



EUROPEAN MIGRATION NETWORK

ANNUAL POLICY REPORT ON MIGRATION AND ASYLUM 2007: IRELAND

CORONA JOYCE

2008

Research Study Prepared for the European Migration Network

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

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This report is the fourth in a series of Annual Policy Reports, a series that is intended to provide a coherent overview of immigration trends and policy development during consecutive periods beginning in January 2003. Many thanks to my colleague Emma Quinn for her insightful comments and input into this report.

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ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, Lower House
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
JHA	Justice and Home Affairs
MRCI	Migrant Rights Centre Ireland
NCCRI	National Consultative Committee on Racism and Interculturalism
NPAR	National Action Plan Against Racism
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
RAT	Refugee Appeals Tribunal
Seanad Éireann	Senate, Upper House of the Oireachtas
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

This report is the fourth in a series of *Annual Policy Reports*¹, a series which is intended to provide a coherent overview of immigration trends and policy development during consecutive periods beginning in January 2003. Comparable *Annual Policy Reports* are also available for a number of other EU countries participating in the European Migration Network.²

One of the most significant developments in Ireland during 2007 was the publication of the *Immigration, Residence and Protection Bill* in April. Following on from the proposed Scheme of draft legislation published in 2006, the 2007 Bill prompted significant debates in parliament, media and civil society.³ Comments on the Bill centred on a lack of clarity around specific legislative provisions, with a high level of Ministerial discretion still provided for in the legislation. The 2007 Bill sought to set forth a legislative framework for a managed and integrated immigration policy and it defined, for the first time in Irish legislation, a foreign national as being a third-country non-EU national. The scope of the Bill was very broad and covered a number of principles governing the presence of foreign nationals in the State alongside statutory processes concerning visa applications; entry to the State; residence within the State; protection applications within the State; and obligations to leave the State.⁴ A new statutory status of 'long-term resident' was proposed, as was a single application procedure for protection claims meaning that Geneva Convention asylum claims and subsidiary protection claims would be examined together. Important changes to the bodies in the asylum process were also proposed. Arguably one of the most controversial aspects of the Bill which prompted much NGO and media debate involved provisions surrounding a potential for detention and removal from the State including provisions which could lead to a foreign national being detained if they do not comply with a condition imposed by an immigration officer or member of the Garda Síochána. These provisions were also applicable to minors under 18 years of age. The published Bill also set forth a basis for summary deportation while legal proceedings are ongoing. A further controversial provision

¹ *Policy Analysis Report on Asylum and Migration: Ireland 2006; Policy Analysis Report on Asylum and Migration: Ireland Mid-2004 to 2005; Policy Analysis Report on Asylum and Migration: Ireland 2003 to Mid-2004*. All are available at www.esri.ie

² The European Migration Network is a network of National Contact Points tasked with gathering accurate, objective and comprehensive information on immigration and asylum. Previous reports in this series for Ireland are available to download from the Economic and Social Research (ESRI) website at www.esri.ie

³ The 2007 Bill fell with the general election and change of government in June 2007, with a slightly amended version of the Bill relaunched by the new Minister for Justice, Equality and Law Reform in January 2008.

⁴ Quinn, Stanley, Joyce, O'Connell, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

stated that the marriage of a third-country foreign national and an Irish citizen does not, of itself, confer a right on the foreign national to enter or be present in the State.

On a national political level, the most significant event of 2007 was a general election, which took place in Ireland in May. Election results, while seeing the largest party, Fianna Fáil, returned to government, also saw a change in the Government coalition composition. The election saw an increase in support for the opposition Fine Gael party, a less-than-expected decrease in Fianna Fáil seats and a marked decrease in votes for the Progressive Democrats. Progressive Democrat losses included the loss of seat of party leader and previous Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell. A new Minister for Justice, Equality and Law Reform was subsequently appointed, Brian Lenihan T.D.

The predominant change in structure of the institutional context was the creation of a new Minister of State with special responsibility for Integration Policy after the general election. This new cross-departmental ministry was allocated €9m in the 2008 national budget, and Conor Lenihan T.D. was appointed to the post in June 2007. Within the Department of Justice, Equality and Law Reform, an Anti-Human Trafficking Unit was established in 2007 to work with governmental and non-governmental agencies in developing coordinating and implementing the Government's national strategy to address human trafficking in Ireland.

Main legislative initiatives during 2007 included the introduction of the *Criminal Law (Human Trafficking) Bill 2007* and the enactment of the *Employment Permits Act 2006* as from January 2007. In October 2007 the Government announced a series of measures targeting trafficking into Ireland, including the publication of the *Criminal Law (Human Trafficking) Bill 2007*. The Bill created offences criminalizing trafficking in persons for the purposes of sexual or labour exploitation (recruiting, transporting, transferring to another person, harbouring or causing the entry into, travel within or departure from the State), or for the removal of their organs. Service provision to suspected victims of trafficking was not included in the scope of the Bill; it has been announced that this is being dealt with separately on an administrative basis.

Prior to the accession of Romania and Bulgaria to the EU in January 2007, restrictions were put in place regarding access to the labour market for newly-arrived nationals of these Member States. Bulgarian and Romanian nationals already legally resident in Ireland prior to Accession, and those arriving subsequently as self-employed, were exempt from restrictions. The implementation of the *Employment Permits Act 2006* in 2007 saw the introduction of significant changes to the existing employment permits system. Reflecting the general policy of meeting most domestic labour needs from within the enlarged EU, the Act contained a reformed system with three elements including a type of 'Green Card' for any position with an annual salary of €60,000 or more in any sector, (or for a restricted list of occupations) where skill shortages have been identified and with an annual salary range from €30,000 to €59,999; a re-established Intra-Company transfer scheme for temporary trans-national management transfers; and a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills. The Government also introduced two administrative schemes in

the area of economic migration during 2007 in the form of the *Third Level Graduate Scheme* and the *Spousal and Dependents Scheme*.

A prominent and lengthy media and parliament debate in mid-2007 concerned the presence and living conditions of a number of Romanian Roma families living in a disused house and at an improvised encampment at a road junction in Dublin. Having entered Ireland legally as EU nationals, the group could not access the workforce due to restrictions to employment in place, and were ineligible for social welfare assistance in Ireland due to welfare restrictions on non-residents. Controversy surrounded claims by the families that conditions at the camp were better than at home and that they had they come to Ireland to escape a life of destitution in Romania. More than 20 NGO groups were involved in supporting the group after they arrived. The encampment was seen by some as a humanitarian issue, and by others as ‘welfare tourism’, with the story capturing lengthy media and parliamentary debate.

In early 2007 a further administrative scheme was announced with regard to the renewal of leave to remain for the non-national parents of Irish-born children granted permission to remain under the *Irish Born Child (IBC/05) Scheme*. Successful applicants under the renewal process have had their leave to remain renewed for up to three years, at which stage those qualifying will be eligible to apply for full citizenship. In order to qualify for a renewal an applicant must: have been successful under the first IBC/05 scheme, must have been living in Ireland with his or her child since being granted permission to remain and must have made every effort to become economically viable. There were a number of legal challenges against refusal decisions under the original IBC/05 administrative scheme resulting in a Supreme Court ruling in December 2007, (*Bode [A Minor] -v- Minister for Justice, Equality & Law Reform & Ors*), which overturned previous findings in the test cases and recognized the fundamental power of the State to control the entry, residence and exit of foreign nationals.

Applications for asylum in Ireland decreased in 2007, and proved to be the lowest since 1997. Some 135 deportation orders to non-EU countries were effected during the year, and there was also an increase in transfer orders effected under Dublin II Regulations. In 2007 Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR and in September the National Residential Orientation and Training Centre was opened to provide newly-arrived resettled refugees with cultural orientation and training in preparation for independent living prior to permanent resettlement.

Other significant policy debates in the period centered on the issue of separated children within State care in Ireland. During 2007 figures became available on the high number of separated children who continued to go missing from State care. Reports detailing the quality of child protection care afforded to separated children in comparison to Irish out-of-home minors prompted much debate, with standards of hostels and social work assistance available to separated children viewed as being much lower.

Regarding EU legislation, during 2007 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research took place and was transposed on the 12 October 2007 by the administrative “Scheme for Accreditation of Research Organisations” under powers provided by

existing legislation. Work also began on the transposition of Council Directive 2005/85/EC relating to the minimum standards concerning the procedure for granting and withdrawal of refugee status in the Member States with provisions included within the published Immigration, Residence and Protection Bill 2008 which are stated to give effect to the Directive's Provisions. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was transposed in Ireland through S.I. No. 656 of 2006 which came into effect during 2007. Regarding earlier Regulations, Ireland had originally opted in to Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third country nationals in 2003. The opt-in process was formally completed during 2007, with Ireland operating on a de facto opt-in basis in the interim period.

1. POLITICAL DEVELOPMENTS IN THE MEMBER STATE

1.1 General Structure of the Political System and Institutional Context Relevant to Migration and Asylum

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Bertie Ahern T.D. as of year end 2007) and Tánaiste (Deputy Prime Minister, Brian Cowen as of year end 2007). Each of the Dáil's 166 members is a Teachta Dála (TD), who is directly elected by the people. General elections take place at least once every five years with one taking place during this reference period in May 2007. An *Agreed Programme for Government* announced after the general election of 2007 saw a change from a coalition between Fianna Fáil and the Progressive Democrats to a coalition government between Fianna Fáil, the Green Party, the Progressive Democrats and four Independent TDs.

There are 15 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland. The Department of Justice, Equality and Law Reform has a range of responsibilities including immigration policy and services, crime and security, law reform, equality and human rights and houses the Irish Naturalisation and Immigration Service (INIS), the Reception and Integration Agency (RIA) and the Garda National Immigration Bureau (GNIB).⁵ The Department of Enterprise, Trade and Employment administers the employment permit schemes. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice, Equality and Law Reform does not operate a dedicated visa office. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice, Equality and Law Reform. The GNIB carries out deportations, border control, and investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with

⁵ Further information on the specific activities of each government department, including the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA) can be found in the previously-published *Policy Analysis Report on Asylum and Migration: Ireland 2006*.

immigration in every Garda district and at all approved ports and airports. There is also a border control unit attached to Dundalk Garda Station.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the 1951 Geneva Convention, The Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) are statutorily independent offices under the aegis of the Department of Justice, Equality and Law Reform. These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively.

The reformation of government after the general election in May 2007 saw a change in the Minister for Justice, Equality and Law Reform.

1.2 General Political Developments

1.2.1 GENERAL ELECTION

A national general election took place in May 2007, with the largest party in the previous coalition, Fianna Fáil, continuing in power. Changes to the previous Fianna Fáil-Progressive Democrats coalition government took place as a result, with a draft Programme for Government agreed by Fianna Fáil and the Green Party in June 2007. A coalition government was established the following day comprising of Fianna Fáil, the Green Party, the Progressive Democrats and four Independent TDs (Members of Parliament). The election saw an increase in support for the opposition Fine Gael party; a less-than-expected decrease in Fianna Fáil seats and a marked decrease in votes for the Progressive Democrats. Progressive Democrat losses included the loss of seat of party leader and previous Tánaiste and Minister for Justice, Equality and Law Reform, Michael McDowell.

Changes to Government as a result of the general election included both the appointment of a new Minister for Justice, Equality and Law Reform, Brian Lenihan T.D. and the creation of a new Minister of State with special responsibility for Integration Policy.

1.3 Institutional Developments

1.3.1 INTEGRATION POLICY DEVELOPMENT

In recent years, a change in integration policy has been seen from that of recognised refugees only to that of the development of integration for all legally resident non-Irish nationals. As referenced in the previous report *Policy Analysis Report on Asylum and Migration: Ireland 2006*, in July 2006 the Minister for Justice, Equality and Law Reform announced the allocation of €5 million for integration-related activities and projects including assistance in employment, language, sport, and community activities. Activities funded under this stream continued during 2007.

The announcement of Ministerial appointments post-general election of June 2007 saw a new Minister of State with special responsibility for Integration Policy created and appointed. The junior ministry is based across three departments: the Department of Community, Rural and Gaeltacht Affairs; the Department of Education and Science; and the Department of Justice, Equality and Law Reform. A total of €9 million was allocated to the new Office of the Minister for Integration in the 2008

Budget. Minister for State Conor Lenihan (a member of the Fianna Fáil party) was appointed to the post in June 2007.

The Irish Naturalisation and Immigration Service (INIS) in co-operation with UNHCR hosted a conference on 'Integration Policy - Strategies for a Cohesive Society' in Dublin Castle in February 2007. The aim of the conference was to initiate a process of consultation and reflection on appropriate strategic directions for the integration of legally resident immigrants into Irish society. Between February and May 2007, the Department of the Taoiseach chaired a cross-departmental group tasked with carrying out both a review of existing integration policy and to provide an initial assessment of future policy options. An Integration Forum hosted by the Office of the Minister for Integration took place in December 2007

1.3.2 ANTI-HUMAN TRAFFICKING UNIT

During 2007 a new Anti-Human Trafficking Unit within the Department of Justice, Equality and Law Reform was established to work with governmental and non-governmental agencies in developing, coordinating and implementing the Government's national strategy to address human trafficking in Ireland. In December 2007 a competition was held to appoint an Executive Director to the new Unit.

Identifying the need for the development of a new comprehensive national strategy to prevent trafficking in human beings, to prosecute traffickers, and to protect victims, the Unit works closely with INIS, An Garda Síochána (including the GNIB) and Non-Governmental Organisations involved in the provision of services to victims. Government strategy has also outlined the central role of the Anti-Human Trafficking Unit as being the fostering, developing and maintaining of cooperative linkages at the highest policy level with other EU Member States and international organisations and institutions, including the prioritisation of close co-operation with the UK on the issue of trafficking in relation to the common travel area and land border with Northern Ireland.⁶

A public consultation period seeking the views of the public on what should be included in the National Action Plan to Prevent and Combat Human Trafficking commenced in October 2007 following the launch in Brussels of a European G6 Initiative against trafficking in human beings.

1.3.3 ELECTRONIC FINGERPRINT SYSTEM

The Minister for Justice, Equality and Law Reform launched the first phase of the new Automated Fingerprint Identification System for An Garda Síochána and the INIS in November 2007. As discussed in the *Policy Analysis Report on Asylum and Migration: Ireland 2006* when measures were announced, this new system is being introduced on a phased basis and sees the replacement of the existing system in the Garda Technical Bureau and the installation of electronic fingerprint capture livescan units at the Office

⁶ National Crime Council, 2007. Anti-Human Trafficking Initiatives, Dublin. Available at: http://www.irlgov.ie/crimecouncil/human_trafficking.html

of the Refugee Applications Commissioner (ORAC). This allows for the electronic taking and exchange of fingerprint data on persons seeking asylum with the central EURODAC fingerprint database. Subsequent phases to be delivered during 2008 will provide for the capture and storing of fingerprints upon registration by the GNIB and also provide Garda Immigration authorities with the ability to capture and store prints at ports of entry including at sea and air ports.⁷

⁷ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

2. POLICY AND LEGISLATIVE DEVELOPMENTS

2.1 General Structure of the Legal System in the Area of Migration and Asylum

2.1.1 LEGISLATIVE STRUCTURE

In April 2007 Ireland published the draft Immigration, Residence and Protection Bill, setting forth a legislative framework for the management of inward migration to Ireland. Seeking to codify, integrate and update various pieces of previous legislative measures, the Bill explicitly mentioned and defined the concept of ‘foreign nationals’ in Irish legislation for the first time. The Bill also laid down principles governing the lawful presence of non-EU nationals in the State. Outlined statutory processes within the Bill included statutory processes for applying for a visa; for entry to the State; for residence in the State (a long-term residence category being introduced) and for being required, when necessary, to leave the State. For the first time an obligation on a foreign national who is unlawfully in the State to leave was explicitly mentioned. The Government’s term of office ended soon after publication in June 2007, and the incoming Government committed itself to the review and re-publication of the Bill. By the end of the year, that review was at a very advanced stage.

As discussed in previous reports in this series (and most notably the *Policy Analysis Report on Asylum and Migration: Ireland 2006*), prior to the mid-1990s Irish asylum and immigration legislation was covered under the 1935 Aliens Act (and Orders made under that Act), together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European Union in 1973.⁸ Following a sharp rise in immigration flows as from the mid-1990s, several legislative measures were introduced to deal with immigration and asylum issues in Ireland including:

- The *Refugee Act 1996* set out, for the first time, a system for the processing of asylum applications in Ireland.
- The *Immigration Act 1999* set out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and made provision for the issuing of deportation and exclusion orders.

⁸ Quinn, E., 2007. *Policy Analysis Report on Asylum and Migration: Ireland 2006*. Dublin: ESRI. Available at www.esri.ie

- The *Immigration Act 2003* introduced carrier liability whereby a carrier can be held responsible and fined accordingly for bringing an undocumented immigrant to the State. Provision was also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.
- The *Immigration Act 2004* included a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It made provision for the appointment of immigration officers and established criteria for permission to land. The Act empowered the Minister to make orders regarding visas and approved ports for landing, and it imposed limits on the duration of a foreign national's stay. Certain obligations were imposed on carriers, and persons landing in the State were required to be in possession of a valid passport or identity document. It also outlined a requirement for foreign nationals to register with the Gardai (police).
- The *Illegal Immigrants (Trafficking) Act 2000* created an offence of smuggling illegal immigrants, with significant penalties on conviction and extends the powers of An Garda Síochána (Police) to enter and search premises, and to detain in relation to such activities.
- The statute law governing Irish citizenship is the *Irish Nationality and Citizenship Act 1956*. The 1956 Act was amended by the Irish Nationality and Citizenship Act 1986, 1994, 2001 and 2004.
- The *Employment Permits Act 2003* was enacted to facilitate the accession of ten new EU Member States in 2004 and introduced particular offences for both employers and employees working in breach of employment permit legislation.
- The *Employment Permits Act 2006* enabled the introduction of significant changes to the existing employment permits system and came into entry in 2007. Reflecting the general policy of meeting most domestic labour needs from within the enlarged EU, the 2006 Act contained a reformed system with three elements including a type of "Green Card" for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999; a re-established Intra-Company transfer scheme for temporary trans-national management transfers; a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills (discussed further below).
- The *Criminal Law (Human Trafficking) Bill 2007* created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalised the selling or purchasing of human beings (discussed further below).

2.1.2 MAIN ACTORS

There are three main ministries involved in the area of asylum and migration in Ireland. The Department of Justice, Equality and Law Reform is responsible for immigration management and the Minister of that Department has ultimate decision making powers in relation to

immigration and asylum. The Office of the Minister of State with special responsibility for Integration Policy is also primarily housed within that department and is tasked with supporting the integration of legally resident migrants in Ireland. The Department of Enterprise, Trade and Employment administers the employment schemes. The Department of Foreign Affairs has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice, Equality and Law Reform does not have a dedicated visa office present within the country.

The following actors are involved in the policy development and implementation in the area of asylum and migration in Ireland. All are within, or under the aegis of, the Department of Justice, Equality and Law Reform.

- The Immigration and Citizenship Policy Unit is responsible for the development of immigration and citizenship policy and proposals for legislative change in this area.
- The Immigration and Citizenship (Operations) Division is responsible for the implementation of policy in relation to the admission of non-nationals to the State, their residence in the State, permission to remain in the State, and the granting where appropriate of Irish citizenship.
- The EU Treaty Rights Division is responsible for applications for residency or family reunification for third-country spouses of EU nationals.
- The Repatriation Unit is responsible for considering the cases of failed asylum seekers and undocumented and/or irregular migrants for leave to remain in the State or for repatriation to their countries of origin.
- The Asylum Policy Division has overall responsibility for asylum including developing policy initiatives, the policy aspects of legislation, and the achievement of asylum processing targets.
- Through the Ministerial Decisions Unit, the Department has direct responsibility for ministerial decisions on refugee status based on recommendations/decisions of the Office of the Refugee Commissioners Office and the Refugee Appeals Tribunal.
- The Reception and Integration Agency is responsible for coordinating the provision of services to both asylum seekers and refugees. In addition it coordinates the implementation of integration policy for all refugees and persons granted leave to remain in the State, and responds to crisis situations that result in large numbers of refugees arriving in Ireland within a short period of time under the Programme Refugee resettlement quota. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social and Family Affairs, of nationals of the ten new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin.
- A two-pillar structure exists for asylum application processing, consisting of:
 - The Office of the Refugee Applications Commissioner (ORAC).

- The Refugee Appeals Tribunal (RAT).

Finally the Refugee Legal Service (RLS) was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board.

2.2 General Overview of the Main Policy and Legislative Debates

2.2.1 PUBLICATION OF IMMIGRATION, RESIDENCE AND PROTECTION BILL, 2007

An Immigration, Residence and Protection Bill was published in April 2007 but fell with the General Election and change of government in June 2007. A slightly amended version of the Bill was relaunched by the new Minister for Justice, Equality and Law Reform in January 2008. The 2007 Bill sought to set forth a legislative framework for a managed and integrated immigration policy, and was described as representing a ‘comprehensive overhaul of the State’s immigration and protection laws dating back to the Aliens Act of 1935.’⁹ The scope of the Bill was very broad and outlined both a number of principles governing the presence of foreign nationals in the State, and statutory processes concerning visa applications; entry to the State; residence within the State; protection applications within the State; and obligations to leave the State.¹⁰

A new statutory status of ‘long-term resident’ was proposed in the Bill which would carry entitlements and access to State services close to those of Irish citizens. A single procedure was proposed for protection claims, meaning that Geneva Convention asylum claims and subsidiary protection claims would be made at first instance and examined together. Important changes to the bodies in the asylum process were also proposed.

Provisions surrounding a potential for detention and removal from the State were among the most controversial, including provisions that could lead to a foreign national being detained if they do not comply with a condition imposed by an immigration officer or member of the Garda Síochána. Of particular controversy was a potential for these provisions for detention to also be applicable to those less than 18 years of age. In addition the possibility of making a removed person liable for the costs of their detention and removal, as well as their accommodation and maintenance while being detained and removed was introduced. The published Bill also included provisions for summary deportation despite pending legal proceedings. A further provision stated that the marriage of a foreign national and an Irish citizen does not, of itself, confer a right on the foreign national to enter or be present in the State. The Bill also introduced a notification requirement for foreign nationals wishing to contract a marriage in the State, which was stated as targeting opportunities for marriages of convenience for immigration purposes, and created an offence of solemnising at, being a party to, or facilitating such a marriage.

Comments on the published Bill centred on a lack of clarity around specific legislative provisions, with a high level of Ministerial discretion still

⁹ Irish Naturalisation and Immigration Service, 2007b. *Tánaiste publishes Immigration, Residence and Protection Bill 2007*. Available at www.inis.gov.ie

¹⁰ Quinn, Stanley, Joyce, O’Connell, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

authorised. The Immigrant Council of Ireland Independent Law Centre (ICI) expressed concern that the legislation did not address key integration issues or provide adequate legal safeguards to protect the rights of migrants. The ICI stated that many of the provisions mirrored existing legislation and failed to provide appropriate legal safeguards, including independent reviews of immigration decisions. In its analysis of the Bill, the ICI highlighted a number of concerns raised by the Irish Human Rights Commission (IHRC) and the Bill's failure to adhere to international standards. The ICI was specifically critical of ill-defined provisions such as long-term residence and of a failure to make provisions for family reunification on a legislative basis, a principal migration flow. In addition to the content of the Bill, ICI questioned the timing of the Government's publication of the proposed legislation, in light of an upcoming General Election, and with a lack of time to properly debate the Bill. (Immigrant Council of Ireland, 2007¹¹.)

In September 2007, a collection of NGOs (Integrating Ireland; Immigrant Council of Ireland; Refugee Information Service; Migrant Rights Centre Ireland; Irish Refugee Council and NASC (The Irish Immigrant Support Centre) came together to publish an *Information Leaflet on the Immigration, Residence and Protection Bill*.¹² A summary of key recommendations were made:

- Fair Procedures/Access to Justice
- Clarity regarding entitlements to Long-term Residency
- Family Life – Family Reunification
- Right to Marry and removal of restriction on foreign nationals to obtain permission of the Minister for Justice, Equality and Law Reform before marriage.
- Rights and Best Interests of Children
- Access to Protection
- Undocumented Workers and Bridging Visas
- Protecting Victims of Trafficking
- Detention

2.2.2 CRIMINAL LAW (HUMAN TRAFFICKING) BILL 2007

In October 2007 the Government announced a series of measures intended to target suspected trafficking into Ireland, including the publication of the *Criminal Law (Human Trafficking) Bill 2007*. Described as legislation with the intention of making 'Ireland a more hostile environment for those who might consider trafficking people here',¹³ the Bill criminalised the selling or purchasing of human beings. The Bill created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation (including the recruiting, transporting, transferring to another person,

¹¹ Immigrant Council of Ireland, 2007. '*The Immigrant Council of Ireland responds to the Government's legislation on immigration, raising concerns about its content and timing*'. Available at http://www.immigrantcouncil.ie/press_detail.php?id=50

¹² Irish Refugee Council, 2007b. Information Leaflet on the Immigration, Residence and Protection Bill. Available at <http://www.irishrefugeecouncil.ie/pub07/residence.pdf>

¹³ The Department of Justice, Equality and Law Reform, 2007a. *Human Trafficking Bill Published*. Available at http://www.justice.ie/en/JELR/Pages/Human_Trafficking_Bill_Published

harbouring or causing the entry into, travel within or departure from the State), or for the removal of their organs.

Within the published Bill, three sections (Sections 3, 4 and 5) created trafficking offences. Section 3 of the Bill criminalised the trafficking of children into, through or out of the State for the purposes of labour exploitation and removal of organs for exploitative purposes. Section 4 amended the *Child Trafficking and Pornography Act 1998* to bring the offence of trafficking into line with other new trafficking offences and to fully comply with international instruments. Section 5 criminalised trafficking in adults for the purposes of labour, sexual exploitation or organ removal for exploitative purposes. All offences in Sections 3, 4 and 5 are to be punishable by a maximum prison sentence of life. Service provision to suspected victims of trafficking was not included in the scope of the Bill, and was announced as being dealt with separately on an administrative basis. Organisations including Amnesty International (Irish Section) criticised the Bill in this regard.¹⁴

2.2.3 PROGRAMME FOR GOVERNMENT 2007

An *Agreed Programme for Government* was published in June 2007 in light of the general election and re-formed Cabinet earlier in May. Setting out an overall 'shared vision' for Government for the years 2007 to 2012, in the area of asylum, immigration and integration a focus was placed on further significant multi-agency action in the area.

2.3

Policy and Legislative Developments in the Area of Migration and Asylum

2.3.1 REFUGEE PROTECTION AND ASYLUM

In 2007 a total of 3,985 asylum applications were received in the State, the lowest since 1997 and a 7.6 per cent decrease on the corresponding figure of 4,314 in 2006. When the number of transfer orders (225) effected in 2007 under the EU Dublin II Regulation is taken into account, this, in real terms, reduces the number of applications to 3,760.¹⁵ It is of interest to note that the unadjusted overall number of applicants for asylum represents less than 4 per cent of the estimate of total gross inward migration in 2007. Classifying applications for asylum according to nationality, the top five source countries in 2007 were Nigeria (25.8 per cent), Iraq (7 per cent), China (6.5 per cent), Pakistan (4.5 per cent) and Georgia (4.4 per cent). The total number of first instance asylum applications processed to completion in Ireland in 2007 was 4,152.

As discussed in-depth in previous reports in this series, new arrangements for the processing of prioritised applications were implemented with effect from January 2005. These arrangements apply in the main to nationals of Nigeria, Croatia and South Africa, with Romania and Bulgaria also included prior to their accession to the EU on 1 January

¹⁴ Amnesty International (Irish Section), 2007. *Amnesty welcomes Trafficking Bill but criticises absence of supports for victims*, Dublin: Amnesty International. Available at <http://www.amnesty.ie/amnesty/live/irish/news-events/article.asp?id=13993&page=4540>

¹⁵ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

2007. 27 per cent of all applications in 2007 were from nationals of countries covered by the prioritised caseload provisions, with Nigerian nationals accounting for 1,028 of the 1,072 prioritised cases (96 per cent) in 2007.¹⁶

2.3.1.1 Applications from EU Nationals

Following their accession to the European Union in January 2007, asylum applications from nationals of Romania and Bulgaria were now deemed inadmissible for processing in the State due to citizens of both countries (and their family members) enjoying free movement rights as set out in the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*. Ireland experienced a number of Romanian nationals (220) seeking to apply for asylum in January 2007. Following consultations with the Attorney General, the Tánaiste applied the *EU Treaty Protocol on asylum for nationals of Member States of the European Union*, which provides that applications for refugee status from EU nationals shall be inadmissible for processing by another EU Member State except in very exceptional circumstances.

2.3.1.2 Future Asylum and Immigration Policy Development

An *Agreed Programme for Government* was published in June 2007. In the area of asylum, the Programme for Government pledged to create a streamlined asylum and pre-deportation process; to subsume the Office of the Refugee Applications Commissioner (ORAC) into the Irish Naturalisation and Immigration Service (INIS); to establish a Protection Review Tribunal to replace (and expand the remit of) the Refugee Appeals Tribunal (RAT) and to provide for a more effective removals system for failed protection applicants.

As discussed earlier, the Immigration, Residence and Protection Bill fell with the change of government in June 2007 but was reintroduced with some amendments in January 2008. If enacted, the Act would repeal the *Immigration Acts, 1999, 2003 and 2004*, and Section 5 of the *Illegal Immigrants (Trafficking) Act 2000*. In addition to restating a number of pieces of existing legislation, the draft Bill introduced a number of important new developments including a shift to a single protection determination procedure meaning that all protection claims (including claims for asylum and subsidiary protection) would be examined under a single procedure. Applicants would be required to set forth all of the grounds on which they wished to remain in the State (including non-protection related reasons for permission to remain) at the outset of their claim, with all of these matters then examined together.¹⁷ The proposed changes would result in four distinct findings by the Minister: that the person is (a) allowed to remain in the State on refugee grounds, (b) allowed to remain in the State on subsidiary protection grounds, (c) allowed to reside in the State on other discretionary grounds, or (d) not allowed to remain in the State. The Bill proposed the establishment of a Protection Review Tribunal, which would

¹⁶ Ibid

¹⁷ At present a person who wishes to claim protection in the State may lodge (a) an asylum application, which is examined under the Refugee Act 1996 as amended, (b) an application for subsidiary protection pursuant to the regulations contained in S.I. 518 of 2006 and (c) an application for leave to remain in the State pursuant to the provisions of the Immigration Act 1999, as amended.

effectively replace the RAT, and proposed that the Minister for Justice, Equality and Law Reform carry out those functions currently dealt with by the Office of the Refugee Applications Commissioner.

2.3.1.3 Refugee Appeals Tribunal

Much media and civil society discussion occurred during 2007 regarding an Irish Supreme Court ruling that statistics regarding asylum appeal decisions of a member of the Refugee Appeals Tribunal (RAT) could be examined in a High Court case. Overall case proceedings had begun in December 2006 when a Congolese asylum-seeker and two others took judicial review proceedings against a named tribunal member, James Nicholson, alleging a lack of fair hearing and chance for a positive outcome of an appeal heard by the member. The member was alleged to have had an almost 100 per cent refusal rate of refugee appeals, having heard up to an estimated 1,000 cases. Included in the initial case proceedings were a number of affidavits submitted by solicitors practising refugee law who stated that they had felt it necessary to 'warn' clients about the tribunal member's decision record. As part of the case, access to statistics related to the member's decisions (and others) were sought. On foot of the June 2007 Supreme Court judgment these statistics are to be produced, with the claim of bias to be further examined by the High Court. Later in the year in December 2007 the RAT settled a related case involving three asylum seekers who did not wish to have their cases heard by the same Tribunal member.

2.3.1.4 Resettlement

During 2007 Ireland continued to implement the Government's *Resettlement Programme* with 200 programme refugees approved for resettlement and 114 admitted to the State. In September, the National Residential Orientation and Training Centre was opened to provide newly-arrived resettled refugees with cultural orientation and training in preparation for independent living prior to permanent resettlement.

2.3.2 UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

2.3.2.1 Separated Children

The issue of separated children (also known as unaccompanied minors) under the care of the State child protection remit continued to be an issue throughout 2007. Public debate centred on figures released by the Health Service Executive (HSE), the entity responsible for child protection services for unaccompanied minors within State care in Ireland, which reported that in the period from 2001 to 2005 some 328 migrant children had gone missing from State care. The Irish Refugee Council (IRC) and the Irish Society for Prevention of Cruelty to Children (ISPCC) repeated a call for a strengthened social work service to be available at Irish ports and airports to assist with the identification, assessment and referral of vulnerable children upon port of entry in Ireland.

A related issue concerning quality of care available to separated children continued to be a much-commented on topic during 2007. In October 2007 the Health Service Executive (HSE) confirmed to *The Irish Times* that 'none of the centres it uses [for accommodation of separated children]

meets the standards necessary for them to be registered to operate or provide accommodation for children.¹⁸ The centres, which are State-funded but privately operated, are not subject to independent monitoring by the Social Services Inspectorate as is the case for Irish children in State residential care. A judge sitting in the Dublin Metropolitan District Court commented in a paper in mid-2007 that the hostels allocated for accommodation of separated children often had minimum levels of staffing – a factor, which was a ‘likely contributor’ to the fact that separated children went missing from care.¹⁹ Other agencies calling for better service provision levels available to separated children included Barnardos and Ireland’s Ombudsman for Children. The Ombudsman, in the context of submitting observations to the Minister for Justice, Equality and Law Reform on the then draft legislation aimed at combating human trafficking, expressed concern that the level of care provision for separated children (including implicit and explicit victims of trafficking) was lower than that available to out-of-home children, with separated children in cases accommodated in non-State operated, private hostels without sufficient staff or security.²⁰

The published Immigration, Residence and Protection Bill 2007 outlined specific legislative provisions for the arrival, care for, and considering of an asylum and/or protection application for a separated children within the State. The Irish Refugee Council (2007a) called for a number of modifications to the Bill including a widened definition of the term ‘separated child’ and the establishment of a Register of Separated Children in Ireland, particularly for those children who were not registered with the Office of the Refugee Applications Commissioner. Other recommendations included a call for age assessment measures to be implemented, the appointment of an independent guardian *ad litem* for each separated child, and protection for separated children who do not apply for asylum.²¹

2.3.2.2 Roma Encampment

In mid-2007 a lengthy and significant public debate within media, civil society and parliament concerned the presence and living conditions of a number of Romanian Roma families living in a disused house and on a highway roundabout in Dublin. The Roma group of about 100 had entered Ireland legally as EU nationals, but without visible means of support or an entitlement to social assistance due to welfare restrictions on non-residents. Romanians were also restricted from working in Ireland due to the

¹⁸ The Irish Times, October 2007a. ‘Child asylum hostels fail minimum standards’. Available at <http://www.ireland.com/newspaper/ireland/2007/1029/1193444067460.html>

¹⁹ The Irish Times, July 2007a. ‘Judge says social workers’ caseloads ‘impossibly large’’. Available at <http://www.ireland.com/newspaper/frontpage/2007/0710/1183751755275.html>

²⁰ Ombudsman for Children, Emily Logan, is quoted as stating that “Victims of trafficking, and indeed unaccompanied minors generally, receive a lower level of protection and assistance than Irish children in care”, The Irish Times, July 2007b. ‘Failings of hostels for trafficked children raised’. Available at <http://www.ireland.com/newspaper/ireland/2007/0703/1183410168459.html>

²¹ Irish Refugee Council, 2007a. ‘Comments by the Irish Refugee Council on the Immigration, Residence and Protection Bill, 2007 in relation to the Protection of Separated Children’. Available at <http://www.irishrefugeecouncil.ie/pub07/comments.pdf>.

requirement for Romanian and Bulgarian nationals to either hold an employment permit or to be legally self-employed.²²

Controversy surrounded claims by the families that conditions at the camp were better than at home and that they had they come to Ireland to escape a life of 'squalor and discrimination' in Romania. This claim was refuted by Romania's ambassador to Ireland who stated that an investigation by the Romanian government had found that many of those in the camp had previously been in receipt of social assistance in Romania and/or had permanent addresses there. More than 20 organisations, including the Irish Roma Support Group and Pavee Point, were involved in supporting the group since they arrived. The encampment was seen as both a humanitarian issue and as 'welfare tourism', with the story capturing lengthy media and parliamentary debate. Removal orders were served on 86 people, with deportation orders subsequently issued to the 38 adults and children who remained at the camp and had not returned voluntarily.

2.3.3 CONTROL AND MONITORING OF IMMIGRATION

2.3.3.1 Programme for Government 2007

An *Agreed Programme for Government* was published in June 2007 and outlined a commitment by Government to the implementation of a 'fair and strategic' national immigration policy. Outlined proposals included a commitment to enact the draft Immigration, Residence and Protection Bill; to consider in the context of the Bill to allow partners of permit holders to work following reunification and permanent residency; to ensure advice and assistance are provided in appropriate languages at ports of entry; to ensure legal aid is available for immigration cases; to further develop a family reunification scheme for family members of non-EEA national workers; to introduce a long-term residency scheme applicable to those resident in the State for longer than 5 years; to take further the introduction of a 'green card' system for people with certain skill sets; to complete the implementation of the Irish Naturalisation and Immigration Service (INIS) and to ensure the visibility of an independent appeals process.

2.3.3.2 Issuance of Residence, Work Permits

There was some increase in the number of new employment permits issued in 2007, which may reflect the new employment permit scheme in operation since January 2007. Fewer than 3,000 Green Cards were issued in 2007.

The Department of Justice, Equality and Law Reform (2007)²³ published figures that showed an increased number of applications for permission to reside in the State during that year, with General Permission

²² Prior to their accession to the EU in January 2007, the Irish Government imposed restricted access to the labour market for Romanian and Bulgarian nationals.

²³ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

to Remain listed as having increased by 600 per cent since 2003 (including applications for Long-Term Residence).²⁴

The Migration Integration Policy Index published in September 2007 showed that Ireland had ranked bottom of an EU-wide table accessing the provision of long-term residence rights for migrant workers. The study of policy indicators highlighted the lack of a ‘long-term resident’ status category in Ireland, which resulted in long-term migrants not being provided with a similar level of security as in other EU states and with the ‘last favourable rights in the 28 countries assessed’.²⁵ However, the publication did note that access to nationality for migrants was facilitated for those with five years of legal residence (three years in the case of recognised refugees), leading Ireland to rank joint fourth in the EU with the U.K. Indicators of labour market access and family reunification entitlements were both low for Ireland. The Index evaluated Irish integration policies as having ‘evolved in a “piecemeal and economically driven fashion’.²⁶

2.3.3.3 Visa Applications

During 2007 over 150,000 visa applications were processed by Irish authorities worldwide, including 66,000 re-entry visas. In addition during the year the Department of Justice, Equality and Law Reform opened dedicated visa offices in London, Abuja and Cairo staffed by officials of the Department.

2.3.3.4 Removal from the State

Some 135 deportation orders to non-EU countries were effected in 2007.²⁷ Regarding *Dublin II Regulation* transfer orders, the Department of Justice, Equality and Law Reform *Annual Report 2007* provides the rate of effecting of orders signed in 2007 as 66 per cent, compared to 53 per cent in 2006 and representing 225 transfer orders to other European States carried out under the Regulation. This year-on-year increase was attributed to the implementation of a number of new strategies aimed at improving the operation of the Regulation in Ireland.

In 2007 for the first time European citizens were removed in accordance with *Regulation 20(1)(a) of the European Communities (Free Movement of Persons), (No 2), Regulation 2006*. Removal Orders were made against nine persons, of which four were removed to various EU States during the year. As discussed in the *Policy Analysis Report on Asylum and Migration: Ireland 2006*, the Regulations bring into effect in Irish law *European Directive 2004/38/EC* on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States. While an EU citizen does not need to register his/her presence in the State with the immigration authorities, his or her residence,

²⁴ The definition of ‘long-term residence’ in Ireland is not in line with the concept of ‘long-term residence’ applicable in other Member States which are bound by the relevant EC Directive.

²⁵ The Irish Times, October 2007b. *Ireland weak on rights for migrant workers*. Available at www.irishtimes.com

²⁶ *Ibid*

²⁷ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

however, remains subject to conditions in that he or she must be working, a student or have enough resources to ensure that they do not become a burden on the social services, or else they must be a family member of an EU citizen in one of those categories. Non-EU family members must hold a residence card.

Quinn *et al.* (2008) discusses the ramifications of transposition of the Directive in the Irish context, specifically as relates to the requirement for a non-EU family member to have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland (*Regulation 3(2)*). As of end of 2007, many applications for residence permits in Ireland have been refused on this basis. The requirement is currently the subject of legal action pending appeal before the Irish Supreme Court²⁸ and the European Court of Justice.²⁹

2.3.3.5 Judicial Review

There were 196 legal challenges to the deportation/transfer process, through the medium of judicial review by persons faced with deportation in 2007. A total of 490 judicial reviews of asylum and immigration reviews were awaiting decisions by the courts at end 2007. Between 196 new cases and 479 cases were on hand at the beginning of 2007, with a total of 675 cases managed during the year. With regard to overall asylum judicial review applications, there were 1,024 such applications in 2007, the highest number on record. Published figures show total costs related to judicial review in 2007 by the Office of the Refugee Applications Commissioner (ORAC) as being €1.125 million, the Refugee Appeals Tribunal listed as €4.29 million, and the Irish Naturalisation and Immigration Service (INIS) as €2.71 million.³⁰

As discussed in Quinn *et al.* (2008), the published Immigration, Residence and Protection Bill sought to explicitly state provisions in relation to judicial review. Section 118 of the Bill stated that validity of any act, decision or determination under the proposed act shall not be questioned otherwise than by way of judicial review. An application for review must be made within 14 days of the date of the impugned decision, and by motion on notice to the relevant respondents.³¹ In addition, further concerns raised by the ICI included the introduction of ‘wasted costs orders’ against applicants’ legal representatives (unconstitutional breach of equality of arms principle) and the limitation of the High Court’s power to extend time.

²⁸ Unreported judgment, *Hanna J., SK –v Minister for Justice, Equality and Law Reform*, 28 May 2007 as referenced in Quinn *et al.* (2008). *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

²⁹ Preliminary Reference C-127/08, *Metock and others – v – Minister for Justice, Equality & Law Reform*, as referenced in Quinn *et al.*, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

³⁰ The Irish Times, March 2008. ‘1,000 Asylum Review Cases Last Year’. Available at <http://www.ireland.com/newspaper/ireland/2008/0415/1208208529197.html>

³¹ Quinn *et al.*, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

2.3.4 ECONOMIC MIGRATION

2.3.4.1 Accession of Romania and Bulgaria

In October 2006 the Minister for Enterprise, Trade and Employment announced that all nationals of Romania and Bulgaria would continue to require employment permits to work in Ireland after the accession of their countries to the EU on 1 January 2007. The Minister stated this decision had been influenced by the substantial flows of immigrants from the ten new EU Member States post accession in 2004. This policy is to be reviewed in 2009. Romanian and Bulgarian nationals who were already legally resident in Ireland as holders of an employment permit prior to January 2007, or who arrived after 1 January 2007 and were registered as self-employed, were eligible in cases for exemption.

2.3.4.2 Implementation of The Employment Permits Act 2006

The *Employment Permits Act 2006* was commenced in January 2007 and provided for the application, granting, renewal, refusal and revocation of employment permits. Under the Act either employers or employees may apply for employment permits and, in an important new development, employment permits are granted to the employee (rather than the employer as in previous practice) with the intention of reducing a potential for employee exploitation. In addition, a permit is required to list certain rights and entitlements of the worker concerned. The Act prohibited recruitment related deductions from remuneration and the retention by the employer of the employee's personal documents. The Employment Permits Act 2006 contained a reformed system introduced with three elements:

- A type of 'Green Card' for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999.
- A re-established Intra-Company transfer scheme for temporary trans-national management transfers.
- A Work Permit scheme for a very restricted list of occupations up to €30,000, where the shortage is one of labour rather than skills.

In January 2007 a new category of Spousal/Dependant Work Permits was announced, which superseded previous schemes. Coming into effect on 1 February 2007, the *Spousal and Dependent Scheme* was designed to facilitate ease access to employment for spouses and dependent unmarried children under the age of 18 who have been admitted into Ireland as family members of employment permit holders. The new arrangements did not remove the need for a work permit, but rather allowed spouses and dependants of employment permit holders to apply for work permits for any occupation without the requirement of a labour market needs test. They or their employer are still required to apply for an employment permit in the usual way.

2.3.4.3 Third Level Graduate Scheme

In April 2007 the *Third Level Graduate Scheme* was implemented, establishing provisions for non-EEA students who have graduated on or after 1 January 2007 with a degree from an Irish third-level educational institution, to be permitted to remain in Ireland for 6 months. The Scheme made provisions

to allow graduates to find employment and to make an application under the Scheme for a work permit or Green Card. While applications are expected to conform to the requirements for Green Cards and/or work permits, the Department of Enterprise, Trade and Employment has expressed a willingness to consider Work Permit applications for a starting salary lower than €30,000 if it can be shown that this is the industry norm for certain graduate occupations.³² During this 6-month period they may work full time without the need for an employment permit. However, they are not permitted to engage in self-employment or to operate a business in the State.³³

2.3.4.4 Employment Rights

As discussed in detail in the *Policy Analysis Report on Asylum and Migration: Ireland 2006*, agreement was established for the creation of a National Employment Rights Authority (NERA) during 2006. This Authority was established on an interim basis by the Government in February 2007, with a view to being established on a statutory basis in 2008.

In wider terms, the Immigration, Residence and Protection Bill 2007 outlined provisions for longer-term rights for legally resident migrants. A proposed new system of residence permits was to be allocated according to the category into which a foreign national falls. The Bill outlined factors to be considered by the Minister when determining an application for residency, together with provisions for long-term residency. Foreign nationals granted long-term residency were to be entitled to the same rights of travel, ability to work and medical care/social welfare benefits as Irish citizens.

Statistics available as to prosecutions initiated under the *Employment Permits Act 2003* by An Garda Síochána were released in mid-2008. During 2007, no proceedings were commenced against employers or convictions secured. Some 3 proceedings had commenced against employees, with 1 conviction during 2007. No proceedings commenced during 2007 for offences under the *Employment Permits Act 2006*, which came into force on 1 January 2007.

A Code of Practice for Protecting Persons Employed in other People's Homes was launched by the Government in May 2007. The Code of Practice follows from agreement by social partners in the Towards 2016, Ten-Year Framework Social Partnership Agreement 2006-2015, on the need for special measures to support the employment rights of those people who are employed in the homes of others, an area of particular concern for female migrant workers. In October 2007 the Migrant Rights Centre of Ireland (MRCI) launched a renewed campaign for a bridging visa proposal to allow undocumented migrants to regularise their status in Ireland. With a focus on migrant workers who can demonstrate that they have been subject to exploitation or have become undocumented through

³² Department of Enterprise, Trade and Employment, 2007. *Policy in relation to Employment Permit applications under the Graduate Scheme*. Available at <http://www.entemp.ie/labour/workpermits/policygraduates.htm>

³³ Irish Naturalisation and Immigration Service, 2007c. *Third Level Graduate Scheme*. Available at <http://www.inis.gov.ie/en/INIS/GraduateScheme.pdf/Files/GraduateScheme.pdf>

no fault of their own, the bridging visa would allow such a worker to change or seek employment during that time.

In September 2007, Ireland indicated that it would not 'opt in' at first instance to EU legislation designed to target employers that hire illegal immigrants, the *EU Proposal for Sanctions Against Employers for Undocumented Workers*. The draft directive was presented in May 2007 and would introduce criminal penalties for employers found to have hired illegal workers.

2.3.4.5 International Students

In December 2007, a significant debate occurred in media and parliament regarding international students with school-aged children who were not entitled to enrol in free State primary and secondary education. This resulted in a call for the Government to apply similar rules to the UK whereby a child of an international student is permitted to receive a State education while a parent is studying there, provided that the child leaves the country when the parent completes their studies. Debate arose after much media coverage of a case of an American student studying in Ireland for a Master's degree who had been informed by the Garda National Immigration Bureau (GNIB) that their residence permit would not be renewed unless they transferred their child from a State school to a private school. The third-country national had not received notice of the requirement and had been initially informed of both a refusal of renewal of their student-visa status and of a refusal of their right to appeal the decision. Represented by the Immigrant Council of Ireland (ICI) Senior Solicitor in a High Court application for a judicial review of the Government's decision, the third-country national was subsequently informed that their application for renewal of residency would be allowed. The Department of Justice, Equality & Law Reform has indicated that from July 2008 children of international students will generally not be permitted to access state funded education as this is being interpreted as the student being in breach of the condition of their residence permit to be self-sufficient.

In a departure from previous legislation regarding the right of third-country student visa holders to work during studies (20 hours per week during term-time and 40 hours during term holidays), the published *Agreed Programme for Government* outlined prospective changes in the area. The Agreed Programme outlined an intention for changes to legislation which would require third-country student visa holders to apply for student work permits in order to undertake any form of paid employment while in the State.

2.3.5 FAMILY REUNIFICATION

The Department of Justice, Equality and Law Reform received a total of 647 applications for family reunification from recognised refugee status holders in 2007. This represented an increase of 490 per cent on figures for 2006. As of September 2007, the average processing time for family reunification applications was 24 months.³⁴

³⁴ Irish Naturalisation and Immigration Service, 2007a. *Family Reunification Information Leaflet*. Available at www.inis.ie

In mid-2007 procedures for applications for family reunification for workers were published on the INIS website and included details of eligibility and documents required. However, there remains a lack of statutory provisions for the family reunification of migrants who do not have refugee status or are EU/EEA nationals. It was argued by NGOs engaged in the area that visas and residence permits for the purpose of joining legally resident family members in Ireland continued to be granted on a discretionary case-by-case basis, which contributed to a lack of clarity concerning the process.

2.3.6 OTHER LEGAL MIGRATION

EU Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of carrying out scientific research was implemented in October 2007 by an administrative scheme effected by the Department of Enterprise, Trade and Employment.

2.3.7 CITIZENSHIP AND NATURALISATION

Some 8,003 applications for naturalisation were received in 2007 representing a 13 per cent increase on the previous year. During the year, 1,501 naturalisation certificates and 3,148 post-nuptial citizenship certificates were issued.³⁵ At present migrants can apply for citizenship if they have been legally resident in Ireland for five years. There is no language requirement, although applicants must be of 'good character' and pledge fidelity to the State. Persons who have been resident in the State for five years or more as students or asylum seekers are not eligible to apply for citizenship. In December 2007, a number of media reports stated that under draft new legislation, immigrants who wished to become Irish citizens will have to reach a minimum standard in English and/or 'reasonable competence' for communicating in English or Irish. Another continuing issue facing the Government during 2007 was the persisting backlog in citizenship applications, with processing times cited in cases as taking several years to process to completion.

2.3.7.1 Renewal of Irish-born Child Scheme

There were very significant policy developments in relation to non-Irish nationals and Irish citizenship in recent years. As discussed in greater detail in the *Policy Analysis Report on Asylum and Migration: Ireland 2006*, in previous years non-Irish parents of Irish-born children had been able to apply for residency in Ireland based on the Irish citizenship of their child. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the *Irish Nationality and Citizenship Act 2004*, which commenced in January 2005. In January 2005 the Department of Justice, Equality and Law Reform moved to clarify the position of the non-Irish national parents of Irish-born children who had applied for residency on the basis of their Irish child but had had their claims suspended in 2003, and invited such persons to apply under the *Irish Born Child 2005 Scheme (IBC/05)*. This was a special scheme under which non-Irish national parents of Irish children could apply for permission to remain in the State. Almost 18,000 applications were submitted under the

³⁵ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

scheme. Of these 16,693³⁶ were approved, with 1,119 refused. Applicants who were rejected were mainly found not to have proved a minimum period of continuous residence or not to have proved their identity (Department of Justice, Equality and Law Reform, May 2006).

In early 2007, a scheme was announced for renewal of leave to remain from the non-national parents of Irish born children granted leave to remain under the *Irish Born Child (IBC/05) Scheme*. Applicants who were successful have had their leave to remain renewed for up to three years at which stage those qualifying will be eligible to apply for full citizenship having held five years of legal residence in Ireland. In order to qualify for a renewal an applicant must:

- Have been successful under the first IBC/05 Scheme,
- Must have been living in Ireland with his or her child since being granted permission to remain, and
- Must have made every effort to become economically viable.

Processing of applications for renewal of this permission to remain in the State commenced in January 2007. By year-end, some 14,035 applications for renewal had been received, with 13,697 granted positive decisions. The closing date for receipt of renewal applications from persons granted permission to remain in the State between 15 January 2005 and 31 March 2006 is listed as 31 March 2008.³⁷

There were a number of legal challenges against refusal decisions under the IBC/05 administrative scheme. In November 2006, in a number of test cases, the High Court overturned the Minister's decision refusing permission to remain on grounds the Minister was required, but had failed, to consider the constitutional and convention rights of the Irish-born children prior to making that decision. In December 2007 the Supreme Court overturned the decision of the High Court in relation to its findings in the series of test cases, (*Bode [A Minor] -v- Minister for Justice, Equality & Law Reform & Ors*), which overturned previous and recognised the fundamental power of the State to control the entry, residence and exit of foreign nationals.

2.3.8 INTEGRATION

2.3.8.1 Development of a National Integration Policy

The *Agreed Programme for Government* (2007) outlined a commitment to ensuring that 'effective integration' was supported on a national level. Outlined measures included the development of a national integration policy; the appointment of a Minister of State to implement a national integration policy and to create an office to bring together officials from all government departments with responsibility for providing services for immigrants; to review language requirements across government and to

³⁶ This figure includes citizens of Romania and Bulgaria. However as of 1 January 2007 Bulgaria and Romania formally became part of the European Union. Citizens of these two countries who were granted permission to remain in the State under the IBC/05 scheme do not now have to apply to have their permission renewed..

³⁷ Quinn *et al.*, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI. Available at www.esri.ie

increase the number of language support teachers to 1,800; to promote national anti-racism and diversity campaigns; to launch funding for education on the role of immigration in Irish society; and to support services provided by non-governmental organisations active in the area of service provision to immigrants with a focus on educational, language and cultural needs of migrant workers.

An *Integration of Migrants Programme*, which will spend €36.25 million on an integration programme, aims to facilitate initiatives that promote the integration of all legally resident immigrants. The Immigrant Council of Ireland (ICI) published and launched *On Speaking Terms* in September 2007. Launched by the Minister of State with responsibility for Integration, the Minister spoke at the event about language test requirements for citizenship and long-term residency applicants in the future. Plans surrounding assistance to help adult immigrant language learning were announced in July 2007 by the Minister of State for Integration, with both a review of existing provisions and recommendations on policy development to be conducted. Also announced in mid-2007 was the inception of a taskforce on integration. The aim of the taskforce was to identify key issues affecting new communities and to make subsequent recommendations for action and policy development within a year of operation.

2.3.8.2 Anti-Racism

In July 2007, the annual *Intercultural and Anti-Racism Week* was held in Ireland and Northern Ireland. With the core theme of ‘Working to Improve Services to Minority Ethnic Groups’, it focused on health, education, employment, housing and policing. The anti-racism week is an all-island initiative co-ordinated by the National Consultative Committee on Racism and Interculturalism (NCCRI), the Equality Commission for Northern Ireland and the monitoring group of the National Action Plan Against Racism (NPAR).³⁸

Under the *National Development Plan 2007-2013*, anti-racism measures were allocated €11.23 million. Some €27 million will also be spent over the next seven years on social inclusion measures under the *National Action Plan against Racism* and the *Programme for Social Economic Advancement of Members of the Traveller Community* including the continuation of positive initiatives and research in these areas.³⁹ A seminar on progress under the *National Action Plan* was held in September 2007 and outlined achievements to date in areas including health and education sectors, media relations and within the Garda Síochána.

In their *Annual Report 2006* published in 2007, the Equality Authority outlined activities undertaken to respond to the patterns of discrimination in their case files through initiatives to embed a focus on equality within organisational policies, procedures, and practices and to promote a focus on equality as part of their cultural value base. Steps taken include support for 133 companies to put in place equality policies and equality and diversity training for staff, and support for seven companies to conduct

³⁸ Further information is available at www.nccri.ie

³⁹ Department of Justice, Equality and Law Reform, 2007b. ‘2.8 billion Euro allocation under the *National Development Plan 2007-2013 for Justice and Equality Programmes*’. Available at <http://www.justice.ie/en/JELR/Pages/PR07000247>

large-scale employment equality reviews and action plans. They have also led three public awareness campaigns, including one on anti-racist workplaces.⁴⁰

In its third report on Ireland the European Commission against Racism and Intolerance (ECRI) welcomed the NPAR and the removal of the requirement for competency in the Irish language for entry to An Garda Síochána (the police). The report's authors make a number of recommendations including improved legislation against racial acts and an increase in non-denominational or multi-faith schools. (European Commission against Racism and Intolerance, 2007).⁴¹

2.3.8.3 Development of a National Intercultural Health Strategy

Details of the national Health Service Executive (HSE) *National Intercultural Health Strategy 2007-2012* (to be published in 2008) were announced in late 2007.⁴² The strategy aimed to review both access to and quality of health services available to ethnic minorities on a national level, and to suggest recommendations for future implementation. Preliminary strategy outputs suggest a variance in services available by hospital, General Practitioner and rural-urban location. Language communication difficulties and access to interpretation services were cited as common problems with potentially serious consequences of misdiagnosis and lack of clinician-patient information and privacy. The launch of the National Strategy will see a call for the establishment of a national interpretation service composed of trained, accredited interpreters, together with an emphasis on visual and spoken health promotion messages. Other recommendations included in the strategy include the implementation of an ethnic identifier collected at the first point of contact with the health system; greater awareness of the specific problems faced by women migrants, including trauma, distrust of contact with official services and effective ante- and postnatal outreach.

2.3.8.4 Garda (Police) Recruitment

Changes to recruitment to the Garda Síochána to increase ethnic diversity in the force and begun in 2004, came under review after it emerged that only 11 out of an initial 7,000 applications from foreign applicants had progressed to the stage of Garda training by 2007.⁴³ A review of the proportionately low progression rate for foreign applicants was announced, with a possible cause cited as being poor English language skills.

In August 2007 the NCCRI urged An Garda Síochána to review its decision not to allow a Sikh recruit to wear a turban when on duty and in uniform. In October 2007 a conference held by An Garda Síochána on policing in multi-ethnic society was held in Dublin, with police

⁴⁰ The Equality Authority, September 2007. *Annual Report 2006*. Available at <http://www.equality.ie/index.asp?locID=136&docID=684>

⁴¹ European Commission against Racism and Intolerance, 2007. *Third Report on Ireland*. Strasbourg. Available at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/ireland/Ireland%20third%20report%20-%20cri07-24.pdf

⁴² Irish Times, December 2007. 'HSE set to endorse immigrant interpreter strategy'. Available at <http://www.ireland.com/newspaper/health/2007/1211/1196839317328.html>

⁴³ See *Policy Analysis Report on Asylum and Migration: Ireland 2006* for further information.

representatives from many European states in attendance. The issue of the ban on wearing of a turban while in uniform was raised at the event.

2.3.8.5 Education Provision

In September 2007 a new non-denominational 'Educate Together' school opened in North County Dublin. Controversy surrounded the opening of the school due to the majority of new pupils coming from non-Irish families, with many unable to secure school places elsewhere. It was feared that this represented evidence of emerging segregation in the Irish education system.⁴⁴ At present the majority of primary schools in Ireland are managed by the Catholic Church with State funding. The concentration of non-Irish children in the Balbriggan, North County Dublin school led to concerns that non-Irish, non-Catholic children were at a disadvantage when it came to allocating places, leading to an over representation of non-Irish children in the small number of non-religious schools in the country.

In December 2007 the Department of Education and Science announced that three new Community Schools would open under the patronage of the County Dublin Vocational Education Committee (CDVEC), a statutory body. This marked a significant turning point in education provision in Ireland. The Minister commented that the new schools would "...be open to children of all religions and none. They will be inter-denominational in character, aiming to provide for religious education and faith formation during the school day for each of the main faith groups represented. A general ethics programme will also be available for children whose parents opt for that and the schools will operate through an ethos of inclusiveness and respect for all beliefs, both religious and non-religious".⁴⁵

2.3.9 ILLEGAL IMMIGRATION

2.3.9.1 Irregular Migration

The Migrant Rights Centre of Ireland (MRCI) published a study looking at irregular migration in Ireland in December 2007 in which it outlined the gap in Irish legislation in not allowing undocumented migrants the ability to regularise their immigration status and remain legally in the country. The research noted the 'increasing vilification' of migrants within political and media debates. It analysed the use of terminology around those liable for deportation from the State due to their immigration status recommending the use of 'undocumented workers', 'irregular migration' and/or 'migrants with irregular status', rather than the used term of 'illegal' migrants.⁴⁶

⁴⁴ The Irish Times, September 2007a. *Hanafin denies racism in education system*; The Irish Times, September 2007b. *106 children left without school places in Dublin*; The Irish Times, September 2007c. *New Catholic school policy could produce unintended 'apartheid'*; The Irish Times, September 2007d. *State has duty to provide alternative to faith schools*.

⁴⁵ Department of Education and Science, 2007. *Minister Hanafin announces new Community National Schools for two Dublin locations – Responding to diverse needs of changing society.* Press Release.

⁴⁶ Migrant Rights Centre Ireland, 2007. *Life in the Shadows – An Exploration of Irregular Migration in Ireland.* Dublin: Migrant Rights Centre Ireland.

2.3.9.2 Trafficking

The Government announced the development of a comprehensive strategy for combating trafficking in human beings in mid-2007. Alongside publication of the *Criminal Law (Human Trafficking) Bill 2007* as discussed earlier, the draft Immigration Residence and Protection Bill 2007 proposed provisions for protection for the victims of trafficking. In addition, the Government's published strategy included the creation of a new High Level Group on Combating Trafficking in Human Beings, together with a *National Action Plan to Combat Trafficking in Human Beings* to include a focus on prevention, prosecution, protection and response to child trafficking.

Ireland signed the *Council of Europe Convention on Action against Trafficking in Human Beings* in April 2007.

Publication of the U.S. State Department report on human trafficking in June 2007 was criticised by a number of Irish NGOs active in the area of anti-trafficking, which stated that the findings minimised the challenges Ireland faced in the area of anti-human trafficking.⁴⁷ Amnesty International, the Migrant Rights Centre, Ruhama and the National Women's Council reported that the *Trafficking in Persons Report for 2007* did not accurately reflect the reality of trafficking in Ireland, including current legislative difficulties, and thus reported an inaccurate picture.⁴⁸

2.3.10 RETURN MIGRATION

In 2007 in Ireland, 417 persons opted to be assisted to return home voluntarily, a substantial increase from 2006 when 238 persons sought voluntary assisted return.⁴⁹

The International Organization for Migration (IOM) continued to run a number of programmes related to voluntary return during 2007: the Voluntary Assisted Return and Reintegration Programme; the Voluntary Assisted Return Programme for Vulnerable Irregular Nigerian Nationals (in conjunction with IOM Netherlands) and the Voluntary Assisted Return and Reintegration Programme for Unaccompanied Minors living in Ireland.

Two IOM return information projects produced country of origin reports concerning Nigeria, Moldova, Georgia, Iran and Zimbabwe.

2.3.11 OTHER POLICY AREAS OR TOPICS

2.3.11.1 Inflows from the New Member States

Data released by the Central Statistics Office (CSO) in late 2007 in the *Population and Migration Estimates* showed the total number of immigrants into Ireland in the year up to April 2007 to be 109,500 - an increase of

⁴⁷ US State Department, Office to Monitor and Combat Trafficking in Persons, 2007. *Trafficking in Persons Report*. Available at <http://www.state.gov/g/tip/rls/tiprpt/2007/>

⁴⁸ Irish Times, June 2007a. 'Report on human trafficking in Ireland flawed, say NGOs'. Available at

<http://www.ireland.com/newspaper/ireland/2007/0619/1181771345414.html>

⁴⁹ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

2,000 on the previous year and substantially higher than for any other year since records began in 1987. Of the estimated immigration rate, almost half (48 per cent) of immigrants were nationals of the EU-12 that acceded in 2004 and January 2007.⁵⁰

In a measure designed to accurately reflect the migration flows within Ireland (some believed immigrants were travelling home soon after arrival), the CSO undertook a cross-sector analysis of records of the Department of Social and Family Affairs and the Revenue Commissioners. Allocated Personal Public Service numbers (PPSNs) and employer end-of-year tax returns for non-Irish nationals were used to reveal the extent to which those issued with PPSN numbers took up and remained in insurable employment.⁵¹ Results published in late 2007 indicated that just under half of those allocated PPSN numbers between 2002 and 2005 had insurable employment activity in Ireland during 2006 provided some support to the idea that many immigrants were not remaining in Ireland on a long-term basis.⁵²

During 2007, 538 nationals from the EU-12 States were assisted to voluntarily return home under the auspices of a Department of Justice, Equality and Law Reform scheme operated by the Reception and Integration Agency (RIA).

2.3.11.2 Ethnic minority attitudes to An Gardaí (Police)

In a report published by An Garda Síochána (police) in 2007, Traveller and ethnic minority attitudes to the police in Ireland were examined. The main focus of the survey was on public satisfaction with Garda service, policing priorities and experiences and fear of crime. Overall satisfaction with Garda service by Traveller and ethnic minorities was high at nearly 80 per cent, while almost 16 per cent of all migrants and refugees contacted had personally experienced crime. Refugees and migrants were asked about their experience of Gardaí at their initial point of entry to Ireland, with 79 per cent stating that their experience was either very good or fairly good, and some 12 per cent stating they could not remember or did not meet any Gardaí. More migrants (83 per cent) than refugees (73 per cent) rated the experience positively.

All respondents were asked whether they thought members of An Garda Síochána were sensitive to their religious and cultural traditions during interactions. Some 11 per cent said they were sensitive most of the time, with 21 per cent stating they were so some of the time. Some 43 per cent of respondents felt Gardaí were not sensitive at all. This view was held most by Travellers (55 per cent), followed by refugees (41 per cent) and migrants (34 per cent). Of those who said Gardaí were not sensitive, one-fifth (21 per cent) thought it was due to Gardaí being unaware of customs,

⁵⁰ Central Statistics Office, 2007a. *Population and Migration Estimates April 2007 (with revisions to April 2003 to April 2006)*. Available at www.cso.ie

⁵¹ PPSN Numbers are used to access benefits and information from public service agencies more quickly and more easily such as social welfare, revenue, public healthcare and education.

⁵² Central Statistics Office, 2007b. *Foreign Nationals: PPSN Allocations and Employment, 2002-2006*. Available at www.cso.ie

28 per cent thought they were aware but ignored the customs and 45 per cent thought it was due to 'other' reasons.⁵³

2.3.11.3 Habitual Residence Condition Review

A review of the Habitual Residence Condition (HRC) was published in mid-2007. A main finding was that the application of the Condition requirements across Community Welfare offices varied greatly.

2.3.11.4 One-Stop-Shop Delivery of Public Services to the Migrants

An initiative promoted by the Portuguese High Commission for Immigration and Intercultural Dialogue (ACIDI, I.P.) involving 6 EU member States received funding from the European Commission under the INTI Programme in 2007. The 'One-Stop-Shop' model was cited as a priority in the Commission Common Agenda for Integration (COM 2005 389), and as an example of best practice in the Handbook on Integration for policy-makers and practitioners. The Immigrant Council of Ireland (ICI) is the Irish partner on the project and has been tasked to produce a country report. An advisory committee involving public sector, NGOs and migrant representatives was set up.

⁵³ An Garda Síochána, 2007. *Traveller/Ethnic Minority Communities' Attitudes to the Garda Síochána 2007*. Available at www.garda.ie.

3. IMPLEMENTATION OF EU LEGISLATION

3.1 Transposition of EU Legislation in the Field of Migration and Asylum into National Law/adminis- trative Practice

3.1.1 TRANSPOSITION OF EU LEGISLATION IN 2007

3.1.1.1 Administrative Scheme to give effect to Council Directive 2005/71/EC

EU Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of carrying out scientific research was transposed in October 2007 by an administrative ‘*Scheme for Accreditation of Research Organisations*’ under powers provided by current legislation and as agreed with the Department of Enterprise, Trade and Employment.

3.1.1.2 Proposed Legislation to give effect to Council Directive 2005/85/EC & Council Directive 2001/55/EC

EU Council Directive 2005/85/EC relating to the minimum standards concerning the procedure for granting and withdrawal of refugee status in the Member States required laws, regulations and administrative provisions necessary to comply with its provisions by 1 December 2007. Concerning Article 15, regarding the right to legal assistance and representation, transposition is required by 1 December 2008. Known as ‘The Procedures Directive’, the purposes of the Directive are to establish minimum standards for procedures within Member States for the granting and withdrawing of refugee status, and to reduce the ‘secondary movement’ of applicants within the EU in search of different legal procedures.⁵⁴ Irish asylum procedures were (and continue to be) governed by the provisions of the Refugee Act, 1996, as amended. The Immigration, Residence and Protection Bill 2007 contained provisions proposing transpositions of Council Directive 2005/85/EC, *inter alia*, in relation to a protection application procedure, and with regard to ‘Safe Countries’. The Bill also provided for a scheme of temporary protection in accordance with Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons and bearing the consequences thereof. The 2007 Bill fell with the change of government in 2007. An amended version of the Bill was launched by the Minister for Justice, Equality and Law Reform in January 2008. In a written response to a Parliamentary Question in mid-2008, the Minister for Justice, Equality and Law Reform stated that the *Immigration, Residence and Protection Bill 2008 includes provisions to restate the law*

⁵⁴ Quinn *et al.*, 2008. *Handbook on Immigration and Asylum in Ireland, 2007*. Dublin: ESRI.

on refugee and other protection procedures in compliance with Ireland's obligations under the [Procedures] Directive'.⁵⁵

3.1.1.3 Legislation Giving Effect to Directive 2004/38/EC comes into Operation

S.I. No. 656 of 2006 (*European Communities (Free Movement of Persons) (No. 2) Regulations 2006*), and S.I. No. 657 of 2006 (*The Immigration Act 2004 (Visas) (No. 2) Order 2006*) came into operation on 1 January 2007.⁵⁶ S.I. No. 656 of 2006 gave effect to *Directive 2004/38/EC* of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. S.I. 656 of 2006 replaced the *European Communities (Free Movement of Persons) Regulations 2006* (S.I. No. 226 of 2006) consequent upon the enlargement of the European Union on 1 January 2007. S.I. 657 of 2006 specifies the classes of non-nationals exempt from Irish visa requirements and those who require a valid Irish transit visa when transiting within a port within the State. The Order renders nationals of Bulgaria and Romania, from the date of accession of those countries to the EU, no longer subject to an Irish visa requirement. The Order revoked the *Immigration Act 2004 (Visas) Order 2006* (S.I. No. 227 of 2006). The Order provides that certain classes of non-nationals are not required to be in possession of a valid Irish visa when landing in the State, including non-nationals who are holders of valid permanent residence cards issued under Regulation 7 or 16 of S.I. No. 656 of 2006. Regulation 3(2) of S.I. No. 656 of 2006 required that a non-EU family member had to have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland. This provision, and whether it was compatible with the Directive, gave rise to public debate and litigation (see Section 3.2.1 below).

3.1.2 EU REQUEST FOR IRELAND TRANSPOSITION

On 27 June 2007 the European Commission sent a formal request to 14 Member States to fully implement EU rules banning discrimination on the grounds of race or ethnic origin (the '*Race Equality Directive*' 2000/43/CE), including Ireland. The Race Equality Directive was agreed in 2000 with a deadline for implementation into national law by 2003. The countries concerned – Spain, Sweden, Czech Republic, Estonia, France, Ireland, United Kingdom, Greece, Italy, Latvia, Poland, Portugal, Slovenia and Slovakia – were given two months to respond, failing which the Commission can take them to the European Court of Justice.⁵⁷ This is the second step of the formal EU infringement procedures. The Commission stated that the main problem areas include (a) national legislation limited in scope to the workplace, whereas the Race Equality Directive also prohibits discrimination in social protection, education and access to goods and services, including housing; (b) definitions of discrimination which diverge from the Directive (in particular, in terms of indirect discrimination,

⁵⁵ Parliamentary Question No.239, 25 June 2008.

⁵⁶ S.I. 656 of 2006 was thereafter amended by S.I. 310 of 2008 to reflect the decision in the *Metock* Case.

⁵⁷ European Commission Press Release, 2007. *Commission acts to close gaps in race equality rules*. Available at

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/928&type=HTML&ag ed=0&language=EN&guiLanguage=en>.

harassment and instructions to discriminate); and (c) inconsistencies in the provisions designed to help victims of discrimination (such as the protection against victimisation, the shift of the burden of proof and the rights of associations to assist individuals with their cases). Failure to respond has the result that the Commission could take Ireland to the European Court of Justice. The Commission is of the opinion that Ireland has not implemented the Directive correctly.⁵⁸ The Irish legislature sought to implement the Directive in Irish law in the Equality Act 2004.

3.1.3 IRELAND FORMALLY OPTS INTO COUNCIL REGULATION (EC) NO. 1030/ 2002

Council Regulation (EC) No. 1030/2002 of 13 June 2002 was initially directly applicable in all Member States, except Ireland.⁵⁹ The Regulation lays down a uniform format for residence permits for third country nationals. The uniform format can be used as a sticker or a stand-alone document. Certain additional technical specifications (designed to prevent counterfeiting and forgery) are stated to be secret and are not published. Member States may add to the permit information of importance regarding the nature of the permit, the holder's legal status, and information regarding permission to work. By notice of letter of 19 December 2003, Ireland notified to the Council and the Commission, in accordance with Article 3 of the 'Protocol on the Position of the United Kingdom and Ireland', of its wish to participate in this regulation, however due to a procedural error this was not implemented until June 2007 when Ireland formally completed the opt-in. Of interest to note is that in the interim timeframe Ireland continued to participate on a de facto basis, and despite the procedural error all institutions and Member States acted as if Ireland had fully participated in the application of the Regulation.⁶⁰

3.1.4 IRELAND OPT-OUT

As referenced earlier, in September 2007 Ireland indicated that it would not 'opt in' at first instance to EU legislation designed to crack down on employers that hire illegal immigrants, the *EU Proposal for Sanctions Against Employers for Undocumented Workers*. The draft Directive was presented in May 2007 and would introduce criminal penalties for employers found to have hired illegal workers.

⁵⁸ European Commission Press Release, 2007. Commission acts to close gaps in race equality rules, Available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/928&type=HTML&aged=0&language=EN&guiLanguage=en>

⁵⁹ Recital 15.

⁶⁰ See Commission Opinion on the request by Ireland to take part in Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third country nationals COM/2007/0506 final.

3.2

Experiences and Debates Regarding the Implementation of EU Legislation in Asylum and Immigration

3.2.1 IMPLEMENTATION OF DIRECTIVE 2004/38/EC

There was much controversy in 2007 regarding Ireland's transposition of *Directive 2004/38/EC* of 29 April 2004 on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States. S.I. No. 656 of 2006 (European Communities (Free Movement of Persons) Regulations 2006), which became operative on 1st January 2007, sought to give effect to the Directive's provisions. These Regulations replaced similar regulations that had previously come into effect.⁶¹ The Regulations give domestic legal effect to Directive 2004/38/EC. The Irish Regulations contained the requirement that a non-EU family member had to have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland.⁶² Many applications for residence permits from spouses and other family members of EU nationals living in Ireland were refused on the basis of this requirement, giving rise to much media coverage of the issue. The Immigrant Council of Ireland stated in November 2007 that the issue of residency rights of non-EEA spouses or partners of EU nationals continued to be the most prominent query in the ICI's Information and Support Service, and that it had received over 900 queries on this issue by that stage of the year.⁶³ The impugned requirement in the Irish Regulations was the subject of many High Court judicial review applications in 2007.⁶⁴ In *S.K. & Anor v Minister for Justice, Equality and Law Reform & Ors*⁶⁵ Mr Justice Hanna held, inter alia, that Directive 2004/38/EC was intended to apply to families that were established in a Member State prior to moving to a host Member State. This decision was appealed to the Supreme Court. Further High Court applications were made in late 2007 by people refused residency under the impugned requirement and who were, or had been, lawfully in the State as migrants or asylum seekers. These applications were not fully argued before the High Court until 2008 (the *Metock* case). The ECJ ultimately found the Regulations to be incompatible with the Directive.⁶⁶

3.2.2 IMPLEMENTATION OF DIRECTIVE 2004/83/EC

Directive 2004/83/EC of 29 April 2004 on 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 was given domestic effect by the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006). This transposing legislation was the subject of debate in

⁶¹ The European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006).

⁶² Regulation 3(2).

⁶³ Immigrant Council of Ireland, (November 2007). *Newsletter*. Available at: http://www.immigrantcouncil.ie/newsletter_details.php?id=21

⁶⁴ Also, in 2008, a preliminary reference to the European Court of Justice.

⁶⁵ [2007] IEHC 216, *Unreported, High Court, 28 May 2007*.

⁶⁶ Case C-127/08, *Metock & Ors v Minister for Justice, Equality and Law Reform* (Unreported, 25/07/2008).

2006,⁶⁷ 2007 and beyond. The Irish transposing legislation came into effect on 10 October 2006, as required. While Ireland already had in place a legislative scheme dealing with refugee status (the Refugee Act 1996), there was no scheme in place for subsidiary protection. Prior to the Regulations of 2006, applications for complementary protection were dealt with in the course of the determinations by the Minister for Justice, Equality and Law Reform regarding whether to proceed with a proposed deportation of a failed asylum seeker, or whether to grant such persons leave to remain in the State. The 2006 Regulations provided a legislative scheme for subsidiary protection in line with the Directive. As a consequence, when the Regulations became operative the Minister received applications for subsidiary protection both from persons whom the Minister proposed to deport as of the date when the transposing Regulations became operative, and from persons who had already been issued with deportation orders prior to the date of transposition. The Minister took the position that claims from the latter category of applicants were invalid and had to be refused as their deportation orders predated the transposition of the Directive. The media reported several cases arising from this situation.⁶⁸

The matter was ultimately determined in the High Court case of *H & D v Minister for Justice, Equality and Law Reform*.⁶⁹ The High Court held that applicants for subsidiary protection in respect of whom deportation orders were made after 10 October 2006 had an automatic right to apply for subsidiary protection, but that the Minister had discretion to consider applications for subsidiary protection from other applicants, and that if a person, whose deportation order pre-dated the transposition of Council Directive 2004/83/EC, and who had been refused leave to remain, was able to identify new facts or circumstances arising after the determination of that application that were relevant to the new scheme, the Minister had discretion to allow such a person apply for subsidiary protection.

3.2.3 IMPLEMENTATION OF COUNCIL DIRECTIVE 2000/43/EC

There was commentary on Ireland's alleged inaction on the full implementation of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, in light of the European Commission's formal request that Ireland fully implement the Directive. The Irish Council for Civil Liberties (ICCL) stated that Ireland faced EU Court Action over its inaction, and that the problem areas in Ireland identified by the Commission included an incorrect definition of indirect discrimination; the exclusion from protection against discrimination for certain 'private' types of employment; the limitation of the right of interested parties to initiate proceedings to defend the victims of discrimination; the limit to

⁶⁷ E.g. Integrating Ireland and the Irish Refugee Council, 2006. *Information Note on Subsidiary Protection under the Qualification Directive*.

⁶⁸ E.g., The Irish Times, June 2007b. *Nigerian Deportation Case Delayed*. Available at: <http://www.irishtimes.com/newspaper/breaking/2007/0618/breaking54.html>

⁶⁹ [2007] IEHC 277, *Unreported*, Feeney J, 27 June 2007.

compensation for victims of discrimination; and the exclusion from protection against discrimination regarding certain types of housing.⁷⁰

3.2.4 PROPOSED IMPLEMENTATION OF COUNCIL DIRECTIVES 2005/85/EC AND 2001/55/EC

The Immigration, Residence and Protection Bill 2007 proposed, inter alia, provisions to transpose Council Directive 2005/85 EC (“The Procedures Directive”) into Irish law. The Bill does not directly transpose Council Directives 2005/85/EC and 2001/55/EC, and it does not only seek to give effect to those Directives. It also seeks to set out a single legislative framework for inward migration to Ireland generally. The Bill gave rise to significant debates in parliament, media and civil society. The Irish Refugee Council raised concerns, inter alia, on the matter of the Bill’s proposed implementation of the Procedures Directive’s minimum standards for procedures for separated children.⁷¹ The Irish office of the United Nations High Commissioner for Refugees made detailed comments about the Bill’s proposed transposition of the Procedures Directive, particularly in relation to its provisions regarding access to the territory for protection applicants; access to a fair and efficient protection determination procedure; and special consideration for vulnerable individuals, including children. The Irish Council for Civil Liberties (ICCL) branded the publication of the Bill a ‘political stunt’, stating that the Bill stood no chance of becoming law before the General Election. The ICCL concluded that its publication had a political, rather than a legislative purpose.⁷² Integrating Ireland made a statement to the same effect.⁷³ The Civil Law Reform Division of the Department of Justice, Equality and Law Reform stated that the Bill ‘will represent the most radical overhaul of the State’s immigration laws since the enactment of the Aliens Act 1935’. The Bill fell with the general election and change of government in June 2007. An amended version of the Bill was launched in January 2008, and again met with much commentary and controversy.

⁷⁰ Irish Council of Civil Liberties, 2007a. *Ireland Faces EU Court Action over Inaction on Race, says the ICCL*. Available at http://iccl.ie/DB_Data/news/IrelandFacesEUCourtActionoverInactiononRacesaysICCL_55.htm

⁷¹ Irish Refugee Council, July 2007. *Comments by the Irish Refugee Council on the Immigration, Residence and Protection Bill 2007, in relation to the Protection of Separated Children*.

⁷² Irish Council for Civil Liberties, 2007b. *Publication of Immigration Bill a “political stunt”, says the ICCL*. Available at http://iccl.ie/DB_Data/news/ImmResBillpub0407_50.htm

⁷³ Integrating Ireland, 2007. *Integrating Ireland responds to the publication of the Immigration, Residence and Protection Bill and calls on the Government not to play politics with the issue of Immigration*. Available at: http://www.integratingireland.ie/userfiles/File/Database/Press%20release_Immigration%20Residence%20and%20Protection%20Bill.pdf.

European Union Measures in Relation to Asylum and Migration, Ireland's Participation, 2007

	Ireland opt-in?
Council Directive 2005/85/EC relating to the minimum standards concerning the procedure for granting and withdrawal of refugee status in the Member States.	Opt-in – Yes The Department of Justice, Equality and Law Reform stated that 'Transposition on 1 December 2007, work still under way on Article 15.' The Immigration, Residence and Protection Bill 2008 contains provisions that are stated to give effect to the Directive's provisions.
Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3 November 2005, p. 15.	Opt-in – Yes. Transposed on the 12 October 2007; dealt with by administrative "Scheme for Accreditation of Research Organisations" under powers provided by existing legislation.
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance), OJ L 158, 30 April 2004, p. 77.	Opt-in – Not Relevant – Not a Title IV Measure. Transposed through S.I. No. 656 of 2006, The European Communities (Free Movement of Persons) Regulations 2006. ⁷⁴ This S.I. came into effect during 2007. ⁷⁵
Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third country nationals	Opt-in – Yes. Ireland opted out initially but decided to opt-in during 2003. The opt-in process was formally completed in 2007. The delay was due to a procedural error. In the interim period, Ireland operated on a de facto opt-in basis. ⁷⁶

⁷⁴ The European Court Of Justice held in 2008 that the Irish statutory instrument was not compatible with the Directive (Preliminary Reference C-127/08, *Metock and others – v – Minister for Justice, Equality & Law Reform*). In addition, S.I. No. 656 of 2006 was thereafter amended by S.I. 310 of 2008 to reflect this decision.

⁷⁵ Comment on Directive 2004/38/EC added by Irish EMN NCP.

⁷⁶ Department of Justice, Equality and Law Reform.

3.3 Developments of Particular Interest

- The European Commission Against Racism and Intolerance (ECRI) published its Third Report on Ireland following a visit here in 2006. It both acknowledged progress and makes a number of recommendations.⁷⁷
- In April 2007 Ireland signed the Council of Europe Convention on Action against Trafficking in Human Beings. The Department of Justice press release indicates that this will result in more formalised structures being put in place, including safeguarding the human rights of victims. Provisions include victims being granted residence permits where it is considered by the Irish authorities that their stay is necessary for the purpose of their co-operation in an investigation or criminal proceedings or both.
- Ireland chaired the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies (IGC), an inter-governmental organisation based in Geneva, for the period July 2006-June 2007. Ireland hosted a workshop on Designing Effective Immigration Systems in Geneva in March and the IGC Full Round of Consultations in Dublin in May 2007.
- During the year, arrangements were made to allow for participation by Ireland in the activities of the European Agency for the Management of Operational Co-operation at the External Borders of the Members States of the European Union (FRONTEX). The Agency was established in 2005 following the adoption of Council Regulation (EC) No 2007/004 and is tasked with improving the co-ordination of operational co-operation between the Member States in the field of external border management. Although Ireland is not bound by, or subject to, the application of the Regulation establishing FRONTEX, Article 12 of the Regulation provides that the Agency shall facilitate operational co-operation of the Member States with Ireland in matters covered by its activities and to the extent required for the fulfilment of its tasks.⁷⁸

⁷⁷ European Commission against Racism and Intolerance, 2007. *Third Report on Ireland, Strasbourg*. Available at http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/ireland/Ireland%20third%20report%20-%20cri07-24.pdf

⁷⁸ Department of Justice, Equality and Law Reform, 2008. *Annual Report 2007*. Dublin: Government Publications. Available at www.justice.ie

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ANNEX I - METHODOLOGY

A1.1

Methodology

1. DEFINITION OF SIGNIFICANT DEVELOPMENT

For the purpose of the Annual Policy Report 2007, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a 'significant development/debate' within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development, and likewise if such developments/debates then led to any proposals for amended or new legislation.

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

- All legislative developments;
- Major institutional developments;
- Major debates in parliament and between social partners;
- Government statements;
- Media and civil society debates:
 - If the debate is also engaged with in parliament, or
 - Items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit.

2. SOURCES AND TYPES OF INFORMATION USED

The sources and types of information used include:

- Published and adopted national legislation;
- Government press releases, statements and reports;
- Published government schemes;
- Media reporting (web-based and print-media);
- Other publications (European Commission publications; I/NGO Annual Reports; publications and information leaflets);
- Case Law reporting.

3. STATISTICAL DATA

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office. Where noted, and where not possible to access

original statistical sources, data were taken from media articles based on access to unpublished documents. Additional statistical reporting contained in *Annex II – Statistical Data* is taken from governmental websites of the Department of Enterprise, Trade and Employment and Department of Justice, Equality and Law Reform. Table 5 (Work Permits Issued and Renewed, 1998-2007) is sourced from the Department of Enterprise, Trade and Employment and was initially calculated for the purposes of the forthcoming *Handbook on Immigration and Asylum in Ireland, 2007* (as referenced).

4. CONSULTED PARTNERS

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report 2007*:

- Immigrant Council of Ireland (ICI)
- Irish Refugee Council (IRC)
- National Consultative Committee on Racism and Interculturalism (NCCRI)
- Migrant Rights Centre Ireland (MRCI)
- Department of Justice, Equality and Law Reform.

A1.2 Concepts and Definitions

All definitions for technical terms or concepts used in the study are as used in the EMN draft Glossary.

ANNEX II – STATISTICAL DATA

The tables below contain further relevant statistics for the reference year of 2007. Information regarding applications for asylum (overall; per nationality) and recognition rate is included, as is information regarding work permit renewals and issuances during the year. Overall gross and net migration flows in Ireland since 1987 are also provided.

1. MIGRATION FLOWS

Table A1: Gross and Net Migration Flows, 1987-2007⁷⁹

Year (ending April)	Outward	Inward (‘000)	Net
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	42.2	109.5	67.3

⁷⁹ Tables A1 and A2 (or part of) are referenced from O’CONNELL, P.J., 2008. ‘International Migration and Ireland, 2007’. Report to OECD Continuous Reporting System On Migration (SOPEMI).

Table A2: Estimated Immigration by Nationality, 1996-2007

	Irish	UK	EU 13 (EU15 excl IE and UK)	EU 16-27 1,000's	USA	Rest of World	Total
2006	18.9	9.9	12.7	49.9	1.7	14.7	107.8
2007 ¹	20.0	5.9	10.4	52.7	2.8	17.8	109.5
				%			
2006	17.5	9.2	11.8	46.3	1.6	13.6	100.0
2007	18.3	5.4	9.5	48.1	2.6	16.3	100.0

Note: ¹ Preliminary.

Source: 1996-2001: CSO Population and Migration Estimates April 2003

2002-2007: CSO Population and Migration Estimates April 2007.

2. ASYLUM AND REFUGEE RECOGNITION

Table A3: Asylum Applications 1994-2007

Year	Applications
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
Total 1994-2007	76,383

Source: Office of the Refugee Applications Commissioner

Available at www.orac.ie

Table A4: Applications for Asylum by Top Five Nationalities in 2007

Country	No.	%
Nigeria	1,028	25.8
Iraq	285	7.2
China	259	6.5
Pakistan	185	4.5
Georgia	174	4.4
Other	2,054	51.5
Total	3,985	100.0

Source: Office of the Refugee Applications Commissioner, Available at www.orac.ie

Table A5: Breakdown of First Instance Asylum Applications Finalised in 2007

Decisions	No.	%
Granted	376	9.0
Refused s.13, s.13 (4), s.13 (5)	2,621	63.1
Dublin Regulation/Dublin Convention	368	8.8
Refused: Withdrawn or Deemed Withdrawn s.13 (2) (“Unprocessable”)	811	19.5
Total	(-24)	
	4,152	100.0

Source: Office of the Refugee Applications Commissioner, Available at www.orac.ie

Table A6: Refugee Recognition Rates 2001-2007

Year	%.
2001	9.3
2002	14.5
2003	9.0
2004	8.6
2005	10.4
2006	10.5
2007	10.2

Source: Department of Justice, Equality and Law Reform/INIS⁸⁰

3. WORK PERMITS

Table A7: Work Permits Issued and Renewed, 1998-2007

Year	Permits Issued*	Permits Renewed	Total	Percentage Renewed
1998	3,830	1,886	5,716	42.0
1999	4,597	1,660	6,262	29.0
2000	15,735	2,271	18,006	36.3
2001	29,951	6,485	36,446	36.0
2002	23,759	16,562	40,321	45.4
2003	22,512	25,039	47,551	62.1
2004	10,821	23,246	34,067	48.9
2005	8,166	18,970	27,134	55.7
2006	8,524	16,600	24,854	61.1
2007	10,147	13,457	23,604	54.1

Source: Department of Enterprise, Trade and Employment website. www.entemp.ie

Note: The percentage renewed is calculated on the basis of the total permits issued for the previous year.

* Includes group permits.

⁸⁰ The Department of Justice, Equality and Law Reform (Irish Naturalisation and Immigration Service) release refugee recognition rates that are calculated on the basis of the total number of recommendations/decisions that refugee status should be granted at first instance and appeal in any given year as a percentage of the total number of recommendations/decisions made at first instance or appeal in that year. This is a widely accepted method of calculation, although the problem of double counting cases persists.