Annual Policy Report on Migration and Asylum 2012: Ireland

Corona Joyce

September 2014

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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN has been established via Council Decision 2008/381/EC.

Available to download from *www.emn.ie*
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Whitaker Square, Sir John Rogerson's Quay, Dublin 2

ISBN 978-0-7070-0363-4

The European Migration Network

The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU-level with a view to supporting policymaking and informing the general public.

The Irish National Contact Point of the European Migration Network, EMN Ireland, is located at the Economic and Social Research Institute (ESRI).

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Acknowledgements

This report has benefited greatly from comments and input on an earlier draft by staff members of the Anti-Human Trafficking Unit within the Department of Justice and Equality; Hilkka Becker of the Immigrant Council of Ireland on immigration-related developments; Siobhán O'Hegarty of the International Organization for Migration (IOM) Dublin; staff members of the Department of Jobs, Enterprise and Innovation; staff members of the Department of Justice and Equality; staff members of the Office for the Promotion of Migrant Integration (OPMI); staff members of the Office of the Refugee Applications Commissioner (ORAC); staff members of the Refugee Appeals Tribunal (RAT); Thomas Dunning from the Social Work Team for Separated Children, Health Service Executive; and by my colleagues Alan Barrett, Elaine Byrne, Egle Gusciute and Emma Quinn.

Assistance with analysis of significant legal occurrences during 2012 was provided by Sinéad Costello BL, independent consultant.

The opinions presented in this report are those of the author and do not represent the position of the Irish Department of Justice and Equality, the European Commission Directorate-General Home Affairs, or the Economic and Social Research Institute.

Table of Contents

Executive Summary **xvii**

Chapter 1 Introduction **1**

1.1 Structure of Asylum and Migration Policy 1

1.1.1 General Structure of the Political System 1

1.1.2 Institutional Context 2

1.1.3 General Structure of the Legal System 5

Chapter 2 Overview Of Asylum And Migration Policy Developments **9**

2.1 Political Developments 9

2.1.2 Budget 2013 9

2.2 Overall Developments in Asylum and Migration 9

2.2.1 Review of Programme for Government 9

2.2.2 *Qualifications and Quality Assurance (Education and Training) Act 2012* 10

2.2.3 *Criminal Justice (Female Genital Mutilation) Act 2012* 10

2.2.4 Changes to the Employment Permits Acts and Ratification of the International Labour Organization (ILO) Convention on Domestic Workers 11

2.2.5 Publication of General Scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill 2012* 13

2.2.6 Proposed Restoration of an *Immigration, Residence and Protection Bill* 13

2.2.7 Statutory Instruments 14

2.2.8 Overall 2012 Statistics 15

2.2.9 Population Data 15

2.2.10 Migrant Access to Social Security 16

2.2.11 Immigration Guidelines for Victims of Domestic Violence 18

2.2.12 Marriages of Convenience 18

Chapter 3 Legal Migration And Mobility **21**

3.1 Economic Migration 21

3.1.1 Removal of Transitional Arrangements Regarding Bulgarian and Romanian Nationals 21

3.1.2 Proposed Legislation 22

3.1.3 Economic Permits 23

3.1.4 Skills Shortages 23

3.1.5 Administrative, Legislative and Operational Developments 25

3.1.6 New Immigration Arrangements for Non-EEA Doctors in the Public Health Service 27
3.1.7 Legislative Developments 27
3.1.8 Intra-Company Transfer Permits 28
3.1.9 National Employment Rights Agency (NERA) 28
3.1.10 Research 29
3.1.11 Case Law 29
3.2 Family Reunification 31
3.2.1 Policy Development 31
3.2.2 Statistics 32
3.2.3 Family Reunification Linked to the *Zambrano* Judgment 32
3.2.4 Research 33
3.2.5 Case Law 34
3.3 Students and Researchers 37
3.3.1 *Qualifications and Quality Assurance (Education and Training) Act 2012* 37
3.3.2 Student Visas and Registrations 38
3.3.3 Administrative, Legislative and Operational Developments 38
3.3.4 'Education in Ireland' Mission to India 39
3.3.5 '*Researcher Directive*' Hosting Arrangements 39
3.4 Other Legal Migration 40
3.4.1 Extension of Short-Stay Visa Waiver Programme 40
3.4.2 Immigrant Investor Programme and Start-Up Entrepreneur Programme 41
3.4.3 'Working Holiday Programme' for Nationals of the Republic of China (Taiwan) 43
3.4.4 Arrangements for Cruise Liners 44
3.4.5 Increase in Registration Fees 44
3.4.6 Certificates of Registration 45
3.4.7 'EU Treaty Rights' and Other Residency Based on Marriage to an Irish National 46
3.4.8 Leave to Remain 47
3.4.9 Long-Term Residency 47
3.4.10 Research 47
3.4.11 Case Law 48
3.5 Integration 55
3.5.1 Funding 55
3.5.2 School Patronage 56
3.6 Citizenship and Naturalisation 57

3.6.1 Statistics Regarding Citizenship and Naturalisation 57
3.6.2 Citizenship Processing 57
3.6.3 Case Law 58
3.7 Managing Migration and Mobility 64
3.7.1 Visa Policy 64
3.7.2 Schengen Governance 67
3.7.3 Border Monitoring 67
3.7.4 Frontex 69

Chapter 4 Irregular Migration And Return 71

4.1 Irregular Migration 71
4.1.1 Data Sharing with the United Kingdom 71
4.1.2 Call for 'Earned' Regularisation Scheme for Undocumented Migrants 72
4.2 Return 72
4.2.1 Readmission Agreements 72
4.2.2 Deportation Orders, Transfers and Removal from the State 72
4.2.3 Voluntary Return 73
4.2.4 Case Law 74

Chapter 5 International Protection Including Asylum 85

5.1 Common European Asylum System 85
5.1.1 International Protection Statistics 85
5.1.2 Administrative, Legislative and Operational Developments 86
5.1.3 Ireland's Participation in the Recast *Qualification Directive* 89
5.1.4 European Database of Asylum Law 90
5.1.5 Research 91
5.2 European Asylum Support Office 91
5.3 Intra-EU Solidarity including Relocation 92
5.4 Cooperation With Third Countries Including Resettlement 92
5.5 Case Law 92
5.5.1 Membership of a Particular Social Group Based on Sexual Orientation - Homosexuality / Failure to Claim International Protection Earlier Does Not Disbar a Person Who Otherwise May Have a Valid Entitlement to International Protection 92
5.5.2 Requirement to Conduct a Forward Looking Assessment of Risk of Persecution 94
5.5.3 Membership of a Particular Social Group - Gender / Women 95
5.5.4 Readmission to the Asylum Process 96
5.5.5 Revocation of Refugee Status 97

5.5.6 Effect of Designation of a Country as a Safe Country of Origin Upon the Effectiveness of an Appeal to the Refugee Appeals Tribunal 101
5.5.7 Dublin Regulation 103
5.5.8 Transposition of the *Qualification Directive* 105
5.5.9 Subsidiary Protection 106
5.5.10 Certificate for Leave to Appeal to the Supreme Court 109

Chapter 6 Unaccompanied Minors And Other Vulnerable Groups 111

6.1 Unaccompanied Minors 111
6.1.1 Administrative, Legislative and Operational Developments 111
6.1.2 Research 112
6.2 Other Vulnerable Groups 113
6.2.1 *Criminal Justice (Female Genital Mutilation) Act 2012* 113
6.2.2 Immigration Guidelines for Victims of Domestic Violence 114
6.2.3 Update to National Intercultural Health Strategy 2007-2012 115

Chapter 7 Actions Against Trafficking In Human Beings 117

7.1 Review of National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012 117
7.2 General Scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill 2012* 118
7.3 Statistics Regarding Human Trafficking 118
7.4 Training and Awareness Raising 119
7.4.1 Training 119
7.4.2 Publications and Awareness Raising 120
7.4.3 International Cooperation 122
7.5 US Trafficking in Persons Report 2012 123
7.6 Research 123

Chapter 8 Migration And Development Policy 125

8.1 Inter-Departmental Committee on Development 125
8.2 Policy Coherence 125
8.3 Ethical Recruitment Practices 125

Chapter 9 Implementation Of Eu Legislation 127

9.1 Transposition of EU Legislation 2012 127
9.2 Experiences, Debates in the (Non-) Implementation of EU Legislation 128
9.2.1 Discussion in Parliament on Ireland's participation in and adoption of the Recast *Qualification Directive* 128
9.2.2 Interpretation of the *Qualification Directive* 128

Appendix I Methodology And Definitions **129**

A.1 Methodology 129

A1.1 Definition of a Significant Development 129

A.1.2 Sources and Types of Information Used 129

A.1.3 Statistical Data 129

A.1.4 Consulted Partners 130

A.2 Terms and Definitions 130

Appendix II National Statistics **131**

References **137**

List of Tables

Table A2.1 Entry Visa Applications Granted by Nationality, 2012 131

Table A2.2 Gross and Net Migration Flows, 1987 - 2012 132

Table A2.3 Certificates of Registration by Nationality and Stamp, 2012 133

Table A2.4 Employment Permits Issued and Renewed, 1998-2012 133

Table A2.5 Applications for Asylum 1992 - 2012 134

Table A2.6 Applications for Asylum by Main Country of Nationality 2007- 2012 135

Table A2.7 Asylum Appeals Received by Type, 2011 and 2012 135

Table A2.8 Applications for Leave to Remain Granted Under Section 3, *Immigration Act 1999* 135

Table A2.9 Applications for Subsidiary Protection 2006 - 2012 136

Table A2.10 Enforced Deportation Orders by Nationality, 2010 - 2012 136

Abbreviations and Irish Terms

CTA	Common Travel Area
Dáil	Parliament, lower House
DEJI	Department of Enterprise, Jobs and Innovation
EASO	European Asylum Support Office
EGFSN	Expert Group on Future Skills Needs
ERF	European Return Fund
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HSE	Health Service Executive
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
I/NGO	Intergovernmental Non- Governmental Organisation
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
MRCI	Migrant Rights Centre Ireland
NASC	The Irish Immigrant Support Centre
NERA	National Employment Rights Authority
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
RAT	Refugee Appeals Tribunal
RIA	The Reception and Integration Agency
SLMRU	Skills and Labour Market Research Unit
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister

TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

Executive Summary

An estimated 165,700 new applications (including for visas, residence, protection and citizenship) were received by the Irish Naturalisation and Immigration Service (INIS) during 2012. A total of almost 175,000 decisions were issued and over 96,700 new or renewed registrations were issued by the Garda National Immigration Bureau (GNIB). A total of 157,782 certificates of registration were issued during 2012, mainly to nationals of India (16,873), Brazil (16,136), Nigeria (14,387), China (13,077) and the USA (12,030). At the end of 2012, approximately 121,000 non-EEA nationals had permission to remain in the State, the majority for work, family or study reasons and primarily from India, Nigeria and Brazil.

In 2012, the largest single issuance of Personal Public Service (PPS) Numbers were to nationals of Poland (8,663), followed by the UK (8,348), Brazil (5,542), Romania (5,283) and Spain (3,929).[1]

During 2012 a total of 2,817 EU Treaty Rights applications under the *European Communities (Free Movement of Persons) Regulations 2006* and *2008* were received, mainly from nationals of Pakistan, Nigeria and Brazil. Permission was granted in 1,829 cases.[2] A total of approximately 2,000 applications were based on marriage to an EU national, with approximately 1,400 applications approved on this ground during 2012.[3]

Census 2011

Further *Census 2011* statistics were published by the Central Statistics Office (CSO) in late 2012 and showed that in April 2011 some 12per cent of the resident population (544,357) from 199 different nationalities were living in Ireland. Polish nationals were the largest nationality grouping, showing a 93.7 per cent increase from 63,276 persons in 2006 to 122,585 in 2011; UK nationals were the second largest group with 112,259 living in Ireland in 2011. A small number of nationalities recorded a decrease between 2006 and 2011, most notably USA and Australian nationals. Almost 58 per cent of non-Irish nationals aged 15 and over were at work; just over 11 per cent of Irish nationals were unemployed. Some 15.1 per cent of the total workforce contained non-Irish nationals (268,180), with Polish and UK nationals accounting for almost half (43.4 per cent) of all non-Irish workers. Indian nationals were the largest non-EU nationality grouping at work in Ireland and fifth overall. In September 2012, the CSO also released revised *Population and Migration Estimates* which showed that in the 12 months to April 2012, gross inward migration of 53,000 was offset by an estimated outflow of over 87,000, resulting in net outward migration of 34,400: the highest level of

1 Department of Social Protection (2013). *Allocation of PPS Numbers by Nationality - All Countries - 2012*. Available at www.welfare.ie.
2 Irish Naturalisation and Immigration Service (INIS), Provisional figures (April 2013).
3 *Ibid*.

emigration for over two decades. Net outward migration continued to increase for both Irish nationals (up 16 per cent to 25,900) and non-Irish nationals (up 68 per cent to 8,400).[4]

Legislation

Some six pieces of secondary legislation by virtue of statutory instruments and relevant to the migration and international protection area were made in 2012:

- *The Immigration Act 2004 (Start-up Entrepreneur Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 259 of 2012)*
- *The Immigration Act 2004 (Immigrant Investor Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 258 of 2012)*
- *The Immigration Act 2004 (Visas) Order 2012 (S.I. No. 417 of 2012)*
- *The Immigration Act 2004 (Registration Certificate Fee) Regulations 2012 (S.I. No. 444 of 2012)*
- *The European Communities (Lawyers' Establishment) Regulations 2003 (Qualifying Certificate 2013) Regulations 2012 (S.I. No. 540 of 2012)*
- *The European Union (Recognition of Professional Qualifications relating to the Profession of Pharmacist) Regulations 2012 (S.I. No. 235 of 2012).*

During 2012, parliamentary activity took place regarding Ireland's 'opt in' to the Council Decision on the conclusion of the Agreement between the EU and the USA on the use and transfer of Passenger Name Records (PNR) to the USA Department of Homeland Security. Ireland exercised its option to adopt the Council Decision in relation to the Agreement under Article 4 of *Protocol 21 to the Treaty on the Functioning of the European Union (TFEU)*. On 8 May 2012, a Motion in relation to the Agreement and the exercise by Ireland of its option, was referred by the Dáil to the Joint Committee on Justice. The Seanad approved the Motion that Ireland exercise its option on 23 May 2012, and the Dáil approved the Motion the following day.

The *Qualifications and Quality Assurance (Education and Training) Act 2012* was enacted in 2012 and provides for the establishment of a merged accreditation body. Quality and Qualifications Ireland was subsequently established on 6 November 2012 under the Act and is an amalgamation of four bodies that have both awarding and quality assurance responsibilities: the Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the National Qualifications Authority of Ireland (NQAI) and the Irish Universities Quality Board (IUQB). A code of practice to be complied with by

[4] Analysis on www.emn.ie; also O'Connell, P.J. et al. (2013). *International Migration in Ireland, 2012*. Geary WP2013/04. Available at www.ucd.ie/geary.

providers of programmes to international learners is provided for, to be published by the new authority and to result in accreditation with an 'international education mark'. A register of providers in possession of this international education mark is also to be maintained.

The Criminal Justice (Female Genital Mutilation) Act 2011 was passed in March 2012 following much parliamentary discussion and commenced on 20 September 2012. The 2012 Act states that a person is guilty of an offence if the '…person does or attempts to do an act of female genital mutilation' or if they should remove or attempt to remove a girl or woman from the State 'where one of the purposes for the removal is to have an act of female genital mutilation done to her.' In addition, provisions for the protection of victims during legal proceedings were also included.

Labour Market

The number of employment permits issued to non-EEA nationals during 2012 stood at 4,007, with 2,919 new permits and 1,088 renewals. Permits were mainly issued in the services sector[5] and to nationals of India (1,389), the USA (527) and the Philippines (307).

Post-Accession in 2007, Ireland initially applied transitional arrangements and continued to require Bulgarian and Romanian nationals to hold an employment permit to access the Irish labour market (excluding self-employed and economically self-sufficient persons, and students). In July 2012 it was announced that restrictions ceased with effect from 1 January 2012.

As from 1 November 2012, doctors presenting for registration or renewal at an immigration office would be provided with a 'Stamp 1' permission for two years upon production of a valid passport, letter of appointment for the public health service and an (endorsed) certificate of registration from the Irish Medical Council. Locums or doctors working in the private health sphere are not eligible. Exceptions apply for doctors in the trainee specialist division, those registered in the 'Supervised Division' of the Irish Medical Council's Register and those doctors already on a 'Stamp 4' permission.

In November 2012, the Minister for Jobs, Enterprise and Innovation outlined plans to amend current employment permits legislation in early 2013. A Regulatory Impact Assessment on the draft employment permits Bill took place during 2012 in which it was noted that a consolidation and streamlining of the 2003 and 2006 *Employment Permit Acts* was necessary in order to: reflect policy and economic developments since 2007; to provide for more flexibility and targeted instruments in support of the economy's evolving skills needs which 'often require rapid response'; and to cater for the accession of new Member States. During 2012 the Department of Jobs Enterprise & Innovation (DJEI) stated

[5] www.djei.ie.

that it had reviewed its processes and identified a number of improvements and opportunities to enhance the employment permit regime for the benefit of the economy, including working with the Department of Justice and Equality to provide a more coherent service across the employment permit and visa regimes including policy convergence, greater information sharing and unified communications from both Departments in respect of labour market access.[6]

A review of the current national scheme for Intra-Corporate Transferees took place with any changes expected to be included in the published employment permits Bill in early 2013.[7]

A *National Skills Bulletin 2012* was published in July 2012 with no changes to the list of occupations for which new work permits will not be issued. The 2012 Bulletin showed some employment opportunities continued to exist, primarily vacancies related to sales (and related occupations) including marketing and customer services roles. Some skills shortages were identified but mainly confined to the information and communications sector and highly specialised posts in high-tech manufacturing (primarily biopharmaceuticals) as well as in more traditional manufacturing segments, the financial services sector, and the health sector.

Between January and September 2012, some 271 employers were found to be in breach of the *Employment Permits Acts* with 548 persons found to be working without legal authorisation. During 2012, the Minister for Jobs, Enterprise and Innovation commented that he intended to 'provide for enhanced compliance measures and a new mechanism for enforcing awards of the Adjudicators and of Labour Court Determinations' in a new employment permits Bill.[8]

Administrative arrangements for eligible individuals who have been in possession of work permits for at least five years, or who have been made redundant, continued to be available during 2012 on a more mainstreamed basis.

Migrant Access to Social Security

A review of guidelines used in the determination of decisions related to habitual residence conditions took place via a working group within the Department of Social Protection during 2010 and 2011, with new guidelines subsequently published in 2012. The Minister for Social Protection described the purpose of the review 'was to make guidelines clearer' but also to 'improve consistency in decision making across the Department'.[9] These new guidelines detail, amongst other things, factors to be considered when determining an applicant's main centre of interest and future intention to remain in Ireland.

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6 Department of Jobs, Enterprise and Innovation (January 2013).

7 Department of Justice and Equality (January 2013).

8 Minister for Jobs, Enterprise and Innovation, Richard Bruton, T.D. written answer as provided in Dáil Éireann Debate (22 November 2012). *Vol. 783 No. 4*. Available at www.oireachtasdebates.oireachtas.ie.

9 Parliamentary Question Vol. 758 No. 1 (6 March 2012). Available at http://debates.oireachtas.ie.

Family Reunification

Applications for family reunification (family members or a civil partner) in respect for 387 persons with refugee status were received by INIS during 2012, with approvals issued for 379 persons. Family reunification for 366 persons was refused during 2012 and applications in respect of 56 persons were either withdrawn or deemed abandoned.

In early 2012 the Minister for Justice, Equality and Defence announced the Departmental prioritisation of the development of a comprehensive policy approach to family reunification or settlement. In a Parliamentary Question in March 2012, the Minister for Justice, Equality and Defence noted that as of that date, some 1,680 applications had been submitted to INIS to have their case to remain in Ireland examined in accordance with principles set forth in the *Zambrano* judgment. Decisions had been made in 925 cases with permission to remain in Ireland granted in 791 cases. It was noted that the majority of cases which remained outstanding concerned missing documentation and/or information. As of that date, some 193 cases subject to judicial review proceedings had a link to the judgment, and 148 of these had been granted permission to remain in Ireland under the terms of the judgment.[10] In October 2012, a newspaper article stated that the Government had paid settlement costs of almost €1.2 million in relation to *Zambrano*-linked cases involving non-EU parents of Irish citizen children.[11]

International Students

During 2012, a total of 7,790 applications were decided upon with 6,939 approvals issued (89.1 per cent). The majority of decided cases concerned nationals of Saudi Arabia (1,738, with an approval rate of 99.9 per cent), China (1,394, with an approval rate of 91.5 per cent), Russia (1,276, with an approval rate of 98.4 per cent), India (662, with an approval rate of 83.1 per cent) and Kuwait (254, with an approval rate of 98.8 per cent). During 2012 the *Third Level Graduate Work Scheme* for access to the labour market for students after graduation continued to apply. In addition, during late 2011 and 2012 a number of administrative arrangements were published concerning students already in Ireland and whose permission may have 'timed out'. Described as a 'final measure' to assist students transitioning to the new immigration regime, a 'student probationary extension' was announced for those who have been continuously resident in the State since before 1 January 2005. Eligible students may continue to remain in Ireland for (up to) an additional two years and on specified conditions (a 'Stamp 2' permission). Approximately 2,700 persons received a two-year extension under this scheme during 2012.

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10 Parliamentary Question No. 191 (29 March 2012).

11 *The Irish Times* (15 October 2012). 'State pays €1.2m to settle cases with non-EU parents'. Available at www.irishtimes.com.

Ireland continued to participate *in Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*. Some 404 research hosting agreements were issued during the year mainly to nationals of India (85 agreements), China (75 agreements), the USA (42 agreements), Pakistan (26 agreements), Iran and Russia (15 agreements respectively).

VISAS

Immigrant Investor Programme and Start-Up Entrepreneur Programme

In January 2012 two new immigration initiatives aimed at attracting non-EEA migrant entrepreneurs and investors were announced and became operational in mid-April 2012. Both Programme applications are to be considered by an inter-departmental Evaluation Committee comprised of representatives of IDA Ireland, Enterprise Ireland, and Departments of Finance; Jobs, Enterprise and Innovation; Justice and Equality; Foreign Affairs and Trade; Health; and other Government Departments as the need arises. Applicants must be of good character and be able to support themselves while in Ireland. Family reunification of a spouse/partner and children is provided for as long as they can be supported by the entrepreneur, investor or other private means, and no social benefits will be provided. At year-end, it was noted that 14 applications had been approved so far representing a total investment in Ireland of over €10.4 million and that investment is expected to protect over 80 existing jobs and create 190 new jobs within the next three years.[12] Of these, 11 granted visas related to the Start-Up Entrepreneur Programme and three for Immigrant Investor Programme.[13]

'Working Holiday Programme' for Nationals of the Republic of China

During 2012 it was also announced that as of 1 January 2013, Ireland will introduce a 'Working Holiday Programme' for young persons who are holders of a Republic of China (Taiwan) passport. This is a reciprocal arrangement with the Republic of China (Taiwan) which will also introduce a similar scheme for Irish passport holders.

Immigration Guidelines for Victims of Domestic Violence

New Immigration Guidelines for victims of domestic violence were published by the Irish Naturalisation and Immigration Service (INIS) during 2012. The Guidelines focus on instances where the victim is a foreign national and whose immigration status is dependent on or derived from that of the perpetrator. The Guidelines advise that someone will not 'have to remain in an abusive relationship' in order to preserve their 'entitlement to remain in Ireland' and may

[12] Minister for Justice, Equality and Defence, Alan Shatter, T.D. as quoted in 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

[13] *The Irish Independent* (27 January 2013). 'Just three investors sign up to the 'visa for cash' scheme'. Available at www.independent.ie.

make a request for an 'independent immigration status' to the Department of Justice and Equality. Permission granted will generally be at the same level as that held as a dependant (noted as normally a 'Stamp 3' permission) and consideration regarding granting permission to work will be given in relevant cases.

Marriages of Convenience

The issue of suspected marriages of convenience continued to attract debate during 2012. The 2012 annual report of the Registrar General noted that while no statistics are available on the incidence of marriages of convenience are available 'anecdotal evidence suggests that the increase in the number of civil marriages from 2008 is partly accounted for by marriages of convenience, following the judgment by the European Court of Justice in the Metock case'. Some 883 (from 780 in 2011) notifications of intention to marry were made during 2012 concerning non-Irish EU nationals and non-EU citizens, with 705 (from 600 in 2011) marriages registered in respect of the notifications. However, all marriages may not relate to the year notified and/or registered. The Annual Report notes that a legislative solution is required in order to enable steps to prevent marriages of convenience from taking place.[14]

In response to a Parliamentary Question during 2012, the Minister for Justice, Equality and Defence stated that he had asked Departmental officials to

> *re-examine the provisions in the Immigration Residence and Protection Bill 2010 and to draft amendments dealing with immigration related marriages of convenience and sham marriages.*

He also noted that Departmental officials were working with the Garda National Immigration Bureau (GNIB) and the Department of Social Protection to 'identify a range of other initiatives, including legislative' to 'make such marriages less prevalent and, where they do take place, less beneficial to those who engage in them'.[15]

Migrant Integration

A total of €1,295,844 was provided to organisations to promote integration and tolerance by the Office for the Promotion of Migrant Integration (OPMI) during 2012. In addition, a number of funding initiatives under the European Refugee Fund (ERF) and the European Integration Fund for third-country nationals (EIF) continued during 2012.

As of year-end 2012, during the year a total of €175,000 had been assigned to sporting organisations; €156,240 to City/County Councils; and €964,604 in general integration funds to a variety of organisations. Between 2008 and 2012,

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[14] General Register Office (2013). *Annual Report of an tArd-Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2012*. Available at www.welfare.ie.

[15] Parliamentary Question No. 427 (13 March 2012).

the Office of the Minister for Integration/Office for the Promotion of Migrant Integration gave grant funding of €12,607,210 for integration purposes, of which €7,470,642 went to integration funds and grants to other organisations; €3,282,027 went to City/County Councils; €1,760,941 went to national sporting organisations; and €93,600 went to faith-based organisations.[16] However, the annual budget of the OPMI has contracted in recent years. The OPMI continued to fund a number of intercultural fora to enable migrants to come together to discuss their integration experience.

In August 2012, the Equality Authority launched an Equality Small Grants Fund which will provide grants of up to €4,000 for equality-focused actions for NGOs working on one or more of the nine equality grounds.

Much media discussion took place in 2012 regarding discussions and findings related to patronage of schools and access of non-Irish families to non-denominational schools. In late December 2012, the Minister for Education published the findings of surveys of parental preferences on primary school patronage in five pilot areas, showing parental demand for a greater choice of patron in each town.

'Leave to Remain in Ireland'

During 2012 a total of 564 persons were granted leave to remain in Ireland under Section 3 of the *Immigration Act 1999 (as amended)*.

Citizenship

Some 20,000 valid applications for citizenship were received by the Citizenship Division of the Irish Naturalisation and Immigration Service (INIS) in 2012. A total of over 25,000 certificates of naturalisation were granted during the year, mainly to nationals of Bangladesh, China (including Hong Kong), India, Moldova and Nigeria.[17] In a year-end review for 2012, the Minister for Justice, Equality and Defence stated that this increase in decision-making over the past few years, and the 'story of citizenship in Ireland' over that time, 'is a truly remarkable one which is without parallel in our entire history'.[18] A total of 35 citizenship ceremonies were held during the year with almost 20,000 persons conferred with citizenship.

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

During 2012 Ireland continued to participate in activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Limited cooperation between

[16] See www.integration.ie.
[17] Department of Justice and Equality (April 2013).
[18] Irish Naturalisation and Immigration Service (January 2013). 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

Frontex and Ireland is provided for via an annual application approved by the Frontex Management Board.

During 2012, Ireland participated in a total of seven joint European return operations organised by Frontex.

During 2012, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a regular basis. It also participated in border guard training in the area of biometrics, common curriculum, false documents and return.

Civilian Officers at Dublin Airport

During 2012 a pilot project to civilianise certain port of entry functions at Dublin Airport continued, with training provided. Previously, all such functions were undertaken by Immigration Officers as An Garda Síochána. Staff members of the Department of Justice and Equality were assigned to work alongside Gardaí in immigration control duties at Dublin Airport. As of year-end, proposals were being finalised to extend this new model of border control to all of Dublin Airport and possibly to other ports of entry.

Deportation, Dublin Regulation Transfers and Voluntary Return

Some 2,205 persons from outside the EU were refused leave to land at Irish ports during 2012. In a Parliamentary Question in early 2013, the Minister noted that the main countries of nationality of persons refused permission to land and removed in 2012 were Brazil, South Africa, China, Bolivia, and Albania.[19]

In 2012, some 302 persons were removed from Ireland by way of deportation orders made under Section 3 of the *Immigration Act 1999*, mainly to Nigeria (85), Pakistan (37), Georgia (27), Somalia (22) and South Africa (19).

A total of 144 positive determinations were made by the Office of the Refugee Applications Commissioner (ORAC) under the Dublin Regulation, and 70 transfer orders were effected.

Some 33 EU nationals were transferred on foot of an EU Removal Order.

A total of 449 persons were assisted to return home voluntarily during 2012, with 359 persons in receipt of voluntary return and reintegration assistance from the International Organization for Migration (IOM) office in Dublin and 90 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS). The main country of nationality of persons assisted by both INIS and IOM was Brazil (97), Moldova (65), China including Hong Kong (58), Mauritius (30) and Georgia (21).

[19] Parliamentary Question No.474 (22 January 2013).

Ireland began the process of opting into some 11 EU readmission agreements during 2012, namely with Macao, Sri Lanka, Albania, Russia, Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan and Georgia.

International Protection

There was a continued decrease in applications for asylum in Ireland, with 956 applications for refugee status (940 new applications and 16 reapplications received) during 2012, a reduction of a quarter on 2011 comparable figures. The majority of applications were made at the Office of the Refugee Applications Commissioner (ORAC), and mainly from nationals of Nigeria (162), and Pakistan (105) and the Democratic Republic of Congo (58).

Some 67 positive recommendations were made at first instance during 2012, with 45 appeals granted at second instance.

Regarding transfers under Eurodac, 714 fingerprints were sent for verification with 15 per cent resulting in a 'hit'. Some 686 appeals were received by the Refugee Appeals Tribunal during 2012, with 691 decisions issued and 55 withdrawn.

Some 511 applications for subsidiary protection were received during 2012, mainly from nationals of Nigeria (66), Pakistan (53) and the Democratic Republic of the Congo (42). A total of 35 applications for subsidiary protection were granted during the year.

Some 23 unaccompanied minors applied for asylum in Ireland during 2012, with a total of 68 referrals to the Dublin-based Team for Separated Children Seeking Asylum during the year.

Activity on progressing an immigration, residence and protection Bill continued during 2012.

At the end of 2012, some 4,841 persons were in direct provision accommodation under contract to the Reception and Integration Agency (RIA), a decrease of 11 per cent on year-end 2011. A total of €62.3 million was spent on the direct provision system in 2012, a reduction of 10 per cent from 2011, attributable to closures as well as reduced contract rates, capacity numbers and energy/operating costs in State-owned facilities. At year-end 2012, the average length of stay in RIA accommodation was 45 months, with 59.3 per cent of residents in direct provision for over three years. Some 8.8 per cent of this figure was resident for over seven years.[20] The closure of several direct provision accommodation centres continued to attract widespread attention during the year.

The *Annual Report 2012* of the Courts Service showed that there were 440 asylum-related applications for judicial review in the High Court during the year,

[20] Reception and Integration Agency (2013). *Annual Report 2012*. Available at www.ria.gov.ie.

showing a 37 per cent decrease on 2011 figures. Some 44 per cent of all judicial review applications concerned asylum-related cases, largely to seek an order to quash the decision of a determining body or an injunction restraining the Minister from effecting a deportation. Waiting time for asylum and pre-leave applications was 33 months. The Supreme Court also saw an increase in judicial review of asylum matters also. There were 725 new applications to the Legal Aid Board for asylum-related matters, compared with 979 in 2011.

During 2012, parliamentary debate regarding Ireland's decision with regard to an 'opt in' to the Recast *Qualification Directive* took place.

Ireland continued its involvement with the European Asylum Support Office (EASO) during 2012. The Refugee Applications Commissioner is Ireland's member on the EASO management Board and participated in four meetings of the Board during the year.

During 2012, some ten persons (representing three family groupings) were relocated from Malta to Ireland.

During 2012, 39 persons arrived in Ireland for resettlement purposes UNHCR-led Resettlement Programme for vulnerable refugees, comprising of five persons of Iranian Kurdish nationality, five persons of Egyptian nationality, one person of Eritrean nationality, three persons of Ethiopian nationality, four persons of Liberian nationality, one person of Congolese nationality and 20 persons from the Democratic Republic of Congo.

Update to National Intercultural Health Strategy 2007-2012

A seventh update to the Health Service Executive *National Intercultural Health Strategy 2007-2012* took place in July 2012. The 2012 update primarily outlined developments with regard to language and communication, and a resource published by the HSE National Social Inclusion Unit which details good practice and practical information for HSE staff in planning, managing and assuring quality translations of health related material into other languages.[21]

Trafficking

In 2012, some 37 cases of alleged human trafficking involving 48 persons were reported to An Garda Síochána, with just under two-thirds female. Of this number, 39 persons were alleged victims of sexual exploitation (26 were female, 13 were male), six were alleged victims of labour exploitation (four were female, two were male) and three persons were alleged victims of uncategorised exploitation (one was female, two were male). The majority of referred cases (32) were from Europe, mainly Ireland (19). The second largest group consisted of persons from Africa (ten persons), followed by four persons from Asia and two

[21] Health Service Executive National Social Inclusion Unit (2012). *Lost in Translation? Good Practice Guidelines for HSE Staff in Planning, Managing and Assuring Quality Translations of Health Related Material into Other Languages*. Available at http://www.hse.ie/eng/services/Publications/services/SocialInclusion/lostintranslationreport.pdf.

persons from Latin America. While the majority of persons reported as alleged victims of sexual exploitation were from Europe (29 persons out of a total of 39 persons reported), all six persons alleged to be victims of labour exploitation were non-EU nationals. Of the 48 reported alleged victims of trafficking, eight persons were asylum seekers, four persons had their immigration permission under consideration, three persons were not resident in Ireland, three persons were present due to international treaty rights and two persons were in the care of the Health Service Executive. Some six convictions took place during 2012 with regard to offences relating to the trafficking of human beings in Ireland.[22] There were 11 convictions for human trafficking and related convictions between 2009 and 2012.[23]

In late 2012 the Minister for Justice, Equality and Defence published the general scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill*. The Bill proposes to fully transpose *Directive 2011/36/EU*, in particular the criminalisation of trafficking for the purposes of forced begging and for criminal activities.

Between 2009 and 2012, some 21 persons have been granted either a 60-day recovery and reflection period and/or a six-month renewable Temporary Residence Permission.[24]

The 2012 US State Department *Trafficking in Persons Report 2012* saw Ireland remain a Tier 1 country. The 2012 Report stated that all identified victims of trafficking had access to services, but did note that the 'majority' of non-EU victims received services and pursued status via the asylum process which was noted by NGOs as resulting in 'inadequate care and insufficient protection of victims' rights, in comparison to the provisions specific to trafficking victims'.[25]

Migration and Development

During 2012, a report commissioned by the Advisory Board for Irish Aid published updated possible indicators for Ireland within the policy coherence for development framework. Seven possible indicators which 'throw light' on the development impacts of Irish migration policy are highlighted including non-DAC[26] inflow as a percentage of total population; support for remittances to developing countries; and the ratio of tuition fees for non-DAC students to DAC students and Irish students.[27]

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22 Department of Justice and Equality (2013a*). Annual Report of Trafficking in Human Beings in Ireland 2012*. Available at www.justice.ie.

23 Anti-Human Trafficking Unit, Department of Justice and Equality (January 2013).

24 *Ibid.*

25 US State Department (2012). *Trafficking in Persons Report 2012*. Available at www.state.gov.

26 OECD Development Assistance Committee (DAC).

27 M. King and A. Matthews (2012). *Policy Coherence for Development: Indicators for Ireland.* Institute for International Integration Studies: Trinity College Dublin. Available at www.dci.gov.ie.

Chapter 1

Introduction

This report is the ninth in a series of Annual Policy Reports, a series which is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. Previous comparable Annual Policy Reports are also available for a number of other EU countries participating in the European Migration Network.

In accordance with Article 9(1) of *Council Decision 2008/381/EC* establishing the EMN, each EMN NCP is required to provide every year a report describing the migration and asylum situation in the Member State, which shall include policy developments and statistical data. The purpose of the EMN report is to continue to provide an insight into the most significant political and legislative (including EU) developments, as well as public debates, in the area of migration and asylum. The EMN *Annual Policy Report on Migration and Asylum 2012: Ireland* will cover the period 1 January 2012 to 31 December 2012.

Each Member State is tasked with documenting the state of implementation of EU legislation and the impact of European policy developments at national level. Nation-specific significant developments (political, legal, administrative, etc.) in the area of migration and international protection are to be described by each Member State. Finally, Member States are asked to comment on relevant debates. The National Reports are used both to contribute to the European Commission's Annual Report on the implementation of the *European Pact on Immigration and Asylum* and, by the European Asylum Support Office (EASO) to inform its Annual Report on the situation of asylum in the EU. EMN Informs will also be produced to provide an EU-wide overview on specific topics.

1.1 Structure of Asylum and Migration Policy

1.1.1 General Structure of the Political System

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Enda Kenny T.D., as of year-end 2012) and Tánaiste (Deputy Prime Minister, Eamon Gilmore, as of year-end 2012). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the

people. General elections take place at least once every five years. A general election took place in February 2011. At the end of 2012, the government was the 29th Government of Ireland which was formed on 9 March 2011. It comprised a coalition government of Fine Gael and the Labour Party.

There were 16 government departments as of the end of 2012, with each headed by a Minister, or Prime Minister in the case of the Department of the Taoiseach.[28]

All Irish citizens who have reached the age of eighteen years and who are not disqualified by law have the right to vote at each election and referendum. British citizens can vote at Dáil elections, European elections and local elections. Other European Union (EU) citizens may vote at European and local elections. Non-EU citizens may vote at local elections only.[29] Details regarding entitlements, how to register and how to vote are on the website of the Office for the Promotion of Migrant Integration (OPMI) as well as other more local initiatives such as that by Dublin City Council.

1.1.2 Institutional Context

Three departments are involved in migration management in Ireland.

In addition, the Department of Health, which is responsible for administration of the care for unaccompanied third-country minors in the State.

1.1.2.1 Department of Justice and Equality

The Department of Justice and Equality[30] is responsible for immigration management and the minister of that Department has ultimate decision making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports and at a border control unit attached to Dundalk Garda Station.

Within Ireland, in addition to the Anti-Human Trafficking Unit[31] within the Department of Justice and Equality, there are three other dedicated units dealing with this issue which includes the Human Trafficking Investigation and

[28] Department of Agriculture, Food and the Marine; Department of Arts, Heritage and the Gaeltacht; Department of Children and Youth Affairs; Department of Communications, Energy and Natural Resources; Department of Defence; Department of Education and Skills; Department of Environment, Community and Local Government; Department of Finance; Department of Foreign Affairs and Trade; Department of Health; Department of Jobs, Enterprise and Innovation; Department of Justice and Equality; Department of Public Expenditure and Reform; Department of Social Protection; Department of the Taoiseach; and Department of Transport, Tourism and Sport.

[29] www.integration.ie.

[30] www.justice.ie.

[31] http://www.justice.ie/en/JELR/Pages/WP09000005.

Coordination Unit in the Garda National Immigration Bureau (GNIB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised Human Trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Director of Public Prosecutions (DPP) Office, as well as in the New Communities and Asylum Seekers Unit within the Department of Social Protection which is tasked with providing assistance to suspected victims not in the asylum system, to make the transition from Direct Provision accommodation to mainstream services for the duration of their temporary residency.

The Irish Naturalisation and Immigration Service (INIS)[32] is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Defence in relation to asylum, visa, immigration and citizenship processing, asylum, immigration and citizenship policy and repatriation. The INIS also brings the Reception and Integration Agency (RIA)[33] under its aegis. The Reception and Integration Agency (RIA) is responsible for coordinating the provision of services to asylum seekers and those awaiting decisions on their applications for subsidiary protection/'humanitarian leave to remain'. It also coordinates the provision of services such as health and education to asylum seekers in RIA accommodation. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social Protection,[34] of nationals of the 12 new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the Geneva Convention 1951, a two-tier structure exists for asylum application processing, consisting of the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT). These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. Both bodies make recommendations on asylum claims and hearings to the Minister of the Department who makes the final decision on whether refugee status is granted or refused. Both ORAC and RAT have their own independent statutory existence. The Department also ensures they have input into the coordination of asylum policy.

The Refugee Applications Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications.

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32 http://www.inis.gov.ie.
33 http://www.ria.gov.ie.
34 http://www.welfare.ie.

The Refugee Documentation Centre (RDC)[35] is an independent library and research service within the Legal Aid Board.[36] The Refugee Legal Service (RLS)[37] was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board. Limited immigration advice is included under the remit of the Legal Aid Board.[38] Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Coordination Unit of An Garda Síochána as 'potential victims' of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.[39] With a focus on the promotion of the integration of legal immigrants into Irish society, the OPMI has a cross-Departmental mandate to develop, lead and coordinate integration policy across government departments, agencies and services. The OPMI also coordinates the resettlement of refugees admitted by Ireland under the United Nations Resettlement Programme and the administration of EU and national funding for the promotion of migrant integration.

1.1.2.2 Department of Jobs, Enterprise and Innovation

The Department of Enterprise, Jobs and Innovation[40] administers the employment permit schemes under the general auspices of the Labour Affairs Development Division:

- *The Economic Migration Policy Unit[41] contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.*
- *The Employment Permits Section[42] implements a labour market driven employment permits system in order to fill those labour skills gaps which cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits, issues guidelines, information and procedures, and produces online statistics on applications and permits issued.*
- *The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national researchers pursuant to Council Directive*

35 http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.
36 www.legalaidboard.ie.
37 http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service.
38 The Legal Aid Board website states that 'Legal aid and advice is also provided in appropriate cases on immigration and deportation matters'. Available at http://www.legalaidboard.ie.
39 www.integration.ie.
40 www.djei.ie.
41 http://www.djei.ie/labour/migration/index.htm.
42 http://www.djei.ie/labour/workpermits.

2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research.

1.1.2.3 The Department of Foreign Affairs

The Department of Foreign Affairs[43] has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office present within the country.[44] The Department of Foreign Affairs has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

1.1.3 General Structure of the Legal System

As outlined in previous reports in this series, and notably by Quinn (2009), the modern Irish legal system is based on Common Law as modified by subsequent legislation and by the *Irish Constitution of 1937*. The Oireachtas, consisting of the President and the two Houses of the Oireachas, Dáil Éireann and Seanad Éireann, is the only institution in Ireland with power to make laws for the State. Bills can either be initiated by Private Members' Bills or by Government and while a Bill may be commenced in either House, it must be passed by both to become law.

The First Stage of the legislative process is the initiation of a Bill (a proposal for legislation) by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a Motion of whether the Bill would now constitute good law. If passed in the Motion, the Bill is then passed to the other House, the Seanad, with Second to Fifth stages repeated there. The Seanad has 90 days (or a longer time period if agreed by both Houses) to consider the Bill and either pass the Bill without amendment, return the Bill to the Dáil with amendments or reject the Bill completely. Once a Bill has been passed by both Houses, the Taoiseach presents a copy of the Bill to the President for signature. When the Bill comes to the President for signature, he or she considers whether the new Bill may conflict with the Constitution and may, after consultation with the Council of State, refer the question of whether or not the Bill is constitutional to the Supreme Court. Once the President has signed the Bill it becomes an 'Act' and has legal force.[45]

'Statutory Instruments', a secondary form of legislation, are typically not enacted by the Oireachtas, and allow persons or bodies to whom legislative power has been delegated by statute to legislate in relation to matters arising from the operation of the relevant primary legislation. Statutory instruments are often used to implement EU Directives.

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[43] www.dfa.ie.

[44] See Quinn (2009) for further discussion.

[45] Quinn (2009) provides a discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

In accordance with the Constitution, justice is administered in public, in courts established by law, with judges appointed by the President on the advice of the Government, and independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are four types of courts in Ireland which hear different types and levels of cases. In ascending hierarchical order the four types of courts are the District Court, the Circuit Court, the High Court and the Supreme Court. Of interest, Quinn (2009) notes how the Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice and Law Reform. The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review.

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under the *Aliens Act 1935* (and Orders made under that Act),[46] together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, *S.I. No. 518 of 2006* seeks to ensure compliance with *EU Directive 2004/83/EC.*[47] Ireland is also a signatory to the 'Dublin Convention', and is subject to the Dublin Regulation[48] which succeeded that Convention and which determines the EU Member State responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various legislation including the *Aliens Act of 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*; and the *Immigration Acts 1999, 2003 and 2004*.[49] The *Immigration, Residence and Protection Bill 2010* constituted a single piece of proposed legislation for the management of both immigration and protection issues, and was restored following a change of government on 23 March 2011; however it was subsequently withdrawn in 2012 and that same year the Minister for Justice and Equality announced his intention to republish the *Immigration, Residence and Protection Bill 2010* in 2013. The republished Bill is to include several initiatives approved in the *Programme for Government 2011* including an independent appeals process and single procedure for applications for international protection. The *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published in

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

47 *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*. Quinn (2009) discusses both current and past development of legislation in great detail.

48 *Council Regulation (EC) No 343/2003* of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

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

July 2008 and amends the 2006 Regulation stipulating that third-country (non-EU) nationals married to EU citizens must have resided in another Member State before moving to Ireland.

Regarding the situation of Ireland concerning an 'opt-in' provision regarding EU measures in asylum and migration, under the terms of the *Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union,* Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the TFEU unless it 'opts into' the measure. Ireland has given an undertaking to opt into measures that do not compromise the Common Travel Area with the UK, which also has an opt-in/opt-out facility.[50] Under Declaration number 56 to the TFEU, Ireland has declared its 'firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.'[51]

[50] As noted in Quinn, E. and Kingston, G. (2012). *Practical Measures for Reducing Irregular Migration: Ireland.* Available at www.emn.ie and www.esri.ie.

[51] Declaration by Ireland on Article 3 of the *Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (TFEU)*. Ireland also 'affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety'.

Chapter 2

Overview of Asylum and Migration Policy Developments

2.1 Political Developments

2.1.2 Budget 2013

The justice sector saw further reductions in Budget 2013 with an allocation of €2.26 billion.[52]

2.2 Overall Developments in Asylum and Migration

2.2.1 Review of Programme for Government

A review of the 2011 *Programme for Government Common Statement* took place during 2012. The *Programme for Government: Annual Report 2012* was published in March of that year and commented on progress within a number of key areas by the Government. Within the economic sphere, the introduction of the Irish Short-Stay Visa Waiver Programme in 2011 was noted, with notice that it was under review to 'ensure that its potential to attract visitors from key target markets is maximised during the 2012 London Olympics'. The introduction of the Immigrant Investor Programme and Start-up Entrepreneur Scheme was also highlighted as allowing for 'people who make considerable investment in Irish jobs permission to reside in Ireland.' The launching of the new 'Education in Ireland' umbrella brand for international marketing of the Irish Higher Education and English Language Sectors also took place. The Annual Report also noted that the citizenship application process had been improved, with efforts 'ongoing to improve waiting time and efficiencies further'. Statutory provision for citizenship ceremonies had been introduced via the *Civil Law Miscellaneous Act 2011*. A number of activities with regard to the patronage of schools were discussed, including the launching of a Forum on Patronage and Pluralism in the Primary Sector in April 2011 and the designation of Educate Together (patron of multidenominational primary schools) of a patron for second-level schools also.

Publication of the *Qualifications and Quality Assurance (Education and Training) Bill 2011* for the merging of accreditation authorities was also noted, as was passing of the *Criminal Justice (Female Genital Mutilation) Bill 2011*.

[52] Department of Justice and Equality (December 2012). 'Budget Allocation for the Justice Vote Group'. *Press Release*. Available at www.justice.ie.

2.2.2 *Qualifications and Quality Assurance (Education and Training) Act 2012*

The *Qualifications and Quality Assurance (Education and Training) Act 2012* was enacted in 2012 and provides for the establishment of a merged accreditation body. Quality and Qualifications Ireland was subsequently established on 6 November 2012 under the Act and is an amalgamation of four bodies that have both awarding and quality assurance responsibilities: the Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the National Qualifications Authority of Ireland (NQAI) and the Irish Universities Quality Board (IUQB).[53]

The 2012 Act designated the creation of an authority as to include the promotion, maintaining and further development of the education framework as well as to advise the Minister in relation to national policy in the area of quality assurance and enhancement in education and training. The authority is to approve the use of the international education mark by providers and to establish and maintain a database providing information on awards recognised within the framework.

In particular, a code of practice to be complied with by providers of programmes to international learners is provided for, to be published by the new authority and to result in accreditation with an 'international education mark'. A register of providers in possession of this international education mark will be maintained. The new authority will also undertake on-going liaison with international awarding bodies with regard to the recognition of non-Irish qualifications.

2.2.3 *Criminal Justice (Female Genital Mutilation) Act 2012*

The Criminal Justice (Female Genital Mutilation) Act 2011 was passed in March 2012 following much parliamentary discussion and commenced on 20 September 2012. It was initially introduced as the *Female Genital Mutilation Bill 2011* in January 2011 with the aim of prohibiting female genital mutilation and related offences (including an extra-territorial aspect) and to act as a deterrent. The 2012 Act states that a person is guilty of an offence if the '…person does or attempts to do an act of female genital mutilation' or if they should remove or attempt to remove a girl or woman from the State 'where one of the purposes for the removal is to have an act of female genital mutilation done to her.' A person will also be guilty of an offence if they do or attempt to undertake an act of FGM in a place other than Ireland if it is on board an Irish ship, on an aircraft registered in Ireland or 'by a person who is a citizen of Ireland or is ordinarily resident in the State, and would constitute an offence in the place in which it is done.' In addition, provisions for the protection of victims during legal proceedings were also included. Punishment is up to 14 years imprisonment and/or a fine; for a summary conviction, the penalty is a fine of up to €5,000 and/or imprisonment for up to 12 months or both.

[53] www.qqi.ie.

The Department of Health and Children summarised the legislation as taking a 'human rights perspective' and that it stipulated that 'the right to practice one's cultural traditions and beliefs cannot be used to justify FGM, which has been internationally recognised as a form of gender-based violence. A defence of custom or ritual in proceedings is not permitted; neither is a defence that the girl/woman or her parents/guardian consented to FGM.'[54] The Department has noted that the Health Service Executive is planning to print information leaflets on the new legislation as well as including the prevention of FGM and care of those who have already undergone the procedure as a Key Result Area within the HSE Service Plan for the following year. The Department of Health stated that that the HSE had introduced a National Maternity Healthcare Record, on which form FGM was listed as a 'risk factor' for obstetric care.

During discussions on the Bill, the Minister for Health, Dr. James Reilly, stated that the most up-to-date figures showed that some 3,183 women who had undergone female genital mutilation (FGM) were living in Ireland.[55] The Minister noted that the definition of FGM in the Bill was based on the 'broad WHO definition […] which includes type IV FGM'.

2.2.4 Changes to the Employment Permits Acts and Ratification of the International Labour Organization (ILO) Convention on Domestic Workers

In November 2012, a Private Members Bill, the *Employment Permits (Amendment) Bill 2012* was introduced with the aim of protecting non-Irish national workers 'from exploitation by providing a due diligence defence for such workers and also to preclude employers from avoiding liability through reliance upon the illegality of a contract of employment and for that purpose to amend the *Employment Permits Act 2003* and to provide for related matters'.[56] Introduced with the aim of addressing 'certain shortcomings' in the *Employment Permits Act 2003* as highlighted in the 2012 High Court case *Hussein v. The Labour Court,*[57] the Bill aims to provide for the enforcement of any employment rights and ability to seek redress 'as if a valid employment permit had been in force' in situations whereby a 'foreign national has established that he or she took all such

[54] http://www.dohc.ie/issues/Female_Genital_Mutilation.

[55] Quoting a study by the NGO AkiDwa. In a press release upon passing of the Bill in 2011, AkiDwa stated that it was estimated that 'there are more than 3,000 women and girls living in Ireland who have undergone FGM. Most are from Nigeria, Somalia, Sudan, Egypt, Kenya and Sierra Leone.' AkiDwa (28 March 2012). 'Migrant Women Welcome Passing of Bill on Female Genital Mutilation'. *Press Release*. Available at www.akidwa.ie.

[56] Explanatory note as provided for in Bill.

[57] *Hussein v. The Labour Court [2012] IEHC 364*. This case was summarised in the Explanatory Memorandum accompanying the 2012 Bill as follows: On 31 August 2012 the High Court overturned a determination of the Labour Court to award €91,134 to a foreign national restaurant worker, arising from a number of complaints which he made concerning the alleged breach of his employment rights. The restaurant owner appealed the determination to the High Court on the basis that as the worker was not employed under a work permit, his contract of employment was illegal and therefore the worker had no standing to invoke the protection afforded by the employment legislation of the State. See http://www.oireachtas.ie/documents/bills28/bills/2012/10112/b10112s.pdf. It was also noted in subsequent debates that the judgment had been referred by Mr Justice Hogan to the legislature for action if deemed necessary. See *The Irish Times* (1 September 2012). 'Government to give 'full consideration' to High Court judgment'. Available at www.irishtimes.com.

steps as were reasonably open to him' to obtain an employment permit. In discussing the Bill in November 2012, Senator Fergal Quinn noted the support of the Migrant Rights Centre of Ireland (MRCI) of the Bill and quoted it as stating that, as presently stands following the *Hussein* ruling, the

> *law as it is now interpreted gives a green light to exploitative employers. Other countries have protections in place where undocumented workers who have had their employment rights violated can seek legal redress. The Government must act immediately to guarantee that undocumented workers are protected under employment law.*[58]

It was announced in the latter part of 2012 that a new employment permits Bill was to be published in the first quarter of 2013 and would include specific, technical provisions for protecting undocumented workers. Heads of a new Bill had been approved by Government in April 2012.[59] A regulatory impact assessment of a new employment permits Bill is detailed in Section 3.1.2, including the recognition of a need for protection of exploited workers who are not legally working in Ireland.

In addition, much activity with regard to addressing an identified skills shortage within the ICT sector also took place during 2012. In November 2012 the Minister for Jobs, Enterprise and Innovation highlighted a January 2012 report by the Expert Group on Future Skills Needs (EGFSN) which identified immediate skills in the ICT area at over eight years' experience. In addition, he noted that 'it is estimated that there are in excess of 1,500 job vacancies in the ICT sector', and that an examination of how the employment permits system could be adjusted 'to facilitate attracting highly sought skills' should take place. The Minister stated that the Department of Jobs, Enterprise and Innovation had reviewed its processes 'with a view to attracting more ICT related applications' and was confident that 'significant improvements' would be made to 'greatly enhance the employment permits regime to ensure growth is not hampered by skills shortages'.[60]

Much debate during 2012 centred on the rights of domestic workers in diplomatic households. In October 2012, the Minister of State at the Departments of Health and Justice, Equality and Defence acknowledged the engagement of Irish officials in discussions regarding the recently-adopted ILO Convention on Decent Work for Domestic Workers. The Minister noted that a

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58 Senator Fergal Quinn (28 November 2012). 'Employment Permits (Amendment) Bill 2012: Second Stage'. Available at http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2012112800016?opendocument.

59 Minister for Jobs, Enterprise and Innovation quoted in Parliamentary Question (22 November 2012). Available at http://oireachtasdebates.oireachtas.ie.

60 *Ibid*. In May 2012, in a newspaper report it was stated that 'Ireland's cumbersome system for granting non-EU workers visas has become a difficulty for an expanding high-tech sector trying to hire skilled staff'. *The Irish Times* article also noted that smaller firms may not be aware of the existence or procedures attached to the Green Card scheme. See *The Irish Times* (23 July 2012). 'Work visas not working for tech sector'. Available at www.irishtimes.com.

decision would be taken when a review of necessary national legislation to ratify the Convention had been conducted. It was also noted that work was underway to 'develop new procedures [in the area of domestic work in diplomatic households]… to assist employees and provide guidance for embassies'.[61] In December 2012, national partners Migrant Rights Centre Ireland (MRCI), the Domestic Workers Action Group, SIPTU and the Irish Congress of Trade Unions called on the Minister for Jobs and Enterprise to commit to ratification of the UN International Labour Organisation (ILO) Convention on Domestic Work.[62]

2.2.5 Publication of *General Scheme of the Criminal Law (Human Trafficking) (Amendment) Bill 2012*

In late 2012 the Minister for Justice, Equality and Defence published the general scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill*.[63] This followed approval of a proposal at a meeting of the Government on 18 December 2012, with the general scheme subsequently forwarded to the Office of Parliamentary Counsel for drafting.[64] The Bill proposes to fully transpose *Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA* which was adopted in April 2011, in particular the criminalisation of trafficking for the purposes of forced begging and for criminal activities. Minister Shatter also stated that he was also 'taking this opportunity, in the interest of clarity, to define the term 'forced labour' as used in the *Criminal Law (Human Trafficking) Act 2008*' and that the Bill provides for the same 'forced labour' definition as in International Labour Organisation (ILO) *Convention No. 29 of 1930 on Forced or Compulsory Labour.*

2.2.6 Proposed Restoration of an *Immigration, Residence and Protection Bill*

The Minister for Justice, Equality and Defence had initially signalled an intention to republish a new redrafted text of the *Immigration Residence and Protection Bill 2010* by late 2012 (subject to time constraints arising from the implementation of EU/IMF/ECB commitments), but by mid-2012, stated that he believed that the frame of a new Bill would not be enacted before 2013. As of year-end, the new Bill had remained unpublished and in early 2013 it was announced that work

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61 Opening remarks by Minister Kathleen Lynch, Minister of State at Department of Health and Department of Justice, Equality and Defence, at Opening of International Conference on Migrant Domestic Workers, Human Rights and Migration Law - UCC on Friday 19 October 2012.

62 MRCI (December 2012). 'National Partners unite in call for Gov to ratify Domestic Workers Convention'. *Press Release*. Available at www.mrci.ie.

63 Department of Justice and Equality (2012). General Scheme of the Criminal Law (Human Trafficking) (Amendment) Bill 2012. Available at http://www.justice.ie/en/JELR/Criminal%20Law%20_Human%20Trafficking_%20_Amendment_%20Bill%202012%20-%20General%20Scheme.pdf/Files/Criminal%20Law%20_Human%20Trafficking_%20_Amendment_%20Bill%202012%20-%20General%20Scheme.pdf.

64 Department of Justice and Equality (7 January 2013). 'Shatter Announces Publication of General Scheme of Criminal Law (Human Trafficking) (Amendment) Bill'. *Press Release*. Available at www.merrionstreet.ie.

remained on-going and that the Minister hoped to be in a 'position to bring a revised Bill to the Government for approval and publication later this year'.[65]

During the year, the Minister indicated to address certain issues in a republished Bill including marriages of convenience, family reunification provisions and the protection of non-nationals who were suffering domestic violence and whose immigration status may be adversely affected if they were to leave their abusive partner. He also stated that he would engage in further debate in the Oireachtas in relation to the content of the Bill, including on matters that may be contained in secondary legislation.[66] Commentary throughout the year on the drafting of the Bill and incorporation of amendments also reiterated the inclusion of a single protection procedure for applications for international protection.

2.2.7 Statutory Instruments

Some six pieces of secondary legislation by virtue of statutory instruments and relevant to the migration and international protection area were made in 2012:

- *The Immigration Act 2004 (Start-up Entrepreneur Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 259 of 2012)*
- *The Immigration Act 2004 (Immigrant Investor Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 258 of 2012)*
- *The Immigration Act 2004 (Visas) Order 2012 (S.I. No. 417 of 2012)*
- *The Immigration Act 2004 (Registration Certificate Fee) Regulations 2012 (S.I. No. 444 of 2012)*
- *The European Communities (Lawyers' Establishment) Regulations 2003 (Qualifying Certificate 2013) Regulations 2012 (S.I. No. 540 of 2012)*
- *The European Union (Recognition of Professional Qualifications relating to the Profession of Pharmacist) Regulations 2012 (S.I. No. 235 of 2012).*

These are discussed throughout the rest of the report.

Of particular note, the *Immigration Act 2004 (Visas) Order 2012 (S.I. 417 of 2012)* revoked the *Immigration Act 2004 (Visas) (No.2) Order 2011 (S.I. No. 345 of 2011)*. It specifies classes of non-Irish nationals who are not required to be in possession of a valid Irish visa when landing in the State, including some family members of EU nationals who are holders of a 'Residence card of a family member of a Union citizen' as specified in Article 10 of *Directive 2004/38/EC* and some holders of travel documents issued in accordance with Section 28 of the Geneva Convention. *S.I. 417 of 2012* also specifies nationals of states which are required to be in possession of a valid Irish transit visa when arriving at a port in the State for purposes of passing through the port in order to travel to another

[65] Parliamentary Question No. 46 (6 March 2013).
[66] Parliamentary Question (13 March 2012), (26 April 2012).

state.[67] In March 2012 it was announced that Ireland's first formal visa waiver programme[68] would be extended for four years via *S.I. No. 417 of 2012.* It also provides for visa free travel for certain nationalities who are primarily visitors to the UK.[69]

2.2.8 Overall 2012 Statistics

Overall during 2012, an estimated 165,700 new applications were received by the Irish Naturalisation and Immigration Service (INIS), including applications for visas, residence, protection and citizenship. A total of almost 175,000 decisions were issued and over 96,700 new or renewed registrations were issued by the Garda National Immigration Bureau (GNIB).[70]

2.2.9 Population Data

Further *Census 2011* statistics were published by the Central Statistics Office (CSO) in late 2012 and showed that in April 2011 some 12 per cent of the resident population (544,357) from 199 different nationalities were living in Ireland. Polish nationals were the largest nationality grouping, showing a 93.7 per cent increase from 63,276 persons in 2006 to 122,585 in 2011; UK nationals were the second largest group with 112,259 living in Ireland in 2011. A small number of nationalities recorded a decrease between 2006 and 2011, most notably USA and Australian nationals. Almost 58 per cent of non-Irish nationals aged 15 and over were at work compared to 49 per cent of Irish nationals, and just over 11 per cent of Irish nationals were unemployed compared to almost 17 per cent of non-Irish nationals. Some 15.1 per cent of the total workforce contained non-Irish nationals (268,180), with Polish and UK nationals accounting for almost half (43.4 per cent) of all non-Irish workers. Indian nationals were the largest non-EU nationality grouping at work in Ireland and fifth overall, at 8,397 persons. Of the 53,267 people who arrived in Ireland in the year prior to April 2011, 62.5 per cent (33,340 persons) were non-Irish nationals, mainly from Poland (4,112) and the UK (4,072). Over two thirds of this non-Irish group were between the ages of 15 and 34 and almost 60 per cent were single. Overall almost 74 per cent of non-Irish nationals identified themselves as of white ethnicity; 7 per cent of black and 12

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67 Nationals of Afghanistan, Albania, Cuba, Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Lebanon, Moldova, Nigeria, Somalia, Sri Lanka and Zimbabwe.

68 The Programme is designed to 'boost tourism and business, especially from emerging markets'. During 2012, Bosnia and Herzegovina were added to the existing list of 16 countries already covered, with fees waived for long-term residents from the countries covered by the Programme who live in the Schengen area. This is to be reviewed after six months; see Irish Naturalisation and Immigration Service (March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

69 Until 31 October 2016 and for nationals of Bahrain, Belarus, Bosnia and Herzegovina, India, Kazakhstan, Kuwait, Montenegro, Oman, People's Republic of China, Qatar, Russian Federation, Saudi Arabia, Serbia, Turkey, Ukraine, United Arab Emirates and Uzbekistan.

70 Irish Naturalisation and Immigration Service (January 2013). 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

per cent of Asian ethnicity. Almost 40 per cent of persons of black ethnicity were Irish nationals.[71]

In September 2012, the CSO also released revised *Population and Migration Estimates* which showed that in the 12 months to April 2012, gross inward migration of 53,000 was offset by an estimated outflow of over 87,000, resulting in net outward migration of 34,400: the highest level of emigration for over two decades. Net outward migration continued to increase for both Irish nationals (up 16 per cent to 25,900) and non-Irish nationals (up 68 per cent to 8,400).[72]

Following the 2011 *Census of Population*, revisions applying to the annual CSO statistics on population, migration and the labour force were analysed in a Research Note in the Winter 2012 ESRI *Quarterly Economic Commentary*. Timoney (2013) highlighted the main feature of the revisions, showing that inward migration flows had been considerably underestimated during the five years spanning 2007-2011. Those from newer EU12 Member States comprise the majority of the migration revisions. Overall, there were 70,200 more citizens of EU12 origin in the 2011 population than had previously been estimated, indicating the EU12 share of total population has remained above 5 per cent since peaking at 5.5 per cent in 2007. The other main source of migration revisions by origin were Irish nationals, totalling 26,700. Together with smaller revisions to migration by all other nationalities and the natural increase (births less deaths), total population in Ireland was 90,600 (2 per cent) higher in 2011 than previously estimated. Looking at overall revisions by age group, those aged 15-24 and 35-39 comprised the majority of the total. The increased number of 15-24 year-olds, for whom the unemployment rate stood at 29 per cent in the third quarter of 2012, contributed to the increase in the overall unemployment rate for the first half of 2012. In terms of the labour force, the revisions point to a broadly stable working-age population of 3.6 million since the second quarter of 2009, despite previous quarterly survey estimates suggesting decline over the period. Overall, given the higher number of young people in Ireland than previously estimated, and the limited prospects for labour market recovery over the short-medium term, the ongoing pattern of net emigration looks set to continue for several years to come.[73]

2.2.10 Migrant Access to Social Security

Much debate continued during 2012 regarding both the implementation of a Habitual Residence Condition (HRC) regarding access to social security and the overall social welfare system.

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[71] Analysis on www.emn.ie. See also Central Statistics Office (2012). *Census 2011 Results. Profile 6 Migration and Diversity- a Profile of Diversity in Ireland*. Available at www.cso.ie.

[72] Analysis on www.emn.ie; also O'Connell, P.J. et al. (2013). *International Migration in Ireland, 2012*. Geary WP2013/04. Available at www.ucd.ie/geary.

[73] Timoney, K. (2012). *Revisions to Population, Migration and the Labour Force, 2007-2011*. Research Note in Duffy et al. (2012). *Quarterly Economic Commentary*, Winter 2012. Available at www.esri.ie.

As discussed in the *Annual Policy Report 2010*, the *Social Welfare and Pensions (No.2) Act 2009* of December 2009 introduced amendments to the Habitual Residence Condition regarding individuals either seeking or having been granted a protection status. Amendments specified that an individual must have a 'right to reside' in the State to satisfy the HRC and sets forth which persons will be regarded as having a right to reside and which persons will not. Individuals who had applied for asylum or a protection status in Ireland could not be considered as habitually resident while awaiting a determination. Overall, an individual 'who does not have a right to reside in the State' should not be regarded as habitually resident. Criticism of these amendments centred on the exclusion of those within the asylum system.

A review of guidelines used in the determination of decisions related to habitual residence conditions took place via a working group within the Department of Social Protection during 2010 and 2011, with new guidelines subsequently published in 2012. The Minister for Social Protection has described the review as to make guidelines clearer but also to 'improve consistency in decision making across the Department'.[74] These new guidelines were published on the Departmental website in September 2012[75] and detail, amongst other things, factors to be considered when determining an applicant's main centre of interest and future intention to remain in Ireland.

A report produced by Doras Luimní, Crosscare and NASC in 2012 looked at issues facing immigrants when accessing social protection. The '*Person or Number*' report used 54 case studies and highlighted experiences and challenges in accessing social welfare. Main findings related to the provision of accurate information in a consistent manner; 'adversarial' approaches and reliance on speculative measures; and 'inappropriate, aggressive and racist language by departmental staff'. The report made a number of recommendations including detailed training of staff both in terms of customer interaction and knowledge of procedures; the publication of guidelines to prevent inconsistent decision making based on 'speculation' as well as appeals; speeding up of processing times; allowing immediate access to the Supplementary Allowance scheme while HRC decisions are pending; and publication of detailed 'allowed' appeals by the Department of Social Protection on a periodical basis. The Report recommended that the accessing of social protection by an applicant for citizenship 'is no longer used by the Minister for Justice and Equality as a reason to refuse naturalisation' and states that such a refusal 'questions the legitimacy of the Department of Social Protection's own checks and balances and, logically, all those who use it.' It also called for the Department of Justice and Equality to end the issuance of

[74] Parliamentary Question Vol. 758 No. 1 (6 March 2012). Available at http://debates.oireachtas.ie.
[75] http://www.welfare.ie/en/Pages/Habitual-Residence-Condition-Guidelines-for-Deciding-Offic.aspx.

immigration permissions containing a clause preventing a person from being an undue 'burden on the State'.[76]

2.2.11 Immigration Guidelines for Victims of Domestic Violence

New Immigration Guidelines for victims of domestic violence were published by the Irish Naturalisation and Immigration Service (INIS) during 2012. The Guidelines focus on instances where the victim is a foreign national and whose immigration status is dependent on or derived from that of the perpetrator. The Guidelines advise that someone will not 'have to remain in an abusive relationship' in order to preserve their 'entitlement to remain in Ireland' and can make a request for an 'independent immigration status'. Applications should be submitted via the General Immigration Division within the Department of Justice and Equality and no application fee will be required. Permission granted will generally be at the same level as that held as a dependant (noted as normally a 'Stamp 3' permission). Consideration regarding granting permission to work will be given in relevant cases. The Guidelines also note that engagement in domestic violence behaviour can be regarded as breaching the 'good character' condition of a holder of an immigration permission in Ireland and could lead to a revocation or non-renewal of subsequent status.[77]

2.2.12 Marriages of Convenience

The issue of suspected marriages of convenience continued to attract debate during 2012. As discussed in the *Annual Policy Report on Migration and Asylum 2011: Ireland*, during that year the then Minister for Justice, Equality and Defence cited 'serious concern' about 'highly irregular patterns of marriage in Ireland' involving EU nationals exercising their freedom of movement, and third-country Nationals.[78] A 2011 case before the Irish courts, *Izmailovic & Anor v. The Commissioner of An Garda Síochána*,[79] found that 'marriages of convenience' are not unlawful in Irish law and the Gardaí are not empowered to prevent their solemnisation if they suspected it was for immigration purposes.[80]

The 2012 annual report of the Registrar General noted that while no statistics are available on the incidence of marriages of convenience are available 'anecdotal evidence suggests that the increase in the number of civil marriages from 2008 is partly accounted for by marriages of convenience, following the judgment by the European Court of Justice in the Metock case'. Some 883 (from 780 in 2011) notifications of intention to marry were made during 2012 concerning non-Irish

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[76] Crosscare, Doras Luimní and NASC (2012). *'Person or Number? Issues Faced by Immigrants Accessing Social Protection'*. Available at www.crosscare.ie.

[77] Irish Naturalisation and Immigration Service (2012). 'Victims of Domestic Violence Immigration Guidelines'. Available at www.inis.gov.ie.

[78] Irish Naturalisation and Immigration Service (9 June 2011). 'Sham marriages leading to abuses of EU freedom of movement rights'. Press Release. Available at www.inis.gov.ie.

[79] *Izmailovic & Anor v. The Commissioner of An Garda Síochána [2011] IEHC 32 (2011).*

[80] See also Joyce, C. (2012). *Misuse of the Right to Family Reunification: Ireland*. Available at www.emn.ie and www.esri.ie.

EU nationals and non-EU citizens, with 705 (from 600 in 2011) marriages registered in respect of the notifications. All marriages may not relate to the year notified and/or registered however. The Annual Report surmises that while 'it would be wrong to characterise all marriages between EU and non-EU nationals as marriages of convenience, the low rate of conversion of notices of intention to marry to actual marriage would suggest that marriages of convenience are a significant problem', a problem 'borne out' by the experience of registrars, amongst others. A legislative solution is noted as needed to enable steps to prevent marriages of convenience from taking place.[81]

In response to a Parliamentary Question during 2012, the Minister for Justice, Equality and Defence stated that he had asked Departmental officials to 're-examine the provisions in the *Immigration Residence and Protection Bill 2010* and to draft amendments dealing with immigration related marriages of convenience and sham marriages'. He also noted that a 'similar approach is being taken in respect of the Free Movement Regulations that transposed the EU Directive into Irish law' and that Departmental officials were working with the Garda National Immigration Bureau (GNIB) and the Department of Social Protection to 'identify a range of other initiatives, including legislative' to 'make such marriages less prevalent and, where they do take place, less beneficial to those who engage in them'. The Minister also highlighted difficulties in both proving such marriages and in employing criminal sanctions due to the constitutional protection of marriage.[82]

[81] General Register Office (2013). *Annual Report of an tArd-Chláraitheoir to the Minister for Social Protection under Section 11 of the Civil Registration Act 2004 for the year 2012*. Available at www.welfare.ie.

[82] Parliamentary Question No. 427 (13 March 2012).

Chapter 3

Legal Migration and Mobility

During 2012, the link between legal migration, mobility and economic growth continued to be highlighted by Government. In a year-end review of 2012 activities, the Minister for Justice, Equality and Defence stated that he is prioritising initiatives to reform the immigration regime in Ireland so as to 'contribute to investment in the State and to assist in economic development', with the Department of Justice and Equality 'playing a full part in restoring our country to economic health'.[83]

All non-EEA nationals over the age of 16 years and in the State for longer than 90 days are required to register with the Garda National Immigration Bureau (GNIB). At the end of 2012, approximately 121,000 non-EEA nationals had permission to remain in the State, the majority for work, family or study reasons and primarily from India (11 per cent), Nigeria (9 per cent), Brazil (9 per cent), China (9 per cent), Philippines (7 per cent) and the USA (7 per cent).[84]

3.1 Economic Migration

3.1.1 Removal of Transitional Arrangements Regarding Bulgarian and Romanian Nationals

Post-Accession in 2007, Ireland initially applied transitional arrangements and continued to require Bulgarian and Romanian nationals to hold an employment permit to access the Irish labour market (excluding self-employed and economically self-sufficient persons, and students). In July 2012 it was announced that such restrictions ceased with effect from the 1 January 2012.[85]

In December 2011, the European Commission invited Ireland to 'work actively towards the eventual opening of its labour market to Bulgarian and Romanian workers and regularly assess the situation of its labour market and reconsider whether it is necessary to maintain restrictions at all'.[86] Upon announcement of the cessation of restrictions in July 2012, the Department of Jobs, Enterprise and Innovation stated that a Government review of policy and possible impact on the

[83] Minister for Justice, Equality and Defence, Alan Shatter, T.D. as quoted in Irish Naturalisation and Immigration Service (2013).'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

[84] Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie. See Appendix II for further cumulative yearly figures.

[85] See Department of Jobs, Enterprise and Innovation (20 July 2012). 'Labour market issues relating to 2005 EU Accession Treaty'. *Press Release*. Available at www.djei.ie.

[86] *Ibid*.

labour market had been undertaken and showed both a fall in recent years in both applications for employment permits and personal public service (PPS) numbers from both nationalities.[87] It was noted that in recent years 'an annual average of less than 450 work permit applications from Bulgarian and Romanian nationals have been received, of which an average of 350 were granted annually'.[88] In addition, arguments favouring the removal of restrictions had been presented to the Government by the European Commission, as well as the Bulgarian and Romanian governments.

3.1.2 Proposed Legislation

Section 2.2.4 detailed the introduction of a Private Members Bill in November 2012 in the form of the *Employment Permits (Amendment) Bill 2012*. This was introduced in the wake of the *Hussein v. The Labour Court 2012* case and with the aim of protecting non-Irish national workers 'from exploitation by providing a due diligence defence for such workers and also to preclude employers from avoiding liability through reliance upon the illegality of a contract of employment and for that purpose to amend the *Employment Permits Act 2003* and to provide for related matters'.[89] In November 2012, the Minister for Jobs, Enterprise and Innovation outlined plans to amend current employment permits legislation in early 2013. A particular emphasis will be on ensuring that 'an employer may not benefit from the illegality of the contract of employment where they are found culpable in not ensuring a valid employment was in place for the employee concerned'.[90] In a related parliamentary question in November 2012, the Minister for Jobs, Enterprise and Innovation reiterated the role of the National Employment Rights Agency (NERA) in investigating breaches of workplace rights but acknowledged the long delays in the overall system and stated that a 'root-and-branch' reform with the objective of 'establishing a world-class Workplace Relations Service' had commenced for legally-resident workers (see also Section 3.1.9). The Minister also highlighted the difficulty experienced by policymakers with regard to legislating for the protection of rights for non-legal, non-Irish national workers, stating that careful consideration had to be given to 'what extent' non-legal workers 'should be dissuaded from working illegally in Ireland by virtue of there being a statutory offence to do so' versus 'to what extent should certain employment rights protect vulnerable migrants who find themselves unwittingly in such employment positions'.[91]

A regulatory impact assessment on the draft employment permits Bill took place during 2012. It noted that the consolidation and streamlining of the 2003 and

87 See Department of Jobs, Enterprise and Innovation (20 July 2012). 'Labour market issues relating to 2005 EU Accession Treaty'. *Press Release*. Available at www.djei.ie.

88 *Ibid*.

89 Explanatory note as provided for in the Bill.

90 Minister for Jobs, Enterprise and Innovation, Richard Bruton, T.D. written answer as provided in Dáil Éireann Debate (22 November 2012). *Vol. 783 No. 4*. Available at www.oireachtasdebates.oireachtas.ie.

91 *Ibid*.

2006 *Employment Permit Acts* was necessary in order to reflect policy and economic developments since 2007; to provide for more flexibility and targeted instruments in support of the economy's evolving skills needs which 'often require rapid response'; to cater for the accession of new Member States to the European Union and to provide for a 'robust employment permits regime with greater clarity'. The impact assessment stated that there is a need to focus on current skills shortages in key sectors, particularly ICT, and that a legislative development would provide for more 'innovative' applications such as online as well as reduce the administrative burden associated with applications. Of note, it also highlighted that need to address 'recent deficiencies identified in the legislation with the potential for employers to benefit from (at the cost of the employee) from the un-enforceability of employment contracts in situations where an employee does not hold an employment permit but is required to do so.'[92]

In 2012, Ireland continued to review its regime to attract highly-qualified workers. In particular, a review of the current national scheme for Intra-Corporate Transferees took place with any changes expected to be included in the published employment permits Bill in early 2013.[93]

3.1.3 Economic Permits

The number of employment permits issued to non-EEA nationals during 2012 stood at 4,007, with 2,919 new permits and 1,088 renewals. Permits were mainly issued in the services sector.[94]

The largest number of overall permits were issued to nationals of India (1,389 permits), the USA (527 permits), the Philippines (307 permits), China (217 permits) and Romania (210 permits). Over a third of all new permits were issued to nationals of India (1,082 permits), followed by the USA (441 permits), Romania (205 permits), China (156 permits) and the Philippines (116 permits).

3.1.4 Skills Shortages

Since 2004, Irish labour market policy has been to ensure that general labour and skills needs are met from within the workforce of the European Economic Area (EEA). Current Government policy is to issue employment permits for the employment of non-EEA nationals for specific vacancies only, and in response to employer demand for strategic skills and labour shortages in designated occupations in key economic sectors such as healthcare, information technology and financial services. [95]

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92 Department of Jobs, Enterprise and Innovation (2012). *Regulatory Impact Assessment draft Employment Permits Bill*. Available at www.djei.ie.

93 Department of Justice and Equality (January 2013).

94 www.djei.ie.

95 Department of Jobs, Enterprise and Innovation (January 2013).

A *National Skills Bulletin 2012*[96] was published in July 2012 with no changes to the list of occupations for which new work permits will not be issued.

As outlined in Quinn (2010),[97] the Department of Jobs, Enterprise and Innovation (DJEI) publishes and keeps under review a list of occupations for which new work permits will not be issued. The Department of Jobs, Enterprise and Innovation can also adapt the system of analysing labour shortages by implementing an application and duration of the labour market needs test, and by the granting or withdrawal eligibility for spousal permits according to labour market conditions. In making decisions on occupations to include on the ineligible/restricted lists and on the implementation of the other mechanisms DJEI first has regard to information gathered by the Expert Group on Future Skills Needs (EGFSN). The EGFSN is chaired by Forfás, Ireland's policy advisory board for enterprise, trade, science, technology and innovation,[98] and it researches particular difficulties in skills recruitment and makes recommendations based on the competencies in short supply, the necessary qualifications required and in most cases the level of shortages are quantified. Consultations with samples of employers take place as well as dialogue with providers, workshops with companies, education and training providers and trade associations to tease out findings and recommendations. It is also advised by a Steering Group which includes industry representatives from the relevant sector or skills being researched.[99] In 2003 the Group established a dedicated Skills and Labour Market Research Unit (SLMRU) within FÁS (Ireland's training and employment authority). The SLMRU set up and continues to maintain the National Skills Database containing quantitative information on skills and labour in Ireland which the EGFSN may draw upon for its work.[100] The *National Skills Bulletin* is produced on behalf of the EGFSN by the SLMRU on an annual basis since 2005, which is based on data from the National Skills Database. The Department of Jobs, Enterprise and Innovation uses this Bulletin to inform policymaking. The Bulletin synthesizes all available data on relevant indicators in order to assess and comment on the balance between the demand and supply for 130 occupations across the Irish workforce.[101] In addition, each year the EGFSN agrees a work programme which

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96 Expert Group on Future Skills Needs (2012). *National Skills Bulletin 2012*. Available at www.skillsireland.ie.

97 Quinn, E. (2010) Satisfying Labour Demand Through Migration: Ireland. Dublin: ESRI. Available at www.esri.ie.

98 See www.forfas.ie.

99 Department of Jobs, Enterprise and Innovation (January 2013).

100 The National Skills Database is constantly amended as new sources emerge but the following key data are collected:

- Employment data mainly from the *Quarterly National Household Survey* (provided by the Central Statistics Office)
- Education provision, participation and output (provided by the Higher Education Authority, the Department of Education and Science, and FÁS)
- First destination of third-level students (provided by the Higher Education Authority)
- Employment permit data (provided by the Department of Enterprise, Trade and Innovation)
- Job vacancies (provided by FÁS, *The Irish Times* and www.irishjobs.ie)
- Jobseeker data (FÁS).

101 In order to determine whether or not a skills shortage exists the SLMRU considers the following indicators, most of which are based on *Quarterly National Household Survey* data:

- Employment stock for each occupation

identifies sectors of the labour market that require research into skills and labour needs. In this respect the mechanism is flexible, responding to the most pressing information gaps as they emerge. The DJEI also has bilateral contacts with other parties such as employers, ambassadors, NGOs, and the National Employment Rights Authority (NERA). Industry representatives may approach DJEI with a business case for easing restrictions on certain niche occupations.[102]

The 2012 Bulletin showed some employment opportunities continued to exist, primarily vacancies related to sales (and related occupations) including marketing and customer services roles. Vacancies continued to exist for professionals within the IT sector (and associate professionals), as well as those working in the science and engineering fields, business, selected administrative occupations and certain personal care occupations. Some skills shortages were identified but mainly confined to the information and communications sector and highly specialised posts in high-tech manufacturing (primarily biopharmaceuticals) as well as in more traditional manufacturing segments, the financial services sector, and the health sector. The 2012 Bulletin noted that the largest share of new employment permits issued in 2011 to non-EEA nationals, at 27 per cent, were for vacancies in the information and communication sector, and 'more than a two-fold increase in the share that prevailed in 2010'.[103]

3.1.5 Administrative, Legislative and Operational Developments

A number of developments related to economic migration occurred in recent years. Many of these developments, particularly with regard to employment permit holders, continued to have effect during 2012. Administrative arrangements for eligible individuals who have been in possession of work permits for at least five years, or who have been made redundant, continued to be available during 2012 on a more mainstreamed basis. Initial arrangements for both groups were introduced in October 2009 and concerned persons working in Ireland in possession of a work permit or work authorisation (or combination of a work permit and a spousal/dependant permit) for at least five years and who have been made redundant.

In November 2010 updated immigration arrangements concerning those eligible under the five year worker and redundancy policy were introduced with

- Percentage of females, part time workers, persons older than 55 years in the overall employment of each occupation group
- Unemployment levels in occupational groups
- Percentage of non-Irish in the total employment in occupational groups
- Annual average employment growth rate for the previous five years
- Number of new employment permits issued
- Reports and results of SLMRU Recruitment Agency Survey
- Replacement rates for each occupation i.e. the share of employment which is expected to be lost each year as a result of workers moving to other occupations, retirement, illness, emigration or death.

[102] Quinn, E. (2010) *Satisfying Labour Demand Through Migration: Ireland*. Dublin: ESRI. Available at www.esri.ie.

[103] Expert Group on Future Skills Needs (2012). *National Skills Bulletin 2012*. Available at www.skillsireland.ie.

immediate effect,[104] and saw a consolidated set of policies introduced including a general scheme for current holders of work permits (including Spousal/ Dependant permits) and work authorisations/visas for at least five consecutive years exempted[105] from the requirement to hold a work permit on the next renewal of their immigration registration.[106] Qualifying persons may work in any employment and will not be restricted to their current employer. In the case of redundancy, they are eligible to seek other employment. Qualifying persons are issued with a 'Stamp 4'[107] immigration permission on a one-year renewable basis. This applies equally to those who are still in employment and to those with a work permit who, having completed five years' work, have since been made redundant. In the case of persons working in Ireland on a work permit for less than five continuous years and who have become redundant involuntarily, and those with five or more years residency but not eligible for the aforementioned waiver, a six-month 'grace period' is available under which they can seek alternative work without requirement for a labour market needs to be applied. In the case of persons who have held a permit for five continuous years but do not qualify for a 'Stamp 4' permission, they will be issued with a temporary 'Stamp 1' permission and should apply for a new employment permit upon receipt of a new job offer. In the case of an employment permit holder becoming redundant, the associated permit held by their spouse or dependant under that scheme will continue to be valid for six months only from the date on which the primary permit holder was made redundant.[108]

During 2012 the Department of Jobs Enterprise & Innovation (DJEI) stated that it had reviewed its processes and identified a number of improvements and opportunities which will enhance the employment permit regime for the benefit of the economy. This included working with Department of Justice and Equality to provide a more coherent service across the employment permit regime and visa

[104] Irish Naturalisation and Immigration Service (2010). 'Policy for 5 year workers and redundant workers'. Available at http://www.inis.gov.ie/en/INIS/Pages/Policy%20for%205%20year%20workers%20and%20re dundant%20workers.

[105] Persons not meeting the exemption criteria will be issued with a 'Stamp 1' for three months and referred back to the Employment Permit Section of the Department of Jobs, Enterprise and Innovation where they will be required to apply for either a renewal or an unlimited employment permit. See http://www.djei.ie/labour/workpermits/fiveyearspermits.htm.

[106] Work authorisations were not issued beyond 2006.

[107] Persons who satisfy the eligibility criteria for this concession will be issued a 'Stamp 4' immigration permission for one year signifying the right to be present in Ireland and to be employed without a work permit. Terms and conditions include:

- Permissions granted may be renewed annually
- Persons granted the permission are expected to work and to support themselves and any dependants and, if made redundant, the person concerned must seek new employment
- The holder of this permission cannot become an undue burden on the State
- The holder of this permission will be free to work in any employment and will no longer be limited to the current employer. Should they subsequently be made redundant they are free to seek other employment
- It is not long term residence and it cannot be seen as any guarantee of permanent status
- The Stamp 4 in this situation allows the person to establish a business or become self-employed
- The concession is being made irrespective of whether the person is currently an applicant for Long Term Residence. See http://www.inis.gov.ie.

[108] Department of Jobs, Enterprise and Innovation (2013). 'Employment Permits holders who have been made redundant'. Available at www.djei.ie/labour/workpermits/redundant.htm.

regime including policy convergence, greater information sharing and unified communications from both Departments in respect of labour market access, and improving information on the DJEI website to better explain the employment permit system and the supporting policies and procedures.[109]

3.1.6 New Immigration Arrangements for Non-EEA Doctors in the Public Health Service

Following a review of immigration registration arrangements in place since June 2010, the Irish Naturalisation and Immigration Service, the Department of Jobs, Enterprise and Innovation, the Department of Health and the Health Service Executive agreed reviewed immigration arrangements for non-EEA doctors recruited to the Irish public health service and effective as from November 2012.

As from 1 November 2012, doctors presenting for registration or renewal at an immigration office would be provided with a 'Stamp 1' permission for two years upon production of a valid passport, letter of appointment for the public health service and an (endorsed) certificate of registration from the Irish Medical Council. Locums or doctors working in the private health sphere are not eligible. Exceptions apply for doctors in the trainee specialist division, those registered in the 'Supervised Division' of the Irish Medical Council's Register and those doctors already on a 'Stamp 4' permission.[110]

3.1.7 Legislative Developments

3.1.7.1 *The Health and Social Care Professionals (Amendment) Act 2012*

The Bill proposes to amend the *Health and Social Care Professionals Act 2005* to provide for the 'enhanced and effective functioning of the Health and Social Care Professionals Council and the registration boards established under the Act'.[111] It relates to persons working in specified regulated professions with respect to freedom of movement of persons under the Treaties for the purposes of *Council Directive 2005/36/EC on the recognition of professional qualifications* (as amended by *Council Directive 2006/100/EC* and *Council Directive 2006/101/EC*). The Act requires the Minister for Health to make an order bringing its provisions into operation under Section 20(2); however no commencement orders were made by the Minister by end of year 2012.

The purpose is to adapt the 2005 Act to enable the recognition of professional qualifications obtained outside Ireland and to ensure appropriate standards of

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[109] Department of Jobs, Enterprise and Innovation (January 2013). As of April 2013, certain phases had been announced including a broadening of the highly skilled occupations list; the reduction of a labour market needs test to two weeks and newspaper advertisement to three days; and the acceptance of applications for permits from certain categories of persons while they are already in Ireland. See www.djei.ie.

[110] Irish Naturalisation and Immigration Service (2012). *'Immigration Arrangements for non-EEA Doctors recruited to the Public Health Service to commence on 1 November 2012'.* Available at www.inis.gov.ie.

[111] Parliamentary Question (29 November 2012).

professional qualifications and competence in the regulated professions covered by the 2005 Act, including as regards Bulgarian and Romanian nationals or persons having professional qualifications from Bulgarian or Romanian educational and/or professional institutions.

The Act requires the Minister for Health to make an order bringing its provisions into operation, and as of year-end 2012, no commencement orders had been made.

3.1.7.2 *The European Communities (Lawyers' Establishment) Regulations 2003 (Qualifying Certificate 2013) Regulations 2012 (S.I. No. 540 of 2012)*

These Regulations were introduced to give effect to the '*Lawyers' Establishment Directive*' (*Directive 98/5/EC*) and to provide for procedures for the purposes of applications for qualifying certificates for applicant registered lawyers. They came into operation on 1 January 2013.

3.1.7.3 *The European Union (Recognition of Professional Qualifications relating to the Profession of Pharmacist) Regulations 2012 (S.I. No. 235 of 2012)*

The purpose of these Regulations is to amend the *Pharmacy Act 2007* to allow for the recognition of qualifications as a pharmacist which had been recognisable prior to the coming into force of *Directive 2005/36/EC*, under a derogation contained in *Directive 85/432/EEC*. It was signed in June 2012 by the Minister for Health.

3.1.8 Intra-Company Transfer Permits

During 2012, Ireland did not exercise the discretion provided for in the Protocol to the TFEU to notify the Council of its wish to participate in the adoption of either the *Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment* or the *Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.* The Department of Justice and Equality has stated that it will assume responsibility for negotiating with the European Parliament, which is co-legislator on both dossiers, during Ireland's Presidency of the Council in 2013.[112]

3.1.9 National Employment Rights Agency (NERA)

With regard to employment rights, inspectors under the National Employment Rights Agency (NERA) are authorised officers under the *Employment Permits Acts* with compliance checks under this legislation considered an 'integral element' of all NERA inspections. Joint inspections may take place in conjunction with the

[112] Irish Naturalisation and Immigration Service (January 2013).

Revenue, Department of Social Protection staff and An Garda Síochána. Between January and September 2012, some 271 employers were found to be in breach of the *Employment Permits Acts* with 548 persons found to be working without legal authorisation.[113]

During 2012, the Minister for Jobs, Enterprise and Innovation commented that he intended to 'provide for enhanced compliance measures and a new mechanism for enforcing awards of the Adjudicators and of Labour Court Determinations' in a new employment permits Bill.[114] In addition, the regulatory impact assessment on such a new Bill stated that it was 'the Department's intention to increase enforcement of the employment permits regime through the National Employment Rights Authority (NERA) when the new legislative framework is in place.'[115]

3.1.10 Research

In late 2012, the Integration Centre published a report, *Migrants and the Irish Economy* and summarised two major areas of focus for government policy, namely to ensure that key skills can be brought into Ireland from overseas and also to ensure that 'requisite support' is in place for migrant workers and businesspeople already in place with regard to their 'economic, legal and cultural integration.

A focus on language training in combination with occupation-related instruction is recommended, as is a more streamlined process with regard to recognition of qualifications. Family reunification for all non-EEA workers is promoted as increasing the attractiveness of Ireland as a destination. Strategic efforts by Government to both attract new investors, and support new migrant entrepreneurs, are recommended, particularly in light of the capacity of 'migrants to build trade links with their countries of origin'. An increase in personal taxation is not encouraged as it may act as a deterrent to new investors.[116]

3.1.11 Case Law

3.1.11.1 Illegal Employment and Residence in the State Precludes Reliance on Employment Protection Legislation

Hussein v. Labour Court [2012] IEHC 364 (High Court, Hogan J., 31 August 2012)

The applicant in this case employed a Mr Younis to work as a chef in his restaurant. They were both Pakistani nationals and were cousins. Mr Younis

[113] National Employment Rights Agency (September 2012). *Quarterly Update - Issue 3 2012*. Available at www.employmentrights.ie.

[114] Minister for Jobs, Enterprise and Innovation, Richard Bruton, T.D. written answer as provided in Dáil Éireann Debate (22 November 2012). Vol. 783 No. 4. Available at www.oireachtasdebates.oireachtas.ie.

[115] Department of Jobs, Enterprise and Innovation (2012). *Regulatory Impact Assessment draft Employment Permits Bill*. Available at www.djei.ie.

[116] The Integration Centre (2012). Migrants and the Irish Economy. Available at www.integrationcentre.ie.

alleged that he was forced to work seven days a week, without holidays, and that he was paid what amounted to pocket money in cash. He also asserted that the applicant in these proceedings had failed to regularise his position with the relevant authorities in relation to his employment. Mr Younis became aware of his rights and entitlements as an employee and he made formal complaints under relevant employment protection legislation to a Rights Commissioner (an employment rights determination officer). His complaints were upheld and he was awarded appropriate compensation under the relevant legislation. Mr Younis then sought to have his award enforced against his employer Mr Hussein, who was the applicant in these proceedings, via the Labour Court. The Labour Court ordered Mr Hussein to pay Mr Younis €1,500 for breaches of the *Terms of Employment (Information) Act 1994*; €5,000 for breaches of the *Organisation of Working Time Act 1997*; and €86,132.42 as back pay under the *National Minimum Wage Act 2000*.

The applicant, Mr Hussein, challenged the decision of the Labour Court on the basis that Mr Younis was not entitled to invoke the protection afforded by employment legislation as his contract of employment was illegal, given that he had no employment permit.

Hogan J. found that the provisions of Section 2(1) to 2(4) of the *Employment Permits Act 2003* prohibit a non-Irish national from being employed in the State without an appropriate employment permit. The Court held that while the prohibition applies to both the employer and the employee, a due diligence type defence is open to the employer under Section 2(4), but critically, Section 2(1) creates an absolute prohibition for an employee. The reasons for an employee's failure to obtain an employment permit are irrelevant to the substantive issue of the illegality of not having the permit. In those circumstances, neither the Rights Commissioner, nor the Labour Court could lawfully entertain an application for redress in respect of the employment contract which is substantively illegal, based on the absence of the work permit. The decision of the Labour Court was quashed.

The Court commented that if Mr Younis's account, which the Labour Court accepted, was correct, he was the victim of most appalling exploitation in respective of which he had no effective recourse. He considered that it may not have been intended by the Oireachtas that undocumented migrant workers should be deprived of the benefits of all employment legislation, even where they were not responsible for their unlawful status. The Court forwarded a copy of its judgment to the Houses of the Oireachtas and the Minister for Jobs, Enterprise and Innovation for their consideration, given the policy implications of the Act.

3.2 FAMILY REUNIFICATION

3.2.1 Policy Development

In early 2012 the Minister for Justice, Equality and Defence announced the Departmental prioritisation of the development of a comprehensive policy approach to family reunification or settlement.[117] The policy will focus on cases involving non-EEA family members of Irish citizens and also those where both parties come from outside the EEA, and that the Minister for Justice, Equality and Defence 'considers that a clear statement of policy will be of benefit to prospective migrants and all those involved in immigration management.' As of year-end, it was noted by the Department that all policy options in this regard were presently being examined.[118]

Much public debate and NGO activity with regard to the topic of family reunification continued during 2012. In January, the Immigrant Council of Ireland (ICI), who led the transnational research project, 'Family Reunification - a barrier or facilitator of integration', called for the inclusion of provisions on family reunification in a republished *Immigration, Residence and Protection Bill*.[119] It noted that it was 'shameful' that Ireland was so far behind other Member States with regard to family reunification.[120] In a submission on the Green Paper to the *Family Reunification Directive*, the ICI further noted that there are no national, statutory rules regarding family reunification for Irish and non-EU citizens living in Ireland which has resulted in a 'lack of clarity regarding which family members may be admitted, the conditions under which family reunification may be granted, the length of time it takes to process applications and the rights and security of status reunited family members have once they join their sponsor in Ireland.' In addition the ICI noted the 'wide discretion' of the Minister for Justice, Equality and Defence with respect to decision making in the area and noted that this had led to 'inconsistencies and a lack of transparency in the decision-making process.' The issue of 'reverse discrimination' in relation to family reunification with third-country national family members of non-mobile EU nationals was also highlighted.[121]

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[117] Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow'. *Press Release*. Available at www.inis.gov.ie.

[118] Irish Naturalisation and Immigration Service (January 2013). In a Parliamentary Question in February 2013, the Minister for Justice, Equality and Defence further elaborated that such a policy document was forthcoming: 'Work has been underway on this for some time and it will include guidelines on all of the main issues including eligibility, dependency, the financial resources necessary to sponsor a dependant and any personal requirements the person seeking entry must meet.' Parliamentary Question (6 February 2013). Available at oireachtasdebates.oireachtas.ie.

[119] Immigrant Council of Ireland (January 2013*). ICI News Bulletin - Issue 93.* Available at www.immigrantcouncil.ie.

[120] Immigrant Council of Ireland (January 2012). 'Ireland Must Develop Effective Family Reunification Policies'. *Press Release*. Available at www.immigrantcouncil.ie.

[121] Immigrant Council of Ireland (March 2012*). Submission to European Commission: Response to Green Paper on Right to Family Reunification of third-country nationals living in the European Union (Directive 2003/86/EC).* Available at www.immigrantcouncil.ie.

3.2.2 Statistics

Applications for family reunification (family members or a civil partner) in respect for 387 persons with refugee status were received by the Irish Naturalisation and Immigration Service (INIS) during 2012, with approvals issued for 379 persons. Family reunification for 366 persons was refused during 2012 and applications in respect of 56 persons were either withdrawn or deemed abandoned.[122] Overall, the Office of the Refugee Applications Commissioner (ORAC) received some 206 applications for family reunification during 2012, representing 409 dependants. The main countries of nationality of applications were by Somalia (38 applications), Afghanistan (23 applications), Sudan (17 applications), Nigeria (13 applications) and Iraq (11 applications). A total of 59 cases remained outstanding at year-end.[123]

3.2.3 Family Reunification Linked to the *Zambrano* Judgment

As discussed in the *Annual Policy Report on Migration and Asylum 2011: Ireland*, following on from the *Zambrano* judgment by the European Court of Justice (ECJ) in March of that year, the Department of Justice and Equality announced that it would examine all cases with a link to the *Zambrano* judgment to see whether criteria were met. If so, permission to remain in Ireland would be granted to parents to work in the State without an employment permit and/or to set up a business. The Department highlighted that the judgment may be particularly relevant to three categories of third-country nationals, namely parents of an Irish citizen child waiting for a decision under Section 3 of the *Immigration Act 1999 (as amended)*; parents of an Irish citizen child with permission to remain in Ireland under Stamps 1, 2 or 3 conditions;[124] and parents of an Irish citizen child who have either been deported from Ireland or have left on foot of a deportation order. In the latter case, the Department announced that applications for a visa would have to be processed via the applicants' country of origin; that evidence of a 'clear link' to the judgment would be required; and that DNA evidence of a biological link to an Irish citizen child(ren) may be requested.[125]

In a Parliamentary Question in March 2012, the Minister for Justice, Equality and Defence noted that as of that date, some 1,680 applications had been submitted to INIS to have their case to remain in Ireland examined in accordance with

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[122] Irish Naturalisation and Immigration Service (April 2012).

[123] Office of the Refugee Applications Commissioner (2013). *Monthly Statistical Report December 2012*. Available at www.orac.ie.

[124] Categories of Stamps are as follows:
Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission.
Stamp number 1A: issued to a person permitted to remain in Ireland for the purpose of full-time training with a named body (main category concerns non-EEA nationals studying accountancy) until a specified date. Other employment is not allowed.
Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions.
Stamp number 2A: issued to non-EEA national students who are not permitted to work.
Stamp number 3: issued to non-EEA nationals who are not permitted to work.

[125] Irish Naturalisation and Immigration Service (2011). European Court of Justice Judgment in the *Zambrano* case. Available at http://www.inis.gov.ie/en/INIS/Pages/WP11000037.

principles set forth in the *Zambrano* judgment. Decisions had been made in 925 cases with permission to remain in Ireland granted in 791 cases. It was noted that the majority of cases which remained outstanding concerned missing documentation and/or information. Of note, persons already registered in Ireland and attending the Garda National Immigration Bureau (GNIB) for consideration under terms related to the *Zambrano* judgment were not recorded. As of that date, some 193 cases subject to judicial review proceedings had a link to the judgment, and 148 of these had been granted permission to remain in Ireland under the terms of the judgment.[126]

In October 2012, a newspaper article stated that the Government had paid settlement costs of almost €1.2 million in relation to *Zambrano*-linked cases involving non-EU parents of Irish citizen children. It noted that a request submitted under the *Freedom of Information Act* (FOI) showed that the State had paid the figure in relation to 96 cases involving Irish citizen children; the average settlement was just under €12,500. A further eight cases had been settled between July and date of publication, with 20 further cases outstanding before the High Court and seven cases before the Supreme Court at that time.[127]

3.2.4 Research

The Immigrant Council of Ireland (ICI) country report for Ireland was published in 2012 and looked at the legislative and administrative procedures governing applications for family reunification in Ireland as well as their impact.[128]

The Country Report concluded that despite identification of family reunification as an important issue ten years ago, no comprehensive reform has taken place and many of the developments have 'merely reacted to specific issues which entailed perceived abuse.' In addition, integration policy can be seen to have focused on economic integration with the relationship between family reunification and integration 'clearly not prioritised' nor is there recognition of the more general relationship between immigration status and integration. Of the recent positive changes (mentioned are spousal work permits, amendments to regulations and inclusion of de facto couples), the Country Report notes that these have resulted due to external pressure from lobbying by NGOs and legal challenges rather than by way of Departmental initiative. The discretionary element within the granting of family reunification (as well as long-term residence status and citizenship) is highlighted as is the absence of a statutory right to family reunification for many. With regard to application processing, the involvement of different divisions within INIS is seen as perhaps creating an 'obstacle' for applicants who 'find it difficult to access information on their rights

[126] Parliamentary Question No. 191 (29 March 2012).

[127] *The Irish Times* (15 October 2012). 'State pays €1.2m to settle cases with non-EU parents'. Available at www.irishtimes.com.

[128] Becker, H., Cosgrave, C. and Labor, M. (2012). *Family Reunification: a barrier or facilitator of integration? Ireland Country Report.* Available at www.immigrantcouncil.ie.

and entitlements, if any, and the procedures applicable to them and their family members.' A perceived lack of consistent decision-making is also noted as is the lack of an independent appeals mechanism at administrative level.

The impact of Ministerial discretion, in particular, on certain groups has been seen to result in 'experiences of delay, anxiety and stress pending the application procedure' and in cases severe delays have contributed to marriage breakdowns. However, it is noted that legal practitioners and NGOs have observed positively impacting developments in recent years including 'DNA testing, case law, acknowledgement of de facto and civil partnerships as well as improvements in processing times'. Looking at integration, participants noted that equal access to rights and opportunities was 'essential'. The need for access to an 'independent status after many years of legal residence' was also highlighted with failure to provide access to such a permission impacting on security and on time'[129].

3.2.5 Case Law

3.2.5.1 Requirement for Proportionality Assessment in Exercise of Ministerial Discretion to Permit Family Reunification of Dependent Family Members of Refugees

AMS (Somalia) v. Minister for Justice and AK (Afghanistan) v. Minister for Justice [2012] IEHC 72 (High Court, Cross J., 14 February 2012)

The first applicant was a national of Somalia and was recognised as a refugee in the State in 2009. He applied to the Minister under Sections 18(3) and (4) of the *Refugee Act 1996* for family reunification with his wife, mother and four minor siblings. All had been living in a refugee camp outside Mogadishu and, at the time of the judgment, in Addis Ababa, Ethiopia. The applicant's daughter and one of his brothers died in a bomb attack in January 2010. The application for the applicant's spouse was granted in 2011. The applications in respect of his mother (who had significant health difficulties) and siblings (two of whom were by then no longer minors) were refused. The second applicant was a national of Afghanistan. He was granted refugee status in 2007. He applied for family reunification for his father who suffered from Parkinson's disease and was living in difficult circumstances in Pakistan. The application was refused.

The Court noted the distinction between Sections 18(3) and (4) in that under Section 18(3) once the Minister is satisfied that the person is an immediate family member of a refugee, meaning a spouse or a child under 18 years, the Minister must grant permission to the person to enter and reside in the State. However in relation to a dependent family member in Section 18(4) the Minister has a discretion whether or not to grant permission for those family members to enter and reside in the State with a refugee. A dependent family member includes a

[129] (http://www.immigrantcouncil.ie/research-publications/publications/638-family-reunification-a-barrier-or-facilitator-of-integration-ireland-country-report).

parent, brother, or sister of the refugee who is dependent on the refugee or is suffering from a mental or physical disability to the extent that it is not reasonable for them to maintain themselves fully. In relation to dependent family members the Minister must first decide if the persons are family members within the meaning of that section. Secondly, he must determine if they are dependent on the refugee and, finally, he must exercise his discretion under Section 18(4).

In the first applicant's case, the Minister found that the persons were members of the refugee's family, and they were dependent. The Minister in exercising his discretion however, analysed the potential earning capacity of, first, the dependants and, secondly, of the refugee. The Minister found that the refugee would be unable to support the dependent family members and they would be unable to contribute to their own support and they would be an unreasonable burden on the social welfare system of the State. It was argued for the applicant that it was a breach of the applicants' rights to family life under Article 8 of the *European Convention on Human Rights* (ECHR) and Article 41 of the *Constitution of Ireland* as there was no evidence that the Minister carried out the necessary balancing exercise and/or applied a proportionality test; the inference which could be drawn was that the Minister had adopted a fixed policy without any consideration of the particular circumstances of the family and if a policy had been adopted it should be published and be reasonable and rational.

Cross J. held that there was no difference between the engagement of Article 8 of the ECHR and Article 41 of the *Constitution* in relation to the question of proportionality of interference with the relevant rights. The question was whether there was any indication of proportionality in the refusal of family reunification on the sole ground of the inability of the refugee to financially support his dependent family members without reliance on social welfare. Part of the investigation of the family includes an assessment of the domestic circumstances of the dependent family member, not the refugee. The Minister's decision must, per the Supreme Court decision in *Meadows v. Minister for Justice*, disclose at least the essential rationale on foot of which the decision is taken. Cross J. held that there was no separate consideration by the Minister of the circumstances of the different dependents, some of whom were elderly, some below the legal age to work, some suffering illness, and therefore there was no indication of any proportionality analysis in the Minister's decision upon the refugees' ECHR rights. Matters such as the medical status were considered but only at the stage of the consideration of identity, relationship and dependency, but in the decision only one matter was addressed and that was that the family members would become a burden on the State. He said it was difficult to conceive in the real world of very many family members of refugees not being a burden on the State at least initially. Given the respondent's statement that it was always open to the applicant to reapply for family reunification if his financial circumstances altered or improved, the Court held that the only circumstances in

which the respondent foresaw the applicant being able to reopen the matter was when they would be in a position to support their dependents in the State without being a burden on the social welfare system. That indicated that the respondent had not taken into account the circumstances of the applicant and his dependents in the exercise of his discretion. There was therefore a failure to meet the test set out in *Meadows*. It was clear that only one factor was taken into account nor was there any indication that the balancing of rights was in any way proportional. Cross J. noted that it could be said that the Minister had adopted a fixed policy and if so, he should state the policy so that it could be examined as being reasonable. He considered that it was also possible, but was unnecessary for him to determine the point, that the Minister's decision had in effect been to adopt a 'sponsorship' requirement for Section 18(4). This was not contemplated by the Act and would require a statutory amendment.

3.2.5.2 Ministerial Requirement on Refugee Seeking Family Reunification to Provide a Passport or Identity Document Not Unreasonable

ZMH v. Minister for Justice [2012] IEHC 221 (High Court, Cooke J., 24 May 2012)

The applicant was a national of Somalia and declared a refugee in 2008. She applied for family reunification for her husband, two sons and her elderly mother, who were said to be nationals of Somalia but all living in Ethiopia. According to Cooke J., the essential issue was whether the apparent decision of the Minister to insist upon the production of passports or identity documents in respect of the family members was reasonable or rational, when it was argued that the Minister's policy was to reject by way of proof for the purposes of family reunification under Section 18 of the *Refugee Act 1996,* passports or personal identity documents issued to Somali nationals by Somali embassies abroad including in Addis Ababa, Ethiopia. He found that the Minister had not actually refused to make a decision and that he had not delayed to such extent as would indicate a refusal to perform a public duty. The issue was rather that an impasse had been reached as to what forms of proof of identity and paternity the Minister was reasonably entitled to require of the applicant for the purpose of satisfying him that the applicant was validly entitled to the grant of family reunification and travel visas under Section 18(3) of the *Refugee Act 1996*.

Cooke J. held that where the Minister had not refused to exercise his public function, the Court could not grant a mandatory order compelling him to do so, and the Court could not accept there was any excessive delay or refusal where the applicant asked the Minister to postpone his decision because additional documents were being obtained. The only matter on which the Court could, or should, give declaratory relief, was whether it was irrational or unreasonable for the Minister to require Somali passports when there is a clearly stated policy that they are not regarded as acceptable proof of identity. Cooke J. held that the

requirement of the Minister that an original passport for the applicant's husband be produced could not be said to be unreasonable or irrational. Given the requirements of Section 18 and the consequence for the State's international obligations in issuing authorisations for international travel, the Minister was both entitled and obliged to satisfy himself that authorisations for family reunification and travel visas issued for that purpose are validly issued to persons who have the genuine family relationship claimed and that their identities have been authentically established.

He held that the Minister was entitled to demand reasonably verifiable proof that the applicant was the mother of the two sons and that the person she claimed was her husband was their natural father and DNA evidence may have to be sought to verify that ultimately. The Minister was entitled to be satisfied that the individuals who seek to enter the State are the same individuals who provided samples for the DNA evidence. Although considerable doubt surrounds the authenticity of identity documents issued in the name of Somali nationals at foreign embassies, the Court did not consider it unreasonable or irrational for the Minister to insist on the presentation of such a passport when the applicant acknowledges it can be obtained. Somali passports are not rejected outright but only as the sole means of establishing identity. Obtaining a passport was only one of a number of steps required to be taken in order to establish some verifiable basis for the identities and family relationships claimed. The degree of weight to be attributed to it ultimately would depend on the cumulative effect of other proofs and information offered including DNA tests, but the mere fact that passports are requested or suggested as part of the material the Minister wishes to consider did not mean that the request was irrational or unreasonable.

3.3 Students and Researchers

3.3.1 *Qualifications and Quality Assurance (Education and Training) Act 2012*

Regarding the recognition of qualifications, the *Qualifications and Quality Assurance (Education and Training) Act 2012* was signed during 2012. It provides for the establishment of a Qualifications and Quality Assurance Authority of Ireland which amalgamates four bodies that have both awarding and quality assurance responsibilities: the Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the National Qualifications Authority of Ireland (NQAI) and the Irish Universities Quality Board (IUQB). The new Authority is to assume all the functions of the four legacy bodies while also having responsibility for new or newly-statutory responsibilities in particular areas. The new Quality and Qualifications Ireland (QQI) integrated agency was established in November 2012, with functions outlined under Part 2 (9) (1) of the 2012 Act.

3.3.2 Student Visas and Registrations

During 2012, a total of 7,790 applications were decided upon with 6,939 approvals issued (89.1 per cent). The majority of decided cases concerned nationals of Saudi Arabia (1,738 cases decided, with an approval rate of 99.9 per cent), China (1,394 cases decided, with an approval rate of 91.5 per cent), Russia (1,276 cases decided, with an approval rate of 98.4 per cent), India (662 cases decided, with an approval rate of 83.1 per cent) and Kuwait (254 cases decided, with an approval rate of 98.8 per cent).[130]

3.3.3 Administrative, Legislative and Operational Developments

During 2012 the *Third Level Graduate Work Scheme* for access to the labour market for students after graduation continued to apply. In 2011 the Scheme was extended to twelve months for those at level 8 or above of the National Framework of Qualifications and to six months for those with level 7 qualifications based on the Framework.[131] The stated purpose of this Scheme is to allow legally resident non-EEA third level graduates to remain in Ireland for the purpose of seeking employment and applying for a Green Card or Work Permit.[132] Some 587 persons were registered under the Third Level Graduate Work Scheme as of 17 January 2013.[133]

Ireland's *Investing in Global Relationships: Ireland's Intercultural Education Strategy (2010-2015)* was formally launched in September 2010, and a new immigration regime for international students took effect from 1 January 2011. The Strategy contains a commitment to examine the current work concession for non-EEA students of 20 hours per week in term time and 40 hours in holiday periods. This review is to be conducted by the Interdepartmental Group on Student Immigration, with any decision on the issue to be taken by Government. This review has been postponed until the full impact of the new immigration regime has been evaluated. It is expected that this review will take place during 2013.[134]

In addition, during late 2011 and 2012 a number of administrative arrangements were published concerning students already in Ireland and whose permission may have 'timed out'.[135] During 2012, and described as a 'final measure' to assist

[130] Irish Naturalisation and Immigration Service (April 2013).

[131] Irish Naturalisation and Immigration Service (January 2011). *New Immigration Regime for Full Time Non-EEA Students - Guidelines for Degree Programme Students.* Available at www.inis.gov.ie.

[132] Department of Jobs, Enterprise and Innovation (February 2012). *Employment Permits Arrangements - Third Level Graduate Scheme.* Available at www.djei.ie.

[133] Irish Naturalisation and Immigration Service (April 2013). This figure is taken from a snapshot of all non-EEA students taken on 17 January 2013.

[134] Irish Naturalisation and Immigration Service (January 2013).

[135] The New Regime for Full-Time non-EEA students commenced on 1 January 2011 and introduced a (general) maximum residence period of seven years for nationals of non-EEA countries who were enrolled in an eligible academic course of study in Ireland. The New Regime applied to all non-EEA students who came to Ireland after 1 January 2011 and to all non-EEA nationals already resident as students on that date. Special provisions were made to facilitate students who exceeded the seven-year timeframe on the date of introduction. These provisions have been extended on several occasions since the introduction of the New Regime to allow 'timed-out' students to complete their studies, avail of

students transitioning to the new immigration regime, a 'student probationary extension' was announced for those who have been continuously resident in the State since before 1 January 2005.[136] The 2012 arrangements will allow eligible students to continue to remain in Ireland for (up to) an additional two years and on specified conditions (a 'Stamp 2' permission). No enrolment in a course of study will be required and they are permitted to work for a maximum of 40 hours per week without requiring a work permit. Private medical insurance will be required, and no recourse to 'publicly funded social assistance programmes' is permitted nor is family reunification.[137] It was also noted that after this 'probationary' period, students will be able to apply for a more 'permanent' status (a 'Stamp 4' permission) if conditions have been met.[138]

Approximately 2,700 persons received a two-year extension under this scheme during 2012.[139]

3.3.4 'Education in Ireland' Mission to India

In November 2012 it was announced that more than 60 academics from 16 Irish higher education institutions had travelled to India to attract more students to study in Ireland. Under the 'Education in Ireland' umbrella, the delegation was led by Enterprise Ireland, and included representatives from Science Foundation Ireland, IDA Ireland and PayPal. The Minister of State for Training and Skills stated that the mission was to send out a 'strong message to prospective Indian students that an Irish education is valued by international employers and will provide a real boost to their future career prospects'. He also noted that it was estimated that 'every 100 additional international students who come to Ireland support the creation of 15 local jobs, through spending on tuition, accommodation and other living expenses'.[140]

3.3.5 '*Researcher Directive*' Hosting Arrangements

During 2012 Ireland continued to participate in *Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research*. Some 404 research hosting agreements were issued during the year mainly to nationals of India (85 hosting agreements), China (75 hosting agreements), the USA (42 hosting agreements), Pakistan (26 hosting agreements), Iran and Russia (15 hosting agreements respectively).[141]

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post-study pathways or arrange for their departure from Ireland. See Irish Naturalisation and Immigration Service (October 2012). *2004 Student Probationary Extension*. Available at www.inis.gov.ie.

136 Students not currently registered and with a 'significant' gap in registrations are ineligible, as are those no longer resident in Ireland.

137 This was later extended to include trainee accountants previously on a 'Stamp 1A' permission.

138 Irish Naturalisation and Immigration Service (October 2012). *2004 Student Probationary Extension*. Available at www.inis.gov.ie.

139 Irish Naturalisation and Immigration Service (April 2013).

140 *The Irish Times* (21 November 2012). 'Delegation in India to attract students'. Available at www.irishtimes.com.

141 *Ibid*.

3.4 Other Legal Migration

3.4.1 Extension of Short-Stay Visa Waiver Programme

In March 2012 it was announced that Ireland's first formal visa waiver programme would be extended for four years via the *Immigration Act 2004 (Visas) Order 2012 (S.I. No. 417 of 2012).* The Programme is designed to 'boost tourism and business, especially from emerging markets'.[142] During 2012, Bosnia and Herzegovina were added to the existing list of 16 countries already covered, with fees waived for long-term residents from the countries covered by the Programme who live in the Schengen area.[143] Upon announcing the extension, indicators arising out of the pilot were released, pointing towards a doubling of tourist groups from China in July-August 2011 in comparison to 2010, and the creation of a number of new operator and travel agent routes including nine new tour operator itineraries from China, ten new tour operator itineraries from India, two meetings and incentives groups included Ireland in their itineraries and five new tour operator itineraries from the Gulf region.[144]

The Government released details on Ireland's first formal visa waiver programme in May 2011. The Short-Stay Visa Waiver Programme (which commenced on 1 July 2011) was announced as part of a Government Jobs Initiative with a view to promoting tourism from emerging markets and to make Ireland 'very attractive for these visitors to the UK to consider Ireland as an 'add-on' element to their planned holiday'.[145]

Initially launched as a pilot until the end of October 2012, the Programme provides for visa-free travel to Ireland for persons in possession of a valid UK visa and who are either nationals of one of the countries covered by the scheme, have entered the UK on a UK 'C' General visa or been granted leave to remain in the UK for up to 180 days. In essence, eligible persons will not be required to have both an Irish and UK visa when entering Ireland after lawful entry to the UK. A valid entry stamp from the UK Border Agency is required on the national's passport. Regarding the categories of persons covered, tourists, business persons (including 'C' long-term, multi-entry business visas), sportspersons and academics are included while holders of transit visas, long-term student visas and family reunification visas are not covered. Qualifying persons are permitted to remain in Ireland for a maximum of 90 days or the duration remaining on their UK leave to remain if shorter. Nationals of primarily 'emerging' markets were catered for under the initial Programme including Eastern Europe (Belarus, Montenegro,

142 Government of Ireland (2012). *Programme for Government Progress 2011-2012.* Available at www.merrionstreet.ie.

143 To be reviewed after six months. Irish Naturalisation and Immigration Service (March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

144 Figures as provided by Tourism Ireland as part of Ministerial review of the pilot programme. See Irish Naturalisation and Immigration Service (March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

145 Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter TD, Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

Russian Federation, Serbia, Turkey and Ukraine), Middle East (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the U.A.E.) and Asia (India, Kazakhstan, China and Uzbekistan).[146]

During 2012, some 38 per cent more visits from countries covered under the Short-Stay Programme took place in comparison to 2010.[147] At the time of announcement it was noted that Ireland had approved 30,000 applications for nationals of these countries during 2010.[148]

The INIS *Information Note* also highlighted that the Programme 'does not amount to a common UK and Irish visa regime' and that possession of an Irish visa does not allow similar visa-free entry to the UK.[149] Long-term nationals who are long-term legal residents in the UK will require a visa but without a fee stipulation.[150] In the 2012 Annual Report, the Department of Justice and Equality did note that INIS is continuing to 'work closely' with UK counterparts to implement a 'reciprocal visa programme for short stay visitors', with particular reference to tourists and business visitors and facilitation of travel throughout the island of Ireland without two separate visas.[151]

In a related development, during 2012 the roll-out of a multi-entry visa regime for business travellers remained ongoing, with visas for a three-year duration issued. The regime was implemented in the Gulf region during 2011, in Russia and China during 2012 and it is proposed to extend to India during 2013.[152]

3.4.2 Immigrant Investor Programme and Start-Up Entrepreneur Programme

In January 2012 two new immigration initiatives aimed at attracting non-EEA migrant entrepreneurs and investors were announced and became operational in mid-April 2012. Both Programmes would provide permission to reside in Ireland in return for an investment for the purpose of 'saving or creating jobs'. Both Programme applications are to be considered by an inter-departmental Evaluation Committee comprised of representatives of IDA Ireland, Enterprise Ireland, and Departments of Finance; Jobs, Enterprise and Innovation; Justice and Equality; Foreign Affairs and Trade; Health; other Government Departments as the need arises. Applicants must be of good character and be able to support themselves while in Ireland.[153] Family reunification of a spouse/partner and

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146 Irish Naturalisation and Immigration Service (2011). *'The Irish Short-Stay Visa Waiver Programme Information Note'*. Available at www.inis.gov.ie.

147 Department of Justice and Equality (2013). *Annual Policy Report 2012*. Available at www.justice.ie.

148 Irish Naturalisation and Immigration Service (2011). *'The Irish Short-Stay Visa Waiver Programme Information Note'*. Available at www.inis.gov.ie.

149 *Ibid.*

150 See Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter TD, Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waiver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

151 Department of Justice and Equality (2013). *Annual Policy Report 2012*. Available at www.justice.ie.

152 *Ibid.*

153 Irish Naturalisation and Immigration Service (January 2012). 'Shatter announces two new initiatives: Immigrant Investor Programme and Start-up Entrepreneur Scheme'. *Press Release*. Available at www.inis.gov.ie.

children is provided for as long as they can be supported by the entrepreneur, investor or other private means, and no social benefits will be provided.[154]

The Immigrant Investor Programme provides for approved participants and 'immediate' family members to enter Ireland on multi-entry visas and to remain for an initial period of five years (generally) with permission renewable after two years. After this initial five-year period, the investor will be free to apply for residence in five-year tranches. No minimum residence requirements are in effect excluding one visit to Ireland each year.[155]

The financial commitment will generally range from a once off endowment of €500,000 for endowment-related investments to €2 million in the new Immigrant Investor low-interest bearing Government Bond:

- A once-off endowment of a minimum of €500,000 to a project with a 'clear public benefit' such as in the arts, education or sport,[156]
- A minimum €2 million investment, to be held for five years, in a designated Irish Government Immigrant Investor Bond,
- A minimum €1 million venture capital funding, for a minimum of three years, into an Irish business,[157]
- A minimum €1million mixed investment in 50 per cent property and 50 per cent in Government securities.[158]

The level of investment in business entities where jobs are being created or saved will generally be €1 million and the Department will be guided by and reliant upon the advice and expertise of IDA Ireland and Enterprise Ireland in assessing individual proposals.[159]

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[154] Irish Naturalisation and Immigration Service (February 2012) 'Speech by Minister for Justice and Equality Mr Alan Shatter TD on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release.*

[155] Irish Naturalisation and Immigration Service (2012*) Investor and Entrepreneur Schemes*. Available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

[156] *Ibid.* A minimum of €2,000,000 investment in a special low-interest five-year immigrant investor bond. There will be one interest payment of 5.1% at the end of the five-year investment period and this is equal to an annual equivalent interest rate of 1% (AER). Irish Naturalisation and Immigration Service (2012*) Investor and Entrepreneur Schemes* (2012). Available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and% 20Entrepreneurs.

[157] A minimum €1,000,000 aggregate investment into new or existing Irish businesses for a minimum of three years. Funding by the investor through the intermediary of a venture capital fund will be considered provided that it can be demonstrated that the net effect is at least equivalent to that of a direct investment. Irish Naturalisation and Immigration Service (2012*) Investor and Entrepreneur Schemes*. Available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and% 20Entrepreneurs It was also stated that an investment into an Irish publicly quoted company 'could be considered' but the investment level would have to be 'much higher'. See 'Speech by Minister for Justice and Equality Mr Alan Shatter TD on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*.

[158] 'Special consideration' could be given to those purchasing property which has been enforced by NAMA, in which case a single €1 million investment in property might be sufficient. See Irish Naturalisation and Immigration Service (February 2012) 'Speech by Minister for Justice and Equality Mr Alan Shatter TD on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*.

[159] Irish Naturalisation and Immigration Service (January 2012). '*Shatter announces two new initiatives: Immigrant Investor Programme and Start-up Entrepreneur Scheme'*. *Press Release*. Available at www.inis.gov.ie. See also further details regarding an 'Evaluation Committee'.

The Start-Up Entrepreneur Programme provides for residency for business development purposes for approved migrants with:

- An innovative business idea for a 'High Potential Start-Up',[160]
- Funding of €75,000, and
- Not be a 'drain on public funds'.[161]

No job creation targets will be set at initial stage. A similar residency permission of five years (an initial two years; and following a review at that point to ensure the entrepreneur is continuing to progress with the business proposal, a further period of three years will be granted). After this initial five-year period, the investor will be free to apply for residence in five-year tranches.[162]

In July 2012 the Minister for Justice, Equality and Defence signed the *Immigration Act 2004 (Start-up Entrepreneur Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 259 of 2012)*, which prescribed a fee of €350 in respect of the making of an application for a permission under the Start-Up Entrepreneur Programme. It also waived that fee in respect of persons who have been sponsored by Enterprise Ireland. That same month, the Minister for Justice, Equality and Defence signed the *Immigration Act 2004 (Immigrant Investor Programme) (Application for Permission) (Fee) Regulations 2012 (S.I. No. 258 of 2012)*, which prescribed a fee of €750 in respect of the making of an application for a permission under the Immigrant Investor Programme.

At year-end, it was noted that 14 applications had been approved so far representing a total investment in Ireland of over €10.4 million and that investment is expected to protect over 80 existing jobs and create 190 new jobs within the next three years.[163] Of these, 11 granted visas related to the Start-Up Entrepreneur Programme and three for Immigrant Investor Programme.[164]

3.4.3 'Working Holiday Programme' for Nationals of the Republic of China (Taiwan)

During 2012 it was also announced that as of 1 January 2013, Ireland will introduce a 'Working Holiday Programme' for young persons who are holders of a Republic of China (Taiwan) passport. This is a reciprocal arrangement with the Republic of China (Taiwan) which will also introduce a similar scheme for Irish

[160] Defined as introducing a new or innovative product or service to international markets; capable of creating ten jobs in Ireland and realising €1 million in sales within three to four years of starting up; led by an experienced management team; headquartered and controlled in Ireland; and less than six years old. See Irish Naturalisation and Immigration Service (2012*) Investor and Entrepreneur Schemes*. Available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

[161] See Irish Naturalisation and Immigration Service (February 2012) 'Speech by Minister for Justice and Equality Mr Alan Shatter TD on Entrepreneur and Investor Schemes Seanad Éireann 9 February 2012'. *Press Release*.

[162] Irish Naturalisation and Immigration Service (2012) Investor and Entrepreneur Schemes. Available at http://www.inis.gov.ie/en/INIS/Pages/New%20Programmes%20for%20Investors%20and%20Entrepreneurs.

[163] Minister for Justice, Equality and Defence, Alan Shatter, T.D. as quoted in 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

[164] *The Irish Independent* (27 January 2013). 'Just three investors sign up to the 'visa for cash' scheme'. Available at www.independent.ie.

passport holders. The Programme aims to promote 'an appreciation of culture and way of life between Ireland and other countries and territorial entities'.[165]

3.4.4 Arrangements for Cruise Liners

In April 2012 streamlined immigration arrangements for the 2012 cruise ship season were announced in which visitors will be able to disembark quickly to avail of tours and visits.

While all passengers and crew seeking to land in Ireland must present to an immigration officer and produce their passport (or other document) establishing identity and nationality, including a visa if required, and be subject to normal checks in accordance with various Immigration Acts, it is now open to an immigration officer to confine any checks to an inspection of all passports/travel documents and a list of passengers and crew as provided. The agent and operators of cruise ships landing in Ireland will be required to provide immigration authorities with information including a list of passengers and crew (and document details) not later than 72 hours (or 48 hours at weekends) before landing in Ireland. The agent and operators of cruise ships will also be required to facilitate the checking of passenger and crew travel documents by the immigration officer at time of landing in Ireland.

Upon announcing these changes, it was noted that a 2010 report by Fáilte Ireland found that in 2010, some 202 calls to Irish ports were made by cruise ships bringing an estimated €20.3 million direct spend by tourists.[166]

3.4.5 Increase in Registration Fees

Much criticism followed the doubling of immigration registration fees in late 2012. In November of that year the cost of registration for all non-EEA nationals residing in Ireland for more than three months increased from €150 to €300. The *Immigration Act 2004 (Registration Certificate Fee) Regulations 2012 (S.I. No. 444 of 2012)* came into force in November 2011 and introduced a new fee of €300 for registration certificates. It revoked the *Immigration Act 2004 (Registration Certificate Fee) Regulations 2011 (S.I. No. 449 of 2011)*.

The Immigrant Council of Ireland (ICI) particularly criticised the introduction with five days' notice and 'without consultation' and noted that Irish immigration registration fees were 'now among the highest in Europe'.[167] Persons with exemptions from paying the fee include Convention Refugees and their reunified family members; those under 18 years; spouses, widow/ers, civil partners or surviving partners of Irish citizens;[168] spouses and dependants of EU nationals in

[165] Irish Naturalisation and Immigration Service (2012). Working Holiday Programme. See www.inis.gov.ie.
[166] Irish Naturalisation and Immigration Service (April 2012). 'Minister Shatter announces streamlined immigration arrangements for cruise liners for 2012 season'. *Press Release.* Available at www.inis.gov.ie.
[167] RTÉ (18 November 2012). *'Immigrant Council of Ireland criticises doubling of registration fee'*. Available at www.rte.ie.
[168] Within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*.

possession of a permit under *Directive 2004/38/EC*; Programme Refugees[169] and victims of trafficking.[170] During 2012, a number of NGOs had lobbied for the exemption of victims of domestic violence also.

In discussing the fee increase in Parliament, the Minister for Justice, Equality and Defence noted that the fee increase would be used to 'meet a portion of the cost involved' in a number of changes to the residence permits system, namely a 'self-selecting online system' as well as other developments. A new 'common format EU Residence Permit' is to replace the current registration certificate and to contain 'individual biometrics indicators protected by a sophisticated encryption system and showing the holders' immigration status in the State'.[171]

3.4.6 Certificates of Registration

A total of 157,782 certificates of registration were issued during 2012.[172] Nationals of India (16,873), Brazil (16,136), Nigeria (14,387), China (13,077) and the USA (12,030) constituted the largest main country groupings of persons registering during 2012.

Looking at Stamps issued by category during 2012,[173] the majority continued to be issued under Stamp 4 with 68,451 issued. A total of 42,775 were issued under

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[169] See Irish Naturalisation and Immigration Service (2012*).* 'Immigration Certificates of Registration issued to non-EEA nationals'. Available at www.inis.gov.ie/en/INIS/Pages/WP07000031.

[170] In Parliamentary Question No. *Vol. 788 No. 1* (16 January 2013), it was noted that during 2012, the list of exempt categories accounted for 'almost 24.4% of the total numbers registering. In 2012, this amounted to 22,781 persons and €3.78 million in fees waived.'

[171] Parliamentary Question No.517 (27 November 2012). Available at http://debatesoireachtas.oireachtas.ie.

[172] This figure refers to the cumulative number of registrations in 2012.

[173] The categories of Stamps are as follows:

- **Stamp number 0:** issued to persons who are permitted to remain in Ireland on condition that they do not receive State benefits and have private medical insurance. The holder must be fully supported by a sponsor in the State and/or is of independent means, and is not entitled to work or engage in a trade, business or profession unless specified in letter from the Irish Naturalisation and Immigration Service (INIS).
- **Stamp number 1:** issued to non-EEA nationals who have an employment permit or business permission.
- **Stamp number 1A:** issued to a person permitted to remain in Ireland for the purpose of full-time training with a named body (main category concerns non-EEA nationals studying accountancy) until a specified date. Other employment is not allowed.
- **Stamp number 2:** issued to non-EEA national students who are permitted to work under certain conditions, namely casual employment of 40 hours per week during vacation and 20 hours per week during term time.
- **Stamp number 2A:** issued to non-EEA national students who are not permitted to work and does not receive State benefits.
- **Stamp number 3:** issued to non-EEA nationals who are not permitted to work.
- **Stamp number 4:** issued to people who are permitted to work without needing an employment permit or business permission: non-EU EEA nationals, spouses and dependants of Irish and EEA nationals, people who have permission to remain on the basis of parentage of an Irish child, Convention and Programme refugees, people granted leave to remain, non-EEA nationals on Intra-Company transfer, temporary registered doctors, non-EEA nationals who have working visas or work authorisations.
- **Stamp number 4 (EU FAM):** issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the *European Communities (Free Movement of Persons) Regulations 2006*. People holding this Stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations.
- **Stamp number 5:** issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Defence to remain in Ireland without condition as to time. Holders of this Stamp do not need an employment permit or business permission in order to work.

Stamp 2; 11,236 under Stamp 3; 10,473 under Stamp 1; 10,357 were 'Unrecorded'; 8,406 under Stamp 4 EU FAM; 4,322 under Stamp 2A; 1,491 under Stamp 5; 179 under Stamp 1A; 62 under Stamp 0; and 30 under Stamp 6.[174]

In a year-end review of 2012 developments, it was noted that a drop in provisional figures for year-end registrations had taken place and stood at 115,000 in comparison to 128,200 at the end of 2011. This fall is attributed by INIS as being mainly due to work to clear a backlog in citizenship applications.[175]

Figures released by the Department of Social Protection show that in 2012, the largest single issuance of Personal Public Service (PPS) Numbers were to nationals of Poland (8,663), followed by the UK (8,348), Brazil (5,542), Romania (5,283) and Spain (3,929).[176]

3.4.7 'EU Treaty Rights' and Other Residency Based on Marriage to an Irish National

During 2012 a total of 2,817 EU Treaty Rights applications under the *European Communities (Free Movement of Persons) Regulations 2006* and *2008* were received. This gives effect to *Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*. Permission was granted in 1,829 cases.[177] A review of a refusal decision was made in 458 cases. The main nationalities of applicants during 2012 were Pakistani (18 per cent), Nigerian (11 per cent), Brazilian (9 per cent), Indian (5 per cent) and Bangladeshi (4 per cent).[178] A total of approximately 2,000 applications were based on marriage to an EU national, with approximately 1,400 applications approved on this ground during 2012.[179]

In 2012 a total of 1,158 applications for residence on the basis of marriage or civil partnership to an Irish national was received and processed through the Spouse of Irish National Unit within the Irish Naturalisation and Immigration Service (INIS). Some 701 approvals took place during 2012.

- **Stamp number 6:** can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

174 Irish Naturalisation and Immigration Service (April 2013).

175 Irish Naturalisation and Immigration Service (January 2013). 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

176 Department of Social Protection (2013). *Allocation of PPS Numbers by Nationality - All Countries - 2012*. Available at www.welfare.ie. The PPS Number is the 'unique customer reference number for transactions between individuals and Government Departments and other public service providers. Its use helps people access benefits and information from public service agencies more quickly and more easily. This includes services such as Social Welfare, Revenue, Public Health Care, and Education.' As described on www.welfare.ie.

177 Irish Naturalisation and Immigration Service (INIS), Provisional figures (April 2013). Same provisional overall figure and grants listed in Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

178 Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

179 Irish Naturalisation and Immigration Service (INIS), Provisional figures (April 2013).

3.4.8 Leave to Remain

During 2012 a total of 564 persons were granted leave to remain in Ireland under Section 3 of the *Immigration Act 1999 (as amended)*.[180]

3.4.9 Long-Term Residency

Some 485 persons were granted Long Term Residency in Ireland in 2012.

3.4.10 Research

A report commissioned by the European Commission (Zimmermann et al., 2012) analysed across a wide range of EU countries the situation of migrants with regard to social assistance and access to social services. The report found that for Ireland, relative rates of welfare use by both migrants and Irish nationals were 'very similar'. Using EU-SILC data from 2003 to 2007, the report found that it was generally the case that migrants were less likely to be in receipt of welfare payments relative to Irish nationals. However, in the case of unemployed migrants and unemployed Irish nationals, the 2007 data showed no difference in terms of likelihood of receipt. In the case of EU12 nationals in Ireland, overall migrant welfare take-up rates were lower than for Irish nationals. This was seen as largely attributable to higher employment rates for this nationality category. Taken on a more in-depth level, EU12 nationals were just as likely to obtain family benefits as Irish nationals, however they are 'substantially less likely' to receive unemployment or disability payments. Of note, unemployed EU12 nationals were less likely to receive unemployment payments prior to 2007 and 2008 only, which the authors argue may point to migrants learning more about their welfare entitlements over time and/or building up contributions and residency.

The Irish case study in the '*Study on Active Inclusion of Migrants'* commented that while there are 'clearly structural mechanisms' in place which prevent migrants from accessing the welfare system for an 'initial period of time', barriers such as a residency condition and mandatory contributions, could result in altered future patterns of usage as more migrants become eligible. It was also noted that perceived dependence on social assistance could be seen to 'jeopardise continued residence' for some migrant categories which were conditional upon not becoming an undue 'burden' on the State.[181]

In March 2012, a study commissioned by the New Community Partnership looked at the implementation of the *Irish Born Child (IBC/05) Scheme*. The position paper addressed the experience of some of the 17,000 people granted residency under the Scheme. The lack of a right to family reunification was highlighted, with the paper concluding that difficulties in accessing the labour market (the legal right to work was conferred with the status) was inherent as the 'conditions attaching to

[180] Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

[181] Zimmermann et al. (2012). '*Study on Active Inclusion of Migrants'*. IZA Research Report No.43. Available at www.iza.org.

family life act to separate families and ensure that many status holders, a significant proportion of them women, are parenting alone in this country'. Difficulties in accessing social welfare payments, particularly lone parent's payments due to consideration of separation by distance only and not self-declaration, are noted, with IBC/05 status holders often 'not accepted by the social protection system in this country'. The uncertainty of future citizenship or status in Ireland was also raised. Recommendations include the need to consider status holders within a revamped statutory family reunification system; to allow persons with IBC/05 status full access to education grants; and the inclusion of IBC/05 status holders under the State's integration agenda. It was also recommended that this category of residence was clearly referenced in materials distributed to staff members of the Department of Social Protection.[182] At the launch of the report, the Ombudsman for Children, Emily Logan, called for a review of the scheme as it did not have 'at its centre the welfare of children, as outlined in the UN Convention on the Rights of the Child, or the constitutional position of the family as the fundamental unit of society'.[183]

3.4.11 Case Law

3.4.11.1 Ministerial Power to Grant Permission to Reside in the State under the *Immigration Act 2004* is Distinct from the Power Given to Immigration Officers under the Act and Relevant for the Purpose of Calculating Time Periods for the Purposes of Lawful Residence in the State

Sulaimon v. Minister for Justice [2012] IESC 63 (Supreme Court, 21 December 2012)

The applicant was a minor and his father applied for an Irish passport on his behalf. This application was made pursuant to Section 6A of the *Irish Nationality and Citizenship Act 1956 (as amended)* which provides that:

> *A person born in the island of Ireland shall not be entitled to be an Irish citizen unless a parent of that person has, during the period of four years immediately preceding the person's birth, been resident in the island of Ireland for a period of not less than three years or periods the aggregate of which is not less than three years.*

The period of residence referred to in Section 6A must be lawful residence and Section 6B(4) provides that a period of residence shall not be reckonable for the purposes of calculating residence under Section 6A if it is in contravention of Section 5(1) of the *Immigration Act 2004*. Section 5 provides that:

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[182] Coakley, L. (2012). *The Irish Born Child Administrative Scheme for Immigrant Residency 2005 (IBC/05) - The impact on the families of status holders seven years on*. Available at www.newcommunities.ie.

[183] *The Irish Times* (23 March 2012). 'Review sought of scheme allowing migrant parents to live in Ireland'. Available at www.irishtimes.com.

> *No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister.*

Section 4 of the 2004 Act provides that

> *…an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport… an inscription, authorising the non-national to land or be in the State…*

and is referred to in the Act as a 'permission'.

The application was based on the father's period of five years' lawful residence in the State. In the first letter informing him that the Minister had decided to grant him permission to reside in the State dated 7 July 2005, it stated that this permission was for a period of two years from the date of the letter, ending on 7 July 2007. In the second letter it stated that the permission was for a further three years, ending on 7 July 2010. In each letter the applicant's father was informed that he was obliged to attend at the Garda National Immigration Bureau in order to have his permission registered and his passport stamped and that the permission only took effect as and from that date. He did so on each occasion a short period of time after receipt of the letters.

At the time of the application for an Irish passport on his son's behalf, the Department of Foreign Affairs and the Department of Justice calculated (from the date of the stamps in the passport and not from the dates of the Minister's letters) that the applicant's father fell three days short of the requisite period for his son, the applicant, to be entitled to an Irish passport.

In interpreting the meaning of the provisions in particular Section 4 and Section 5 of the *Immigration Act 2004*, O'Donnell J. (with whom the other members of the Court agreed) held that the Act clearly contemplated that at least two permissions may be given under the Act, one by the Minister and another granted by an immigration officer on behalf of the Minister. It followed that the Act contemplated a separate power in the Minister to grant the permission contained in the letters to the applicant's father, other than through the agency of the immigration officer.

Section 5 only required that a person be in the State with the permission of the Minister and O'Donnell J. held that the word 'permission' in Section 5 did not have a special meaning derived from Section 4 but was used in a more general and ordinary sense. That the word 'permission' should be interpreted in accordance with Section 4 meant no more than saying that a ministerial permission shall be of the same nature as the permission granted under Section 4. The Act, O'Donnell J. said, does not provide any details about the grant of a ministerial permission and does not set out any procedure for either an

application for such permission or the manner in which it is to be approached. Further, the structure of the Act conceived that a permission was separate and distinct from the requirement to register under Section 9 of the Act. Such registration is required of all non-nationals who have already been granted permission to be in the State. He held that the Act, properly construed, recognised that the Minister may grant permission, and does not prescribe any particular formality for such permission.

The Court held that, calculating the applicant's father's permission to be in the State i.e. his lawful residence, as and from the date of the Minister's letters, he met the criteria as to the period of lawful residence required in order for his son to be entitled to an Irish passport as an Irish citizen.

3.4.11.2 Application for Permission to Reside in the State on the Basis of Parentage of an Irish Citizen Child Pursuant to Article 20 of the Treaty on the Functioning of the European Union (TFEU) and the *Zambrano Decision*

Gilani v. Minister for Justice [2012] IEHC 193 (High Court, Cooke J., 14 May 2012)

The applicant sought a mandatory order directing the Minister to determine within a reasonable period of time his application for permission to reside in the State on the basis of his parentage of an Irish citizen child, pursuant to Article 20 of the Treaty on the Functioning of the European Union (TFEU), Article 24 of the EU *Charter of Fundamental Rights* and the decision of the European Court of Justice in *Ruiz Zambrano*. He was a national of Pakistan and had entered the State on a visitor's visa, overstayed the period of validity of the visa and remained illegally in the State. He had been in a relationship with an Estonian national since 1999 and they had a daughter born in 2007 who was an Irish citizen and therefore an EU citizen. She was the second named applicant in the proceedings. The relationship ended and the child remained with her mother in Ireland and the applicant saw her a number of times per week and contributed unspecified financial support for her. He subsequently married an Irish citizen in 2009 and was given permission to reside in the State on that basis and issued with a 'Stamp 4' endorsement[184] valid to January 2012. The couple ceased living together in 2011 but had not divorced.

In June 2011 the applicant submitted an application for permission to reside and work in the State on the basis of his parentage of his Irish daughter pursuant to inter alia Article 20 TFEU. The Minister responded stating that it did not consider that the decision in *Ruiz Zambrano* applied to the applicant and that, in any event, he already held a right of residence in Ireland which allowed him to enter employment or a profession or set up a business without the need to seek further permission from the Minister. The Minister stated that the State's obligation

[184] This grants permission to reside and work or engage in business in the State.

under the *Zambrano* principles were met in his case, and that those principles offered him nothing extra from an immigration standpoint. Despite the Minister's response, the applicant again requested the Minister to make a decision on his permission to reside based on Article 20 and *Zambrano* prior to the expiry in January 2012 of the residence permission he held based on his marriage to an Irish citizen.

The Court refused the application for leave to apply for judicial review. First, it held that the court could only make a mandatory order to compel a public body to perform a public duty where it was under an obligation to do so and has either wrongfully refused to do so or delayed so egregiously that the delay is tantamount to a refusal. In this case, the Minister had made a decision on the applicant's application. He refused it on the basis that the applicant already had permission to reside in Ireland and had taken up employment which he was entitled to do. Therefore the Minister's public duty had been discharged.

Secondly, the applicant's assertion that he was entitled to reside in the State pursuant to the decision in *Zambrano* was misconceived and based on a misreading of that decision. The decision of the European Court of Justice conferred no right or entitlement on the applicant as a non-EU national father. The rights and protection conferred by Article 20 TFEU apply to the EU citizen only. It is only where the removal of the third-country national or the refusal to grant the third-country national parent a work permit will necessarily lead to the departure of the EU citizen child from the territory of the Union that Article 20 TFEU can be invoked by the EU citizen to require the relevant Member State to permit the parent to remain and to be employed.

Cooke J. held that it was clear that the entitlement of a minor EU citizen child to assert an entitlement to compel the grant of a right of residence and a work permit to a non-Irish national parent is fundamentally dependent upon it being shown that it is necessary to do so in order to avoid the Union citizen child having to depart the territory of the Union upon the removal of the parent. There was no evidence that this case came within that criterion. There was no suggestion that the child, who lived with her mother in the State, was at risk of having to leave the country. She was only 'dependent' on her father in the sense that she saw him a number of times per week and that he contributed a sum towards her. This did not constitute evidence of the type or level of dependence envisaged in cases such as *Ruiz Zambrano* and *Dereci,*[185] namely one which compels the EU citizen to leave the territory of the EU if the parent is removed.

Further, the applicant had not been refused residence or permission to continue in employment. Although the permission was said to have expired in January 2012, there was no evidence before the Court that it would not be renewed so long as the applicant was married to an Irish citizen, and there was no evidence

[185] *Case C-256/11*, decision of 15 November 2011.

that there had been any proposal to deport the applicant. If the permission to reside was not renewed and a proposal to deport the applicant were to be made, his entitlement to avoid deportation would depend not on the principles of the *Zambrano* case but on the application of the principles protecting family life. The Court refused the application.

3.4.11.3 Application for Permission to Reside in the State Pursuant to the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 and 2008*

Wang v. Minister for Justice [2012] IEHC 311 (High Court, Cooke J., 23 July 2012)

The second applicant was a Chinese national who arrived in the State on a student visa in 2004. She met a Hungarian national in 2005 and they married in 2006. She was subsequently granted permission to remain in the State for a five-year period under the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* as the wife of an EU national. The first applicant was born to that couple in 2009 and was a Hungarian national. The marriage ended and the second applicant's husband returned to Hungary in 2010. He had no relationship with his daughter since then and made no contribution to her care or upbringing. The third applicant was also a Chinese national, who arrived in the State in 2002 on a student visa. His permission was renewed from time to time and was valid up to August 2012. The second and third applicants described themselves as being in a long-term, committed relationship. The second applicant was then pregnant with the third applicant's child.

The applicant applied to the Minister for permission to reside in the State under the 2006 Regulations. Her solicitor also requested that the Minister consider the position of the three applicants with regard to EU law, in particular *Zhu and Chen v. Secretary of State for the Home Department (Case C-200/02)* and *Ruiz Zambrano (Case C34/09)*. It was asserted that the position of the minor applicant's mother was substantially the same as that of Mrs. Chen and she was entitled to reside with her daughter in Ireland as her daughter's primary carer. It was also asserted that the third named applicant was the minor applicant's stepfather and they constituted a family unit and he was therefore entitled to reside in the State with his stepdaughter and partner. The Minister replied stating that in view of the fact that the applicant's husband no longer lived in the State it appeared the grounds upon which permission to reside had been granted in 2007 no longer applied and that they proposed to revoke it as she was no longer a qualifying or permitted family member within Regulation 2(1) of the 2006 Regulations. The Minister proposed to examine their case under the *Chen* principles. The solicitor wrote again requesting consideration under the principles in the *Zambrano* case.

The Minister determined that the *Zambrano* judgment did not apply to their case, and referred to the later *Dereci* case *(Case C-256/11)*. The Minister also determined the claim under the 2006 Regulations and decided that the adult applicant could not claim dependency upon the child and that the minor child could not constitute the basis of a household for the purposes of the Regulation and therefore Regulation 2(1) did not apply in that respect. In relation to the *Chen* principles the Minister determined that while it was possible for them to come within the parameters of Chen, however he considered that they were unable to comply with the other requirements to be self-sufficient and have private medical insurance. The third applicant who appeared to support the other two applicants, did not have a legal obligation to do so either now or in the future, as he had no legal relationship to the minor and was not married to the mother of the minor applicant. The Minister was not satisfied that the mother could be considered self-sufficient in her own right.

The Court held that the third applicant was neither the spouse of the second applicant nor the father of the first applicant and he was not a permitted family member within Regulation 2(1). Apart from whether he could be a 'dependant' of the child, he was never the dependant or member of the household of the EU citizen in her country of origin, habitual residence or previous residence, as his country of origin or previous residence was China. The Court also held that the *Chen* principles also could not benefit the third applicant as he was not the child's parent and the *Chen* principles could only apply as between the child and her mother exclusively.

The Court held that the mother and daughter's position was different in this respect to the third applicant, as up to the departure of her Hungarian husband the second applicant was entitled to reside as a qualifying family member, but after this entitlement ended she did not meet the criteria to be a permitted family member. Cooke J. held that it was not arguable that the mother could claim to be a dependant of the EU citizen child and given its ordinary meaning an adult could not be the dependant of a child. The Court held however, that it was arguable that the mother might be considered a member of the household of the minor EU citizen notwithstanding that she was only three years old and the term household was open to the interpretation that if one individual is an EU citizen all members of the group could be regarded as equal members of the household.

The Court further held that the second aspect of the refusal related to the question as to whether the circumstances of the mother and child fall within the *Chen* principles and whether the decision that the mother was not self-sufficient was based on the view that their means were provided for by the third applicant. Cooke J. held that it was not clear what test of self-sufficiency was applied by the Minister in reaching the conclusion that the means test condition was not satisfied if the support of the third applicant is excluded. It was arguable that the Minister erred in fact and reached an unreasonable and disproportionate

conclusion in rejecting the application on the basis that the Chen conditions were not met.

3.4.11.4 Family Life and *Zambrano*

Scully v. Minister for Justice [2012] IEHC 466 (High Court, Cooke J., 16 April 2012)

The applicants were the parents and minor children, whose husband and father, the second applicant was made the subject of a deportation order in 2009, and on foot of which he was deported. An application was made to the Minister to revoke the deportation order but the Minister refused. The applicants sought to quash the refusal to revoke the deportation order and to challenge the constitutionality of Section 3(1) and (11) of the *Immigration Act 1999*. The second applicant had entered the State in 2002 on a work permit which was valid to 2004. He was the father of four Irish citizen children. The Minister refused to renew his visa. The applicant had accumulated a large number of convictions for a range of offences and had served a three-year sentence. In March 2011, the Minister made a statement following the decision of the European Court of Justice (ECJ) in *Zambrano* (Case-34/09) on the position he would propose to adopt to cases which it was considered were affected by *Zambrano*. In April 2011 the applicants made a second application requesting the Minister to revoke the deportation order based on the *Zambrano* judgment. The applicant also disclosed that he had HIV and Hepatitis C for which he was receiving anti-retroviral medication. Submissions were also made on his criminal record.

The Court held that the only new circumstances or events capable of being considered in a further application to revoke the decision under Section 3(11) were the pronouncement of the *Zambrano* judgment and the publication of the Minister's statement of policy following *Zambrano*, and the disclosure of the applicant's medical condition and his need for continuing treatment. The Court held that it was arguable that the Minister had erred in law in applying the principles in the judgment of the European Court of Justice in *Zambrano* to the personal and family circumstances of the applicants. Cooke J. also that it was arguable that the Minister erred in law in construing and applying to the said personal and family circumstances, and particularly to the minor applicants as Irish and EU citizens, the protections afforded to them by Articles 40.3, 41 and 42 of the *Constitution of Ireland* and Articles 3 and 8 of the *European Convention on Human Rights* (ECHR). He also found that the conclusions reached and the reasons given were unreasonable and disproportionate to the permanent impact of the order on the personal and family circumstances of the applicants having regard to the changed facts set out in the second application to revoke the deportation order, and to the fact that the minor applicants were Irish and EU citizens.

3.5 INTEGRATION

The *Intercultural Education Strategy (2010-2015)*, the *Cultural Diversity and the Arts Strategy (published in 2010)*, *An Garda Síochána Diversity Strategy and Implementation Plan (2009-2012)* and the *Intercultural Health Strategy (2007-2016)* continued to be implemented throughout 2012.

3.5.1 Funding

A total of €1,295,844 was provided to organisations to promote integration and tolerance by the Office for the Promotion of Migrant Integration (OPMI) during 2012. In addition, a number of funding initiatives under the European Refugee Fund (ERF) and the European Integration Fund for third-country nationals (EIF) continued during 2012.

As of year-end 2012, during the year a total of €175,000 had been assigned to sporting organisations; €156,240 to City/County Councils; and €964,604 in general integration funds to a variety of organisations. Between 2008 and 2012, the Office of the Minister for Integration/Office for the Promotion of Migrant Integration gave grant funding of €12,607,210 for integration purposes, of which €7,470,642 went to integration funds and grants to other organisations; €3,282,027 went to City/County Councils; €1,760,941 went to national sporting organisations; and €93,600 went to faith-based organisations.[186] However, the annual budget of the OPMI has contracted in recent years.

The OPMI continued to fund the Employment of People from Immigrant Communities (EPIC) Programme during 2012, with over €444,000 provided during the year and co-funding from the European Social Fund (ESF). The EPIC Programme is a training project for EU immigrants and non-EU immigrants on 'Stamp 4' classification and provides assistance in accessing employment or further training including training in English for work, interview skills, living and working in Ireland and IT and is operated by Business in the Community (BITC).[187] Training takes the form of a six-week training module followed up by individual support with a Training and Employment Officer. As of October 2012, training for over 1,300 persons from 93 nationalities had been provided, with 69 per cent of that number either in work, further training or volunteering. Collaboration between BITC and companies/NGO also takes place with an on-going emphasis on network building.[188]

Funding continued during 2012 from the OPMI to the New Communities Partnership (a migrant-led NGO) to employ an immigration law expert to train volunteers on citizenship matters who could then provide information and advice to citizenship applicants on eligibility criteria and completion of forms. In a

[186] See www.integration.ie.
[187] *Ibid*.
[188] Office for the Promotion of Migrant Integration (30 October 2012). 'EPIC Programme Graduation Ceremony, 30 October 2012'. *Press Release*.

related area, The Integration Centre published a *'Guide for Migrant Jobseekers in Ireland'* in October 2012 which outlined information for immigrant jobseekers about the recruitment process in Ireland. Information regarding the advertisement and application stage was provided, with the aim of helping users to successfully engage with the Irish labour market.[189]

The OPMI continued to fund a number of intercultural fora to enable migrants to come together to discuss their integration experiences.

In August 2012, the Equality Authority launched an Equality Small Grants Fund which will provide grants of up to €4,000 for equality-focused actions for NGOs working on one or more of the nine equality grounds.

3.5.2 School Patronage

Much media discussion took place in 2012 regarding discussions and findings related to patronage of schools.

During 2012 the Minister for Education and Skills drew up an Action Plan in response to the report of the Advisory Group to the Forum on Patronage and Pluralism in the Primary Sector. As a first step in the plan, surveys were conducted in five pilot areas around the country to establish the level of parental demand for a wider choice in the patronage of primary schools within these areas, with results published in December.[190] Upon the launch of the Action Plan in June, the Minister stated that the aim was to make 'real and substantial progress on ensuring diversity of choice of primary schools for parents'.[191]

In late December 2012, the Minister for Education published the findings of surveys of parental preferences on primary school patronage in five pilot areas, showing parental demand for a greater choice of patron in each town. The *Annual Policy Report on Migration and Asylum 2007: Ireland* outlined the controversial issue of education provision for pupils coming from non-Irish families during that year, with many such pupils unable to secure school places prior to the opening of a new nondenominational 'Educate Together' school in North County Dublin. It was feared that this represented evidence of emerging segregation in the Irish education system. The majority of primary schools in Ireland are managed by the Catholic Church with State funding. The Minister for Education and Skills stated that he would ask the Catholic patronages of each of the pilot areas to 'consider the reconfiguration options open to him which would

189 The Integration Centre (2012). *Guide for Migrant Jobseekers in Ireland.* See www.integrationcentre.ie.

190 Department of Education and Skills (2012). *Report on the pilot surveys regarding parental preferences on primary school patronage.* Available at www.education.ie.

191 Department of Education and Skills (20 June 2012). 'Minister Quinn outlines his Action Plan in response to the report of the Advisory Group to the Forum on Patronage and Pluralism in the Primary Sector'. *Press Release.* Available at www.integration.ie.

allow sufficient school accommodation to be made available to facilitate this choice'. The survey areas were also to be increased.[192]

At an event organised by the Immigrant Council of Ireland (ICI) in May 2012, the special representative of the UN Secretary General for Migration, Peter Sutherland, warned of 'ethnic polarisation' developing in Irish schools unless increased integration took place. He noted that 'evidence shows us that greater segregation leads to lower employment, lower earnings, lower education participation'.[193]

3.6 Citizenship and Naturalisation

3.6.1 Statistics Regarding Citizenship and Naturalisation

Some 20,000 valid applications for citizenship were received by the Citizenship Division of the Irish Naturalisation and Immigration Service (INIS) in 2012. A total of over 25,000 certificates of naturalisation were granted during the year, mainly to nationals of Bangladesh, China (including Hong Kong), India, Moldova and Nigeria.[194]

3.6.2 Citizenship Processing

The issue of processing times for applications for citizenship has attracted considerable debate in recent years, and received additional commentary during 2012.

Upon announcing changes to the citizenship application process in June 2011, the Minister for Justice and Equality stated that upon taking office in March of that year, approximately 22,000 citizenship applications had been awaiting decisions. Of this number, approximately 17,000 had been waiting over six months, with an average waiting time of 26 months. During 2011 a total of 16,150 applications had been decided upon, in contrast to the previous year when 7,800 cases were decided.[195] The Department of Justice and Equality noted in its *Annual Report 2011* that as from mid-2012 all non-complex cases (noted as 70 per cent of all applications) will be completed within six months.[196] In a year-end review for 2012, the Minister for Justice, Equality and Defence stated that this increase in decision-making over the past few years, and the 'story of citizenship in Ireland' over that time, 'is a truly remarkable one which is without parallel in our entire

[192] Office for the Promotion of Migrant Integration (28 December 2012). 'Education - Pilot surveys on parental patronage preferences show demand for diversity'. *Press Release*. Available at www.integration.ie.
[193] As quoted in *The Irish Times* (26 May 2012). 'Schools 'need to integrate''. Available at www.irishtimes.com.
[194] Department of Justice and Equality (April 2013).
[195] Department of Justice and Equality (2012). *Annual Report 2011*. Available at www.justice.ie.
[196] *Ibid*.

history'.[197] A total of 35 citizenship ceremonies were held during the year with almost 20,000 persons conferred with citizenship.[198]

During 2012, the New Communities Partnership continued to extend Citizenship Application Support Service drop-in clinics. Providing support in the completion of applications for citizenship, the clinics are funded by the Office for the Promotion of Migrant Integration (OPMI).

3.6.3 Case Law

3.6.3.1 In Exercising His Absolute Discretion to Grant or Refuse a Certificate of Naturalisation the Minister Must Provide Reasons for His Decision or for His Refusal to Disclose His Reasons

Mallak v. Minister for Justice [2012] IESC 59 (Supreme Court, 6 December 2012)

The appellant was a citizen of Syria. He and his wife were recognised as refugees in Ireland in 2002 and he subsequently applied for a certificate of naturalisation pursuant to Section 15 of the *Irish Nationality and Citizenship Act 1956* (as amended). This application was refused by the Minister in November 2008 acting in his absolute discretion. He did not provide any reasons for his decision. However, the appellant's wife was granted a certificate of naturalisation in October 2008. The Minister stated in his decision that there was no appeal from his decision but that the appellant could reapply to the grant of a certificate of naturalisation in the future, which would be considered having regard to all statutory and administrative conditions applicable at that time.

The appellant's solicitor's sought a statement of reasons for the refusal pursuant to Section 18 of the *Freedom of Information Acts 1996* and *2003*. This section imposes a general obligation on every head of a public body, on application to it by any person affected by its acts, to provide a written statement of reasons for the act. This was declined in accordance with Section 18(2) of the Act. The Information Commissioner informed the appellant's solicitors that he was satisfied that the Minister's decision to refuse to provide reasons for his decision refusing to grant a certificate of naturalisation was in line with Section 18(2) and was correct. It was acknowledged that the appellant was left none the wiser as to why his naturalisation application and subsequent request for reasons were refused. In parallel, the appellant sought information under the *Data Protection Acts* 1988 and 2003 and the Department provided a schedule of records which included a 'Garda report' and a 'Garda Request Form'. The appellant maintained that these had never previously been disclosed to him and he had never had an opportunity to meet any adverse findings contained in them.

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[197] Irish Naturalisation and Immigration Service (January 2013). 'Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

[198] Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

The appellant claimed that the Minister's decision was invalid because of his refusal to give reasons for it. He submitted that he had a legitimate expectation that he would be granted naturalisation in a manner consistent with the Minister's obligations under the *Geneva Convention relating to the Status of Refugees* and that it was unfair and unreasonable to deny him those reasons. That failure also hindered him in any future applications for naturalisation he might make. He also claimed that the 1956 Act was unconstitutional insofar as the provisions ousted the jurisdiction of the courts to exercise the full original jurisdiction to review Ministerial decisions and infringed Article 41(2), paragraph 3 of the EU *Charter of Fundamental Rights* insofar as it had the effect of conferring power on the Minister to deprive the appellant of citizenship of the EU without any obligation to give reasons.

In the High Court, Cooke J. held that the Minister was not obliged to give reasons for his decision. First, the decision of the Minister was one which was in his 'absolute discretion' and the Court held that this meant 'quite literally that the Minister does not need to have or to give any reason for refusing an application'. Secondly, the High Court considered that, in applying for a certificate of naturalisation, the applicant was not seeking a decision in relation to anything to which he had a legal right, but rather was seeking a benefit or privilege.

The appellant appealed to the Supreme Court on three essential points:

- Insofar as it provides that the Minister may refuse to grant a certificate of naturalisation in his absolute discretion i.e. without giving reasons Section 15 of the 1956 Act is unconstitutional;
- Section 15 should be interpreted in the sense that the Minister is obliged to give reasons;
- The decision of the Minister to grant or refuse a certificate of naturalisation is a decision regarding the acquisition of citizenship of the EU to which the general principles of EU law apply, in particular Article 41 of the *Charter of Fundamental Rights* and the Minister was obliged to give reasons. If necessary, this is a matter which should be referred to the European Court of Justice (ECJ) pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU).

Fennelly J. gave the judgment of a unanimous (five judge) Supreme Court. At the outset the Court addressed two points, which were relied upon by the Minister and recurred in High Court judgments, as grounds for dispensing with the need to give reasons. First, it did not necessarily follow that where a decision is in the absolute discretion of the decision-maker, no reason need be given for it. The Supreme Court pointed out that there is a difference between having a reason and disclosing it. It considered that it cannot be correct to say that the 'absolute discretion' conferred on the Minister necessarily implied that he is not obliged to have a reason. That would be the very definition of an arbitrary power and it was

axiomatic that the rule of law required all decision-makers to act fairly and rationally, meaning that they must not make decisions without reasons. It found that the fact that a power is to be exercised in the absolute discretion of the decision-maker may well be relevant to the extent of the power of the court to review it, but it did not follow from the fact that a decision is made at the absolute discretion of the decision-maker, here the Minister, that he has no reason for making it, since that would be to permit him to exercise it arbitrarily or capriciously. Once it is accepted that there must be a reason for a decision, the characterisation of the Minister's discretion as absolute provides no justification for the suggestion that he is dispensed from observance of such requirements of the rules of natural and constitutional justice (fair procedures) as would otherwise apply.

Secondly, it was said that there was no obligation to give reasons, given that the grant of a certificate of naturalisation is matter of benefit or privilege rather than of right. The Supreme Court found that the grant or refusal of a certificate of naturalisation is, at least in one sense, a matter of privilege rather than of right. However, it was clear that the applicant had a right to apply to the court for judicial review, and it would be contrary to the very notion of a state founded on the rule of law if all persons within the jurisdiction, including non-nationals did not in principle have a constitutionally protected right of access to the courts to enforce their legal rights.

Fennelly J. considered that the mere fact that a person in the position of the appellant was seeking access to a privilege did not affect the extent of his right to have his application considered in accordance with law or apply to the courts for redress. The 1956 Act established a legal procedure permitting non-nationals to apply for certificates of naturalisation. The appellant was a refugee and by virtue of Section 3 of the *Refugee Act 1996* enjoyed a number of specific legal rights including to travel to and from the State and access to the courts in a like manner and to a like extent as an Irish citizen, and he enjoyed the legal right to apply for a certificate of naturalisation. Article 34 of the *Geneva Convention* appeared to encourage contracting states to grant naturalisation to those to whom they have granted refugee status. The Court considered that it did not appear from previous High Court case law, concerning cases in which the Minister was not relying on his absolute discretion but on failure of an applicant to meet one of the statutory conditions in Section 15, that the courts generally regarded the mere fact that a person is applying for an important privilege, Irish citizenship, which he has no legal right to compel the State to grant him, means that he enjoys inferior legal protection when pursuing his application. Fennelly J. considered that a distinction could not be drawn for this purpose between compliance with a statutory condition and the exercise by the Minister of his broader and more general discretion.

The Supreme Court considered that the overarching principle in relation to the duty to give reasons is that persons adversely affected by administrative decisions should have access to justice, they should have the right to seek the protection of the courts in order to see that the rule of law has been observed, that fair procedures have been applied and that their rights are not unfairly infringed. The Court noted the requirement for an opinion of a decision-maker to have been bona fide held, factually sustainable and not unreasonable, and that if no reasons have been given then the court cannot review the exercise of the power in light of those criteria.

In the appellant's case the Minister's letter stated that it was open to him to reapply for the grant of a certificate of naturalisation at any time, and the Court said that might reasonably be read as implying that whatever reason the Minister had for refusing the certificate was not of such importance or such permanent character as to deprive him of hope that a future application might be successful. But it found that it was impossible for the appellant to address the Minister's concerns and to make an effective application when he was in complete ignorance of the Minister's concerns. The Court held that, more fundamentally, it is not possible for the appellant, without knowing the Minister's reason for refusal, to ascertain whether he has a ground for applying for judicial review and, by extension, it was not possible for the courts to effectively exercise their power of judicial review.

The Supreme Court noted that several converging legal sources strongly suggested an emerging common view that persons affected by administrative decisions have a right to know the reasons on which they are based including Section 18 of the *Freedom of Information Act 1997*, Article 296 of the Treaty on the Functioning of the European Union (TFEU), and Article 41 of the EU *Charter of Fundamental Rights.* This provides that every person shall benefit from the right to good administration including the obligation of the administration to give reasons for its decisions. Recent jurisprudence of the European Court of Justice explained the purpose of the provision as being, first, to provide the person concerned with sufficient information to ascertain if the act is well founded or whether if it is vitiated by a legal defect which may permit its legality to be contested before EU courts and, second, to enable those courts to review the legality of the act. The Supreme Court also noted the decision of the English Court of Appeal in *R v. Secretary of State*[199] which related to the refusal of an application for naturalisation as a British citizen, in which the Secretary of State declined to give reasons for his decision. Lord Woolf MR noted the damaging effect on their reputations of having their applications refused, but also that the refusals deprived them of the benefits of citizenship, which were substantial. He commented that unless an applicant knows the areas of concern it will be impossible for him to make out his case and the result could be grossly unfair.

[199] *R v. Secretary of State, ex parte Fayed [1998] 1 WLR 763*.

The English Court held that the decisions were reached unlawfully and they were quashed.

Fennelly J. thought it noteworthy in the Fayed case that there was no suggestion that the applicants were deserving of any diminished standard of review because they were seeking the privilege of UK citizenship and also the unfairness of failing to inform the applicants of the Secretary of State's areas of concern.

The Supreme Court considered that at the very least the decision-maker must be able to justify the refusal. The Minister submitted that there were issues of public policy that leaned against the giving of reasons, but no reasons related to the public interest were disclosed. The Court noted that the Minister has the power under Section 17(2) of the *Refugee Act 1996* to restrict the rights otherwise enjoyed by the appellant (as a refugee) if it was necessary to do so in the interests of national security or public policy ('*ordre public'*), but the Minister has not purported to exercise that power, and the Court said that it could only be concluded that none of the grounds mentioned in those provisions exist in the appellant's case.

The Court held that the Minister was under a duty to provide the appellant with the reasons for his decision to refuse his application for naturalisation. His failure to do so deprived the appellant of any meaningful opportunity either to make a new application for naturalisation or to challenge the decision on substantive grounds. If reasons had been provided it might have been possible for the appellant to make relevant representations when making a new application. That might have rendered the decision fair and made it inappropriate to quash it. In the absence of reasons the Court quashed the decision.

The Court held that, in light of that finding, it was not necessary to address the constitutionality of Section 15, or of the argument in relation to Article 41 of the EU *Charter of Fundamental Rights*.

3.6.3.2 Applicants for Naturalisation who Consider Themselves Stateless Must Put That to the Minister and it is for the Minister in the First Instance who Must Decide if the Applicant is Stateless in Fact and in Law

Spila v. Minister for Justice [2012] IEHC 336 (High Court, Cooke J., 31 July 2012)

The applicants were ethnic Russians born in Latvia and residing in Ireland from 1999 onwards. They applied for naturalisation as Irish citizens under the *Irish Nationality and Citizenship Act 1956 (as amended)*. They described themselves in their application as 'Latvian (ethnic Russian)'. However, under Latvian law they only had an entitlement to an 'Alien's passport' from the Latvian authorities, with no rights to vote and were not classed by the Latvian authorities as EU citizens.

The Minister refused their applications on the basis that they had benefited from State financial support for lengthy periods in the past. It stated that the Minister's general policy was to require applicants for naturalisation to show that they had supported themselves while residing in the State and would be in a position to continue to do so into the future. This was the position unless they came within a category of persons whom, the Minister accepted, by virtue of their recognised status as refugees, programme refugee or stateless persons, could avail of State support. The Minister would be satisfied that an applicant is self-supporting if there was no evidence of their having accessed State support in the three-year period prior to the application and they had supported themselves independently during that period.

The applicants' solicitors wrote to the Minister indicating that notwithstanding the applicants' classification of themselves as Latvian (ethnic Russian) they were in fact stateless persons within the meaning of the United Nations *Convention relating to the Status of Stateless Persons 1954.* Therefore they came within one of the categories which the Minister accepted did not need to show they had supported themselves independently of the State. They requested the Minister to reconsider his decision on the basis that they should be categorised as stateless.

The essential issues identified by the Court was whether or not the applicants as ethnic Russians originating in Latvia by birth were stateless and whether in the application of his policy the Minister erred in answering that question. Expert evidence was tendered to the Court by both parties as to the status of the applicants in Latvian law and reference was made to jurisprudence of the European Court of Human Rights (ECtHR).

The Court held that it was not necessary for it to come to a view on the status of the applicants as stateless as a matter of international law or otherwise. First, the Minister was not explicitly requested to consider whether, as ethnic Russian Latvians, they were stateless in any sense and it was only after the Minister's decisions that the applicants asserted that they were stateless. It was clear that the central consideration in the refusal was that the applicants had been in receipt of social welfare support and not that they were stateless. Also, it found that having regard to the Minister's absolute discretion under Section 15 of the 1956 Act the mixed question of fact and law as to whether the applicants, in their particular personal circumstances, were stateless, was first and foremost a matter of policy for the Minister, and for him to decide that in the first instance.[200] Secondly, Cooke J. found that the Minister was not put on inquiry as to their character as stateless persons. In particular, the refusal decisions offered the possibility to make new applications, and it was open to the applicants to do so, incorporating all the new information and expert opinion they had relied

[200] The Court's consideration of the Minister's absolute discretion must now be seen in light of the decision of the Supreme Court in *Mallak v. Minister for Justice* [2012] IESC 59) above.

upon, and that was the appropriate course for them to follow. The judicial review application was refused.

3.7 Managing Migration and Mobility

3.7.1 Visa Policy

3.7.1.1 *The Immigration Act 2004 (Visas) Order 2012 (S.I. 417 of 2012)*

The *Immigration Act 2004 (Visas) Order 2012 (S.I. 417 of 2012)* revoked the *Immigration Act 2004 (Visas) (No.2) Order 2011 (S.I. No. 345 of 2011)*. It specifies classes of non-Irish nationals who are not required to be in possession of a valid Irish visa when landing in the State, including some family members of EU nationals who are holders of a 'Residence card of a family member of a Union citizen' as specified in Article 10 of *Directive 2004/38/EC* and some holders of travel documents issued in accordance with Section 28 of the *Geneva Convention*. *S.I. 417 of 2012* also specifies nationals of states which are required to be in possession of a valid Irish transit visa when arriving at a port in the State for purposes of passing through the port in order to travel to another state.[201] It also provides for visa free travel for certain nationalities who are primarily visitors to the UK.[202]

3.7.1.2 Statistics Regarding Visas

During 2012 a total of 132,425 visa applications were received, with 88,345 applications for initial entry visas and 44,080 for re-entry visas. The main nationality of applicants applying for entry visas in 2012 were Indian (16 per cent), Russian (14 per cent), Chinese (11 per cent), Nigerian (8 per cent) and Saudi Arabian (5 per cent).[203] During 2012, some 123,392 visas were issued by Irish authorities worldwide, including 79,319 entry visas and 44,073 re-entry visas. The main nationalities granted an entry visa during 2012 were India (13,442), Russia (12,033), China (9,342), Nigeria (4,602) and Saudi Arabia (4,232).[204]

3.7.1.3 Visa Waivers

In March 2012 it was announced that Ireland's first formal visa waiver programme would be extended for four years via the *Immigration Act 2004 (Visas) Order 2012 (S.I. No. 417 of 2012).* The Programme is designed to 'boost

[201] Nationals of Afghanistan, Albania, Cuba, Democratic Republic of the Congo, Eritrea, Ethiopia, Ghana, Iran, Iraq, Lebanon, Moldova, Nigeria, Somalia, Sri Lanka and Zimbabwe.

[202] Until 31 October 2016 and for nationals of Bahrain, Belarus, Bosnia and Herzegovina, India, Kazakhstan, Kuwait, Montenegro, Oman, People's Republic of China, Qatar, Russian Federation, Saudi Arabia, Serbia, Turkey, Ukraine, United Arab Emirates and Uzbekistan.

[203] Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

[204] Irish Naturalisation and Immigration Service (April 2013).

tourism and business, especially from emerging markets'.[205] During 2012, Bosnia and Herzegovina were added to the existing list of 16 countries already covered, with fees waived for long-term residents from the countries covered by the Programme who live in the Schengen area.[206] Upon announcing the extension, indicators arising out of the pilot were released, pointing towards a doubling of tourist groups from China in July-August 2011 in comparison to 2010, and the creation of a number of new operator and travel agent routes including nine new tour operator itineraries from China, ten new tour operator itineraries from India, two meetings and incentives groups included Ireland in their itineraries and five new tour operator itineraries from the Gulf region.[207]

In May 2011 the Government released details on Ireland's first formal visa waiver programme. The Short-Stay Visa Waiver Programme (which commenced on 1 July 2011) was announced as part of a Government Jobs Initiative with a view to promoting tourism from emerging markets and to make Ireland *'very attractive for these visitors to the UK to consider Ireland as an "add-on" element to their planned holiday'*.[208] Initially launched as a pilot until the end of October 2012, the Programme provides for visa-free travel to Ireland for persons in possession of a valid UK visa and who are either nationals of one of the countries covered by the scheme, have entered the UK on a UK 'C' General visa or been granted leave to remain in the UK for up to 180 days. In essence, eligible persons will not be required to have both an Irish and UK visa when entering Ireland after lawful entry to the UK. A valid entry stamp from the UK Border Agency is required on the national's passport. Regarding the categories of persons covered, tourists, business persons (including 'C' long-term, multi-entry business visas), sportspersons and academics are included while holders of transit visas, long-term student visas and family reunification visas are not covered. Qualifying persons are permitted to remain in Ireland for a maximum of 90 days or the duration remaining on their UK leave to remain if shorter. Nationals of primarily 'emerging' markets were catered for under the initial Programme including Eastern Europe (Belarus, Montenegro, Russian Federation, Serbia, Turkey and Ukraine), Middle East (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the U.A.E.) and Asia (India, Kazakhstan, China and Uzbekistan).[209] At the time of announcement it was noted that Ireland had approved 30,000 applications for nationals of these countries during 2010. The INIS *Information Note* also

[205] Government of Ireland (2012). *Programme for Government Progress 2011-2012.* Available at www.merrionstreet.ie.

[206] To be reviewed after six months. Irish Naturalisation and Immigration Service (March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

[207] Figures as provided by Tourism Ireland as part of Ministerial review of the pilot programme. See Irish Naturalisation and Immigration Service (March 2012). 'Minister Shatter announces extension of Irish Short-Stay Visa Waiver Programme'. *Press Release*. Available at www.inis.gov.ie.

[208] Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter TD, Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

[209] Irish Naturalisation and Immigration Service (2011). '*The Irish Short-Stay Visa Waiver Programme Information Note'*. Available at www.inis.gov.ie.

highlighted that the Programme 'does not amount to a common UK and Irish visa regime' and that possession of an Irish visa does not allow similar visa-free entry to the UK.[210] Long-term nationals who are long-term legal residents in the UK will require a visa but without a fee stipulation.[211]

A further visa initiative announced during 2012 related to events under '*The Gathering Ireland 2013'*. Attendees with verified invitations from event organisers will be provided with a code to quote on their visa application which will ensure priority processing of a free-of-charge visa application.[212]

3.7.1.4 Visa Security and Cross-Checking

The cross-checking of Irish visa applicant data with the UK immigration fingerprint database has been in operation since June 2012. In addition, the sharing of limited data related to applicants for Irish visas took place with the UK in the latter half of 2012. Between June 2012 and the end of the year, a cross-check of the fingerprints of almost 3,000 applicants for an Irish visa and the UK immigration fingerprint database took place. In a year-end review, the Minister for Justice, Equality and Defence noted that as a result 'numerous incidences of identity swapping' and identification of visa applicants with 'adverse immigration histories in the UK' took place.[213]

In a year-end review of 2012 developments, the Minister for Justice, Equality and Defence stated that he would be 'prioritising cooperation with the UK on initiatives such as a Common Travel Area visa… and systems for improved collection and sharing of visa data' in the coming year.[214]

In 2012 Ireland continued to operate biometric data collection ('e-Visa') as part of the visa application process in Nigeria and indicated its intention to expand this collection system to certain other countries, notably Pakistan. Within the e-Visa system, all visa applicants aged six years and over and who are residing in Nigeria (irrespective of nationality) must present in person to one of the Ireland Visa Application Centres (VAC) in Abuja or Lagos. Nigerian nationals seeking permission to enter at the border in Ireland may have their fingerprints checked against records at Dublin Airport.

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[210] Irish Naturalisation and Immigration Service (2011). '*The Irish Short-Stay Visa Waiver Programme Information Note'*. Available at www.inis.gov.ie.

[211] See Irish Naturalisation and Immigration Service (11 May 2011). 'Alan Shatter TD, Minister for Justice, Equality and Defence announces Ireland's first formal Visa Waiver Programme as an integral part of the Government's Job Initiative'. *Press Release*. Available at www.inis.gov.ie.

[212] Irish Naturalisation and Immigration Service (2 January 2013). 'Shatter Press Release: Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.

[213] *Ibid*.

[214] *Ibid*.

During 2012, an Investigations Unit within the Irish Naturalisation and Immigration Service (INIS) in the Department of Justice and Equality continued to address cases concerning 'free movement' as well as visas.[215]

3.7.2 Schengen Governance

In June 2000 Ireland applied to take part in some aspects of Schengen, namely police and judicial cooperation in criminal matters, the fight against drugs and the Schengen Information System (SIS). The Council adopted a decision approving Ireland's request on 28 February, 2002. It is necessary for Ireland to put new legislative and other measures in place to give effect to the relevant elements of the Schengen *acquis*. It is has been noted by the Department of Justice and Equality that Ireland is actively following up on these activities.

Ireland is participating in the recently-adopted Schengen evaluation mechanism to the same extent that it is participating in Schengen measures.[216]

3.7.3 Border Monitoring

3.7.3.1 Advance Passenger Information

Ireland transposed *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data via the European Communities (Communication of Passenger Data) Regulations 2011* which came into effect in October 2011. The Regulation requires all air carriers on inbound flights from outside the EU to provide passenger data to Irish immigration authorities in order to improve border control and combat irregular immigration.[217] Airlines are required to provide data on passengers as available via machine-readable passports and to transmit this to Irish authorities after check-in is completed in order for checks against 'watchlists' for persons of concern to take place. Data may only be stored for 24 hours or for up to three years in cases of persons of concern or until they cease to be in such a category. By the end of 2012, a trial system was in place to collect data from airlines operating from outside the European Union. The Irish Naturalisation and Immigration Service has stated that, as required, Irish law is now in conformity with *Directive 2004/82/EC*.[218]

During 2012, parliamentary activity took place regarding Ireland's 'opt in' to the Council Decision on the conclusion of the Agreement between the EU and the USA on the use and transfer of Passenger Name Records (PNR) to the US Department of Homeland Security. Ireland exercised its option to adopt the Council Decision in relation to the Agreement under Article 4 of *Protocol 21 to the*

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[215] Department of Justice and Equality (December 2012).
[216] *Ibid*.
[217] Irish Naturalisation and Immigration Service (October 2011). '*Minister Shatter signs new law requiring airlines to provide Advance Passenger Information*'. Available at http://www.inis.gov.ie/ga/JELR/Pages/PR11000206.
[218] Irish Naturalisation and Immigration Service (January 2013).

Treaty on the Functioning of the European Union (TFEU). The exercise of this option is provided for in Article 29.4.7(iii) of the *Constitution of Ireland*, but its exercise is subject to prior approval by both Houses of the Oireachtas. On 8 May 2012, a Motion in relation to the Agreement and the exercise by Ireland of its option, was referred by the Dáil to the Joint Committee on Justice, where it was debated on 16 May. The Seanad approved the Motion that Ireland exercise its option on 23 May 2012, and the Dáil approved the Motion the following day.

3.7.3.2 Civilian Officers at Dublin Airport

During 2012 a pilot project to civilianise certain port of entry functions at Dublin Airport continued, with training provided. Previously, all such functions were undertaken by Immigration Officers as An Garda Síochána. Staff members of the Department of Justice and Equality were assigned to work alongside Gardaí in immigration control duties at Dublin Airport. The pilot was described as taking place in the context of 'reducing Garda numbers, continued commitment to the civilianisation of appropriate tasks, and the need to look afresh at how public services are delivered.'[219]

As of year-end, proposals were being finalised to extend this new model of border control to all of Dublin Airport and possibly to other ports of entry.[220]

3.7.3.3 Refusal of Leave to Land

Some 2,205 persons from outside the EU were refused leave to land at Irish ports during 2012.[221]

In a Parliamentary Question in early 2013, the Minister noted that the main countries of nationality of persons refused permission to land and removed in 2012 were Brazil, South Africa, China, Bolivia, and Albania.[222]

3.7.3.4 EUROSUR

Ireland and the UK are both excluded from the *Regulation of the European Parliament and the Council establishing the European external border surveillance system* (EUROSUR) on the basis that it relates to those aspects of the Schengen *acquis* to which neither country has applied to participate. However, there are proposals to include Ireland and the UK in the data sharing provisions (Article 18). As of year-end, the Regulation was at an advanced stage of the legislative process and Ireland will be responsible for negotiations with the European Parliament (as

[219] Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie

[220] Irish Naturalisation and Immigration Service (2 January 2013). 'Shatter Press Release: Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie. See also Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie which describes a 'full-scale extension' of the pilot.

[221] Irish Naturalisation and Immigration Service (April 2013).

[222] Parliamentary Question No.474 (22 January 2013).

co-legislator in the dossier) during the Irish Presidency of the European Council.[223]

3.7.4 Frontex

During 2012 Ireland continued to participate in activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). The legal base of the Frontex Regulation falls within those provisions of the Schengen *acquis* in which Ireland does not participate and, as such, Ireland is excluded from participating as a full member. Limited cooperation between Frontex and Ireland is provided for via an annual application approved by the Frontex Management Board.

During 2012, Ireland participated in a total of seven joint European return operations organised by Frontex:[224]

- On 7 March 2012, Ireland participated in a Frontex joint return operation in which 21 persons were deported from Ireland to Nigeria under Section 3 of the *Immigration Act 1999*.
- On 18 April 2012, Ireland participated in a Frontex joint return operation in which 12 persons were deported from Ireland to Nigeria under Section 3 of the *Immigration Act 1999*.
- On 27 April 2012, Ireland participated in a Frontex joint return operation in which seven persons were deported from Ireland to Georgia under Section 3 of the *Immigration Act 1999*.
- On 17 May 2012, Ireland participated in a Frontex joint return operation led by the UK in which eight persons were deported from Ireland to Ghana under Section 3 of the *Immigration Act 1999*.
- On 20 June 2012, Ireland participated in a Frontex return operation in which 18 persons were deported from Ireland to Nigeria under Section 3 of the *Immigration Act 1999*.
- On 12/13 September 2012, Ireland participated in a Frontex return operation in which 13 persons were deported from Ireland to Nigeria under Section 3 of the *Immigration Act 1999*.
- On 11 October 2012, Ireland participated in a Frontex return operation in which nine persons were deported from Ireland to Georgia under Section 3 of the *Immigration Act 1999*.
- On 25 October 2012, Ireland participated in a Frontex return operation led by Spain in which 19 persons were deported from Ireland to Pakistan under Section 3 of the *Immigration Act 1999*.

During 2012, Ireland continued to participate in meetings of the Frontex Risk Analysis Network and to provide relevant statistical data on a regular basis. It also

[223] Parliamentary Question No.474 (22 January 2013).
[224] See www.inis.gov.ie for further details.

participated in border guard training in the area of biometrics, common curriculum, false documents and return.[225]

[225] Irish Naturalisation and Immigration Service (January 2013).

Chapter 4

Irregular Migration and Return

4.1 Irregular Migration

4.1.1 Data Sharing with the United Kingdom

The *Annual Policy Report on Migration and Asylum 2011: Ireland* detailed the signing of a Common Travel Area (CTA) accord between Ireland and the UK in 2011. On 20 December 2011, Ireland and the UK signed a joint agreement reinforcing the CTA between both countries and providing a 'platform for greater cooperation on immigration matters'.[226] The statement aims to work towards 'joint standards for entry and ultimately enhanced electronic border systems' with which to identify persons with no legal right to enter the CTA before they arrive at the border. It aims to facilitate legitimate travel within the CTA while preventing abuse of the common area and development of ways to challenge the '*credibility of visa and asylum applications where appropriate*'. It is also envisioned that the joint agreement will facilitate the return of unlawfully entering persons to their country of origin. It is intended that persons without a right to enter the CTA will be identified before they arrive at the border. The Agreement places a focus on visa information exchange between both countries, particularly with regard to 'high risk' countries and to include fingerprint biometrics and other biographical details.[227]

During 2012 cooperation between Ireland and the UK continued regarding maintenance of the CTA, particularly with regard to exchange of information. Several data exchanges took place during the year including cross-checking of Irish visa biometric data with that of the UK's immigration fingerprint data. Since June 2012, the fingerprints of almost 3,000 such applicants have been cross referenced with 'numerous incidences' of 'identity swapping' noted. In addition, applicants were found with prior 'adverse immigration histories' in the UK.[228] Cross-referencing of fingerprints from 1,750 failed asylum seekers with UK immigration records also took place during the year, with 'almost 30 per cent' matched and 'the majority' showing a different identity in UK records. In his end-of-year review, the Minister notes that this activity may assist with processing cases and facilitation of removal where applicable as well as providing extra

[226] Irish Naturalisation and Immigration Service (20 December 2011). 'Ireland-UK Accord to Further Secure the Common Travel Area'. *Press Release*. Available at www.inis.gov.ie.
[227] *Ibid*.
[228] *Ibid*.

support against 'fraudulent activities'.[229] It has been stated that while Ireland continues to engage in informal or ad hoc cooperation with authorities on border management and security, there are no plans to formally cooperate with any other countries at present.[230]

4.1.2 Call for 'Earned' Regularisation Scheme for Undocumented Migrants

Both NGO activity and parliamentary debate regarding the regularisation of undocumented migrants in Ireland continued during 2012. In May, the 'Justice for the Undocumented' campaign, led by the Migrant Rights Centre Ireland (MRCI), presented a petition with 4,000 signatures to the special advisor of the Minister for Justice, Equality and Defence. The related campaign called for the introduction of an 'earned regularisation scheme' which would require those who are undocumented to work over a period of time as well as to pay taxes and meet other criteria prior to being granted temporary or permanent residency. The MRCI called for the consideration of such a regularisation scheme in the context of a further *Immigration, Residence and Protection Bill*. It also noted that three Dublin local councils (Dublin City Council, South Dublin County Council and Fingal County Council) have passed Motions in support of such a scheme.[231]

The MRCI has estimated that there are 30,000 undocumented migrants living in Ireland, many of whom have been in the State for many years.[232]

4.2 RETURN

4.2.1 Readmission Agreements

Ireland began the process of opting into some 11 EU readmission agreements during 2012, namely with Macao, Sri Lanka, Albania, Russia, Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan and Georgia. It is expected that this process will be completed during 2013 following which it will be possible for Ireland to agree implementing protocols with all of the third countries concerned.

4.2.2 Deportation Orders, Transfers and Removal from the State

In 2012, some 302 persons were removed from Ireland by way of deportation orders made under Section 3 of the *Immigration Act 1999*. The main country of nationality of deportation orders effected in 2012 related to Nigeria (85 persons),

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229 Irish Naturalisation and Immigration Service (20 December 2011). 'Ireland-UK Accord to Further Secure the Common Travel Area'. *Press Release*. Available at www.inis.gov.ie.

230 Irish Naturalisation and Immigration Service (January 2013).

231 *The Irish Times* (18 July 2012). 'Migrants petition for regularisation'. Available at www.irishtimes.com.

232 The MRCI has described earned regularisation as an approach of allowing undocumented migrants to 'earn' temporary and/or permanent residency rights over a specified time period, and separate to an amnesty or typical regularisation scheme which is primarily based on time spent either living or employed in a state. See www.mrci.ie for further information.

Pakistan (37 persons), Georgia (27 persons), Somalia (22 persons) and South Africa (19 persons).[233]

A total of 144 positive determinations were made by the Office of the Refugee Applications Commissioner (ORAC) under the Dublin Regulation, and 70 transfer orders were effected.[234]

Some 33 EU nationals were transferred on foot of an EU Removal Order.[235]

4.2.3 Voluntary Return

A total of 449 persons were assisted to return home voluntarily during 2012, with 359 persons in receipt of voluntary return and reintegration assistance from the International Organization for Migration (IOM) office in Dublin and 90 availing of administrative assistance from the Irish Naturalisation and Immigration Service (INIS). The main country of nationality of persons assisted by both INIS and IOM was Brazil (ten persons and 87 persons respectively), Moldova (two persons and 63 persons respectively), China including Hong Kong (six persons and 52 persons respectively), Mauritius (two persons and 28 persons respectively) and Georgia (two persons and 19 persons respectively).[236]

IOM Ireland provided assistance to some 113 persons under the VARRP programme,[237] with 246 vulnerable irregular migrants meeting specific vulnerability criteria availing of assistance under the IVARRP programme[238] to return home and avail of reintegration assistance.

4.2.3.1 International Organization for Migration

During 2012, the IOM mission in Ireland coordinated Irish participation in the Voluntary Return European Network (VREN), a joint IOM-EC initiative which aims to create a Europe-wide network on Voluntary Return policies and practices and the widest possible involvement of all stakeholders dealing with Voluntary Return.

During 2012 IOM Ireland provided assistance to 59 persons to travel to Ireland under family reunification visas. This assistance comprised of IOM's transit visa waiver assistance to allow family members to transit through airports where they would otherwise need a visa; airport assistance at airport of departure/transit/ arrival; and occasional travel documentation assistance e.g. liaison with the

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233 Irish Naturalisation and Immigration Service (April 2013).
234 *Ibid.*
235 Department of Justice and Equality (2013). *Annual Report 2012*. Available a www.justice.ie. Number quoted as 55 in Irish Naturalisation and Immigration Service (2 January 2013). 'Shatter Press Release: Immigration in Ireland - 2012 in Review'. *Press Release*. Available at www.inis.gov.ie.
236 Irish Naturalisation and Immigration Service (April 2013).
237 The Voluntary Assisted Return and Reintegration Programme (VARRP) is eligible for non-EEA nationals pending or failed asylum seekers, who are at any stage of the process prior to a deportation.
238 The IVARRP is open to vulnerable irregular migrants presenting with a range of specific vulnerabilities.

International Committee of the Red Cross/Crescent for the issuance of travel documents.

IOM Ireland also facilitated Irish Government Programme Refugee Resettlement cases incoming into Ireland. In 2012, IOM Ireland assisted 43 refugees from seven different countries of refuge to travel to Ireland for the purposes of resettlement.

IOM Ireland provided assistance with health related services, such as detailed health assessment including medical history, physical examination, clinical investigations and pre-departure treatment or immunizations. Transportation services included facilitating exit permission, immigration formalities and verification of travel documents in the country of refuge as well as Carrier Agreements, reservations, ticketing and baggage allowance, departure and transit assistance en route, including visa waivers as needed. Refugees requiring special medical attention during the journey are accompanied by a medical escort.

4.2.4 Case Law

4.2.4.1 Deportation, Detention and Removal from the State

Khadri v. Governor of Wheatfield Prison [2012] IESC 27 (Supreme Court, 10 May 2012)

This was an application for the release of the applicant on the basis that his detention was unlawful. The applicant argued that the total period of his detention, when counted from 8 February 2012 to 13 April 2012, exceeded the aggregate period of eight weeks permitted by Section 5(6)(a) of the *Immigration Act 1999*.

The applicant was an Algerian national and was the subject of a deportation order but he evaded the implementation of the order. He was arrested and detained on the basis of Section 5 of the *Immigration Act 1999* including that he: failed to comply with a provision of the deportation order; failed to comply with a requirement in a notice sent to him under Section 3(3)(b)(ii); and that he intended to avoid removal from the State. Garda authorities conducted discussions with the Algerian Consulate in London and arrangements were put in place and travel documents issued for his repatriation to Algeria. While he was being transported to the airport he became physically violent and acted in the most extreme manner to resist the efforts of the Garda to remove him. The Garda concluded that it would not be possible to deport him. He was arrested at the airport and brought back to prison. A new notice of detention was completed. The same basis under Section 5 for the detention was used as had been used on the previous occasion. The applicant remained in custody

In the Supreme Court, Fennelly J. held that the 8-week period commencing on 8 February 2012 had not expired on 29 March when the applicant was taken from

Cloverhill prison to be deported, 50 days later. However, he was brought back to Wheatfield prison and detained there, and there was no break in the detention and therefore the period of detention had exceeded the 8-week aggregate period. Fennelly J. said that not only did the provision prohibit detention for any single period of more than eight weeks but it also prohibited multiple detentions of periods of less than eight weeks, where the total period exceeded eight weeks. Fennelly J. held that the Court could not adopt a flexible or purposive interpretation of a provision designed to protect personal liberty, particularly where such an interpretation would not be in accordance with the clear language of the Oireachtas.

Clarke J. held that there were sound policy reasons for imposing a time limit on a form of detention that might, if it could be open-ended, be considered unjust, and possibly unconstitutional. The reason for imposing a time limit on the aggregate amount of detention was to prevent the use of multiple periods to get round the eight week limit. MacMenamin J., in agreement with Fennelly and Clarke JJ., noted that the effect of Section 5(6)(a) was that the applicant benefited from his own wrongdoing and his own violent misconduct prevented his orderly deportation from the State. He held that there were, however, fundamental issues of the right to liberty at stake and the applicant was entitled to rely on a literal interpretation of the provisions. MacMenamin J. also pointed out that the matter was for the legislature to remedy, and clearly, where a deportation can be defeated by unlawful actions by an individual about to be deported, this required legislative intervention.

Jin Liang Li v. Governor of Cloverhill Prison [2012] IEHC 493 (High Court, Hogan J., 28 November 2012)

The applicant was a Chinese national who was living in the State for approximately 13 years, having overstayed his visa entitlements and had been working illegally. The applicant refused to cooperate in obtaining travel documents for him and it later transpired that he had another valid passport unknown to the Irish authorities. He was arrested and as arrangements were being made to take him to the airport and leave the applicant claimed asylum. He was arrested and detained pursuant to Section 9(8)(a) of the *Refugee Act 1996*. He was brought before the District Court which made an order detaining him on the ground he posed a threat to public order.

The High Court held that the power to arrest an asylum applicant under Section 9(8)(a) and detain him or her for up to 21 days is a form of preventive civil detention. Given the constitutional guarantee in Article 40.4.1 the objective necessity for such detention must be compellingly established. The constitutional considerations must inform, and by necessity, delimit these powers to arrest and detain a person. The words ‘public order’ are juxtaposed beside ‘national security’ and this meant that the phrase ‘public order’ must be given its narrower

and more restricted meaning. In that context the reference to public order referred to the threat posed to fundamental state interests by the likely conduct or even, in particularly unusual cases, the very presence of the applicant for asylum in the State.

The applicant's conduct in flouting the immigration regime, by, for example, not cooperating and working illegally was to be deplored but his conduct did not threaten fundamental state interests and there were no compelling State interests which would justify his detention on a preventive basis. The applicant's conduct did not and could not in itself threaten public order in the narrow sense that the Court held the words in Section 9(8)(a) to mean. The Court found that it followed that his arrest and detention on the basis of public orders was unlawful.

4.2.4.2 Deportation Order - Constitutionality and Compatibility with Article 8 of the *European Convention on Human Rights* (ECHR)

Sivsivadze v. Minister for Justice [2012] IEHC (High Court, Kearns P, 21 June 2012)

The first applicant was a Georgian national who had previously been the subject of a deportation order and deported from the State. He had lived in the State unlawfully for a period of ten years using a false identity, and engaged in fraud and deceit. He applied for the revocation of this deportation order on the basis of family life rights in circumstances where his wife and child were lawfully resident in the State. The applicant's wife had been aware of his deceit and fraud and acted in concert with him. He had evaded deportation since 2001 and lived under a false name. He travelled to Iceland using a forged Spanish passport and applied for asylum there in 2002. He was returned to Ireland in 2003 under a Dublin Regulation transfer order. He used another false name after his return to Ireland. Georgian Embassy officials travelled to Ireland several times between 2004 and 2009 in order to establish his identity but he was uncooperative and they were not able to do so. The applicant was deported in 2011. The Minister refused to revoke the deportation order against him.

The applicants argued that Section 3(1) and (11) of the *Immigration Act 1999* were unconstitutional and that the indefinite and potentially lifelong duration of the deportation under Section 3(1) was disproportionate having regard to their family life rights. They also argued that the legislature had failed to set out any principles or policies as to the exercise of the power to revoke deportation orders. They also sought declarations that the provisions were incompatible with the *European Convention on Human Rights* (ECHR).

Kearns P. held that the function of the Court was to evaluate the constitutional arguments by reference to and in the context of the specific facts of the case before it. He stated that this case was ill suited to a constitutional challenge as the deported applicant had never been lawfully in the State and had displayed an egregious lack of candour and mala fides. Any delay in implementing the

deportation order was due to the applicant's own fraud and subterfuge and his wife was complicit in that. The Court held that the delay brought about by his own wrongdoing and breach of immigration laws could not be used to aid his constitutional challenge to Section 3(1). Kearns P stated that the applicants organised their own family life in a manner designed to frustrate the operation of the immigration system and that in those circumstances he did not see how the applicant could argue that the provision under which he had been deported operated disproportionately having regard to his personal history and the real requirement that the State would have the capacity to maintain effective immigration controls. The Court considered that a claim that a deportation order of a particular time duration must, as a matter of constitutional obligation, be hioned for a person in the applicant's position was somewhat unreal. It held that a system which permits the making of an indefinite deportation order only after the most careful scrutiny of the various factors identified by the European Court of Human Rights provides certainty, and under the current system, does not prevent later applications for a revocation of the order where a change of circumstances warrants it, or even where there has been no change of circumstances.

Kearns P. held that the *Immigration Act 1999* contains multiple safeguards for persons to whom the Minister proposes to make a deportation order. The two provisions in Section 3(1) and Section 3(11) should not be artificially isolated from each other and a continuing exclusion under Section 3(1) must always be open to submissions under Section 3(11). The Court found that Section 3(11) was entitled to the presumption of constitutionality and the absence of criteria, standards or goals does not indicate that the Minister may act unconstitutionally. The Minister must determine every application on its merits and within the boundaries of the Act and the ECHR. In relation to the decision refusing to revoke the deportation order the Court was satisfied that the refusal decision was made in accordance with constitutional principles. The Court noted that the applicant was unlawfully in the State at all times and his stay was prolonged by fraud and deception, his wife was also involved in this and both of them knew their situations were precarious at the time they married. In relation to arguments founded on the ECHR the Court said that the duration of the deportation order was not the determining factor in a case such as this, but it was one of a list of factors which must be duly weighed and examined. It found that on the facts of this case it could not conclude that it should make a declaration of incompatibility with the ECHR.

4.2.4.3 Marriage Formalities, Identity and Immigration

Tahir v. Registrar for County Cork [2012] IEHC 191 (High Court, Hedigan J., 16 May 2012)

The applicant claimed to be a national of Somalia and applied for asylum in the State. Her application was refused. A short time later she and the second applicant decided to marry. They were advised of an appointment to meet the Registrar in order to fulfil the necessary requirements for their three-month notification of their intention to marry. The Registrar was informed by the applicant's solicitor that the applicant was a Somali national and would not be able to obtain identity documents. The Registrar informed her that evidence of identity was required under Section 46(7) of the *Civil Registration Act 2004* and an affidavit was not sufficient. She attended again with a number of documents but she was again informed of the requirement that she must submit an identity document such as a passport. Later a Garda from the Garda National Immigration Bureau (GNIB) went to see the Registrar and he informed her that he believed the applicant was not a Somali national. He indicated that her fingerprints matched those of a Tanzanian national with a different name.

The Court held that the central issue in the case was whether the Registrar was entitled to consider that the requirements of Section 46(7) had not been met. Hedigan J. pointed out that the applicant swore an affidavit in which she said that it was not possible to get a passport from the Somali authorities. The applicant argued that the Registrar failed to inform her of the information from the GNIB and to afford her an opportunity to respond and this was a breach of her right to fair procedures. However, Hedigan J. pointed out that the applicant knew of the fingerprint match as it had arisen in her asylum claim and therefore she could not claim that she was denied fair procedures. The Court held that the Registrars' were entitled to refuse to accept the documents in the circumstances and that only the applicant could resolve the doubts about her identity which she herself created by her efforts to deceive.

4.2.4.4 Certificate of Leave to Appeal to the Supreme Court Granted as to the Nature and Extent of the Constitutional Guarantee under Article 40.3 to Defend and Vindicate Personal Rights including to Safeguard the Life and Health of a Person Suffering a Life Threatening Medical Condition

MEO (Nigeria) v. Minister for Justice [2012] IEHC 448 (High Court, Cooke J., 2 November 2012)

The applicant was illegally in the State. She suffered serious health difficulties including HIV infection for which she relied on anti-retroviral treatment but her condition was not critical nor was she in imminent danger of serious deterioration of her health. She also had other health difficulties including

cognitive impairment, peripheral neuropathy ad ocular complications. In its judgment in the substantive proceedings[239] the Court had held that the reliance placed upon the protection of Article 40.3.2 of the *Constitution of Ireland* in the particular circumstances of the applicant was unfounded. It held that the protection afforded by the Constitution did not impose any positive obligation on the State to provide or continue to provide any particular type of medical treatment because any harm that might befall an individual in the applicant's position was the natural consequence of her condition of ill health and not an 'unjust attack' within the meaning of Article 40.3.2. The Court also held that if such was the position in respect of citizens in Article 40.3.2, it must necessarily also be the case when the provision is sought to be invoked by a non-citizen such as the applicant.

In light, however, of the inherent importance of the decisions taken for the individuals concerned, such as the applicant, and the absence of definitive authority on the point of law in the State, the Court was satisfied that the threshold for the grant of a certificate for permission to appeal to the Supreme Court was met.

The important point of law on which it was desirable that clarification be obtained was:

> *Does the guarantee of the State under Article 40.3 of the Constitution to defend and vindicate the personal rights of the citizen and particularly its duty under paragraph 2 of that Article to 'protect from unjust attack and to vindicate in the case of injustice done the life and person of an individual,' impose upon the State a positive duty to safeguard an individual from the consequences of a life threatening medical condition and a duty to refrain from acts which would interrupt or terminate medical treatment currently made available by the State which prevents the condition deteriorating to a critical state?*
>
> *If the obligation of the State under the Article does so extend, is it also applicable to a non-citizen of the State or of the EU who is present in the State without lawful permission?*

The Court was not satisfied that the threshold for the grant of a certificate for leave to appeal was met in relation to the proposed point(s) of law directed at Article 8 of the *European Convention on Human Rights* (ECHR). The Court found that, in relation to Article 8, the Minister's decision was made on the specific facts of the applicant's case and no point of law of importance arose which transcended the circumstances of the case, such as might warrant the grant of leave to appeal.

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[239] *MEO (Nigeria) v. Minister for Justice [2012] IEHC 394 (High Court, Cooke J., 5 September 2012).*

4.2.4.5 Deportation Orders and Injunctions Preventing Deportation

Okunade v. Minister for Justice [2012] IESC 49 (Supreme Court 16 October 2012)

The applicants were Nigerian nationals whose asylum claims had been refused and who had made applications for subsidiary protection in the State and also applied to the Minister for permission to remain in the State for humanitarian reasons ('leave to remain'). The minor applicant was four years of age and was born in Ireland. He was not an Irish citizen. Their applications were refused and the Minister made deportation orders in respect of them. They challenged these decisions and, in the interim, when no undertaking was given by the Minister not to deport them pending the hearing of the proceedings, they applied for an interlocutory injunction to restrain their deportation pending the trial of the action. This was refused by the High Court. They appealed the refusal to grant the injunction to the Supreme Court.

By the time the appeal came before the Supreme Court the issue had become moot but because the issue arose in a significant number of cases the Supreme Court heard the appeal on the basis of it being in the nature of a test case.

The Supreme Court considered the criteria which should be applied to the granting of injunctions generally, and the immigration field in particular, and whether the criteria to be applied were the same as in private law proceedings or whether there were some different criteria to be applied in the public law field.

The Court (Clarke J. speaking for a unanimous Court) considered the proper test for the granting of a stay or an injunction which has the effect of preventing an otherwise valid measure or order from having effect pending trial, while the court is also attempting to determine a regime which is necessary to properly protect the interests of all parties pending the full trial. Clarke J. considered that the underlying principle must be that the court should put in place a regime which minimises the overall risk of injustice and that underlying principle remains the same whether or not the court is considering whether to place a stay on a measure or to grant an injunction. The court must act in all cases so as to minimise the risk of injustice and that same underlying principle applied in any application in the context of judicial review.

The Court held that, as an overall test, a court should apply the following considerations in considering whether to grant a stay or an interlocutory injunction in judicial review proceedings:

- Whether the applicant has established an arguable case; if not, the application must be refused, if so, then:
- The court should consider where the greatest risk of injustice would lie; in doing so the court should:
    - Give all appropriate weight to the orderly implementation of measure (eg deportation orders) which are prima facie valid;

  - Give such weight as may be appropriate to any public interest in the orderly application of the particular scheme under which the measure under challenge was made; and
  - Give appropriate weight to any additional factors arising on the facts of the individual case which would heighten the risk to the public interest of the specific measure under challenge not being implemented pending the resolution of the proceedings;
  - Give all due weight to the consequence for the applicant of being required to comply with the measure under challenge in circumstances where it may be found to be unlawful
- The court should also, in the limited cases where it is relevant, have regard to whether damages are an adequate remedy, and also whether damages could be an adequate remedy arising from an undertaking as to damages;
- The court can also, and subject to the issues arising in the judicial review not involving detailed investigation of facts or complex issues of law, place all due weight on the strength or weakness of the applicant's case.

The Court first made general observations in relation to the application of those principles to immigration cases generally. It stated that given that the entitlement of a country to exercise a significant measure of control, within the law, of its borders was an important aspect of public interest of any state. Therefore, a significant weight needed to be attached to the implementation of decisions made in the immigration process which are prima facie valid and a high weight should be placed on the need to respect orders and decisions in the immigration process unless and until they are found to be unlawful. However, the Court considered that it was also clear that a person who asserts an entitlement to remain in the State or to have consideration given to their being allowed to remain in the State in circumstances where they argue that the consideration previously given was not in accordance with law, will suffer some injustice if the person were to be removed from the State pending the result of the challenge to the legality of the decision to deport them, but where the court ultimately found in their favour. The possible injustice to an applicant is a factor which must also be given weight, independent of any additional consequences which may be said to flow from deportation on the facts of an individual case.

However, in the absence of any additional factors on either side, the Court considered that, if faced simply with an assertion by the Minister that he wishes to enforce a deportation order, pending a finding that it is or is not invalid, and an assertion by an applicant that they do not wish to risk deportation only to be readmitted if the proceedings are successful, then the position of the Minister would win out. Therefore, the default position was that an applicant will not be entitled to a stay or an injunction. However, it may be, the Court found, that on the facts on any individual case, there are further factors that can properly be taken into account on either side. Such factors could include for example, on the

Minister's side, a serious risk of criminality of an applicant, or on the applicant's side the practical consequences of being deported pending conclusion of the judicial review process such as the conditions in the country to which they are to be deported. It may be that the presence of an applicant is necessary for the hearing of the judicial review proceedings and where an applicant would suffer material prejudice in the presentation of their case at trial, great weight would need to be given to that fact.

The Court also found that if an applicant could demonstrate that a deportation, even on a temporary basis, would cause more than the ordinary disruption in being removed from a country, such as a particular risk to the individual or a specific risk of irremediable damage, then such facts, if they were sufficiently weighty, could readily tilt the balance in favour of the injunction or a stay. Where, as is frequently the case, an applicant has had the facts underlying their claim to face such a risk analysed by a series of administrative bodies, the High Court was in a much better position to form a judgment as to whether there is a real risk of serious harm should a deportation order be implemented. The Court considered that where, on an arguable basis, the High Court was faced with a situation where there was a credible basis for suggesting a real risk of significant harm to the applicant if they were to be deported, and it would require very weighty considerations indeed to displace the balance of justice on the facts of that case.

The Court also held that in the context of deciding what is to happen on a temporary basis pending trial a disruption of family life which has been established in Ireland for a significant period of time is a material consideration. It had, the Court considered, to be taken into account that part of the problem giving rise to the risk of disruption of family life stems from the highly complicated structure of the statutory regime in respect of applications for asylum, subsidiary protection and permission to remain in the State on other grounds, with the consequent prolongation of the process. That is a factor in the State's control and often leads to situations where parties, especially children have put down roots. Clarke J. held that all due weight needed to be attached to the undesirability of disrupting family life involving children, where after a successful judicial review or any other process, the children might be allowed to remain in or return to Ireland.

The Court emphasised that there was a distinction between the considerations appropriate where the court is deciding on whether or not to grant a stay or an injunction, or deciding on the substantive rights of the parties. At the stage of deciding on whether to grant a stay or an injunction, the court has to decide on where the least risk of injustice lies, in formulating a temporary measure which will apply until the determination of the substantive legal rights. The weight to be attached to any such difficulties will necessarily depend on the facts of the case and such difficulties are not necessarily decisive, but are one factor to be taken into account. Finally, the Court held that the strength of the case can be taken

into account provided that the assessment of the strength of the case does not involve analysing disputed facts or dealing with complex issues of law.

On the facts of the case before it, the Court held that the question was whether there was any sufficient countervailing factor to alter the default position that the deportation order should be implemented. The Court found that even without a serious risk of harm, deportation albeit on a possibly temporary basis is not compensable in damages, and it was necessary to consider the balance of justice. As the minor applicant was a four year old child who had resided in the State and who knew no country other than Ireland, the Court considered that the disruption to family life was sufficient to tilt the balance of justice in favour of the grant of the injunction.

4.2.4.6 Whether the Minister Must Consider the Issue of *Refoulement* and Sign a Deportation Order Personally

Afolabi v. Minister for Justice [2012] IEHC 192 (High Court, Cooke J., 17 May 2012)

The applicants were a mother and three children from Nigeria. They had applied for and been refused refugee status and their applications for subsidiary protection were likewise refused. Deportation orders were made in respect of them. They sought to challenge the subsidiary protection decisions and the deportation orders on a number of grounds including that the Minister had not personally considered whether or not they should not be subject to *refoulement* pursuant to Section 5 of the *Refugee Act 1996* and also that he had not signed the deportation order personally.

In relation to those specific points Cooke J. held that the question of law as to whether the Minister must sign deportation orders personally was under appeal to the Supreme Court. As for the question on *refoulement* and whether the Minister had to consider this issue personally, the Court noted that the applicants relied on the comments of Murray C.J. in *Meadows v. Minister for Justice* where he stated that at the deportation stage it remained for the Minister alone, in light of all the material before him, to form an opinion on *non-refoulement*. The Court held that while the comments of Murray C.J. did not exclude the application of the principle that the Minister may act through his officials (known as the 'Carltona Principle'), the issue had not been definitively decided. It was clearly of considerable importance, particularly in light of the change of practice in the Minister's department to delegate to officials entirely: the functions of analysis and assessment; the formulations of the recommendations in the examination of file note; the approval of deportation and the formal signing and sealing of the deportation order. Having regard to the emphasis of Murray C.J. that it was for the Minister alone to form an opinion in relation to *refoulement* required under Section 5 of the *Refugee Act 1996*, the Court granted leave to apply for judicial review of the deportation orders, on the ground that they were invalid by reason

of the fact that the Minister had not personally considered whether the State's *non-refoulement* obligations would be breached by the deportation of the applicants.

Chapter 5

International Protection Including Asylum

Unlike other Member States, Ireland has a two-stage international protection process.

- An applicant for international protection is permitted to remain in the State under the *Refugee Act 1996*, and has their asylum claim investigated by the Refugee Applications Commissioner and, on appeal, the Refugee Appeals Tribunal, who make recommendations in respect of asylum to the Minister for Justice and Equality.
- Where an applicant is unsuccessful in respect of asylum, his permission to be in the State comes to an end, and he is made the subject of a proposal to deport under the *Immigration Act 1999*.
- In this context, the applicant can make representations regarding why they should not be deported, and may also apply for subsidiary protection under *The European Communities (Eligibility for Protection) Regulations 2006) (S.I. 518 of 2006).*

5.1 Common European Asylum System

5.1.1 International Protection Statistics

There was a continued decrease in applications for asylum in Ireland, with 956 applications for refugee status (940 new applications and 16 reapplications received) during 2012, a 25.9 per cent reduction on 2011 comparable figures. Of the overall 956 applications received by the Office of the Refugee Applications Commissioner (ORAC) during 2012, the majority related to nationals of Nigeria (162 applications, representing 16.9 per cent of all applications), followed by nationals of Pakistan (105 applications, representing 11 per cent of all applications), Democratic Republic of Congo (58 applications, representing 6.1 per cent of all applications), Zimbabwe (49 applications, representing 5.1 per cent of all applications) and Albania (46 applications, representing 4.8 per cent of all applications). Of the 1,198 cases processed to completion by ORAC during 2012, there were 67 positive recommendations, 700 negative recommendations following interview, 287 other negative/withdrawn recommendations and 144 determinations under the Dublin Convention/Regulation. At the end of December 2012, some 219 cases were awaiting processing, with 11 on hand for over six months. A total of 3.6 per cent were processed under the *Ministerial Prioritisation Directive* and completed with a median processing time of 20

working days from the date of application. The remainder of cases were processed to completion in a median time of 9.1 weeks (from date of application to date of recommendation). Regarding transfers under Eurodac, 714 fingerprints were sent for verification with 15 per cent resulting in a 'hit'.[240]

The cross-matching of asylum and visa applications has taken place and during 2012 ORAC used the Automated Visa Application and Tracking System (AVATS) of INIS to detect applications for asylum where the applicant had withheld information about an Irish visa.

Some 686 appeals were received by the Refugee Appeals Tribunal during 2012, with 691 decisions issued and 55 withdrawn. Of the appeals received, some 451 related to those under the substantive 15-day process, 190 under the accelerated appeals process and 45 related to the Dublin Regulation. A total of 746 appeals were completed during 2012. A total of 494 cases under the substantive 15-day process were completed, with 45 decisions set aside, 401 reaffirmed and 48 cases considered withdrawn.[241] A total of 205 cases were completed under the accelerated appeals process, with no decisions set aside. No cases were considered withdrawn. A total of 40 cases were completed with regard to the Dublin Regulation, of which two decisions were overturned, 38 were reaffirmed and no case was considered abandoned.[242] The median processing times for asylum applications to the Refugee Appeals Tribunal were 19 weeks for oral hearings under substantive 15-Day Appeals and seven weeks for paper accelerated appeals.[243]

A total of 511 applications for subsidiary protection were received during 2012, with the main countries of nationality of persons applying including Nigeria (66 applications), Pakistan (53 applications), the Democratic Republic of the Congo (42 applications), Zimbabwe (34 applications) and Afghanistan (30 applications).[244] 35 applications for subsidiary protection were granted during the year.[245]

5.1.2 Administrative, Legislative and Operational Developments

5.1.2.1 Restoration of an *Immigration, Residence and Protection Bill*

Activity on progressing an *immigration, residence and protection Bill* continued during 2012. In early 2012 the Minister for Justice, Equality and Defence stated that it was his intention to progress the *Immigration, Residence and Protection Bill 2010* and

[240] Office of the Refugee Applications Commissioner (2013b). *Annual Report 2012.* Available at www.orac.ie.
[241] Refugee Appeals Tribunal (2013). *Annual Report 2012.* Available at www.refappeal.ie.
[242] *Ibid*.
[243] Department of Justice and Equality (April 2013).
[244] Irish Naturalisation and Immigration Service (April 2013).
[245] Department of Justice and Equality (2013). *Annual Report 2012.* Available at www.justice.ie.

> *following development of key Government amendments, to return to the Oireachtas with this comprehensive legislative centrepiece of a wider programme of reform, in line with the Programme for Government.*[246]

On 23 May 2012, the Minister outlined plans to frame a new Bill to the Oireachtas Committee on Justice, Defence and Equality. He note over 300 amendments to the existing Bill would need to be incorporated; that a delay in finalising amendments and producing amendments had arisen due to other timeframe obligations within the EU-IMF context; and that he did not anticipate the new Bill being enacted before 2013. He added that the benefit of a new Bill

> *…is that many of the issues that members would like to see addressed properly and that were not addressed adequately in the previous measure would now be addressed, facilitating a speedy enactment. It will only be then that we will be able to come to terms with the length of time that people are being held in the process and the fragmented nature of the structure.*[247]

Work on the Bill continued during 2012,[248] on that basis, while also taking account of any intervening matters of relevance such as decisions by the Courts.[249] In the Department of Justice and Equality *Annual Report 2012*, it was noted that 'preparations for elements of reform included in the Bill such as the introduction of a single procedure for protection applicants continued throughout the year and will be implemented on the enactment of the requisite legislation.'[250]

5.1.2.2 Direct Provision

At the end of 2012, some 4,841 persons were in direct provision accommodation under contract to the Reception and Integration Agency (RIA), a decrease of 11 per cent on year-end 2011 and the 'fourth straight decline in a row'[251] The number of contracted centres fell from 39 to 35 over the course of the year, representing a decline in bed numbers of 526 or 9 per cent of contracted capacity.[252]

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246 Irish Naturalisation and Immigration Service (January 2012). 'Immigration in Ireland 2011 - a year-end snapshot - major changes and more to follow. Minister Shatter outlines plans for 2012'. *Press Release*. Available at www.inis.gov.ie.

247 Oireachtas Committee on Justice, Defence and Equality (23 March 2012). Vote 24 - Department of Justice and Equality. Available at www. http://debates.oireachtas.ie/JUS/2012/05/23/00005.asp.

248 And continued as of April 2013.

249 Parliamentary Question No. 484 (23 April 2013). In April 2013, the Minister stated that it remained his 'objective under this new approach, and mindful of our having to deal with the competing legislative demands of our EU/IMF/ECB Programme commitments, to be in a position to bring a revised Bill to Government for approval and publication later this year.'

250 Department of Justice and Equality (2013). *Annual Report 2012.* Available at www.justice.ie.

251 Reception and Integration Agency (2013). *Annual Report 2012*. Available at www.ria.gov.ie.

252 Department of Justice and Equality (2013). *Annual Report 2012.* Available at www.justice.ie.

A total of €62.3 million was spent on the direct provision system in 2012, a reduction of 10 per cent from 2011, attributable to closures as well as reduced contract rates, capacity numbers and energy/operating costs in State-owned facilities.[253] At year-end 2012, the average length of stay in RIA accommodation was 45 months, with 59.3 per cent of residents in direct provision for over three years. Some 8.8 per cent of this figure was resident for over seven years.[254]

During 2012 the system of direct provision accommodation continued to prompt much media and parliamentary debate.

The closure of several direct provision accommodation centres continued to attract widespread attention during the year, and it was noted in the latter half of 2012 that RIA had reduced its portfolio of accommodation from 60 centres in 2009 to 37 as of late summer 2012. Criticism of the closure of the largest direct provision centre in the West of Ireland, Lisbrook House in Galway, related to the alleged short notice provided to residents and its timing around the beginning of a new school year for children living there.[255]

A report by the Irish Refugee Council, *'State Sanctioned Child Poverty and Exclusion'*[256] looked at children in state accommodation for asylum seekers and called for the establishment of an independent inquiry to 'acknowledge and investigate the long list of complaints, grievances and child protection concerns' reported. It found that Direct Provision accommodation was 'not conducive to positive development in children', that there was a need for adequate space for families and for children to play in, and that parents were often unable to care for or govern the 'rules and customs of their family'. Difficulties in preparing food, as well as overcrowding and inappropriate sleeping provisions and lack of shared sanitary facilities were highlighted, as were difficulties experienced by children in fully participating in school and other community activities. In addition, the report cited a 2012 report by the Special Rapporteur for Children, Geoffrey Shannon in which he highlighted the 'real risk' of child abuse in Direct Provision centres. The report contains 13 recommendations including a call for asylum seekers in Ireland for over 12 months to be allowed to work.

In response to a parliamentary question on the report, the Minister for Justice, Equality and Defence stated that while some of the recommendations contained in the report were at odds with government policy, such as the right to work, others had been, and would be, addressed. It was noted that 'RIA will continue to seek over time to increase the percentage of families having access to non-shared bathroom/toilet facilities'. Regarding the issue of the lengthy time spent by some residents in the Direct Provision system, the Minister stated:

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253 Reception and Integration Agency (2013). *Annual Report 2012*. Available at www.ria.gov.ie.
254 *Ibid*.
255 *The Irish Times* (11 September 2012). 'Anti-racism body in appeal over closure'. Available at www.irishtimes.com.
256 Arnold, S. (2012). *State Sanctioned Child Poverty and Exclusion*. Available at www.irishrefugeecouncil.ie.

> *I have taken steps to speed up the processing of applications, primarily by redeploying staff from the refugee determination bodies. The Immigration, Residence and Protection Bill, 2010 which I intend to republish in the near future provides for the introduction of a single procedure to determine applications for protection and other reasons to remain in the State. This should substantially simplify and streamline the existing arrangements.*[257]

The issue of direct provision accommodation had been raised in both the lower and upper houses as a result of the IRC report, and in debate in the Seanad on 20 September 2012, the Minister of State at the Department of the Environment, Community and Local Government stated that 'the Minister has directed that it be comprehensively examined and any issues arising addressed. In particular, he has directed that issues relating to child welfare be dealt with without delay.'[258]

5.1.2.3 Legal Assistance and Challenges

The *Annual Report 2012* of the Courts Service showed that there were 440 asylum-related applications for judicial review in the High Court during the year, showing a 37 per cent decrease on 2011 figures. Some 44 per cent of all judicial review applications concerned asylum-related cases, largely to seek an order to quash the decision of a determining body or an injunction restraining the Minister from effecting a deportation. Waiting time for asylum and pre-leave applications was 33 months. The Supreme Court also saw an increase in judicial review of asylum matters.[259]

The Refugee Legal Service (RLS) is a specialised office established by the Legal Aid Board to provide services to persons applying for asylum in Ireland, as well as certain advice related to immigration and deportation matters. Advice is also provided to victims of trafficking. During 2012, there were 725 new applications to the Board for asylum-related matters, compared with 979 in 2011.[260]

5.1.3 Ireland's Participation in the Recast *Qualification Directive*

During 2012, parliamentary debate regarding Ireland's decision with regard to an 'opt in' to the Recast *Qualification Directive* took place. Ireland took part in *Directive 2004/83/EC* (known as the '*Qualification Directive*') of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection. During the 2012 discussion, the Minister for Justice, Equality and Defence noted that as the legal basis for the Recast Directive, *Council Directive 2011/95/EU of 13 December 2011, on standards for the qualification of third-country nationals or stateless persons as*

[257] Parliamentary Question Nos. 522, 523 (23 October 2012).
[258] Seanad Éireann (20 September 2012).
[259] Courts Service (2013). *Annual Report 2012*. Available at www.courts.ie.
[260] Minister for Justice, Equality and Defence as quoted in Parliamentary Question (8 May 2013).

beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, is Article 78 of the Treaty on the Functioning of the European Union (TFEU) and thus the provisions of the *Protocol on the position of Ireland and the United Kingdom in respect of the Area of Freedom, Security and Justice, annexed to the Treaty of the European Union* (TEU) and the Treaty on the Functioning of the European Union (TFEU) apply. He noted that in 'accordance with Articles 1, 2 and Article 4(a)(1) of the Protocol, Ireland did not participate in the adoption of the Directive and is not bound by it or subject to its application. This is without prejudice to Article 4 of the Protocol under which Ireland may at any time after the adoption of a measure by the Council notify its intention to the Council and to the Commission that it wishes to accept (opt-in to) the measure.'[261]

5.1.4 European Database of Asylum Law

The Irish Refugee Council (IRC) continued to act as lead partner with regard to implementation of the European Database of Asylum Law (EDAL), an online database of case law from EU Member States relevant to the interpretation of European asylum law.[262] The EDAL has been developed by the IRC in conjunction with the European Council on Refugees and Exiles (ECRE), and is financed by the European Refugee Fund (ERF). The first phase of funding ran for 18 months up until March 2012, at which point almost 500 case summaries from 11 EU countries (Belgium, Czech Republic, Germany, Finland, France, Hungary, Ireland, the Netherlands, Spain, Sweden and the United Kingdom) had been commissioned and hosted on the site.[263] The database contains a variety of supplementary resources such as copies of relevant legislation, country overviews and other resources relevant to the case summaries hosted. The second phase began in September 2012 (until February 2014) and will see the database expanded to cover an additional six EU countries (Austria, Greece, Italy, Poland, Slovakia and Slovenia), to broaden its focus to cover all aspects of the Common European Asylum System, and to include both European Court of Justice and European Court of Human Rights decisions in the database. In addition, the Hungarian Helsinki Committee has joined ECRE and the IRC as an implementing partner and in particular they will manage the administration of the six most easterly EU countries. Two international conferences will also take place under this second phase.[264]

[261] Parliamentary Question (22 February 2012).
[262] www.asylumlawdatabase.eu.
[263] The summaries are available in the original language of each decision and in English. In addition, the full text of the original decision is made available (where possible). See the Irish Refugee Council (2013). *Annual Report 2012.* Available at www.irishrefugeecouncil.ie.
[264] Irish Refugee Council (2013). *Annual Report 2012.* Available at www.irishrefugeecouncil.ie.

5.1.5 Research

In a report looking at the assessment of asylum claims in Ireland, the Irish Refugee Council made a number of recommendations regarding the asylum determining process in Ireland. The *Difficult to Believe* report analysed 86 files from individuals who had claimed asylum in Ireland and had a full, 'active' file in either 2011 or 2012 and represented 31 nationalities. A 'culture of disbelief' is claimed, with the author stating that it is difficult to reach 'any conclusion other than that a culture of disbelief does indeed exist in the Refugee Status Determination procedure in Ireland.' Five main conclusions with regard to the asylum determining process are identified, namely that the system places applicants at a disadvantage in that it requires the facts of their claim to be first established via an unfamiliar system and one which takes place via a questionnaire and interview at first instance; that there is a misapplication of the burden of proof and that the standard of proof applied is too high at both first and second instance levels; that there is often a particular focus on one aspect of the case which can be 'peripheral' to the actual asylum claim or risk of persecution, and can lead to an overall negative credibility assessment; that there can be an overreliance on documentary evidence and an 'inability or unwillingness' to see oral testimony as evidence in itself; and that there is a 'lack of fairness and transparency' in the Refugee Appeals Tribunal in particular. The report also notes that decision-makers are often unable to 'accept any explanation for conduct or behaviour which appears contrary to their expectation of norms'. Particular supports for survivors of torture and other trauma is called for, and the provision of early legal advice is recommended. A call for the publication of redacted decisions by the Refugee Appeals Tribunal is also made, alongside public hearings to become 'a norm' except in the case of a minor applicant or in other instances.

5.2 European Asylum Support Office

Ireland continued participation and involvement with the European Asylum Support Office (EASO) during 2012.

The Refugee Applications Commissioner is Ireland's member on the EASO management Board and participated in four meetings of the Board during the year.

Officials of the Office of the Refugee Applications Commissioner (ORAC) participated in a number of training modules on the European Asylum Curriculum (EAC). Ireland deployed a national expert to provide a 'Train the Trainers' training for the European Asylum Curriculum (EAC) *Interviewing Children Module* in June 2012. In November 2012, an ORAC trainer completed the EAC train the trainer

module on the Dublin Regulation[265] which provides a comprehensive study of the Dublin system. A number of ORAC staff members completed the EAC training module on Country of Origin Information during 2012. In November 2012, ORAC participated in an EASO conference on Afghanistan, 'Country of Origin Information and Beyond'.[266]

In addition, Ireland has incorporated EASO training materials into the Refugee Status Determination (RSD) training modules within the ORAC office.[267]

ORAC has stated that it is also taking part in the EASO initiative on Quality Assurance. This exercise will encompass a review of quality-related initiatives and projects in EU Member States since 2004, particular quality mechanisms in place, as well as a mapping of the ways in which asylum systems function in everyday practice.[268]

5.3 Intra-EU Solidarity including Relocation

During 2012, some ten persons (representing three family groupings) were relocated from Malta to Ireland. This was undertaken as a 'gesture of support' to the Maltese Government.[269]

5.4 Cooperation With Third Countries Including Resettlement

Ireland joined the UNHCR-led resettlement scheme in 1998 and some 1,043 vulnerable persons were resettled as 'programme refugees' between 2000 and 2012.[270] During 2012, 39 persons arrived in Ireland for resettlement purposes, comprising of five persons of Iranian Kurdish nationality, five persons of Egyptian nationality, one person of Eritrean nationality, three persons of Ethiopian nationality, four persons of Liberian nationality, one person of Congolese nationality and 20 persons from the Democratic Republic of Congo.[271]

5.5 Case Law

5.5.1 Membership of a Particular Social Group Based on Sexual Orientation - Homosexuality / Failure to Claim International Protection Earlier Does Not Disbar a Person Who Otherwise May Have a Valid Entitlement to International Protection

SA (Algeria) v. Refugee Appeals Tribunal [2012] IEHC 78 (High Court, Hogan J., 24 January 2012)

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[265] *Council Regulation (EC) No 343 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.*

[266] Office of the Refugee Applications Commissioner (January 2013b).

[267] *Ibid*.

[268] *Ibid*.

[269] Office for the Promotion of Migrant Integration (OPMI) (January 2013).

[270] *Ibid*. Available at www.integration.ie.

[271] Office for the Promotion of Migrant Integration (OPMI) (January 2013). See Section 4.2.3.1 for IOM involvement.

The applicant was an Algerian national and homosexual. He claimed refugee status on the basis of a well-founded fear of persecution for the Refugee Convention reason of membership of a particular social group based on sexual orientation. He was refused by the Refugee Appeals Tribunal inter alia on the basis that he had not suffered any specific act of persecution or serious ill-treatment between 1996 and 2006 when he came to Ireland and the Tribunal was of the view that a person must be seriously ill-treated in their own country in order to come within the refugee definition. The Tribunal referred to country of origin information that homosexuality was a taboo subject in Algeria and that because of the shame associated with it few individuals openly revealed their sexual orientation, and also that homosexuals may suffer harassment from the security forces and society in general. He found that while homosexuals in Algeria are discriminated against and harassed he was not satisfied that the extent of any harassment and discrimination that the applicant experienced amounted to persecution. The applicant's claim was also rejected because he had not claimed asylum in France and Spain in which he had been for a two month period in 2003.

The Court held that the Tribunal appeared to have broadly accepted the applicant's narrative, but that the Tribunal's conclusion amounted to a finding that the applicant would come to no harm if he were to adopt a discreet lifestyle and not flaunt his homosexuality. It found that it was a fallacy to suggest that international protection will be available only where the applicant has actually suffered persecution in the past and the Geneva Convention protects those who can show they have a well-founded fear of persecution. The test, therefore, was essentially forward looking. The question was whether there was a well-founded fear that persecution may occur if the claimant was returned to his country of origin. Secondly, homosexuals form part of a social group for the purpose of the Refugee Convention, and sexual orientation is an intrinsic and immutable feature of human identity. Hogan J. held that a homosexual cannot, therefore, be expected to sublimate or conceal their very identity in order to escape persecution by the state or societal forces condoned by the state, and he referred in this respect to the UK Supreme Court decision in *HJ (Iran) v. Home Secretary.*[272]

Noting the definition of persecution in Article 9(1)(a) of the *Qualification Directive,*[273] the Court held that the fundamental question was whether the applicant was likely to have to endure a severe violation of his basic human rights if he is returned to Algeria in the sense contemplated by Article 9, in circumstances where it was unlikely that his homosexual orientation will be concealed. The Court held that there were substantial grounds for stating that the Tribunal had erred in law by failing to ask the correct questions which were how the applicant was likely to be treated if he were returned to Algeria, and whether such treatment would amount to persecution i.e. would he be likely to

[272] *HJ (Iran) v. Home Secretary [2010] UKSC 31*.
[273] *Council Directive 2004/83/EC*.

suffer significant and severe violations of his human rights? Hogan J. held that for an administrative tribunal to ask itself the wrong question was a jurisdictional error. In relation to the Tribunal's finding that the applicant could have claimed refugee status in either Spain or France, the Court held that this did not necessarily dispose of a case such as this. A failure to claim asylum at the first opportunity normally goes to the overall credibility of an applicant and may indicate a claim is not genuine. This case raised the difficult question as to whether a claimant who might otherwise have a valid entitlement to international protection may be disbarred simply by reason of his failure to claim asylum at an earlier opportunity in a different country. There was no suggestion here that the applicant was not generally credible and he distinguished *E v. Refugee Appeals Tribunal*[274] on that basis.[275] He held that there were also substantial grounds on this basis to challenge the Tribunal's decision.

5.5.2 Requirement to Conduct a Forward Looking Assessment of Risk of Persecution

MLTT (Cameroon) v. Minister for Justice and Refugee Appeals Tribunal [2012] IEHC 568 (High Court, Clark J., 27 June 2012)

The applicant was a national of Cameroon and claimed refugee status on the basis of a well-founded fear of persecution arising out of his involvement as a student in political demonstrations which were suppressed by the authorities and several students had been killed, others arrested and female students raped. The applicant claimed he was arrested and detained in very poor conditions and frequently beaten. He was released having agreed to cease his involvement in student politics. For over a year he had no difficulties but after he again became involved in organising a student march he was warned that he was in danger of imminent arrest and received death threats. The Tribunal appeared to accept that he was a student, that the human rights situation in Cameroon was far from satisfactory and that the government did not tolerate anti-government activities especially by students. The Tribunal made no comment on the previous negative credibility findings and accepted at face value the new documents produced at the appeal which included a medico-legal report and (what seemed in the opinion of the Court to be) a very detailed and genuine looking hospital record of medical treatment following his release from custody in 2005. The Tribunal accepted the medico-legal report and considered whether the previous detention and ill-treatment in custody could amount to persecution. He found that such ill-treatment did not amount to persecution. The Tribunal made two credibility findings against the applicant as to the source of the information warning him about his imminent arrest and that he was targeted again after 18 months without problems.

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[274] *[2011] IEHC 149* (High Court, Smyth J., 30 March 2011).

[275] See Joyce, C (2012). *Annual Policy Report on Migration and Asylum 2011: Ireland*.

The Court held that the issue was that, on the basis that the Tribunal accepted that the applicant was a student from Cameroon, he should have considered whether there was any risk of persecution to him on his return. Clark J. held that it was well established as a matter of international law and domestic refugee law that the test for determining whether a person is a refugee is forward looking. The Court held that the principle that the decision-maker may look to the past as a guide to what is likely to occur in the future but the past is not determinative was consistently accepted and applied. She held that in circumstances where the applicant's core claim to have been a student activist in Cameroon appeared to have been accepted the Tribunal was bound to give consideration to and ought to have gone on to ask himself whether the applicant has a well-founded fear of persecution if returned to Cameroon, in the light of the accepted past experiences and to objective country information relating to previously arrested students there. The Court found there were substantial grounds that the Tribunal erred in law in failing to apply a forward looking test when assessing whether the applicant had a well-founded fear of persecution.

5.5.3 Membership of a Particular Social Group - Gender / Women

CB (DR Congo) v. Refugee Appeals Tribunal [2012] IEHC 487 (High Court, Clark J., 26 June 2012)

The applicant was a national of the Democratic Republic of Congo (DR Congo). She claimed that she came from South Kivu province in eastern DR Congo and that she had suffered arrest, detention, beating and rape because of her activities in organising a small informal group whose purpose was to educate people about rape and warn against the activities of the RDC militia and Rwandan troops in occupation in the eastern DR Congo. She stated that after she escaped detention she fled to Rwanda and ultimately to Ireland. When she applied for asylum in Ireland she did not disclose that she had spent time in Italy and had made a previous application in Belgium after going there from her native DR Congo. This material non-disclosure was the primary reason why negative credibility findings were made in respect of her narrative and she was refused refugee status. She was not afforded an oral hearing.

The applicant argued that the Tribunal failed to grapple in any substantial way with the submission that she feared persecution by reason of her membership of a particular social group, namely women in eastern DR Congo, and in doing so failed to apply a forward looking assessment of risk. It was also submitted that it gave insufficient consideration to documentary evidence furnished. These included medical reports, letters and personal documents, relevant previous Tribunal decisions, written submissions, and a large number of country of origin information reports which supported the application. The Tribunal in its decision noted the documents submitted included country of origin information and, in particular, the submission that the applicant faced persecution because of her

membership of a particular social group namely women in east Kivu. She also noted the negative credibility issues and questioned whether the events alleged had occurred at all and stated that the claim of gender-based persecution on grounds of membership of a particular social group was a 'bare assertion'.

The High Court held that the aspects of the applicant's claim which were not specifically rejected were her gender and asserted nationality and possibly that she is from eastern DR Congo. In those circumstances, the Court found that it was arguable that, given the well-documented prolonged violent conflict in that region, the Tribunal ought to have gone on to apply a forward looking assessment of risk, based on those elements. There was strong support in the country of origin information reports which were before the Tribunal that particularly egregious gender-based persecution takes place in South Kivu in addition to generalised and indiscriminate violence. Forward looking submissions were made to the Tribunal which urged an alternative basis for refugee status in the event that the applicant's narrative was disbelieved, grounded on that gender-based persecution and the Tribunal had not addressed that claim. It was arguable that that forward looking test should have been applied. On the basis of the country of origin information, it was arguable that gender is a relevant contributory reason for the rape and sexual violence suffered by women and a large amount of country of origin information was provided to the Tribunal to support the claim that violence in the DR Congo has a differential impact on women. The Court found that it was arguable that the Tribunal erred in the assessment of this part of the applicant's claim as it failed to investigate or assess the possible risk to the applicant as a member of a particular social group, and instead dismissed it as a 'bare assertion'. The Court found that there was no flaw in the Tribunal's assessment and consideration of other documentation submitted by the applicant.

5.5.4 Readmission to the Asylum Process

AA v. Minister for Justice [2012] IEHC 63 (High Court, Cross J., 31 January 2012)

The applicant, a Nigerian national, made an initial claim for asylum in 2004 on the basis that he risked persecution from his extended family for refusing to become 'head priest' at the village shrine and because he was homosexual. He claimed that he had suffered persecution in the past and would continue to suffer persecution if he was returned to Nigeria. His application was refused. He was diagnosed as HIV positive but this was not raised in his original application. He applied to the Minister for readmission to the asylum process under Section 17(7) of the *Refugee Act 1996* on the basis of his HIV status. The Minister refused his application and this refusal was challenged on the basis that the Minister reached unreasonable conclusions. In his assessment of the potential risk to the applicant, and hence the possibility of a favourable outcome in a fresh asylum claim, he did not have proper regard to the evidence before him. It was argued that the test

was whether or not the applicant had demonstrated new issues of substance showing some reasonable prospect of a favourable decision. It was also submitted that country of origin information furnished to the Minister documented discriminatory treatment of HIV sufferers in Nigeria including by employees of the State, in hospitals and other State institutions, as well as a certain failure to protect persons with HIV.

The Minister's decision referred to country of origin information and stated that no case had been put forward which would suggest that the applicant would be at risk of persecution from the Nigerian authorities. Further, no case was put forward which would suggest that he would be at risk of persecution from a group whose operations within the State are knowingly tolerated or that the authorities are unable, unwilling or refuse to offer protection. The criteria applied by the Minister in making a decision whether or not to admit a person to the asylum process was whether there was a reasonable prospect of a favourable view being taken of a new asylum claim by the applicant despite the unfavourable conclusions reached earlier, having regard to the new information presented.

The Court held that the criteria applied by the Minister were correct. It applied the reasoning of the Court in *LH v. Minister for Justice*[276] that the essential issues to be addressed were inter alia whether the (new) material the Minister was asked to examine as the basis for a further application contained potentially the ingredients required to establish that the applicant came within the definition of a refugee. This included questions as to whether the material pointed to a well-founded fear of persecution, whether it related to his country of origin, what was the source of the persecution, and whether the reason for the persecution was for a Refugee Convention reason. The Minister was considering only whether, if remitted to the Refugee Applications Commissioner for investigation, the further application may establish that the applicant is a refugee. The Court held that there was no evidence that the Minister had not considered the country of origin information, and his reference to it indicated that he had considered it. The issue before the Minister was whether discrimination against HIV sufferers could amount to persecution and the Minister's decision that the level of discrimination referred to in the documents did not and could not amount to persecution in this particular case was entirely reasonable and rational.

5.5.5 Revocation of Refugee Status

Adegbuyi v. Minister for Justice [2012] IEHC 484 (High Court, Clark J., 1 November 2012)

The applicant had been recognised as a refugee in 2007. In late 2007 and 2008 information came to the Minister's attention which caused him concern as to the

[276] *LH v. Minister for Justice [2011] IEHC 406 (High Court, Cooke J., 28 October 2011).*

applicant's need for international protection. The applicant had originally been recognised as a refugee arising out of a criminal case involving a colleague at Lagos State University (LASU) who, it was alleged, forged a document in relation to the applicant's academic qualifications, and from whom the applicant feared harassment and persecution from which he would not be protected on return. At the time of his application for refugee status he gave the Refugee Applications Commissioner's office a Nigerian passport. He was issued with a refugee travel document which stated that it was valid for all countries except for Nigeria.

However, it transpired that the applicant had another previously undisclosed Nigerian passport and travelled to Nigeria twice in 2007, in April and July, via the UK. In November 2007 he was questioned by the UK Border Agency (UKBA) at Heathrow Airport. He did not disclose his refugee status and did not use his refugee travel document. He told the UKBA that he was travelling to the UK and Ireland for as part of his PhD studies. His reasons for coming to the UK and his stated period of stay were disbelieved and the UKBA cancelled his UK visa and returned him to Nigeria. They found his Irish refugee travel document and other Irish documents and forwarded them, together with the passport on which he travelled to the UK, to the Garda National Immigration Bureau (GNIB). This passport also showed immigration stamps for travel to Nigeria in 2006 and twice in 2007 and a business visitor visa for the USA valid for two years issued in December 2006.

The Minister requested the applicant to clarify his travel to Nigeria during the time his application for refugee status was being considered, and subsequently after he had been declared a refugee, why he had two Nigerian passports, and for information in relation to his undisclosed passport found at Heathrow Airport. The Minister informed him that these facts may indicate that he no longer required international protection in the State. Explanations were furnished and further information was sought by the Minister. The applicant stated that he returned to Nigeria for the purposes of the court case and had been in hiding during that time to avoid threats and that he wished to return to Ireland for safety reasons. The Court found that from 2008, it was clear that the passport issue and the applicant's return to Nigeria were of primary importance to the Minister.

The Minister revoked his refugee status in 2010 under Section 21(a), (d) and (e) of the *Refugee Act 1996.* This was on the basis that the applicant had voluntarily re-availed himself of the protection of his country of nationality and that he had re-established himself in Nigeria. He further found that the fact that he was given the opportunity to pursue his court case in Nigeria against the people who he alleged persecuted him indicated that he no longer required international protection and the circumstances under which he had been granted refugee status no longer existed. The applicant challenged this decision.

Further information came to light following the Minister's decision arising from an application by the applicant for residency in Ireland on foot of the decision of the European Court of Justice in *Zambrano*[277] where stated he was living at his old address at LASU, and that he was granted a new Nigerian passport.

The applicant argued that the Minister was not correct to rely on Section 21(1)(a), (d) or (e) of the *Refugee Act 1996* He argued that the Minister was required to present compelling evidence that circumstances had changed and effective state protection was then available to the applicant in Nigeria. The burden was on the Minister to show that there was such a change.

The Court held that in determining the validity of revocations of refugee status under Section 21(5) of the *Refugee Act 1996* it was exercising an appellate function and determining whether or not the decision was wrong, and not a review function as to whether the decision was lawful or unlawful. In this respect two issues arose: 1) whether the Court could consider information which was not before the Minister when his decision was made; and 2) whether the Court could confirm the Minister's decision for reasons other than those given by the Minister. The Court was satisfied that the correct approach was to consider the revocation appeal on all of the information put before it and it was not confined to the information which was before the Minister. The Court also found that it could substitute its own reasons for those found by the Minister and this interpretation was in accordance with the terms of Section 21(5).

The Court held that if it was determining the appeal on the basis of the information before the Minister in 2010 it would have approached the matter on the basis that the applicant was a refugee but that the evidence was adequate to support the conclusion that he had voluntarily re-established himself in Nigeria. However, the further information put before the Court was strongly indicative of a fraudulent asylum claim such that the applicant never needed international protection.

The Court considered the grounds in Section 21(1)(a) to (h) of the *Refugee Act 1996*. Clark J. held that Section 21(1)(h) and its sister provisions in Regulation 11(2)(b) of the *European Communities (Eligibility for Protection) Regulations 2006*[278] ('Protection Regulations') and Article 14(3)(b) of the *Qualification Directive* had no equivalent in the *Geneva Convention.*[279] They operate where evidence emerges that invalidates a declaration of refugee status i.e. where it becomes apparent that the persons should never have been granted refugee status. In that event, the declaration becomes void *ab initio*. This has been explicitly recognised by the UNHCR in its Handbook and in its *Note on*

[277] *Case C-34/09*, judgment of 8 March 2011.
[278] *Statutory Instrument No. 518 of 2006.*
[279] *Convention relating to the Status of Refugees 1951.*

Cancellation of Refugee Status[280] which the Court found of considerable assistance in the interpretation of Section 21(1)(h).

Clark J. stated that Section 21(1) must be read together with Regulation 11(2) of the 'Protection Regulations', which was designed to give effect to Article 14(3) of the *Qualification Directive*. She noted that Regulation 11(2)(a) removed Ministerial discretion to revoke refugee status under Section 21(1), and made revocation mandatory under all sub-sections except Section 21(1)(g). The Court held that the Minister had satisfied it that the applicant provided the asylum authorities with information which was false or misleading in a material particular, that there was a link between the falsity of the information and the grant of refugee status, and that he furnished the false information with the intention to mislead those authorities. The Court held that the evidence rendered the core of the applicant's claim for refugee status unsustainable, that it was proper to confirm the decision to revoke his refugee status under Section 21(1)(h) as a person who never needed international protection and his declaration of refugee status was void *ab initio*.

Morris Ali [2012] IEHC 149 (High Court, O'Keeffe J., 1 March 2012)

The applicant was a national of Sierra Leone and had been given a declaration of refugee status in 2002. In 2008 he pleaded guilty to the possession of drugs worth €70 for sale or supply under Section 15 of the *Misuse of Drugs Act 1977 (*as amended) and of possession of a false instrument, a false South African passport. He was sentenced to 18 months and 12 months imprisonment respectively, the sentences to run concurrently. In 2009 the Minister informed the applicant that he proposed to revoke his declaration as a refugee under Section 21(1)(g) on the basis that the Minister was satisfied that the applicant was a person whose presence in the State posed a threat to national security or public policy ('*ordre public'*). The applicant made representations inter alia expressing his regret for what had happened, that he was engaged and that his fiancée was pregnant with his child. Submissions were made including on Regulation 11(1)(b) of the 'Protection Regulations' which provided for revocation of refugee status where the refugee, having been convicted of a 'particularly serious crime' constituted a danger to the community of the State. It was submitted by the applicant that Regulation 11(1)(b) did not apply as the applicant had not been convicted of a 'particularly serious crime' and in the review by the Minister the offence had been labelled incorrectly. It was pointed out that he had been transferred to an open prison, and that it would not be reasonable or lawful for the Minister to apply a fixed policy whereby all convictions under Section 15 were deemed particularly serious crimes.

[280] *UNHCR Handbook on the Procedures and Criteria for determining Refugee Status*, paragraph 117. UNHCR *Note on Cancellation of Refugee Status, 2004.*

In 2010 the Minister revoked the applicant's declaration as a refugee under Section 21(1)(g) and Regulation 11(1)(a) and (b) on the basis that the applicant was a person whose presence in the State posed a threat to national security or public policy (*'ordre public'*) and that there were reasonable grounds for regarding him as a danger to the security of the State or that he, having convictions for particularly serious crimes, constituted a danger to the community of the State. However, in the Minister's consideration of the proposal to revoke the declaration of refugee status there were a number of factual errors.

O'Keeffe J. adopted the reasoning of Cooke J. in *Gashi v. Minister for Justice*[281]as to the procedure for an appeal under Section 21(5). The Court held that having regard to the totality of the Minister's consideration of the proposal to revoke the declaration the decision could not stand as it was not a fair and accurate summary of the relevant admitted facts. There was no evidence that the drug was crack cocaine as distinct from cocaine and there was no specific consideration based on the correct classification of the drug as cocaine. Secondly, the applicant had only one conviction for a drug offence and not convictions. There was also a suggestion that the applicant was found to be in possession of what was described as 'cocaine dealing paraphernalia' which, it was said, indicated that he had scant regard for the laws of the State, but there was no charge of having 'cocaine dealing paraphernalia' and the latter finding was not supported by the facts. There was an unsupported conclusion that he was a "serious player" on the drug scene and that he was in the business for monetary gain only.

The Court held that the Minister should have considered the separate constituents of the phrases 'serious crime' and 'particularly serious crime' based on an informed and correct version of the facts. O'Keeffe J. held that the Minister had not acted in a reasonable manner in the preparation of the consideration, in the conclusions reached and the decision taken in reliance on such analysis and conclusions. The Court directed the Minister to withdraw the revocation of the declaration of refugee status.

5.5.6 Effect of Designation of a Country as a Safe Country of Origin Upon the Effectiveness of an Appeal to the Refugee Appeals Tribunal

S.U.N. v. Minister [2012] IEHC 338 (High Court, Cooke J., 30 March 2012)

The applicant was a South African national who claimed a well-founded fear of persecution as a member of the Venda ethnic group who was targeted by persons of Zulu ethnicity. The Refugee Applications Commissioner had found against the applicant because of a disbelief of the applicant's personal credibility. The Commissioner makes a finding under Section 13(5) and (6)(e) of the *Refugee Act 1996* that the applicant was a national of a country designated by the

[281] *Gashi v. Minister for Justice [2010] IEHC 436.*

Minister as a 'safe country' pursuant to Section 12(4) of the 1996 Act and as a consequence the applicant was denied an oral hearing on appeal to the Refugee Appeals Tribunal. Section 12 of the *Refugee Act 1996* provides for prioritisation of certain classes of application, including of applicants who are nationals of or who have a right of residence in a country which has been designated as a safe country by the Minister for Justice and Equality. The provision also allows Minister to designate a country as safe. The Minister designated South Africa as a safe country of origin under *S.I. No. 714 of 2004*.

The Court said that the central issue was the legality of the provisions under which South Africa had been designated as a safe country of origin with the consequence which that had on the onus of proof placed on the applicant. However, the Court directed the trial of a preliminary issue, which was that where the Commissioner's negative recommendation was based primarily on a finding of lack of personal credibility, was the exclusion of an oral hearing by reason only of the designation of the applicant's country of nationality as safe compatible with the obligation of the State to provide a remedy that is effective under EU law and in line with fair procedures under the Constitution? An applicant's entitlement to request an oral hearing is excluded where the Commissioner's recommendation includes one of the findings specified in Section 13(6) of the Act, one of which is that the applicant is a national of, or has a right of residence in, a safe country of origin.

The Court said that the first question that arose was whether the inclusion of such a finding was mandatory in any case where it arises, or whether the Commissioner has a discretion to decide not to include such a finding. The Court considered that the wording of the statute clearly indicated an intention to leave to the judgment of the Commissioner the matters appropriate for the contents of the report and that cases may frequently arise where it would be possible or appropriate for the Commissioner to reach a conclusion on the recommendation without having to come to a view on the matters under Section 13(6). Further, Section 13(6)(e) could have been cast in mandatory terms, if the Oireachtas had intended that a finding in relation to a safe country of origin was always to be included where an applicant was from a country which was designated as such. The Court held that Section 13(5) fell to be interpreted as leaving to the judgment and discretion of the Commissioner the decision to make one or more findings under Section 13(6).

The Court considered that this then raised the issue as to what criteria the Commissioner should take into account when making the judgment or exercising his discretion and, in particular, whether there was an obligation to omit the Section 13(6)(e) finding where the Commissioner's negative recommendation is to be made primarily on a finding of lack of credibility. This raised the question of the effectiveness of the remedy by way of appeal to the Refugee Appeals Tribunal where an applicant had been automatically deprived of an oral hearing before

the Tribunal because a finding that the applicant was a national of a safe country of origin had been included in the Commissioner's report. This was of particular importance where the applicant had been found lacking in personal credibility. The Court said that where the issue of credibility was clearly fundamental to the appeal, and the events and facts as described by the applicant were of a kind that could have taken place but were rejected because the applicant was disbelieved, as a matter of law the effectiveness of the appeal depended on the availability of an opportunity for the applicant to persuade the deciding authority on appeal that he or she was personally credible. The Court found that this was all the more obvious where the exclusion of an oral hearing was the result of a factor which had no necessary connection with the issue to be raised on the appeal. The Court said that the adverse presumption combined with the removal of the opportunity to rectify the personal impression the applicant made on the decision-maker tipped the balance of proof against the applicant in a way that was unfair as it resulted from a consideration, namely the fact of his nationality, which had no necessary connection with the applicant's conduct, testimony or the inherent nature of his claim.

The Court held that where the Commissioner has discretion, as here, as to the inclusion in the Section 13 report of a statutory finding under Section 13(6), the obligation to ensure that an applicant has access to an effective remedy by way of an appeal to the Tribunal requires that the finding as to a safe country of origin ought not to be included when the effect will be to deprive the applicant of an oral hearing in an appeal against a negative recommendation which is based predominantly on a lack of credibility.

5.5.7 Dublin Regulation

5.5.7.1 Procedures and Time Limits for Take Back Requests under *Council Regulation 343/2003/EC (Dublin II Regulation)* and *Commission Regulation 1560/2003* Must Be Read in Light of the Context and Objective of the Provisions Which are to Ensure the Procedures Work Expeditiously and Efficiently

Akukwe v. Refugee Applications Commissioner [2012] IEHC 9 (High Court, Cooke J., 17 January 2012)

The applicant applied for an interlocutory injunction to prevent her transfer to the UK pursuant to the Dublin Regulation. The first issue to be determined was the alleged illegality of the transfer order upon the ground that the acceptance of the 'take back request' by the UK was outside the time limits in the regulations. The question depended on the construction of the provisions for the timing of the transfer procedures in Article 20(1)(b) of the Dublin Regulation and the final sentence of Article 5(2) of *Commission Regulation 1560/2003*.

The applicant had been arrested in September 2011 as she was illegally in the State. She applied for asylum and it was revealed in a Eurodac search that she had made an asylum application in the UK in 2003 which had been refused. The Irish authorities made a request to the UK authorities to take charge of the applicant on 11 October 2011 and the UK replied on 19 October 2011 seeking further information as to the applicant's whereabouts between June 2007 (when she was last known to the UK) and her arrival in Ireland. They stated that in the meantime the take back request was denied. The Court found that this response was therefore both a request for further information to establish the responsibility of the UK for the asylum application and also a denial of that responsibility. It was clearly formulated in those terms in light of the two-week time limit for a reply, but in the knowledge that further information might be provided before responsibility was finally determined. On 7 November 2011 the Refugee Applications Commissioner made a request under Article 5(2) to the UK to re-examine that reply, and on 9 November the UK formally accepted the take back request.

The Court considered that Article 16(1)(e) provides that a Member State responsible for examining an application for asylum is obliged to take back, under the conditions laid down in Article 20, a third-country national whose application it has rejected and who is in the territory of another Member State without permission. Article 20(1)(b) provides that the asylum seeker is to be taken back in accordance with Article 16(1)(e). This provides that the Member State requested to take back the applicant is obliged to make the necessary checks and reply to the request as quickly as possible and not exceeding one month from the referral. When the request is based on information from the Eurodac system, the time limit is reduced to two weeks. Article 5 of the Commission Regulation deals with the circumstances when a negative reply is given under Article 20 of the Dublin Regulation. It was argued for the applicant that the additional procedure of Article 5 could not extend the two-week period for acceptance fixed in Article 20(1)(b) so that the UK's acceptance on 9 November was invalid because it came more than two weeks after the original request made on 11 October.

The Court held that the applicant's argument was unfounded and that it was necessary, in considering EU legislation, to look not only at the wording of the provision but also its context and objective or purpose. It said that it was incorrect to concentrate on the literal meaning of the final sentence of Article 5(2). It held that the purpose and objective of the Commission Regulation was to provide the detailed rules needed to give effect to the take back procedures and to provide a mechanism by which doubts based on a possible lack of information as to the basis of the responsible Member State can be resolved while ensuring the procedure works expeditiously and efficiently. A time limit is fixed under Article 20(1)(b) for the requested Member State's checks and reply to a take back request, which is two weeks where the request is based on the immediately

ascertainable and more reliable information from Eurodac, but one month in other cases where more extensive checking may be required. The Court held that the purpose of the final sentence of Article 5(2) of the Commission Regulation is to make it clear that once a negative reply has been given to the requested State within the two weeks mentioned in Article 20(1)(b), that period is effectively exhausted or satisfied. It is not reactivated or overridden by the making of a re-examination request. Cooke J. found that the additional procedure of Article 5 should be understood and applied on the basis that the time limits fixed in that Article take as their starting point the date of a negative reply to the take back request given by the Member State within the two-week period in Article 20(1)(b).

5.5.8 Transposition of the *Qualification Directive*

5.5.8.1 Preliminary Reference from the Supreme Court to the European Court of Justice on the Implementation of the *Qualification Directive* in Irish Law - Does an Applicant for Subsidiary Protection Have to be a Failed Asylum Seeker Before He can Apply for Subsidiary Protection?

HN (Nawaz) v. Minister for Justice [2012] IESC 58 (Supreme Court, 19 December 2012)

The applicant was a national of Pakistan and wished to apply for subsidiary protection in the State without first having to apply for refugee status. He claimed that the *European Communities (Eligibility for Protection) Regulations 2006* ('Protection Regulations') were incompatible with and failed to properly transpose the *Qualification Directive* in requiring him to make a claim for refugee status despite knowing he did not qualify prior to allowing him to make a claim for subsidiary protection.

The applicant was from the Swat Valley in Pakistan and arrived in Ireland in 2003 on a student visa. He married an Irish national and was granted permission to remain in the State until 2005. The marriage ended and the Minister notified him that his permission to be in the State was not being renewed as he was no longer living with his wife. Thereafter he had no legal entitlement to be in the State. The applicant did not apply for asylum and stated that he did not have a fear of persecution for one of the reasons specified in the Refugee Convention and therefore he was not a refugee. He claimed, instead to fear returning to Pakistan because of the indiscriminate violence there, particularly in the Swat Valley where he was from and to which he said it was unsafe for him to return, and where he would be at risk of suffering serious harm within the meaning of Article 15(c) of the *Qualification Directive*.

The Supreme Court noted its previous decision in that Regulation 4(2) of the 'Protection Regulations' does not confer any power or discretion on the Minister

to accept and consider applications for subsidiary protection other than in the cases provided for i.e. those whose asylum applications had previously been refused by the Minister. The Court also noted that Ireland was the only Member State which had not adopted a single administrative process applying the '*Procedures Directive*' (*Directive 2005/85/EC*) to claims for both refugee status and subsidiary protection. The applicant stated that he feared serious harm as defined in Article 15(c) of the *Qualification Directive*.

The Supreme Court held that it was clear that in Irish law the applicant could not make an application for subsidiary protection without having first made an application for, and been refused, refugee status. The result is that he must have the status of a failed asylum seeker before he can even make the application for subsidiary protection. The Court considered that the true question was whether the *Qualification Directive* required Member States, in their implementing measures, to make it possible for a third-country national to make an application for subsidiary protection without making any application for refugee status. In order to determine whether the Minister was obliged to consider the applicant's application for subsidiary protection in the absence of a determination that he was not entitled to refugee status, it was necessary to establish whether it is compatible with the *Qualification Directive* for Irish law to provide that an application for subsidiary protection will not be considered unless the applicant has already applied for and been refused refugee status.

The Supreme Court referred the following question to the European Court of Justice for preliminary ruling in accordance with Article 267 TFEU:

> *Does Council Directive 2004/83/EC, interpreted in the light of the principle of good administration in the law of the European Union and, in particular, as provided for by Article 41 of the Charter of Fundamental Rights of the European Union, permit a Member State, to provide in its law that an application for subsidiary protection status can be considered only if the applicant has applied for and been refused refugee status in accordance with national law?*

5.5.9 Subsidiary Protection

5.5.9.1 Nature of the Process for International Protection in Ireland and the Procedures for the Assessment of Subsidiary Protection in Parallel with Consideration of Deportation

Debisi v. Minister for Justice [2012] IEHC 44 (High Court, Cooke J., 2 February 2012)

The applicant had been refused asylum by the Refugee Applications Commissioner, and he withdrew his appeal to the Refugee Appeals Tribunal on the basis that he did not have a fear of serious harm in Nigeria on for one of the

reasons specified in the Refugee Convention. He subsequently applied for subsidiary protection, based on the same facts as his asylum claim, and he rejected the Commissioner's adverse credibility findings, and sought to clarify and correct those aspects of his claim that the Commissioner did not accept. The Minister refused the subsidiary protection application, and issued the applicant with a deportation order. The applicant sought leave to apply for judicial review to challenge both of those decisions.

In relation to the subsidiary protection decision, the applicant argued, inter alia, that the Minister had failed to engage with the explanations and clarifications that he had set out in his application. The Court stated that the applicant sought to challenge the Commissioner's negative credibility findings on the basis of explanations as to why he should be believed, but it refused to uphold his challenge on this ground as the Court considered it failed to appreciate the essential procedural character of international protection underpinning the common asylum system of the EU.

The Court stated that the *European Community (Eligibility for Protection) Regulations 2006* presupposed that an application for subsidiary protection will have been examined in the first instance in the asylum process, and that where the Commissioner (or the Refugee Appeals Tribunal) has found an applicant's claim to be lacking in credibility, there was no obligation on the Minister to reconsider the question of credibility in the absence of new evidence, information or another basis which could demonstrate that the original findings were vitiated by material error on the part of the decision-maker. The Court said that such a requirement would require the Minister not to consider whether the applicant was eligible for subsidiary protection, but for asylum. The Court stated that if findings of fact, including findings of lack of credibility, are to be challenged, such a challenge must be done by way of appeal to the Refugee Appeals Tribunal in the asylum process. The Court held the applicant did not have grounds to challenge the subsidiary protection decision. The Court noted, however, that it may be that the principle of fair procedures would require a decision-maker to interview an applicant for subsidiary protection who sought to rely upon a risk of harm from a source not previously considered in the asylum process, and that nothing in the 'Protection Regulations' precluded this.

In relation to the challenge to the deportation order, the applicant's argument focussed on the alleged invalidity of the order by reference to Regulation 4(5) the 'Protection Regulations 2006'. This provides that '[w]here the Minister determines that an applicant is not a person eligible for subsidiary protection, the Minister shall proceed to consider, having regard to the matters referred to in Section 3(6) of the 1999 Act, whether a deportation order should be made in respect of the applicant.'

The examination of file report in relation to the applicant on which the deportation order was based predated the subsidiary protection decision (although the deportation order itself was signed after that decision), and the applicant argued first, that it was clear that the Minister 'proceeded to consider' the making of the deportation order before the subsidiary protection application had been determined, which was contrary to the strict statutory interpretation of Regulation 4(5); and secondly, that the subsidiary protection decision had been prejudged by the prior consideration given to the making of a deportation order.

The Court rejected these arguments. The Court held that the clear intent of the 'Protection Regulations' was that 'proceed' was to be read in the sense of 'proceed' or 'continue', and that this is because it is part of the scheme of the statutory instrument giving effect to the *Qualification Directive* and situated the subsidiary protection process within, and adapted it to, the scheme for deportation under Section 3 of the *Immigration Act 1999*. The Court stated that the first step in the deportation process had already been taken by the decision to notify the proposal to deport, and that the deportation process was interrupted by the requirement to determine the subsidiary protection application. Accordingly, the Court held, it was in the sense of resuming or continuing the procedure initiated with the notification of the deportation proposal that the words 'proceed to consider' were used in Regulation 4(5). Secondly, the Court held that the work done by the officials in preparing the examination of file re-deportation was preparatory work by way of summarising, analysing and drafting, and that prejudgment which would vitiate a decision making process can only be prejudgment or bias on the part of the actual decision-maker and the Minister was entirely free to make his own judgment on the case.

5.5.9.2 Validity of the Inclusion of the Subsidiary Protection Determination Process Within the Deportation Process

VF Moldova v. Minister for Justice [2012] IEHC 337 (High Court, Cooke J., 31 July 2012)

The applicant was a national of Moldova who applied for asylum in the State and was unsuccessful. He was also refused subsidiary protection and a deportation order was made against him. The applicant argued inter alia that the process by which the subsidiary protection scheme operated in Ireland with the deportation/leave to remain procedure was in breach of EU law and rendered the refusal of the subsidiary protection decision unlawful. It was in breach of the principles of equivalence and effectiveness.

The Court granted leave to challenge the decision on this ground only. It formulated the ground as follows:

By confining the right to apply for subsidiary protection to the circumstance in which the asylum seeker's entitlement to remain lawfully in the State pursuant to Section 9(2) of the Refugee Act 1996, has expired and a decision has been taken to propose the deportation of the applicant under Section 3(3) of the Immigration Act 1999, Regulation 4(1) of the 2006 Regulations in conjunction with Section 3 of the said Act of 1999, has the effect of imposing a precondition or disadvantage upon a subsidiary protection applicant which is ultra vires Council Directive 2004/83/EC of 29 April, 2004, and is incompatible with general principles of European Union law.

5.5.10 Certificate for Leave to Appeal to the Supreme Court

5.5.10.1 Certificate for Leave to Appeal to the Supreme Court Granted in Relation to Whether a Claim to Refugee Status by a Person Who Has Been Arbitrarily Deprived of his Nationality by the Authorities of his State Should be Assessed in Relation to that State as his 'Country of Nationality' or Whether it is Correct to Regard that Person as Stateless

DT (No 2) v. Refugee Appeals Tribunal [2012] IEHC 562 (High Court, O'Keeffe J., 21 December 2012)

The applicant was born in Bhutan and a member of the minority Brahmin Nepali ethnic group. His brother was a founding member of the Bhutan People's Party (BPP) and the applicant was a member. After his brother was murdered by the Bhutanese authorities the applicant became a BPP leader in his area. In 1990 he was detained and tortured in a police station arising from a demonstration he had organised and he was only released because he signed an agreement to leave Bhutan. After his release he and his family were threatened with torture and detention and they fled to Nepal. He and his family together with a large number of other Bhutanese who had also been expelled to Nepal were stripped of their Bhutanese citizenship. He and his family subsequently lived in a refugee camp in eastern Nepal. In 2010 he and his family returned to Bhutan after international pressure was put on the Bhutanese government but attempts to settle on his land failed and he was arrested, detained and tortured again before he escaped and fled to India and travelled to Ireland.

The Refugee Applications Commissioner accepted that he was Bhutanese but determined his application on the basis that he was stateless and his country of former habitual residence was Nepal. Adverse credibility findings were also made and it was concluded that he had not established a well-founded fear of persecution. On appeal to the Refugee Appeals Tribunal, the same approach to his nationality was adopted as that of the Commissioner, and it was found that he

had not given any cogent evidence that he had suffered persecution for a reason specified in the Refugee Convention in Nepal nor was there a risk of any such persecution in the future. Negative credibility findings were also made in relation to his account of his return to Bhutan in 2010 and his failure to contact the Red Cross or make better efforts to inquire about his family's alleged detention in Bhutan.

The applicant argued that the Tribunal erred in law in finding that he was stateless given that at all times he maintained that he was of Bhutanese nationality, and it was argued that the Tribunal should have assessed him as a Bhutanese national or alternatively, as a stateless person whose country of former habitual residence was Bhutan. It was clear from the judgment of the English Court of Appeal in *EB (Ethiopia) v. Secretary of State for the Home Department*[282]that denial of citizenship may amount to persecution within the meaning of the Refugee Convention. The High Court refused the application for leave to apply for judicial review inter alia on the basis that there was nothing irrational in the Tribunal's conclusions that the applicant was stateless and that Nepal was his country of former habitual residence.

The Court considered, however, that these issues of nationality, statelessness and habitual residence were substantial issues of refugee law. The key issue on which there was uncertainty was the question whether, where a person has been arbitrarily stripped of his citizenship, the applicant's country of birth remains his country of nationality or whether he ought to be regarded as stateless. As there were divergences between the authorities, it would be in the public interest for the Supreme Court to deliver an authoritative determination on the subject. The questions of law also transcended the facts of the particular case and have arisen in several cases involving Bhutanese nationals before the courts. Statelessness was a global phenomenon and a matter which has serious consequences and therefore it was desirable in the public interest to grant a certificate for permission to appeal to the Supreme Court.

The Court certified that the point of law was of exceptional public importance and it was desirable in the public interest that an appeal should be taken to the Supreme Court on the following point:

> *Where the executive agencies of the a state arbitrarily deny a person his or her citizenship, is it correct to assess that person's claim to refugee status on the basis that that state is his or her 'country of nationality' for the purposes of Article of Directive 2004/83/EC and Section 2 of the Refugee Act 1996, or is it correct to regard that person as 'stateless'?*

[282] *EB (Ethiopia) v. Secretary of State for the Home Department [2009] 1 QB 1*.

Chapter 6

Unaccompanied Minors and Other Vulnerable Groups

6.1 Unaccompanied Minors

On a national level, activities outlined under commitments in the 2009 *Joint Protocol on Missing Children*[283] and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*[284] continued during 2012.

Some 23 unaccompanied minors applied for asylum in Ireland during 2012.[285] A total of 68 referrals to the Dublin-based Team for Separated Children Seeking Asylum took place during the year.[286]

6.1.1 Administrative, Legislative and Operational Developments

During 2012 a National Office for Unaccompanied Minors was established within the Office of the National Director for Children and Family Services. The role of the Office is to develop national strategy policy and practice in relation to social work services for unaccompanied minors. It is envisioned that the office will also collect national data on minors.

Updated care arrangements for unaccompanied minors continued to apply during 2012, with no significant change to practices and clinical service delivery taking place. In January 2011, the Health Service Executive (HSE) confirmed that all unaccompanied minors were now cared for in either foster placements or residential units following the closure of hostel accommodation on 31 December 2010. The HSE also stated that it aims to provide a dedicated social worker for each unaccompanied minor.[287] An 'equity of care' principle for unaccompanied

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283 Health Service Executive (2009). An Garda Síochána and Health Service Executive Joint Protocol on Missing Children. Available at http://www.hse.ie/eng/services/news/2009_Archive/April_2009/An_Garda_S%C3%ADochana_and_Health_Service_Executive%C2%A0_%C2%A0JOINT_PROTOCOL_ON_MISSING_CHILDREN.html. The Protocol sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors. The Protocol outlines arrangements for addressing issues relating to children in State care who go missing, and sets out the actions to be taken by both organisations when a missing child in care report is made to An Garda Síochána.

284 Office of the Minister for Children (2009). Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009. Available at http://www.omc.gov.ie/documents/publications/Implementation_Plan_from_Ryan_Commission_Report.pdf. The Plan contains a review of the number of, and care provisions for, unaccompanied minors. A commitment is made to allocate a social worker to unaccompanied minors in care, and for them to be placed in 'accommodation suitable for their needs and inspected like any other children's hostels'.

285 Department of Justice and Equality (April 2013).

286 Social Work Team for Separated Children Seeking Asylum.

287 *The Irish Times* (10 January 2011). 'Number of missing children falls as new policies adopted'. Available at www.irishtimes.com.

minors is in place.[288] The Dublin-based Team for Separated Children Seeking Asylum now acts primarily as an intake and assessment service for all unaccompanied minors, with three shorter-term residential units where unaccompanied minors remain for a period of three to six months after referral and one medium-to-longer term residential unit for cases of special need. A national policy regarding transfers of unaccompanied minors is in place and since early 2011, 'quality matching' with foster families on a national basis has taken place. The Social Work Team for Separated Children Seeking Asylum identifies, secures and funds the foster placement for the duration of the young person's time in care and undertakes additional monitoring of placements to ensure the placement is still viable. In addition, this Team continues to provide technical support, and to facilitate information sharing, with other social work teams throughout Ireland. In the case of 'aged-out' minors over the age of 18, all are now allocated a leaving and after-care worker.

Ireland continued to attend the EU-level *Expert Group on Unaccompanied Minors in the Migration Process* and in March 2012 attended the second Expert Group meeting on 'Family Tracing'.

During 2012, officials of the Office of the Refugee Applications Commissioner (ORAC) attended a number of meetings organised by the EASO on age assessment for unaccompanied minors, organised within the framework of the European Commission *Action Plan on Unaccompanied Minors (2010-2014)* and the EASO 2012 work programme, and in order to develop EU best practice in the area.

6.1.2 Research

A Children's Rights Alliance report published in September 2012 looked at care provisions for separated children in Ireland.[289] Based on 16 interviews with key stakeholders, the '*Safe Care for Trafficked Children in Ireland: Developing a Protective Environment*' report outlined the supports and legal protection available to (suspected) child trafficking victims and makes a number of policy recommendations.

The report called for the development of national protocols regarding the clear identification of responsibilities of State agencies regarding the tracking of unaccompanied minors seeking asylum within the care and overall asylum process. The development of the role of guardians for both unaccompanied and trafficked children was highlighted, and the change in care arrangements for all unaccompanied minors was welcomed. The report noted the required enactment

[288] The termed 'equity of care' policy contained within the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009* sought to end the use of separate hostels for unaccompanied minors and to accommodate them 'on a par with other children in the care system by December 2010'.

[289] Children's Rights Alliance (2012). *Safe Care for Trafficked Children in Ireland: Developing a Protective Environment*. Available at www.childrensrights.ie. See Section 6.1.2 for further discussion on the report's findings with regard to overall care for separated children.

of legislation to bring care providers for unaccompanied and trafficked minors under the inspection and monitoring remit of the Health Information and Quality Authority (HIQA). It also noted that a lack of social work follow up of reunified minors 'can place separated migrant children at risk of trafficking and exploitation'. The report stated that it had found a 'lack of clarity' on the transfer of responsibility from the Dublin-based Social Work Team for Separated Children Seeking Asylum to social workers in HSE local offices, and that communication of the process between the HSE areas, local social work teams and private fostering agencies 'requires attention'. The 2012 report also noted that in some instances, unaccompanied minors residing outside Dublin had a social worker in Dublin. Regarding family reunification, the HSE practice of conducting DNA testing in all such cases was noted, however the report highlighted the importance of recognising that 'close blood ties are not the only key characteristic of kinship connections'. The follow up of all family reunification cases was described as 'crucial' and it was noted that a lack of follow up could place minors at 'risk of trafficking and exploitation'. The report calls for a legislative change to provide for extended aftercare for all minors in care with particular reference to unaccompanied minors. It notes that there is an 'inequity of care' with regard to the aftercare system for unaccompanied minors turning 18, with minors transferred to the Direct Provision system rather than in the case of Irish children who are permitted to 'remain with their foster families, are supported in private rented accommodation and continue to receive education and financial support from state agencies'.

6.2 Other Vulnerable Groups

6.2.1 *Criminal Justice (Female Genital Mutilation) Act 2012*

The *Criminal Justice (Female Genital Mutilation) Act 2012* was enacted in 2012. It prohibits female genital mutilation and related offences (including an extra-territorial aspect) and seeks to act as a deterrent.

As discussed in the *Annual Policy Report on Migration and Asylum 2011: Ireland*, the definition of female genital mutilation (FGM) in the Act was broadly based on the World Health Organisation (WHO) definition of FGM. The Act provides that it is a criminal offence if a '… person does or attempts to do an act of female genital mutilation.' It provides for very limited exceptions where it is required on medical grounds and in such cases states that such an act is not an offence where it is a 'surgical operation performed by a registered medical practitioner [or a midwife]' and is 'necessary for the protection of [a girl or woman's] physical or mental health' or 'when [a girl or woman] is in any stage of labour, or has just given birth, for purposes connected with the labour or birth'.

The Act removes the possibility of a person relying on a defence of the female's [or her parent or legal guardian's] 'consent' to a charge of having committed the act or of having attempted to commit an act of FGM.

It creates an offence in Section 3 of removing or attempting to remove a female from the State for the purpose of having FGM done to her. In that respect, it creates a legal presumption, where certain circumstances are present, that one of the purposes of the removal of the female by the accused person from the State was to have an act of FGM done to her, unless the contrary is shown by the accused person.

In addition, provisions for the protection of victims during legal proceedings are also included.

6.2.2 Immigration Guidelines for Victims of Domestic Violence

As discussed in Section 2.2.10, during 2012, the Irish Naturalisation and Immigration Service (INIS) published guidelines for applying for an independent status for legally-resident non-EEA victims of domestic abuse whose immigration status is derived and/or dependent on that of the perpetrator of domestic violence.[290] An application can be made either by an individual or via their solicitor and should detail the domestic violence suffered and situation regarding children and living arrangements of the alleged perpetrator. In general, a 'Stamp 3' permission will be granted; however consideration regarding a requirement to work will subsequently be addressed as required.[291] The Guidelines also note that engagement in domestic violence behaviour can be regarded as breaching the 'good character' condition of a holder of an immigration permission in Ireland and could lead to a revocation or non-renewal of subsequent status.[292]

Earlier in 2012, the Domestic Violence Coalition held a number of events to discuss the effects of domestic violence on migrant women and called for legislative change to enable migrant women who are experiencing domestic abuse to 'safely and expeditiously remove themselves from situations of domestic abuse' without 'endangering their right to stay in the country'. The ICI, a member of the Coalition, noted the positive discretion which the Minister had exercised in previous, similar cases but called for a statutory provision for the granting of an independent residency permit. It noted that such an introduction would bring Ireland 'in line with what is now the recognised international position'. Women's Aid, another member of the Coalition, stated that members had 'daily experience…of assisting women forced by immigration policy to remain living with their abusers'.[293]

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[290] Irish Naturalisation and Immigration Service (2012). *Victims of Domestic Violence, Immigration Guidelines*. Available at www.inis.gov.ie.

[291] *Ibid*.

[292] *Ibid.*

[293] Women's Aid (March 2012). 'Reform of Immigration Rules Needed to Protect Migrant Women from Domestic Violence'. *Press Release.* Available at www.womensaid.ie. The member organisations of the Coalition on Domestic

While the publication of further information was largely welcomed, organisations such as NASC called for further clarity and stated that they 'will continue to campaign for legislation and enhancement of the guidelines'.[294] The Immigrant Council of Ireland (ICI) welcomed the new Guidelines and subsequently held a public information session on the topic which was attended by over 35 representatives from support organisations. Within the context of the Domestic Violence Coalition, the ICI added that a number of issues remained outstanding post-publication of the Guidelines, namely the type of immigration status to be issued and what rights and entitlements would be provided to holders. NASC further called upon the Department of Social Protection to issue similar guidelines on policies for providing support to migrant victims of domestic violence. It added that the Coalition would continue to engage with INIS with particular reference to the 'stated requirement that independent immigration status only applies when the parties are no longer living together as a family unit.'[295]

6.2.3 Update to National Intercultural Health Strategy 2007-2012

A seventh update to the national Health Service Executive *National Intercultural Health Strategy 2007-2012* took place in July 2012.[296] The National Intercultural Health Strategy was launched in 2007 and designed to 'ensure that the 'HSE provides a quality health service equally to all, responds appropriately to the specific health and social care needs of new and well established minority communities and is an employer of choice for many'. Subsequent implementation has taken place based on three main themes of 'Access to services'; 'Data, Information & Research'; and 'Staff Learning, Training and Support'.[297] The 2012 update primarily outlined developments with regard to language and communication, notably *A Guideline for Communication in Cross-Cultural General Practice Consultations*[298] and a 2012 resource published by the HSE National Social Inclusion Unit which details good practice and practical

Violence are: Longford Womens' Link, Sonas, the Immigrant Council of Ireland, AkiDwA, the Domestic Violence Advocacy Service, Womens' Aid, and Doras Luimní.

294 NASC (2012). *Obtaining independent residency status following separation or domestic violence*. Available at www.nascireland.org.

295 Women's Aid (2 August 2012). 'Coalition Welcomes New INIS Guidelines for Immigrants Experiencing Domestic Violence'. Available at www.womensaid.ie/newsevents/2012/08/02/coalition-welcomes-new-inis-guidelines-for-immigra/.

296 Health Service Executive Social Inclusion Unit (2012). *National Intercultural Health Strategy 2007 - 2012, Update March 2012.* Available at http://www.integration.ie/website/omi/omiwebv6.nsf/page/AXBN-8TEKBM15454716-en/$File/March%202012%20NIHS%20Update%202.pdf.

297 Intercultural Health Strategy page on the website of the Office for the Promotion of Migrant Integration. Available at http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-nationalinterculturalhealth-en.

298 Developed by the Centre for Participatory Strategies, Co. Galway and the HSE Social Inclusion Unit, Dublin. This research was funded by the Health Research Board and the HSE Social Inclusion Unit.

information for HSE staff in planning, managing and assuring quality translations of health related material into other languages.[299]

[299] Health Service Executive National Social Inclusion Unit (2012). *Lost in Translation? Good Practice Guidelines for HSE Staff in Planning, Managing and Assuring Quality Translations of Health Related Material into Other Languages.* Available at http://www.hse.ie/eng/services/Publications/services/SocialInclusion/lostintranslationreport.pdf.

Chapter 7

Actions Against Trafficking in Human Beings

Ireland continues to operate the *Criminal Law (Human Trafficking) Act 2008*. It provides for penalties up to life imprisonment and/or an unlimited fine for persons who traffic or attempt to traffic other persons for the purposes of labour or sexual exploitation or for the removal of a person's organs. This is considerably higher than penalties in other jurisdictions which can be as low as five years. It builds on the *Child Trafficking and Pornography Act 1998* which criminalised trafficking in children for sexual exploitation. The 2008 Act also criminalises trafficking in adults for sexual exploitation and criminalises trafficking in adults and children both for labour exploitation and organ removal. It also raised the penalty in the 1998 Act for child trafficking from 14 years to life imprisonment and amended the definition of the age of a child from 17 to 18 years.

7.1 Review of National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012

In terms of overall coordination nationally, an Interdepartmental High Level Group was established to recommend the most appropriate and effective responses to trafficking in human beings for the Minister. The Group comprises senior representatives from various Government Departments and Public Sector bodies. Representatives of the High Level Group engage with NGO representatives by way of roundtable discussions held approximately every four months. There are five Working Groups in place focusing on the areas of child trafficking; awareness raising and training; labour and sexual exploitation; and a national referral mechanism. These groups continued to meet regularly during 2012 and to work at a practical level to implement agreed priorities as set out in the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012*.[300]

Work continued during 2012 on a review of the *National Action Plan to Prevent and Combat Trafficking in Human Beings 2009-2012*.[301] A commitment to a structured mid-term review is contained in the *National Action Plan*, and during 2012 existing structures such as a Roundtable Forum and various Working Groups were used for this consultative review. A new Action Plan was published in early 2013.

[300] Anti-Human Trafficking Unit (January 2013).
[301] Available on www.blueblindfold.gov.ie.

Visits and reviews of Ireland's anti-human trafficking activities took place during 2012 by the *Special Representative and Coordinator for Combating Trafficking in Human Beings from the Organisation for Security and Cooperation in Europe (OSCE)* and by the *Council of Europe Group of Experts on Action to Combat Trafficking in Human Beings (GRETA)*. Recommendations from these reports will 'feed into the second *National Action Plan for Ireland*.'[302]

7.2 General Scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill 2012*

Ireland has opted into the *Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA* which was adopted in April 2011. Transposition of the Directive is due on 6 April 2013.

As discussed in Section 2.2.5 in late 2012 the Minister for Justice, Equality and Defence published the general scheme of the *Criminal Law (Human Trafficking) (Amendment) Bill*.[303] This followed approval of a proposal at a meeting of the Government on 18 December 2012, with the general scheme subsequently forwarded to the Office of Parliamentary Counsel for drafting.[304] The Bill proposes to fully transpose *Directive 2011/36/EU*, in particular the criminalisation of trafficking for the purposes of forced begging and for criminal activities. Minister Shatter also stated that he was also 'taking this opportunity, in the interest of clarity, to define the term 'forced labour' as used in the *Criminal Law (Human Trafficking) Act 2008*' and that the Bill provides for the same 'forced labour' definition as in International Labour Organization (ILO) *Convention No. 29 of 1930 on Forced or Compulsory Labour.*

7.3 Statistics Regarding Human Trafficking

The *Annual Report of Trafficking in Human Beings in Ireland for 2012* from the Anti-Human Trafficking Unit of the Department of Justice and Equality notes that 48 persons were reported as victims of human trafficking in Ireland during 2012, with the majority (39) for sexual exploitation. The majority of overall reported victims were from Europe (32 including non-EU countries with 19 from Ireland, ten from other EU countries and three from non-EU European countries), followed by Africa (eight from Western Africa and two from Southern Africa) and Asia (three from South East Asia and one from Southern Asia). Some two persons

[302] Department of Justice and Equality (2013). *Annual Report 2012*. Available at www.justice.ie.

[303] Department of Justice and Equality (2012). *General Scheme of the Criminal Law (Human Trafficking) (Amendment) Bill 2012*. Available at http://www.justice.ie/en/JELR/Criminal%20Law%20_Human%20Trafficking_%20_Amendment_%20Bill%202012%20-%20General%20Scheme.pdf/Files/Criminal%20Law%20_Human%20Trafficking_%20_Amendment_%20Bill%202012%20-%20General%20Scheme.pdf.

[304] Department of Justice and Equality (7 January 2013). 'Shatter Announces Publication of *General Scheme of Criminal Law (Human Trafficking) (Amendment) Bill*'. *Press Release*. Available at www.merrionstreet.ie.

from Latin America were also referred. Some 29 of the 39 persons reported as alleged victims of sexual exploitation were from either Ireland or the EU; however all alleged victims of labour and uncategorised exploitation were third-country nationals (six persons of which three were from South East Asia and one from Southern Asia, and three persons of which all were from non-EU European countries, respectively). Of the 48 referrals of alleged victims, 19 were Irish citizens and nine were EU Member State citizens. Some eight persons seeking asylum were referred. Some six cases secured convictions during 2012.[305]

Between 2009 and 2012, some 21 persons have been granted either a 60-day recovery and reflection period and/or a six-month renewable Temporary Residence Permission.[306] Such permissions are only required by persons who do not already have a pre-existing permission, such as an asylum application, to remain in the State. In Ireland the majority of victims of human trafficking have a pre-existing permission and therefore do not require the aforementioned permissions.

There were 11 convictions for human trafficking and related convictions between 2009 and 2012.[307]

In response to a Parliamentary Question in December 2012, the Minister for Justice, Equality and Defence stated that between January and November 2012, some 22 investigations had been started involving 27 suspected victims of trafficking of which 20 were adults and 21 were female. Some 19 of the initiated cases were on-going at this time. The Minister also stated that seven prosecutions under the *Criminal Law (Human Trafficking) Act 2008* were on-going at that date. He also highlighted the prioritization of the prevention and detection of human trafficking within the An Garda Síochána *Policing Plan for 2012*.[308]

7.4 Training and Awareness Raising

7.4.1 Training

During 2012, a number of activities took place by the Anti-Human Trafficking Unit within the Department of Justice and Equality related to prevention of trafficking in human beings. A training course entitled *'Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution'* was delivered to 62 members of An Garda Síochána; two members of the Police Service of Northern Ireland (PSNI)

[305] Department of Justice and Equality (2013*). Annual Report of Trafficking in Human Beings in Ireland 2012*. Available at www.justice.ie.

[306] Administrative Arrangements for victims of trafficking set out the protections from removal, such as a 60-day period of recovery and reflection and renewable six-month temporary residence permission in addition to other protections, available to suspected victims of human trafficking who have no legal permission to be present in the State. They were established in June 2008 to coincide with the commencement of the *Criminal Law (Human Trafficking) Act 2008* and were updated and republished in July 2010 and March 2011. See www.justice.ie.

[307] Anti-Human Trafficking Unit, Department of Justice and Equality (January 2013).

[308] Parliamentary Question No. *Vol. 786 No. 1* (11 December 2012).

and two members of the Northern Ireland Public Prosecution Service in 2012. Training includes victim identification through recognising indicators of trafficking in human beings. Since the commencement of this training series in 2009, a total of 692 Gardaí have attended this course. Over the years, members of the PSNI together with the United Kingdom Borders Agency, London Metropolitan Police and a Romanian Police Officer also participated in this training. Awareness raising training on human trafficking has now been delivered to a total of 3,196 Probationer Gardaí during their final phase of training; 42 members of the Garda Reserve; 96 Immigration Officers; 192 Ethnic Liaison Officers (of whom four were PSNI Liaison Officers); 80 Senior Investigating Officers; and ten staff in the Border Management Unit in Dublin Airport.[309] An Garda Síochána have also trained Garda Ethnic Liaison Officers on the topic of human trafficking so they can outreach to immigrant communities. Ethnic Liaison Officers, as well PSNI Minorities Liaison Officers received this training, with a programme of awareness raising training for member of the traffic corps of An Garda Síochána has been initiated and will be rolled out to the entire traffic corps in 2013.[310]

The International Organization for Migration (IOM), in conjunction with the AHTU, developed a 'Train the Trainer' course material on human trafficking. This training was rolled out to trainers in large public sector organisations with the intention of further in-house training to staff within the respective organisations. On the basis of feedback received by IOM on the delivery of this training it was decided that IOM should develop Shorter Train the Trainer course modules templates of one-hour and three-hour duration to facilitate this training. This was completed and distributed to Public Sector organisations and RIA centres during 2012.

A specialised training course was held in September 2009 for staff of the Legal Aid Board who provides legal aid and advice to potential and suspected victims of trafficking in human beings since November 2009. A refresher course took place in 2012.

7.4.2 Publications and Awareness Raising

The *Annual Report of Trafficking in Human Beings in Ireland for 2011* was published in May 2012 and is the third such report to be produced. Extensive data analysis was included in the report including that of increased prosecutions within the overall criminal justice response to human trafficking in Ireland.[311]

The Department of Social Protection has circulated Anti-Human Trafficking Guidelines to frontline staff. These Guidelines set out a definition of human trafficking, indicators of human trafficking and what to do in the event of

[309] Anti-Human Trafficking Unit, Department of Justice and Equality (January 2013).
[310] *Ibid*.
[311] Anti-Human Trafficking Unit, Department of Justice and Equality (May 2012). *Annual Report of Trafficking in Human Beings in Ireland for 2011*. Available at www.justice.ie and www.blueblindfold.gov.ie. See *Annual Policy Report on Migration and Asylum 2011: Ireland* for further discussion of 2011 trends.

concerns. The Anti-Human Trafficking Unit published a *Guide to the Procedures in Place for Supporting and Protecting Victims of Human Trafficking* in 2012. A further guide titled *Services for Victims of Child Trafficking* was published in February, 2012. A step by step guide on what an officer should do if they think encounter an instance of human trafficking is available to every member of An Garda Síochána on an on-line portal.

The Anti-Human Trafficking Unit has reported on a number of activities during 2012 related to awareness raising:[312]

- In May 2012 an information note on human trafficking was uploaded to the Office for the Promotion of Migrant Integration's website.[313]
- In addition, a guide titled '*Services for Victims of Child trafficking*' was produced by the AHTU and aimed at service providers who deal with children.
- During 2012 the AHTU and members of An Garda Síochána made presentations to a wide range of organizations for the purpose of raising awareness concerning trafficking in human beings. These included a number of presentations to third level institutions e.g. Trinity College Dublin, University College Dublin, Dublin City University, Dublin Institute of Technology, with the aim of promoting research on this topic.
- A prize-giving ceremony for an art competition for second level students took place on 22 February 2012 at which Ms. Kathleen Lynch, Minister of State for Disability, Equality and Mental Health addressed participants. A cross-border video and photography competition for third level students also took place during 2012 with a prize-giving ceremony held in December and attended by the Minister for Disability, Equality and Mental Health and the Northern Ireland Justice Minister David Ford, MLA.
- The content of the Department of Justice and Equality's anti-trafficking website www.blueblindfold.gov.ie continued to be updated and revised during 2012 to make the site more user-friendly and informative.
- The AHTU began a newsletter series in October 2012. It will be issued three times a year with relevant updates of work completed by the Unit and NGO/IO activities. The newsletter is sent to all members of relevant internal working groups as well as other interested parties.
- A number of publications and articles by the Anti-Human Trafficking Unit on human trafficking were placed in magazines aimed at reaching persons within different sectors. An article was submitted to the Irish Hotels Federation (IHF) in January 2012 for distribution to its members,

[312] Anti-Human Trafficking Unit, Department of Justice and Equality (January 2013).
[313] See '*Human Trafficking is a Crime in Ireland Don't Close Your Eyes - Be Aware, Be Alert*' page on www.integration.ie.

and a further article to the Irish Vocational Education Association (IVEA) on 29 February for their newsletter.

Regarding prevention in source countries, the AHTU, with the assistance of the Department of Foreign Affairs and Trade, has disseminated an information pack on human trafficking (this included leaflets on the indicators to be aware of in relation to sexual exploitation, labour exploitation and child trafficking, posters, contact details to report suspicions, etc) to visa offices (many of which are based within the Embassies) and to all diplomatic offices abroad. Presentations have also been made to diplomatic personnel being posted abroad.[314]

7.4.3 International Cooperation

International cooperation regarding law enforcement continued during 2012 with regard to prevention and prosecution. The Anti-Human Trafficking Unit has stated that given the international nature of human trafficking, Ireland has placed considerable importance on cooperating with other EU Member States in combating trafficking in human beings.[315]

Coordination with third countries continued during 2012. The AHTU, with the assistance of the Department of Foreign Affairs and Trade, disseminated an information pack on human trafficking (this included leaflets on the indicators to be aware of in relation to sexual exploitation, labour exploitation and child trafficking, posters, contact details to report suspicions, etc) to visa offices (many of which are based within the Embassies) and to all diplomatic offices abroad. Presentations have also been made to diplomatic personnel being posted abroad. In addition, the framework for a new partnership programme between Irish Aid and the International Labour Organization (ILO) and based around the ILO's Decent Work Agenda, was approved in 2011 and consists, in principle, of two phases: Phase I (2012-2013) and Phase II (2014-2015). Irish Aid funding will be lightly earmarked at the level of selected Programme and Budget outcomes corresponding to the priority themes funded in the previous three phases of the programme, namely, women's entrepreneurship, promoting employment and entrepreneurship opportunities for persons with disabilities and action against forced labour and child labour. The total funding for the new programme is €12 million; with €6 million provided for each phase. It is envisaged that in each phase €1.8 million and €0.6 million will be allocated to the priority themes of forced labour and child labour respectively.[316]

[314] Anti-Human Trafficking Unit, Department of Justice and Equality (January 2013).
[315] *Ibid*.
[316] *Ibid*.

7.5 US Trafficking in Persons Report 2012

The 2012 US State Department *Trafficking in Persons Report 2012* saw Ireland remain a Tier 1 country,[317] fully complying with the minimum standards for the elimination of trafficking. The 2012 report noted that Ireland continued to be a 'destination, source and transit country' for women, men and children subjected to trafficking for the purposes of sexual and labour exploitation. It noted that sex trafficking victims originated in 'Eastern Europe, African countries including Nigeria, South America, and Asia'. Adult labour trafficking victims reportedly came from 'South America, Eastern Europe, Asia, and Africa' and were highlighted as being found in 'domestic service and restaurant work'. The subject of labour exploitation in the diplomatic sphere was highlighted and the Report noted that the Irish government had taken 'important steps' to 'investigate and prevent domestic servitude among employees of diplomats posted in Ireland'.

The 2012 Report stated that all identified victims of trafficking had access to services, but did note that the 'majority' of non-EU victims received services and pursued status via the asylum process which was noted by NGOs as resulting in 'inadequate care and insufficient protection of victims' rights, in comparison to the provisions specific to trafficking victims'. The lack of prosecutions of offenders under the 2008 Act was noted.

The Report made a number of recommendations including the increased implementation of the *Criminal Law (Human Trafficking) Act 2008 with particular regard to holding offenders accountable*, the consideration of additional legislation to 'explicitly criminalize' forced labour, to 'explore and enhance' the role of NGOs in the victim identification process and to ensure that all victims are granted an official recovery and reflection period 'regardless of immigration status'. The expansion of legal aid services beyond cooperation with law enforcement is recommended, and Ireland is urged to consider establishing a national anti-trafficking rapporteur or similar entity.[318]

7.6 Research

A Children's Rights Alliance report published in September 2012 looked at care provisions for separated children in Ireland.[319] 'Safe Care for Trafficked Children in Ireland: Developing a Protective Environment' outlined the supports and legal protection available to (suspected) child trafficking victims and make a number of policy recommendations. The report called for the enshrinement in law of the automatic granting of temporary residency on humanitarian grounds for trafficked children, and called for the immediate ratification of the United

[317] Tier 1 classification indicates countries which fully comply with *Trafficking Victims Protection Act*'s (TVPA) minimum standards.

[318] US State Department (2012). *Trafficking in Persons Report 2012*. Available at www.state.gov.

[319] Children's Rights Alliance (2012). *Safe Care for Trafficked Children in Ireland: Developing a Protective Environment*. Available at www.childrensrights.ie. See Section 6.1.2 for further discussion on the report's findings with regard to overall care for separated children.

Nations *Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Pornography and Child Prostitution* by the Irish government. It noted the change in accommodation arrangements for unaccompanied minors and welcomed such changes as well as noting that a 'number of challenges' had presented themselves at an early stage including the management and inspection of services as well as the contracting of services to private foster care providers. There was a consensus among those interviewed that trafficked, or at risk of, minors should be accommodated in specialised placements. The report noted the required enactment of legislation to bring care providers for unaccompanied and trafficked minors under the inspection and monitoring remit of the Health Information and Quality Authority (HIQA). It also noted that a lack of social work follow up of reunified minors 'can place separated migrant children at risk of trafficking and exploitation'. Recommended trainings included on the identification and care needs of trafficked children. The lack of extension of a protocol regarding missing unaccompanied minors between the Dublin-based Social Work Team for Separated Children Seeking Asylum and the Garda National Immigration Bureau (GNIB) to all ports (beyond Dublin Airport) was also highlighted.

Chapter 8

Migration and Development Policy

8.1 Inter-Departmental Committee on Development

Since 2007, the Irish Inter-Departmental Committee on Development (IDCD) has met twice a year. The Committee is an inter-departmental forum with the stated aim of ensuring greater coherence on development policy across all Government departments. All 14 Government departments attend, and migration has been recognised as a policy area which can have a 'profound impact' on development.

8.2 Policy Coherence

During 2012, a report commissioned by the Advisory Board[320] for Irish Aid published updated possible indicators for Ireland within the policy coherence for development framework. Seven possible indicators which 'throw light' on the development impacts of Irish migration policy are highlighted including non-DAC inflow as a percentage of total population; support for remittances to developing countries; and the ratio of tuition fees for non-DAC students to DAC students and Irish students.

8.3 Ethical Recruitment Practices

Regarding efforts to mitigate brain drain, Ireland continued to interact with global alliances such as the Global Health Workforce Alliance which was instrumental in achieving the Code of Conduct for International Recruitment of Health Workers.

[320] M. King and A. Matthews (2012). *Policy Coherence for Development: Indicators for Ireland.* Institute for International Integration Studies: Trinity College Dublin. Available at www.dci.gov.ie.

Chapter 9

Implementation of EU Legislation

9.1 Transposition of EU Legislation 2012

Council Directive 2005/36/EC on the recognition of professional qualifications (as amended by Council Directive 2006/100/EC and Council Directive 2006/101/EC)

Transposition date: 20 October 2007.

Status: *Health and Social Care Professionals (Amendment) Act 2012* (not commenced).

Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (as amended by Council Directive 2006/100/EC)

Transposition date: 14 March 2000.

Status: *The European Communities (Lawyers' Establishment) Regulations 2003 (Qualifying Certificate 2013) Regulations 2012 (S.I. No. 540 of 2012).*

Article 49 of the Treaty on the Functioning of the European Union (TFEU)

Transposition date: N/A.

Status: *The European Union (Recognition of Professional Qualifications relating to the Profession of Pharmacist) Regulations 2012 (S.I. No. 235 of 2012)* were made in order to give full effect to Article 49 TFEU and to amend the *Pharmacy Act 2007* to allow for the recognition of qualifications as a pharmacist which, prior to the coming into force of *Directive 2005/36/EC* had been recognisable by virtue of a derogation contained in *Directive 85/432/EEC*.

9.2 Experiences, Debates in the (Non-) Implementation of EU Legislation

9.2.1 Discussion in Parliament on Ireland's participation in and adoption of the Recast *Qualification Directive*

The question of Ireland's participation in and adoption of the Recast *Qualification Directive (2011/95/EU)* arose for discussion in Dáil Éireann.[321] The Minister for Justice and Equality stated that Ireland had not participated in its adoption nor was it bound by the Recast Directive, however, the question of Ireland opting-in at a later stage would be considered in the context of the negotiations on the other proposed measures forming part of the Common European Asylum System. Agreement on the proposals for a Recast Dublin Regulation, Eurodac Regulation and Asylum Procedures Regulation remained to be concluded.

9.2.2 Interpretation of the *Qualification Directive*

Following a preliminary reference from the High Court, the European Court of Justice in *MM v. Minister for Justice* considered the interpretation of Article 4(1) of the *Qualification Directive* regarding the duty to cooperate. It found that the requirement for the Member State to cooperate with an applicant in that provision cannot be interpreted as meaning that where a foreign national requests subsidiary protection status after he has been refused refugee status and the competent national authority is minded to reject that status as well, that the authority is on that basis obliged to inform the applicant that it proposes to reject his application and notify him of its arguments before it adopts its decision so as to enable him to make his views known before the decision is adopted.

However, the Court of Justice went on to say that where there are two separate procedures, one after the other, for examining applications for refugee status and subsidiary protection, it was for the national court to ensure that in each of the procedures, the applicant's fundamental rights and in particular, the right to be heard, and to have the opportunity to make his views known before the adoption of the decision. It also requires that there must be a separate opportunity to make his views heard in relation to each of the two parts of the system, at the subsidiary protection stage, no less than in the determination of refugee status.

[321] Parliamentary Question No.203 (22 February 2012).

Appendix I Methodology and Definitions

A.1 METHODOLOGY

A1.1 Definition of a Significant Development

For the purpose of the *Annual Policy Report on Migration and Asylum 2012: Ireland*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a 'significant development/debate' within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Development will also be considered significant if such developments/debates then led to any proposals for amended or new legislation.

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

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

A.1.2 Sources and Types of Information Used

The sources and types of information used include:

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

A.1.3 Statistical Data

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office.

Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents.

A.1.4 Consulted Partners

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report on Migration and Asylum 2012: Ireland:*

- Department of Jobs, Enterprise and Innovation
- Department of Justice and Equality
- Health Service Executive (HSE)
- Immigrant Council of Ireland (ICI)
- International Organization for Migration (IOM)
- Irish Refugee Council (IRC)
- Migrant Rights Centre Ireland (MRCI)
- UNHCR Ireland.

A.2 Terms and Definitions

All definitions for technical terms or concepts used in the study are as per the *EMN Glossary 2.0.*

Appendix II National Statistics

The tables below contain further relevant statistical data for 2012.

Table A2.1 Entry Visa Applications Granted by Nationality, 2012

Entry Visa Applications Granted by Nationality 2012	
Nationality	No.
India	13,442
Russian Federation	12,033
China	9,342
Nigeria	4,602
Saudi Arabia	4,232
Turkey	3,945
Philippines	2,841
Pakistan	2,284
Ukraine	2,131
Belarus	1,963
Other	22,504
Total	**79,319**

Source: *Irish Naturalisation and Immigration Service (April 2013).*

Table A2.2 Gross and Net Migration Flows, 1987 - 2012

Year (ending April)	Outward	Inward	Net
	1,000s		
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	46.3	151.1	104.8
2008	49.2	113.5	64.3
2009	72.0	73.7	1.6
2010	69.2	41.8	-27.5
2011	80.6	53.3	-27.4
2012	87.1	52.7	-34.4

Source: Central Statistics Office, *Population and Migration Estimates*, various years. Available at www.cso.ie. Earlier table first appeared in O'Connell, P.J. et al. (2013). *International Migration in Ireland, 2012*. Geary WP2013/04. Available at www.ucd.ie/geary.

Table A2.3 Certificates of Registration by Nationality and Stamp, 2012

Total GNIB Registrations by Stamp 2012	
Stamp	**No.**
Unrecorded	10,357
Stamp 1	10,473
Stamp 1A	179
Stamp 2	42,775
Stamp 2A	4,322
Stamp 3	11,236
Stamp 4	68,451
Stamp 4 EU Fam	8,406
Stamp 5	1,491
Stamp 6	30
Stamp 0	62
Total	**157,782**

Total Registrations by Nationality, 2012	
Nationality	**No.**
Indian	16,873
Brazilian	16,136
Nigerian	14,387
Chinese	13,077
American	12,030
Philippines	10,621
Pakistan	7,482
Malaysia	4,640
South Africa	4,332
Ukraine	3,231
Others	54,973
Total	**157,782**

Source: *Irish Naturalisation and Immigration Service (April 2013).*

Table A2.4 Employment Permits Issued and Renewed, 1998-2012

Year	Permits Issued	Permits Renewed	Total Permits Issued (including Group Permits)
1998	3,830	1,886	5,716
1999	4,597	1,653	6,250
2000	15,735	2,271	18,006
2001	29,951	6,485	36,436
2002	23,759	16,562	40,321
2003	22,512	25,039	47,551
2004	10,821	23,246	34,067
2005	8,166	18,970	27,136
2006	8,254	16,600	24,854
2007	10,147	13,457	23,604
2008	8,481	5,086	13,567
2009	4,024	3,938	7,962
2010	3,394	3,877	7,271
2011	3,184	2,016	5,200
2012	2,919	1,088	4,007

Source: *Department of Jobs, Enterprise and Innovation. Available at www.djei.ie.*

Table A2.5 Applications for Asylum 1992 - 2012

Year	Number of Applications
1992	39
1993	91
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
2008	3,866
2009	2,689
2010	1,939
2011	1,290
2012	956

Source: *Office of the Refugee Applications Commissioner. Available at http://www.orac.ie. Earlier table first appeared in O'Connell, P.J. et al. (2013). International Migration in Ireland, 2012. Geary WP2013/04. Available at www.ucd.ie/geary.*

Note: *Total figures refer to new and reapplications.*

Table A2.6 Applications for Asylum by Main Country of Nationality 2007- 2012

Ranking	2007		2008		2009		2010		2011		2012	
1st	Nigeria	1,028	Nigeria	1,009	Nigeria	570	Nigeria	387	Nigeria	182	Nigeria	162
2nd	Iraq	285	Pakistan	237	Pakistan	257	China	228	Pakistan	175	Pakistan	105
3rd	China	259	Iraq	203	China	194	Pakistan	200	China	142	DR Congo	58
4th	Pakistan	185	Georgia	181	DR Congo	102	DR Congo	71	DR Congo	70	Zimbabwe	49
5th	Georgia	174	China	180	Zimbabwe	91	Afghanistan	69	Afghanistan	67	Albania	46
6th	Sudan	158	DR Congo	173	Georgia	88	Ghana	57	Zimbabwe	66	South Africa	33
7th	DR Congo	151	Moldova	141	Moldova	86	Cameroon	56				
8th	Somalia	145	Somalia	141	Somalia	84	Moldova	56				
9th	Moldova	133	Sudan	126	Ghana	82	Georgia	53				
10th	Eritrea	112	Zimbabwe	114	Iraq	76	South Africa	53				
All others		1,355		1,361		1,059		709		588		503
Total		**3,985**		**3,866**		**2,689**		**1,939**		**1,290**	**Total**	**956**

Source: *Office of the Refugee Applications Commissioner. Available at http://www.orac.ie. Earlier table first appeared in O'Connell, P.J. et al. (2013). International Migration in Ireland, 2012. Geary WP2013/04. Available at www.ucd.ie/geary*

Note: *Total figures refer to new and reapplications.*

Table A2.7 Asylum Appeals Received by Type, 2011 and 2012

Procedure	2011	2012	% Change
Substantive/ Substantive 15 Day	641	451	-30%
Accelerated	386	190	-51%
Dublin Regulation	79	45	-43%
Total	**1,106**	**686**	**-38%**

Source: *Table cited in Refugee Appeals Tribunal (2013). Annual Report 2012. Available at www.refappeal.ie.*

Table A2.8 Applications for Leave to Remain Granted Under Section 3, *Immigration Act 1999*

Year	Number of Applications
1999	22
2000	11
2001	53
2002	98
2003	59
2004	209
2005	154
2006	217
2007	859
2008	1,278
2009	659
2010	188
2011	1,968*
2012	563**
Total	**6,338**

Source: *Irish Naturalisation and Immigration Service (April 2013).*

*** *This figure includes cases granted following their consideration under Section 3 of the Immigration Act 1999 (as amended) and the cases of those persons who claimed a link to the Zambrano judgment to advance their case to remain in the State.*

**** *Note that 2012 figure provided as 564 in Department of Justice and Equality (2013). Annual Report 2012. Available at* www.justice.ie.

Table A2.9 Applications for Subsidiary Protection 2006 - 2012

Year	Applications Received	Applications Granted
2006*	185	0
2007	1,341	2
2008	1,498	7
2009	1,758	21
2010	1,466	2
2011	889	13
2012	511	28

Source: *Irish Naturalisation and Immigration Service (April 2013).*
Note: **Subsidiary Protection Regulations came into force on 10 October 2006.*

Table A2.10 Enforced Deportation Orders by Nationality, 2010 - 2012

2010		2011		2012	
Country	No.	Country	No.	Country	No.
Nigeria	209	Nigeria	124	Nigeria	85
Georgia	45	Moldova	21	Pakistan	37
Moldova	10	South Africa	21	Georgia	27
Brazil	9	Georgia	18	Somalia	22
South Africa	9	Pakistan	18	South Africa	19
Others	61	Others	78	Others	112
Total	**343**		**280**		**302**

Source: *Irish Naturalisation and Immigration Service (April 2013). Earlier table first appeared in Quinn, E. and Kingston, G. (2012.) Practical Measures for Reducing Irregular Migration: Ireland. Available at www.esri.ie.*

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ISBN 978-0-7070-0363-4

EMN Ireland is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN was established via Council Decision 2008/381/E