

Immigrant Council of Ireland

  
A Social Innovations Ireland Initiative

# LABOUR MIGRATION INTO IRELAND

*Study and Recommendations  
on Employment Permits, Working Conditions,  
Family Reunification and the Integration  
of Migrant Workers in Ireland*

## ACKNOWLEDGEMENTS

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## FOREWORD

I would like to congratulate the Immigrant Council of Ireland on this excellent publication, which I believe will prove to be an invaluable contribution in informing and guiding public debate on immigration. Migration generally, and inward labour migration in particular, is one of the most important social and political issues facing our society and societies around the world. One of the greatest difficulties in facing the challenges posed by immigration is the lack of accurate data and research in the area and in that respect, the work of groups like the Immigrant Council is of primary importance. This study provides a comprehensive guide to existing Irish legislative and administrative regulation of immigration, but it also provides a blueprint for how we might go forward as a society in developing a coherent and compassionate migration system here.

Inward migration is a relatively new phenomenon for Ireland. For the most part, it was not anticipated and, as a result, policy development is at a relatively early stage. Inward migration presents an exciting and positive opportunity which could generate great benefits for Ireland while also presenting us with the challenge of dealing with potentially complex social difficulties if not handled well.

Not least among these dangers is the threat posed by increasing racism in Irish society. Combating racism is one of the priority areas of work for the Human Rights Commission in our current programme of work. There is some evidence to suggest that racist incidents against non-nationals have increased in recent years and this is a pressing social problem that needs to be addressed with the greatest urgency. There are several other groups doing important work in this area including NCCRI, Know Racism, the Equality Authority and the Garda Racial and Intercultural Unit.

Among the most important means of addressing this problem is the need to ensure that public debate around issues relating to migration is conducted in an informed and balanced manner. Groups such as the Immigrant Council of Ireland have an important role to play in raising public awareness and understanding of these issues. Accurate data and well-presented research are particularly important elements in that process and I am glad to see the Council already producing research of this quality which will make a significant contribution to that process.

From a human rights perspective, the starting point for any discussion of migration policy is the core value that all persons are deserving of the basic human right to be treated with dignity and to be free from discrimination on the grounds of gender, race, nationality, religion, ethnic origin or any other ground. This might seem a simple point, but it could well be argued that the driving force behind much of our legislation in this area has at times been ‘control’-driven, with the rights of the individuals concerned being treated on occasion as a secondary issue within the legislative process.

This study makes the important point that there is much that we in Ireland can learn from our own history of emigration and makes particular reference to the experience of Irish people living abroad as undocumented/irregular migrant workers in the past and I believe there is deep resonance in this point. As a nation, we campaigned strongly and successfully for our migrants abroad to be treated with compassion and fairness regardless of legal status, and for irregular and undocumented workers to be viewed as being the product of economic and social circumstances rather than as the source of criminality and social problems.

There will always be a need for all states to exercise some control over their borders, but we must strive to ensure that individuals are always treated as people with rights rather than as economic units. Penal measures to control migration, such as deportation and detention mechanisms, should only be used where necessary and always with respect for individual dignity.

I also strongly support the Immigrant Council's contention that our legislation and policy must be underpinned by international human rights standards. I am particularly pleased to note that the Immigrant Council of Ireland has joined the Human Rights Commission and other groups including SIPTU in calling on the Irish Government to ratify the *UN Convention on Migrant Workers*. The UN Convention along with the Council of Europe *Convention on Migrant Workers and their Families* are important tools in ensuring that all migrant workers in States that are party to the convention are afforded basic protection of their human rights. They also represent important commitments on behalf of the States that are party to the conventions to the principle of global solidarity and shared responsibility for the rights of each other's citizens. The Joint Committee of the Irish Human Rights Commission and Northern Ireland Human Rights Commission has also made the plight of migrant workers and the combating of racism a key part of its ongoing work.

I was especially struck by the argument, eloquently outlined in the report, that in addressing the challenges of immigration we must guard against the danger that debates on immigration fall victim to competition between marginalised groups for scarce resources. In understanding labour migration, in particular, as a social, cultural and economic opportunity for Ireland and by always recalling the basic human dignity and rights of all those within the territory of the State, I believe we can look forward with some confidence to building together a prosperous, pluralist and successful society in the years ahead.

Maurice Manning  
President  
Human Rights Commission

## PREFACE

When the Immigrant Council of Ireland was set up in 2002, there was almost no accurate data or up-to-date research on immigration into Ireland. The ICI immediately set about collecting, collating and analysing the latest statistics on immigration trends, processes and practices. This study is the outcome of that work, and it gives an account of the Irish immigration process, with a focus on immigration for employment and business purposes.

The most glaring conclusion of this study is the recognition of serious deficiencies in our immigration process. There is no coherent legislative or social policy on immigration, and any provisions in this area have been *ad hoc*, piecemeal and designed, to a large extent, (a) to control immigration and present it as a 'security matter' rather than to promote the rights of immigrants, and (b) to exclude rather than provide a clear route of access for immigrants to Ireland. The emphasis in our system is on meeting the demands of the economy for labour, rather than on upholding the rights and meeting the needs of immigrants and their families. The result of this employer-led and market-driven policy is that immigrants to our country are insecure and vulnerable to exploitation.

Ireland's history has been one of emigration, but in the past three years emigration rates have fallen to an historic low of less than 20,000 per annum. Immigration, by contrast, has continued to rise, reaching peaks of more than 47,000 per annum in recent years. This is a very high rate – the United States, for example, accepts 700,000 legal immigrants a year; if they had the same rate of immigration as we have, in proportion to the population, the US would be accepting over three million immigrants annually. The rate of immigration into Ireland is also very high by EU standards; only Luxembourg has a higher rate. It is clear that Ireland has moved from being one of the most homogeneous countries in the EU to a country with a rate of change that is unparalleled in speed and scale.

Moreover, this study makes it clear that immigration is here to stay. We can no longer presume that the flow of immigrants will be reversed by economic slowdown or by introducing restrictive measures. Such a way of thinking fails to understand the underlying factors driving migration today. Migration is not something that just happens; it is, rather, a global phenomenon with a variety of players – governments, companies, NGOs, migrants, recruitment agencies, traffickers, police and transport companies. Labour migration, in particular, generates enormous sums of money and a lot of employment. Remittances from emigrants back to their countries of origin play a role second only to oil revenues in the global economy.

This study points out the need for clear integration policies, the primary focus of which should be equal treatment of immigrants in the area of legal rights, employment, education, welfare rights, housing and policing. Ireland is new to the immigration experience, and now has a unique opportunity to learn from other countries around the globe, learning from their mistakes as well as adopting their positive models of good practice.

Much of the debate concerning immigrants has focused on asylum seekers and refugees. It is vital that we also accept our responsibility and our obligation with regard to the wider population of immigrants, the majority of whom are not coming to Ireland to seek protection from persecution. In the past, society could claim that it was not aware of immigration or of the poor provision made for immigrants in Ireland. With the publication of this report, that is no longer the case. Urgent and immediate action is required in Ireland if the rights of immigrants and their positive contribution to our society are to be realised.

What we need now is vision and leadership and a response to immigrants that accepts immigration as a permanent and positive reality and protects and respects the welfare and rights of immigrants. In this light, and in light of the findings of this study, the Immigrant Council of Ireland now calls on the government and other leaders to:

- accept and publicly declare that immigration is a permanent and positive reality in Irish society and to spell out the benefits that this is bringing to Ireland
- make it clear to immigrants that they are welcome as new members of our society and not just tolerated while the economy is growing
- adopt a more strategic and long-term approach to immigration and integration policies in Ireland
- put in place an *integrated, transparent, rights-based policy on immigration* which will be publicly available and will give a clear picture to Irish society of the role of immigration in the development of our society and economy
- put in place policies based on the recommendations in this report on employment and residence permits, working conditions, family reunification and the integration of immigrants in Ireland
- establish an integrated response to the reality of immigration and work strategically to implement coherent immigration plans, procedures and practices. Such an approach must also incorporate cross-departmental and inter-agency cooperation.
- establish a highly-skilled, professional and highly-resourced inspectorate to ensure that the rights of immigrants are protected
- ratify the international conventions on migrant workers and their families and develop a managed immigration policy in the context of a human rights framework

Executive Chair  
Stanislaus Kennedy RSC

## EXECUTIVE SUMMARY

***Immigration is here to stay, driven by indigenous and international factors. Ireland, in common with our neighbours, needs a managed policy (chapters 1 and 2).***

Increasing globalisation, cheap travel, improved communications, demographic and economic factors, and the high levels of inequality between the northern and southern hemispheres, all suggest that continuing flows of migrant workers to all of the more prosperous developed economies in the world are likely. Ireland, which has seen strong economic growth in the past decade, is experiencing this phenomenon and is now a country of substantial ongoing labour immigration. In the recent past, more than 45,000 persons have been migrating to Ireland every year, whereas fewer than 20,000 have been emigrating. Even if there is an economic downturn, substantial numbers of these migrants will become long-term members of Irish society. People from a wide variety of societies and cultures are already working in virtually every sector of the economy and in all parts of the country, making a vital contribution to Irish society.

***The present Irish immigration system is inadequate (chapter 3).***

Ireland's immigration system reflects an earlier period when the country attracted few immigrants. It is largely market-driven and while it has proved flexible, it does little to protect the rights of migrant workers and their families. There has been little emphasis, other than through lip-service, on long-term integration, reflecting an official mindset which has tended to see immigration as small-scale and short-term.

***Policy in other EU Member States holds valuable lessons but we also need to look further afield (chapter 4).***

Other EU countries have more experience of immigration than Ireland, for historical, colonial and economic reasons. The EU is beginning to develop a common policy, although progress has been slow. In general, Europe has not regarded itself as a region of immigration and policies until recently have not been adequate. Any study of European systems needs to be complemented by an examination of policies and infrastructure in those countries which have long experience as immigration countries, notably the USA, Canada, Australia and New Zealand. There is a need to consider a range of options for managed migration, including meritocratic systems, points-based systems, market- or employer-led systems and lotteries, provided due regard is given to the ethical and humanitarian dimensions of immigration policy for receiving societies, sending societies and migrants themselves.

***Recommendations (chapter 5).***

It is now time for the government to adopt a more strategic, long-term approach to immigration and integration policy. This should be rights-based and should proceed from a fair and transparent immigration and reception system to a comprehensive approach to integration which recognises that Ireland will remain an intercultural society, one that respects diversity within a framework of shared core values.

In this regard, the Immigrant Council of Ireland makes the following policy recommendations:

1. Irish immigration policy should learn from best practice in other countries.
2. A more integrated and representative approach to policy is required.
3. The work of relevant agencies should be incorporated into the policy process.
4. Debate on integration must incorporate a bottom-up approach.
5. An anti-racism and anti-discrimination agenda must be introduced urgently.
6. Migrant workers should have rights equivalent to those of host-society members.
7. Better information on workplace-related rights should be provided and they should be enforced more effectively.
8. The needs of migrant workers should be identified and appropriate services put in place.
9. Migrant workers who are here for a considerable period should have the right to become permanent residents.
10. A system for regularising undocumented migrants should be considered.
11. Steps towards integration must be taken. These should reflect a commitment to an egalitarian, rights-based society and should include programmes to promote mutual intercultural awareness, support for local integration initiatives, and a reform of the educational system.

Furthermore, the Immigrant Council of Ireland believes that the legislative recommendations below should be taken as a basis for improving the protection of immigrants' rights in the state:

1. The UN Convention on the *Rights of Migrant Workers and their Families* should be ratified.
2. Other international instruments to protect migrant workers should be adopted. Ireland should also respect its legal obligation to transpose the EU 'Race Directive' into domestic legislation as a matter of urgency.
3. The changes in legislation in the *Employment Permits Act 2003* must not result in a 'Europeans Only' policy.
4. Family reunification rights should be a legal right and spouses and partners should have the right to work.

The Immigrant Council of Ireland further calls on the government to give serious consideration to the following regulatory recommendations:

1. Recruitment agencies should be regulated.
2. Employment permits should be issued to the migrant worker, not the employer.
3. Practices of passing on the employment permit fee to migrant workers must be ended.
4. The validity period for work/residence permits should be increased.

5. The situation of migrant workers who become unemployed must be addressed.
6. There should be a single residence/employment permit.
7. The process for reinforcing the rights of immigrants must be improved.
8. Mandatory licensing should be introduced for language schools.
9. Migrant workers and their families should be given access to education and training.



## Profile of Migration to and from Ireland

*Who are the new migrants?*

*A 9/11 effect?*

*A more diverse population*

*A diverse and ubiquitous community*

*Emigration: it hasn't gone away*

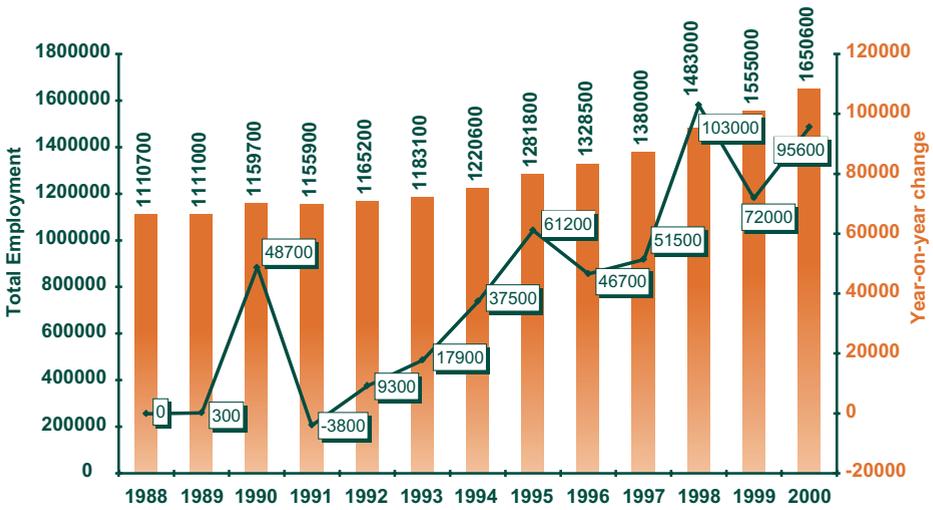




## PROFILE OF MIGRATION TO AND FROM IRELAND

Ireland’s history has been one of constant emigration. Even in the very recent past, about two per cent of the entire population of the Republic of Ireland left the country in a single year (70,600 persons in the twelve-month period April 1988 to March 1989). This peak came at the end of a dismal decade during which nearly half a million people emigrated. The failure of successive governments to create a society able to provide for all of its citizens was matched by an equal failure to address the needs of those who were obliged to leave. Government funding for emigrant welfare organisations remained extremely meagre until the 1990s and a major Task Force Report on Emigration<sup>1</sup> was not published until 2002. It remains to be seen whether its principal recommendations will be implemented.

In contrast with earlier decades, the 1990s, the period of the so-called ‘Celtic Tiger’ economy, was characterised by significant economic growth, fuelled in large part by a policy of wage restraint achieved through a series of partnership-based agreements. This economic growth translated into job creation on a scale never



previously experienced in Ireland.

**Chart 1: Employment in Ireland (26 counties) 1988-2000** (Source: CSO)

Chart 1 shows that whereas just over 1.1 million people were at work in the Irish economy in 1988, this figure had increased by more than half a million by 2000. The growth in labour demand initially led to a significant fall in Irish unemployment rates as well as an increase in the number of women in paid employment. When employment growth is tracked against immigration (see Chart 2) it is evident that rapidly increasing employment in the early 1990s was not initially matched by increased immigration – in fact the rate of inward migration actually fell by more than 10,000 per annum between 1992 and 1994.

<sup>1</sup> Department of Foreign Affairs (2002). *Report of the Task Force on Policy regarding Emigrants to the Minister for Foreign Affairs Mr. Brian Cowen, T.D.* Dublin: Department of Foreign Affairs. [http://www.gov.ie/iveagh/policy/emigrant\\_taskforce.htm](http://www.gov.ie/iveagh/policy/emigrant_taskforce.htm)

The explanation is simple – those already available were the first to be drawn into the growing economy. However, by the late 1990s, the annual rate of job creation increased further and unemployment fell to about four per cent. From the middle of the decade onwards there is a clear correlation between increased employment growth and increased immigration.

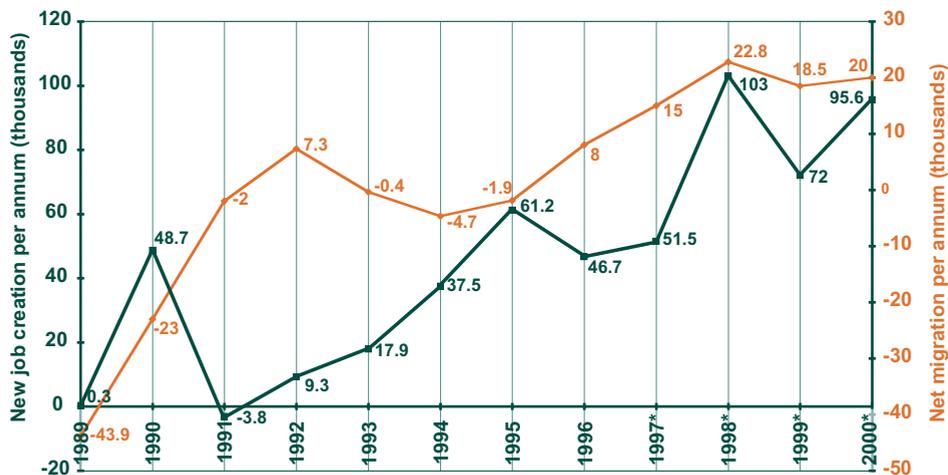


Chart 2: Comparing employment growth and net migration (Source: CSO)

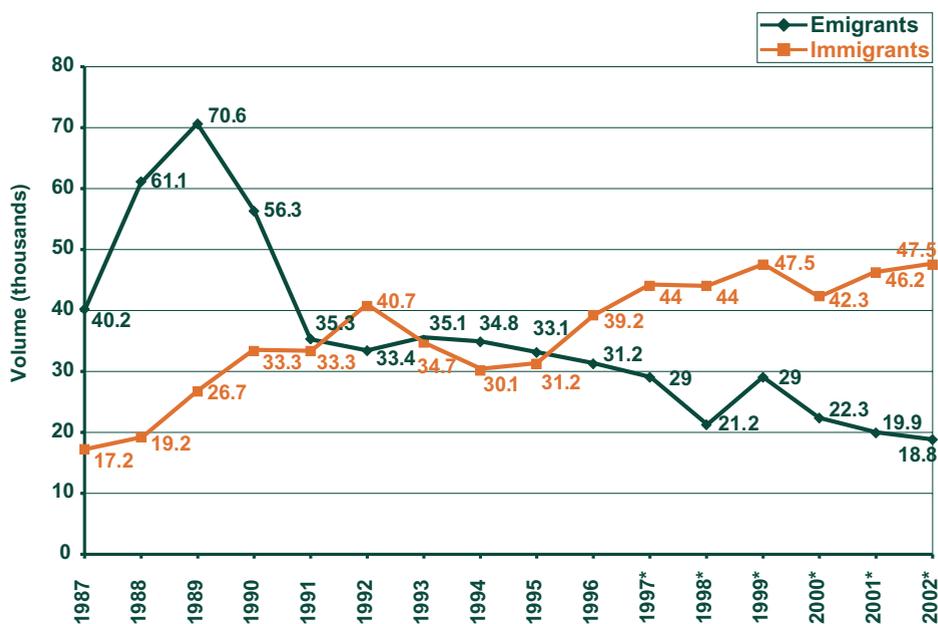


Chart 3: Ireland, emigration and immigration, 1987-2002

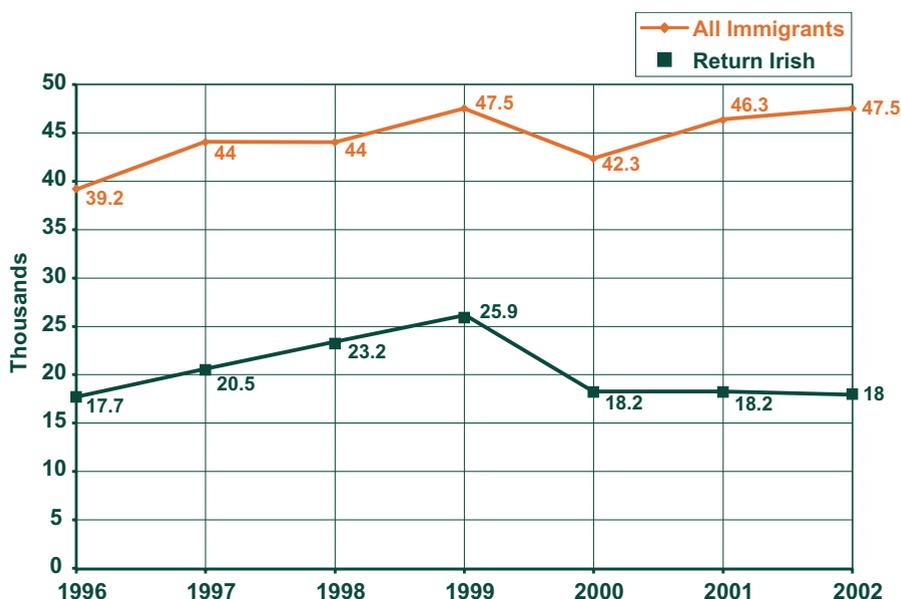
(Source: CSO population and migration estimates)

Emigration rates have now fallen to an historical low of less than 20,000 per annum (see Chart 3). Immigration, by contrast, has continued to rise, reaching peaks of more than 47,000 per annum in recent years and as will be explained later, this figure may in fact be an underestimate. To put this in some perspective, consider the USA (population 290 million) which consistently accepts a substantial annual intake of approximately 700,000 legal migrants from all parts of the globe. The figure for Ireland (population 3.9 million) of 47,000 would be the equivalent of well over three million annual immigrants to the US. The Irish rate of immigration is also high by EU standards; only Luxembourg (which is an exceptional case, as a very small State where more than one third of the population is foreign-born) has a higher rate.

### Who are the new migrants?

A substantial number of those included in the statistics are not immigrants in the strict sense, but returning Irish migrants. Chart 4 compares returning Irish migrants with overall immigration levels.

The figure for returning Irish migrants peaked in 1999, at almost 55 per cent of all migrants; at present it is under 40 per cent. However, some of those migrants classified as foreign-born are the children of returning Irish migrants. While there is room for discussion about the statistics, it can be said with some confidence that the proportion of returning Irish migrants will continue to fall for one simple reason: the available 'pool' of would-be return migrants is itself shrinking, as Irish emigration has fallen in recent years. Those who left in the 1980s are now in their thirties or older. It seems reasonable to assume that most who might have wished to return and who had the possibility of obtaining employment in Ireland

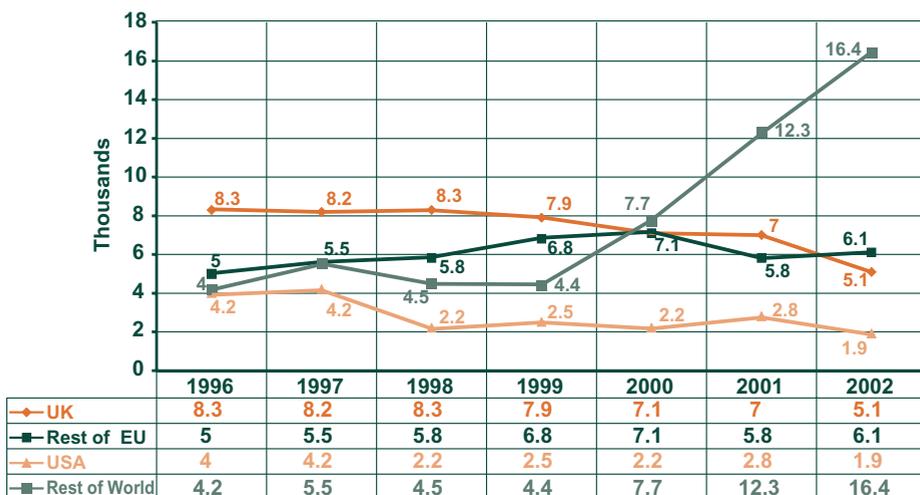


**Chart 4: Ireland, emigration and immigration, 1987-2002**

(Source: CSO population and migration estimates)

will already have done so. Future immigration is therefore likely to consist of a higher proportion of foreign-born individuals, the great majority of whom will have had no previous ties to Ireland.

If returning Irish are factored out (and the point about foreign-children of returning Irish migrants is ignored), the figures for non-Irish immigrants are summarised in Chart 5 and the accompanying Table. However, the figures for emigration and immigration between census years should be taken as a guide only and there is some evidence that the real level of immigration in recent years may have been higher than suggested. We know, for instance, that the CSO data for immigration suggests that the January to December 2001 figure for immigration from outside the EU and the USA was of the order of 15,000.<sup>2</sup> Yet in the same year more than 29,000 new employment permits were issued (excluding US citizens) and 10,325 persons applied for asylum. This is before foreign students, who do not require employment permits, are taken into account, or the spouses and children (neither category of whom has an independent right to work) of those admitted with employment permits, work visas or work authorisations.<sup>3</sup>



**Chart 5: Estimated immigration by region of origin, 1996-2002**

(Source: CSO population and migration estimates April 2002 published September 2002)

- 2 Approximate estimate. CSO data for population is calculated for the year from April to March whereas most other data, for example, employment permits and asylum applications are published on a January to December basis. It is surely time to standardise such data.
- 3 Employment permits are the standard type of permit, with a maximum (renewable) validity of 12 months and relatively few rights and entitlements. Work visas/authorisations (they are called visas or authorisations depending on whether the country of origin is one for which an entry visa to Ireland is required, but in every other sense they are identical) are only awarded for those high-skills occupations for which it has been decided that a shortage exists. They are valid for two years and the range of accompanying rights and entitlements is greater.

Therefore, the true figure for immigration from the 'rest of the world' (an outdated category anyway) must be considerably in excess of the CSO intercensal estimate and may have been closer to 40,000 than 15,000 in 2002. There is no reason to believe that the 2002 picture would have been substantially different, although there was a drop in new employment permits, from 29,326 to 23,326 (in real terms the drop was larger as about 3,000 of 'new' permits were actually for existing migrant workers who had changed employer).<sup>4</sup> Asylum applications increased slightly, from 10,325 to 11,530 (provisional figure, January 2003).

Part of the problem with the CSO's intercensal data is that it is extrapolated from the Quarterly National Household Survey (QNHS), based on a sample of 39,000 households quarterly, although other migration indicators are also used. The CSO acknowledges a margin of error in connection with asylum seekers due to the fact that many may be accommodated in hotels and hostels (the QNHS only covers private households), but a broader problem may exist. The CSO states that it regards its intercensal population and migration estimates as 'robust'<sup>5</sup> but the discrepancy highlighted above can only be explained either (a) if the estimates are incorrect and the real rate of immigration is higher or (b) if the figures for employment permits are distorted, for whatever reason. There is some anecdotal evidence of specific fraudulent practices such as the trafficking of people into Ireland on employment permits for non-existent jobs (and in one specific case their subsequent employment in the black economy in Britain), but it is highly unlikely that such practices are taking place on such a widespread scale to explain more than a small part of the statistical discrepancy set out above. Another possible factor in this undercounting might be the short-term nature of some of the permits granted, but a substantial number were renewed the following year.

If the QNHS turns out to be an unreliable migration indicator in the cases of migrant workers from outside the EU and USA, as well as foreign students, there would also be reason to doubt its reliability for the measurement of immigrants from other EU countries. Registration requirements for EU workers in Ireland are rather relaxed, and it is not uncommon in certain sectors of employment for workers to share hostel-type accommodation or for multiple occupancy of private-rented houses to occur.

Despite some doubts about the reliability of the statistics, the trends are clear. The most salient point, for the purposes of this study, is the growing number of non-EU migrant workers. The aggregate annual number of employment permits, work visas and work authorisations is now more than 40,000.<sup>6</sup> Figures to the end of August 2003 suggest there may be little change in overall numbers for the current year.<sup>7</sup> This may be compared with the far more modest figures, less than 12,000 including persons from Britain, for in-migration from other EU countries (although possible undercounting needs to be noted here as well).

4 Source: Department of Enterprise and Employment

5 Private conversations with two CSO personnel, 14 January 2003

6 Statistics for 2002 (source: Sanctuary No. 22, March 2002, Refugee Project of the Irish Bishops' Conference): over 40,000 employment permits were issued to people from some 140 countries. More than 23,300 were new employment permits and some 16,600 were renewals. Work visa/authorisation: almost 1,100 were issued.

7 The website of the Department of Enterprise, Trade and Employment (accessed 11 September 2003) states that by 31 August 2003 the year-to-date figures were: new permits 15,342; renewals 16,487; group permits 347; refusals 1082; total granted 32,176. <http://www.entemp.ie/lfd/wp-2003nat.doc>

The fact that migration from other EU countries into Ireland is less than migration from outside the Union is in line with EU experience generally. The *Social Situation in the European Union 2002*<sup>8</sup> points out that of the 19 million non-nationals living in the 15 Member States, only about 30 per cent are nationals of another Member State. The same report, in a section headed ‘population dynamics’<sup>9</sup> points to other underlying demographic factors at work. Europeans are living longer and fertility is low. In fact, fertility rates in all parts of the EU, including Ireland, are currently below the population replacement rate; one of the lowest rates of all is in Italy. Put simply, better living standards in the regions and lower fertility mean that mass migration from any of the current EU Member States is effectively over. The reality in most countries is very different, with a shrinking indigenous supply of people for the labour market. This explains why all EU countries are experiencing inward migration from third countries. Even though immigration cannot in itself solve the problems of low fertility and increasing age dependency in the EU, it is clear that managed immigration will play an increasingly important role in all EU Member States.

### **A 9/11 effect?**

It might be supposed that the general economic downturn which followed the events of 11 September 2001 (often referred to as 9/11) would lead to a revision of future immigration estimates. This type of forecasting is not an exact science. Even in the very recent past, the political instability caused by events in Iraq and the social and economic effects of the outbreaks of SARS in China, Vietnam, Singapore and Canada show that it would be over-sanguine to assume that economic growth, and hence migration trends, can ever be predicted through a simple linear extrapolation of existing trends. The best that can be said is that there is no reason at present to suppose that immigration will not continue, although the level may fall somewhat.

The aggregate number of employment permits granted in 2002, at 40,321, was actually an increase on the figure for the previous year. However, this figure included 16,562 renewals; moreover, about 3,000 ‘new’ permits were actually issued for existing migrant workers who had changed employer. Therefore, the number of employment permits issued to new arrivals in the country fell in 2002 by more than 27 per cent (about 8,000). However, this does not show that a drop in demand occurred, merely that a relatively high number of employment permit holders had their permits renewed, thus reducing the demand for new permits.

It is now more than likely that there will be a rise in unemployment in Ireland, at least for the short term. The market for tourism is particularly vulnerable, arising from the twin effects of the well-known reluctance of Americans to undertake foreign travel in times of uncertainty and the possible dangers of the spread of SARS.<sup>10</sup> On the other hand, most commentators are in agreement that the medium- to long-term outlook for the Irish economy is relatively positive.

8 Eurostat (2002) *The Social Situation in the European Union 2002* Luxembourg., p. 17.

9 Eurostat (2002) Op. cit., p. 5.

10 For example, Brenda Power, *Sunday Tribune* (2003). ‘Welcome to the land of a hundred thousand vacancies’ 27 April 2003.

Finally, while there has been some suggestion that some employers were seeking to substitute Irish or other EU workers with cheaper non-EU labour, and while aspects of the employment permit system have been tightened up, we do not have evidence of wholesale labour substitution by non-EU immigrants. Many of the jobs being taken up in such areas as horticulture and meat processing are posts for which it is becoming increasingly difficult to find Irish or other EU workers. Evidence from other countries indicates that the ‘substitution effect’ of immigrant labour is not very significant. Having said that, there is little doubt that some unscrupulous employers and agencies have exploited migrant workers and in some cases denied them their rights, including the right to a minimum wage. Moreover, it should also be noted that if the effect of large-scale immigration to a particular sector of the labour market has been to drive down wages for that particular activity (usually a niche one) it is likely that workers in any such sector will continue to be marginalised and underpaid in relative terms and that the sector will therefore continue to be disproportionately one where migrant workers make up the labour force. This may be described as a form of substitution.

### A more diverse population

The 1996 Census (see Chart 6) showed a population which was largely homogenous. If one excludes persons born in Britain (many of whom had Irish connections anyway) the total foreign community was small. Apart from the exceptional case of citizens of the USA (many of whom work in the multinational corporate sector), the numbers of non-EU citizens resident in Ireland at the time were very modest.

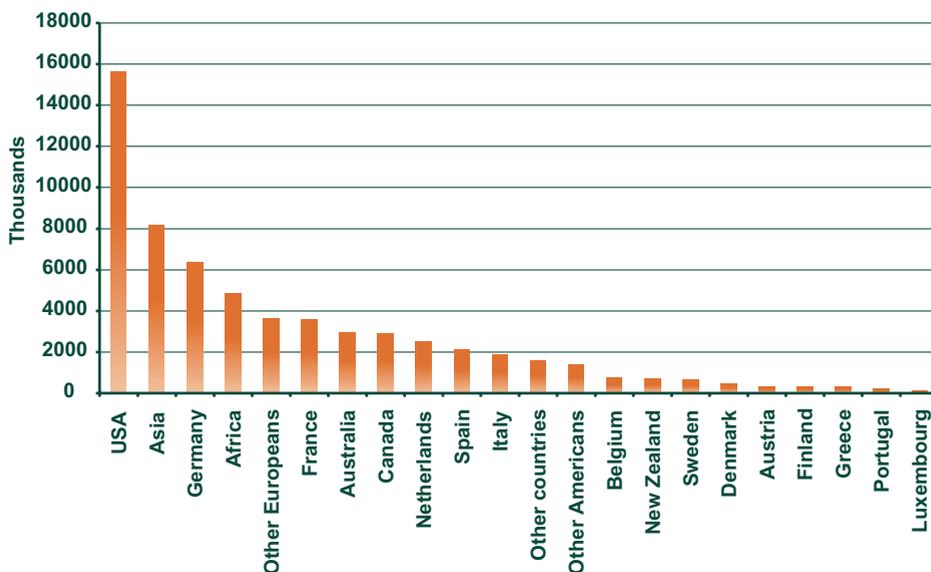
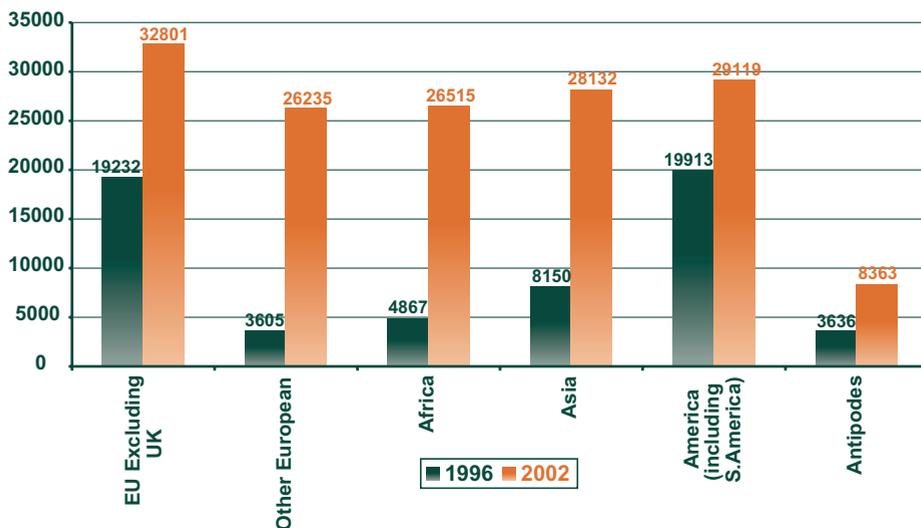


Chart 6: Foreigners in Ireland excluding those born in Britain, 1996

(Source: Census)

Since 1996, Ireland has received at least 147,000 foreign immigrants, of whom close to 57,000 (including almost 16,000 US citizens, with 41,000 in the ‘rest of world’ category) came from outside the EU. Although there may be room for debate about the numbers (see the discussion earlier about the reliability of statistics), there is the underlying reality of the volume of permits, visas and authorisations issued annually. If the higher figures discussed earlier turn out to be correct, especially for the period 2000 to 2002, the true figure for all non-Irish immigrants to Ireland since 1996 may be closer to 200,000, a remarkable five per cent of the population. This is without taking into account (a) family reunification and (b) undocumented migrants. There is also likely to be a degree of undercounting of students in this data.

The publication in June 2003 of some of the data from the 2002 Census provides further information on the number of foreign-born persons living in Ireland. Apart from the difficulties concerning possible intercensal undercounting already adverted to, the lack of a breakdown by ethnic background in the Census is a pity. Another difficulty, as pointed out earlier, concerns the numbers of foreign-born persons who are actually the children of at least one Irish parent and at least ethnically Irish. There was a question in the latest Census about nationality, as opposed to ethnicity, but this is a complex area and 1.3 per cent of those enumerated did not answer it. Of those who did, 91.6 per cent stated they were Irish and a further 1.3 per cent stated they had Irish and another nationality – it is probably not coincidental that the number reported as having been born in Northern Ireland is also 1.3 per cent. Of the 5.8 per cent who stated that they were not Irish or part-Irish in 2002, about half were British. The remainder came from all parts of the world.

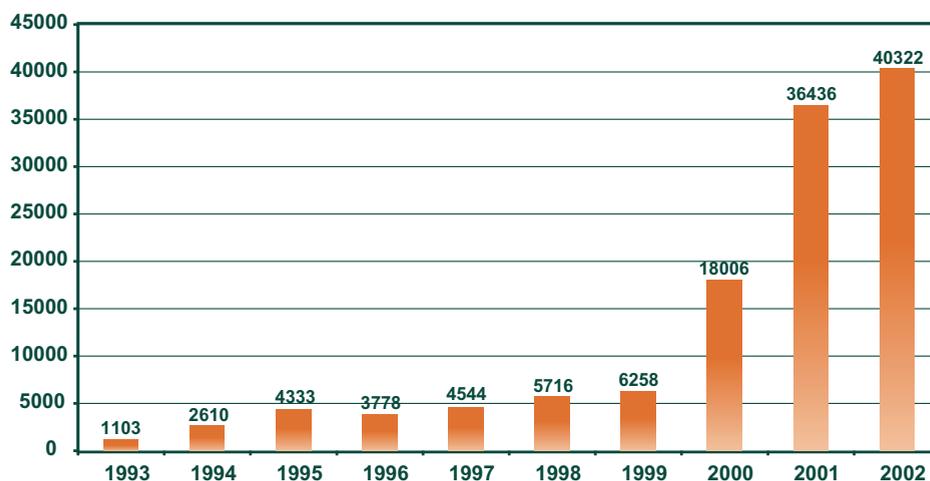


**Chart 7: Changes in foreign born population, excluding Britain, 1996-2002**  
(Source: CSO)

It is impossible, without more detailed cross-tabulations, to disaggregate the Census data in terms of the different categories of resident foreigners (migrant workers, asylum seekers, family reunification, students and so on). For the same reason, it is impossible to pronounce definitively on the intercensal immigration data and on the possibility that a degree of undercounting may have occurred. But one statistic which is worth citing is that mentioned earlier of the 41,000 from the 'rest of world' category (excluding USA) in intercensal data for the period since 1996. The Census data for the slightly longer period 1996 to 2002 shows an increase in 'rest of world' from 24,552 to 97,159 (including non-EU Europe, Asia, Africa, the Antipodes and the Americas apart from US), a substantial increase of 72,607. Even allowing for the fact that many of these migrants may not be permanent, these figures are dramatic. Chart 7 gives a breakdown by region of origin.

### ***A diverse and ubiquitous community***

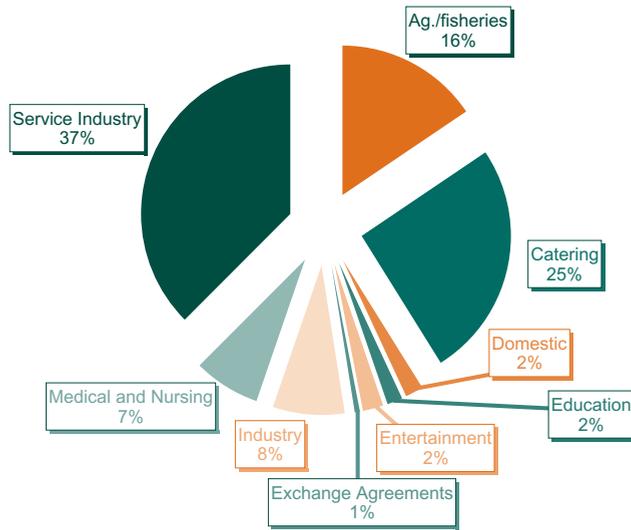
As Chart 6 and Chart 7 show, the characteristics of the new immigration are (a) diversity and (b) ubiquity. Migrant workers come from all parts of the world; the most strongly represented region is Central and Eastern Europe. They are employed in every sector of the economy, although clearly they are disproportionately present in certain sectors such as agriculture and horticulture; hotels and the catering industry; medical and paramedical care; and unskilled employment of various kinds.



**Chart 8: Work permits 1993-2002**

(Source: Department of enterprise, trade and employment)

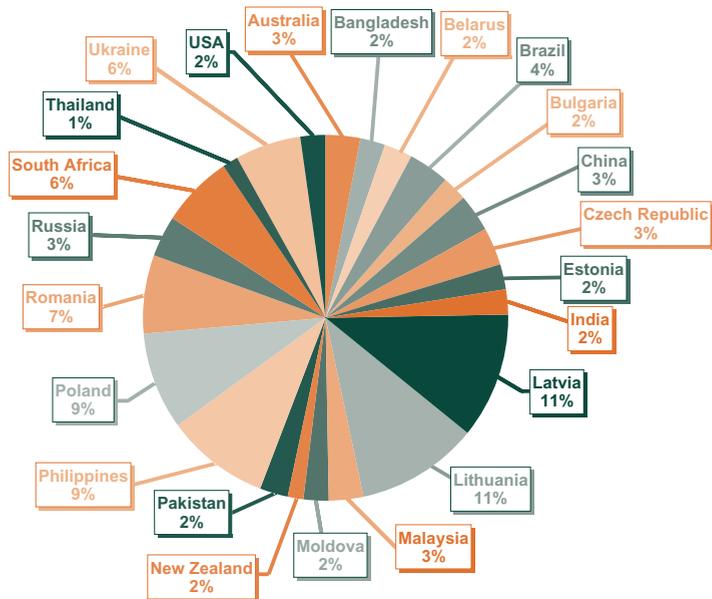
Chart 8 shows the very recent and very dramatic nature of the rise in employment permits, with an increase of more than 600 per cent since 1999. In short, Ireland has moved, from being one of the most homogenous countries in the EU, to a country with a rate of change which is almost unparalleled in speed and scale.



**Chart 9: Work permits by sector, 2002**

(Source: Department of enterprise, trade and employment)

While migrant workers are found in all sectors of the economy (see Chart 9), a large number of workers are concentrated in unskilled or low-skill employment in services, catering, agriculture and fisheries, and industry.

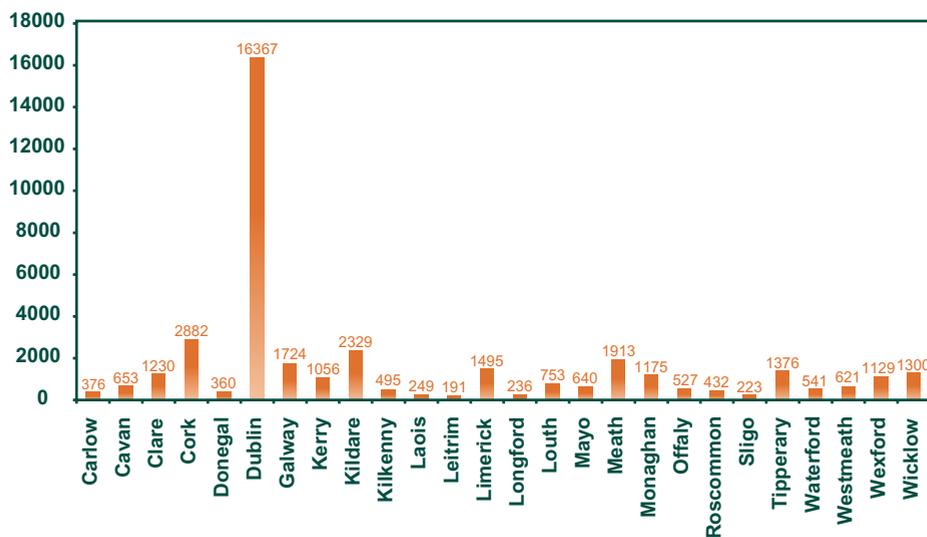


**Chart 10: Non-EEA countries with at least 500 employment permit holders in Ireland, 2002**

Two contrasting features stand out in Chart 10, which shows all those countries for which at least 500 employment permits were granted in 2002. On the one hand, there is a remarkable spread of migrant workers: 21 countries are included in the '500 or over' category and a further 113 countries also sent workers in smaller numbers to Ireland in 2002. On the other hand, a full 61 per cent of migrants referred to in Chart 10 were from central and eastern Europe; a significant proportion of these are from the ten countries which will shortly become members of an enlarged EU from 2004. It is also clear that about 25 per cent of these migrant workers are from central and eastern European States which will *not* be part of the next EU enlargement process.

Questions must be asked about the nature of the recruitment process and whether unregulated intermediaries play an excessively influential role. It is difficult to understand why the largest single category of migrant workers is from Latvia, closely followed by Lithuania. If Baltic States play such a significant role, why are only two per cent of those listed in Chart 10 from Estonia? How is it that the official statistics list only four Palestinian migrant workers, including one renewal, whereas anecdotal evidence from the Migrant Rights Centre in Beresford Place indicates that up to 100 Palestinian individuals and families live in the inner city area of Dublin? Questions need to be asked about the recruitment process, the adequacy of data being gathered and the potential level of undocumented migrant workers in Ireland.

Looking to the future, a study commissioned by the EU Commission suggests that the impact of enlargement on Ireland will be relatively marginal, with most new migrants opting for Austria and Germany.<sup>11</sup>



**Chart 11: Work permits by county, 2002**  
(Source: Department of enterprise, trade and employment)

11 EU Commission (2001). *The Free Movement of Workers in the Context of Enlargement*. [http://europa.eu.int/comm/enlargement/docs/pdf/migration\\_enl.pdf](http://europa.eu.int/comm/enlargement/docs/pdf/migration_enl.pdf) Accessed 27 May 2003.

Chart 11 considers the distribution of employment permits within the country. One factor stands out here: the Dublin area accounts for 41 per cent of all employment permits (this is higher than the proportion of the indigenous population living in the greater Dublin area). But it also clear that there is no part of Ireland which does not have non-EU migrant workers: even Leitrim (population 26,000) had 191.

In sum, migration into Ireland on a substantial scale is very recent but its impact has been significant. Migrant workers, their families, refugees with full status and others with leave to remain are present in every sector of the Irish economy and in every part of Ireland. Irrespective of developments in the coming years, substantial numbers are here to stay.

### ***Emigration: it hasn't gone away***

It is sometimes argued that immigration somehow shows that emigration is a 'thing of the past'. In fact, as the CSO figures make clear, in examining age cohort depletion for the 15 to 24 age group, 'even in the most recent census period when average annual net inward migration exceeded 25,000, the 15 to 24 age group continued to record net losses due to emigration'.<sup>12</sup> This must be a matter of concern. Ireland's economy may be increasingly knowledge-based, but there are many who continue to feel excluded.

12 CSO (2003). *Census 2002 – Principal Demographic Results*. Dublin, p 23.

# Forces Driving Labour Immigration in Ireland

*The changing world of work*

*Networks*

*World population growth*

*Irish and European demographic change*

*Membership of the European Union*





## FORCES DRIVING LABOUR IMMIGRATION IN IRELAND

### *The changing world of work*

Estimates suggest that around 170 million people live outside their country of birth. This number has doubled over the last 30 years, and is likely to grow further. Contrary to many people's belief, most migration takes place between developing countries. But migration to Europe has also grown to the point where migrants make up around 20 million of the EU's 380 million people. 'Illegal' or unauthorised migrants are estimated to make up 10 to 15 per cent of the total already in Europe, and 20–30 per cent of incoming flows.<sup>13</sup>

Ireland's historical role, as a marginalised island economy dominated by its nearest neighbour Britain, was as a source of cheap food and cheap labour for that neighbour. The inequalities of the relationship did not end with the independence of this part of the island. Significant emigration continued for several decades, but Ireland was at least fortunate in that its migrants had access to a number of the world's strongest economic regions, notably the UK, USA and other English-speaking countries. It is only within the last thirty years that a transformation has occurred in Ireland itself, with the development of a new knowledge-based economy and a greatly improved standard of living for most people.

The effects of this change have not been felt equally in all parts of Irish society. According to a survey conducted by *Foreign Policy* and A.T. Kearney Associates, Ireland has been the world's most globalised country for two years running,<sup>14</sup> but the consequences of this are complex and not always positive. Traditional sectors such as agriculture are not faring well. The 'digital divide' is largely class-based and the poor and socially marginalised are not keeping up. The disappearance of traditional, heavily-unionised skilled occupations has been accompanied by the increasing casualisation of work, which in turn has led to greater insecurity and fewer benefits in many sectors. It is not a coincidence that such sectors are precisely the ones in which immigrants are also most likely to be found.

One side effect of these changes can be seen clearly in new patterns of Irish emigration. On the one hand, Ireland's strong integration within the global economy and the educational and social opportunities open to many in Irish society, compared to the past, mean that a confident new generation of emigrants has emerged. They are more mobile, more successful, more likely to choose destinations which are not typical or traditional and, in many cases, more likely to return. On the other hand, the relative lack of social mobility for the socially excluded in Ireland and the fact that globalisation and change have not had a similar impact within all parts of our society has meant that a more traditional type of emigration still exists, even if the numbers have fallen. Many of those in this category feel that the changes visible in the new Ireland have not brought them the same opportunities as the better-off and better-educated. The statistics, for instance, for the number of Irish homeless in London would suggest that we continue as a society to fail to cherish all of the children of the nation equally.

13 Veenkamp, T., Bentley, T., Buonfino, A. (2003). *People Flow: Managing Migration in a New European Commonwealth*. London: Demos, p. 5.

14 Globalisation Index 2003. *Foreign Policy* <http://www.foreignpolicy.com/wwwboard/g-index.php> Accessed 17 January 2003.

## ***Globalisation***

What is true for Ireland is also true for other places. Indeed, the Irish case may be regarded as a microcosm of the realities of globalisation. Global economic interdependence has created a world where corporations are more important than governments. Freedom of movement of capital and a constantly changing investment environment have created a world employment market of considerable volatility. For instance, the type of assembly-line production facilities which typified foreign investment in Ireland in the 1960s subsequently moved to countries such as Brazil or Morocco; nowadays they are likely to be located in China or Vietnam. Lately, even the new knowledge industries, or at least the manufacturing part of them, are also moving increasingly from Ireland and other high-cost locations to the new Accession States of central and eastern Europe.

The freedom of movement increasingly enjoyed by capital and investment in a global economy has not been accompanied by an equivalent freedom for the humans who produce wealth in the first place. While governments and international bodies such as the World Trade Organisation, the International Monetary Fund and the World Bank are everywhere promoting the liberalisation and internationalisation of trade, much of the policy in relation to the movement of people for employment is still one of seeking to restrict or prevent movement, except under very controlled circumstances.

One way of understanding the growth in immigration in Ireland is to see it as a result of the expansion of the economy. However, the underlying structural changes which have occurred in the economy have also influenced the growth of immigration. Since the 1970s, a new global economy has emerged, which is organised around new industries and new patterns of production and is structured differently than the previous manufacturing-based economy. There is a growth in demand for workers at the top and the bottom of the labour market, and a decline in the middle. Thus there is considerable growth in high-waged knowledge-based jobs and intense international competition between countries to attract immigrants who have these knowledge skills. The new knowledge- and service-based economy is changing the nature and organisation of work in ways which are increasing the demand for migrant workers on a permanent basis. Even if the overall size of the economy contracts that demand is likely to persist.

There is also a huge growth in low-paid service jobs to service aspects of these new industries and to service the changing lifestyles which the new patterns of living and working are bringing. Many of these service jobs do not provide pay or conditions acceptable to indigenous workers. While immigrants fill many of the high-waged knowledge jobs, they also increasingly fill the low-waged service jobs. This is a phenomenon in all developed economies. The claim that these jobs are being taken from host-society workers is not borne out by the facts. In fact, there is a sub-structure of work being done by migrants in all developed economies without which these economies could not function. However, it cannot be denied that the arrival of migrants sometimes changes the views of what work people do. Some work gets categorised as migrants' work and will no longer be done by host-society workers.

### ***New winners and losers***

These processes of rapid change at global level have created new winners and new losers. High-skills migrants are in short supply worldwide, which is the main reason why governments are scrambling to offer attractive immigration programmes in an increasingly competitive market. But the side-effects of the concentration of global economic power in the hands of large multinational corporations have been much more complex, and frequently damaging for poorer places and poorer people. The ongoing concentration of wealth and power in the rich North, and the accompanying ongoing impoverishment of the South, have combined with the disruptive effects of volatility in national and regional labour markets, the greater availability of information about opportunities in other places, and the falling cost in real terms of long-distance transport. At the same time, people in the world's wealthy regions are in many cases no longer prepared to do the dirty, dangerous, arduous and ill-paid work which needs to be done in any society. The combination of all of these factors has created new waves of international migrants, who may lack the skills and opportunities needed to take advantage of change and whose status as, in effect, economic migrants, often leaves them at the mercy both of receiving societies and ruthless intermediaries.

The Irish of previous generations were in many cases the unskilled or semi-skilled migrants of their day,<sup>15</sup> although many Irish emigrants also contributed as teachers, doctors, engineers and other high-skills workers. Whatever their background and training, they had free access at all times to at least one of the best-performing economies in the world. Thus, many went to the USA in the late nineteenth century, and the UK in the twentieth century, prepared to do precisely the sort of unattractive or ill-paid work that was not wanted by many indigenous workers but which represented an opportunity of escape and advancement compared to poverty at home. Over time, most became integrated and subsequently advanced within their new societies. Today's low-skills migrants, by contrast, may have similar motivations and ambitions but often find the doors are barred.

### ***New challenges for Irish society?***

The ethical, policy and societal issues raised by these changes are very new to Ireland, simply because we were a sending society and not a receiving society for so long. On the one hand, our own experience should give us a special insight into the situation and needs of migrant workers coming here. The Filipino nurses now working in our hospitals, for example, cannot but remind us of the generations of Irish nurses who were the backbone of the British National Health Service. On the other hand, there was relatively little perceived need until the recent past to deal with the rights of new migrants and to address the more fundamental changes which would be required throughout Irish society if this phenomenon was to be accommodated. We lack the experience, policy, legislation, support organisations and structures which are found in other more diverse societies.

Unfortunately, the one other aspect of our historical experience which is relevant to this issue, the question of how to deal with diversity, shows that our record is a very mixed one. Travellers in Ireland have been, and continue to be, severely

15 OECD (2002). *Trends in International Migration*. OECD: Paris, section on Ireland, p. 186.

marginalised and the victims of ongoing prejudice and discrimination. Other minorities have at best found themselves 'tolerated' in a largely monocultural society where difference was not understood or accommodated, and where the different were expected to 'know their place' and by and large remain silent.

We should now accept that, because of our changed economic and political circumstances, Ireland is likely to continue to attract immigrants from other countries. Many of these, although not all, will become long-term residents and ultimately citizens of our society. Accepting and welcoming this fact is the beginning of the creation of an effective policy on immigration. No state can afford to have uncontrolled immigration across its borders – there are infrastructural issues such as housing, transport, education and health care to consider, as well as broader political and social issues. But we can no longer claim that ours is not a country of immigration. For the reasons set out below, this situation is not likely to change soon.

Immigration represents a significant opportunity for our society. The challenge is to recognise the reality of the globalisation of the movement of people and the ease of movement which transport makes possible; to accept the reality of ongoing immigration to Ireland, to transcend traditional ideas about boundaries and controls and to develop new ways of managing the process which will benefit all concerned.

## **Networks**

Networks are considered to be important drivers of migration. Once a number of people from a country become established in a new location, they then constitute an information and support network for further migration. The Irish have long experience of this phenomenon. If legal routes are closed to these networks, this will only serve to encourage trafficking/smuggling, now a highly-organised international system. If the doors are closed legally for unskilled work, as is now being proposed in some quarters, then people will find clandestine ways in. Experience in the rest of Europe bears this out.

## **World population growth**

The population of the world is now more than six billion people. The UN predicts that this will grow to 8.92 billion by 2050.<sup>16</sup> As the world is getting smaller, it is also becoming more crowded, particularly in the least developed regions. Even though population growth rates have levelled off in many countries, the number of people of working age will increase from three to five billion between 1990 and 2025, with over 90 per cent of the increase occurring in developing countries.<sup>17</sup> This will bring enormous pressures for migration unless there is major economic growth and an increase in job creation in these countries. Migration is a by-product of global inequality and the exploitation by the countries of the North of the resources and people of the South. Moreover, recent events suggest

16 United Nations (2003). *World Population Prospects: the 2002 Revision Highlights*. New York: UN, p. .15, medium scenario. <http://www.un.org/esa/population/publications/wpp2002/WPP2002-HIGHLIGHTSrev1.PDF> Accessed 27 May 2003.

17 Bloom, D., Brender, A. (1993). 'Labor and the Emerging World Economy', *Population Bulletin of the Population Reference Bureau*, vol. 48, no. 2.

that, while superpowers like the USA will seek to protect their own interests in countries like Afghanistan and Iraq, they are much less concerned with the welfare of the citizens of those countries or with their long-term development.

Ireland's response as a country should be two-fold. Firstly, we need to help Majority World countries to improve their standards of living and economic performance through significant foreign aid programmes and by more favourable trade policies, the dismantling of tariff barriers and the ending of the subsidisation of EU exports which undercut other producers on world markets.

Secondly, we also need to recognise that flexible and fair migration policies can play a major role. It is estimated by the UN that emigrants' remittances are second only to oil in the global generation of money and far ahead of foreign aid.<sup>18</sup> This flow of money is a central resource for some countries, just as it was for Ireland for many decades. Indeed, the organisation of migration is a part of government policy in some countries – the Philippines educates nurses for export for the remittances which they can send home.<sup>19</sup> Governments can be asked to restrict migration in return for aid. Some have even used migration flows to reduce political tension, something which is not entirely absent from Irish historical experience.<sup>20</sup>

Migrants are major stakeholders in this business but at present many have no effective voice to represent their interests and are just a traded product, ending generally as the underclass in the developed economies. This is a lose-lose situation for the migrants themselves, and the sending and receiving societies.

### ***Irish and European demographic change***

As mentioned in chapter 1, the EU as a whole faces a major demographic challenge with a birth rate in most Member States well below the rate needed to maintain the labour force and population levels. At the same time increasing numbers of people are living longer.

The Total Fertility Rate (TFR) is usually used as a measure of national fertility, with a rate of 2.1 required if a population is to remain stable.<sup>21</sup> Ireland had the highest birth rate in western Europe for most of the twentieth century, reaching a peak of more than 4.0 (TFR) in the mid-1960s, but the rate declined rapidly in the 1980s and 1990s to its present level of slightly below the replacement rate. With fewer children being born, the number of people joining the labour force will decline over time. Immigrants will be needed to maintain the population, to maintain the labour force and enable the economy to grow. The growth in the economy in recent years was driven by the availability of labour at all skill levels.

At the same time as the birth rate is decreasing, life expectancy is increasing, leading to an ageing population and an increasingly unfavourable age dependency ratio. In addition to people living longer, there are also a growing

18 Harris, N. (2002). *Thinking the Unthinkable..* London: I.B. Taurus.

19 MacLaughlin, J. (1994). *Ireland: the Emigrant Nursery and the World Economy.* Cork: Cork University Press.

20 Alexis Fitzgerald in the *Reports of the Commission on Emigration and Other Population Problems (1955)* saw emigration as useful because...'High emigration, granted a population excess, releases social tensions which would otherwise explode and makes possible a stability of manners and customs that would otherwise be the subject of radical change'.

21 The figure is given as 2.1 and not 2 because of factors such as infant mortality.

number of very old people. This is a tribute to the level of progress reached in our societies, but it also has enormous demographic, service provision and financial implications. Immigration will not stop the trend of demographic ageing in our society, because immigrants themselves become part of it over time and because the fertility patterns of immigrant populations tend to conform to mainstream societal norms over time. However, managed immigration can help the State to mitigate some of the effects of excessively rapid change, in particular by helping to meet particular shortcomings in the labour market at both highly-skilled and less-skilled levels.

### ***Membership of the European Union***

Ireland's membership of the EU will ensure that we will continue to receive substantial numbers of migrants. Citizens of EEA<sup>22</sup> countries and Switzerland have a legal right to take up work in other Member States. The Irish government has no powers to limit this movement. In fact the European Commission has instituted a series of initiatives to try to increase the flow of workers between Member States as it feels this is too low at present. If these initiatives are effective this will mean more workers will move within the EU.

At present, the 13 million workers in the EU who are non-EU nationals do not have the right to move from the country where they are registered to work. The Commission sees this as discrimination and has tabled a proposal to change this, although progress in negotiations has been extremely slow. If agreement is reached, it will make Ireland more attractive for non-EU nationals (assuming employment opportunities are available in Ireland) in other EU states as they can then shift between countries in search of work.

As pointed out in chapter 1, the majority of non-EEA workers in Ireland at present are from Central and Eastern Europe and a majority of them are from the Accession States which will join the EU in the next round. There is provision for a transitional regime of up to seven years before the citizens of accession countries have complete freedom of movement, including the right to take up employment, in the present Member States of the EU. The Irish position has now been clarified — migrant workers from accession countries will have complete freedom to seek work in Ireland as soon as their countries became members of the EU, that is, there will be no transition regime, although there is provision for a change if labour market conditions change.<sup>23</sup> This is a welcome alteration of the position adopted by the Government last year, when it bowed to the anti-Nice campaign and appeared to vacillate on the rights to be accorded to would-be migrants from new Accession States.

It is more difficult to predict medium- to long-term migration flows within the EU, but the cases of Ireland itself, and of Spain and Portugal, are instructive. The latter joined the EU in the 1980s amid fears of a major outflow of migrant workers seeking to leave two very impoverished and relatively underdeveloped countries. In fact, net migration flows in the decade which followed were in the reverse direction. As the Spanish and Portuguese economies began to benefit

22 The EEA (European Economic Area) comprises the EU Member States as well as Norway, Iceland and Liechtenstein. Switzerland has a similar status to the EEA countries.

23 See chapter 4 for further details.

from EU membership, many migrant workers chose to return home and the two countries became popular destinations for migrants from other EU Member States. The Irish case is more complex as emigration reached new peaks in the 1980s. But ultimately Ireland, as noted, has also become a country of net immigration.

When all is said and done, most people prefer to live at home. Predictions of mass westward movements of migrant workers from the new Accession States are unlikely to be vindicated. Similar predictions were also made at the time of the fall of the Berlin Wall and the ending of the Cold War, but the expected exodus did not take place.



# The Irish Labour Immigration System

*Recruitment/entry/residence*

*Integration/alienation*

*Deportation/voluntary return*





## THE IRISH LABOUR IMMIGRATION SYSTEM

There are three aspects to the immigration process in the context of workers, their families and other persons entering the State:

1. recruitment/entry/residence
2. integration/alienation
3. departure/voluntary return/deportation

### ***Recruitment/entry/residence***

People who wish to enter Ireland (other than tourists and other short-stay visitors) fall into a number of categories:

- EEA/Swiss nationals
- Nationals of the ten Accession States joining the EU in 2004
- Non-EEA/Swiss nationals with employment permits, work visas or work authorisations
- Persons benefiting from family reunification rights for non-EEA/Swiss workers
- Business permission holders
- Persons benefiting from intra-corporate concession schemes
- ‘Van der Elst’ migrant workers
- Refugees and asylum seekers
- Students
- Parents/siblings of Irish nationals
- Undocumented migrants
- Turkish nationals

### ***EEA/Swiss nationals***<sup>24</sup>

Nationals of other Member States in the EU, and the larger EEA area, as well as Swiss nationals, can freely come and work and live in Ireland. No entry visa or employment permit is required and family reunification rights are guaranteed.

How significant is labour migration to Ireland from our neighbours? The EU is not a unified social, economic and cultural area; there are considerable cultural barriers to large-scale migration and integration within the EU. Moreover, while EU and EEA countries have been fairly significant sources of migrant workers in Ireland, evidence from other Member States suggests that, as living standards have converged within the EU, the flow of intra-EU migration has fallen and will continue to fall further.

At the top end of the labour market demand-driven immigration policies offer relatively attractive access and working conditions to migrants irrespective of their country of origin. At the bottom end of the market there is no longer a substantial pool of EU citizens ready to take up poorly paid, insecure and

24 The EEA (European Economic Area) comprises the EU Member States as well as Norway, Iceland and Liechtenstein. Switzerland has a similar status to the EEA countries.

sometimes dangerous or degrading work; such work is for the most part done by host-society members or non-EEA workers.

In general, EU, other EEA and Swiss citizens have rights similar to those of Irish people. EU citizens may also vote in European elections. Holders of British passports other than British overseas passports (the latter confer no right to live in the UK or any other EU country) can, in addition, vote in all Irish elections except referenda and presidential elections, and can also benefit from the Common Travel Area arrangement which enables passport-free travel between Ireland and the UK.

Nevertheless, it should not be assumed that migrant workers from other EU/EEA states encounter no problems in Ireland. More could be done by statutory and non-statutory stakeholders in such areas as information provision, intercultural awareness, and support for multicultural action and translation and interpretation facilities.

Zane is from Denmark and is married to Julia, a Chilean national. As a member of the European Union, Danish nationals have the right to live and work in a Member State. As the married partner of an EU national, Julia has the same rights as Zane. They are resident in Ireland and Zane is currently in a community employment training scheme. Julia was granted permission to remain as the spouse of an EU national for one year. Her permission to remain in Ireland expired and was not renewed in time. The Immigration Division of the Department of Justice, Equality and Law Reform has requested that Zane send in a contract of employment and payslips. This is not possible because Zane is in a training course and so is in receipt of public funds. However, he has sufficient funds to support himself and his wife and according to the law is entitled to the same rights as a worker if he is in temporary unemployment or studying.<sup>25</sup>

### ***Nationals of the ten Accession States joining the EU in 2004***

The Government has proposed<sup>26</sup> and the Oireachtas has recently passed the *Employment Permits Bill 2003*, which will allow full freedom of access to the Irish labour market for nationals from the ten states which will become members of the EU from May 2004. This decision is in line with the approach being followed by Denmark, the Netherlands, Sweden, Spain, Greece and the UK. These Accession States are:

- Czech Republic
- Estonia
- Latvia
- Lithuania
- Hungary
- Poland

25 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

26 Press Release, 24 March 2003, by An Tánaiste Mary Harney. 'Tánaiste Announces New Immigration Rules for Accession Countries' <http://www.entemp.ie/presso3/240303.htm>

- Slovenia
- Cyprus (freedom of movement already provided for in Treaty of Accession)
- Malta (freedom of movement already provided for in Treaty of Accession)

Sergei is a Latvian national who came to Ireland at the height of the Celtic Tiger boom. He has been living in Ireland for three years. Sergei is employed as a shop manager and is on his third employment permit. Sergei is the only person who is not Irish in his workplace. He has got to know his workmates very well over the past three years and likes his job, his colleagues and the craic. Two months ago, Sergei discovered that his Irish colleagues were paid more than he was for the same job. The other shop managers are paid €9.75 an hour while Sergei is paid the minimum wage. His employer has never paid overtime, and told Sergei that in Ireland people are paid the same wage every week. Most weeks Sergei has worked in excess of 50 hours. Sergei was also told that in Ireland all holidays are unpaid. He has been unable to afford to take a holiday for the past three years. When Sergei confronted his employer with this information, he was sacked. He has been looking for another job but is having difficulty explaining why he is out of work. His former workmates have been trying to help him but he cannot get a reference from his old job.<sup>27</sup>

The *Employment Permits Act 2003* provides for

- A reiteration of the existing law regarding persons (not otherwise entitled to do so) working without a work permit (now to be called an employment permit). It creates a specific offence for both an employer and an employee where employment is entered into in the absence of the requisite permit. It also provides for penalties for non-compliance. Penalties range from €3,000 or 12 months in prison (or both) for a summary conviction up to €250,000 and 10 years in prison (or both) for conviction on indictment. The provision remedies the defect in the present legal basis on which the employment permit system operates with no charge that can be brought against an employer who employs persons not entitled to work in the State without an employment permit.
- Employment permits will not be required by citizens of the EU Accession States once they have joined the EU. However, provision is made for the re-imposition of employment permits during the seven-year transition period if labour market conditions so require.

Maria is from the USA. She came to Ireland on holiday and fell in love with the country. She was very keen to stay and work in Ireland. As she did not need a visa to enter the country she was not aware that she would need an employment permit. Maria had no difficulty in finding employment and was offered several jobs. When she started working she was issued with a PPS number and paid tax and PRSI. Both Maria and her employer assumed that as a taxpayer Maria was legally entitled to stay and work in Ireland. Maria has been working for the same employer for the past two years. She was unaware that she was required to register with the Garda National Immigration Bureau. When the *Employment Permit Act 2003*, was enacted, her employer was advised to check the paper work of her employees. When she asked to see

27 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

Maria's green card, they both realised that Maria was living in Ireland without documentation. Maria was shocked to learn that she is undocumented. She keeps repeating that she was given a PPS number and has been paying tax. Her employer, while sympathetic, has explained that she has to let Maria go as she is not prepared to face prosecution for employing someone without permission to work. Maria is afraid to remain living in Ireland illegally and is afraid of attempting to regularise her situation if it brings her to the attention of the Garda National Immigration Bureau. She is also afraid of what may happen at the airport if she leaves Ireland and if she will ever be able to return to the country she loves.<sup>28</sup>

While nationals of these countries will continue to need to apply for employment permits until that time, the Government has also decided <sup>29</sup> that they will be given preference over other applications. While this may appear reasonable, there is a danger that a 'Europeans first' policy may send the wrong signal.

### ***Non-EEA/Swiss nationals with employment permits, work visas or work authorisations***

Apart from the exceptions mentioned elsewhere in this chapter, every person who is not a national of the EEA area or Switzerland needs *either* an employment permit obtained by an employer in respect of him or her, or must personally obtain a work visa/authorisation to be able to enter employment in Ireland. As discussed in chapter 1, increasing numbers have been coming through these routes in the past five years. Migrant workers from outside the EEA/Switzerland face many kinds of marginalisation and exclusion, including lack of information, exploitation by recruitment agencies and traffickers, exploitation by employers, racism and discrimination within civil society, inadequate access to the means of legal redress, difficulties accessing services to which they have a right, and exclusion from other services (for example, training) to which EEA/Swiss migrant workers are entitled.

### ***Employment permits***

The vast majority of non-EEA migrant workers enter the State on employment permits. Employers, not would-be employees, apply for these permits. Legally employers are forbidden from passing on the cost of the permit (currently €500 for twelve months) to the employee. Recruitment agencies are also forbidden from charging a fee to the employee. Nevertheless, the fact that permits are in the hands of employers, not employees, is a major factor in the exploitation of migrant workers.

Yuri and Oxana are from Russia. They came to Ireland on employment permits. These permits were obtained through an agency based in Russia. Yuri and Oxana, paid €2,000 each, plus €500 for the employment permit fee for the first year. This is contrary to the standard undertaking given by all employers and agents on the employment permit application form. It took an entire year to save the money needed to pay the agent. They believed that it was worth

28 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

29 Department of Enterprise, Trade and Employment (2003). Press Release 'Department of Enterprise, Trade & Employment and FÁS Clarify Operational Arrangements of Employment Permit Procedures'. <http://www.entemp.ie/presso3/070403a.htm>

it as they were told they would earn three times their Russian salary in Ireland. The agency also offered to organise accommodation for the couple and to link them up with employers. An agent met them at the airport and took them to their accommodation. The house where they are staying is overcrowded, damp and has no heating. For this substandard accommodation they pay €120 each per week. The agent placed them in jobs where they earn €160 per week. This is less than the minimum wage. Other workers are paid €300 per week for the same job. Yuri and Oxana often have to work a lot of overtime to earn enough to meet their basic needs. At the end of the first year the agent told them they must pay for the renewal of their employment permits. Although Yuri paid €500 for the renewal of his employment permit, he has not yet received this from the agent for the purpose of registration. Some of his colleagues have suggested approaching the employer directly. Yuri is worried about what may happen if he bypasses the agent, and especially what impact this would have on Oxana.<sup>30</sup>

While there is nothing to prevent a migrant worker from applying directly from her/his region of origin to a potential employer, many practical issues may intervene, including lack of knowledge of the labour market, lack of knowledge of the language and lack of knowledge of procedures to be followed. In the circumstances, it is hardly surprising that people should turn to knowledgeable or allegedly knowledgeable intermediaries who offer to handle everything – for a fee. A layer of formal and informal recruitment agencies has grown up, offering to put would-be employees in touch with potential employers and to arrange the necessary paperwork. Some of these agencies are *bona fide* intermediaries, but many are not.

Bruce and Kylie are from Australia. They have been working in Britain for the past two years. A recruitment agency approached several people from their company regarding work in Ireland. The employment package was very attractive and they were interested, especially as their two-year visas for Britain were due to expire. Bruce and Kylie were invited to attend job interviews with the recruitment agency. They were successful at interview and were offered work with the agency who agreed to arrange employment permits for them on completion of an in-house training programme. Bruce and Kylie relocated to Ireland to begin a four-week training course. At the end of the four weeks the entire training group were told that, at present, there were no vacancies in Ireland. They were asked if they were interested in being sent to another European country. Their fellow trainees accepted the agency's proposal and went to work in the North of Ireland. When Bruce and Kylie explained that they would not be able to work without the appropriate employment permits, the recruitment agency abandoned them. They feel badly let down, especially as they have had no income over the past six weeks and have spent a lot of money relocating.<sup>31</sup>

30 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

31 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

## Widespread abuses of employment permit scheme

There is little doubt that the present system has led to widespread abuse. At worst, recruitment agencies may cheat would-be migrant workers by providing them with fake permits for non-existent jobs. Workers may also become a form of indentured labour, signing away part of their future earnings before they have even left their home countries and paying exorbitant fees and interest for the cost of the journey. Once in Ireland unscrupulous employers may use a variety of tactics against them, from paying less than the promised wage (and sometimes less than the legal minimum), to various kinds of illegal deductions from their salaries. As the employer effectively controls the employment permit the worker is not fully free to sell his or her labour in the marketplace and may feel intimidated from making any complaints about such grievances.

Christina is from the Ukraine. She came to work in Ireland on an employment permit as an accountant. Before leaving the Ukraine Christina received a job description and a contract of employment with very favourable conditions. When she started work she discovered that she was not paid the rate that had been agreed. When Christina raised this with her employer she was told that if she complained her employment permit would be cancelled. She did the job asked of her for a year, in the hope that things would improve. However, when Christina asked about the renewal of the permit she was asked to resign. She does not know why but thinks that her P60 would reveal that she had not been paid the rate declared in original application. She is currently looking for a new position with better working conditions. Christina wants to pursue a case of constructive dismissal but is afraid that this may draw attention to the fact that her permit has expired. Although she may be entitled to social welfare, she is unsure if PRSI has been paid in respect of her. Christina is currently living on her savings.<sup>32</sup>

There is also a danger that employers may be using low-cost immigrant labour to drive down wage costs in certain niche sectors. At present, vacancies must be advertised on the FÁS website and thus throughout the EU's EURES system for four weeks before employers can seek an employment permit for a non-EEA worker. However, it is possible for an employer to advertise a post at the minimum wage or a wage which may be well below the going rate for the job, wait for four weeks and then seek an employment permit after (understandably) no Irish or EEA worker has applied for the underpaid post.

Martha is from the Uganda. When she applied for, and was offered, a job in Ireland, she felt it was the beginning of a new life. Martha waited patiently for the paperwork to be processed for her entry visa and for the employment permit to employ her as a clerical officer to be issued. She spent the time packing her belongings to be shipped, and gave up the lease on her apartment. When she arrived in Ireland, Martha's happiness soon turned to shock when she was asked to work on a pig farm, on a building site and to clean horses. When she asked her employer to give her a written contract of employment outlining her clerical duties, as required by law, he refused. Instead, he gave instructions on a daily basis of what was expected. When Martha tried to complain, she was told to "shut up or be sent back". She was afraid to speak up, but couldn't bear to continue working for her employer.

<sup>32</sup> Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

When she left the job her former boss told her that if she tried to take a case against him, he would make sure that she is "kicked out of the country". Although she was effectively constructively dismissed she is afraid to take her case to the Labour Court. Martha is traumatised because of the experience and cannot believe her new life in Ireland has turned out like this.<sup>33</sup>

The Department of Enterprise, Trade and Employment is aware of many of the abuses which have taken place. In certain cases it has taken commendably strong action, as was seen with the suspension of two of the schemes for intra-company transfers after evidence emerged that they were being abused. In one typical case, workers were being brought in on twelve-month 'training programmes' as cheap unskilled labour for a catering company, with no training being provided. In another, an employer in the meat business imported a 'trainee' who had 27 years' experience. In other cases such as a recent one where workers from Eastern Europe arrived in Ireland with permits which turned out to be fakes, the Department was flexible in its interpretation of the present regulations and allowed a period for work to be sought, although it appears that the Immigration service was not so understanding.<sup>34</sup> Regrettably, it has often been the case that action to combat abuse has targeted the migrant worker, who is often the victim of the system, rather than the employer.

### Legislation covering employment permits

The employment permit scheme operates under the *Aliens Act of 1935*, *Aliens Order 1946*, and the *Immigration Act 1999* as amended by the *Illegal Immigrants Trafficking Act 2000*, and the *European Communities Rights of Residence Regulations 1977, 1997 and 1998*. New legislation is in the course of preparation.

### Procedure for getting employment permits

An employment permit is issued by the Department of Enterprise Trade and Employment to an employer who has a job vacancy which cannot be filled by an EEA/Swiss national. It is given to the employer for a specific job to employ a named employee. Details of the person who will fill the job must be given in the application form and he/she must sign the application. It is valid for up to 12 months and can be renewed. Initially, there were no restrictions or guides on the type of work covered by the employment permit scheme — this was completely defined by employers. However, this has changed dramatically as the Department has moved to restrict the types of employment for which permits will be issued (see below). There is currently no quota on the number of employment permits which can be issued under this scheme.

To get an employment permit, the employer must advertise the position nationally and advertise with FÁS, and throughout the EEA area, using the EURES information system. If a suitable worker has not been found after a minimum of four weeks of the advertisement being on the FÁS/EURES website, the employer can then look for someone from outside the EEA area. When the worker has been sourced, the employer applies to the Department of Enterprise, Trade and Employment for an employment permit. The length of time for processing applications in the Department is 30 to 40 working days at present.

33 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

34 Holland, K. (2003). 'Department Very Sympathetic to Ukrainians with Fake Permits'. *Irish Times*. 1 April 2003.

The employer must fill in details of the job describing the type of job, wages, main functions, deductions and the number of working hours per week. These details must be filled in before the worker signs it. The form states that the employer cannot charge the employee a fee for the employment permit or for agreeing to seek employment for him/her. It also informs the worker that she/he is entitled to the full benefits of all relevant employment rights legislation. The Department of Enterprise, Trade and Employment has produced a booklet on these rights, which is available in nine languages.

Mustafa is from Morocco. He came to Ireland on an employment permit. Mustafa arrived in Ireland to discover that the job did not exist. He could not believe this as he had been given assurances before he left Morocco. He contacted the recruitment agency, which could do nothing for him. When he contacted the Gardaí to make sure he was legally resident in the State, his passport was confiscated. Mustafa feels very confused as he felt that he was trying to do everything correctly. Despite this, Mustafa was determined to make the most of the opportunity to be here. He actively searched for another job and has now found an employer who will make an application for an employment permit for him. His new employer is delighted that Mustafa has come along. She had advertised for more than six months and couldn't find someone from Ireland or the European Economic Area with Mustafa's experience. However, the new employer needs a copy of Mustafa's passport which contains his current valid residence permit and entry visa. The Gardaí have indicated that Mustafa will have to leave the State in order for a new residence permit to be issued. Even if the employer manages to obtain an employment permit, Mustafa does not have the money to pay for a return ticket to Morocco.<sup>35</sup>

### **Renewal of employment permits**

Employment permits can be renewed. The employer applies for the renewal in respect of a particular employee employed by him/her. Almost 40 per cent of employment permits were renewed in 2001. A worker on an employment permit can change jobs if his/her new employer has been granted an employment permit. Almost ten per cent of immigrants changed jobs in 2001. Generally, the first employer must return the employment permit to the Department of Enterprise, Trade and Employment before the Department will issue a new permit for the worker changing his/her job.

The immigrant named on an employment permit is entitled to apply for an unlimited employment permit after six years, but only if they have been with the same employer for five years and stay with that same employer in the future. If they leave that employer any time in the future, they must get a new employer to get them an employment permit under the temporary employment permit scheme, and the entire cycle begins again.

35 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

Yousef is a Tanzanian national who came to Ireland two-and-a-half years ago. He has been working for the same employer since he came to Ireland. Yousef enjoyed living in Ireland so much that his wife Miriama joined him as a dependent spouse. They had a good relationship with Yousef's employer whom they both met socially and regarded as a friend. Yousef was pleased when his employer applied for his third employment permit well before the second employment permit expired. The couple started looking at buying a house when things changed suddenly. Yousef's employer withdrew the application before the employment permit had been issued. Yousef was dismissed. He wants to challenge the dismissal in the Employment Appeals Tribunal. Yousef and Miriama are very worried. Their residency in Ireland is based on Yousef holding an employment permit. They are concerned that they may not be allowed to stay to pursue his case. Additionally, he may not be able to take up alternative employment even if an employment permit is obtained by another employer because of the gap in his residency.<sup>36</sup>

### **Rights of migrant workers with employment permits**

The migrant worker is entitled to broadly similar rights as Irish nationals in relation to employment, health, education at primary and secondary level for the children, housing and social welfare. There is no formal right of family reunification. The position as regards non-contributory social welfare is unclear and seems to depend on the particular social welfare officer.

Aisha is from Sri Lanka. She came to live in Ireland one year ago. She had heard about Ireland from friends living here and couldn't wait to go and work there. It took many months for her employment permit to be issued, but Aisha was excited and prepared to wait. Soon after arriving in Ireland she started working. Aisha found her employer very strange and tried to make sure she was never alone with him. However, her boss often found opportunities to get Aisha on her own. At these times he would make requests for sexual favours. Each week, when she went to collect her wages, he subjected Aisha to unsolicited kisses before he would hand over her pay. These experiences were deeply traumatic for Aisha. Her friends at work tried to make sure that she was not alone with her employer. Eventually, the stress of being constantly vigilant became too great and Aisha left her job. She is afraid to seek redress, even though her friends from work will give evidence, as she is terrified of her employer. When Aisha left her job he told her "the moment she exposes him, he is going to send her back". Her permission to stay in Ireland is linked to her employment and is due to expire. Aisha is terrified that she is going to be deported.<sup>37</sup>

36 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

37 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

## Major changes (April 2003) in the employment permit scheme

Recently, the government announced major changes to the employment permit scheme.<sup>38</sup> Following consultations with FÁS, the Department of Enterprise, Trade and Employment will define, on a quarterly basis, those sectors which will be ineligible for employment permits. A very wide list of excluded sectors has been announced with immediate effect.<sup>39</sup>

This new policy represents a shift towards a far more selective use of the employment permit scheme. It remains to be seen whether sufficient Irish and EU/EEA workers are available to take up employment in those sectors which have now been excluded from the scheme. Employers' groups have already expressed concern.<sup>40</sup>

Aziz is from Libya. He came to Ireland on an employment permit, and was placed in a branch of a large restaurant chain. Aziz did very well in his job and was offered more and more responsibility. His employer was very impressed with Aziz and the initiative he took. His employer recommended Aziz for promotion if he was prepared to transfer to another branch of the same restaurant. Aziz was very eager to take up the opportunity and agreed to the transfer with a view to being promoted in 12 months. Before the end of the first 12 months of employment his employer sent in a renewal application for him to work in the other branch. As this seemed a standard procedure, Aziz and his employer were surprised when the application was returned. His employer was advised to make a new work permit application. The chain of restaurants was operated by franchise, with each branch considered independently. Meanwhile, the Department of Enterprise, Trade and Employment had issued a list of jobs considered ineligible for work permits. This list includes catering. Aziz and his employer are now caught in a double bind. While his employer is continuing to explore every avenue, he cannot believe this is the reward given to migrant workers in Ireland. The initial excitement Aziz felt when he was approached about this new opportunity has disappeared. He does not know if he will be able to remain in Ireland.<sup>41</sup>

## Work visas and work authorisations

The Department of Enterprise, Trade and Employment introduced the work visa/authorisation scheme in 2000 to enable the entry of skilled workers in specific skilled areas. This scheme covers defined categories of work and is aimed at attracting skilled workers to Ireland.

38 Department of Enterprise, Trade and Employment Press Release (2003). 'Department of Enterprise, Trade & Employment and FÁS Clarify Operational Arrangements of Employment Permit Procedures'. 7 April 2003. <http://www.entemp.ie/press03/070403a.htm>

39 Press release of 7 April 2003. Clerical and Administrative; General Labourers and Builders; Operator and Production Staff; Sales Staff; Including retail sales, sales representatives and Management/Supervisory/Specialist Sales; Transport Staff Including Drivers - Bus, Coach, Car, Taxi, Fork Lift, and HGV etc; Childcare Workers; Including Nursery/ Crèche Workers, Child Minder/ Nanny; Hotel Tourism and Catering; Reception staff and Barpersons; Craft Workers; Including Mechanic Aircraft, Bookbinder, Bricklayer, Cabinet Maker, Carpenter / Joiner, Carton Maker, Fitter - Construction Plant, Electrician, Instrumentation Craftsperson, Fitter, Tiler - Floor / Wall, Mechanic - Heavy Vehicles, Instrumentation Craftsperson, Metal Fabricator, Mechanic - Motor, I.T.- Network Administration, Originator, Painter And Decorator, Plumber, Printer, Engineer - Refrigeration, Sheet Metal Worker, Tool Maker, Vehicle Body Repairer, Machinist - Wood

40 IBEC (2003) Press Release. 'IBEC expresses concern with employment permit procedures'. 7 April 2003. <http://www.ibec.ie/ibec/press/presspublicationsdoclib3.nsf/vwTopTwoNews/72D999E6FCA0591080256D01005E33D D?OpenDocument> Accessed 21 April 2003.

41 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

Although the work visa authorisation scheme is administered through Irish Embassies, the Department of Enterprise, Trade, and Employment has formal responsibility for the scheme and makes all decisions of substance. Work authorisation letters and work visas are issued directly to the immigrant by the Irish Embassy in their country of origin or habitual residence. Application forms for these work visas and work authorisations are available at the Irish Embassies or Consulates abroad and must be accompanied by documents regarding the professional qualifications and experience of the applicant, evidence of a job offer and job contract in the categories of jobs defined under the scheme.

The categories of jobs are:<sup>42</sup>

- Information and computing technologies professionals
- Information and computing technologies technicians
- Architects, including architectural technicians/technologists
- Construction engineers, including engineering technicians
- Quantity surveyors and building surveyors
- Town planners
- Medical practitioners
- Registered nurses
- Dentists and the following specified professionals in the Public Health and Social Care sectors, including voluntary bodies:
  - Diagnostic or therapeutic radiographer
  - Audiologist
  - Dietician
  - Social worker
  - Occupational therapist
  - Medical scientist
  - Orthoptist
  - Physiotherapist
  - Medical physicist
  - Hospital pharmacist
  - Psychologist
  - ECG technician
  - Speech and language therapist
  - Neurophysiological measurement technician
  - Biochemist
  - Cardiac catheterisation technician

The work visa/authorisation is given to the worker for two years. During this time he/she can change jobs and the visa is renewable for a two-year period. There is no quota on the numbers of visas which can be given out.

Under this scheme, people coming from countries which require a visa to enter Ireland will need a work visa while those coming from non-visa countries need a work authorisation only. All work visa/authorisation holders have to get a residency permit from immigration. The residency permission of a visa/work authorisation holder has to be renewed by the Garda on its expiry.

Blessing is from Nigeria. She is a software engineer and has a working visa under one of the high-skills categories. Blessing came to Ireland two-and-a-half years ago. Her husband Solomon and their two children stayed behind to

42 Department of Enterprise, Trade and Employment (2003). *Information Leaflet Concerning Working Visas for Employment in Ireland*. 11 February.

sell the house. They joined Blessing six months later. The couple were hoping to make a new life in Ireland. On paper, Blessing's salary looked attractive. However they soon realised that the cost of living in Ireland was high. The family found it impossible to live on one income and Solomon began to look for work. As Solomon was not eligible for a working visa he looked for work under the employment permit scheme. After almost two years trying Solomon has given up. He now whiles away his time feeling helpless and dependent. The couple have decided that it is not sustainable for Blessing to continue working in Ireland. They are planning to go back home to restart their lives. They feel particularly frustrated when they hear from former colleagues who emigrated to other countries for much greater benefits. They feel that it is a pity that the families of migrant workers are not treated as units. They say that they are forced to return home and in the process will deprive Ireland of two highly-skilled people.<sup>43</sup>

### ***Persons benefiting from family reunification rights for non-EEA/ Swiss workers***

After being three months in Ireland, a person who has a work visa/authorisation can apply for permission to bring his/her family members to Ireland. This permission is not guaranteed but in practice is usually granted. Nonetheless, the discretionary nature of the regime, and the lack of clarity in terms of the rights of migrant workers, can lead to anomalies.

Valentine is from Romania. He is resident in Ireland on a working visa under one of the high skills categories and is working as a construction engineer. Valentine has been living in Ireland for one-and-a-half years. On a work visa, Valentine is entitled to apply for his family to join him after three months. His wife Natalia joined him in Ireland a year ago. Valentine and Natalia have two daughters aged 14 and 9 years. They decided that it would be good for the children to finish the school year before coming to Ireland. In June 2002, they applied for their two daughters to join them here in Ireland. Neither parent could believe it when the visa applications were refused. When they requested the reasons for the refusal, they were informed that the applicants had not demonstrated their daughters' obligation to return to their home country and that they 'may overstay following their proposed visit'. A visa appeal was made and Valentine and Natalia waited anxiously for the decision. Natalia felt that she should be with her children and became increasingly depressed. The children cried on the phone in weekly calls home. Valentine and Natalia considered leaving Ireland, so that the family would not be separated any longer. Finally, in January 2003, seven months after the initial application, the family was reunited.<sup>44</sup>

Family reunification rights for non-EEA workers are limited and in many cases discretionary (for example, spouses and partners of migrant workers with employment permits have no automatic right to family reunification). Where family reunification is permitted, rights and entitlements are very limited. In particular, spouses have no right to work. This in turn can lead to a poverty trap as migrant workers and their families struggle to survive on a single low salary. Non-married partners and persons in same-sex relationships have no formal rights.

43 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

44 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

### **The particular situation of women migrants**

One of the phenomena observed across all EU labour markets in recent years has been a growing trend towards casualisation and feminisation of significant parts of the labour market. This has particular consequences for women migrants. They are relatively more likely to be found in less skilled work than their male counterparts and to be badly paid for that work. The situation of the female partners of male migrants may also lead to difficulty in such countries as Ireland where they are denied the right to work. The fact that in many cases their status is linked to that of their working male partners may also leave them in a very difficult position, for instance, if the desire to escape from a violent and/or abusive relationship has to be weighed against the danger of losing their right to remain in the host country. Finally, a growing problem exists in the trafficking of women and children into the European sex industry.

Helen is from New Zealand and has been living in Ireland for nearly two years. She is married and her husband is a construction engineer and has a work authorisation under one of the high-skills categories. Helen joined her husband on a dependant's visa, which was issued for one year and is renewable. This means that she cannot work in her own right and is financially dependent on her husband. When her husband became violent and abusive towards her, Helen was terrified. She was so far from home and from family and friends who could provide support. Helen left the marriage after a severe beating and spent a number of months in a Women's Refuge. When her residency card expired she went to the Garda National Immigration Bureau to renew it. Helen was told to come back with her husband. She is worried that she cannot remain in Ireland as her residency is based on her marriage to a person on a work authorisation.<sup>45</sup>

### **Business permission holders**

Under the business permission scheme a letter of permission to enter and reside can be given by the Department of Justice, Equality and Law Reform to someone wishing to come and set up a business. Permission is given for 12 months initially. This can be renewed for a further 12 months and then for a further five years. The business, among other things, must transfer €300,000 to the state and create employment for at least two Irish/EEA nationals. There are a number of additional requirements.

Nationals from the following ten countries may establish a business in Ireland under the terms of the *Association Agreements*, also known as the *Europe Agreements*, concluded by the EU with the applicant states:

- Poland
- Hungary
- Bulgaria
- Czech Republic
- Romania

45 Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

- Lithuania
- Latvia
- Estonia
- Slovenia

As a result, individuals who are nationals of these states have the right to establish a business in the Member States.<sup>46</sup> They have the right to:

- Pursue economic activities as self-employed persons and to set up and manage undertakings, in particular companies which they effectively control.
- Take up and pursue economic activities by means of setting up and managing subsidiaries, branches and agencies (in regard to companies) and in order to do this, to send key personnel, as defined in the agreements.<sup>47</sup>

However, nationals of *Europe Agreement* countries require a business permission to establish a business in Ireland.

### ***The effect of the Turkey Association Agreement on the granting of business permission***

Under the Turkey Association Agreement, the European Court of Justice recently decided in the case of *Savas*<sup>48</sup> that the Agreement contained a ‘stand-still’ provision which prevented signatory states from introducing more restrictive immigration regulations for self-employed persons than were in place when the Agreement became effective in that Member State. The meaning of this judgement is yet to be tested in Ireland. For the UK, which was bound by the Agreement on 1 January 1973, it is likely to mean that the requirement to invest £200k and certain other requirements cannot be applied to Turkish nationals. This means that the rights of entry and residence for self-employed Turkish nationals may become similar to those extended to the nationals of countries covered by the Europe Agreements.<sup>49</sup>

### ***Persons benefiting from intra-corporate concession schemes***

Two schemes (introduced in 1999 but currently suspended) allowed employers to bypass the employment permit/visa controls in bringing in workers.

### ***Intra-corporate transfer/secondment***

Companies were allowed to transfer staff to Ireland for up to four years without an employment permit being necessary. The concession was intended primarily to facilitate those international companies which needed to locate key personnel to Ireland for a limited period of time.

46 Poland and Hungary from 1 February 1994, Bulgaria, Czech Republic, Romania and Slovakia from 1 February 1995 and Lithuania, Latvia, Estonia and Slovenia from 31 December 1999. The right of establishment for individuals from Slovenia has been delayed until six years after entry into force of the Association Agreement with Slovenia. Guild, E. (1996). *A Right to Establishment under the Europe Agreements*. London: Bailey, Shaw and Gillett, p. 5.

47 Guild, E., Staples, H. (2001). ‘Inside Out and Outside In: Third-Country Nationals in European Law and Beyond’ in *European Law and Policy on Immigration and Asylum*. Brussels: Université Libre de Bruxelles, p. 192.

48 *Savas*, C-37/98, [2000], Al ER (EC) 627.

49 Seddon, D. (ed.) (2002 ed.). *Immigration, Nationality and Refugee Law Handbook*. London: Joint Council for the Welfare of Immigrants, p. 481.

### **Non-EEA/Swiss trainee scheme**

This scheme allowed Irish companies to bring in non-EEA/Swiss personnel for a period limited to up to three years for training.

Both these schemes have been temporarily suspended because the Department of Enterprise, Trade and Employment has evidence of misuse of these schemes: contrived arrangements were being put in place by employers and employment agencies to bypass the employment permit scheme and the domestic labour market. It also appears that many staff were being transferred are low-skilled or unskilled workers whereas the scheme was intended for a very limited number of high-skilled key personnel.

### **“Van der Elst’ migrant workers**

There is another category, which is not discretionary and has not been suspended, concerning the transfer of non-EU workers already legally employed in one EU Member State who are temporarily sent on a contract to another Member State (this followed the *Van der Elst* case in the European Court of Justice in 1994).

### **Refugees and asylum seekers**

People have the right to claim refugee status under the Geneva Convention 1951 and the 1967 Protocol. There was a significant growth in the numbers seeking refugee status in Ireland between 1995 and 2002, when the numbers rose from 424 to 11,634. Asylum seekers are obliged to live in accommodation provided by the Reception and Integration Agency and the local Health Board where they receive full board. They also receive an allowance of €19.10 for adults and €9.55 for children.<sup>50</sup> Aside from those covered by a one-off decision in 2000, they are not allowed to work while awaiting the results of their application. Because of particular circumstances, some asylum seekers are given a private accommodation allowance by the Health Boards and given supplementary welfare allowance. Some Health Boards operate on the basis that direct provision is harmful to the health and mental welfare of asylum seekers, and allow them to seek accommodation in the private-rented sector after a period.

A number of major changes are in the course of implementation at present. It is proposed to transfer the administration of payments from the Health Boards to the Department of Justice, Equality and Law Reform. There are grounds to fear that this may be part of a more general policy to require asylum seekers to remain in official accommodation until decisions about their cases are taken. This would make integration all but impossible and would have particularly deleterious effects on children.

### **Students**

Selling education to students from developing countries has been promoted by the government as a major source of foreign revenue. A particular area of growth is in language studies. Students from non-EU countries must get a residence permit from the Department of Justice, Equality and Law Reform for the period of the course and must register with the Gardaí. They can work without a permit for

50 Irish Refugee Council (2002). *Fact sheet on Asylum Seekers and Accommodation Centres*

twenty hours per week during term, and can work full time during holidays. They are a significant source of labour and their numbers are growing rapidly. At the end of their course, students must return home unless their qualifications are in one of the high-skilled categories, in which case they can apply for a work visa/authorisation. Other than for work in the defined high-skills categories, they cannot apply for an employment permit while studying in Ireland. They must first go home and an employer can then apply for an employment permit. Exceptions have been made to this rule in some cases where employment was a logical follow-on from the course attended.

### ***Parents/siblings of Irish nationals***

A Supreme Court decision in January 2003 will lead to a change in the practice to date whereby the parents of children born on the island of Ireland (who are in almost all cases Irish nationals) were given the right of residence in Ireland more or less automatically. It is unclear what will happen to the more than 10,000 parents/siblings already in the country who were given temporary residence. Pending cases are even more unclear/suspended as they are not currently being processed.

Chioma is from South Africa. Some of her friends from South Africa were already working in Ireland. Their experience was very positive and they told their Irish friends that other South Africans were interested in working in Ireland. Chioma came to Ireland on an employment permit obtained by an Irish friend who is a businessman. When she arrived in the country she was informed that there was no job for her. Instead, she was offered accommodation and worked in the shadow economy to earn money. Despite the fact that she was not working legally, her employment permit was renewed for the purpose of renewing her residence permit. Chioma then became pregnant. When she informed her Irish partner he was not supportive. She tried to get help from the social welfare office and the Health Board and was told that although she had a valid visa her situation was dubious as no tax and PRSI had been paid in respect of her. Her employment permit will expire around the time her baby is due. She can no longer make an application for permission to remain as the parent of an Irish citizen. Chioma has no savings and feels that she would be shunned if she were to return home as a lone parent.<sup>51</sup>

### ***Undocumented migrants***

Ricardo is from Cameroon. He came to Ireland seven years ago and is an undocumented migrant worker. Ricardo has worked all over the country and was always prepared to go where the work was. No employer ever asked to see documentation to show that Ricardo had permission to work. All his employers were happy to pay cash in hand. He has worked for good employers who paid top rates to get the job done, and for employers who paid very badly and provided bad working conditions. Ricardo sends whatever money he has to his family back home in Cameroon. They rely on this income and are hoping one of his brothers will be able to get to Europe like Ricardo. In his last job Ricardo was working outside Dublin. The work was difficult and most days

<sup>51</sup> Source: Immigrant Council of Ireland. For reasons of confidentiality certain details have been altered, but this example is based on an actual case.

they worked ten hours or more. None of the workers were given safety equipment. Some scaffolding fell on Ricardo and he had to be cut from the wreckage. As a result Ricardo lost a limb. Although he had an arguable case in law against his employer on grounds of negligence, he was too afraid to report the matter and take appropriate action. He does not know what he can do to help his family at home, let alone manage financially himself. He doesn't qualify for disability payments and his medical costs are escalating. The case has many parallels among undocumented Irish in the USA.<sup>52</sup>

Undoubtedly, there are undocumented migrants working in the informal economy in Ireland. However, it is impossible to put a figure on their numbers in the absence of any studies.

### ***Turkish nationals – a special case***

The EU's Association Agreement with Turkey constitutes an exceptional case. The main benefit under the Turkey Association Agreement is for those who have been admitted to Ireland in an immigration category that allows access to employment, for example, as a worker or spouse of an EEA national. Regulations, known as Decision 1/80 issued under the authority of the Turkish Association Council, state that after completing a period of one year in employment, a Turkish national has the right to a residence permit, allowing him/her to continue in that same employment for a further three years. On completion of the fourth year, a Turkish national in this situation acquires a right to a residence permit which will allow him/her to take up any employment.<sup>53</sup>

### ***Integration/alienation***

The process of integrating immigrants into the new society is an essential part of immigration policy. It has a vital bearing on how immigration affects the immigrants and the host society.

In Ireland there is no Government Agency for integrating migrant workers or their families. There is a Reception and Integration Agency, which was established by the Department of Justice, Equality and Law Reform. However, this Agency has no responsibility or services for migrant workers. It is responsible only for services for asylum seekers/refugees and, in any event, is almost entirely concerned with reception, not integration.

Once the Department of Enterprise, Trade and Employment issues an employment permit to an employer and makes a booklet on employment rights available to the employer, there is no government service responsible for the integration of migrant workers. Integration whether in the workplace or at large, is essentially *laissez faire*, leaving employees to take responsibility for themselves; on occasions the employer, colleagues or trades unions may help. The Inspectorate in the Department of Enterprise, Trade and Employment has responsibility for ensuring that the workers get their employment rights, but it is responsible for all workers in the state and has no particular focus on migrant workers. There are 17 Inspectors for the whole country. If a migrant reports abuse then the Inspectorate will investigate and if appropriate, take action in the Labour Court.

52 Source: Irish Centre for Migration Studies, NUI Cork. For reasons of confidentiality details have been altered, but this example is based on an actual case

53 Seddon, D. (2002) op. cit., p. 480.

Anti-discrimination legislation is an important part of integration structures. Ireland has good legislation in this respect — the *Employment Equality Act 1998*, the *Equal Status Act 2000* — and it is hoped that, over time, case law will establish clear precedents and benchmarks. The Equality Authority and the Director for Equality Investigations look into discrimination cases in employment, and the Equality Authority looks at cases of discrimination in relation to goods and services. In contrast, the *Prohibition of Incitement to Hatred Act 1989* has proved a very weak piece of legislation, and a very small number of prosecutions have occurred. The results of a review of this legislation promised by the previous Minister for Justice, Equality and Law Reform have yet to be published.

### ***Deportation/voluntary return***

Irish immigration policy is not an open door for whomever wishes to come and work and live here — it is one of managed immigration within specific rules. There is legislation and procedures to expel those who do not meet the rules and who do not leave voluntarily unless they are granted permission to remain on grounds set out in Section 3(6) of the *Immigration Act 1999*. The procedures for expulsion/deportation are regulated by the *Refugee Act 1996* and the *Immigration Act 1999* as amended by the *Illegal Immigrants (Trafficking) Act 2000* and by various Statutory Instruments based on these and earlier legislation. The *Immigration Act* lists nine categories of people in respect of whom the Minister of Justice, Equality and Law Reform may make a deportation order. The Act also lists criteria which the Minister must consider before he/she makes a deportation order. Each case is considered on its own merits. In 2001 there were 365 deportations; the 2002 figure was 518.

The Immigrant Council of Ireland (ICI) accepts the need for a managed immigration policy, including provision for deportation and voluntary return, provided that such a policy is rights-based, fair, transparent and non-discriminatory, and provided that those directly affected by it have full access to appropriate legal protection including the right of appeal. ICI is concerned with reports which would appear to indicate that undocumented or allegedly undocumented migrants, persons whose papers are allegedly not in order and others whose status is open to question may in certain cases experience detention and deportation without due process.

# Labour Immigration Systems In Other Countries

*Immigration regimes in EU/EEA Member States  
since World War Two*

*Immigration policies in traditional receiving  
countries outside Europe*





## LABOUR IMMIGRATION SYSTEMS IN OTHER COUNTRIES

### *Immigration regimes in EU/EEA Member States since World War Two*

Europe has historically been a region of emigration, not immigration, and a narrow and exclusive ethno-nationalism in many European countries all too often meant that outsiders were given a cold and conditional welcome even when they did come. This is epitomised in the term *gastarbeiter* or guest worker. A guest was expected to go home sometime, and the term ‘worker’ implied a unit of economic production, not a person living in the broader society. Because EU countries have only very recently begun to consider the notion that they should become regions of permanent immigration, there is not as yet a substantial body of legislation, policy and best practice to draw upon. The approach generally adopted by European countries up to now ignored the practical reality that migration is largely self-regulating — migrants will only migrate if there are employment opportunities in the receiving country — and did not seek to build on the economic and social benefits linked to migration (as evidenced so clearly in such cases as the USA and Canada) through the provision of long-term residence and integration arrangements for migrant workers.

Many of the Member States of the present EU received foreign workers in the aftermath of World War Two as the continent, shattered by war and depleted in population, sought to rebuild itself. In general, immigration programmes of the time were restrictive and initially workers had few rights. Examples of such programmes included the aforementioned *gastarbeiter* programme in Germany, the *European Voluntary Worker* programme in the UK and the various state-to-state bilateral programmes put in place by countries such as France. Conditions were often harsh, with poor working and housing conditions and few social rights.

By the 1960s a more rights-based perspective was evolving, although policy and practice varied widely. In the UK, for instance, most Commonwealth migrants had citizenship and full political and residence rights (something which is no longer the case for those arriving today) and many gradually became integrated into British society. Although second-generation immigrant children experienced marginalisation and social exclusion, especially in the school system, the introduction of ‘race relations’ policies and other anti-discrimination measures gradually led to an improved climate for many migrant workers and their families. In Germany, by contrast, while social and economic conditions did improve, it continued to be impossible for guest workers to become German citizens and in most cases even their children, born in Germany, were also denied citizenship. French policy on citizenship was more lenient but official policy on cultural rights was highly assimilationist and immigrants were strongly encouraged to ‘become French’ in a cultural and linguistic sense if they intended to remain in France. Multiculturalism was, and remains, an alien concept in France.

The failure of European societies to integrate immigrants in the early stages after their arrival had lasting consequences. While many did become integrated over time, substantial numbers of immigrants and their children were marginalised and ghettoised, caught in a cycle of poverty and deprivation from which the double effects of class and race discrimination made it all but impossible to escape.

### ***Retrenchment in labour immigration in the 1970s***

The war in the Middle East (1973 to 1974) was followed by a sharp rise in oil prices, high inflation and a sharp increase in unemployment. European countries in general placed an embargo on labour migration and in countries such as France strong and largely unsuccessful efforts were made to bring about the voluntary return of migrant workers to their home countries. However, even though labour immigration dipped sharply, family reunification for migrant workers with permanent residence rights ensured a continuing stream of immigrants. The French government initially tried to ban this type of immigration as well as labour immigration but the measures introduced were struck down by the courts.

The last three decades of the century saw a period of retrenchment in immigration in Europe. It was also a period, initially of scapegoating immigrants as unemployment rose, and latterly of a recrudescence of racism as the New Right gained strength across Europe in the 1990s. While immigrant organisations, statutory agencies and the voluntary sector grew in strength and influence, anti-immigrant sentiment also grew across Europe. Parties professing openly anti-immigrant policies took power in Austria, the Flemish regions of Belgium, the Netherlands, and Denmark, while mainstream parties in other countries, including Italy, France, Spain and Britain, expressed increasingly unsympathetic views to immigrants (although some evolution in British thinking has since occurred).

### ***The effect of demographic change on immigration policy in the 1990s***

For most of the past three decades official policy in EU Member States was based on the assertion that they *were not countries of immigration*. It was only at the close of the 1990s that it began to be admitted, in view of the unique demographic situation in Western Europe, that it was now time to abandon this doctrine and to replace it by managed immigration policies, to borrow the term which has been in use recently in Britain.<sup>54</sup>

Individual EU Member States began to implement a variety of new policies to attract high-skills migrants (France, Germany, Britain, and Ireland).<sup>55</sup> These are not yet really comparable, however, with programmes of this type in traditional immigration countries such as the USA, Canada, Australia and New Zealand. One of the best-known recent innovations, the much-vaunted German 'green card' programme, modelled in part on the USA system, provides for a five-year permit. However, it does not, unlike the USA system, allow for permanent immigration in certain cases. The Irish equivalent is for a maximum duration of only two years. This is renewable, but the Irish approach illustrates once again that migrant workers, even the highly-skilled, are often seen as meeting temporary market-related needs rather than as persons who could represent a permanent and significant asset to Irish society.

54 Spencer, S. (2002). 'Recent developments in Immigration Policy in the United Kingdom', in *Migration Policy: Reform and Harmonisation. Ireland in the broader European Context and Issues arising from the Common Travel Area with Britain*. Dublin: National Consultative Committee on Racism and Interculturalism.

55 International Organisation for Migration (2002). *International Comparative Study of Migration Legislation and Practice*. Dublin: Department of Justice, Equality and Law Reform pp.118-119.

In general, high-skills programmes reflect the fact that there is an increasing worldwide shortage of certain kinds of skilled labour and Europe is now competing for such labour with other wealthy and developed economies. Policy towards high-skills migrants is therefore demand- rather than supply-driven. While EU countries are thus making it easier for certain would-be immigrants to get in, we have not seen, as yet, a more root and branch reform of immigration and integration policies such as would be necessary if countries are really to accept and embrace the reality of immigration.

Unskilled migrant workers have also been arriving in increasing numbers in most Member States. However the *de facto* presence of growing numbers of migrant workers, whatever their skills and experience, has not been accompanied by the codification of a clear series of core rights for all such migrants. States continue to follow widely varying approaches on such key issues as permitted length of stay, the right to change employer, the right of family members to work, family reunification, welfare, social and citizenship rights. Many, if not most, recently-arrived unskilled migrant workers are living in situations of considerable deprivation and poverty.

Finally, the absence of effective managed immigration systems for less-skilled migrants — who are prepared to work and for whom there is also a strong demand — has had other unfortunate consequences. Some of those currently applying for asylum in EU countries would probably choose labour migration if such a route was open to them. Others, whose employment prospects in their home countries are virtually nil and who face lives of poverty, place themselves in the hands of traffickers, often at great personal risk to themselves, and try to enter as undocumented workers. This frequently becomes a form of indentured labour, as such migrants struggle in black market jobs to pay off the money they borrowed to pay for the trip.

### ***The evolution of policy at EU level***

The right of free movement between EU Member States, guaranteed to all EU citizens since the Treaty of Maastricht in 1992, has not been extended to long-term migrant workers. In fact, the marginalisation of long-term migrant workers in the EU has arguably been further exacerbated by the implementation of the so-called *Schengen Acquis* between 13 of the present 15 EU Member States (excluding Ireland and Britain); moreover the Schengen arrangements will be extended to all applicant states as soon as they join. While these arrangements have led to the abolition of frontier controls in participating countries, only those who are EU citizens or who are short-stay visitors from outside the EU with a ‘Schengen visa’ are entitled to benefit from this freedom. This has led to an obvious difficulty: how are the authorities to identify those persons who are entitled to cross frontiers and prevent those who are not? Regrettably, the ‘solution’ to this security conundrum has too often been based on presumptions arising from distinctions of skin colour, with frequent identity checks particularly targeted at persons who ‘look like’ immigrants, the arbitrary use of stop and search, and raids on quarters heavily populated by immigrants.<sup>56</sup> The effect of

56 Mac Éinrí, P. (2002). ‘The Implications for Ireland and the UK arising from the development of recent EU policy on Migration’, in *Migration Policy: Reform and Harmonisation. Ireland in the broader European Context and Issues arising from the Common Travel Area with Britain*. Dublin: National Consultative Committee on Racism and Interculturalism. <http://www.nccri.com/pdf/migration.pdf>

these methods has been to render both migrant workers and indigenous ethnic minority persons increasingly marginalised within host societies. Moreover, there is a range of additional concerns arising from the low priority accorded to the protection of civil rights under the Schengen arrangements.

The 1997 Treaty of Amsterdam provided that immigration policy would become an area of Union competence five years after the entry into force of that Treaty, an event that occurred in May 1999. However, this transition to Union competence is hedged with a series of conditions which effectively mean that all contentious areas will continue to require unanimity. Progress on most of the initiatives launched by the Commission (for example, a proposal to allow permanent migrant workers to move freely within the EU) has been extremely slow or non-existent. It is now doubtful that any meaningful Union policy will be in place by 2004.

Two Directorates-General (DG) in the Commission have an input into policy in this area: Justice and Home Affairs (JHA), and Employment and Social Affairs. Most of the initiatives which are currently blocked are on the JHA side. However, this does not prevent initiatives by the DG for Employment and Social Affairs under the general headings of integration and social exclusion. The second stage of the National Action Plans against Poverty and Social Exclusion (NAPs/inclusion, 2003/2005) constitutes an ideal opportunity to promote action at EU and Member State level in this field, as it has already been decided that the social exclusion of immigrants, including immigrant women, will be a priority field. Moreover, the Irish Presidency in 2004 has signalled its intention to convene a conference on the issue of the social exclusion of migrants, following on from similar initiatives by the recent Greek Presidency.

Finally, Article 13 of the Treaty of Amsterdam provides the basis for important new initiatives concerning discrimination and exclusion on a number of grounds including race, nationality and ethnicity. Three directives based on article 13 have now been adopted: the 'Race Directive', the 'Framework Employment Directive' and the 'Gender Equal Treatment Directive' (see appendix A for full references). These directives will significantly improve the scope and level of protection already conferred under existing Irish legislation. The Race Directive prohibits discrimination on grounds of race and ethnic origin in access to employment, vocational training, employment and working conditions, membership of and involvement in unions and employer organisations, social protection including social security and health care, 'social advantage' education as well as goods and services, including housing.<sup>57</sup> Unfortunately, Ireland has failed to transpose the Directive by the date specified, 19 July 2003. This lacuna must be righted by the time Ireland assumes the Presidency of the EU in January 2004.

## **Conclusion**

The reality of the permanence of immigrant and minority communities in all Member States is being slowly and grudgingly accepted, but this has not yet translated into comprehensive and coherent policies either for the reception or for the integration of new migrants. At EU level, the philosophy of the European Commission provides for the graduated accretion of rights for migrant workers

57 For a brief comment, see NCCRI newsletter, August 2003. <http://www.nccri.com/NewsAug2003.html>

and their families, depending on the length of time spent in the host country, but progress is slow. This is an area where the ‘post 9/11’ effect is very visible and very negative, with a slowing down of most of the proposals which would confer greater rights and freedoms on such persons.

### ***Immigration policies in traditional receiving countries outside Europe***

The generally restrictive attitude towards immigration in most EU Member States contrasts sharply with the policies of such countries as the USA, Canada, Australia and New Zealand. Although each of these can also be criticised on various grounds (Australia followed an explicitly racist ‘whites only’ policy until the relatively recent past) there is much to learn from them.

Canada views immigrants as key players in the process of building a constantly-changing nation and immigrants are encouraged to think of themselves as Canadians from the beginning. A variety of federal, state and municipal measures are in place to assist them in the process of integration. In Europe, by contrast, nation-states appear to consider themselves to be already complete, and thus migrants are often seen as threats to the homogeneity of the nation. This insistence on a mono-cultural, unitary, largely ethno-national identity poses a challenge for the integration of new immigrants and is moreover an ongoing difficulty for Europe’s internal minorities, whether they are recent arrivals or of long standing. The underlying problem is not the presence of immigrants but the lack of acceptance of diversity within civil society; one has only to think of the exclusion of Travellers and Jews in Irish society. Any comprehensive policy must attend to both admission (who gets in? under what terms and conditions?) and integration (what changes are needed to provide for harmonious co-existence in a society which is based on equality and values diversity?).

It is useful to distinguish between those policies which are most effective at the admission level (reception) and those which work best in terms of long-term integration. For example, the USA’s immigration policy at the admission/reception level, while complex, has many admirable features and may fairly be described as enlightened and progressive in many respects. It is balanced, fair, transparent, effective, and reasonably non-discriminatory – or at least it was until the post-9/11 climate brought about a worrying erosion of civil liberties directed in particular at persons of Arab and/or Muslim background. But it does little, compared to Canada, to promote the integration of the immigrant once s/he has arrived.

### ***Managed immigration systems***

A managed immigration system may contain some of the following elements:

- Quotas for overall numbers of immigrants; these may be combined with sub-quotas by sector or category of migrant and are usually linked with labour-market forecasts
- A points-based, largely meritocratic, selection system for would-be migrants with high skills
- Special programmes for those with skills considered to be in particular demand
- Some type of lottery system for selecting less-skilled migrants
- Various schemes for temporary labour migration, often market-driven

- Business-related and entrepreneurial categories
- Family reunification; this may or may not include the right of such family members to seek work themselves

### **Points-based systems**

A number of countries, notably Australia, New Zealand and Canada, use points-based systems to assess would-be candidates. The advantages of a meritocratic points-based system for handling high-skills migration are fairly clear: transparency, fairness, efficiency (people can see at a glance whether they will qualify or not and the volume of applications will thus be reduced). Moreover, it is possible to vary such systems through the inclusion of social factors, such as likelihood of adaptability, so that they are not exclusively market-led.

The New Zealand system is an example of a points-based system. Points are allocated as follows:

- *Qualifications* (maximum 12 points)
- *Work experience* (scale of 1 point for 2 years up to maximum 10 for 20 years' experience)
- *Offer of Employment* (2 points if in an area not relevant to your qualifications; 8 if the area is relevant)
- *Age Group* (maximum 10 points for 25 to 29 age group; zero for over fifties)
- *Settlement Factor 1* Funds (1 point if you have NZ\$100,000, 2 points if you have twice or more)
- *Settlement Factor 2* Previous work experience in NZ (maximum 2 points)
- *Settlement Factor 3* Spouse/partner's qualifications (maximum 2 points)
- *Settlement Factor 4* Parent, brother, sister, child, living in NZ for at least three years, who sponsors you or your spouse/partner (3 points)

The four settlement factors listed last are capped at a total of seven points maximum. Currently would-be migrants (2003) must have at least 29 points to be eligible. However, even if a person does not have 29 points, the 'Job Search' category, for which 24 points are required, enables a person to spend up to six months in New Zealand looking for work.

The system confers benefits on the receiving country, which is able to access needed high-skills labour in an efficient and cost-effective manner, and on the migrant, who is able to access a relatively streamlined process with various benefits, rights and entitlements. Employers are in no way disadvantaged, as a definite job offer in a relevant work area attracts a significant eight points out of the 29 required.

There are also disadvantages. If there is not a prior job offer, the individual who does best according to a set of pre-determined indicators may not be the one the employer prefers. Moreover a 'pure' points system does not take account of the impact it will have on particular sending countries (for example, the risk of a brain drain). The long-term benefits are hard to calculate and there may be a danger that education and training programmes for the indigenous population will be neglected or under-resourced if high-skills migrants can be imported instead (arguably this happened in the late 1980s and early 1990s in the USA when various special visa programmes benefited educated migrants from places

like Ireland and Poland at a time when inner-city America was a site of serious social marginalisation). Problems may also be encountered with the validation of foreign qualifications.

Clearly, a points system will not be suitable for migrants other than high-skills migrants, unless used as part of a more complex system.

### **Employer-driven systems**

The United States uses a combination of employer-driven systems (for example, the H1-B programme) and a lottery as part of its complex range of immigration instruments. Ireland's current system is also based on a market-led approach, where the employer applies for and retains the employment permit. This type of approach is common in other countries, whether 'traditional' or 'new' migration countries in Europe and elsewhere.

The system does have advantages. Perhaps the most obvious are speed and flexibility. If the system is administered properly, only those workers for whom a job vacancy exists will get a permit. There is none of the cumbersome bureaucracy found in country-to-country agreements such as those operated, for instance, by Italy and Spain. The Government can also react rapidly and effectively in the event of changing market conditions (as it has done on more than one occasion in the current year).

An employer-driven system can also have significant downsides:

- It effectively privatises both reception and integration regimes
- A system where the employer holds the permit, unless it is very tightly regulated, is a recipe for exploitation

Even in an employer-driven system the following elements are crucial:

- There must be tight and effective control of recruitment and workplace conditions
- There must be a common set of core rights and entitlements, including family reunification, open to all migrants
- The statutory sector must accept that it has a vital role to play in reception and integration programmes
- If workplace terms and conditions are in accordance with the contract negotiated, employers may well have an expectation that employees will spend some minimum period on their first contract. However, a market-driven system should work both ways. The best incentive for the employer to offer the worker to stay will always be attractive pay and working conditions. There is no intrinsic justification for imposing more restrictive conditions on the rights of migrant workers to sell their labour in the marketplace freely than those conditions which apply to workers in general, including minimum notice.

### **Lotteries**

The best-known example of a lottery programme is the US Diversity Visa Program, well-known to many Irish people because they have been beneficiaries. Such a system can offer a degree of fairness and flexibility and can still be adjusted from time to time to reflect changing labour market needs, development policy or other policy objectives.

The US 'diversity' programme is not a high-skills programme although a minimum standard of education (second-level) is sought. It should be noted that even this relatively modest condition confers an inherent advantage on candidates from First World countries, who are more likely to have enjoyed the benefits of a good state or private education system. Following the US example it would be possible, for instance, to design a lottery-based system which would give priority to particular countries such as those with which Ireland has a bilateral development relationship. Alternatively, a modest lottery programme might be offered to countries with which we now have a strong relationship because of the presence here of asylum seekers (for example, Nigeria, Romania, Ghana).

### ***Temporary employment permit programmes***

Systems such as those outlined above, including points-based immigration regimes and lotteries, usually have long-term immigration as their goal. But many states also have temporary migrant worker programmes. Not all migrant workers will wish to become members of the host society and it should be possible to design programmes which are rights-based but which recognise that in certain cases the stay of the worker will not be permanent. Seasonal agricultural work schemes (for example, the USA and Britain) and contract labour of various kinds constitute examples.

## Recommendations

*Basic principles*

*Policy recommendations*

*Legislative recommendations*

*Regulatory recommendations*



## RECOMMENDATIONS

### *Basic principles*

However obvious, it is worth restating some of the advantages of an effective immigration regime:

- Migrants are needed to meet employment shortages in virtually all sectors of the economy.
- Effective and humane immigration policies, based in the first place on clearly articulated rights-based perspectives, transparent and fair selection systems and consensus-based support from the social partners, are the most appropriate way to provide for a well-managed admissions system, to prevent exploitation of individual migrant workers and to meet the needs of employers and society effectively.
- The experience of traditional immigration countries such as the US suggests that immigrants are major long-term economic, social, cultural and political assets to society.
- Today all societies are mixed and include indigenous minorities and immigrants from a range of backgrounds. Effective integration of migrant workers and their families promotes interculturalism, mutual respect and social harmony. It also diminishes the risk of social conflict, racism and xenophobia.

It is now time for the government to adopt a more strategic, long-term approach to immigration and integration policy. This should proceed from a fair and transparent immigration and reception system to a comprehensive approach to integration which recognises that Ireland will remain an intercultural society, one that respects diversity within a framework of shared core values.

There is a need for an integrated, transparent immigration policy, which should be publicly available and give a clear picture, to all within Irish society, of the role of immigration in Irish social and economic development. This should include information on the objectives, goals and benefits of immigration, the rules on entry for immigrants, the rights and obligations of immigrants, host-society obligations, and the structures and policies for the integration of immigrants.

A comprehensive immigration policy must be based on best practice and on an ethical rights-based approach. It should address the needs and impacts of migration on the host society, the migrant and the society from which the migrant came.

The development of a substantial and permanent mixed population inevitably must mean that host societies will also have to change if we are to provide for a harmonious climate of interculturalism and respect for diversity within a framework of agreed common values.

### *A managed policy*

Although politicians have frequently presumed that the only alternative to a restrictive immigration policy is a so-called ‘open door’ policy, this is a false alternative. The choice facing Ireland is not one between the extremes of an ‘open door’ policy or a ‘fortress Ireland’. All states need to manage migration.

Completely unrestricted immigration is impracticable for a variety of reasons. Apart from the fact that such a policy would be impossible to adopt in isolation

from other countries, especially our EU neighbours, any unplanned large-scale movement of persons, internally or externally, would have a variety of very practical consequences, such as the impact on the provision of transport, health, housing, education and other services. Moreover, in societies marked by conditions of considerable social inequality – and regrettably Ireland is an example – any substantial unmanaged influx may give rise to the dangers of social conflict between those indigenous and immigrant communities (or between immigrant communities themselves) which suffer from social exclusion and marginalisation and where there may be a perception that a very small cake is being divided in increasingly smaller slices. Therefore, immigration policy should not be seen as separate from broader social policy, particularly those policies which are designed to address problems of social exclusion.

Not all migrants coming to Ireland will wish to become a permanent part of our society. There must be room for flexible temporary arrangements particularly for those migrant workers who may wish to work in this country and then return home. Even in the case of those who become long-term or permanent migrant workers in Ireland, there will be some, such as persons from countries which do not allow dual citizenship, who will not wish to become Irish citizens. Temporary migrants or non-citizen permanent migrants should have their basic human, economic, social and cultural rights protected and validated.

### ***Policy recommendations***

Migration policy, whether temporary or permanent, must in all cases follow a comprehensive, rights-based approach, including the following key recommendations:

#### **1. Irish immigration policy should learn from best practice in other countries.**

The ICI recommends that Irish immigration policy should learn from best practice in other countries, particularly those countries which have long experience of immigration. No regime is perfect, but such a policy should reflect the transparency, fairness and comprehensive nature of progressive immigration policy at the reception level in such countries as the USA and Canada, combining some or all of the following:

- Employer-driven employment permits should continue to have a place, provided a strictly-regulated regime protects workers from exploitation and they are allowed to change employer. The permit should be given to the employee, not the employer.
- The codification of a common set of core rights and entitlements for migrant workers, including family reunification, the option of permanent residence after a fixed period, health, housing, welfare and education rights.
- Strong and comprehensive anti-racism and integration programmes to be implemented by statutory and voluntary service providers working within an holistic framework.
- Effective political leadership to address integration and diversity issues.

## **2. A more integrated and representative approach to policy is required.**

To date, immigration policy in Ireland has been marked by poor coordination between the main statutory actors. Thus, migrant workers are partly the responsibility of the Department of Enterprise, Trade and Employment and students are partly the responsibility of the Department of Education and Science, while the status of all immigrants is a matter of primary concern for the Department of Justice, Equality and Law Reform. Other departments, notably Health and Children, Social and Family Affairs and Foreign Affairs, are also involved. Some government departments have more experience of cooperation with voluntary and community agencies than others, while immigrants themselves are generally poorly represented in both the statutory and voluntary sectors. In a more general sense, immigration and integration issues need to be mainstreamed throughout the policy and legislative infrastructure in Ireland.

The ICI proposes that a study be commissioned, as a matter of urgency, to identify the most effective and suitable models, for an Irish context, of policy mainstreaming, inter-agency cooperation and immigrant representation. Such a study should take particular account of models of good practice developed in other countries for example, Sweden, which has a Ministry of Integration.

The aim should be to mainstream ‘integration- and diversity-proofing’ of all relevant areas of Government policy and legislation, in much the same way as is already taking place in the area of equality.

## **3. The work of relevant agencies should be incorporated into the policy process.**

Within Ireland, important new legislation and evolving policy can provide the basis for further action, provided it is undertaken in a properly coordinated and integrated fashion. The ICI supports the findings and recommendations of the recently published report of the consultative process and proposed framework for the *National Action Plan Against Racism*.<sup>58</sup> The ICI also draws attention to the relevance of the *National Action Plan Against Poverty and Social Exclusion*<sup>59</sup> and the Department of Enterprise, Trade and Employment’s *Ireland’s Employment Action Plan*.<sup>60</sup>

## **4. Debate on integration must incorporate a bottom-up approach.**

The debate about integration cannot be managed in a top-down fashion as it will be essential to build a strong popular consensus to support the policy. It should involve all of the key players in civil society and should aim to establish (a) a framework of common values, such as gender equality and protection for human rights (b) clear policies and structures to support the specific needs of migrants and their communities; these include support for their cultural rights. It would not be appropriate, by definition, to offer a prescriptive set of definitions and rules in advance of this process.

58 National Action Plan Against Racism Steering Group – *Diverse Voices* Summary of Outcomes of the Consultative Process and a Proposed Framework for the National Action Plan Against Racism. July 2003.  
[http://www.justice.ie/802569B20047F907/vWeb/rlMJDE5JADJ4/\\$file/immigration+act,+1999+consolidated.pdf](http://www.justice.ie/802569B20047F907/vWeb/rlMJDE5JADJ4/$file/immigration+act,+1999+consolidated.pdf)

59 Department of Social and Family Affairs (2002) *National Action Plan against Poverty and Social Exclusion 2003-2005* Dublin: Department of Family and Social Affairs.  
<http://portal.welfare.ie/publications/allpubs/naps/nactactplan/napso305.pdf>

60 Department of Enterprise, Trade and Employment (2002) *Ireland’s Employment Action Plan*  
[http://europa.eu.int/comm/employment\\_social/news/2002/may/nap2002/nap2002\\_irl\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/may/nap2002/nap2002_irl_en.pdf)

## **5. An anti-racism and anti-discrimination agenda must be introduced urgently.**

There is a need to introduce mandatory targets for diversity, anti-racism training and intercultural programmes in public and private sector organisations, with appropriate arrangements for benchmarking, reviewing and monitoring systems, based on specific targets such as those being adopted in the UK. The ICI calls for the establishment of an independent agency with statutory powers and a strong monitoring role in the area of anti-racism and anti-discrimination, or alternatively, for the extension of the role of an existing agency working in this field, such as the NCCRI. As mentioned above, the ICI strongly endorses the initiatives emerging within the consultation process to develop a *National Action Plan Against Racism*. In particular, it calls for action framed around the principal issues identified during the consultation process:

- Protection – enhancing protection against racism, including a focus on combating discrimination, assaults, incitement and abuse
- Inclusion – ensuring economic inclusion and equality, including a focus on poverty, employment and the workplace
- Provision – seeking equality of access to, participation in, and outcomes from service provision for minority ethnic groups
- Participation – supporting the full participation of minority ethnic groups in Irish society, including a focus on participation in decision-making
- Recognition – recognising and building respect for cultural diversity and promoting interaction and understanding<sup>61</sup>

## **6. Migrant workers should have rights equivalent to those of host-society members.**

Broader social rights, including access to education, training, health care and the right to family reunification, should follow the principle that migrant workers should in general have rights equivalent to those of host-society members.

## **7. Better information on workplace-related rights should be provided and they should be enforced more effectively.**

Workplace-related rights should be the same for all, regardless of status, ethnicity, or nationality. They should be properly monitored and enforced. The ICI is concerned that, while Ireland has good legislation in this area, better information provision is needed and much more effective enforcement is required.

## **8. The needs of migrant workers should be identified and appropriate services put in place.**

Insofar as migrant workers and their families have needs over and above those of host-society members – an example might be difficulties concerning language and translation services – these additional needs should be identified and appropriate services put in place.

61 National Action Plan Against Racism Steering Group – *Diverse Voices* Summary of Outcomes of the Consultative Process and a Proposed Framework for the National Action Plan Against Racism. July 2003. [http://www.justice.ie/802569B20047F907/vWeb/f1RXHR5Q6BZS/\\$file/diverse+voices.pdf](http://www.justice.ie/802569B20047F907/vWeb/f1RXHR5Q6BZS/$file/diverse+voices.pdf)

## **9. Migrant workers who are here for a considerable period should have the right to become permanent residents.**

Those who are here for a reasonable period should, whether they opt for citizenship or not, have the right to become permanent residents and enjoy the same security, rights and entitlements as Irish and EU citizens living here.

## **10. A system for regularising undocumented migrants should be considered.**

The ICI accepts that the State has the right to regulate immigration. Logically this must include the right to take action in the case of undocumented migrants. However, the State must have regard for the human rights of such migrants, who in the vast majority of cases are, in effect, involuntary migrants desperately seeking work. It is not long since tens of thousands of Irish migrants found themselves precisely in this position. Moreover, the ICI believes that more effective action should be taken against unscrupulous employers and their agents, rather than against the migrants themselves.

The ICI is mindful that changes in labour market legislation in a number of other EU countries have been accompanied by various regularisation measures aimed at those who may have been working in the 'black' or 'grey' economies. The introduction of employer sanctions by the government here, for the first time, carries with it the danger that undocumented migrants may be driven into an even more marginalised position than before, or that they may simply find themselves being let go by employers worried about prosecutions and fines.

This situation has arisen already in a number of other states and has been addressed through various regularisation programmes. Greece, Spain, Portugal, Italy and Belgium have all implemented such programmes. In the USA the Immigration Reform and Control Act (IRCA) 1986 regularised the position of those who could show that they had been living in the USA as undocumented aliens for a period of at least three years prior to the legislation. Many Irish migrants benefited from this measure.

The ICI urges the government to adopt the same type of creative and compassionate approach towards those in this plight as it advocated, less than two decades ago, for Irish undocumented aliens in the USA.

Finally, with respect to the detention and deportation of undocumented migrants and others whose situation is deemed to be irregular, the ICI urges the government to allow human rights monitors from designated organisations access to ports, airports and detention centres.

## **11. Steps towards integration must be taken.**

- We must create a just society. While special integration programmes are important, they must be implemented against a background of effective State policy to fight social exclusion. An effective integration system will focus on tackling social inequality and poverty and create a just society in which everyone has access to a minimum living wage, housing, health care, education, and social services.
- Integration is not a one-way street. We should introduce awareness programmes for immigrants on Irish culture and society.

- English language classes should be available free for all immigrants through their local adult education services.
- Local integration groups should be encouraged and resourced.
- The Irish education system and curriculum needs to be reviewed and reformed to reflect the increasing diversity of Irish society.
- Particular care is needed to provide for the needs of the children of migrant workers, in the light of the *UN Convention on the Rights of the Child* and bearing in mind that many such children will grow up as fully-fledged members of Irish society but will wish also to express and safeguard their own religious, cultural and ethnic identity. The ICI considers that it would now be timely to revisit the difficult issue of the religious ethos within the state school system, given that there is in practice little choice for most parents but to send their children to the local school, which may have a ‘particular religious ethos’ of a non-inclusive kind and thus deny the child the right to full equality and respect.

### ***Legislative recommendations***

#### **1. The UN Convention on the Rights of Migrant Workers and their Families should be ratified.**

The ICI supports the call by the ICTU (December 2002) for Ireland to sign and ratify the UN Convention on the *Rights of Migrant Workers and their Families*. The ICTU has pointed out that:

- Migrant workers are viewed as more than just economic entities. They are seen as social entities with families and have rights accordingly.
- Migrant workers are an unprotected population whose rights are often not addressed by receiving or sending states, and so the responsibility to provide measures of protection becomes that of the international community, through the UN.
- The Convention provides for an international definition of a migrant worker and the standards of treatment.
- Fundamental human rights are extended to migrant workers and also additional rights recognising their unique situation.
- The Convention has the potential to play a role in preventing and eliminating the exploitation of migrant workers and their families.
- The Convention seeks to establish minimum standards of protection for migrant workers and their families that are universally acknowledged and serves as a tool with which to encourage those states lacking national standards to bring their legislation in closer harmony with recognised international standards.
- At the very least, we should become a signatory to the Convention to initiate a national debate regarding its ratification and incorporation into Irish law.

## **2. Other international instruments to protect migrant workers should be adopted.**

A powerful body of international legal instruments designed to protect the rights of migrant workers and their families already exists. Ireland should now promote a more positive approach to the adoption of the most important of these. The State should move speedily to respect its legal obligation to transpose Council Directive 2000/43/EC (the 'Race Directive') into domestic legislation. The ICI also believes that an urgent study should be made with a view to the early ratification of other appropriate Directives and Conventions.

## **3. The changes in legislation in the Employment Permits Act 2003 must not result in a 'Europeans only' policy.**

As noted in chapter 3, the Government has stated that in the run-up to accession of the ten new EU States, preference will be given to employment permit applications from Accession States. The ICI is concerned that such preferential treatment may contradict Equality legislation and may also send out the wrong message that a 'Europeans only' policy is being implemented. The ICI would also be concerned if this clause was to be used in a way which might lead to the forced departure of migrant workers already living and working in Ireland. The confirmation by the Department of Enterprise, Trade and Employment that the new system will not apply to renewals of existing employment permits is noted.

## **4. Family reunification should be a legal right and spouses and partners should have the right to work.**

Under present legislation there is no statutory right for migrants to family reunification, even though this should be acknowledged as a fundamental human right. Moreover, spouses and partners have no right to seek work on arrival unless they have obtained employment permits, work visas and/or work authorisations in their own right. This can lead in practice to situations where, even though *de facto* family reunification may be accorded on a relatively lenient basis, such families may quickly be caught in a poverty trap. This can only exacerbate the process of social exclusion. It is out of line with practice in many other countries, including Britain, and is a significant disincentive to would-be migrant workers.

The government should recognise the constitutional recognition given to the family as the natural primary and fundamental unit of society in its immigration policy. All categories of legal migrants should have the legal right to immediate family reunion. Spouses and partners should be given the immediate right to work.

It has proved possible in other countries to extend family reunification rights to include couples in non-marital relationships, same-sex unions and children in unofficial fostering arrangements. The ICI calls on the government to implement similar arrangements here.

## ***Regulatory recommendations***

### **1. Recruitment agencies should be regulated.**

Putative migrant workers, wishing to go to a faraway country of which they know little and whose language they may not speak, will often turn to intermediaries. There is evidence that criminal traffickers control part of international recruitment agencies and that migrants are becoming victims of a whole series of abuses. In many cases they will have effectively signed away parts of their legal rights and entitlements before they have even arrived in the State.

Because intermediaries cannot be regulated directly (if they are outside Irish jurisdiction), the ICI recommends that recruitment agencies should be provided with incentives for good practice. For example, a voluntary code of good practice and a voluntary regulatory system for agencies based in countries of origin could be introduced. Also an ISO9000 standard for recruitment agencies could be introduced and employers could be offered the incentive of lower-cost employment permits if they go through an approved agency.

The abuses to which the present regime has unfortunately given rise are frequently dealt with through action, sometimes harsh, against the migrants themselves, often on their arrival at an Irish airport or port. The ICI proposes that the burden should be shifted towards the recruitment agency and the employer if clear evidence of deliberate breaches of the law can be found. To ensure compliance, employers could be required to post a bond in respect of each migrant worker, to be forfeited in the event of any abuse (as is the case in Singapore).

### **2. Employment permits should be issued to the migrant worker, not the employer.**

At present an employment permit is issued to the employer and not to the employee. As pointed out earlier this can give rise to abuses. At the very least, it ensures that some migrant workers will feel unable to assert their rights in the workplace in accordance with law and established negotiating practice.

The ICI believes that migrant workers should have the right to offer their labour freely to whomsoever they choose in the labour market. Responsible employers offering correct pay and conditions of employment would have nothing to fear from this change.

The present application form for an employment permit requires the migrant applicant to sign the form, but much more could be done to ensure that all applicants are fully aware of all of their rights. The ICI proposes that a comprehensive list of such rights, in all of the appropriate languages, should be read and signed section by section by all applicants before an employment permit is submitted.

### **3. Practices of passing on the employment permit fee to migrant workers must be ended.**

It is illegal for employers to seek to pass on the employment permit fee to employees but there is evidence to suggest that the practice is widespread. Employers may also seek to recover other costs through illegal deductions from workers' salaries. Such practices must be ended.

Organisations with charitable status are exempt from the payment of employment

permit fees. At present, the waiving of fees is operating on a discretionary basis. The ICI proposes that such waivers should be automatic, and in accordance with clear and transparent policy.

#### **4. The validity period for work/residence permits should be increased.**

Currently, employment permits are issued for a maximum of one year, renewable annually. Such a system is premised on the notion that the work is temporary and that most migrant workers will return home. While many will indeed wish to do so, the evidence presented in chapter one suggests that a substantial number will become part of a long-term migrant community here. Moreover, an exclusively short-term regime does not serve the interests of responsible employers, who will wish in many cases to retain the services of a worker in whom they have invested time and resources.

The ICI proposes that employment permits should be offered on the same terms and conditions as the current work visas and work authorisations, that is, two years with provision for automatic renewal, provided the migrant is in employment, for a further two years. Once legally resident in the country for a maximum of four years, migrants should be enabled automatically to obtain permanent residence status. Once such a status has been obtained, migrants should have the full range of rights and entitlements (housing, health, education, welfare, and so on) available to Irish and EU citizens.

#### **5. The situation of migrant workers who become unemployed must be addressed.**

At present, if the employment relationship between migrant worker and employer breaks down, for whatever reason, the worker fears deportation as his/her right to reside in the country is linked to his/her employment status. If the employment permit was given to the migrant and not to the employer, as proposed in this document, this would go some way towards protecting the worker's rights and enabling him/her to change employment, but workers who have been unfairly discriminated against still need to be given time to vindicate their rights. Better support needs to be provided for workers who may have been unfairly dismissed, constructively dismissed or whose terms of employment may have been breached by the employer.

There is a need to clarify and codify the welfare rights and residency rights of migrant workers who may find themselves between jobs for one reason or another. The ICI proposes that best practice elsewhere should be examined with a view to putting an equitable system in place and that, at a minimum, the migrant worker should be allowed to remain for the full period of validity of the residence permit granted.

#### **6. There should be a single residence/employment permit.**

Separate residence and employment permits are unnecessary, cumbersome and bureaucratic. Consideration should be given to the replacement of the present documents by a single smart card. The ICI also proposes that the present cumbersome system for re-entry visas be ended. It should suffice for migrant workers to have a stamp in their passports stating that they have permission to reside and re-enter for the period their work and residence permits are valid.

## **7. The process for reinforcing the rights of immigrants must be improved.**

Apart from the need to achieve a fairer recruitment process, there is also a need for much more effective regulation of workplace conditions and rights once migrants have arrived. The State needs to focus resources to ensure these rights are upheld. The ICI proposes a substantial increase in staffing in relation to immigration management and in the Labour Inspectorate in the Department of Enterprise, Trade and Employment. The ICI also proposes a more pro-active policy by the Equality Authority in relation to uncovering practises of discrimination against migrant workers and their families.

## **8. Mandatory licensing should be introduced for language schools.**

There is evidence of some abuse in the area of language schools. Students from certain countries who have paid high fees for language tuition, do not always receive such tuition and may, in addition, find themselves victimised as casual workers in service industries.

The licensing of language schools should be mandatory, with regular inspections. The Advisory Council for ELS should have staff adequate to ensure checking of all applications and the functioning of schools including accommodation of students. At present the ELS has three full-time staff and some part-time staff who work a few days a year.

Students attending language schools are allowed to work, as noted, for up to 20 hours per week during term time and full time during holiday periods. This is a sensible measure, but better monitoring and enforcement mechanisms are needed to ensure that exploitation of such students is ended.

## **9. Migrant workers and their families should be given access to education and training.**

Often migrant workers are considered temporary. The State does not see them as a future resource for Irish society and the Irish economy. The usual range of education, training and back to work programmes are not open to migrants.

The ICI accepts that some migrants will be in Ireland on a temporary basis. However, it is short-sighted and self-defeating not to recognise that many will be staying for longer periods or will become permanent residents. An investment in their education and training is an investment in Irish society and in the maximisation of the contribution which they can make to that society and to their own futures in it.

Immigrants should have the right, after an initial period here, to attend full time education and training. In the case of third level 'economic fees', these should not be levied on migrant workers who have been in the country for a certain period. Migrant workers should be enabled and encouraged to study part-time.

Migrant workers are a valuable resource. In addition to providing access to mainstream education and training programmes, much more needs to be done to provide specific programmes, based on best practice elsewhere, to enable them to adjust to Irish labour market conditions rapidly. Such programmes might include mentoring programmes, specially adapted 'English for the workplace' programmes and systems for establishing the equivalence of foreign qualifications. Comprehensive provision of English language tuition at all levels is probably the single most necessary measure in this regard. This should be done on a mainstreamed basis through the existing adult education services,

which have the competence, experience and capacity to deliver such dedicated programmes to adults.

The ICI calls for equal access to education for migrant children. Such access should respect the *UN Convention on the Rights of the Child* and must respect the religious, ethnic and cultural rights of migrant children.

## **Appendix A**

*References*

## **Appendix B**

*Documents/instruments  
relating to migration*





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## DOCUMENTS/INSTRUMENTS RELATING TO MIGRATION<sup>62</sup>

### **International**

1. *United Nations Universal Declaration of Human Rights 1948 (UDHR)* Articles 13, 14.<sup>i</sup>
2. *United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990<sup>ii</sup>* which entered into force 1 July 2003. For more information, see the Portal for the Promotion and Protection of the Rights of Migrants.<sup>iii</sup>
3. The International Labour Organization (ILO) Convention and Recommendations<sup>iv</sup> in particular conventions and recommendations relating to migrant workers. For example:
  - Migration for Employment Convention (revised) 1949<sup>v</sup>*
  - Migration for Employment Recommendation (revised) 1949<sup>vi</sup>*
  - Migrant Workers (Supplementary Provisions) Convention 1975<sup>vii</sup>*
  - Migrant Workers Recommendation 1975<sup>viii</sup>*
  - Equality of Treatment (Social Security) Convention 1962<sup>ix</sup>*
  - Maintenance of Social Security Rights Convention 1982<sup>x</sup>*
  - Maintenance of Social Security Rights Recommendation 1983<sup>xi</sup>*
 See the ILO website<sup>xii</sup> for other relevant ILO standards
4. *International Covenant on Civil and Political Rights 1966<sup>xiii</sup>*
5. *International Convention on the Elimination of All Forms of Racial Discrimination 1969 (CERD)<sup>xiv</sup>*
6. *The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) and its Optional Protocol 1999<sup>xv</sup>*
7. *International Convention on the Rights of the Child 1989<sup>xvi</sup>*

### **Other international sources**

1. ILO: International Migration Policy Program<sup>xvii</sup>
2. IOM: International Organisation for Migration (IOM)<sup>xviii</sup>
3. Organisation for Economic Cooperation and Development (OECD) (international migration)<sup>xix</sup>
4. Since 1999, a Special UN Rapporteur on the Human Rights of Migrants, Ms. Gabriela Rodríguez, has been looking at ways and means to overcome obstacles to the full and effective protection of the human rights of migrants, including difficulties for the return of those who are ‘undocumented’. The Report is available online.<sup>xx</sup>

62 This list is based primarily on one compiled by Jacqueline Healy of the NCCRI. ICI is grateful to her and to NCCRI for permission to use it; any errors are our own.

## **Europe**

### **Council of Europe**

1. *Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (ECHR)*<sup>xxi</sup>
2. The main intergovernmental body responsible for migration activities in the Council of Europe is the *European Committee on Migration (CDMG)*,<sup>xxii</sup> whose terms of reference are ‘to develop European co-operation on migration, on the situation and social integration of populations of migrant origin and refugees and on community relations’. A series of texts containing policy guidelines have been adopted over the years by the Committee of Ministers as well as by the Parliamentary Assembly.
3. *The European Convention on the Legal Status of Migrant Workers (1977)*<sup>xxiii</sup> which entered into force in 1983. Ireland has not signed this Convention.
4. *European Social Charter 1965* (as revised in 1996).<sup>xxiv</sup> Entered into force 1 July 1999. This has been signed and ratified by Ireland.

### **European Union**

#### **A. Directives and decisions**

1. *Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the 'Race Directive')*<sup>xxv</sup>
2. *Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation (the 'Framework Employment Directive')*<sup>xxvi</sup>
3. *Council Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions ('gender equal treatment Directive')*<sup>xxvii</sup>
4. 16/01/1996. 31996D0116(01) *Council Decision on monitoring the implementation of instruments already adopted concerning admission of third-country nationals*<sup>xxviii</sup> Official Journal C 011, 16/01/1996 p. 0001 - 0001
5. 31/12/1996. 31996D0749 *Council Decision on monitoring the implementation of instruments already adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third-country nationals and cooperation in the implementation of expulsion orders.* Official Journal L 342 , 31/12/1996 p. 0005 – 0005<sup>xxix</sup>

#### **B. Communications**

1. 03/06/2003. COM(2003) 315 final *Communication from the Commission to the Council and the European Parliament. Towards more accessible, equitable and managed asylum systems.*<sup>xxx</sup>
2. 03/06/2003. COM (2003) 336 final *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment.*<sup>xxxi</sup>

3. 03/06/2003. COM(2003) 323 final *Communication from the Commission to the European Parliament and the Council, in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents.*<sup>xxxii</sup>
4. 26/03/2003. COM(2003)152 final *Communication from the Commission to the Council and the European Parliament on the common asylum policy and the Agenda for protection.*<sup>xxxiii</sup>
5. 14/10/2002. COM (2002) 564(01). *Communication from the Commission to the Council and the European Parliament on a community return policy on illegal residents.*<sup>xxxiv</sup>
6. 03/12/2002. COM/2002/703 final *Communication from the Commission to the Council and the European Parliament, integrating migration issues in the European Union's relations with third countries.*<sup>xxxv</sup>
7. 10/04/2002. COM/2002/0175 final 52002DC0175 *Green paper on a community return policy on illegal residents.*<sup>xxxvi</sup>
8. 15/11/2001. COM/2001/0672 final 52001DC0672 *Action plan on illegal immigration (part III, points 4.1. to 4.8.). Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration.*<sup>xxxvii</sup>
9. 09/07/2001. COM/2001/0387 final 52001DC0387. *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy.*<sup>xxxviii</sup>
10. 22/11/2000. COM(2000)757 *Communication from the Commission to the Council and the European Parliament on a Community immigration policy.*<sup>xxxix</sup>

### **C. Proposals**

1. 02/05/002. COM/2002/0225 final - CNS 1999/0258. 52002PCo225 *Amended proposal for a Council directive on the right to family reunification* Official Journal C 203 E , 27/08/2002 P. 0136 - 0141<sup>xl</sup> Decision follow-up<sup>xli</sup>
2. 11/02/2002. COM 2002 071 final 52002PCo071 *Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities*<sup>xlii</sup> Decision follow-up<sup>xliii</sup>
3. 29/01/2002. COM 2001 567 final 52001PCo567 *Proposal for a Council decision adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO)* Official Journal C 025 E, 29/01/2002 P. 0526 – 053<sup>xliv</sup>
4. 15/11/2001. COM/2001/0672 final 52001DC0672 *Action plan on illegal immigration (part III, points 4.1. to 4.8.). Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration*<sup>xlv</sup>
5. 11/07/2001. COM (2001) 386 final *Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities.* Official Journal C 332 E, 27/11/2001 P. 0248 0256<sup>xlvi</sup> Decision follow-up<sup>xlvii</sup>
6. 13/03/2001. COM(2001)127 final *Proposal for a Council directive concerning the status of third-country nationals who are long-term residents.* Official Journal C 240 E, 28/08/2001 P. 0079-0087<sup>xlviii</sup> Decision follow-up<sup>xlix</sup>

7. 10/10/2000. COM(2000) 624 *Amended proposal for a Council directive on the right to family reunification*. Official Journal C 062 E, 27/02/2001 P. 0099 0111<sup>l</sup>
8. 07/11/1997. COM/97/0387 final - CNS 97/0227. 51997PCo387. *Proposal for a Council Act establishing the Convention on rules for the admission of third-country nationals to the Member States*. Official Journal C 337 , 07/11/1997 p. 0009<sup>li</sup>

#### **D. Some key background texts**

1. Treaty establishing the European Community: immigration policy became a full Community responsibility with the entry into force of the Treaty of Amsterdam on 1 May 1999. Article 63 makes immigration a competence of the EU).<sup>lii</sup> The following is an excerpt from Article 63 of the Treaty establishing the European Community (ex Article 73k):

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (3) measures on immigration policy within the following areas: conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion, illegal immigration and illegal residence, including repatriation of illegal residents;
  - (4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States. Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements. Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.
2. *Vienna Action plan* The European Council, meeting at Cardiff called on the Council and the Commission to submit at its meeting in Vienna an action plan on 'how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice'. Heads of State or Government further confirmed the importance they attach to this subject by agreeing to hold a special European Council in Tampere in October 1999. Official Journal C 019, 23/01/1999 p. 0001 – 0015.<sup>liiii</sup>
  3. *Tampere European Council* 15 and 16 October 1999. Presidency conclusions. A special meeting of the European Council held at Tampere, Finland, in October 1999, was dedicated to the establishment of an Area of Freedom, Security and Justice and elaborated the political guidelines for the next years, including the field of immigration. Relevant conclusions : 10 to 27.<sup>liv</sup>
  4. Council of European Union (2001). *Evaluation of the conclusions of the Tampere European Council* Brussels: document 14926/01, 6 December 2001 (11.12) (OR.fr).<sup>lv</sup>
  5. *Laeken European Council* 14-15 December 2001. Belgium<sup>lvi</sup>
  6. *Scoreboard* a detailed work programme to implement the Tampere conclusions, complete with deadlines, updated every six months<sup>lvii</sup>
  7. *Charter of Fundamental Rights of the European Union* 18/12/2000 'Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal

values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice. The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, goods, services and capital, and the freedom of establishment. To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter'. Official Journal C 364, 018/12/2000. p. 0001 0022.<sup>lviii</sup>

8. Commission of the European Communities (2000). *Everything you want to know about the Charter (of Fundamental Rights)*.<sup>lix</sup>
9. 10/04/2002. COM (2002) 175 final Green paper on a *Community return policy on illegal residents*.<sup>lx</sup>
10. *EU Employment Guidelines*<sup>lxi</sup> and *European Employment Strategy*<sup>lxii</sup>
11. EU Social Protection Committee (2003) *Common Outline for the 2003/2005 NAPs/inclusion* Brussels: EU Social Protection Committee
12. *Conclusions of the Thessaloniki Council* Immigration was prominent on the agenda of the current Thessaloniki summit as part of the Greek Presidency of the EU. There has been affirmation of the draft migration directives on family reunification and on long-term residents. There was a confirmation of the importance of immigrants for the EU's economic future and an emphasis on the integration of legally resident third-country nationals. The Greek Foreign Minister George Papandreou said that one of the aims of the Thessaloniki European Council would be to incorporate different policies on migration in the EU into a more comprehensive approach and possibly establish a regular annual report on migration.<sup>lxiv</sup>
13. *Convention on the Future of Europe draft Constitutional Treaty*<sup>lxv</sup>

### **Britain**

1. Home Office (1998) *Fairer, Faster and Firmer: a modern approach to immigration and asylum* (white paper) London: HMSO<sup>lxvi</sup>
2. Home Office (1999) *Explanatory Notes to Immigration and Asylum Act* London: HMSO<sup>lxvii</sup>
3. Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain* London: HMSO: CM5387<sup>lxviii</sup>
4. Home Office, Immigration and Nationality Directorate (1999) *The Immigration and Nationality Act 1999* London: HMSO<sup>lxix</sup>
5. House of Lords Select Committee on European Union Eighth Report (2001) *Minimum standards of reception conditions for asylum seekers* London: HMSO<sup>lxx</sup>
6. House of Lords Select Committee on European Union Fifth Report (2001) *The Legal Status of Long-Term Resident Third-country Nationals* London: HMSO<sup>lxxi</sup>

7. House of Lords Select Committee on European Union Thirteenth Report and Government Response (2001) *A Community Immigration Policy* 11529/00 London: HMSO<sup>lxxii</sup>
8. Immigration and Nationality Directorate (2002) *Trust and confidence in our nationality, immigration and asylum system* London: HMSO<sup>lxxiii</sup>

## **Ireland**

1. *Aliens Act 1935*<sup>lxxiv</sup>
2. *Aliens Order 1946*<sup>lxxv</sup>
3. *Irish Nationality and Citizenship Act 1986*<sup>lxxvi</sup>
4. *Refugee Act 1996*<sup>lxxvii</sup>
5. *Immigration Act 1999*<sup>lxxviii</sup>
6. *Illegal Immigrants (trafficking) Act 2000*<sup>lxxix</sup>
7. *Employment Permits Act 2003*<sup>lxxx</sup>
8. *National Economic and Social Council – Recommendations on Migration Policy*<sup>lxxxi</sup> The National Economic and Social Council set out a useful approach to the development of a policy framework. The core elements of this policy framework include:
  - Set a framework for population inflows through different routes of entry which is conducive to economic and social development
  - Specify the types of contribution sought, currently and in the future, from skilled and unskilled migrant workers to Ireland's economic and social life
  - Embrace in a proactive manner Ireland's responsibilities under international and European law
  - Specify mechanisms that achieve integration in a way that is consistent with Ireland's anti-racist policy and respects the dignity and rights of all members of society
  - Specify the instruments, procedures and resources needed by the Irish authorities to regulate inflows into the state and protect the interests of those legitimately present within it
  - Identify whether, and which, specific supports and services are needed by people from outside the EEA. This would include estimating the implications of the scale and composition of the population inflows for social services, from the provision of interpreters and language teaching to housing, education and health.
  - Acknowledge and make practical provision for the important role of organisations and groups in civil society in achieving the satisfactory integration of immigrants into local communities
  - Ensure satisfactory data is gathered and research carried out to track the social progress of immigrants in Ireland
  - Strengthen Ireland's participation in shaping and monitoring the common immigration policies of the EU

9. Department of Enterprise, Trade and Employment (April, 2002) *Ireland's Employment Action Plan* Dublin: Department of Enterprise, Trade and Employment.<sup>lxxxii</sup>
10. Department of Social and Family Affairs (2002) *National Action Plan Against Poverty and Social Exclusion 2003-2005* Dublin: Department of Family and Social Affairs<sup>lxxxiii</sup>
11. Department of Justice, Equality and Law Reform (2000) *Integration: a Two-Way Process: Report to the Minister for Justice, Equality and Law Reform by the Interdepartmental Working Group on the Integration of Refugees in Ireland* Dublin: Department of Justice, Equality and Law Reform<sup>lxxxiv</sup>
12. Department of Justice, Equality and Law Reform (2001) *Submissions to Public Consultation on Immigration Policy* Dublin: Department of Justice, Equality and Law Reform<sup>lxxxv</sup>
13. International Organisation for Migration (2002) *International Comparative Study of Migration Legislation and Practice* Dublin: Department of Justice, Equality and Law Reform<sup>lxxxvi</sup>
14. *Sustaining Progress: Social Partnership Agreement 2003-2005*<sup>lxxxvii</sup>
15. *Employment Equality Act 1998 and Equal Status Act 2000*<sup>lxxxix</sup>
16. National Action Plan Against Racism Steering Group – *Diverse Voices: Summary of Outcomes of the Consultative Process and a Proposed Framework for the National Action Plan Against Racism*. (July 2003)<sup>xc</sup>
17. Incorporation of ECHR into domestic law (*European Convention of Human Rights Act 2003*)<sup>xcj</sup>

## **Endnotes**

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## NOTES