

# EUROPEAN MIGRATION NETWORK

## RETURN MIGRATION: THE IRISH CASE

EMMA QUINN

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*LIST OF ABBREVIATIONS AND IRISH TERMS*

European Migration Network	EMN
Dáil	Parliament (lower house)
Garda National Immigration Bureau	GNIB
Garda Síochána	Police
Health Service Executive	HSE
International Organization for Migration	IOM
Irish Born Child Scheme	IBC05
Irish Naturalisation and Immigration Service	INIS
Ministerial Decisions Unit	MDU
National Contact Point	NCP
Non-Governmental Organisation	NGO
Oireachtas Parliament (Upper House)	
Office of the Refugee Applications Commissioner	ORAC
Refugee Appeals Tribunal	RAT
Statutory Instrument	S.I.
Voluntary Assisted Return Programmes	VARP



# EXECUTIVE SUMMARY

The majority of return migration from Ireland is voluntary: the decision is taken by the individual and does not require State intervention. This is clearly the ideal scenario but in reality every managed migration scheme must include procedures for forced return. The following discussion provides an overview of “forced” and “assisted voluntary” return migration from Ireland under existing systems. Return systems and the meaning of terms associated with return vary a great deal between EU Member States. For this reason the relevant concepts and definitions appropriate in Ireland are defined in Chapter 2. The various categories of potential returnees from Ireland are also described comprising: deportees; persons subject to removal procedure; Dublin II Returnees and assisted voluntary returnees.

A detailed analysis of voluntary return is provided in Chapter 3. There are three types of voluntary return. Only a decision taken by an individual to return to their country of origin that is entirely freely made can be described as truly voluntary. There is no State involvement and because Ireland has no immigration exit controls no information exists on these returns. Second, in some cases people need to contact the Department of Justice, Equality and Law Reform for documents before they can travel home. The Department holds figures on such returnees who have been administratively “assisted”. Finally, some returns are assisted under Voluntary Assisted Return Programmes (VARPs). VARPs are currently offered by the IOM to non-EU nationals without the legal right to stay in Ireland and by the Reception and Integration Agency to EU nationals who cannot afford to stay in Ireland or to return home. All non-EEA nationals who do not have a clear legal right to be in the State may avail of assisted voluntary return.

The numbers of non-EU nationals who were assisted to return voluntarily increased between 2001 and 2003 before falling to 335 in 2005. The fall may be attributed partly to the accession of the ten new EU member states and the granting of free access to the Irish labour market. Also in December 2004, the Government invited families who had applied for leave to remain on the basis of their Irish citizen child prior to the change in citizenship law (see Section 4.1.1), to submit an application for leave to remain under the Irish Born Child (IBC05) scheme. Families who might have returned on an IOM scheme may have lodged such an application instead.

The current IOM VARPs are of three types: (1) General VARP, which is open to all non-EEA nationals including unsuccessful

asylum applicants, irregular migrants and victims of trafficking (2) The unaccompanied minors VARP and (3) the vulnerable Nigerians VARP which targets those Nigerian nationals who have been through the asylum system and other irregular migrants. In addition since March 2004 there has been a special assisted voluntary return programme run by the Reception and Integration Agency for the repatriation of nationals of the ten new EU Member States who fail the Habitual Residency Condition required for social assistance or benefit payments and who are in danger of becoming destitute.

The procedures for voluntary return are discussed in Section 3.3. Section 3.4 includes the limited available information on the demographic characteristics of Returnees on the IOM general Voluntary Assisted Return Programme: over 70 per cent of returnees in 2005 were male and over 80 per cent were adults. Almost one-quarter of all non-EU assisted voluntary returnees in 2005 were Croatian nationals, a further 13 per cent were Romanian nationals and 12 per cent Nigerian nationals. In 2006 almost 60 per cent of EU nationals who were assisted to return by the Reception and Integration Agency were Polish and 15 per cent Slovakian.

Chapter 4 provides analysis of forced return from Ireland. There are three different processes for the forced removal of non-nationals from the State: deportation, removal and Dublin II transfers. The majority of people who are deported are people who have been unsuccessful in an asylum claim, however, all people who come legally and fail to comply with laws of State (particularly immigration requirements) may be deported.

A deportation order is signed by the Minister for Justice, Equality and Law Reform. Its consequences are serious. It allows the deportee to be forcibly removed from the State and it requires the deportee to remain outside the State for ever, irrespective of the circumstances giving rise to its making. The number of deportation orders signed peaked in 2004 at 2,900 before falling to just below 1,900 in 2005. This decline may be attributed to a variety of policy developments including the recent changes in citizenship law mentioned above which have the effect that it is no longer possible for persons born in Ireland to obtain automatic Irish citizenship. In previous years the non-Irish parents of Irish-born children could apply for residency in Ireland based on the Irish citizenship of their child. This led to concerns that people were travelling to Ireland without the necessary immigration status in order to have children here. In addition asylum applications have declined in recent years which may be due in part to the introduction of safe countries of origin, prioritised and accelerated asylum procedures and to the accession of ten new EU Member States.

Almost three-quarters of those in respect of whom deportation orders were signed in 2005 were nationals of Nigeria or Romania. Over two-thirds of deportation orders effected in the same period were effected to these two countries. More detailed information can be found in Chapter 4.1.

In Section 4.1.3 the procedures leading up to the signing of a deportation order are discussed. It may be argued that the current procedures tend to “channel” unsuccessful asylum seekers towards deportation rather than assisted voluntary return. This is because after an unsuccessful applicant has exhausted the asylum application procedures he or she may apply for “...humanitarian leave to remain in the State”. Very few people are given this permission and the process automatically terminates in a deportation order being issued. The period of consideration of such an application for humanitarian leave to remain may, however, stretch to several years by which time it is likely that the immigrant has become integrated in Ireland. The Department of Justice, Equality and Law Reform (2005) has indicated that forthcoming legislation may introduce changes to help to resolve this issue by streamlining the protection application procedure.

In 2005 just 21 per cent of the 1,899 deportation orders signed were effected. The Garda National Immigration Bureau report that a large proportion of people abscond on receipt of an “arrangements letter” which sets out the details of their proposed deportation. Some may go ‘underground’ while others leave the State without contacting the authorities. Once the order is made, failure to observe the order or to co-operate with arrangements made for departure may result in detention with a view to securing departure. The Department of Justice, Equality and Law Reform believe that just over 50 per cent of deportation orders served are evaded. The GNIB believe that the number of persons evading deportation orders has fallen in recent years due to “better enforcement” and as a result of the changes in Irish citizenship law.

Another challenge is the identification of illegally resident non-Irish nationals. Frequently people give false identities when apprehended which are supported with high quality fraudulent documents. The Minister for Justice, Equality and Law Reform recently informed the Dáil that during 2005 some 80 per cent of total asylum applicants arrived with no documentation. It should be noted that refugees might destroy documents during flight to protect their identity and not to circumvent immigration controls.

Removal is a less serious type of forced return than deportation. Irregular migrants who come to the State without permission or who over-stay can be removed under a purely administrative procedure within the first 3 months of their stay. There are no data available on these removals. In addition people who are refused permission to land at the Irish border are removed as opposed to deported. Of those refused entry at the border in 2005, 91 per cent were subsequently removed and 9 per cent claimed asylum. During 2005, 13 per cent of those refused entry at the border to Ireland and returned were Brazilian, 11 per cent were Romanian nationals and 10 per cent were Nigerian nationals. People may be refused leave to land for a wide variety of reasons including insufficient funds to support oneself, lack of proper documentation, no employment permit, suspected intention to abuse UK/Irish Common Travel

Area arrangements. A removal decision does not prohibit the future re-entry to the State of the removed person.

Dublin II Transfers are the final type of forced return. Since 2003 when an individual makes an asylum application in Europe their fingerprints are taken and almost instantly checked with the fingerprints of asylum applicants across Europe held on the EURODAC system. If an individual is deemed to have already made an application in an EU Member State, Ireland (or any other Member State), may request the original State of application to “take back” the application under the Dublin II Regulation. Of the 1,720 persons who claimed asylum in Ireland between January and mid-May 2006 almost 19 per cent involved applications by persons whose fingerprints matched prints stored on the EURODAC system. The GNIB report that the vast majority of Dublin II returnees are people who have made an asylum claim in another Regulation State which has not yet been finalised, or was withdrawn or rejected.

Of the 426 Dublin II Regulation Transfer Orders Signed in 2005, 49 per cent were effected. Over one-third of people in respect of whom Dublin II Regulation Transfer Orders were signed in 2005 were nationals of the two African States, Somalia and Sudan. Almost 70 per cent of Dublin II returnees travel back to the UK.

The current practice with respect to the detention of non-Irish nationals in Ireland is discussed at Section 4.4. It is not common practice for asylum applicants to be routinely detained in Ireland. However, provision is made under the Refugee Act 1996 for their detention under certain circumstances. Persons aged over 18 years who are refused permission to land or who are caught within the borders within 3 months of their arrival may be arrested and detained pending removal. Persons in respect of whom a deportation order has been issued may be detained for the purposes of executing that order, however, arrest and detention as it is related to deportation requires non-compliance of some kind. The Department of Justice, Equality and Law Reform must also be in a position to deport the individual; as soon as the ability to deport ceases (for example, if legal proceedings are underway) the individual cannot generally be detained. Finally, persons who receive a Dublin II Regulation Transfer Order are also generally detained pending removal.

Information on the costs associated with return is provided in Chapter 5. The available data show that in terms of transport costs alone, voluntary return is a much less expensive option for the State than deportation. Deportation costs in 2005 were estimated to be approximately €4,200 per person while an average IOM assisted voluntary return cost just over €600. In 2004 the average cost per person of a transfer under Dublin II was much higher at €522 than in 2005 (€265). The reduction has been achieved by increasing the use of ferry transfers rather than flights to the UK. The average deportation cost per person has increased in the same period. One reason suggested for the increase was that the GNIB had to charter

flights in the period to return “disruptive” individuals. The Scheme for a new Immigration, Residence and Protection Bill indicates that the future legislation may include a provision for making foreign nationals who have been removed under the Scheme liable for the costs incurred by the State in removing them.

Costs to the State associated with deportation increase considerably if legal proceedings are undertaken and won by the applicant, or if an individual is detained. Costs incurred by the Department of Justice, Equality and Law Reform Legal Judicial Review Unit arise primarily from judicial review proceedings taken against decisions made in repatriation matters. Data are supplied in Section 5.1.1 that show a significant increase in legal costs paid by the Department’s Repatriation Judicial Review Unit since 2002.

Chapter 6 provides information on relevant European developments. In general, the deportation and removal systems in Ireland are operated domestically, by the GNIB and the Department of Justice, Equality and Law Reform. European legislation appears to have had little direct effect so far as the GNIB favour direct international linkages developed with airports, carriers, embassies and countries of destination. A bilateral Readmission Agreements with Nigeria was signed in 2001 and subsequently ratified by Ireland. The ratification process is ongoing on the Nigerian side but the authorities there are “...operating in the spirit of the agreement”.

The Conclusions of the study can be found in Chapter 8. All parties consulted agreed that assisted voluntary return is by far the preferred option, both to the State and the returning migrant. Voluntary return is clearly a much less expensive procedure, it is a more dignified way for the migrant to return to their country of origin and they may return to Ireland in the future if they wish. Assisted voluntary returns still represent a very small fraction of non-EU returns from Ireland. To be effective, assisted return schemes need to be adequately publicised and incentivised and perhaps the Irish schemes have not yet been developed sufficiently. Reintegration assistance has recently become available to all people who return on the IOM’s general voluntary assisted return programme but the amount is small. The Department of Justice, Equality and Law Reform discussion document “Outline Policy Proposals for an Immigration and Residence Bill” proposed that the bill should provide formally for voluntary assisted return schemes, however, there was no mention of such a provision in the subsequent Scheme for an Immigration, Residence and Protection Bill.

By international standards the Irish return system is relatively young and it is still developing. The current report was compiled at a time of significant change as policymakers were beginning to put in place comprehensive legislation in the form of an Immigration, Residence and Protection Bill to deal with the inflows and the inevitable outflows.





# 1. INTRODUCTION

International experience shows that a large proportion of migrants return to their country of origin. Return migrants are a heterogeneous group that includes, among others, rejected asylum seekers, those who had been protected under temporary schemes or refugees after the termination of their asylum status, irregular labour migrants, migrants with expired temporary work permits, those who have failed to integrate economically in the host country, those who have achieved their objectives and return, and people with legal residence who wish to retire in their country of origin. In Ireland as elsewhere, most return migration is voluntary and does not entail state intervention. However, a managed migration system also must make provision for various interventions to assist in voluntary return and include procedures for forced return. This study provides an overview of the current situation relating to forced and voluntary return in Ireland. It represents the contribution of the Irish National Contact Point within the European Migration Network (EMN) to the European research study on *Return Migration in the EU Member States*, commissioned by the EU Commission in 2005-6.

Ireland changed from a country of net emigration in the late 1980s to one of net immigration from the mid-1990s onwards. In 1987, 23,000 more people left than entered the country. However, from 1996 onwards, net migration has made a positive contribution to Ireland's population growth. The net inflow of immigrants increased from 8,000 per annum in 1996 to 53,000 per annum in 2005. Irish policy makers have been under pressure to produce a workable immigration strategy to cope with these changed flows. The Department of Justice, Equality and Law Reform published a discussion document for Immigration and Residence legislation in 2005. The Heads of a new wide-ranging Immigration, Protection and Residence Bill were published in 2006; actual legislation is expected in the near future. (See Department of Justice, Equality and Law Reform, 2005, 2006b.) Return, forced and voluntary, is a necessary element of any immigration strategy. Return migration is, however, a frequently contentious issue as the objectives of the immigrant can be directly at odds with those of the State.

Given that immigration is a relatively recent development in Ireland, it is perhaps not surprising that existing information on return from Ireland are currently disparate, that policies are in the process of development, and that the surrounding issues are often poorly understood. This report attempts to collate and objectively present available information on return from Ireland. Forced and

voluntary return mechanisms are compared in terms of effectiveness for both the migrant and the member state. The operational difficulties associated with enforcing return and facilitating voluntary return are presented.

It is hoped that the current report will inform the public debate by providing the information necessary to locate individual stories reported in the media, within the broader policy picture. It is intended that policy makers, researchers and groups working with immigrants in Ireland can use this objective information to inform their own work. Nine participating National Contact Points of the European Migration Network<sup>1</sup> produce a similar national report: Austria; Belgium; Estonia; Greece; Ireland; Italy; and Latvia. The Netherlands; Sweden. The joint approach makes it possible to produce a synthesis European report with comparative information on the participating Member States, and thus present the opportunity to learn from other EU Member States.<sup>2</sup>

<sup>1</sup> The European Migration Network is a network formed to collate, provide access to and facilitate the exchange of information on migration and asylum. The EMN also analyses such information and undertakes its own research projects.

<sup>2</sup> Synthesis report will be available at <http://www.european-migration-network.org/>.

# 2. METHODOLOGY, DEFINITIONS AND RETURN CATEGORIES

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## 2.1 Methodology

The current study was produced with a combination of desk research and interviews. The majority of the information contained in the report was obtained in interviews conducted with the Garda National Immigration Bureau, the Repatriation Unit of the Department of Justice, Equality and Law Reform and the International Organization for Migration and we are grateful for their contributions. The Immigrant Council of Ireland also provided valuable input. Other sources included Oireachtas (parliamentary) debates, legislation and newspapers.

The specifications for the study, drawn up in conjunction with the EMN, were very detailed and certain questions were not relevant in the Irish case. For this reason the current report is a restructured version of the unpublished Irish national report presented to the European Migration Network.

The report contains as much relevant statistical data as was available. The majority of the statistical information comes from an internal Department for Justice, Equality and Law Reform document.<sup>3</sup>

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## 2.2 Clarification of Concepts and Definitions

Forced Return	
Deportation	The act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of leave to remain (IOM 2004).
Detention	Restriction on freedom of movement, usually through enforced confinement, of an individual by government authorities. There are two types of detention. Criminal detention, having as a purpose punishment for the committed crime; and administrative detention, guaranteeing that another administrative measure (such as deportation or expulsion) can be implemented. (IOM, 2004a).
Escort	A person (usually an official of the Member State) who accompanies a returnee on their journey or part of their journey.

<sup>3</sup> Unpublished contribution from the Repatriation Unit, Department of Justice, Equality and Law Reform to the *Annual Report 2005*.

Expulsion	An act by an authority of the State with the intention and with the effect of securing the removal of a person or persons (aliens or stateless persons) against their will from the territory of that State (IOM, 2004a).
Forced return	The compulsory return of an individual to the country of origin, transit or third country, on the basis of an administrative or judicial act (IOM, 2004a).
Leave to land	Permission to enter the territory of the State.
Leave to remain*	Leave to remain in Ireland is a statement of the conditions on which a non-EEA national is permitted to remain in the State and the duration of that permission. It is given on behalf of the Minister for Justice, Equality and Law Reform in the form of a stamp (endorsement) in an individual's passport. A residency document – Certificate of Registration - may also be issued for the same period of time as the stamp (endorsement) placed in the passport (Department of Justice, Equality and Law Reform, May 2004).
Prohibition of refoulement*	A person shall not be expelled from the State or returned in any manner whatsoever to the frontiers of territories where, in the opinion of the Minister, the life or freedom of that person would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion (Refugee Act 1996).
Removal*	Refers to the procedure of return applicable to persons refused permission to enter Ireland or persons who evade immigration controls or who enter other than through an approved port within three months of their arrival.
Return	Refers broadly to the act or process of going back. This could be within the territorial boundaries of a country or from a host country (either transit or destination) to the country of origin. There are subcategories of return which can describe the way the return is implemented, e.g. voluntary, forced, assisted and spontaneous return; as well as subcategories which describe who is participating in the return, e.g. repatriation (for refugees) (IOM 2004a).
Return assistance	Refers to assistance, financial, administrative or other to return to country of origin or another country.
<b>Voluntary Return</b>	
Voluntary return	Voluntary return is based on a decision freely taken by the individual. A voluntary decision embraces two elements: freedom of choice, which is defined by the absence of any physical, psychological, or material pressure; and an informed decision which requires having enough accurate and objective information available upon which to base the decision (IOM, 2004a).
Persuaded to return voluntarily	Return where a person is first invited to benefit from the voluntary return actions, otherwise they would be subject to a compulsory deportation order and are anyway no longer entitled to reside in the country.
Assisted voluntary return	Logistical and financial support to rejected asylum seekers, trafficked migrants, stranded students, qualified nationals and other migrants unable or unwilling to remain in the host country who volunteer to return to their countries of origin (IOM 2004a).
Independent return	Return of non-Irish national without assistance, financial or administrative from any party.

\* Definition is specific to Irish case.

## 2.3 Return Categories

### 2.3.1 DEPORTEES

People who come legally and fail to comply with laws of State, particularly immigration requirements. Such people may be deported under Immigration Act 1999, section 3, enforced by section 5. The Immigration Act 1999 sets out that deportees will fall into one of the following categories:

- (a) a person who has served or is serving a term of imprisonment imposed on him or her by a court in the State,
- (b) a person whose deportation has been recommended by a court in the State before which such person was indicted for or charged with any crime or offence,
- (c) a person who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977),
- (d) a person to whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies,
- (e) a person whose application for asylum has been transferred to a convention country for examination pursuant to section 22 of the Refugee Act, 1996,
- (f) a person whose application for asylum has been refused by the Minister,
- (g) a person to whom leave to land in the State has been refused,
- (h) a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State,
- (i) a person whose deportation would, in the opinion of the Minister, be conducive to the common good (Immigration Act 1999 as amended).

The majority of people who are deported are people who have been unsuccessful in an asylum claim.

### 2.3.2 PERSONS SUBJECT TO REMOVAL PROCEDURE

- Irregular migrants who come to the State without permission or who over-stay. Within the first 3 months of their stay they can be removed under a purely administrative procedure under the Immigration Act 2003 section 5.
- People who are refused permission to land at the Irish border on the grounds set out at section 4 of the Immigration Act 2004 are removed under Immigration Act 2003, section 5.
- Persons who claim asylum but are detained under the Refugee Act may decide to go home rather than pursue asylum claim. A District Court Judge may make an order directing the Minister for Justice, Equality and Law Reform to facilitate their return home. These people are therefore not the subject of a deportation order but of an order of a District Court. They may re enter Ireland if they become “immigration compliant” in the future. This is removal under Refugee Act 1996 section 9.

### 2.3.3 DUBLIN II RETURNEES

- The following asylum applicants may be transferred under the Dublin II Regulation<sup>4</sup>:
  - Those who are to be transferred to another EU member State for family unity purposes;
  - Those in respect of whom another Regulation State has issued a visa or work permit;
  - Who regularly crossed the frontier of another Regulation State prior to applying for asylum in Ireland;
  - Who have made an asylum claim in another Regulation State which has not yet been finalised, or was withdrawn or rejected. The GNIB report that the vast majority of Dublin II returnees are people who fall into the latter category and are picked up on the EURODAC system (see Section 4.3.3).

### 2.3.4 ASSISTED VOLUNTARY RETURNEES

- All non-EEA nationals who do not have a clear legal right to be in the State may avail of assisted voluntary return including:
  - Asylum applicants.
  - Irregular migrants (i.e. people who lack legal status in the State).
  - Victims of trafficking.
  - Unaccompanied minors.
  - Aged out minors.
  - At risk EU nationals who cannot find work in Ireland and who cannot access social assistance/benefits due to the Habitual Residence Condition.<sup>5</sup>

<sup>4</sup> In 2003 the Dublin II Regulation succeeded the Dublin Convention as the instrument which provides the legal basis for determining which EU Member State is responsible for examining an asylum application. All Member States plus Norway and Iceland are subject to the new Regulation, with the exception of Denmark (the Dublin Convention remains in force between Denmark and the other Member States).

<sup>5</sup> An Habitual Residence Condition was included ahead of the Accession of ten new EU Member States in May 2004. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare.

# 3. VOLUNTARY RETURN

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## 3.1 Overview

In Ireland there are three types of voluntary return:

- 1) A decision taken by an individual to return to their country of origin that is entirely freely made. This type of voluntary return fulfils the IOM definition supplied in Section 2.2 above. The majority of such returns happen without any involvement of the State and because Ireland has no immigration exit controls no information exists on the magnitude of such flows. (It is worth noting that the *Scheme for an Immigration, Residence and Protection Bill* includes a suggestion that exit controls may be introduced in the future. See Department of Justice, Equality and Law Reform, 2006.)
- 2) In some cases people need to contact the Department of Justice, Equality and Law Reform for documents held for example on an asylum application file before they can travel home. In the case of failed asylum applicants who have received a 15 day letter (see Section 4.1.3) they must supply details of their departure to the Department of Justice, Equality and Law Reform. The Department holds figures on such returnees (see Table 3.1).
- 3) Voluntary assisted return programmes (VARPs) are currently offered by the IOM to non EU nationals without the legal right to stay in Ireland and by the Reception and Integration Agency to EU nationals who cannot afford to stay in Ireland or to return home. The pressure to return inherent in the threat of deportation means that VARPs cannot qualify as truly voluntary. Once the Minister for Justice, Equality and Law Reform issues a deportation order the individual concerned no longer qualifies for voluntary assisted return.

Taking non-EU voluntary returns first, since 2003 more people go through IOM schemes each year than through the Department of Justice, Equality and Law Reform. The numbers of non-EU nationals who returned voluntarily in 2001-2005 are shown in Table 3.1. The substantial fall between 2004 and 2005 in the number of people who availed of assisted voluntary return can be explained by two developments. First, the accession of the ten new EU member states meant that IOM assisted voluntary return was no longer available to nationals of those states. Second, in December 2004, the Government invited families who had applied for leave to remain on the basis of their Irish citizen child prior to the change in citizenship law (see Section 4.1.1), to submit an application for leave to remain

under the Irish Born Child (IBC05) scheme. Families who might have returned on an IOM scheme may have lodged such an application instead.

**Table 3.1: Numbers of Non-EU Nationals Returned Voluntarily 2001-2005**

Year	IOM Assisted Voluntary Returns	Other Assisted Voluntary Returns	Total
2001	3	353	356
2002	110	396	506
2003	401	361	762
2004	393	218	611
2005	210	125	335
<b>Total</b>	<b>1,117</b>	<b>1,453</b>	<b>2,570</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

The IOM VARPs are of three types:

- 1) General voluntary assisted return programme, running January – December 2006. Open to all non-EEA nationals including unsuccessful asylum applicants, irregular migrants, victims of trafficking, occasionally other exceptional cases). Funded by the Department of Justice, Equality and Law Reform.
- 2) Unaccompanied minors VARP, running July 2005 – July 2006. This is the third year of this programme which is funded by the European Refugee Fund.
- 3) Vulnerable Nigerian VARP, running July 2005 – July 2006. Particularly targets those Nigerian nationals who have been through the asylum system and turned down and other irregular migrants, including female heads of households, migrants with health problems, victims of trafficking, young adults if vulnerable, and aged out minors. The programme is funded through the Refugee Fund and in general more resources are available to individual returned under this programme than those returned under the general VARP.

Previous programmes targeted nationals of Sub-Saharan African countries 2004-2005 and the parents of Irish born children.

In addition since March 2004 there has been a special assisted voluntary return programme run by the Reception and Integration Agency for the repatriation of nationals of the ten new EU Member States who fail the Habitual Residency Condition<sup>6</sup> required for social assistance or benefit payments and who are in danger of becoming

<sup>6</sup> A Habitual Residence Condition was included ahead of the Accession of ten new Member States in May 2004. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare.



destitute. Table 3.2 shows the number of EU nationals who availed of this programme to return to EU Member States.

**Table 3.2: Number of EU Nationals Returned Voluntarily 2004-2006**

Nationality	Total
2004	149
2005	318
2006	*646

*Source:* Reception and Integration Agency.

\*Provisional end of year figure.

### 3.2 Legal Basis for Voluntary Return

There is no legislative provision for voluntary return as such, however, the Immigration Act 1999 sets out that before issuing a deportation order the Minister is obliged to inform the individual of his intention and to invite the person to leave Ireland voluntarily. The Department of Justice, Equality and Law Reform (2005) indicated that forthcoming immigration and residence legislation should make explicit provision for voluntary return schemes, however, no such provision is mentioned in the subsequent Scheme of the Bill (2006).

### 3.3 Procedures for Voluntary Return

If a person who has been warned of an imminent deportation order decides to leave voluntarily he or she must provide details of their proposed departure to the Department of Justice, Equality and Law Reform. Some returns are paid for and organised by the individual concerned. The International Organization for Migration (IOM) operates the assisted voluntary return schemes for non-EU nationals discussed above in cooperation with the Department of Justice, Equality and Law Reform and the Reception and Integration Agency operates the voluntary assisted return programme for EU nationals.

Persons who are ‘assisted’ by the Department of Justice, Equality and Law Reform to return voluntarily receive administrative assistance only, for example with passports/identity document needed for the journey. The Department of Justice, Equality and Law Reform passes such documentation to the GNIB who makes contact with the returnee at the point of departure.

The first IOM pilot voluntary return programme was initiated in 2001 for Nigerian and Romanian nationals. It has now been extended to all asylum seekers and irregular migrants from non-EEA countries, without documentation and the necessary financial means to return to their home country. The general IOM VARP offers assistance in three stages of return: pre-departure, transportation and post arrival. The procedure for travelling on the general VARP is as follows.

A person who wishes to travel with the VARP run by IOM makes contact with IOM directly. The person fills in an application. IOM advise the individual to take legal advice and IOM staff make enquiries to make sure the person is making an informed choice. The person also signs a declaration of voluntary return. IOM send the details of the application to the Department of Justice, Equality and Law Reform. If a leave to remain application has been made (see section 4.1.3 below) this application is frozen and there is no longer a threat of a deportation order being issued. The Department of Justice, Equality and Law Reform must approve every applicant who applies for return under IOM's programmes. (Less than 2 per cent are turned down; reasons for refusals are if a deportation order exists or if some criminal charge is outstanding.)

If the application is approved the person has no more contact with Department of Justice, Equality and Law Reform. The IOM requests documentation held by, for example, the Office of the Refugee Applications Commissioner/Refugee Appeals Tribunal/GNIB to be transferred to Department of Justice, Equality and Law Reform and IOM will collect it there.

The majority of returnees on IOM VARPs do not have the necessary travel documents. IOM work with embassies and generally receive good cooperation. Even if a passport cannot be secured in time embassies will usually supply a travel document for the person to make the return journey. Most of the embassies IOM Dublin works with have a representation in Dublin. IOM Dublin staff also work with embassies in London or Brussels. Documentation is usually issued within a couple of weeks.

IOM makes the necessary travel arrangements. Most returnees want to travel quite soon after making their application. IOM can be reasonably flexible if for example a family want to wait for children to finish a school term.

IOM staff will meet the person at Dublin airport and can also arrange assistance in transit. Unless a transit visa is needed accompaniment is purely optional. IOM Dublin staff work closely with IOM staff in Schiphol and Frankfurt airports because transit visas can be waived if a representative meets the returnees.

On arrival in the country of return the individual may get assistance with the final leg of their journey. This may involve an internal flight or land connection and/or overnight accommodation if the person must wait for a connection. If people are not being met by IOM field staff it is entirely their choice whether or not they confirm they have arrived. The Department of Justice, Equality and Law Reform require only to know that a person has left Ireland.

Generally people are returned to their country of origin however if someone has a legal right to reside elsewhere the IOM can return them there instead. For example sometimes the IOM will return Nigerians to Ghana at individual request.

The procedure for the Unaccompanied Minors programme is slightly different in that the IOM work with Health Service Executive (HSE) staff rather than the potentially returning children.

The programme is unique because each case is investigated in much greater detail in order to assess whether it would be in the best interests of the child to return him or her to their family or to alternative care in the country of origin.

The IOM uses a variety of means to assess the situation at the child's home. A social work assessment is undertaken which looks at issues such as housing, the family's situation, stability in the area etc. In Nigeria such assessments are undertaken by the authorities and have proved very useful to IOM to date. IOM does not take any decision on whether the child should or should not be returned, information is passed between the country of return and the HSE. The HSE makes a presentation to the court about whether it is in the best interests of the child to return to the country of origin and the court makes the final decision. Children always travel with an escort.

The Vulnerable Nigerians VARP is funded by the European Return Fund and is run between IOM Dublin and the IOM office in The Hague. This is a small programme (50 persons each may travel from Ireland and Netherlands) designed to develop networks in Nigeria. The vulnerable returnees will need particular services on return to Nigeria especially trafficked people who will need safe accommodation, counselling etc. The Programme does not aim to provide all the services required but to give people the relevant information on service providers pre return.

The Reception and Integration Agency (RIA) is responsible for the arrangements for the repatriation of accession state nationals and certain other special-case EU nationals who find themselves destitute during their time in Ireland. Community Welfare Officers refer individuals who come to them looking for help to RIA. The Homeless Agency and other NGOs also refer eligible returnees. RIA makes contact with the person and books their flight home. The returnees must sign a form agreeing to avail of the service only once and RIA takes a copy of their passport. RIA also books and pays for temporary accommodation in Dublin until the flight leaves (usually one or two nights), deliver the flight tickets to that accommodation and organises transport to the airport.

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### **3.4 Demographic Characteristics of Returnees**

The only demographic information available for any of the categories of returnees discussed in the current report relates to persons returned on the IOM general Voluntary Assisted Return Programme. The IOM provided the following breakdown of their 2005 returnees:

**Table 3.3: Demographic Characteristics of Returnees on IOM VARP 2005**

	% (Based on 182 of 224 Cases)
Male	73
Female	27
Adult	84
Minor	16

*Source:* IOM, June 2006.

IOM also indicated that the majority of returnees are aged between 18 and 40 years.

### 3.5 Origin, Nationality and Destinations of Returnees

The nationality of all non-EU assisted voluntary returnees are shown in Table 3.4. Of these people 210 were assisted by IOM and 125 contacted the Department for Justice, Equality and Law Reform for documentation but returned to their country of origin independently.

**Table 3.4: Nationalities of all Non-EU Assisted Voluntary Returnees in 2005**

Nationalities of all Voluntary Returns in 2005		
	Number	%
Croatia	79	23.6
Romania	45	13.4
Nigeria	40	11.9
China	24	7.2
Moldova	23	6.9
Brazil	17	5.1
Algeria	11	3.3
Israel	11	3.3
South Africa	10	3.0
Pakistan	6	1.8
Ukraine	6	1.8
Albania	5	1.5
Georgia	5	1.5
India	5	1.5
Iraq	4	1.2
Russia	4	1.2
American	3	0.9
Morocco	3	0.9
Philippines	3	0.9
Serbia	3	0.9
Belarus	2	0.6
Others	26	7.8
<b>Total</b>	<b>335</b>	<b>100.0</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

The nationality of EU nationals who were assisted to return by the Reception and Integration Agency is shown in Table 3.5. The majority of returnees on this programme are of Polish or Slovakian nationality. In 2006 almost 60 per cent of returnees were Polish.

**Table 3.5: Nationalities of all EU Assisted Voluntary Returnees 2004-2005**

Nationality	2004		2005		2006*	
		%		%		%
Czech	19	12.8	15	4.7	33	5.1
Estonian	39	26.2	6	1.9	10	1.5
Hungarian	13	8.7	19	6.0	46	7.1
Latvian	7	4.7	28	8.8	47	7.3
Lithuanian	5	3.4	33	10.4	28	4.3
Malta	0	0.0	0	0.0	1	0.2
Polish	51	34.2	138	43.4	380	58.8
Slovak	11	7.4	69	21.7	98	15.2
EU 15 MS	4	2.7	10	3.1	3	0.5
<b>Total</b>	<b>149</b>	<b>100.0</b>	<b>318</b>	<b>100.0</b>	<b>646</b>	<b>100.0</b>

*Source:* Reception and Integration Agency.

\*Provisional end of year figure.

### 3.6 Information Campaigns

Generally information about IOM programmes is passed by word of mouth, by contacts who previously availed of the return or by service providers such as HSE staff. IOM Dublin does have a website which contains the application form and FAQ and staff undertake regular visits to service providers and accommodation centres. Information leaflets are translated into several languages including Russian, Romanian, Serbo-Croat, French and Arabic. Leaflets are distributed to outreach workers and organisations such as the Migrant Rights Centre Ireland and the Immigrant Council of Ireland. Information on the Reception and Integration Agency-run programme is disseminated by word of mouth, advertisements in immigrant (notably Polish) newspapers and through Community Welfare Officers, the Homeless Agency and other NGOs.

### 3.7 Incentives to Voluntary Return

A person who has been the subject of a deportation order may have trouble travelling anywhere outside their country of origin in the future whereas a voluntary returned person has no endorsement on their passport and may return to Ireland in the future if they so wish and are “immigration compliant”. If someone applies for voluntary return while a leave to remain application is being processed the leave to remain application is frozen until that person has left. As mentioned at below at Section 4.1.3 the vast majority of leave to remain applications terminate in a deportation order so voluntary return offers a way of avoiding having a deportation order issued in your name even after making a leave to remain application. Another incentive to voluntary return is the payment of

reintegration assistance grants. This is discussed in more detail below.

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### **3.8 Return Counselling**

Information on return counselling is only offered to returnees on the IOM programmes (however all asylum applicants may avail of limited counselling service during their time in Ireland). IOM encourages all returnees to seek the advice of a solicitor before making an application for voluntary return, for example to take advice on the potential impact of withdrawing an asylum claim. Potential returnees are referred to the Refugee Legal Service, and to other migrant support organisations, such as the Migrant Rights Centre Ireland or the Immigrant Council of Ireland. IOM also refers people for medical or psychological services to SPIRASI, Ruhama, Health Boards, Aids Alliance and Women's Aid.

The type of advice and guidance offered by IOM differs depending on which VARP is being discussed and the needs of the individual client. IOM never give advice on whether or not any person should return although the reasons for considering return are explored.

Counselling is always available to the victims of trafficking and the IOM has some contact information for counselling services in countries of return Romania and Nigeria. This is one element that will be investigated further in the pilot return project for vulnerable Nigerians.

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### **3.9 Post-arrival Assistance**

Reintegration assistance has recently become available to all people who return on the IOM's general voluntary assisted return programme. The grant can be used towards vocational/educational training or to start a small business. Different possibilities are available depending on which part of the world people are returning to. Exactly what the money is spent on is up to the individual, provided that the expenditure is deemed acceptable by the IOM. The money cannot be spent on accommodation costs or healthcare. The amount of assistance available is €600 per person and €1200 per family regardless of the number of children. It does not vary from country to country. The Unaccompanied Minors programme also includes a reintegration payment (€600 per child) which is available to the child's family.

Approximately 60 per cent of voluntary returnees on the general IOM programme express an interest in reintegration assistance, about half of whom actually have taken it up after they return. The IOM undertake monitoring in the country of return as discussed above. The small reintegration assistance can help people who have been abroad particularly those who have been in the asylum system to make up some of the time spent out of employment.

# 4. FORCED RETURN

There are three different processes for the forced removal of non-nationals from the State: deportation, removal and Dublin II transfers.

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## 4.1 Deportation

### 4.1.1 OVERVIEW

A deportation order is signed by the Minister for Justice, Equality and Law Reform. Its consequences are serious. It allows the deportee to be forcibly removed from the state and it requires the deportee to remain outside the State for ever, irrespective of the circumstances giving rise to its making. (It is possible for the person in respect of whom the deportation order was signed to apply to the Minister to revoke the order and to re-enter the State in accordance with any necessary immigration requirements.) The deportation process can be applied to any non-national in the State whose enforced departure is being contemplated. The deportation system is however most commonly used for unsuccessful asylum applicants and the operational and administrative events arising are summarised in Section 4.1.3 and in Figure 4.2.

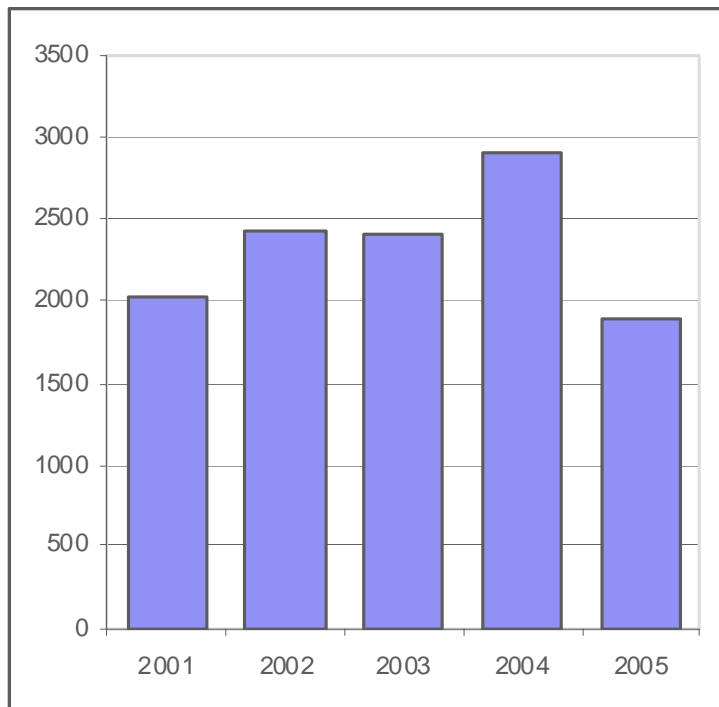
As Figure 4.1 shows the number of deportation orders signed peaked in 2004 at 2,900 before falling to just below 1,900 in 2005. This decline may be attributed to a variety of policy developments including the following:

- After a Citizenship Referendum in 2004, changes in citizenship provisions were enacted in the Irish Nationality and Citizenship Act 2004 which commenced in January 2005. The effect is that it is no longer possible for persons born in Ireland to obtain automatic Irish citizenship. In previous years the non-Irish parents of Irish-born children could apply for residency in Ireland based on the Irish citizenship of their child. This led to concerns that people were travelling to Ireland and having children in order to gain that status.<sup>7</sup>
- Declining asylum applications due to:

<sup>7</sup> In December 2004, the Government invited the non-national parents of Irish-citizen children born before 1st January 2005 to submit an application for leave to remain under the Irish Born Child (IBC05) scheme. In May 2006 it was announced that under this Scheme almost 18,000 applications for leave to remain in Ireland were submitted. Of these 16,693 were approved and 1,119 given refusal decisions.

- Safe countries of origin, prioritised and accelerated asylum procedures. Under amendments to the 1996 Refugee Act contained in the 2003 Immigration Act the Minister for Justice, Equality and Law Reform was empowered to introduce certain measures to speed up the asylum process. As a result Bulgaria, Romania, Croatia and South Africa have been designated as safe countries of origin and are subject to accelerated asylum application procedures. In addition priority must now be accorded to applications made by Nigerian nationals. In mid 2006 approximately 40 per cent of total asylum applications fall into the prioritised category.<sup>8</sup>
- Accession of ten new EU Member States and the resulting decline in applications from those states.

**Figure 4.1: Deportation Orders Signed 2001-2005**



*Source:* Department of Justice, Equality and Law Reform, June 2006.  
Data are supplied below in Table 4.1.

<sup>8</sup> Dáil debates. Written Answers – Wednesday, 5th July, 2006



### 4.1.2 LEGAL BASIS FOR DEPORTATION

The main legislative instrument concerning deportation is the Immigration Act 1999. The deportation system derives from Section 3 of Immigration Act 1999 which follows on the Supreme Court's judgment in the case of *Laurentiu v Minister for Justice, Equality and Law Reform*.<sup>9</sup> The Immigration Act 1999 puts deportation on a statutory footing and secondary legislation arising from the Act sets out the working arrangements of the system. Statutory Instrument (S.I.) No. 55 of 2005 – Immigration Act 1999 (Deportation) Regulations 2005 authorises Immigration Officers and members of the Garda Síochána to deport a person from Ireland under the 1999 Immigration Act. The form of the deportation order and the prescribed places of detention for the purposes of deportation are set out in the First and Second Schedule of the Order respectively. (A sample deportation order is supplied at Appendix 4.)

### 4.1.3 PROCEDURES AND AGENCIES INVOLVED

In cases where the Minister for Justice, Equality and Law Reform proposes to make a deportation order requiring an unsuccessful applicant to leave the State, that person is sent a “15 day letter” which sets out three options: to make representations to the Minister as to why the applicant should be given leave to remain in the State; to leave the State voluntarily within a short period; or to consent to the making of the deportation order within 15 working days. All three options are officially valid for 15 working days after which time a deportation order can be signed. If someone submits representations or opts for voluntary return after the 15 days have expired and the file hasn't been concluded then in practice a deportation order will not be issued. Voluntary return is an option up to the point that a deportation order is signed. Table 4.1 shows the number of deportation orders signed and effected in the period 2001-2005.

<sup>9</sup> [2000] 1 ILRM 1. In this case the Supreme Court found that the manner in which the 1935 Aliens Act conferred on the Minister the power to make secondary legislation (Aliens Orders) in relation to deportation was inconsistent with the Constitution. In response the Oireachtas enacted the Immigration Act 1999.

**Table 4.1: Deportation Orders Signed and Effectuated 1999-2005**

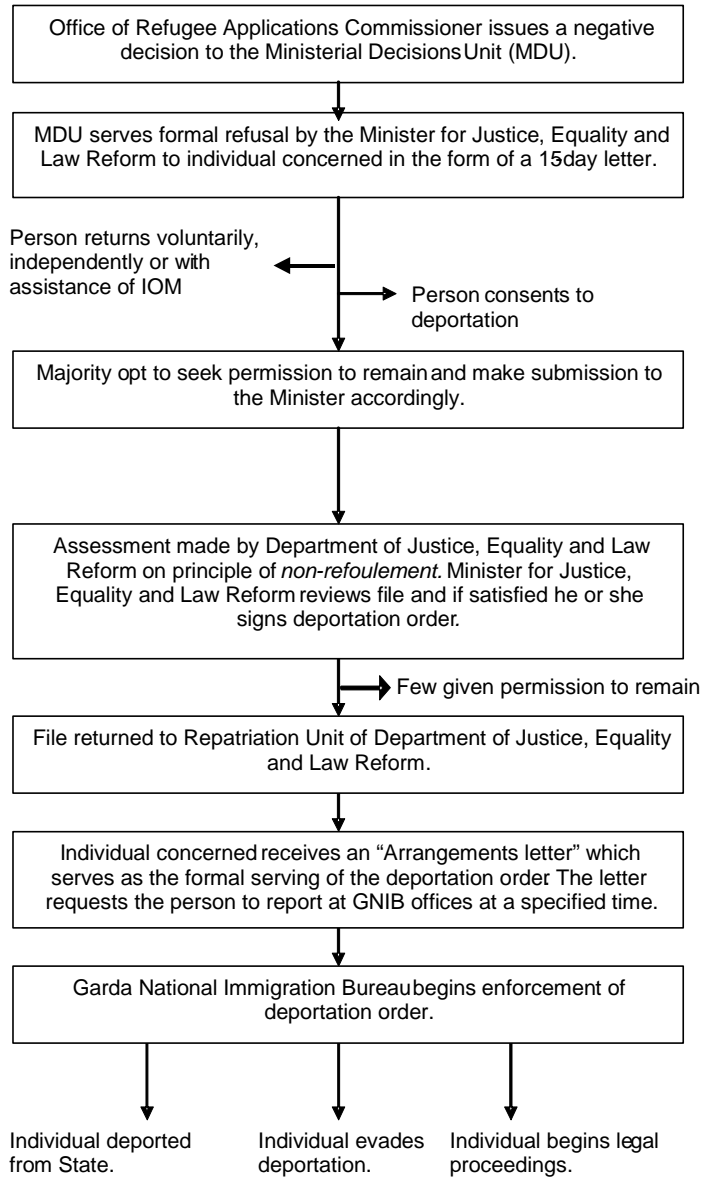
	<b>Deportation Orders Signed</b>	<b>Deportation Orders Effectuated</b>	<b>% Effectuated</b>
1999	102	6	6
2000	940	187	20
2001	2,025	365	18
2002	2,430	521	21
2003	2,411	591	25
2004	2,915	599	21
2005	1,899	396	21
<b>Total</b>	<b>12,722</b>	<b>2,665</b>	<b>21</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006. Note orders signed in one period may be effectuated in a subsequent period.

Very few recipients of the “fifteen day letter” (less than 1 per cent) consent to deportation order being made and less than 10 per cent opt for voluntary return. The majority opt to make representations to the Minister as to why they should be allowed leave to remain in Ireland. This part of the procedure is based on Section 3 of the Immigration Act 1999 which sets out that in every individual case consideration must be given as to whether a deportation order should be issued or whether that person should be granted leave to remain in the State. An assessment of each individual case is made on the basis of the following eleven factors:

- (a) the age of the person;
- (b) the duration of residence in the State of the person;
- (c) the family and domestic circumstances of the person;
- (d) the nature of the person’s connection with the State, if any;
- (e) the employment (including self-employment) record of the person;
- (f) the employment (including self-employment) prospects of the person;
- (g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- (h) humanitarian considerations;
- (i) any representations duly made by or on behalf of the person;
- (j) the common good; and
- (k) considerations of national security and public policy.

**Figure 4.2: Deportation Procedure as Applied to an Unsuccessful Asylum Applicant**



As Table 4.2 shows very few unsuccessful asylum applicants attain leave to remain at this stage. (The data in Table 4.2 also includes some people who did not make written representations to the Minister but who were allowed to remain due to concerns about refoulement.) There is such a small chance of attaining this status, and the implications of having a deportation order issued are so serious, that it may not be in the best interests of the immigrant to apply for leave to remain. Legal practitioners and organisations

providing support to both asylum seekers and other migrants have criticised the existing procedures for lacking transparency and consistency and for taking too long. The Immigrant Council of Ireland reports that it is not unusual for applications to remain undecided for a period of over three years and in some cases much longer.

The Department of Justice, Equality and Law Reform (2005) has indicated that forthcoming legislation may introduce changes to help to resolve this issue. It is proposed that protection claims are examined in a single procedure and that unsuccessful applicants could be removed rather than deported. The removal order may then be automatically converted into a deportation order after a period of time of non-enforcement. The proposed new legislation is due to be published early in 2007.

**Table 4.2: Number of Unsuccessful Asylum Applicants Granted Leave to Remain Temporarily in the State 2000-2005**

	Number of Persons Granted Leave to Remain Temporarily in the State
2000	19
2001	77
2002	158
2003	86
2004	207
2005	135

*Source:* Minister McDowell. Dáil Eireann – Unrevised Debates, 27 June 2006.

Excludes persons who have been granted leave to remain in the State on the basis of their parentage of an Irish Born Child or those persons granted residency in the State on the basis of marriage to an Irish or EU National. Includes people who did not make written representations to the Minister but about whom there are refoulement concerns.

The Minister must see every file and be satisfied that the asylum recommendation made to him is the correct one. An assessment is made on principle of non-refoulement<sup>10</sup> before the deportation order is signed. Refoulement is considered up to the point of departure and if, for example, a war breaks out in the country of destination deportation orders may not be enforced. The Minister also takes into account Section 4 of the Criminal Justice (UN Convention against Torture) Act 2000.

The Minister for Justice, Equality and Law Reform then signs a deportation order a copy of which is supplied at Appendix 4. The individual's file returned to Repatriation Unit of the Department of Justice, Equality and Law Reform and an "Arrangements letter" is

<sup>10</sup> The principle of *non-refoulement* is one fundamental to refugee protection whereby a person will not be returned to a place where their life or liberty may be threatened. Refugee Act 1996, section 5.

sent out which informs the individual that a deportation order has been signed on their behalf and requires them to present at the office of the Garda National Immigration Bureau. This serves as the formal serving of the deportation order. It is sent in English only and is also issued to the individual and solicitor if their identity known.

The case is then handed over to the GNIB and treated as an operational matter. The GNIB report that a large proportion of people abscond on receipt of the “arrangements letter”; some may go ‘underground’ while others leave the State without contacting the authorities. Once the order is made, failure to observe the order or to co-operate with arrangements made for departure may result in detention with a view to securing departure (see section 4.5).

Given the fact that Ireland is an island with just one land border with Northern Ireland forced removals must take place by air or sea. Returns from Ireland to the UK increasingly take place by ferry because it is more economical and more people may be transferred at a time. There are no other ferry ports in Europe used by the GNIB. Deportees going further afield are generally removed to hub airports. Approximately 95 per cent of deportees from Ireland travel to London, Amsterdam or Budapest. These airports are favoured because the GNIB have worked closely with airport staff.

Improving relationships between immigration authorities have meant that much fewer escorts are now needed to transport deportees. GNIB policy is not to escort anyone who doesn’t need escorting and for an individual to be escorted for his or her entire journey is now unusual. Escorts are required in cases where carriers do not accept unaccompanied deportees or when individuals are deemed to be potentially violent. Dublin II returnees are no longer escorted.

In order to ensure the unescorted deportee’s arrival at the port of destination the GNIB has negotiated agreements with a number of carriers. Under these agreements the deportee is placed on a flight from Ireland to a hub airport and the immigration authorities at that airport will ensure departure. The airports are given 48 hours notice of a person’s intended passage unless there is a reason to move more quickly. This method is the preferred one partly because airport and airline staff will often have a common language with the deportee.

Detailed information, including photographs, is held on the GNIB Information system on all persons who have been refused leave to land, all those who are the subject of deportation orders and almost all legally resident non-EEA nationals.<sup>11</sup> The roll out of the system to all ports of entry was completed in the first quarter of 2003 (An Garda Síochána, 2004a). The system is linked back to GNIB headquarters at Burgh Quay in Dublin.

<sup>11</sup> Vol. 578, No.4, Written Answers – Garda Operations. Tuesday 27 January 2004.

#### 4.1.4 ORIGIN, NATIONALITY AND DESTINATIONS OF DEPORTEES

Table 4.3 below shows the nationalities of those in respect of whom deportation orders were signed in 2005 and Table 4.4 shows the countries to where deportation orders were effected in the same period. Nigeria, Romania and China are the most frequently occurring countries of nationality and destination.

**Table 4.3: Nationalities of Those in Respect of Whom Deportation Orders Were Signed in 2005**

Nationalities of Those in Respect of Whom Deportation Orders were Signed in 2005		
	Number	%
Nigeria	978	51.5
Romania	412	21.7
China	119	6.3
Croatia	49	2.6
South Africa	49	2.6
Albania	29	1.5
Moldova	29	1.5
Georgia	26	1.4
Algeria	20	1.1
Angola	17	0.9
Brazil	17	0.9
Bulgaria	16	0.8
Russia	15	0.8
Ghana	14	0.7
Kosovo	14	0.7
Kenya	9	0.5
Sierra Leone	8	0.4
Cameroon	6	0.3
Pakistan	5	0.3
India	4	0.2
Ivory Coast	4	0.2
Others	59	3.1
<b>Total</b>	<b>1,899</b>	<b>100.0</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

**Table 4.4: Countries to Where Deportation Orders Were Effectuated in 2005**

	Countries to Where Deportation Orders Were Effectuated in 2005	
	Number	%
Nigeria	135	34.1
Romania	122	30.8
China	18	4.5
Croatia	17	4.3
South Africa	17	4.3
Moldova	15	3.8
Brazil	13	3.3
Algeria	11	2.8
Kosovo	10	2.5
Bulgaria	6	1.5
Egypt	4	1.0
Georgia	4	1.0
Albania	3	0.8
Bosnia	3	0.8
Ukraine	3	0.8
Lebanon	2	0.5
Mongolia	2	0.5
DR Congo	1	0.3
India	1	0.3
Israel	1	0.3
Ivory Coast	1	0.3
Jamaica	1	0.3
Macedonia	1	0.3
Pakistan	1	0.3
Russia	1	0.3
Serbia	1	0.3
Turkey	1	0.3
Vietnam	1	0.3
<b>Total</b>	<b>396</b>	<b>100.0</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

## 4.1.5 PROBLEMS/ISSUES

### 4.1.5.1 Non Enforcement and Evasion

The main problem with deportation from the perspective of the Irish State is the lack of enforcement of deportation orders. The main reason for the lack of enforcement of deportation orders is the evasion of the subjects of the orders. According to the GNIB some of the people concerned are not in the State and may have departed soon after making an asylum claim; some remain in Ireland under different identities. Some cannot return to their country of origin as the necessary travel documents cannot be obtained from the embassy. See Section 4.1.5.3 below.

The Department of Justice, Equality and Law Reform believe that just over 50 per cent of deportation orders served are evaded. Of the 12,722 deportation orders issued between 1999 and 2005 total of 6,744 or 53 per cent were outstanding and deemed evaded on 31 December 2005. Between 2001 and 2005 there were 11,680 deportation orders issued. Table 4.5 shows the main nationalities of persons deemed to be evading deportation orders.

**Table 4.5: Nationality of Those Deemed to be Evading Deportation Orders as at 31 December 2005**

Nationality of Those Deemed to be Evading Deportation as at 31/12/2005*		
	Number	%
Nigeria	1,883	27.9
Romania	1,747	25.9
China	291	4.3
Moldova	233	3.5
Algeria	207	3.1
Poland	193	2.9
Russia	171	2.5
Kosovo	166	2.5
Ukraine	129	1.9
Sierra Leone	104	1.5
Albania	103	1.5
DR Congo	95	1.4
South Africa	92	1.4
Georgia	86	1.3
Czech republic	84	1.2
Bulgaria	78	1.2
Ghana	77	1.1
Pakistan	70	1.0
Lithuania	68	1.0
Belarus	64	0.9
Kenya	54	0.8
Others	749	11.1
<b>Total</b>	<b>6,744</b>	<b>100.0</b>

\*The GNIB believe that many departed the State soon after arrival.

Source: Department of Justice, Equality and Law Reform. June 2006.

Note figures related to persons who have evaded deportation orders in all years.

Once issued a deportation order remains valid forever meaning that once it is enforced the subject is required to remain outside the State unless the order is revoked. GNIB liaison officers liaise with the Department of Social and Family Affairs to ensure that individuals who have been deported and those who fail to comply with deportation orders no longer receive social welfare payments. There are no other formal policies in place to deter people from evasion.



The GNIB believe that the number of persons evading deportation orders has fallen in recent years due to “better enforcement” and as a result of the IBC05 scheme discussed above at Section 4.1.1. Some individuals who had previously been listed as evaders had their deportation orders revoked following a successful application under the IBC05 scheme. If people who are evading deportation orders reappear in Ireland they are arrested under section 5 of the Immigration Act 1999 and the GNIB have 56 days to deport them. The person concerned is detained for that period unless they are released under section 5 of the 1999 Immigration Act by the High court or if they have taken judicial review proceedings.

#### *4.1.5.2 Judicial Review*

There has been considerable debate recently on the subject of judicial review. The Department of Justice, Equality and Law Reform and the GNIB argue that high incidence of judicial review proceedings is a second reason for the lack of enforcement of deportation orders. The Minister for Justice, Equality and Law Reform commenced making deportation orders in November 1999 and between then and June 2006 over 1000 deportation orders have been challenged in the High Court by way of judicial review.<sup>12</sup> However, judicial review may only delay the enforcement of a deportation order (under certain circumstances) and may only stop enforcement when the Court has quashed the deportation order and the order has therefore become invalid. If an applicant for judicial review does not request an injunction or an undertaking from the Department not to enforce the deportation order, deportation can be enforced while judicial review proceedings are in being. A recent Supreme Court judgment<sup>13</sup> has the effect that if the subject of a deportation order does not lodge judicial review proceedings within fourteen days of the serving of the order the person may no longer get an injunction for preventing their deportation. The Department are now leaving a fourteen-day “valley period” between the serving of the deportation order and beginning enforcement.

#### *4.1.5.3 Identification of Potential Deportees*

The GNIB observe that the identification of illegally resident non-Irish nationals is one of the most challenging aspects in enforcement of immigration controls. Frequently people give false identities when apprehended which are supported with high quality fraudulent documents. The GNIB report that the majority of people liable to

<sup>12</sup> Unpublished contribution from the Repatriation Unit, Department of Justice, Equality and Law Reform to the Annual Report 2005.

<sup>13</sup> *Adebayo & Ors -v- Commissioner of An Garda Síochána*. Supreme Court, March 2 2006.

deportation that they deal with have, or claim to have, no passport or hold passports in fraudulent names. If the GNIB suspects that a person is not disclosing his or her true identity they employ a range of investigative methods to try to ascertain nationality and then identity. They may check through any documentation held by a person and investigate who the individual associates with Ireland. There are no language tests in Ireland, consular officials are brought to Dublin instead and interviews conducted with the individual concerned. GNIB personnel visit London several times a week to share information with embassies that do not have representations here. Contacts exist with diplomatic missions attached to Ireland. Information is exchanged with European colleagues and the individual himself/herself is interviewed.

The Minister for Justice, Equality and Law Reform recently informed the Dáil that during 2005 some 80 per cent of total asylum applicants arrived with no documentation. These included 80 per cent of Nigerian and Romanian applicants. Nearly 90 per cent of applicants from Somalia, Sudan and Iran had no travel documentation.<sup>14</sup> It should be noted that refugees might destroy documents during flight to protect their identity and not to circumvent immigration controls. The GNIB report that it is much easier to return people to countries which are among the most common countries of repatriation, (see Table 4.4), because expertise with forged documentation and linkages with the relevant authorities are built up over time.

In cases where an individual in respect of whom a deportation order has been issued denies knowledge of their nationality and embassies do not claim them as nationals the GNIB's investigation process remains open until the individual is repatriated. The individual is required to repeatedly attend the GNIB office until they are successfully identified. In some cases individuals may co-operate with the enforcement process but cannot be removed from the State because the necessary travel documents cannot be obtained or there is no State willing to accept them. An individual may therefore be rendered "stateless". The Immigrant Council of Ireland observe that although Ireland is a party to the UN Convention on the Reduction of Statelessness there is no domestic legislation to give effect to its provisions. The ICI reports that in their experience this is a particular problem for immigrants from former USSR countries.

Generally, if an individual has been identified, the country of return will cooperate with passports or other travel documentation. If problems are encountered, the case is sent by the GNIB to the Department of Foreign Affairs to be pursued at a diplomatic level. In the case of forced return, travel costs are met by the Irish State, specifically out of the Garda budget. The GNIB sources necessary travel documentation.

<sup>14</sup> Dáil debates. Written Answers – Wednesday, 5 July, 2006.

#### 4.1.5.4 Protest and Solidarity Movements

Activist groups such as Residents Against Racism have organised specific campaigns against deportations. For example in April 2005 a rally was held to protest against the deportation of asylum seeking families in Athlone.<sup>15</sup> These protests were in response to the deportation of 35 Nigerian nationals on a chartered flight in March 2005. At the time the media focused on the fact that some children were removed by the Gardai from school and that five children were left behind by their parents having been sent into hiding. There were also concerns raised about the dangers faced by women returning to Nigeria.

The return of one student who was studying for his Leaving Certificate<sup>16</sup> in Ireland attracted particular attention. Staff and students at his school argued that Olukunle (Kunle) Elukanlo should have been allowed to complete his studies before being sent back. Supporters organised a campaign on the teenager's behalf. NGOs, politicians and members of the general public also became involved and the Minister for Justice, Equality and Law Reform decided to return the student to Ireland in order to "...maintain public confidence in the deportation system".<sup>17</sup> In March 2006 the Minister for Justice, Equality and Law Reform issued a new deportation order in respect of Mr Elukanlo, which is currently the subject of judicial review proceedings.

Protests have also been initiated by non-Irish nationals who are liable for deportation. In April 2006 a group of Afghan nationals staged a hunger strike in a prominent Dublin cathedral. They made up a diverse group including some people who were appealing initial negative asylum determinations and some who had already secured leave to remain in Ireland. A large amount of public interest ensued partly because the group of 41 men included minors. Supporters gathered outside the cathedral and there was sustained media interest. The protest ended peacefully one week after it began.<sup>18</sup>

The removal of people who have integrated and have built up links within their community causes distress and often leads to protests. The Department of Justice, Equality and Law Reform have indicated that prioritised/accelerated asylum applications procedures were introduced in part to avoid the integration of individuals and families who were likely to ultimately get a negative determination.

At the end of July 2004 the Irish Refugee Council issued guidelines on deportation drawing attention to the fact that live legal proceedings should suspend the enforcement of a deportation order, the need for appropriate guardianship of minors and calling for

<sup>15</sup> *The Irish Times*, 14 April 2005 "Agents of State' blamed for breaking up families".

<sup>16</sup> The highest secondary level qualification awarded in Ireland.

<sup>17</sup> *The Irish Times*, March 25 2005, "U turn was right thing to do says McDowell".

<sup>18</sup> *The Irish Times*, May 22 2006, Peaceful end to Afghan protest; May 20 2006, Vigil beside cathedral but not all support Afghans.

independent monitoring of deportations (Irish Refugee Council, July 2004a, b).

#### **4.1.6 SUSTAINABILITY OF DEPORTATION ORDERS, RE-ENTRY BANS**

A person who has been deported from Ireland cannot generally return. Their passport is endorsed on departure and they will find it very difficult to travel beyond their country of return in the future.

There are just two ways for a deported person to be readmitted to Ireland. They may seek a revocation under section 3 of Immigration Act 1999 or seek to be readmitted to the asylum system under section 17 (7) of the Refugee Act 1996 if the situation in their home country had changed significantly. The Minister for Justice, Equality and Law Reform's consent is required to make a further application for refugee status if the first has been refused.

The Department of Justice, Equality and Law Reform (2005) has indicated that forthcoming immigration and residence legislation will include a provision for the Minister to provide for different periods of exclusion of returnees depending on circumstances.

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## **4.2 Removal**

### **4.2.1 OVERVIEW**

A removal decision, in contrast to a deportation order, can (subject to the necessary safeguards) be made by an officer of the Minister for Justice, Equality and Law Reform (usually an immigration officer) and such a decision does not prohibit the future re-entry to the State of the removed person. If a person is denied permission to land in Ireland on the variety of grounds set out at Section 4 of the Immigration Act 2004 he or she is returned the way they came if possible. Carrier liability was introduced in the Immigration Act 2003. Carriers are now required to check that individuals have appropriate documentation before allowing that person to board a vehicle, they are required to check that all persons on board disembark in compliance with directions given by immigration officers, and that all persons are presented to immigration officers. People may be refused leave to land for a wide variety of reasons including insufficient funds to support oneself, lack of proper documentation, no employment permit, suspected intention to abuse UK/Irish Common Travel Area arrangements.

Table 4.6 shows the number of people refused entry at the border to Ireland, and of this number how many subsequently claimed asylum and how many were removed. The vast majority of people refused leave to land are subsequently removed.

**Table 4.6: Refusal of Leave to Land, Subsequent Asylum Claims and Removals**

	Claimed Asylum	Removed	Total	Claimed Asylum	Removed	Total
		No.			%	
2003	1,060	4,841	5,901	18	82	100
2004	438	4,502	4,940	9	91	100
2005	460	4,433	4,893	9	91	100

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

As Table 4.7 shows the majority of refusals to enter occur at Dublin airport.

**Table 4.7: Port of Arrival of Persons Refused Leave to Land**

	2003	2004	2005
Cork airport	697	297	338
Dublin airport	3,880	3,208	2,644
Dublin port	348	405	233
Dun Laoghaire port	268	257	416
Dundalk port	110	372	866
Rosslare port	222	210	167
Shannon airport	150	76	67
Other	226	115	162
Total	5,901	4,940	4,893

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

Certain people who are caught inland in contravention of immigration requirements may be removed, as opposed to deported, under section 5 of the Immigration Act 2003. There are no data available on these removals.

#### 4.2.2 LEGAL BASIS FOR REMOVAL

The removal procedure has a legislative basis in section 5 of the Immigration Act 2003. Secondary legislation is used to set out the practicalities of the scheme. S.I. 56 of 2005 – Immigration Act 2003 (Removal Places of Detention) Regulations 2005 sets out the prescribed places of detention for the purposes of removal from the State. S.I. 446 of 2003, Immigration Act 2003 (Removal Direction) Regulations 2003 prescribe the form to be used by an immigration officer or a member of the Garda Síochána (police) to give a direction in writing to a carrier to remove a person from the State.

Both processes (removal and return) are by statute subject to the prohibitions on refoulement<sup>19</sup> set out at section 5 of the Refugee Act 1996 and section 4 of the Criminal Justice (UN Convention against Torture) Act 2000.

<sup>19</sup> The principle of *non-refoulement* is one fundamental to refugee protection whereby a person will not be returned to a place where their life or liberty may be threatened. Refugee Act 1996, section 5.

### 4.2.3 PROCEDURES AND AGENCIES INVOLVED

If a carrier brings an undocumented migrant to Ireland their transit from Ireland is paid for by the carrier concerned. Certain people who are caught inland in contravention of immigration requirements may be removed, as opposed to deported, under section 5 (1)(c) of the Immigration Act 2003. This removal process may only be invoked within three months of the arrival of a non-national in the State. It applies to non-Irish nationals who evade immigration controls or who enter other than through an approved port. The person may be arrested, identified and documented, and detained for the purposes of the removal and arrangements made straightaway for departure (Department of Justice, Equality and Law Reform, 2005). They are then removed in the same way that a person with a deportation order is removed. Their transit is paid for by the State.

### 4.2.4 ORIGIN, NATIONALITY AND DESTINATIONS OF RETURNEES

Table 4.8 shows the proportions of nationalities of persons refused entry at the border to Ireland and subsequently returned.<sup>20</sup>

**Table 4.8: Nationalities of Persons Refused Entry at the Border to Ireland and Returned, 2004-June 2006**

	2004	2005	Jan-Jun 2006
	%	%	%
Nigeria	10	10	7
Brazil	10	13	20
Romania	7	11	11
Poland	5	0	0
South Africa	5	5	3
China	4	7	5
Lithuania	4	1	0
Pakistan	2	2	2
Somalia	2	3	2
Malaysia	2	2	5
Moldova	2	2	1
Other	48	44	42
Total	100	100	100

## 4.3 Dublin II Transfers

### 4.3.1 OVERVIEW

Dublin II<sup>21</sup> transfers are a separate type of forced return. The vast majority of Dublin II returnees from Ireland are people who have claimed asylum here but who have already made a claim elsewhere in Europe.

<sup>20</sup> Unfortunately there are inconsistencies between the total figures supplied by the Garda National Immigration Bureau for Table 4.6 and Table 4.4. For this reason proportions only are supplied in Table 4.6.

<sup>21</sup> Information taken from the website of the Reception and Integration Agency ([www.ria.gov.ie](http://www.ria.gov.ie)).

### 4.3.2 LEGAL BASIS FOR DUBLIN II TRANSFERS

Return under the Dublin II Regulation (Council Regulation (EC) No. 343/2003) is implemented in Irish domestic law through the Refugee Act 1996 as amended by the Immigration Act 2003.

### 4.3.3 PROCEDURES AND AGENCIES INVOLVED

Since 2003 when an individual makes an asylum application in Europe their fingerprints are taken and almost instantly checked with the fingerprints of asylum applicants across Europe held on the EURODAC system.<sup>22</sup> If an individual has already made an application in an EU Member State, Ireland (or any other Member State), may request the original State of application to “take back” the application under the Dublin II Regulation. In cases where Ireland calls on another Regulation State to “take back” an application for asylum, the requested State is obliged to make the necessary checks and to reply no later than one month from the date of the request. Where Ireland's request is based on data obtained from the EURODAC system, the one-month time limit is reduced to two weeks. If the requested State fails to respond it is considered to have agreed to take back the application for asylum. Of the 1,720 persons who claimed asylum in Ireland between January and mid May 2006 almost 19 per cent involved applications by persons whose fingerprints matched prints stored on the EURODAC system.<sup>23</sup>

Another type of Dublin II return that is less common in Ireland results from a request to another Dublin II Regulation State to “take charge” of an application, i.e., to accept responsibility for it. This may happen for example if another State gives a visa to an individual and the person claims asylum in Ireland. Ireland may then ask the other State to take charge of that application. The request must be made within three months from the date of asylum application. The requested State must give a decision no later than two months from the date on which the request was received. Where the request to take charge of an application for asylum is not made to the other State by Ireland within the period of three months, responsibility lies with Ireland to deal with the person's application.<sup>24</sup> Table 4.9 shows the number of Dublin II Regulation Transfer Orders signed and effected in 2004 and 2005.

<sup>22</sup> Since January 2003, the fingerprints of anyone who applies for asylum in the European Union (except Denmark, for the time being) and in Norway and Iceland, are stored in a database called EURODAC. This check is currently run at the Office of the Refugee Applications Commissioner and the system will be rolled out to ports of entry soon.

<sup>23</sup> Dáil debates. Written Answers – Wednesday, 5 July, 2006.

<sup>24</sup> Ireland may ask for an urgent reply from the requested State in cases where for example a person has been refused leave to enter or remain in Ireland or has been arrested and/or being held in detention. If the requested State fails to reply within one month it has effectively taken responsibility for the application.

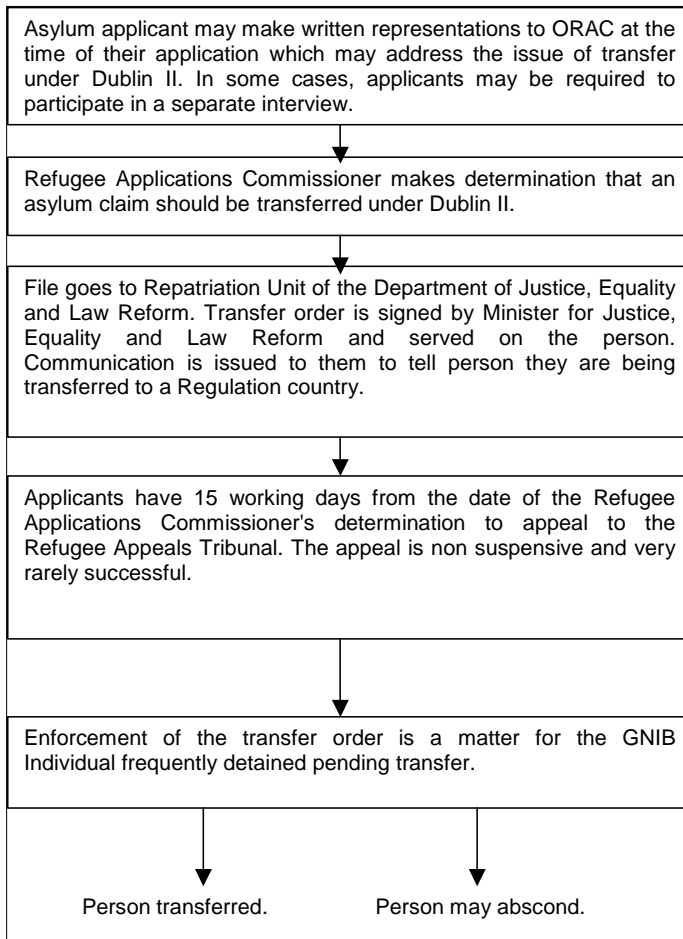
**Table 4.9: Dublin II Regulation Transfer Orders Signed and Effected, 2004 and 2005**

	Dublin II Regulation Transfer Orders signed	Dublin II Regulation Transfers effected
2004	238	65
2005	426	209
<b>Total</b>	<b>664</b>	<b>274</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

An asylum applicant may at the time of making his or her application in Ireland make written representations to the Office of the Refugee Applications Commissioner which may address the issue of transfer under Dublin II. In some cases, applicants may be required to participate in a separate interview relating specifically to the consideration of an application under the Dublin II Regulation. However, this information is usually gathered during the standard initial asylum interview.

**Figure 4.3: Dublin II Transfer Procedure**





If another Dublin II Regulation State is found to be responsible for examining an application and the State agrees to accept responsibility for the transfer of the application, the asylum applicant is informed immediately (in writing) that they will be transferred to that country.<sup>25</sup> Copies of the “Notice of determination to transfer application to another Council Regulation country” and the “transfer order” are supplied at Appendix 3. The formal document contains the name of the Regulation country to which the person will be transferred and the reasons for the Refugee Applications Commissioner’s determination.

The transfer of the asylum claim is arranged by the Department of Justice, Equality and Law Reform and takes place as soon as is possible and at the latest within six months of acceptance by the other Dublin II Regulation State. Where the transfer does not take place within the six-month time limit, responsibility for the asylum claim lies with Ireland.<sup>26</sup> The GNIB are responsible for effecting the actual departure.

People to be transferred under Dublin II may appeal to the Refugee Appeals Tribunal, however, only on one occasion has such an appeal been successful. The Refugee Appeals Tribunal has limited jurisdiction in terms of what it may determine on in a Dublin II appeal. Any appeal submitted does not suspend the transfer of an application or individual to the Regulation state. Individual applicants are advised to inform the Refugee Appeals Tribunal on arrival of their new address for the purpose of corresponding in relation to the appeal. If the Refugee Appeals Tribunal were to overturn the determination of the Refugee Applications Commissioner, the application would be returned by the Refugee Appeals Tribunal to the Refugee Applications Commissioner for examination in Ireland. The individual would receive a written notification and if they had already been transferred to another Dublin II Regulation country, arrangements would be made for return.

#### **4.3.4 ORIGIN, NATIONALITY AND DESTINATIONS OF RETURNEES**

Table 4.10 shows the nationalities of those in respect of whom Dublin II Regulation Transfer Orders were signed in 2005. Over one-third of these people are nationals of the two African States Somalia and Sudan. There are no direct flights from Africa to

<sup>25</sup> Ireland may also call on and agree with another Regulation State to take charge of spouses and or minor dependent children, in addition to the application in question, even if the spouse or minor dependent children did not make an asylum application in the Regulation State responsible for the asylum application in question.

<sup>26</sup> This time limit can be extended up to a maximum of one year if the transfer cannot be carried out due to the person’s imprisonment or up to a maximum of 18 months if the person absconds.

Ireland. Many immigrants travel to Ireland from the UK. As Table 4.11 shows almost 70 per cent of Dublin II returnees travel back to the UK.

**Table 4.10: Nationalities of Those in Respect of Whom Dublin II Regulation Transfer Orders Were Signed in 2005**

	Nationalities of Those in Respect of Whom Dublin II Regulation Transfer Order Where Signed	
	Number	%
Somalia	102	23.9
Sudan	44	10.3
Iran	39	9.2
Nigeria	25	5.9
Afghanistan	22	5.2
DR Congo	20	4.7
Angola	19	4.5
Eritrea	15	3.5
Iraq	15	3.5
Romania	11	2.6
Algeria	8	1.9
Georgia	8	1.9
Liberia	7	1.6
Albania	5	1.2
China	5	1.2
Ghana	5	1.2
Lebanon	5	1.2
Palestine	5	1.2
Russia	5	1.2
Armenia	4	0.9
Cameroon	4	0.9
Others	53	12.4
<b>Total</b>	<b>426</b>	<b>100.0</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

**Table 4.11: Numbers Transferred to Each Member State under Dublin II Regulation in 2005**

<b>Numbers Transferred to Each Member State under Dublin II Regulation in 2005</b>		
	<b>Number</b>	<b>%</b>
United Kingdom	144	68.9
Italy	12	5.7
Belgium	9	4.3
Malta	8	3.8
Netherlands	8	3.8
Sweden	6	2.9
Austria	5	2.4
France	5	2.4
Germany	5	2.4
Luxembourg	3	1.4
Norway	2	1.0
Finland	1	0.5
Spain	1	0.5
<b>Total</b>	<b>209</b>	<b>100.0</b>

*Source:* Department of Justice, Equality and Law Reform, June 2006.

#### 4.4 Detention **4.4.1 CURRENT PRACTICE WITH RESPECT TO THE DETENTION OF ALIENS**

It is not common practice for asylum applicants to be routinely detained in Ireland. However, provision is made under the Refugee Act 1996 section 9(8) for the detention of asylum applicants under the following circumstances:

Where an immigration officer or a member of the Garda Síochána, with reasonable cause, suspects that an applicant –

- (a) poses a threat to national security or public order in the State,
- (b) has committed a serious non-political crime outside the State,
- (c) has not made reasonable efforts to establish his or her true identity,
- (d) intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to section 22,
- (e) intends to leave the State and enter another state without lawful authority, or
- (f) without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

Second, persons aged over 18 years who are refused permission to land or who are caught within the borders within 3 months of their arrival may be arrested and detained pending removal under section 5 of the Immigration Act 2003.

Third, persons in respect of whom a deportation order has been issued may be detained for the purposes of executing that order (section 3(1)(a) Immigration Act 1999 as amended). In addition section 5(1) of the Immigration Act 1999 as amended provides that:

Where an immigration officer or a member of the Garda Síochána, with reasonable cause suspects that a person against whom a deportation order is in force –

- (g) has failed to comply with any provision of the order or with a requirement in a notice under section 3(3)(b)(ii),
- (h) intends to leave the State and enter another state without lawful authority,
- (i) has destroyed his or her identity documents or is in possession of forged identity documents, or
- (j) intends to avoid removal from the State,

he or she may arrest him or her without warrant and detain him or her in a prescribed place.

The GNIB observed that the existing immigration system is based on compliance on the part of the non-Irish national and that the power of arrest and detention as it is related to deportation requires non-compliance of some kind. A concluded intention to deport is also required; as soon as the intention to deport ceases (for example if legal proceedings are underway) the individual cannot generally be detained.<sup>27</sup>

Finally, persons who receive a Dublin II Regulation Transfer Order are also generally detained pending removal. The legal basis for detention pending Dublin II transfer is section 7(5) of Statutory Instrument (S.I.) 423 of 2003.<sup>28</sup>

#### 4.4.2 CONDITIONS OF DETENTION

Detention in relation to immigration is not well tracked in Ireland and available data are limited. A research study (Kelly, 2005) commissioned by NGOs the Irish Refugee Council, the Immigrant Council of Ireland and the Irish Penal Reform Trust and published in 2005 attempted to unravel this complex situation.

<sup>27</sup> Legal authority for this is *Ojo v Governor of Dóchas Centre and Ors.*, High Court, Finlay-Geoghegan J., 8 May 2003.

<sup>28</sup> This S.I. implements Council Regulation 343 of 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

There are no specialised detention facilities for people waiting for forced removal in Ireland. Under the Immigration Act 1999 (Deportation) Regulations 2005 people may be detained at any Garda Síochána station or one of the following prisons with prisoners charged with or (in the case of the Dóchas Centre, Mountjoy) convicted of criminal offences:

- Castlerea Prison.
- Cloverhill Prison.
- Cork Prison.
- Limerick Prison.
- The Midlands Prison.
- Mountjoy Prison, Dublin.
- Saint Patrick’s Institution, Dublin.
- The Training Unit, Glengarriff Parade, Dublin.
- Wheatfield Prison, Dublin.

Kelly (2005) found that people detained pending deportation were rarely kept in Garda stations for more than a short period of time. In most cases, they were quickly transferred to one of the prisons listed above.

Kelly found that of the 946 persons detained for immigration-related reasons,<sup>29</sup> 200 were women, and the remaining 746 were men. The vast majority of people detained for immigration related reasons are held in either the Cloverhill or Mountjoy Prisons in Dublin. Female inmates are held in the Dóchas Centre at Mountjoy Prison. The Dóchas Centre opened in December 1999 and has a bed capacity of 81 places. It operates as a closed medium-security prison, accommodating female inmates aged 17 years and over. Inmate accommodation is in six self-contained “houses”. In general, the conditions at the Dóchas Centre were found to be better than those at Cloverhill (more open visits and more time unlocked) however, overcrowding was found to be a problem which affects immigration related detainees even more than other detainees.

#### **4.4.3 ALTERNATIVE MEASURES TO DETENTION**

As mentioned above relatively few asylum applicants are detained pending deportation in Ireland; and most are not subject to any measures to prevent absconding. In January 2005, however, the Minister for Justice, Equality and Law Reform introduced new measures designed to speed up the asylum and deportation process.

<sup>29</sup> These include detained asylum applicants, persons refused leave to land, person detained pending deportation and persons held in prison on remand (i.e. awaiting trial for immigration-related offences).

Now applicants that are deemed “prioritised”<sup>30</sup> may be housed in dedicated accommodation centres, they have statutory obligations placed on them to reside and report daily to immigration officers. Failure to comply with such obligations is an arrestable offence. The measures were introduced so that unsuccessful asylum applicants would be more readily available to immigration authorities/Garda National Immigration Bureau for removal. (See Department of Justice, Equality and Law Reform, January 2005).

The Department of Justice, Equality and Law Reform report that the measures have been successful in terms of keeping track of the individual up to the point of the 15-day letter (see Section 4.1.3) but do not prevent evasion which is common after that point.

#### 4.4.4 MAXIMUM PERIOD OF DETENTION AND RESPONSIBLE AUTHORITIES

Kelly found a significant fall in the total number of people detained in prison under immigration laws, from 1,852 in 2003 to 946 in 2004; a reduction of 48 per cent. However as Table 4.12 shows Kelly found that those detained in 2004 were held for longer periods than in previous years.

**Table 4.12: Persons Held Under the Immigration Acts in 2003, 2004**

Period of Detention (Days)	2003	2004
	Number of Persons Detained	
0-3	1,140	199
4-7	324	110
8-14	6	9
15-30	12	7
31-50	3	2
51+	367	619
Total	1,852	946

*Source:* Kelly (2005).

#### *Deportation*

Detention of an intended deportee under section 5 of the Immigration Act 1999 may not exceed a period of 8 weeks in aggregate. However, certain periods of time spent in detention, including any period spent on remand awaiting a criminal trial or serving a sentence, need not be counted as part of this 8 week maximum.

Kelly observes that, a deportee who obstructs, hinders or fails to facilitate an attempt to deport him or her is, by virtue of section 8 of the Immigration Act 1999, guilty of a criminal offence punishable on

<sup>30</sup> Under amendments to the 1996 Refugee Act contained in the 2003 Immigration Act the Minister for Justice, Equality and Law Reform was empowered to issue prioritisation directives to the ORAC and the RAT for certain categories of applicants including apparently unfounded claims, apparently well-founded claims and cases of family reunification. A prioritisation directive requires ORAC and RAT to deal with the specified category of cases as soon as possible.

conviction by penalties including imprisonment for a term not exceeding 12 months. It is also noted that if a detained person brings court proceedings to challenge the validity of the deportation order, the period from when a legal challenge is brought until the final appeal is also excluded from this 8 week aggregate detention period.

### *Removal*

People refused permission to land may be detained under warrant of an immigration officer or member of the Garda Síochána in an authorised place of detention pending his or her removal from the State. The Immigration Act 2003 section 5(3)(a) states that they may be held “...only until such time (being as soon as practicable) as he or she is removed from the State [...] but, in any event, may not be detained for a period exceeding 8 weeks in aggregate”.

### *Dublin II Transfers*

Regarding Dublin II transferees the GNIB have an automatic power of arrest and detention once the transfer order is issued. If transport arrangements are in place when a person reports to the GNIB on receipt of notification of a transfer order that person is often detained for around 24 hours. The GNIB argue that this is a practical precaution given that the vast majority of Dublin II returnees are people who have shown up on EURODAC as having a history of multiple asylum claims and of absconding. (While other groups of people may be eligible for transfer, for example, those who have transited through another State, these are generally not detected in Ireland.) If transport arrangements are not in place the person may be asked to report back.

# 5. COSTS AND EVALUATIONS

## 5.1 Costs of Return Actions

Table 5.1 below sets out the costs to the State associated with Dublin II transfers, deportations and voluntary returns in 2005. These data are limited to transport costs. No information is available on salaries (for example of Garda or IOM personnel) or administrative costs.<sup>31</sup> However, the data show that in terms of transport costs alone, voluntary return is a much less expensive option for the State than deportation. It is reasonable to assume that forced return would become more expensive relative to voluntary return if staff and administrative costs were included.

Garda overtime and subsistence payments for example, paid for from the Garda budget, make up a significant part of the costs associated with forced return. Developing cooperation with carriers and airports has resulted in increased use of commercial as opposed to chartered flights and the decreasing need for Garda escorts – both of which should bring the overall costs of forced return down. As discussed at Section 4.1.3 only very disruptive deportees are escorted.

**Table 5.1: State Transport Costs Associated with Dublin II Transfers, Deportations and Voluntary Returns, 2005**

	<b>No. Persons Transferred/ Returned</b>	<b>Total Cost €</b>	<b>Cost Per Person €</b>
Dublin II Transfer	209	55,343	265
Deportation*	396	1,670,402	4,218
IOM Assisted Non-EU Voluntary Return**	181	109,686	606
RIA Assisted EU Voluntary Returns	318	60,180	189

*Source:* Department of Justice, Equality and Law Reform, June 2006. Reception and Integration Agency.

\*Chartered and commercial flight costs.

\*\*General IOM VARP only.

<sup>31</sup>The IOM estimate that with staff costs and other overheads included the Department of Justice, Equality and Law Reform's estimation for a voluntary return is approximately €2,500 compared to approximately €6,000 to deport a person.



In 2004 the average cost per person of a transfer under Dublin II was much higher at €522 than in 2005. The reduction has been achieved by increasing the use of ferry transfers rather than flights to the UK.

The average deportation cost per person has increased in the same period from €2,952 to €4,218. One reason for the increase, suggested by the Department of Justice, Equality and Law Reform, is the fact that four of six chartered flights in 2005 were to Nigeria and were consequently expensive. The GNIB are occasionally forced to incur huge expense to return “disruptive” individuals. For example, in January 2004 an aeroplane had to be chartered at a cost of €43,300 to transport one person to Spain under the Dublin II Regulation. Similarly, in February 2004 a flight had to be chartered to take one person to Gambia at a cost of €50,200.<sup>32</sup> A detailed table of the destinations of chartered deportation flights and the associated costs is supplied at Appendix 2, Table A2.1. Between January 2002 and May 2006, 23 aircraft were chartered for deportations at a total cost of €3,150,073 transporting a total of 723 people. At least two chartered flights in the period were joint deportation operations - with the Netherlands in November 2003 to Romania and Bulgaria, and with Britain in the same month to Romania and Moldova.<sup>33</sup> Of the 23 chartered flights 9 went to Nigeria and a further 9 went to Romania or Romania and Moldova.

Compared to deportation removal is a relatively inexpensive procedure. People who are refused leave to land are returned by the carrier and people caught inland are arrested by a Garda officer and returned without any involvement of the Irish Naturalisation and Immigration Service and usually without court proceedings.

The recently published Scheme for a new Immigration, Residence and Protection Bill indicates that the future legislation may include a provision for making foreign nationals who have been removed under the Scheme liable for the costs incurred by the State in removing them. These costs will be a debt of the foreign nationals concerned which must be cleared before any future application for lawful migration to the State will be considered (see Department of Justice, Equality and Law Reform, 2006a,b).

Of the currently live or soon to be live IOM projects the Irish State contributes only to the general VARP. The Department of Justice, Equality and Law Reform estimates that it cost approximately €606 per non-EU person who was voluntarily returned in 2005. Now that reintegration assistance is available (see Section 3.9) to all persons returned on the general VARP this cost per head may increase. The main cost incurred under the RIA assisted voluntary returns for EU nationals is accommodation for the returnee prior to travel. In 2005 accommodation costs amounted

<sup>32</sup> Discussions with the Department of Justice, Equality and Law Reform.

<sup>33</sup> Minister McDowell. Dáil Eireann – Unrevised Debates, 17 May 2005.

to almost €160,000 while transport costs were just over €60,000. Checks around the allocation of accommodation have been tightened due to the problem of people availing of the accommodation but failing to travel.

### 5.1.1 JUDICIAL REVIEW

Costs to the State associated with deportation increase considerably if legal proceedings are undertaken and won by the applicant, or if an individual is detained. Costs incurred by the Department of Justice, Equality and Law Reform Legal Judicial Review Unit arise primarily from judicial review proceedings taken against decisions made in repatriation matters. The Minister for Justice, Equality and Law Reform commenced making deportation orders in November 1999 and between then and June 2006 over 1,000 deportation orders have been challenged in the High Court by way of judicial review.<sup>34</sup> Where the courts rule in favour of the applicant and find that a deportation order is based upon an unsound decision, or if the Department chooses to settle matters in favour of the applicant, the applicant's costs are usually paid from the Minister's Vote. Table 5.2 shows a significant increase in legal costs paid by the Department's Repatriation Judicial Review Unit since 2002.

**Table 5.2: Legal Costs Paid by the Department's Repatriation Judicial Review Unit 2002-2005**

	Costs Paid €m
2002	0.10
2003	0.42
2004	0.94
2005	2.60

*Source:* Department of Justice, Equality and Law Reform, 2006.

These figures exclude the Minister's own costs which are paid from the Vote of the Chief State Solicitor's Office. The data include legal costs associated with judicial reviews of repatriation matters along with various other procedural hearings, however, the vast majority of legal costs shown relate to judicial reviews of repatriation matters. Of the total €2.6 million incurred during 2005 judicial review hearings accounted for €2.3 million.<sup>35</sup>

In November 2004 the Master of the High Court was critical of the fact that so many applicants for asylum were on the High Court judicial review list. He argued that the Refugee Appeals Tribunal was not giving sufficient consideration to the credibility of asylum applicants and that such applicants were then challenging negative decisions in the courts.<sup>36</sup> Forthcoming legislation may replace the

<sup>34</sup> Unpublished contribution from the Repatriation Unit, Department of Justice, Equality and Law Reform to the Annual Report 2005.

<sup>35</sup> Unpublished contribution from the Repatriation Unit, Department of Justice, Equality and Law Reform to the Annual Report 2005.

<sup>36</sup> *The Irish Times*, November 20, 2004, "Lawyer criticises assessment of refugees".

Refugee Appeals Tribunal with a Protection Review Tribunal (see Department of Justice, Equality and Law Reform, 2006a,b).

## 5.2 Assessments/ Evaluations of the Return Action(s)

The first pilot voluntary return project from Ireland was evaluated in 2002 and there have been no evaluations undertaken of the assisted voluntary return programmes since. The Comptroller and Auditor General's<sup>37</sup> Annual Report for 2004 formally evaluated the deportation procedure giving particular attention to the issue of enforcement (Comptroller and Auditor General, 2005). Table 5.3 shows the status of deportation orders in 2004 and 2005.

**Table 5.3: Status of Deportation Orders 2004 and January to 30 June 2005**

	2004	Jan-Jun 2005
Deportation Orders Signed	2,723	967
Deported, left State before enforcement or transferred to another jurisdiction	384	92
Evaded*	1,449	522
Through revocation or otherwise, applicant permitted to remain	384	33
Orders remain to be enforced	506	320
<b>Total</b>	<b>2,723</b>	<b>967</b>

*Source:* Comptroller and Auditor General, 2005.

\*Deportation orders are deemed evaded when the subject of the order fails to report to the Bureau as requested in the notification letter sent to them. Cases deemed evaded are not actively pursued. In practice, it is believed that most of those 'evading' have already left the State of their own accord.

The Comptroller and Auditor General investigated a specific deportation operation in April 2005. The Department of Justice, Equality and Law Reform targeted 456 failed asylum seekers for deportation to an African country. An analysis of the outcome of the 456 cases written to is given in Table 5.4.

<sup>37</sup> The task of the Comptroller and Auditor General is to provide the public with assurance that public money is properly administered and spent to good effect. The Office audits and reports on the accounts of public bodies.

**Table 5.4: Analysis of the Deportation Operation**

	Number	%
Failed to show	228	50.0
Made new Applications	90	19.7
No Deportation Order Received in the Bureau	32	7.0
Injunctions taken out	16	3.5
Undertakings Made by Asylum Seeker	14	3.1
Unable to Travel for Medical Reasons	10	2.2
Deportation Orders Revoked	8	1.8
Held	6	1.3
Irish Born Child Applications	5	1.1
Other	22	4.8
Number finally Deported	25	5.5
<b>Total</b>	<b>456</b>	<b>100.0</b>

*Source:* Comptroller and Auditor General, 2005.

In relation to the 228 people who failed to show, some were later located in the United Kingdom and the African country concerned. Others have been subsequently deported or will be deported in the future. It was reported that in many cases there was no trace of the individuals after the initial claim for asylum at a port of entry. Others had left their accommodation after receipt of the deportation arrangements letter. The Comptroller and Auditor General observed that the absence of exit checks at departure points from Ireland and the ease of movement over the land border with Northern Ireland allows for substantial abuse of the common travel area by persons subject to deportation orders.

All parties consulted agreed that assisted voluntary return is by far the preferred option, both to the State and the returning migrant. Voluntary return is clearly a much less expensive procedure and therefore saves the State money. The Department of Justice, Equality and Law Reform and IOM also pointed out that voluntary return is a more dignified way for the migrant to return to their country of origin and they may return to Ireland in the future if they wish.

# 6. EUROPEAN DEVELOPMENTS

## 6.1 Influence of European Legislation

In general the deportation and removal systems in Ireland are operated domestically, by the GNIB and the Department of Justice, Equality and Law Reform. European legislation appears to have had little direct effect so far as the GNIB favour direct international linkages developed with airports, carriers, embassies and countries of destination.

The Council of the EU has authorised the European Commission to negotiate Community Readmission Agreements with 11 countries. Figure 6.1 illustrates the current status of these Community Readmission Agreements. In relation to Irish return procedures the Readmission Agreements concluded with Hong Kong and Macau are not generally used by the GNIB due to a low numbers of immigrants to Ireland from those areas. Possible agreements under negotiation with Ukraine, China and Turkey are of more relevance to Ireland and the Department of Justice, Equality and Law Reform are watching those developments closely.

**Figure 6.1: Current Status of European Community Readmission Agreements**

Negotiations not yet launched	Ongoing Negotiation	Agreements in force
Algeria China	Ukraine Morocco Pakistan Turkey	Russia Sri Lanka Hong Kong Macao Albania

The Fourth Protocol to the Amsterdam Treaty means that Ireland and the UK have three months from the date a proposal or initiative is presented to the Council of Ministers by the European Commission to notify the Council of its wish to take part. Ireland may still accept a measure at any stage after it has been adopted. Ireland made a declaration at the time the Amsterdam Treaty was signed of its intention to opt in to measures under Title IV of the Treaty as long as they are compatible with the Common Travel Area with Britain.

Table 6.1 sets out the position Ireland has taken on the various expulsion-related EU measures. Ireland has not yet opted into the “German Air Directive” on assistance and transit in air but the GNIB is hopeful that this will happen soon. This directive would allow the airport authorities to meet escorted and unescorted deportees and effect their transit.

## **6.2 EFFECTS OF SCHENGEN AND DUBLIN ON NATIONAL POLICIES**

Ireland and the UK are the only EU Member States, which are not full participants in the Schengen system.<sup>38</sup> Iceland and Norway also participate and Switzerland is likely to join in 2007. The impact of Schengen is therefore less significant to Ireland. The Common Travel Area shared with the UK has a much greater impact.

The introduction of carrier regulations in the Immigration Act 2003 was, however, related to Schengen. Critics of the measures argued that carrier companies were being asked to act as immigration officials. It was also suggested that genuine asylum seekers could be prevented from reaching the State and that without some means of permitting their passage asylum seekers/refugees could be driven into the hands of smugglers and traffickers (UNHCR, 2002). The Government defended the measures on the ground that they were necessary for Ireland to meet its obligations under the Schengen Agreement.

As Table 4.9 shows there were a significant number of transfers made by Ireland in 2005 under Dublin II. The Garda National Immigration Bureau has indicated that most of the transfers are now undertaken as a result of data found on the EURODAC system.

<sup>38</sup>The Schengen system involves the abolition of border controls between participating States. All internal border checks have been abolished and transferred to the external borders of the participating States. Schengen also involves a series of measures designed to strengthen external borders and address participants' security concerns.

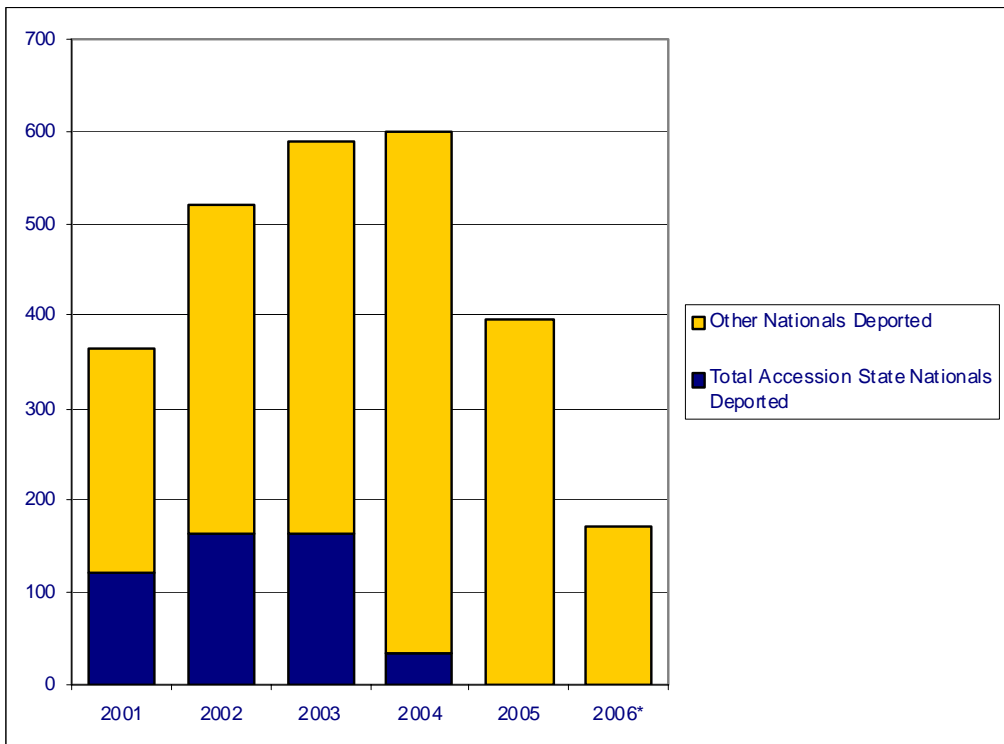
**Table 6.1: EU Legislative Developments and Related Irish Developments Related to Expulsion**

<b>Migration (Expulsion) Proposals</b>				
	<i>Title</i>	<i>Adopted</i>	<i>Opt in by</i>	<i>Ireland opted in?</i>
	Council Directive on the mutual recognition of decision concerning expulsion of third country nationals.	28 May 2001	28 May 2001	Ireland opted in as part of its decision (28 Feb 2002) to join parts of the Schengen Acquis. Measure not yet transposed into Irish law.
	Proposal from the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purposes of removal by air (German Air Directive)*.	25 Nov 2003	9 Jan 2003	Ireland intends to opt in under Art.4 of Protocol 4 to the Amsterdam Treaty.
Council Decision 2004/80/EC	Council Decision concerning the signing of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation & Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.	23 Sept 2002	17 Dec 2003	Ireland opted in (28 Feb 2002) as part of Schengen. (does not require domestic legislation).
Council Decision 2004/191/EC	Council Decision setting out the criteria and practical arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals*.	23 Feb 2004	23 Feb 2003	Ireland intends to opt in under Art.4.
Council Decision 2004/424/EC	Council Decision concerning the conclusion of the agreement between the European Community and the Government of the Macao Special Administrative region of the People's Republic of China on the readmission of persons residing without authorisation*.	13 Oct 2003	21 April 2004	Ireland intends to opt-in under Art.4.
	Proposal for a Council Decision concerning the signing of the agreement between the European Community and the Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation and Council Decision concerning the conclusion of the agreement between the European Community and the Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation*.	25 Nov 2003		Ireland intends to opt-in under Art.4.
Council Decision 2004/573/EC	Council Decision on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders	29 April 2004	29 April 2004	Ireland opted in under Art.3 of Protocol 4 to the Amsterdam Treaty. Measure does not require domestic legislation.
	Proposal for a Council Decision establishing a secure web-based Information and Coordination Network for Members States' Migration Management Services (ICONet)	Delayed because of technical problems with text. Expected to be adopted soon.		Ireland will opt in after adoption under Art.4.
	Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation; and Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation*.	Adoption by Council awaited		Ireland intends to opt-in under Art.4.

### 6.3 EFFECT OF EU ENLARGEMENT ON NATIONAL POLICIES

The main impact of accession has been to reduce asylum caseload and the number of deportations and removals to the ten new Member States. As Figure 6.2 shows deportations to the Accession States previously accounted for a significant portion of total deportations annually.

**Figure 6.2: Deportations Effectuated of Accession State Nationals and all Persons 2001-2006**



*Source:* Department of Justice, Equality and Law Reform, June 2006.

The Accession States referred to comprise the Czech Republic; Slovakia; Hungary; Latvia; Lithuania; Poland; and Estonia.

\*Data for 2006 is for the period January to June only.

The development of the special assisted voluntary return programme run by the Reception and Integration Agency for the repatriation of EU nationals was a direct result of accession and the introduction of the Habitual Residency Condition required for social assistance payments.



# 7. BILATERAL AND MULTILATERAL CO- OPERATION

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## 7.1 Return-Related Bilateral Treaties, Memoranda of Understanding and Agreements with Countries of Origin

Ireland has concluded Readmission Agreements with Poland, Romania, and Bulgaria. An agreement with Nigeria was signed in 2001 and subsequently ratified by Ireland. The ratification process is ongoing on the Nigerian side. Nevertheless, the authorities there are "...operating in the spirit of the agreement".<sup>39</sup> The agreements are designed to provide a structured repatriation procedure for the return of the nationals of these countries who are residing illegally in Ireland. In the case of Nigeria the diplomatic or consular officers of Nigeria interview returnees within five days of being requested to do so in order to establish identities and prove nationality. If Nigerian nationality is confirmed a Nigerian travel document is issued within four days so that the forced removal can take place. The agreements with Bulgaria, Romania and Poland list mutually agreed documents as proof of citizenship. (See Quinn and Hughes, 2005 and International Organization for Migration, 2004b). The Polish Readmission Agreement is no longer relevant since accession in May 2004.

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## 7.2 Co-operation with Return Countries

The GNIB reported that no particular problems exist with return countries and co-operation is generally good both in terms of the acquisition of documentation and the recognition of returnees.

IOM Dublin works mainly with the IOM offices in the country of return; there are IOM offices in 120 countries worldwide. In countries where IOM does not have a presence reintegration assistance is administered with the help of other agencies. (In Brazil two governmental vocational training organisations work with IOM Buenos Aires towards facilitating the entry of returnees to training.) Regarding the IOM unaccompanied minors programme, good links have been established between IOM and local organisations who can carry out social work assessments of a child's family's situation and inform IOM's work in Dublin.

<sup>39</sup> Minister Michael McDowell, Written Answers, Dáil Éireann 10 February 2005.

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**7.3**  
**Co-operation**  
**with Transit**  
**Countries**

**T**here is particularly close co-operation between the Irish and UK immigration authorities. For example, the UK charter a flight to Albania every week that the GNIB may use for Albanian and Kosovan returns.

## 8. CONCLUSIONS

Ireland has seen exceptional economic growth over the past decade. The economic boom has helped to transform the country from one characterised by emigration to one with large and sustained inflows of immigrants. Ireland's return system was put in the form of a primary statute for the first time with the enactment of the Immigration Act 1999.<sup>40</sup> Prior to that date the State relied on legislation dating from 1935 to return non-Irish nationals. By international standards the Irish return system is, therefore, relatively young and it is still very much in a process of development.

The existing forced returns system comprises deportations, removals and Dublin II transfers. The data on deportations supplied in this report shows that the number of deportation orders signed and effected both peaked in 2004 before falling in 2005. It is likely that reduced flows of asylum applicants, the change in the Irish citizenship law and the accession of ten states to the EU in May 2004 all contributed to the decline in 2005. The high proportion of Nigerian and Romanian nationals in the deportation figures is striking. During 2005 over half the deportation orders signed were in respect of Nigerian nationals; Nigerian and Romanian nationals together accounted for almost three-quarters of orders signed. Two-thirds of deportation orders effected in the same period were to these two countries. The number of Dublin II transfer orders effected between 2004 and 2005 more than tripled due in part to the establishment of the EURODAC system and the Dublin II Regulation<sup>41</sup> and the increased use of ferry transfers to the UK. The number of people refused leave to land remained relatively stable between 2004 and 2005, having fallen between 2003 and 2004. The majority of those refused leave to land were subsequently returned (91 per cent).

The number of voluntary returns assisted by IOM has increased since the schemes were introduced in 2001. However, assisted voluntary returns still represent a very small fraction of non-EU

<sup>40</sup> The legislation was in response to the case of *Laurentiu v Minister for Justice* in which the Supreme Court found that the manner in which the 1935 Aliens Act conferred on the Minister the power to make secondary legislation (Aliens Orders) in relation to deportation was inconsistent with the Constitution.

<sup>41</sup> The Dublin II Regulation replaced the Dublin Convention and is considered to be more workable due to the reduction in the number of "orbit cases", in which no State would consider itself responsible for the determination of an asylum claim.

returns effected from Ireland (a total of 335 non-EU nationals availed of assisted voluntary return in 2005). The analysis of relative costs provided at Chapter 5 shows clearly that assisted voluntary return is financially more advantageous to the State than deportation. Aside from the transport costs involved, forced return is inherently problematic. This was made evident in the discussion above on the non-enforcement of deportation orders, evasion and the cost implications of frequent legal challenges. From the immigrants' perspective, deportation has serious consequences for their future mobility. Those who successfully evade deportation orders may remain in Ireland or elsewhere in an illegal and therefore very vulnerable situation.

Assisted voluntary return plays an essential part in a modern return system and perhaps the Irish schemes have not yet been developed sufficiently. To be effective, assisted return schemes need to be adequately publicised and incentivised. The recent extension of reintegration grants to all returnees on IOM's general assisted voluntary return programme is a step in the right direction, however, the size of the grant is still relatively small: €600 per person or €1,200 per family. (Under the UK voluntary assisted return and reintegration programme between £1,000 and £3,000 stg. (about €1,480 to €4,440) is available per family member.)<sup>42</sup>

The experience of other EU member states may be instructive in developing Irish voluntary assisted return schemes. In the UK for example an "Explore and Prepare Programme", run by the Home Office, allows individual Afghans to return to their country for a short period to explore the option of returning permanently with their family. Assisted voluntary return schemes need not be limited to groups without any legal right to reside in Ireland. In Sweden, for example, people with refugee status may choose to return to their country of origin in the knowledge that they can return to Sweden easily; they are not removed from the Swedish social welfare system until two years after their return to the country of origin. Circular migration is actively encouraged by Swedish policy makers as beneficial both to Sweden and to the country of origin; the assisted voluntary return scheme is an essential part of that strategy. Regarding awareness raising initiatives, the Belgian Department of the Interior recently produced a DVD to help publicise their voluntary return programmes.<sup>43</sup> Further research into the choices immigrants make regarding return could also illuminate future policy development. The Department of Justice, Equality and Law Reform discussion document "Outline Policy Proposals for an Immigration and Residence Bill" proposed that the bill should provide formally

<sup>42</sup> Presentation by UK National Contact Point to European Migration Network working group, 17 July 2006.

<sup>43</sup> Various presentations by National Contact Point to European Migration Network working group, 17 July 2006. See relevant country studies for more information.

for voluntary assisted return schemes. The proposal was supported by NGOs working in the field (see for example Immigrant Council of Ireland, 2005). However, it is disappointing that there was no mention of such a provision in the subsequent Scheme for an Immigration, Residence and Protection Bill.

Apart from developing an assisted voluntary return system, it is also important that existing structures direct the majority of immigrants away from, not towards, receiving a deportation order. The majority of deportees from Ireland were at one time in the asylum application system and may have applied to the Minister for leave to remain on alternative grounds. This is a high-risk strategy as few are granted such permission and most are therefore likely to receive a deportation order. It could be argued, therefore, that the effect of this system is to channel unsuccessful asylum applicants towards deportation.

The recently published Scheme for Immigration, Residence and Protection legislation indicates that the present asylum and examinations process is due to be significantly restructured with a view to addressing such issues. The European Qualification Directive, which provides for a system of subsidiary protection, came into force in October 2006. Temporary measures were recently introduced<sup>44</sup> to give effect to the Directive pending the introduction of a system of subsidiary protection in the forthcoming Immigration, Residence and Protection legislation. It is intended by the Department of Justice, Equality and Law Reform that the reforms will result in each “leave to remain” case being considered on the grounds for subsidiary protection status as laid out in the Directive. There will, therefore, be a “single procedure” for assessment of refugee status, subsidiary protection and leave to remain. In response to a discussion document on the new legislation the Immigrant Council of Ireland (2005) cautioned however that efforts to improve efficiency should not affect the quality of the decision making process and that any reformulated return system must incorporate safeguards such as access to legal services and transparency of procedures.

The current report was compiled at a time of significant change as policymakers were beginning to put in place comprehensive legislation to deal with the relatively new inflows and the inevitable outflows. This is a unique opportunity to formulate a return system, incorporating forced and assisted voluntary elements, which achieves an appropriate balance between the interests of the migrant and those of the wider Irish society.

<sup>44</sup> The European Communities (Eligibility for Protection) Regulations 2006.

# APPENDIX 1

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# APPENDIX 2

## ADDITIONAL STATISTICS

**Table A2.1: Deportation on Chartered Flights, Destinations and Costs**

Date	Destination	No. of Non-Nationals Deported			Cost €	Cost per Person
		Adults	Minors	Total		
09-Jan-02	Algeria	2	Nil	2	23,490	11,745
28-Mar-02	Nigeria	6	Nil	6	190,000	31,667
14-Nov-02	Nigeria	N/A*	N/A*	12	151,500	12,625
18-Nov-03	Romania and Moldova	N/A*	N/A*	24	92,490	3,854
28-Nov-03	Romania and Bulgaria	N/A*	N/A*	20	27,800	1,390
12-Feb-04	Romania	N/A*	N/A*	62	93,609	1,510
20-Feb-04	Gambia	1	Nil	1	50,200	50,200
31-Mar-04	Romania	49	4	53	71,590	1,351
06-Apr-04	Nigeria	26	3	29	146,500	5,052
26-Aug-04	Nigeria	24	1	25	248,610	9,944
17-Nov-04	Romania and Moldova	56	10	66	82,700	1,253
15-Dec-04	Romania and Moldova	39	2	41	82,700	2,017
15-Mar-05	Nigeria	26	9	35	265,000	7,571
01-Jun-05	Romania	50	8	58	84,720	1,461
05-Jul-05	Nigeria	30	16	46	248,300	5,398
13-Sep-05	Romania and Moldova	46	5	51	87,270	1,711
18-Oct-05	Nigeria	23	15	38	243,300	6,403
08-Dec-05	Nigeria	17	2	19	238,850	12,571
17-Jan-06	Romania and Moldova	42	2	44	91,255	2,074
**27-Jan-06	Spain (Dublin II transfer)	1	Nil	1	43,300	43,300
21-Feb-06	China	13	Nil	13	255,539	19,657
04-Apr-06	Nigeria	23	6	29	242,050	8,347
15-May-06	Romania	44	4	48	89,300	1,860
<b>Total</b>				<b>723</b>	<b>3,150,073</b>	<b>4,357</b>

\* A breakdown of adults and minors is not available.

\*\* This flight was not a deportation but a transfer of a disruptive individual under Dublin II Regulation.

Source: Minister McDowell. Dáil Eireann – Written Answers, 27 June 2006.



**Table A2.2: Deportation on Scheduled/Commercial Flights, Costs**

	<b>Cost of Deportation by Scheduled/Commercial Flights*</b> €	<b>Cost of Dublin II Regulation Transfers</b> €
2000	431,545	N/A
2001	1,061,287	N/A
2002	1,633,386	N/A
2003	1,446,066	N/A
2004	992,690	33,923
2005	502,962	55,325

\*Includes Dublin Convention transfers (1999-September 2003) before Dublin II Regulation came into effect.

*Source:* Minister McDowell. Dáil Éireann – Written Answers, 27 June 2006.

# APPENDIX 3

## EXCERPT FROM S.I. NO. 423 OF 2003. REFUGEE ACT 1996 (SECTION 22) ORDER 2003

Notice of determination to transfer application to another Council Regulation country

To: (name and last known address of applicant) The Refugee Applications Commissioner has determined that [Council Regulation country] is responsible, pursuant to the provisions of Article [appropriate Article(s)] of Council Regulation (EC) No 343/2003, for dealing with your application for asylum.

Following is/are the reason(s) for this determination: [insert reasons]

The appropriate authorities in [Council Regulation country] [are deemed to] [have agreed to] \* readmit you to that country pursuant to the Council Regulation.

You may appeal this decision within 15 working days of the date of this notice. If you wish to appeal, you must do so by completing the attached notice of appeal. The notice of appeal should set out all of the facts and contentions on which you rely for the purposes of your appeal. Your appeal should be sent by registered post to the Refugee Appeals Tribunal, [insert address] or delivered to a person who is apparently an employee of the Tribunal Office, at the Offices of the Tribunal during normal office hours and a receipt of delivery obtained.

The Minister for Justice, Equality and Law Reform has been notified of this determination with a view to making arrangements for your transfer to [Council Regulation country]. Any appeal submitted by you will not suspend the transfer of your application or your

removal to that country. Upon your arrival in that country you should as soon as possible notify the Refugee Appeals Tribunal of your address for the purposes of corresponding with you in relation to your appeal. The fact that you have submitted an appeal will not affect your entitlement to have your application for asylum examined in [Council Regulation country].

You will be notified of the outcome of your appeal at the address forwarded by you. If your appeal is successful, arrangements will be made for your reception into the State. In accordance with the provisions of the Council Regulation, your transfer to [Council Regulation country] will take place as soon as practically possible and at the latest within six months from [insert date of request to take charge]. This time limit can be extended up to a maximum of one year if the transfer cannot be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

Signed:

Rank of Officer:

Date:

\* delete as appropriate

## SCHEDULE 2

Refugee Act 1996 (Section 22) Order 2003

### TRANSFER ORDER

To: [name and address of applicant]

WHEREAS it is provided by Article 7 of the Refugee Act 1996 (Section 22) Order 2003 that the Minister for Justice, Equality and Law Reform may by order require an applicant, in respect of whom a determination under Article 4 of the Order that he or she should be transferred to a Council Regulation country has been made, to leave the State on or before such date or within such period as may be specified in the order and to go to the relevant Council Regulation country;

AND WHEREAS you are a person in respect of whom a determination under Article 4 of the Order has been made and, accordingly, a transfer order may be made under Article 7 of the Order;

AND WHEREAS, arising from the determination under the said Article 4, your period of entitlement to remain in the State under section 9 of the Refugee Act 1996 has expired;

NOW I, [insert name] on behalf of the Minister for Justice, Equality and Law Reform, in exercise of the powers conferred by the said Article 7, hereby require you to leave the State in accordance with the arrangements and within the period ending on the date specified in the notice served on or given to you with a copy of this order and to go to [Council Regulation country] pursuant to the provisions of Council Regulation (EC) No 343/2003.

[signature of officer of Minister]

[Name and rank of officer of Minister]

On behalf of the Minister for Justice, Equality and Law Reform

[date of signature]

APPENDIX 4  
S.I. No. 55 OF 2005.  
IMMIGRATION ACT 1999  
(DEPORTATION)  
REGULATIONS 2005

DEPORTATION ORDER

WHEREAS it is provided by subsection (1) of section 3 of the Immigration Act 1999 (No. 22 of 1999) that, subject to the provisions of section 5 (prohibition of refoulement) of the Refugee Act 1996 (No. 17 of 1996) and the subsequent provisions of the said section 3, the Minister for Justice, Equality and Law Reform may by order require a non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State;

WHEREAS ...[insert name of person].... is a person in respect of whom a deportation order may be made under subsection (2) [insert applicable paragraphs] of the said section 3; AND WHEREAS the provisions of section 5 (prohibition of refoulement) of the Refugee Act 1996 and the provisions of the said section 3 are complied with in the case of .....[insert name of person];

NOW, I, ....., Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by the said subsection (1) of section 3, hereby require you the said .....[insert name of person] to leave the State [within the period ending on the date specified in the notice served on or given to you under subsection (3)(b)(ii) of the said section 3, pursuant to subsection (9)(a) of the said section 3]\* [within the period ending on the date specified by me in the notice served on or given to you with a copy of this order]\*\* and to remain thereafter out of the State.

\* Delete in the case of a person for whom a notice under subsection 3(b)(ii) is not required.

\*\* Delete in the case of a person for whom a notice under section 3(b)(i) is required.

GIVEN UNDER my Official Seal, this (insert date).

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Minister for Justice, Equality and Law Reform.