This discussion paper outlines the issues that will need to be addressed in a proposed Immigration and Residence Bill. The report sets out the current situation and international practice in relation to: visa and pre-entry clearance, border controls, entry to the State, admission for the purpose of work, self-employment and research, for the purpose of study, for the purpose of family reunification and admission of non-economically active persons. Residence status and residence permits, monitoring and compliance, removals and administration and delivery of services are also discussed at length.
16. Department of Justice, Equality and Law Reform, December 2004, “Minister Announces Revised Arrangements for Non-EEA Students

in Ireland?”. Available from: <http://www.justice.ie/80256E01003A02CF/vWeb/pcSSTY5UBER3-en>. Accessed 1st March 2005.

17. European Commission, 2002, Green Paper on a *Community Return Policy of Illegal Residents*. Brussels: European Commission.

The Green Paper builds upon the elements as defined in the Council's action plan developed on the basis of the Commission's Communication on a Common Policy on Illegal Immigration. The Green Paper explores various issues related to the return of third-country nationals. In Part I it is emphasised that a Community return policy has to fit in and to complement the existing Community policies on immigration and asylum. The various dimensions of voluntary and forced returns in relation to migration, in the context of asylum and the relation to third-countries, are briefly sketched. The report also looks at future co-operation on return of illegal residents among Member States and the development of the re-admission policy together with third countries.

18. Hughes, G., 2005, Annual Report on Statistics on Migration, Asylum and Return: Ireland 2002, Dublin: European Migration Network.

The National Contact Points of the EMN used statistical tables produced by Eurostat for the year 2002 in order to produce the Annual Report on Statistics on Migration, Asylum and Return. The Irish contribution includes information on policy changes and legal developments in 2002 and an analysis of migration statistics. Issues in relation to the asylum system are presented together with figures for the period. Information is provided on illegal immigration and return.

19. Hughes, G., E. Quinn, 2004, *The Impact of Immigration on Irish Society*, Dublin: European Migration Network.

The Impact of Immigration on Irish Society is the first research report produced by the Irish Contact Point of the European Migration Network. This is a broad ranging study that attempts to draw together existing research in the following areas: immigration history and development, the economy, civil society and the cultural context, the political context and finally factors which impacting on immigrants: provision of support and restrictions.

20. Immigrant Council of Ireland, 2003, *Handbook on Immigrants Rights and Entitlements in Ireland*, Dublin: Immigrant Council of Ireland.

The Immigrant Council of Ireland (ICI), an NGO representing immigrants in Ireland, compiled and published this resource. *The Handbook on Immigrants Rights and Entitlements in Ireland* is a practical resource for immigrants rather than a research study. It provides clear information on domestic and international law, policy and practice relating to immigration in Ireland. The rights and entitlements of nine different categories of immigrants living in Ireland are clearly identified. Key topics include residency, entry visas, work permits, business permission, student visas, family reunification, citizenship, social welfare, health care, education, accommodation, and employment.

21. Immigrant Council of Ireland, October 2003, “Immigrant Council of Ireland's new labour migration policy proposal puts pressure on Government for change”. <http://www.immigrantcouncil.ie/>. Accessed on 25<sup>th</sup> November 2004.

22. Immigrant Council of Ireland, Irish Council for Civil Liberties, Irish Refugee Council, Migrant Rights Centre, February 2004, “Joint



Response to the Immigration Bill 2004". <http://www.immigrantcouncil.ie/>. Accessed on 20<sup>th</sup> April 2005.

23. Immigrant Council of Ireland, 2005, "Round Table Discussion on Irregular Migration in Ireland," Carmelite Centre, 25<sup>th</sup> February 2005.
24. Ingoldsby, Brian, 2002, 'Regular Migration to Ireland', paper delivered at the Incorporated Law Society Seminar: "Rights to Reside in Ireland" on 14 May 2002 at Blackhall Place, Dublin 7.

This short paper gives an overview of the process of migrating to Ireland in conformity with Irish law and immigration requirements. While the emphasis is on longer-term migration, some aspects of shorter-term sojourns in Ireland are also covered. The author is Principal Officer in the Civil Law Reform Division of the Department of Justice, Equality and Law Reform and is therefore well placed to summarise a complicated system.

25. International Organization for Migration, 2004, *Return Migration: Policies and Practices*, Geneva: International Organization for Migration.

This is a compendium of information on migrant return policy, legislation and practice by the then 15 EU Member States, the 10 Accession States and Norway and Switzerland. The data used come mainly from government records and International Organization for Migration's (IOM) programmes and research. The study was commissioned by the Netherlands' Advisory Committee on Aliens Affairs in order to inform the Netherlands' presidency of the EU in the latter half of 2004.

26. Irish Refugee Council, 2002, "Combating trafficking in human beings: impact on access to asylum". Information Note. <http://www.irishrefugeecouncil.ie/>. Accessed on 28<sup>th</sup> April 2005.
27. Kelleher Associates, 2004, *Voices of Immigrants: The Challenges of inclusion*, Dublin: Immigrant Council of Ireland.

Commissioned by the NGO Immigrant Council of Ireland, the *Voices of Immigrants: The Challenges of inclusion* is compiled from case studies of twenty-two immigrants and their families who have come to Ireland. The objective of the study is to give a voice to immigrants and their families, who are living in Ireland, by exploring some of their experiences including their reasons for coming to Ireland, what it is like to work away from home, issues relating to family and community, issues of concern to women, and their experience of racism. The authors outline the Irish policy context and supply a list of relevant research.

28. Kelly, N., 2004, *Work Permits in Ireland: A recommendation for change*. Dublin: Migrant Rights Centre Ireland.

The author of this report summarises a variety of secondary sources on the subject of work permits. The material is occasionally illustrated with accounts of the experiences of migrant workers and their families who have used the services of the Migrant Rights Centre (an Irish NGO working with emigrants and immigrants). The report "...attempts to situate the [Irish] work permit system and proposals for new mechanisms in the wider context of globalisation, increased mobility, EU and domestic legislative and policy developments." The author usefully draws together a broad range of background material including EU and domestic legislation. Relevant international Human Rights law is presented. The Irish work permit system is discussed with particular focus on integration, family reunification and access to social protection. The author calls for improved data on migration

and makes general recommendations on the operation of the work permit system.

29. Mac Éinrí, P., P. Walley, 2003, *Labour Migration into Ireland*. Dublin: Immigrant Council of Ireland.

Presents some statistics on immigration and draws attention to a possible discrepancy between Department of Enterprise, Trade and Employment data on work permits and Central Statistics Office data on the annual inflow of immigrants to the labour force. Considers some of the factors influencing labour immigration and documents some cases of abuse of the work permit scheme by employers. Reviews labour immigration policies in other countries in the EU and in Canada and the United States. Concludes with recommendations that immigration policies should be tilted more towards the immigrants' needs rather than the needs of employers, that immigrants should be entitled to a right of residency after four years employment, that there should be a right to family reunification, and that the criteria used to select immigrants should not discriminate between immigrants from Europe and the Rest of the World.

30. Migrant Rights Centre Ireland, 2005, *Private Homes a Public Concern*. Dublin: Migrant Rights Centre Ireland.

The Migrant Rights Centre Ireland is an NGO that provides support and advocacy services to immigrants in Ireland. This report is based on 20 semi-structured interviews with migrant women working in the private home in Ireland. The women were employed as domestic workers and/or care workers. The social and economic context of the research is provided before a detailed discussion of the experiences of the 20 women. Their experiences are discussed in the areas of workloads, sick leave and pregnancy, pay, hours of work etc. The report is concluded with recommendations for action.

31. National Observatory on Violence Against Women, 2004, *First Country Report from the Republic of Ireland*. Dublin: National Women's Council of Ireland.

This short report opens with a discussion of the extent of violence against women in Ireland. The history of responses to violence against women and the policy context is presented. The authors discuss legislation and enforcement of the law in the area. An overview is provided of service provision and the NGO sector in Ireland and the lack of a National Action Plan on Violence against Women is highlighted. The second section of the report deals with prostitution and trafficking in Ireland. Legislation and enforcement are discussed. Service provision and the experience of women in prostitution in Ireland are also described. The report concludes with a number of recommendations.

32. NCCRI, 2004, International perspectives relating to the future of Irish Born Children and their Non-National Parents in Ireland. Advocacy Paper Series, Dublin: National Consultative Committee on Racism and Interculturalism.

This paper was published in advance of the referendum on the question of changing the way Irish citizenship is granted. The authors look at the question of the regularisation of the non national parents of Irish born, and therefore Irish citizen children. The authors discuss: whether regularisation programmes have been carried out in other countries, and what can be learned from these (for example do such regularisations compromise immigration policy); the conceptual

basis of citizenship; the importance (and limitations) of relevant human rights instruments.

33. O'Mahony, P., December 2004, "Some refugee – and asylum-related issues of 2004: a review". Article. Accessed at <http://www.activelink.ie>. No longer accessible.

34. Office of the Refugee Applications Commissioner (ORAC), 2003, *Annual Report 2002*. Dublin: ORAC.

The Annual Report of the Office of the Refugee Applications Commissioner (ORAC) presents the activities of the Office during the year 2002. The report provides information on the ORAC and its remit. Information is provided on the day-to-day running of the ORAC particularly the time taken to process applications. Important themes such as unaccompanied minors, family reunification and the Dublin Convention are discussed. Detailed statistics on asylum applications are provided in an Appendix.

35. Office of the Refugee Applications Commissioner (ORAC), 2004, *Annual Report 2003*. Dublin: ORAC.

The Annual Report of the Office of the Refugee Applications Commissioner (ORAC) presents the activities of the Office during the year 2003. The report provides information on the ORAC and its remit. Key developments in 2003 relate to new legislative provisions contained in the Immigration Act 2003, a fall in asylum applications and participation in EURODAC. Information is provided on the day-to-day running of the ORAC particularly the time taken to process applications. Important themes such as unaccompanied minors, Dublin Convention and Dublin II Regulation and presenting at appeal hearings are discussed. Detailed statistics on asylum applications are provided in an Appendix.

36. Office of the Refugee Applications Commissioner (ORAC), 2005, *Annual Report 2004*. Dublin.

The Annual Report of the Office of the Refugee Applications Commissioner (ORAC) presents the activities of the Office during the year 2004. The report provides information on the ORAC and its remit. Key developments regarding corporate and customer service development in 2004 are presented. Progress on 2004-2006 Strategy Statement Higher Level Goals is presented. These goals are as follows: 1. To investigate applications for refugee status and for family reunification within minimum time frames. 2. To develop the highest standard of investigation and decision-making. 3. To contribute to the preservation of the integrity of the asylum process. 4. To efficiently and effectively manage our organisation and its resources having particular regard to the development of our staff and the delivery of excellent customer services. Detailed statistics on asylum applications are provided in an Appendix.

37. Le Voy, M., N. Verbruggen, J. Wets, 2005, *Undocumented Migrant Workers in Europe*, Leuven: Platform for International Cooperation on Undocumented Migrants (PICUM) and Hoger Instituut voor de Arbeid (HIVA).

This report analyses the socio-economic and political forces that create and maintain the presence of undocumented migrant workers in Europe. This analysis provides the backdrop for considering what rights should be granted to undocumented migrant workers. The situation in various economic sectors in Europe is analysed, and

issues such as the protection of victims of forced labor and the problems associated with regularisation campaigns are presented. The report highlights the role played by social inspectors, trade unions and NGOs in protecting undocumented migrant workers, and offers recommendations for specific policy measures. Many of the articles contained in this report were presented at an international conference on undocumented migrant workers, which was held at the European Parliament on 26 May 2003. The conference brought a variety of different actors together to search for effective means to ensure protection of undocumented migrant workers.

38. Pinkerton, C., G. McLaughlan, and J. Salt, 2004, "Sizing the Illegally Resident Population in the UK". London: Home Office Online Report 58/04, 2nd edition.

This paper reviews a variety of methods that are used in Europe, the United States, Morocco, Tunisia, Costa Rica and South Africa to estimate the stock of illegally resident migrants. It argues that a combination of direct and indirect measurement and survey methods may be required to produce an estimate and to provide information on the characteristics of the illegally resident migrant population and a profile of its economic and social position.

39. Quinn, E. and G. Hughes, 2004, *Policy Analysis Report on Asylum and Migration: Ireland 2003 to mid-2004*, Dublin: European Migration Network.

This is the first of a series of reports compiled by the European Migration Network National Contact Points that summarise policy developments in relation to immigration and asylum. The period covered is January 2003 to July 2004.

40. Ruhama, 2005a, *Biennial Report 2003-2004*. Dublin: Ruhama.

The Biennial Report provides some statistics regarding the work of Ruhama in the period 2003 – 2004 including their work with trafficked women.

41. Ruhama, 2005b, *The Next Steps Initiative: Research report on barriers affecting women in prostitution*. Dublin: Ruhama.

This research report resulted from a participatory action research project called the Next Steps Initiative. The project was undertaken by Ruhama, an NGO working with women involved in the sex industry in Ireland. The core objective of the project was to undertake research and to use the information to develop a model of intervention that could help marginalised women. The report provides a discussion of the links between prostitution and socio-economic inequality. The experiences of the women who participated in the research are presented followed by the support model which was developed as a result. A large part of the report is concerned with outlining the factors that affect women's entry into and experiences of prostitution. The report concludes with a series of conclusions and recommendations.

42. UN, 2000, UN Convention Against Transnational Organised Crime. <http://www.unodc.org/> accessed May 2005.

43. UN, 2001, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and Protocol Against the Smuggling of Migrants by Land, Sea and Air. <http://www.unodc.org/> accessed May 2005.

44. Wylie, G., 2003, "Secreted Lives: Eastern European Women and Trafficking for Sexual Exploitation in Ireland" in Ronit Lentin and Eithne Luibhéid (eds.), *Women's Movement: Migrant Women Transforming Ireland*. Selection of papers from a conference held in Trinity College Dublin, 20-1 March 2003.

This paper attempts to cast light on the lives of Eastern European women working in the sex industry in Ireland. The evidence for the existence of trafficking to Ireland is discussed. The role 'legitimate' lap dancing clubs play in such movements is debated. The experiences of trafficked women who have come to the attention of Ruhama (an NGO working with women in the sex industry in Ireland) are also briefly discussed. The author discusses the legal status, or lack thereof, of trafficked women. The question is raised as to in what sense these women can be understood as agents with free choice at all.

45. Veale, A., L. Palaudaries and C. Gibbons, 2003, *Separated Children Seeking Asylum in Ireland*, Dublin: Irish Refugee Council.

This report updates an initial report by the Irish Refugee Council published in 1999, when there were 32 documented cases of separated children in Ireland. By March 2003, a total of 2,717 separated children had entered the State. This report compiles the views of policy makers, service providers and NGOs regarding the Separated Children in Europe Programme's (SCEP) 'Statement of Good Practice' (SGP). Eight Core Organisations and Service Providers participated in consultative process. A further 15 individuals from a variety of relevant organisations were interviewed or consulted. Issues investigated include: guardianship and interim care; combating child trafficking; the needs of especially vulnerable separated children and youth; the asylum procedure, complementary protection and leave to remain; the issues arising from large numbers of separated minors completing the asylum application process. A number of recommendations are made.

**ANNEX III: SUMMARY OF DECISIONS TO OPT IN TO MEASURES IN RELATION TO ILLEGAL IMMIGRATION UNDER TITLE IV OF THE AMSTERDAM TREATY**

Reference	Title	Opt-in Deadline (relevant to exercise of the opt-in under Art 3 of the fourth Protocol only i.e. before the instrument is adopted	Adopted	Did Ireland opt- in (Y/N)? Opt-in under Art 3 of the fourth Protocol TEC unless otherwise specified
<b>Asylum Proposals</b>				
Council Regulation (EC) No 2725/2000	Council Regulation (EC) Concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention	13 Oct 1999	11.12.00	Y
Council Decision 2002/463/EC	Council Decision adopting an action programme for administrative cooperation in the fields of external borders, visa, asylum and immigration (ARGO programme)	N/A	13.06.02	Intend to opt-in under Art.4 of the fourth Protocol TEC subject to Parliamentary approval
Not published in OJ yet. Ref. no of Commission proposal: COM(2004)384 final	Council Decision amending Decision No. 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visa, asylum and immigration (ARGO programme)	N/A	13.12.04	Intend to opt-in under Art.4 of the fourth Protocol TEC subject to Parliamentary approval
<b>Migration (Admission) Proposals</b>				
COM/2002/0548	Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.	14 May 2002	29.4.04	N
COM/2002/0071 Final	Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities			
<b>Migration (Expulsion) Proposals</b>				
Council Directive/2001/40/EC	Council Directive on the mutual recognition of decision concerning expulsion of third country nationals.	28 May 2001	28.5.01	Ireland intends to opt in under Art.4
	Proposal from the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purposes of removal by air (German Air Directive)	25 November 2003	9.1.03	Ireland intends to opt in under Art.4
Council Decision 2004/80/EC	Council Decision concerning the signing of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation & Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation	23 Sept 2002	17.12.03	Ireland opted in as part of Schengen. (does not require domestic legislation)
Council Decision 2004/191/EC	Council Decision setting out the criteria and practical arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals.	23 Feb 2003	23.2.03	Ireland intends to opt in under Art.4

Reference	Title	Opt-in Deadline (relevant to exercise of the opt-in under Art 3 of the fourth Protocol only i.e. before the instrument is adopted	Adopted	Did Ireland opt- in (Y/N)? Opt-in under Art 3 of the fourth Protocol TEC unless otherwise specified
Council Decision 2004/424/EC	Council Decision concerning the conclusion of the agreement between the European Community and the Government of the Macao Special Administrative region of the People's Republic of China on the readmission of persons residing without authorisation	13 Oct 2003	21.4.04	Ireland intends to opt-in under Art.4
	Proposal for a Council Decision concerning the signing of the agreement between the European Community and the Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation and Council Decision concerning the conclusion of the agreement between the European Community and the Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation	25 November 2003		Ireland intends to opt-in under Art.4
Council Decision 2004/573/EC	Council Decision on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders	29 April 2004	29.4.04	Ireland intends to opt-in under Art.4
	Proposal for a Council Decision establishing a secure web-based Information and Coordination Network for Members States' Migration Management Services (ICONet)	Delayed because of technical problems with text. Expected to be adopted soon.		Intend to opt-in under Art.4 once it is adopted
	Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation; and Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation.	Adoption by Council awaited		Intend to opt-in under Art.4
<b>Visa Proposals</b>				
	Proposal for a Council Regulation on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents which are not recognised by the Member State drawing up the form.	6 Jul 2001		N
	Proposal for a Council Decision establishing the Visa Information System (VIS)	None. This is a Schengen building Measure		N
	Proposal for a Council Regulation on standards for security features and biometrics in EU citizens' passports	None. This is a Schengen building Measure		N
	Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external land borders of the Member States	None. This is a Schengen building Measure		N
	Proposal for a Council Regulation laying down a uniform format for residence permits for third-country nationals.	2 Jan 2004		Y
	Proposal for a Council Regulation laying down a uniform format for visas for third-country nationals.	2 Jan 2004		Y
Border Proposals	Harmonisation of the financial penalties imposed on carriers transporting third country nationals	8 Nov. 2000		Y
	Council Directive defining the facilitation of unauthorised entry, movement and residence	4 Nov. 2000		N

Reference	Title	Opt-in Deadline (relevant to exercise of the opt-in under Art 3 of the fourth Protocol only i.e. before the instrument is adopted)	Adopted	Did Ireland opt- in (Y/N)? Opt-in under Art 3 of the fourth Protocol TEC unless otherwise specified
	Proposal for a Council Decision adopting an action programme for Administrative Co-operation in the fields of External Borders, Visas, Asylum and Immigration (ARGO)	18 Jan 2001		N
	Initiative of the Kingdom of Spain with a view to adopting a council Directive on the obligation of carriers to communicate passenger data	26 June 2003		This automatically applies to Ireland by virtue of Council Decision 2002/192/EC
	Initiative of the Hellenic Republic with a view to adopting a Council Regulation on the creation of an immigration liaison officers network	3 September 2003		N
<b>Visas/borders/immigration (illegal)</b>				
Not published in OJ yet. Ref. no. of Council proposal: 15130/04 JAI 490 ASIM 47	Decision of the Council providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty	8 Dec. 2004 (actual opt-in date)	21.12.04	Y



**ANNEX IV: STATISTICS**

Visitors to Ireland – Estimated Number of Overseas Visits 2000-2004 (classified by Route of Travel, Area of Residence and Reason for Journey) and Cross-Border Visits on Rail and Scheduled Bus Services (000s)

<b>Visits to Ireland</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Route of Travel</b>					
Air Cross-Channel	3,047	2,969	3,073	3,253	3,413
Sea Cross-Channel	1,518	1,313	1,335	1,262	1,192
Continental European	1,187	1,170	1,173	1,287	1,408
Transatlantic	561	539	484	567	561
<b>Total Overseas Visits</b>	<b>6,310</b>	<b>5,990</b>	<b>6,065</b>	<b>6,369</b>	<b>6,574</b>
<b>Cross Border (from Northern Ireland)</b>	545	568	531	524	522

Source: CSO Tourism and Travel 2004. April 2005.

## ANNEX V: LIST OF LEGISLATION CITED

### *Domestic legislation*

All legislation enacted before 2003 is available at <http://www.acts.ie>. Legislation enacted between 1997 and 2005 is available at <http://www.oireachtas.ie>.

- Aliens Act 1935 and the Aliens Orders made thereunder.
- Child Trafficking and Pornography Act 1998.
- Children's Act 2001.
- Criminal Law (Sexual Offences) Act, 1999.
- Employment Equality Act 1998.
- Employment Permit Act 2003.
- Equal Status Acts 2000 and 2004.
- Equality Act 2004.
- European Convention on Human Rights Act 2003.
- Illegal Immigrants (Trafficking) Act 2000.
- Immigration Act 1999.
- Immigration Act 2003.
- Immigration Act 2004.
- Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Act 2001.
- Irish Nationality and Citizenship Act 2004.
- Refugee Act 1996.

### *European Legislation*

- Amsterdam Treaty.
- Council Directive on defining the facilitation of unauthorised entry, transit and residence.
- Council Directive on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (the Qualification Directive).
- EC Treaty.
- Framework Decision on combating trafficking in human beings.
- Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

### *Other*

- Council of Europe convention on action against trafficking in human beings.
- UN Convention Against Transnational Organised Crime.
- UN Protocol Against the Smuggling of migrants by Land, Sea and Air.
- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.