

# Strategies Used to Support Return Policy in Ireland

## *National Policy and Practice on Entry Bans and Ireland's use of Readmission Agreements*

Emma Quinn, Egle Gusciute

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## 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 levels 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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## About this Report

This European Migration Network Study, compiled according to commonly agreed specifications, provides an overview of policies, administrative practices and available data on strategies used to support return policy in Ireland up to June 2015. The study focuses on national policy and practice regarding entry bans and Ireland's use of readmission agreements.

The report consists of information gathered primarily for an overview, EU-level synthesis report on *Good practices in the return and reintegration of irregular migrants*. All reports are available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/).

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

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## Abbreviations and Key Terms

An Garda Síochána	Irish Police Force
AVRR	Assisted Voluntary Return and Reintegration
CJEU	Court of Justice of the European Union
CTA	Common Travel Area
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
Entry Ban	An administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision ( <i>Asylum and Migration Glossary 3.0</i> , EMN 2014.)
EU	European Union
EURAs	EU Readmission Agreements
Forced return	Compulsory return of an individual to the country of origin, transit or third country (i.e. country of return), on the basis of an administrative or judicial act ( <i>Asylum and Migration Glossary 3.0</i> , EMN 2014.)
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GNIB	Garda National Immigration Bureau
ICI	Immigrant Council Ireland
INIS	Irish Naturalisation and Immigration Service
IOM	International Organisation for Migration
IRC	Irish Refugee Council
NGO	Non-Governmental Organisation
ORAC	Office of the Refugee Applications Commissioner

Return Decision	An administrative decision or judicial act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return ( <i>Asylum and Migration Glossary 3.0</i> , EMN 2014.)
S.I.	Statutory Instrument
SIS	Schengen Information System
SP	Subsidiary Protection
TCN	Third-Country National
T.D.	Teachta Dála, a member of the Irish Parliament
TFEU	Treaty on the Functioning of the European Union
UKBA	UK Border Agency
UNHCR	United Nations High Commissioner for Refugees
Voluntary Return	Assisted (in which case it would be assisted voluntary return) or independent return to the country of origin, transit or third country, based on the free will of the returnee ( <i>Asylum and Migration Glossary 3.0</i> , EMN 2014.)

# Executive Summary

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## Background

This study aims to provide a greater understanding of entry bans and readmission agreements, as elements of the forced return procedures applied to non-EU nationals without legal permission to reside in Ireland.

A similar study has been produced in 22 other EU Member States, plus Norway. The national reports inform an EU-wide synthesis report, which facilitates an overview of the practical application of entry bans and readmission agreements in relation to the return of non-EU nationals. However the Irish situation regarding return policy and practice is not directly comparable to other EU Member States. EU legal provisions are such that Ireland and the UK may choose whether or not to participate in EU immigration and asylum measures that fall under Title V of the Treaty on the Functioning of the European Union (TFEU). Ireland and the UK do not participate in the EU Return Directive,<sup>1</sup> and therefore apply entry bans in cases of forced return differently to the majority of EU Member States.<sup>2</sup>

In Ireland, any non-EU national whose residence in the State becomes illegal may be liable to deportation (forced return). Each deportation order issued contains an inherent entry ban of indefinite duration. Unlike in some other Member States, entry bans are not issued independently of forced return procedures in Ireland.

The entry ban component of the Irish deportation order is the focus of the current report. Ireland has also recently opted to participate in a range of EU Readmission Agreements; these will also be discussed.

## OVERVIEW OF DOMESTIC LEGAL FRAMEWORK

In the Irish context of return processes, the *Immigration Act 1999* is the key instrument. This Act provides for the making of deportation orders, each of which contains an inherent entry ban of indefinite duration. Section 3(1) of the *Immigration Act 1999* provides for the making of deportation orders and requires

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<sup>1</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>2</sup> Norway is bound by the Return Directive as a non-EU Member State associated to the Schengen Area.

*...any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.*

Before a deportation order is made, a notification of a proposal to deport known as the '15-day letter' is issued, which sets out three options for the recipient: to leave the State voluntarily; to consent to the making of a deportation order; or to make representations as to why he or she should be given 'leave to remain'. Once a deportation order is issued, the requirement to leave the State, and remain thereafter outside it, is in place.

### AVAILABLE DATA

Available data on entry bans as contained in deportation orders issued and enforced are limited. The number of deportation orders issued to non-EU nationals increased by 72 per cent, from 1,077 to 1,854, between 2009 and 2013. The number of deportation orders enforced fell by 38 per cent in the same period, from 338 to 209. The exact reasons behind the low enforcement ratio are unknown but may include: difficulties in implementing deportation orders caused by problems procuring documents that would allow the person to travel; sequential protection applications being made by members of the same family; evasion by the subject of the deportation order; and in the context of a prolonged recession in Ireland, reduced resources available to the authorities tasked with the enforcement of deportation orders. Finally, the figures may also reflect the strategic and/or operational priorities of the responsible Minister at the time.

The Irish Naturalisation and Immigration Service indicated that the majority of people deported from Ireland are unsuccessful protection applicants, although the relevant data are not published. The median period between the date on which a deportation order is signed in respect of an unsuccessful protection applicant, to the date of enforcement, was 17 months between 2011 and 2014.<sup>3</sup>

Evidence exists of a decline in the annual ratio of deportation orders issued to those enforced: in 2010 the ratio was 33 per cent, falling to 21 per cent in 2011. Data supplied by INIS indicate that the enforcement ratio in 2012 was approximately 22 per cent and 11 per cent in 2013.<sup>4</sup>

<sup>3</sup> Communication with the Repatriation Division of INIS, June 2015.

<sup>4</sup> Years 2010 and 2011: Dáil Debate Written Answer 79-80, Vol. 785 No. 3 (Unrevised), 6 December 2012. Years 2012 and 2013: Repatriation section, Irish Naturalisation and Immigration Service, June 2014.

Non-implementation of return decisions is a challenge faced across the EU (European Union Agency for Fundamental Rights, 2011). EU-level return-related data are captured in a manner that reflects the procedures set out in the Return Directive, therefore direct comparisons with the Irish situation are not possible. However, over the period 2009 to 2013, the total number of return decisions (which allow for forced or voluntary return) issued under the Return Directive across the EU has consistently been more than double the number of returns (forced and voluntary) implemented (European Migration Network Return Experts Group, 2014).

In 2013, 426 persons chose to return voluntarily from Ireland rather than be issued with a deportation order, down from 540 in 2009. Between 2009 and 2013 the main country of nationality of forced returnees was Nigeria and the main country of nationality of voluntary returnees was Brazil.

## LEGAL CHALLENGES

The power of the State to deport is inherent to the State and decisions on deportation must remain with the Executive.<sup>5</sup> However this power may be restrained by the Courts, and deportation orders have been quashed by the Courts for a variety of reasons, depending on the individual circumstances of a case. Revocation of a deportation order may be sought at any time under Section 3(11) of the *Immigration Act 1999*, including by persons outside the State, and the decision on revocation is made by the Minister for Justice and Equality. Apart from revocation the only available legal remedy is to seek to set aside a deportation order via judicial review, which deals with the procedures followed rather than the merits of the individual case. When such a deportation order is quashed, it falls to the Minister to reconsider whether or not a deportation order should be made again in respect of the person.

The fact that the entry ban contained within the deportation order is of indefinite duration has given rise to a number of challenges in the Courts in recent years, especially in relation to family life as protected under Article 41 of the *Irish Constitution* and Article 8 of the *European Convention on Human Rights*. Such challenges often involve non-EU family members of Irish nationals, including Irish-citizen children. For example, in recent years, priority has been given by INIS to examining and resolving cases involving Irish-citizen children to which the *Zambrano Judgment*<sup>6</sup> (a judgment which defended the right of EU-citizen children

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<sup>5</sup> *Efe v. Minister for Justice* [2011] 2 IR 798.

<sup>6</sup> *Gerardo Ruiz Zambrano v. Office National de l'Emploi, Case C-34/09*, decision of the Court of Justice of the European Union in 2011.

to reside with their parents in the EU, even without intra-EU movement having taken place) may be relevant. In eligible cases deportation orders have been revoked by the Minister and/or leave to remain in the State has been granted.

There have been cases of deportation orders being overturned where, due to the inherent lifelong entry ban, a family would be separated permanently and/or where the possibility for an Irish national to move to the country of origin of the person being deported was not regarded by the Courts to be acceptable.<sup>7</sup> In cases of deportation of family members for the purpose of prevention of crime and disorder in the State, requests for revocation of deportation orders have not been granted, notwithstanding the fact that the family may be separated, and the Courts have upheld such decisions.<sup>8</sup>

It is currently not possible to administratively appeal against a deportation order and, by extension, the entry ban. Several NGOs have called for an independent appeals mechanism for immigration-related administrative decisions, including return decisions, to be established.<sup>9</sup>

## EU READMISSION AGREEMENTS AND BILATERAL READMISSION ARRANGEMENTS

EU Readmission Agreements (EURAs) form part of the EU's effort to build co-operation with non-EU countries of origin, on the return of illegally-staying nationals. EURAs establish better procedures for the identification and repatriation of persons who do not, or no longer, fulfil the conditions for entry, residence or presence in the territory of the requesting state. INIS has stated that the policy priorities of the EU and Ireland are becoming increasingly aligned as regards return and readmission policy. Since July 2014 Ireland now participates in twelve EU Readmission Agreements, although Ireland has not yet returned anyone on the basis of such Agreements. An INIS official stated the Agreements are viewed as an important sign of solidarity with other Member States and a closer alignment of Ireland's irregular migration policies and priorities with other EU states.

Ireland has no formal bilateral readmission agreements with any third countries other than an agreement with Nigeria, which is not yet formally ratified by the

<sup>7</sup> See *XA v. Minister for Justice* [2011] IEHC 397.

<sup>8</sup> See *FE v. Minister of Justice* [2014] IEHC 62.

<sup>9</sup> See for example Crosscare, 2010; Immigrant Council of Ireland, 2010, 2013; Doras Luimní, the Irish Refugee Council (IRC) and Nasc (2011).

Nigerian authorities. The agreement with Nigeria is not at present binding on either State but both sides are 'operating in the spirit of agreement, particularly in the area of repatriation' (Quinn and Kingston, 2012). A number of informal bilateral arrangements are also in place.

## EU JOINT RETURN OPERATIONS

The existence of the CTA between Ireland and the UK largely influences the former's policy on the return of non-EU nationals. Ireland and the UK exchange certain information to prevent immigration abuse and to preserve the integrity of the CTA. Over recent years the Irish immigration service has become increasingly involved in joint return operations with other Member States and operations led by Frontex,<sup>10</sup> and the Irish Naturalisation and Immigration Service (INIS) stated that return operations are now more 'European-focused'. Ireland participated in five joint return operations organised in conjunction with Frontex in 2013 and in seven such joint return operations in both 2011 and 2012. INIS stated that the return of irregular migrants<sup>11</sup> is an increasingly important policy priority in terms of upholding the integrity of the immigration system and as an ongoing deterrent against irregular migration.

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<sup>10</sup> European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

<sup>11</sup> In a global context this term refers to any person who owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country (*Asylum and Migration Glossary 3.0*, EMN 2014 available at [www.emn.ie](http://www.emn.ie)).

# Section 1

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## Introduction

### 1.1 OBJECTIVES

This study aims to provide a greater understanding of entry bans and readmission agreements as elements of the return-migration procedure that is applied to non-EU nationals without permission to reside in Ireland. The EU Return Directive<sup>12</sup> sets out the legal framework for EU return policy. EU legal provisions are such that Ireland and the UK may choose whether or not to participate in EU immigration and asylum measures that fall under Title V of the Treaty on the Functioning of the European Union (TFEU), in accordance with Protocol No. 21 to the Treaty. Ireland and the UK do not participate in the Return Directive and therefore apply entry bans, in cases of forced return, differently to the majority of EU Member States. Unlike some other Member States, in Ireland entry bans are not issued independently of forced return procedures. In the Irish context of return processes, the Immigration Act 1999 (as amended) (henceforth the Act of 1999) is the key instrument. The Act of 1999 provides for the making of a deportation order which requires the non-Irish national specified in it to leave the State within specified period and to remain thereafter outside the State.

A similar report has been produced in 22 other EU Member States, plus Norway, in order to inform an EU-wide synthesis report.<sup>13</sup> The current section provides an introduction to the study, its methodology and the terminology used. Section 2 examines the national legal framework for issuing deportation orders (with inherent entry bans). Section 3 provides an overview of national policy regarding deportation orders, which constitute the closest equivalent to entry bans in Ireland. The deportation procedure and the main actors involved in the return process are described. Available national data are provided together with data on the number of entry bans issued by other EU Member States plus Norway. The revocation of deportation orders and relevant case law are considered. The territorial scope of entry bans contained in deportation orders, information-sharing regarding entry bans with other EU Member States, and practical

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<sup>12</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>13</sup> For the purpose of that report, a deportation order (containing an inherent entry ban), as set out in the Act of 1999, was treated as broadly equivalent to an entry ban as set out under the Return Directive. Synthesis report is available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/studies/results/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm).

challenges are also examined. In Section 4 readmission agreements and bilateral return agreements are explored. Ireland has no formal bilateral agreements with third countries regarding readmission; however a number of informal readmission arrangements are in place. Key findings from the study are summarised in Section 5.

## 1.2 METHODOLOGY

This report was originally compiled according to commonly agreed European Migration Network (EMN) specifications. In order to write the Irish report, desk research was undertaken. Key sources in this regard included previous EMN reports on return and irregular migration,<sup>14</sup> academic research and reports from NGOs. The Department of Justice and Equality website also proved to be a useful source of information. In order to fill outstanding information gaps, interviews were conducted with officials of the Irish Naturalisation and Immigration Service (INIS). The EMN Ireland legal consultant also provided input. Further comments were received from the Office of the Refugee Applications Commissioner (ORAC), the Immigrant Council of Ireland and the Irish Refugee Council.

Data availability was limited, necessitating the use of several different sources. The national data used in this report were derived from parliamentary questions, the Department of Justice and Equality media releases ‘Immigration in Ireland Review’ (2012, 2013 and 2014) and from INIS officials. In order to locate Ireland within the EU context, data on entry bans issued in other Member States plus Norway are reproduced from the synthesis report.<sup>15</sup>

## 1.3 KEY TERMINOLOGY

**An Entry Ban** is defined as

*an administrative or judicial decision or act prohibiting entry into and stay on the territory of the Member States for a specified period, accompanying a return decision.*<sup>16</sup>

For the purpose of this report on entry ban policy in Ireland, a deportation order will be treated as broadly equivalent to an entry ban: the requirement to leave the State and remain thereafter outside is inherent in each deportation order issued.

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<sup>14</sup> Previous EMN reports are available at [www.emn.ie](http://www.emn.ie).

<sup>15</sup> European Migration Network (2014a).

<sup>16</sup> *Asylum and Migration Glossary 3.0*, EMN 2014 available at [www.emn.ie](http://www.emn.ie).

**A Deportation Order** is an order made under Section 3(1) of the *Immigration Act 1999*, which states that the Minister may

*require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.*

**An Exclusion Order** is made under Section 4(1) of the Act of 1999, which states that

*The Minister may, if he or she considers it necessary in the interest of national security or public policy, by order (referred to in [the] Act as an ‘exclusion order’) exclude any non-national specified in the order from the State.*

Deportation orders and exclusion orders are different in character: the former is primarily designed to remove a non-Irish national from the State and to exclude them from it thereafter; whereas the latter is primarily designed to prevent the arrival in the State of any individual that may threaten national security or public policy.<sup>17</sup>

**A Return Decision** is defined in the Return Directive as

*an administrative decision or judicial act, stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return.*<sup>18</sup>

In the Irish return context two documents contain elements of the return decision: a notification that the individual does not have a legal basis to remain, contained in what is known as a ‘15-day letter’; and an obligation to leave the territory, communicated by way of an ‘Arrangements letter’. Both documents are discussed in greater detail below.

A notification of a proposal to deport (‘15-day letter’) issued under Section 3(3) of the *Immigration Act 1999* sets out several options for the recipient: to leave the State before the Minister issues a deportation order, either independently or as part of an Assisted Voluntary Return Programme; to consent to the issuing of a deportation order; or to make representations to the Minister as to why the individual concerned should be granted leave to remain temporarily in the State.

<sup>17</sup> Correspondence with legal consultant, April 2014.

<sup>18</sup> *Asylum and Migration Glossary 3.0*, EMN 2014 available at [www.emn.ie](http://www.emn.ie).

The letter of notification neither imposes nor states an obligation to return (see Annex 1).

The obligation to return is found in the notification sent when the Minister has made a deportation order. Accordingly, for the purpose of this study, the measure which most closely approximates to a ‘return decision’ as defined in the Return Directive is the notification in writing pursuant to Section 3(3)(b)(ii) of the *Immigration Act 1999*, which the Minister sends to the person in respect of whom he or she has made a deportation order. This notification is known as the ‘Arrangements letter’ and contains the information that a deportation order has been issued, the reasons for issuing and the date by which the person concerned must leave the State (See Annex 3).

**EU Readmission Agreement** for the purpose of this study is defined as

*an agreement between the EU with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the third country or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation.*<sup>19</sup>

**Removal** in the Irish context refers to Section 5 of the *Immigration Act 2003* (henceforth the Act of 2003), which permits the removal from the State of persons refused leave to land in the State. Subject to Section 5 of the *Refugee Act 1996* (prohibition of *refoulement*) and Section 4 of the *Criminal Justice (United Nations Convention Against Torture) Act 2000*, Section 5 of the Act of 2003 applies to certain persons, whom an immigration officer or a member of An Garda Síochána (the Irish police force) with reasonable cause, suspects has been unlawfully in the State for a continuous period of less than three months.<sup>20</sup> The

<sup>19</sup> *Asylum and Migration Glossary 3.0*, EMN 2014 available at [www.emn.ie](http://www.emn.ie).

<sup>20</sup> (a) a non-national to whom leave to land has been refused under Article 5(2) of the *Aliens Order 1946* (“the Order”);  
 (b) a non-national who has failed to comply with Article 5(1) of the Order (i.e. a non-national who, coming to the State from a place outside it, other than Northern Ireland or Great Britain, failed to present himself or herself to an immigration officer for leave to land);  
 (c) a non-national who has entered the State in contravention of Article 6 of the Order (i.e. a non-national (other than a seaman) who, coming by sea or air from outside the State, landed elsewhere than at an approved port without the permission of the Minister for Justice);  
 (d) a non-national deemed to be a person to whom leave to land has been refused under the Order;  
 (e) a non-national who has failed to comply with Section 4(2) of the *Immigration Act 2004* (i.e. a non-national who, coming to the State by sea or air from a place outside it, failed to present himself or herself to an immigration officer for permission to land);  
 (f) a non-national who has been refused a permission [to land] under Section 4(3) of that Act;  
 (g) a non-national who is in the State in contravention of Section 5(1) of that Act (i.e. a non-national who is in the State without permission by or on behalf of the Minister for Justice);

Act of 2003 does not provide for the imposition of an entry ban on the persons specified in the event of their removal from the State.

**Voluntary Return** is defined as assisted (in which case it would be Assisted Voluntary Return) or independent return to the country of origin, transit or third country, based on the free will of the returnee.<sup>21</sup>

**Forced Return** is the compulsory return of an individual to the country of origin, transit or third country (i.e. country of return), on the basis of an administrative or judicial act.<sup>22</sup>

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(h) a non-national who has landed in the State in contravention of Section 6(1) of that Act (i.e. a non-national (other than a seaman) who, coming by sea or air from outside the State, landed elsewhere than at an approved port without the consent of the Minister for Justice).

<sup>21</sup> *Asylum and Migration Glossary 3.0*, EMN 2014 available at [www.emn.ie](http://www.emn.ie).

<sup>22</sup> *Ibid.*

# Section 2

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## Legal Framework for Entry Bans

Section 2 provides an overview of the Irish legal framework in relation to the return of non-Irish nationals as set out in the *Immigration Act, 1999*. The various factors and grounds that are taken into consideration when deciding whether to issue a deportation order are also discussed.

### 2.1 OVERVIEW OF LEGAL FRAMEWORK

The EU Return Directive<sup>23</sup> sets out the legal framework for EU return policy. Ireland does not participate in the Directive and therefore does not apply entry bans as set out under Article 11 of the Directive.<sup>24</sup> In Ireland the *Immigration Act 1999* provides for the issuing of deportation orders, with inherent entry bans. The form of the order is specified by *Statutory Instrument (S.I.) No. 55 of 2005*<sup>25</sup> (see Annex 2 for a sample deportation order).

Section 3(1) of the Act of 1999 (subject to the provisions of Section 5 (prohibition of *refoulement*)<sup>26</sup> of the *Refugee Act 1996* and Section 4 of the *Criminal Justice (United Nations Convention Against Torture) Act 2000*)<sup>27</sup> states that

*the Minister may by order require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State.*

Hence every deportation order made contains an entry ban of indefinite duration.

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<sup>23</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>24</sup> The application of Title IV of the EC Treaty to Ireland and the UK is subject to the provisions of a fourth Protocol to the Treaty of Amsterdam. This fourth Protocol means that Ireland and the UK may choose which EU immigration and asylum initiatives to participate in.

<sup>25</sup> S.I. No. 55 of 2005, *Immigration Act 1999 (Deportation) Regulations 2005*.

<sup>26</sup> The return by a State, in any manner whatsoever, of an individual to the territory of another State in which he or she may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or would run the risk of torture (*Asylum and Migration Glossary 3.0*, EMN 2014).

<sup>27</sup> Section 4 of the Act contains a *non-refoulement* safeguard, and states that a person shall not be expelled or returned from the State to another state where the Minister is of the opinion that there are substantial grounds for believing that the person would be in danger of being subjected to torture.

Section 3(2) of the Act of 1999 prescribes the classes of person in respect of whom deportation orders may be made, namely:

- a) a person who has served or is serving a term of imprisonment imposed on him or her by a Court in the State,
- b) a person whose deportation has been recommended by a Court in the State before which such person was indicted for or charged with any crime or offence,
- c) a person who has been required to leave the State under Regulation 14 of the *European Communities (Aliens) Regulations, 1977 (S.I. No. 393 of 1977)*,<sup>28</sup>
- d) a person to whom Regulation 19 of the *European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997)* applies,<sup>29</sup>
- e) a person whose application for asylum has been transferred to a convention country for examination pursuant to Section 22 of the *Refugee Act, 1996*,
- f) a person whose application for asylum has been refused by the Minister,
- g) a person to whom leave to land in the State has been refused,
- h) a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State,
- i) a person whose deportation would, in the opinion of the Minister, be conducive to the common good.

### 2.1.1 Exclusion Order

In addition Section 4 (1) of the Act of 1999 states that

*The Minister may, if he or she considers it necessary in the interest of national security or public policy, by order (referred to in [the] Act as an 'exclusion order') exclude any non-national specified in the order from the State.*

<sup>28</sup> The 1977 Regulations apply to citizens of Member States of the EEA other than Union-citizens. The persons to whom they apply may be required by the Minister for Justice to leave the State if he or she is satisfied that the person's conduct has been such that it would be contrary to public policy or would endanger public security to permit the person to continue to remain in the State or, where the person has not been given a first residence permit, he or she is suffering from a disease or disability specified in the Second Schedule to the Regulations.

<sup>29</sup> The 1997 Regulations apply to citizens of Member States of the EEA other than Union-citizens who are students, retired or otherwise non-economically active and their dependants. Regulation 19 thereof provides that a person who fails to comply with the Regulations or is required to leave the State in accordance with them and who fails to do so may be liable to deportation.

Whilst all deportation orders contain an inherent entry ban of indefinite duration, an exclusion order in its own right differs from a deportation order in character: the former is primarily designed to remove a non-Irish national from the State, and to exclude them from it thereafter; whereas the latter is primarily designed to prevent the arrival in the State of any individual that may threaten national security or public policy.<sup>30</sup> A former Minister of State at the Department of Justice observed that exclusion orders are

*..aimed primarily at persons who are internationally notorious for war crimes, crimes against humanity, terrorism or other serious offences.*<sup>31</sup>

## 2.2 ISSUES THAT MUST BE CONSIDERED PRIOR TO ISSUING A DEPORTATION ORDER (WITH INHERENT ENTRY BAN)

Before a deportation order is issued, the Minister is required to notify<sup>32</sup> the person concerned in writing of the proposal to make such an order and the reasons for it. Section 3(3)(b) of the *Immigration Act 1999* provides that a person who has been notified may, within 15 working days from the sending of the notification, make representations in writing to the Minister and the Minister is obliged to take into account any representations made by or on the behalf of the person before deciding whether the person concerned should or should not be deported (see Section 3 for a description of the deportation process).

Representations may be made by reference to Section 3(6) of *Immigration Act 1999*, which specifies that in determining whether to make a deportation order in relation to a person, the Minister shall have regard to the following:

- a) the age of the person;
- b) the duration of residence in the State of the person;
- c) the family and domestic circumstances of the person;
- d) the nature of the person's connection with the State, if any;
- e) the employment (including self-employment) record of the person;
- f) the employment (including self-employment) prospects of the person;

<sup>30</sup> Correspondence with legal consultant, April 2014.

<sup>31</sup> Written Answer by former Minister of State at the Department of Justice, Equality and Law Reform M. Wallace. *Immigration Bill, 1999*: Committee Stage (Resumed), Select Committee on Justice, Equality and Women's Rights Debate, 29 June 1999.

<sup>32</sup> See *F.P. v. Minister for Justice* [2002] 1 IR 164, which underlined the importance of stating reasons for the proposal to make a deportation order in the letter of notice, as required under Section 3(3)(a) of the *Immigration Act 1999*. The Supreme Court held that an applicant is entitled under the Act to a written notification of the reasons underpinning the proposal for applicant's deportation and to an adequate statement of the reasons for the decision to make the deportation order itself. See, also, the decision of the Supreme Court in *Meadows v. Minister for Justice* [2010] 2 IR 701 on the nature of the reasons which need to be given for a conclusion that the deporting of a non-national will not breach the prohibition on *refoulement* contained in Section 5 of the *Refugee Act 1996*.

- g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- h) humanitarian considerations;
- i) any representations duly made by or on behalf of the person;
- j) the common good; and
- k) considerations of national security and public policy, so far as they appear or are known to the Minister.

Section 3(8) of the Act states that if

*...a person who has consented in writing to the making of a deportation order is not deported from the State within three months of the making of the order, the order shall cease to have effect.*

The Minister is also required to have regard to the provisions of Section 3 *European Convention on Human Rights Act 2003* and also to the principles that have developed arising from relevant case law, in particular Supreme Court decisions, such as *Bode [2007]* and *Oguekwe [2008]*.

### **2.2.1 Groups Unlikely to be Issued with a Deportation Order with Inherent Entry Ban**

In addition, existing policy indicates that certain categories of non-Irish nationals would be unlikely to be issued with a deportation order, with inherent entry ban:

- If a victim of trafficking has had a negative determination in an asylum or subsidiary protection application, he or she will be issued with a notification of proposal to deport. At that stage considerations regarding experience of trafficking, along with any other matters as outlined in Section 3(6) will be examined and the Minister may exercise discretion not to issue a deportation order.
- No legislative prohibition exists on the deportation of unaccompanied minors aged under 18 years, but in practice no such deportations have taken place. Transfers of unaccompanied minors under the Dublin Regulation do occur when TUSLA has deemed that it is in the best interests of the child. Between 2009 and 2013, 16 unaccompanied minors were transferred under the Regulation (Quinn et al., 2014).
- Under EU law, the deportation of third-country national parents of Irish (and hence EU-citizen children) is likely to be precluded. For non-EU national parents to take their children with them would arguably deprive the children of the substance of the rights conferred on them by citizenship of the EU.

This position was made clear by the European Court of Justice in judgment handed down in the case of Ruiz Zambrano, a judgment which defended the right of EU-citizen children to reside with their parents in the EU, even without intra-EU movement having taken place.<sup>33</sup> See Section 3.3.2.2 for further discussion.

Persons with a serious illness and elderly people may be deported unless the actual act of removal would cause death (Quinn and Kingston, 2012).

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<sup>33</sup> *Gerardo Ruiz Zambrano v. Office National de l'Emploi, Case C-34/09*, decision of the Court of Justice of the European Union in 2011.

# Section 3

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## National Policy and Data on Entry Bans

This section provides an overview of national policy regarding deportation orders, each of which contains an entry ban in Ireland. The deportation procedure and the main actors involved in the return process in Ireland are described. Available administrative data are provided. The revocation of deportation orders and relevant case law are considered. The territorial scope of entry bans contained in deportation orders, information-sharing regarding entry bans with other EU Member States, and practical challenges associated with implementation of entry bans are also examined.

### 3.1 OVERVIEW OF NATIONAL POLICY REGARDING ENTRY BANS CONTAINED IN DEPORTATION ORDERS

The Minister for Justice and Equality is responsible for setting overall immigration policy. The Irish Naturalisation and Immigration Service (INIS), an executive office of the Department of Justice and Equality, is responsible for devising and implementing immigration policy.

As outlined in Section 2, the *Immigration Act 1999* provides for the making of a deportation order which requires any non-Irish national<sup>34</sup> specified in it to leave the State within the specified time and to remain thereafter outside the State. The Minister for Justice and Equality is responsible for issuing deportation orders, and on his or her behalf INIS sends notifications of proposals to deport and any other relevant notifications pertaining to deportation orders. The Repatriation Division of INIS is responsible for making practical arrangements for the deportation of persons issued with a deportation order<sup>35</sup> and the Garda National Immigration Bureau (GNIB) is tasked with enforcement of the order.

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<sup>34</sup> An EU citizen's removal from the State may take place pursuant to removal orders made under the *EC (Free Movement of Persons) (No. 2) Regulations 2006* (as amended). Equally, where a third-country national is a person to whom the Regulations apply, e.g. on account of being the spouse of an EU citizen exercising EU Treaty Rights in the State, then removal of such a person must take place pursuant to those Regulations, not pursuant to the Act of 1999: see, for instance, *Irshad v. Minister for Justice* (Unreported, High Court, Barr J. 6 March, 2014).

<sup>35</sup> See [www.inis.gov.ie/en/INIS/Pages/Repatriation](http://www.inis.gov.ie/en/INIS/Pages/Repatriation).

An official of the Irish Naturalisation and Immigration Service indicated that the majority of people who are deported from Ireland are unsuccessful asylum seekers,<sup>36</sup> although the relevant data are not published. Any non-EU national in the State<sup>37</sup> who does not have permission to be in the State may be liable for deportation.

### 3.1.1 National Administrative Data

The entry ban component of the Irish deportation order is the focus of the current report and relevant data relate to deportation orders issued and enforced. The limited data available (derived from a Parliamentary Question and directly from INIS) on deportation orders are summarised in Table 3.1.

Table 3.1 indicates that the number of ‘proposals to deport’ (known as 15-day letters) issued more than halved between 2009 and 2011, which is the most recent full year of data. The exact reasons for this decline are unknown and may reflect immigration-related events and/or Ministers’ operational strategy. The ratio of ‘proposals to deport’ to ‘deportation orders issued’ was 54 per cent in 2011. The gap reflects the fact that, as discussed below in Section 3.2, a ‘proposal to deport’ offers the recipient several options: to leave the State voluntarily; to consent to the making of a deportation order; or to submit representations as to why he or she should be allowed leave to remain. Up to November 2013 the same notification also invited unsuccessful asylum applicants to apply for subsidiary protection, but this now forms a separate step.

Overall, the number of deportation orders issued increased by 72 per cent between 2009 and 2013, while the number of deportation orders enforced fell by 38 per cent in the same period. The median period between the dates of signing a deportation order in respect of an unsuccessful protection applicant and the date of enforcement was 17 months between 2011 and 2014.<sup>38</sup> Figures derived from a Parliamentary Question in 2012 suggest a decline in the annual ratio of deportation orders issued to those enforced: in 2010 the ratio was 33 per cent, falling to 21 per cent in 2011. Data supplied by INIS indicate that the enforcement ratio in 2012 was approximately 22 per cent, and 11 per cent in 2013 when 209

<sup>36</sup> Communication with an official of Repatriation section, Irish Naturalisation and Immigration Service, July 2014.

<sup>37</sup> Section 3(9)(b) of the Act of 1999 states that ‘A person who is ordinarily resident in the State and has been so resident for a period (whether partly before and partly after the passing of this Act or wholly after such passing) of not less than five years and is for the time being employed in the State or engaged in business or the practice of a profession in the State other than (i) a person who has served or is serving a term of imprisonment imposed on him or her by a Court in the State, or (ii) a person whose deportation has been recommended by a Court in the State before which such person was indicated for or charged with any crime or offence, shall not be deported from the State under this section unless three months’ notice in writing of such deportation has been given by the Minister to such person.

<sup>38</sup> Communication with the Repatriation Division of INIS, June 2015.

deportation orders were enforced - the lowest number of forced returns in the reference period.<sup>39</sup>

The exact reasons behind the declining ratio are unknown. The existence of a gap between the number of persons liable to return annually and the number of returns actually implemented each year is seen across EU Member States (European Union Agency for Fundamental Rights, 2011). EU-level return-related data are captured in a manner that reflects the procedures set out in the Return Directive, therefore direct comparisons are not possible. However, over the period 2009 to 2013, the total number of return decisions (which allow for forced or voluntary return) issued across the EU has consistently been more than double the number of returns (forced and voluntary) implemented (European Migration Network Return Experts Group, 2014).

An official of the Irish Naturalisation and Immigration Service indicated that obtaining returnees' identification/travel documents from certain non-EU countries can be difficult and that this represents a significant barrier to the enforcement of deportation orders.<sup>40</sup> This challenge is shared by many EU Member States (European Migration Network, 2014a).

The Irish Naturalisation and Immigration Service commented on delays caused by members of the same family applying for protection sequentially, and legal challenges to various decisions.<sup>41</sup> A legal challenge does not impede enforcement unless an injunction is granted by the court (Becker, 2012).<sup>42</sup> The Irish Human Rights and Equality Commission (IHREC) has commented on the fact that in January 2014, 868 residents in the direct provision reception system were the subject of deportation orders. Such residents may continue to live in the reception centres indefinitely as, for a variety of reasons, the deportation orders cannot be given effect to<sup>43</sup> (Irish Human Rights and Equality Commission, 2014).

A previous EMN study reported the GNIB's view that evasion by the subject of the deportation order was another reason for low enforcement rates (Quinn, 2007). A 2013 court decision has had the effect that the Gardaí (police) may no longer enter a private premises to enforce a deportation order.<sup>44</sup> New legislation is

<sup>39</sup> Correspondence with an official of Repatriation section, Irish Naturalisation and Immigration Service, June 2014.

<sup>40</sup> Communication with the Repatriation Division of INIS, October 2014.

<sup>41</sup> Communication with the Repatriation Division of INIS, June 2015.

<sup>42</sup> See, for instance, the decision of the Supreme Court in *Okunade v. Minister for Justice* [2012] IESC 49.

<sup>43</sup> The Immigrant Council of Ireland commented that statelessness may be an issue in some such cases (comments received April, 2015). See UNHCR (2014) for discussion on the practical implications of statelessness.

<sup>44</sup> In the case of *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579 it was found that members of An Garda Síochána could not enter private premises to enforce a deportation order.

expected to address this issue. In addition, in the context of a prolonged recession in Ireland between approximately 2008 and 2013, it is likely that reduced resources were available to the authorities tasked with the enforcement of deportation orders.

The Repatriation Unit of INIS stated in 2008 that the low enforcement rate is largely attributable to evasion and that court challenges caused delays in enforcement:

*At any one point in time, between 300 and 400 deportations are in the course of being challenged by way of judicial review and the enforcement of orders in these cases is generally suspended pending the outcome of such proceedings (Repatriation Unit, 2008).*

**TABLE 3.1** Deportation Orders (DO) Signed and Enforced 2009-2013

Year	Proposals To Deport Issued	DO Signed	DO Enforced	DO Orders Revoked	Ratio Of DO Enforced To DO Signed
2009	5,037	1,077	338	14	31
2010	4,326	1,034	343	21	33
2011	2,471	1,334	280	15	21
2012	1,779*	1,351	302	18*	22
2013	NA	1,854	209	NA	11
<b>Total</b>	<b>NA</b>	<b>6,650</b>	<b>1,472</b>	<b>NA</b>	<b>NA</b>

*Sources:* Years 2009-2011: Dáil Debate Written Answer 79-80, Vol. 785 No. 3 (Unrevised), 6 December 2012;. Years 2012 and 2013: Repatriation Division, Irish Naturalisation and Immigration Service, May, June 2014.

*Notes:* Deportation orders enforced may relate to deportation orders signed/proposal to deport issued in previous years.  
\*Up to end of October 2012, full year data unavailable (Dáil Debate Written Answer 79-80, Vol. 785 No. 3 (Unrevised), 6 December 2012).

The number of deportation orders revoked has increased in recent years, from 15 in 2011<sup>45</sup> to 180 in 2012, 247 in 2013 and 262 in 2014.<sup>46</sup>

Table 3.2 supplies the number of voluntary returns from Ireland in the period 2011-2013. The majority of persons who opted to return voluntarily, rather than to be issued with a deportation order,<sup>47</sup> received assistance from the International

<sup>45</sup> Debate Written Answer 79-80, Vol. 785 No. 3 (Unrevised), 6 December 2012.

<sup>46</sup> Data taken from Working Group on the Protection Process, 2015. Data relate to protection applicants only. Note that only limited reference to the Working Group report was possible within the current report, due to the short time available.

<sup>47</sup> Department of Justice considers voluntary return to be a cost effective programme and every effort is made to increase its usage among migrants who wish to return home (Department of Justice and Equality, 2014). Coakley (2013) argues that migrants who have applied for international protection in Ireland do not see voluntary return as an attractive option. The majority of them remain in Ireland in the hope of obtaining a positive outcome at some point in the future. The author further notes that the majority do not engage with the idea of voluntary return until it is too late and a deportation order has already been issued.

Organization of Migration (IOM) as part of an Assisted Voluntary Return and Reintegration Programme.

**TABLE 3.2** Recorded Voluntary Returns (No Deportation Order Issued) 2011-2013

Year	Voluntary Returns**	Of which IOM assisted	IOM assisted*** %
2011	475	402	85
2012	467	383	82
2013*	425	340	80
Total	1,367	1,125	82

Source: Department of Justice and Equality, *Immigration in Ireland Review* (2012, 2013, 2014).

Notes: \* 2013 figures are provisional.

\*\* No deportation order issued.

\*\*\* Percentages have been rounded.

The most recent data available on deportation orders issued, broken down by nationality of the person concerned, are for 2012. The main country of nationality for deportation orders signed in 2012 was China (including Hong Kong), accounting for nearly 27 per cent of all 1,351 deportation orders signed, followed by Pakistan (12 per cent) and Georgia, Nigeria and Brazil (7 per cent).

Table 3.3 provides data on the nationalities of forced returnees (i.e. persons in respect of whom a deportation order has been issued and enforced) between 2009 and 2013. In this period Nigeria remained as the main country of nationality of forced returnees. South Africa and Georgia appeared in the top five between 2009 and 2012.

**TABLE 3.3** Top Five Nationalities of Forced Returnees (Persons In Respect of Whom a Deportation Order Was Enforced), 2009-2013

Year	2009	2010	2011	2012	2013
Total number of enforced returns	338	343	280	302	209
Top 5 nationalities	Nigeria	Nigeria	Nigeria	Nigeria	Nigeria
	South Africa	Georgia	South Africa	Pakistan	China
	Brazil	Moldova	Pakistan	Tanzania	Albania
	China	Brazil	Georgia	Georgia	Mauritius
	Georgia	South Africa	Moldova	South Africa	Pakistan

Source: Irish Naturalisation and Immigration Service, May 2014.

Table 3.4 shows top five nationalities of voluntary returns between 2009 and 2013. In this period Brazil remained as the main country of nationality of

voluntary returnees. Moldova was the second main country of nationality of voluntary returnees between 2009 and 2012, dropping to the fourth place in 2013.

**TABLE 3.4** Top Five Nationalities of Voluntary Returnees 2009-2013

Year	2009	2010	2011	2012	2013
Total number of voluntary returns	540	461	477	449	426
Top 5 nationalities	Brazil	Brazil	Brazil	Brazil	Brazil
	Moldova	Moldova	Moldova	Moldova	China
	Nigeria	Georgia	Nigeria	China	Mauritius
	Georgia	Nigeria	Georgia	Mauritius	Moldova
	Malaysia/Pakistan	Mauritius	South Africa	Georgia	Malawi/ Georgia

Source: Irish Naturalisation and Immigration Service, May 2014.

Note: Total figure for voluntary returns may differ to those in Table 3.2 due to different sources.

### 3.1.2 EU Data on Entry Bans Imposed

In order to put the Irish data in context, Table 3.5 supplies data on entry bans from EU Member States plus Norway. In 2013, most entry bans were imposed by Greece (52,619), Germany (16,100), Spain (13,435) and Sweden (10,392). In absolute numbers, Greece and Germany have remained the two countries issuing the most entry bans since 2009. The high number of entry bans imposed by Greece may result from the fact that, like in Ireland, entry bans are automatically imposed with all return decisions.

The number of entry bans imposed shows an overall increasing trend in Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Sweden, Norway, and a decreasing trend in France, Greece, Germany, Poland, Croatia, Czech Republic, Bulgaria, Slovak Republic (European Migration Network, 2014b).

**TABLE 3.5** Number of Entry Bans Imposed in EU Member States plus Norway, 2009-2013

	2009	2010	2011	2012	2013
Greece	88,902	107,734	105,417	85,941	52,619
Germany	20,059	18,351	15,698	14,514	16,100
Sweden <sup>[1]</sup>	42	62	87	3,151	10,392
Poland	8,518	8,272	7,435	6,857	7,334
Belgium	NA	NA	NA	3,309 <sup>[2]</sup>	6,245
Croatia	8,396	7,459	8,053	7,585	6,057
Hungary	883 <sup>[3]</sup>	3,748	6,449	6,151	5,997

Contd.

TABLE 3.5 *Contd.*

Netherlands <sup>[4]</sup>	NA	NA	NA	4,255	3,945
Norway	2,194	2,929	2,509	3,111	3,928
Finland	1,070	1,398	1,916	2,385	2,757
Czech Republic	3,790	3,242	3,030	2,814	2,545
Austria	NA	NA	954 <sup>[5]</sup>	1,854	2,132
Ireland <sup>[6]</sup>	1,077	1,034	1,334	1,351	1,854
France	NA	NA <sup>[7]</sup>	4271	5393	1,515
Bulgaria	1,274	718	1,610	1,054	849
Estonia	267	996	1,081	507	799
Lithuania	412	394	991	783	707
Slovak Republic	1,552	942	670	461	492
Latvia	181	169	284	398	297
Luxembourg	71	40	63	190	139

Source: European Migration Network (2014a).

NI; no information: NA; not applicable; the data are organised in descending order based on year 2013.

[1] The Return Directive was implemented on 1 May, 2012; [2] Data as of 1 July onwards; [3] Partial data;

[4] The Return Directive was implemented in December 2011; [5] Data as of 1 July onwards;

[6] Number of deportation orders issued;

[7] In France, this measure was created by the law of 16 June 2011. Consequently, it did not exist in 2009 and 2010.

### 3.2 ENTRY BAN PROCEDURE

In Ireland entry bans are not issued independently of deportation orders. The following section therefore describes the scenario for the imposition of deportation orders; the procedure is summarised in Figure 3.1.

Before a deportation order is issued, the Minister for Justice is required under Section 3(3) of the Act of 1999 to notify the person concerned in writing that a deportation order is proposed and of the reasons for that proposal. Where a solicitor is on record for the person concerned, it is the practice to send a copy of the letter to him or her. As noted above this notification of the proposal to issue a deportation order is usually referred to as a '15-day letter', due to the fact that the person concerned may make representations to the Minister within 15 working days of the sending of the notification.

The '15-day letter' (see Annex 1) sets out three options: a person may leave the State voluntarily; a person may consent to the making of a deportation order; or a person may submit a leave to remain application. The second and third options are valid for 15 days. The first option, voluntary return, including assisted voluntary return with the International Organization for Migration (IOM) is

available up to the point that a deportation order is signed.<sup>48</sup> IOM Dublin runs a Voluntary Assisted Return and Reintegration Programme which supports asylum seekers, irregular migrants, victims of trafficking and unaccompanied minors from non-EU countries who wish to return home voluntarily but do not have the financial means and/or the necessary documentation, to do so.<sup>49</sup>

In the case of unsuccessful asylum applicants, the Minister notifies the person concerned that he or she has been refused a declaration of refugee status and that he or she may apply for subsidiary protection, prior to the issuing of a notification of a proposal to deport.<sup>50</sup> The application must be made within 15 days to the Office of the Refugee Applications Commissioner.<sup>51</sup> If no application for subsidiary protection is received, the Minister will issue a proposal to deport as provided for under Section 3 of the Act of 1999.<sup>52</sup>

If the person concerned chooses to leave the State voluntarily, the Minister must be notified in writing within the 15-day period and details of arrangements made to leave the State must be supplied. (He or she is not required to leave within the 15 days as it may take longer to make the necessary arrangements.) In such cases a deportation order will not be issued and an entry ban will therefore not apply.<sup>53</sup>

If the person concerned consents to the making of a deportation order within 15 working days, the Minister, giving consideration to *non-refoulement*<sup>54</sup> considerations, has the obligation to arrange for the removal of the person concerned 'as soon as practicable' (see Section 3(4)(c) of the Act of 1999). In such cases an entry ban will apply. However where a person who has consented to the making of a deportation order in writing has not been deported from the State within three months of the making of the order, the order ceases to have effect (see Section 3(8) of the Act of 1999).

Finally, the person concerned may choose to make representations to the Minister as to why they should be allowed 'leave to remain' in the State. Before

<sup>48</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

<sup>49</sup> See [www.iomdublin.org](http://www.iomdublin.org).

<sup>50</sup> Communication with the Repatriation Division of INIS, October 2014. Prior to 14 November 2013 the MDU issued one letter, known as the 15-day letter, which included: notification that the asylum application is refused; notification that entitlement to remain in the State has expired; the options to apply for subsidiary protection, make representations to the Minister, seek voluntary return or consent to a deportation order.

<sup>51</sup> Person concerned must make his or her application within 15 days to the Office of the Refugee Applications Commissioner (ORAC). If an application is not received within 15 working days of the date of the initial letter, it will be assumed that the person concerned does not wish to apply for subsidiary protection. A deportation order cannot be issued while a decision on an application for international protection is pending. Correspondence with ORAC, May 2014.

<sup>52</sup> Correspondence with legal consultant and ORAC, May 2014.

<sup>53</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

<sup>54</sup> A core principle of international Refugee Law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. See European Migration Network, 2012.

deciding whether or not to make a deportation order, the Minister must take any such representations into consideration, as well as considering *non-refoulement*<sup>55</sup> issues. The person concerned must then be notified in writing of the Minister's decision in respect of the representations and the reasons for it.<sup>56</sup>

If leave to remain in the State is granted, this decision is conveyed in writing to a successful applicant and to his/her legal representative. This communication advises the successful applicant of the conditions attaching to his or her permission to remain in the State (usually for an initial one-year period which may be extended for a further three years),<sup>57</sup> the circumstances under which this permission can be revoked, the means by which the person must become registered in the State, and the process involved in applying for the renewal of the permission to remain (Stanley and Brophy, 2010).

Table 3.6 provides data on the number of persons granted temporary leave to remain following representations made under Section 3 of the Immigration Act 1999, between 2008 and 2012. The increase in the number of people granted leave to remain in 2011 may reflect the impact of the *Ruiz Zambrano*<sup>58</sup> Judgment (discussed in Section 3.3.2.2).<sup>59</sup>

**TABLE 3.6** Persons Granted Leave To Remain 2008-2014 Following Representations Made Under Section 3 of the *Immigration Act 1999*

Year	Number of Unsuccessful Protection Applicants Granted Leave To Remain	Total Number Granted Leave To Remain
2008	1,025	1,136
2009	479	518
2010	161	237
2011	749	1,095
2012	382	550
2013	598	773
2014	626	769
Total	4,020	5,078

Source: Reporting and Analysis Unit, July 2015.

<sup>55</sup> 1951 UN Convention Relating to the Status of Refugees states that: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

<sup>56</sup> Under Section 3(5) of the Act of 1999, this obligation does not apply to a person who consents in writing to the making of a deportation order against him, a person to whom Section 3(2)(c) to (e) applies, or a person who is outside the State.

<sup>57</sup> Interview with legal consultant, April 2014.

<sup>58</sup> *Gerardo Ruiz Zambrano v. Office National de l'Emploi, Case C-34/09*, decision of the Court of Justice of the European Union in 2011.

<sup>59</sup> Dáil Debate Written Answer 79-80, Vol. 785 No. 3 (Unrevised), 6 December 2012.

If the Minister makes a negative determination regarding representations as to why an individual should be allowed 'leave to remain' in the State, a deportation order is immediately signed and issued.

Once a deportation order is signed by or on the behalf of the Minister, the file is returned to the Repatriation Division of the Department of Justice and Equality and an 'Arrangements Letter' is sent to the person concerned. As is the case with a '15-day letter', where a solicitor is on record for the person concerned, it is the practice to send a copy of the letter to him or her.<sup>60</sup> The 'Arrangements Letter' informs the person that a deportation order has been made in respect of him or her and requires the recipient to leave the State by a specified date. This constitutes the formal serving of a deportation order and an entry ban now applies to the individual concerned.

See Annex 2 for a copy of a sample deportation order and Annex 3 for a copy of a sample 'Arrangements Letter'. The person is obliged to leave the State by the date specified in the letter and to notify the authorities of the arrangements being made for that purpose. In the event of the person failing to leave the State by the specified date, he or she is obliged to present at the offices of the Garda National Immigration Bureau (GNIB) on a specified date and time in order to make arrangements for his or her deportation from the State.<sup>61</sup> A person who fails to leave the State by the specified date becomes liable to arrest and detention for the purpose of enforcing his or her deportation from the State.<sup>62</sup>

The deportation order is sent in English only and is issued to both the individual and his or her solicitor if known (Quinn, 2007). However, in the event that the subject of a deportation order does not understand English, Section 3(3)(b)(ii) of the Act of 1999 provides for a copy of the notification of the Minister's decision and of the reasons for it, to be given to the subject of the order in a language that he or she understands, 'where necessary and possible'. The Immigrant Council of Ireland noted that this is not common practice, however.<sup>63</sup>

At this point the individual concerned may be deported from the State and an automatic entry ban applies. In some cases individuals evade deportation; some may leave the State or remain illegally. The individual concerned may also begin legal proceedings challenging the deportation order. However, this does not

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<sup>60</sup> Correspondence with legal consultant, August, 2014.

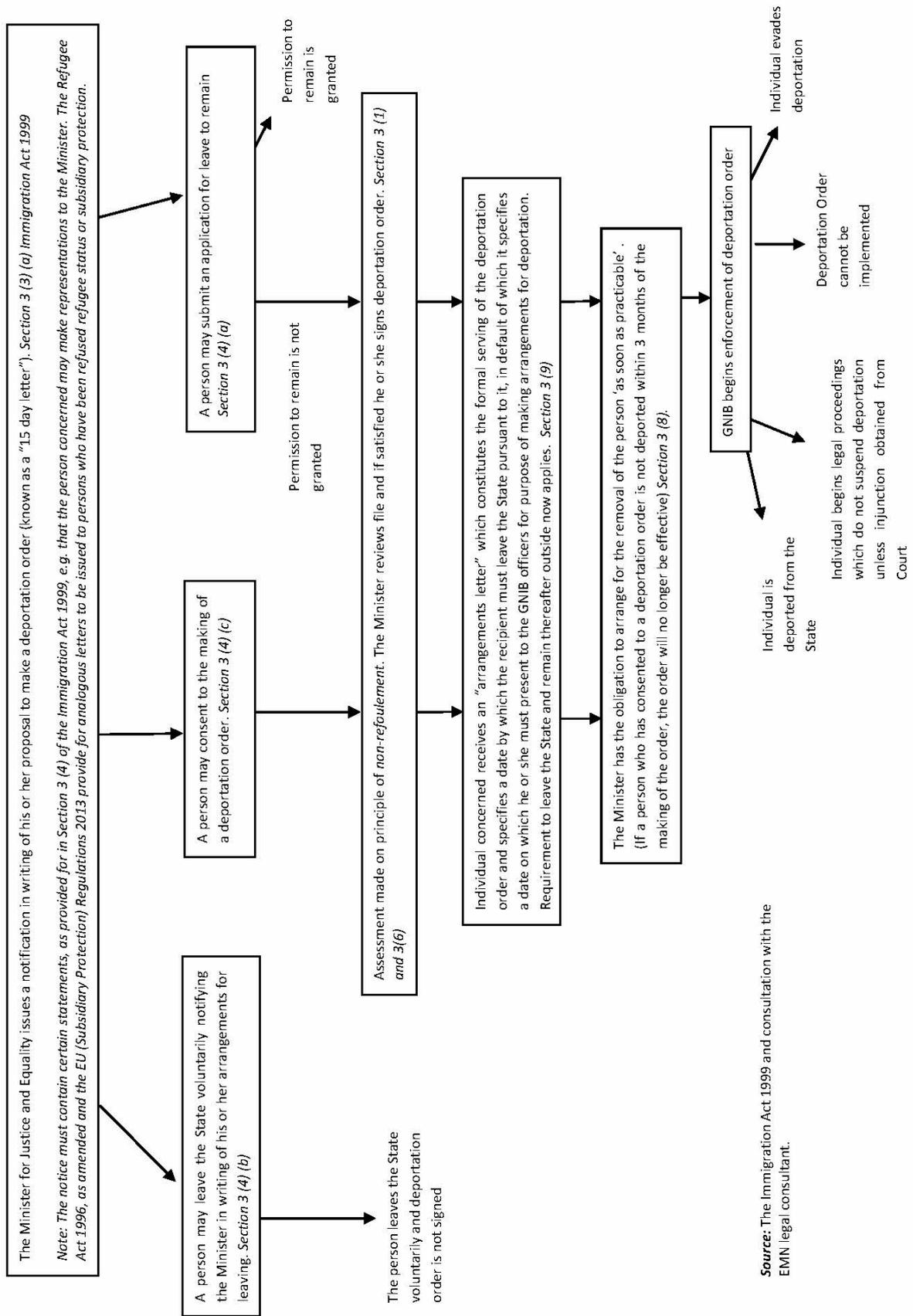
<sup>61</sup> Correspondence with legal consultant, June 2014.

<sup>62</sup> See Section 5(1)(a)(i) of the *Immigration Act 1999* and *Omar v. Governor of Cloverhill Prison [2013] IEHC 579*, paragraph 7. In the latter case it was found that members of An Garda Síochána could not enter private premises to enforce a deportation order.

<sup>63</sup> Immigrant Council of Ireland, comments received April 2015.

automatically suspend the enforceability of a deportation order unless an injunction is obtained from the Courts (Becker, 2012).

FIGURE 3.1 Deportation Process in Ireland



Source: The Immigration Act 1999 and consultation with the EMN legal consultant.

Source: The Immigration Act 1999 and consultation with the EMN legal consultant.

### 3.3 LEGAL CHALLENGES TO DEPORTATION ORDERS WITH INHERENT ENTRY BANS

The *Immigration Act, 1999* provides for the possibility to apply for the revocation of a deportation order. Apart from revocation the only available legal remedy to seek to set aside a deportation order is via judicial review of procedures followed. The *Illegal Immigrants (Trafficking) Act, 2000* places greater restrictions on a challenge to a deportation order than a judicial review issued in respect of other administrative decisions.<sup>64</sup> If a judicial review is successful the decision is quashed and the matter is referred back to the Minister for Justice and Equality for consideration; only the Minister may revoke a deportation order. NGOs have called for the establishment of an independent appeals body for immigration-related decisions (see for example Crosscare, 2010; Immigrant Council of Ireland, 2010, 2013). A joint submission by Doras Luimní, the Irish Refugee Council (IRC) and Nasc (2011) also called for an independent appeals body to which immigration related decisions, including deportations, could be appealed.

#### 3.3.1 Revocation of Deportation Order

Section 3(11) of the *Immigration Act, 1999* provides for the possibility to apply for the revocation of a deportation order. The Act states that ‘The Minister may by order amend or revoke an order made under this section including an order under this subsection’. Deportation orders, other than by way of revocation, cannot be suspended, withdrawn, or administratively appealed. An application for revocation can be made at any time before the actual enforcement of the order or thereafter by a person who is outside the State and is seeking readmission to the State (Becker, 2012).

By its wording, Section 3(11) appears to confer a wide power on the Minister for Justice to amend or revoke. The nature of that power has been the subject of consideration by the Courts in recent years, and their decisions indicate the circumstances in which the power may be exercised, for example in the case of *EAI v. Minister for Justice*, the Court stated:

*No conditions or criteria are stipulated in the section for the exercise of the Minister’s power. Clearly however, it follows from first principles that the Minister must consider fairly the reasons put forward by an applicant for the request to revoke and he must also satisfy himself that no new circumstances are shown to have arisen since the making of the deportation order which would bring into play any of the statutory impediments to the execution of a deportation order at that point such*

<sup>64</sup> These restrictions have recently been somewhat relaxed. Section 5 of the Act of 2000 was recently amended by Section 34 of the *Employment Permits Act 2014* with the effect, inter alia, that the limitation period in which an application for judicial review must be made has been extended from 14 to 28 days.

*as, for example, a change of conditions in the country of origin which would attract the application of the prohibition against refoulement in Section 5 of the 1996 Act.*<sup>65</sup>

The requirement that there be ‘new’ information can be understood to be an attempt to prevent applicants from frustrating their deportation by making revocation applications based on information which was readily available to them in advance of the making of the deportation order.<sup>66</sup>

In *Akujobi v. Minister for Justice* the applicants had applied for revocation on the basis of country of origin information and medical reports. The judgment stated that it gave rise to

*an inference not rebutted by evidence, that material was being ‘drip fed’ to the [Minister for Justice which] was either already within the procurement of the applicants, or not in their minds at all as a real issue. Furthermore, the contents of such material do not indicate that what is raised therein on the applicant’s behalf was new at all.*

The Judge held that

*...an applicant making representations to the Minister for leave to remain on humanitarian grounds is obliged to actively put his or her best case forward in such representations. To address the second issue directly any such application under Section 3(11) to revoke a deportation order made having considered such representations, must advance matters which are truly materially different from those presented or capable of being presented in the earlier application. There must be ...“unusual, special, or changed circumstances”.*

Leave to challenge the refusal of their revocation application was refused on the grounds of want of candour and lack of credit.<sup>67</sup>

The recent Supreme Court decision in *Smith v. Minister for Justice* provides guidance on what might ground a successful application for revocation. The Supreme Court confirmed that it is only where a revocation application can point to some significant feature, not present when the original deportation order was made, that there is any obligation on the Minister for Justice to give detailed

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<sup>65</sup> *EAI v. Minister for Justice* [2009] IEHC 334.

<sup>66</sup> Correspondence with legal consultant, August, 2014.

<sup>67</sup> *Akujobi v. Minister for Justice* [2007] IEHC 19.

reconsideration to the question of deportation. Additionally, it held that where the original deportation order has not been successfully challenged in the Courts, it was to be assumed that the analysis of the Minister for Justice on the basis of the information that was before him or her at that stage, was correct.<sup>68</sup>

A revocation application does not suspend the enforcement of a deportation order. The situation is analogous to that which arose in *Okunade v. Minister for Justice*, where the question for consideration was whether the issuing of proceedings seeking leave to apply for judicial review to overturn the deportation entitled the applicants to remain in the State pending the hearing of the leave application. The Supreme Court held that no such entitlement existed.<sup>69</sup>

### 3.3.2 Case Law Relevant to the Entry Ban Inherent in Deportation Orders

#### 3.3.2.1 Lifelong Entry Ban as Contained in a Deportation Order

The lifelong entry ban which is inherent in all deportation orders has been challenged in the Courts. In *Sivsvadze v. Minister for Justice* the applicant, seeking to quash the refusal to revoke the order, argued that Section 3(1) of the Act of 1999 was unconstitutional in that it imposed, in principle at least, a lifelong ban on the person to whom the deportation order was addressed, and that a ban of that kind amounted to a disproportionate interference with the applicants' right to family life under Article 41 of the *Irish Constitution*. The applicant also sought a declaration that the provision was incompatible with the *European Convention on Human Rights* (ECHR).<sup>70</sup> The High Court rejected their challenge and the applicants appealed to the Supreme Court.

The Supreme Court recently found that Section 3(1) and Section 3(11) of the Immigration Act 1999, which concern the power to make and to amend or revoke a deportation order respectively, are not unconstitutional or incompatible with the State's obligations under the ECHR. A non-Irish national who has no permission to be in the State may be made the subject of a deportation order by the Minister for Justice which has the effect of requiring him or her to leave the State and remain outside of it indefinitely. On account of his or her status, such an order does not deny him or her any right to be in the State. Whether or not the

<sup>68</sup> *Smith v. Minister for Justice* [2013] IESC 4.

<sup>69</sup> Rather, it was incumbent on an applicant in such proceedings to seek an injunction enjoining deportation. The Supreme Court confirmed that, in effect, the normal test for obtaining a stay/injunction applied, i.e. was there a fair issue to be tried, and where did the balance of convenience lie: see *Okunade v. Minister for Justice* [2012] IESC 49. EMN legal consultant, July 2014.

<sup>70</sup> *Sivsvadze v. Minister for Justice and Equality* [2012] IEHC 244. EMN legal consultant, June 2015.

making of such an order is disproportionate on account of inter alia its effect on family life, will depend on the facts of each individual case.<sup>71</sup>

### 3.3.2.2 Deportation of Non-Irish National Parents of Irish Children

Irish-citizen children's non-Irish parents may be deported from the State under certain circumstances. In *Lobe and Osayande v. Minister for Justice, Equality and Law Reform*, the Court held that there were grave and substantial reasons associated with the common good that required that the presence of the parents within the State should be ended, even though, in order to remain a family unit, their children would also have to leave the State.<sup>72</sup>

In *Oguekwe v. Minister for Justice, Equality and Law Reform*, the Supreme Court held that the Minister, by way of Section 3 of the 1999 Act, was constrained by the obligation to exercise the power to deport a non-Irish national in a manner consistent with the constitutional and ECHR rights of the people affected. The Court affirmed that if the Minister was to take a decision to deport the parent of an Irish child he must:

- a) consider the facts relevant to the personal rights of the citizen child protected by Article 40.3 of the Constitution if necessary by due enquiry in a fair and proper manner
- b) identify a substantial reason which requires the deportation of a foreign national parent of an Irish-born child
- c) make a reasonable and proportionate decision.<sup>73</sup>

The *Ruiz Zambrano* judgment<sup>74</sup> handed down from the European Court of Justice (ECJ) during 2011 found that (even in the absence of movement within the EU) the Belgian-citizen children concerned were entitled to grow up in Belgium and had the right to the company of their parents.<sup>75</sup> The court ruled that Article 20 TFEU precludes a Member State from refusing a third-country national upon whom EU-citizen minor children are dependent, a right of residence in the Member State of residence. The Member State may also not refuse to grant a work permit to such a third-country national. The *Ruiz Zambrano* judgment resulted in an announcement being made by the Department of Justice and Equality to the effect that all cases with a link to the judgment would be examined

<sup>71</sup> *Sivsvadze v. Minister for Justice* [2015] IESC 53.

<sup>72</sup> *Lobe and Osayande v. Minister for Justice, Equality and Law Reform* [2003] 1 IR 1 and [2003] 3 ICLMD 57.

<sup>73</sup> *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] IESC 25.

<sup>74</sup> *Gerardo Ruiz Zambrano v. Office National de l'Emploi, Case C-34/09*, decision of the Court of Justice of the European Union in 2011.

<sup>75</sup> *Ibid.*

to see whether the necessary criteria were met to grant residence in the State (Joyce, 2012). The Minister stated:

*...I have asked my officials to carry out an urgent examination of all cases before the courts (approximately 120 at present) involving Irish-citizen children to which the Zambrano judgment may be relevant... I have also asked my officials to examine the cases in the Department in which the possibility of deportation is being considered in order to ascertain the number of cases in which there is an Irish-citizen child and to which the Zambrano judgment is relevant. In addition, consideration will be given to those cases of Irish-citizen children who have left the State whose parents were refused permission to remain (Department of Justice and Equality, 2011a).*

*Amobi v. Minister for Justice* is an example of a legal challenge from outside the State, to a deportation order which was finally revoked further to the *Ruiz Zambrano* Judgment. In this case, following the revocation of the Irish-citizen applicant's father's deportation order, leave to remain was granted.<sup>76</sup>

The Department of Justice has stated that, as a matter of public policy, the terms of the *Ruiz Zambrano* Judgment will not be applied to any third-country parent of an Irish-born citizen child/children, who has been convicted of serious and/or persistent criminal offences.<sup>77</sup>

### 3.3.2.3 Deportation of Family Members for the Purpose of Prevention of Crime and Disorder

In *F.E and Others v. Minister for Justice*, the High Court upheld the deportation of a convicted sex offender and parent of citizen children, on the basis that his removal was desirable in the interests of preventing disorder and crime. The person's application for renewal of his permission to reside in the State was refused and a deportation order was made against him, notwithstanding that his wife and citizen children intended to remain in the State.

The applicant and his family then challenged the legality of that decision in judicial review proceedings, and leave was granted on the basis that the decision was disproportionate in that it infringed the applicants' constitutional and convention rights.

<sup>76</sup> *Amobi v. Minister for Justice* [2013] IEHC 47.

<sup>77</sup> See Department of Justice and Equality, [www.inis.gov.ie/en/INIS/Pages/WP11000037](http://www.inis.gov.ie/en/INIS/Pages/WP11000037).

The applicants were unsuccessful at the substantive stage. The High Court firstly held that the Minister could revoke a deportation order in the future or that the deportee could apply to have the deportation order revoked and the Minister could exercise his discretion to do so. Secondly the deportation order was made solely against the fourth applicant (the father of the children) and there was no obligation imposed by it upon his wife or children to leave the State. It noted that they intended to remain in the State in any event. Thirdly, it noted that careful consideration had been given in examination of the file to the potential effect of his removal or exclusion from the State on the other applicants. The appropriate test of whether there were any ‘insurmountable obstacles’ to their re-establishing family life with him in Nigeria had been applied and, in that regard, it had been noted that the children were of an ‘adaptable age’ should they leave the State to live in Nigeria. It was also noted that the disruption to family life would not have the same impact as if their father had been living with his family for the full duration of his time in the State (a reference to a sentence of imprisonment served by him). In the light of all this, the High Court was satisfied that the applicants had failed to establish that the decision to deport the fourth named applicant was unreasonable, irrational or disproportionate, and it refused the applicants a certificate of leave to appeal against its decision.<sup>78</sup>

#### 3.3.2.4 Deportation of Non-Irish Spouses of Irish Nationals

In *Cirpaci v. Minister for Justice*, the applicants were an Irish-citizen wife and her non-Irish husband. They married after the husband’s deportation and sought a visa for him to re-enter the State on the basis that they were a family unit. The application was refused as he had a deportation order outstanding against him which obliged him to remain outside the State. An application to revoke that order followed, which was refused on the basis that the couple had not resided together as a family unit for an appreciable period of time since their marriage.

The reason for the refusal was subsequently upheld by the Supreme Court which found that it was legitimate for the Minister for Justice to have regard to the duration of the marriage relationship when weighing in the balance the family rights in question and deciding whether or not to revoke the deportation order. Regard was had to the summary of the key principles of the jurisprudence of the European Court of Human Rights (ECtHR) on such matters.<sup>79</sup> It was noted the State was not bound to respect the choice of residence made by married couples and pointed to the fact that the applicants were aware of the husband's unfavourable immigration history when they entered into their marriage. He

<sup>78</sup> *FE v. Minister for Justice* [2013] IEHC 93 and [2014] IEHC 62.

<sup>79</sup> It included the propositions that a state has a right under international law to control the entry of non-nationals into its territory, subject always to its treaty obligations, and that Article 8 ECHR does not impose on a State any general obligation to respect the choice of residence of a married couple. See Lord Phillips in *R. (Mahmood) v. Secretary of State for the Home Department* [2001] 1 WLR 840.

emphasised that it was for the Minister to decide how the balance should be struck between the competing considerations and that he was obliged to respect the principle of proportionality.<sup>80</sup>

However more recently in the case of *Gorry v. Minister for Justice*<sup>81</sup> the High Court said an Irish citizen has a *prima facie* right to live in the State with his or her non-Irish-citizen spouse, although this right is not absolute, and the decision of the Minister must ultimately balance the competing considerations in order to reach a proportionate decision. The decision is under appeal.<sup>82</sup>

In *XA v. Minister for Justice* the applicants sought to quash a decision by the Minister for Justice to revoke a deportation order against the non-Irish national husband of an Irish national. In considering whether or not the decision was reasonable and proportionate, the Court had regard to the fact that the deportation order was, in principle, permanent in its effect. The Court noted that the decision turned, in many ways, on the conclusion that the wife would be free to join her husband in Nigeria, but it did not regard that as a realistic or proportionate appraisal of the matter. It took the view that the reality was that the family would be separated, more or less permanently. It therefore quashed the refusal to revoke the deportation order and again it fell to the Minister to reconsider whether or not a new deportation order should be made. The decision is under appeal to the Supreme Court.<sup>83</sup>

### 3.4 TERRITORIAL SCOPE OF ENTRY BANS AS CONTAINED IN DEPORTATION ORDERS AND INFORMATION-SHARING WITH OTHER EU STATES

#### 3.4.1 Territorial Scope of Entry Bans Imposed by Ireland

Ireland does not participate in Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals. However, when issuing people with a proposal to deport, the Minister for Justice and Equality states that there may be consequences for the person in seeking entry to other Member States due to this Directive. The ‘15-day letter’ states that

*... regulations will be made under the European Communities Act, 1972, (as amended), to give statutory effect to the European Union (EU) Directive 2001/40/EC which obliges each EU Member State to mutually*

<sup>80</sup> *Cirpaci v. Minister for Justice* [2005] 4 IR 109.

<sup>81</sup> *Gorry v. Minister for Justice* [2014] IEHC 29.

<sup>82</sup> Comments received from reviewer, May 2015.

<sup>83</sup> *XA v. Minister for Justice* [2011] IEHC 397.

*recognise and give effect to Deportation Orders issued in respect of third country nationals i.e. anyone who is not a national of any of the EU States. This means that a Deportation Order may also prevent you from entering another EU State in the future. (See Annex 1).*

A deportation order does not in itself prevent the person subject to it from entering any other EU country. However, other EU immigration authorities may, depending on their respective immigration rules and procedures, consider the existence of an Irish-issued Deportation Order as sufficient grounds to refuse entry to their national territory. This may especially be the case in respect of entry to the United Kingdom in view of the joint commitment of both Ireland and the UK to protect the integrity of the Common Travel Area (CTA).<sup>84</sup>

Limited information exists on practical challenges in relation to entry bans (inherent in deportation orders). Challenges such as difficulty in ensuring compliance with entry bans (deportation orders) on the part of non-EU nationals exist; in particular the existence of the Common Travel Area and the shared land border with the UK makes it more challenging to check all non-EU nationals entering the State (see Quinn and Kingston, 2012).

### **3.4.2 Information-Sharing with Other EU States**

Ireland's policy towards return and irregular migration is largely influenced by existence of the CTA shared with the UK, the Channel Islands and the Isle of Man. In 2011 Ireland and the UK signed an agreement committing further to secure the CTA against irregular migration (Department of Justice and Equality, 2011b). Hence information-sharing practices exist between Ireland and the UK. No formal arrangements are in place with other EU Member States in relation to information-sharing but this may happen informally.<sup>85</sup> INIS officials consulted for this study noted that Immigration Officers at the Irish border are unlikely to have access to information on whether the individual presenting has been issued with an entry ban in another EU Member State.<sup>86</sup>

#### **3.4.2.1 Type of Information Shared**

INIS officials indicated that Ireland exchanges certain information with the UK to prevent immigration abuse and to preserve the integrity of the Common Travel Area (CTA). Biometric data sharing has allowed for incidents of identity swapping to be detected, for example regarding persons known to the UK authorities with different name or/and nationality (Department of Justice and Equality, 2013).

<sup>84</sup> Dáil Debate Written Answer 750, (Unrevised), 11 June 2013. Available at [www.oireachtas.ie/parliament](http://www.oireachtas.ie/parliament).

<sup>85</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

<sup>86</sup> Ibid.

INIS and the UK Border Agency (UKBA) cooperate by exchanging biometric data (see Quinn and Kingston, 2012 for more information). In 2013 enhanced information-sharing arrangements were put in place with the UK authorities in relation to Irish visa applicants with an adverse UK immigration and/or criminal history. During 2014, the Department of Justice and Equality stated that initiatives to improve systems and processes between Ireland and the UK in order to collect and share visa data will be prioritised (Department of Justice and Equality, 2014).

Data sharing with the UK has been used to identify abuse of the asylum and immigration systems. For example, in *AG v. Refugee Appeals Tribunal*, the applicant claimed to have been a national of Bhutan who had been forced to leave the country for Nepal in 1991, where he claimed to have lived. He said that he arrived in Ireland via India in 2006. He claimed that he had never previously sought asylum in Ireland or in any other country. He claimed that he feared persecution from Maoists in Nepal, who had sought him to join their organisation.

The asylum authorities made a negative recommendation on his claim of persecution, assessed by reference to Nepal. The applicant challenged this in the course of judicial review proceedings and the matter proceeded to leave hearing, at which point judgment was reserved. At that stage, information came to light from the UKBA which indicated that the applicant had applied for asylum in the UK in 2002 using different identity details in which he claimed to be Nepalese. The information indicated that the application had been refused in 2003, and that an appeal against that decision had been dismissed. The applicant had subsequently been treated by the British authorities as an absconder. In the light of this information, the asylum authorities brought a successful application to the High Court to dismiss the applicant's proceedings on the ground of abuse of process.<sup>87</sup>

While no formal information-sharing arrangements exist between Ireland and other EU States (excluding the UK), the Garda National Immigration Bureau (GNIB) works with immigration authorities in hub transport cities in France, Spain and the Netherlands (Quinn and Kingston, 2012).

### 3.4.2.2 Schengen Information System

The Schengen Information System (SIS) is a joint (EU Member States plus associated countries) information system. It enables the relevant authorities in each Member State, by means of an automated search procedure, to have access

<sup>87</sup> *AG v. Refugee Appeals Tribunal* [2013] IEHC 247.

to alerts on persons and property for the purposes of border checks and other police and customs checks carried out within the country in accordance with national law and, for some specific categories of alerts (Article 96), for the purposes of issuing visas, residence permits and the administration of legislation on aliens in the context of the application of the provisions of the Schengen Convention relating to the movement of persons (European Migration Network, 2014a).

Ireland is precluded from inputting to SIS as it is not party to the Schengen Agreement under the Treaty of Amsterdam. Ireland will participate in certain elements of the second generation of SIS (SIS II), which entered into operation in April 2013, for example in relation to police cooperation. Ireland will not participate in the Schengen arrangements in relation to abolition of border checks. Ireland's application to participate in the specific articles of the Schengen Agreement was approved by a Council Decision and provisions will come into effect after evaluations by the Council.<sup>88</sup> INIS stated that no specific timeframe has been set for the completion of the evaluation.<sup>89</sup>

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<sup>88</sup> Written Answer 519, Dáil Éireann Debate Vol. 812 No. 2 (Unrevised), 18 July 2013.

<sup>89</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

# Section 4

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## EU Readmission Agreements and Bilateral Readmission Arrangements

This section discusses EU Readmission Agreements (EURAs)<sup>90</sup> and certain bilateral readmission arrangements which Ireland has with non-EU countries. An overview of these agreements/arrangements is provided and some practical obstacles in implementation are considered.

### 4.1 EU READMISSION AGREEMENTS

EU Readmission Agreements (EURAs) form part of the EU's effort to build co-operation with non-EU countries of origin, on the return of illegally-staying nationals. EURAs establish better procedures for the identification and repatriation of persons who do not fulfil, or no longer fulfil the conditions for entry, residence or presence in the territory of the requesting state. These agreements contain provisions relating to the obligation on the third country and the Community to readmit persons to their territory (including their own nationals and in certain circumstances third-country nationals or stateless persons). EURAs also commonly include provisions relating to the following: commonly accepted definitions, arrangements for transit operations, recovery of costs, data protection, non-impact on international rights and obligations, standards of proof, time limits for dealing with requests, territorial application, entry into force, duration and termination. The legal base for EU readmission agreements falls within Title V of the Treaty on the Functioning of the European Union (TFEU),<sup>91</sup> and therefore Ireland may choose whether to participate in the relevant measures.

#### 4.1.1 Ireland and EU Readmission Agreements

In Ireland, the Repatriation Division within the Irish Naturalisation and Immigration Service (INIS) is the responsible body for securing readmission to third countries in individual cases of forced and voluntary return. EU Readmission Agreements are generally conducted in tandem with visa facilitation agreements.

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<sup>90</sup> Only readmission agreements with non-EEA countries are considered, any other readmission agreements with EEA countries are outside the scope of this study.

<sup>91</sup> Correspondence with official of Immigration Policy section, Irish Naturalisation and Immigration Service, May 2014.

However, since visa facilitation agreements relate to the Schengen area only they do not impact directly on Ireland.<sup>92</sup>

INIS has stated that the policy priorities of the EU and Ireland are becoming increasingly aligned as regards return and readmission policy.<sup>93</sup> Since July 2014 Ireland participates in 12 EU Readmission Agreements which are with Hong Kong, Sri Lanka, Russia, Pakistan, Macao, Albania, Bosnia, Macedonia, Montenegro, Moldova, Serbia and Georgia. The European Commission and Ireland will now begin the process of formally notifying all the countries concerned, in line with the procedures as set out in the agreements, that Ireland is now bound by these agreements. In addition, operational protocols for readmission will be agreed between Ireland and all of the third countries concerned.<sup>94</sup>

Ireland up to this point has never returned anyone on the basis of its EU Readmission Agreements.<sup>95</sup> An INIS official stated that it is not entirely clear how Ireland's return activities will be affected by the EU Readmission Agreements in the future and it is anticipated that there may be limited benefits due to small numbers of citizens from the countries concerned taking up residence in Ireland.<sup>96</sup> However it was also stated that these agreements are viewed in a wider EU context as an important sign of solidarity with other Member States<sup>97</sup> and a closer alignment of Ireland's irregular migration policies and priorities with other EU states.<sup>98</sup>

#### **4.1.2 Ireland and EU Joint Return Operations**

Over recent years the Irish immigration service has become increasingly involved in joint return operations<sup>99</sup> with other Member States and operations led by Frontex,<sup>100</sup> and INIS stated that return operations are now more 'European-focused'. In 2013 Ireland participated in ten chartered deportation flights, five of which were organised in conjunction with Frontex. In 2012 Ireland participated in nine chartered deportation flights, seven of which were organised in conjunction with Frontex and two were joint operations with the UK. In 2011, Ireland participated in seven chartered deportation flights all of which were organised in

<sup>92</sup> Correspondence with official of Immigration Policy section, Irish Naturalisation and Immigration Service, May 2014.

<sup>93</sup> Ibid.

<sup>94</sup> Correspondence with official of Immigration Policy Section, Irish Naturalisation and Immigration Service, September 2014.

<sup>95</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

<sup>96</sup> Correspondence with official of Immigration Policy Section, Irish Naturalisation and Immigration Service, September 2014.

<sup>97</sup> Written Answers - Readmission Agreements: Motions. Joint Committee on Justice, Defence and Equality Debate, Wednesday, 20 February 2013. Available at [www.oireachtas.ie/parliament](http://www.oireachtas.ie/parliament).

<sup>98</sup> Correspondence with official of Immigration Policy Section, Irish Naturalisation and Immigration Service, September 2014.

<sup>99</sup> 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.

<sup>100</sup> European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

conjunction with Frontex (Department of Justice and Equality 2014, 2013 and 2012).<sup>101</sup>

## 4.2 BILATERAL READMISSION ARRANGEMENTS

Ireland has negotiated a bilateral agreement with Nigeria in relation to immigration matters, including readmission. Certain formalities necessary to bring the agreement into operation are outstanding. The agreement was concluded in 2001 but has not yet been formally ratified by the Nigerian government. While the agreement is not binding on either State, both sides are 'operating in the spirit of agreement, particularly in the area of repatriation' (Quinn and Kingston, 2012). INIS officials interviewed for the current study stated that this is still the case and reported a good working relationship with Nigerian authorities.<sup>102</sup>

Ireland has no formal bilateral agreements other than the agreement with Nigeria, however informal readmission arrangements are in place with a number of third countries. INIS officials interviewed for the current study stated that once the EURAs become fully binding on Ireland and third countries concerned, these agreements will take precedence over any informal arrangements which may have previously existed with the relevant countries. Informal arrangements with third countries with which there are no EURAs in place will remain in place.<sup>103</sup>

The Annual Programme 2013 supported through the European Return Fund encouraged actions aimed at increasing cooperation with third countries to which Ireland has traditionally had difficulty in returning nationals due to difficulties in securing travel documents. These countries include<sup>104</sup> Albania, Algeria, Bangladesh, Cameroon, Georgia, Ghana, Iraq, Kenya, Liberia, Moldova, Morocco, Pakistan, Russia, Rwanda, Serbia, Sierra Leone, Tanzania, Uganda, Burundi and Zimbabwe (Repatriation Unit, 2013). INIS stated that 37 countries are supported under the European Return Fund.<sup>105</sup>

## 4.3 PRACTICAL OBSTACLES

INIS has stated that the Irish immigration service has actively cultivated links and informal readmission arrangements with those third countries to which Ireland regularly returns persons. While such arrangements have proven useful to INIS, officials noted that they have limitations and have no binding legal effect. Ireland,

<sup>101</sup> Correspondence with official of Immigration Policy section, Irish Naturalisation and Immigration Service, May 2014.

<sup>102</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

<sup>103</sup> Ibid.

<sup>104</sup> Returns to other countries may also be considered.

<sup>105</sup> Communication with official of Immigration Policy section, Irish Naturalisation and Immigration Service, July 2014.

unlike many other EU Member States, does not have a framework of bilateral agreements with third countries for the readmission of their own nationals found to be in an irregular situation in the State.<sup>106</sup>

INIS has stated that practical obstacles in relation to readmission may remain despite the implementation of the EU Readmission Agreements (EURAs). Officials noted that obstacles are still likely to be encountered as regards the identification or recognition of the nationality of returnees and the sourcing of the necessary travel documents. In addition, it was stated that the experience of other Member States has shown that having EURAs in place does not guarantee full cooperation from third countries concerned.<sup>107</sup>

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<sup>106</sup> Correspondence with official of Immigration Policy section, Irish Naturalisation and Immigration Service, May 2014.

<sup>107</sup> Interview with official of Immigration Policy section, Irish Naturalisation and Immigration Service, April 2014.

# Section 5

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## Conclusions

Ireland does not participate in the EU Return Directive and therefore does not apply entry bans as set out under Article 11 of the Directive. The *Immigration Act, 1999* is the key legislative instrument governing the return of non-EU nationals from Ireland. It provides for the making of a deportation order, with inherent entry ban, requiring the recipient to leave the State and to remain thereafter outside the State.

A properly functioning return system is essential to maintaining public confidence in the immigration system and to Ireland's capacity to offer protection to those fleeing violence and war. However the deportation of non-EU nationals who do not have legal permission to stay, many of whom have invested much in Ireland and do not wish to leave, is an ongoing challenge.

Available data on entry bans as contained in deportation orders are limited. However, overall, the number of deportation orders issued to non-EU nationals increased by 72 per cent, from 1,077 to 1,854, between 2009 and 2013. The number of deportation orders enforced fell by 38 per cent in the same period, from 338 to 209. The Irish Naturalisation and Immigration Service indicated that the majority of people deported from Ireland are unsuccessful asylum seekers, but the relevant breakdown is not published. The median period, between the signing of a deportation order in respect of an unsuccessful protection applicant and enforcement, was 17 months between 2011 and 2014.<sup>108</sup>

Figures derived from a Parliamentary Question in 2012 indicate that the ratio of deportation orders issued to those enforced in 2010 was 33 per cent. Data obtained from INIS show that the same ratio had fallen to 11 per cent in 2013.<sup>109</sup> The exact reasons behind the declining ratio are unknown but may include: difficulties in implementing deportation orders, including in procuring documents that would allow the person to travel (of particular relevance to stateless persons); sequential protection applications made by members of the same family; evasion by the subject of the deportation order; and in the context of a

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<sup>108</sup> Communication with the Repatriation Division of INIS, June 2015.

<sup>109</sup> Correspondence with an official of Repatriation section, Irish Naturalisation and Immigration Service, June 2014.

prolonged recession in Ireland, reduced resources available to the authorities tasked with the enforcement of deportation orders. Finally, the figures may also reflect the strategic and/or operational priorities of the responsible Minister at the time.

The power of a State to deport is an inherent power and decisions on deportation must remain with the Executive. However this power may be restrained by the Courts. The *Immigration Act, 1999* provides for the possibility to revoke a deportation order. Apart from revocation the only available legal remedy is to seek to set aside a deportation order via judicial review of procedures followed.

Following several significant legal judgments, some of which centre on the inherent entry ban contained in a deportation order, Irish case law and policy on return has evolved considerably in recent years. Deportation orders have been variously quashed and upheld by the Courts for a range of reasons depending on the individual circumstances of the case. The inherent entry ban contained within the deportation order is of indefinite duration. This aspect of a deportation order has been challenged in the Courts, especially in relation to family life under Article 41 of the *Irish Constitution*. While EU citizens and their family members generally have a right to be in the State under EU free movement provisions, non-EU nationals do not in general have a right to be in the State. It is often their individual circumstances, increasingly family circumstances, which allow non-EU nationals to show an attachment to the State and if necessary to establish a case for being allowed to remain.

In recent years, priority has been given to examining cases involving Irish-citizen children to which the *Ruiz Zambrano* judgment of the CJEU may be relevant and in certain cases, deportation orders have been revoked as a result.

The existence of the Common Travel Area (CTA) largely influences Ireland's policy regarding return and most information-sharing occurs between Ireland and the UK. However INIS has stated that the policy priorities of the EU and Ireland are becoming increasingly aligned as regards return and readmission policy. As from July 2014 Ireland participates in 12 EU Readmission Agreements, which have had no practical impact (no returns have been made under the agreements) but are deemed by INIS to be an important sign of solidarity with other Member States, and of closer alignment of Ireland's irregular migration policies and priorities with other EU states. Over recent years the Irish immigration service has become increasingly involved in joint return operations with other Member States and

operations led by Frontex; INIS indicated that return operations are now more European-focused.

Ireland has no formal bilateral readmission agreements with third countries other than an agreement with Nigeria which has not been fully ratified. The agreement with Nigeria is not binding on either State but both sides are 'operating in the spirit of agreement, particularly in the area of repatriation' (Quinn and Kingston, 2012).

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## Annex 1 15-day letter

Your Ref:

Person ID:

Application ID:

Legacy Ref:

Dear xxx

I am directed by the Minister for Justice and Equality to notify you that the Minister proposes to make a Deportation Order in respect of you under the power given to him by Section 3 of the *Immigration Act 1999*, (as amended).

The reason for the Minister's proposal is xxx

In accordance with Section 3(4) of the *Immigration Act, 1999*, (as amended), the following options are open to you. It is important that you note that some of these options involve the making of a Deportation Order and that you know what this entails. A Deportation Order will require you to leave this State and to remain outside the State thereafter. Moreover, you should be aware that regulations will be made under the *European Communities Act, 1972*, (as amended), to give statutory effect to the European Union (EU) Directive 2001/40/EC which obliges each EU Member State to mutually recognise and give effect to Deportation Orders issued in respect of third-country nationals i.e. anyone who is not a national of any of the EU States. This means that a Deportation Order may also prevent you from entering another EU State in the future.

Your options

You now have three options open to you and you must choose one of them as follows:

Option 1: Leave the State before the Minister decides on a deportation order. You may, subject to public policy concerns, choose to leave the State voluntarily, before the Minister decides on a deportation order. If you choose this option and it is accepted, a deportation order will not be issued. This means that you may apply to come back to Ireland legally in the future, for example on a tourist visa, work permit or study permit.

Advice and assistance on the voluntary return option is available from the Repatriation Division of this Department, Lo-call 1890 551 500

If you choose this option, please inform us of your decision, before you make arrangements to leave. Please quote this letter and your file reference shown at the top. The office to contact is Arrangements/Support Unit, Repatriation Unit, Irish Naturalisation and Immigration Service (INIS), Department of Justice and Equality, 13/14 Burgh Quay, Dublin 2. Lo-call 1890 551 500

Option 2: Consent to a Deportation Order You can give your consent in writing to a Deportation Order, subject to public policy concerns. If you choose this option and it is accepted, you must contact us at the address and telephone number shown above within 15 working days of the date of this letter. Arrangements will then be made for your departure. If a deportation order is made, you must leave Ireland and remain outside the State.

Option 3: Submit representations to the Minister under Section 3 of the *Immigration Act, 1999* (as amended). You may also make representations to the Minister, setting out reasons as to why a Deportation Order should not be made against you.

You can submit representations against the making of a Deportation Order on the enclosed form or in a similar format. Please note that the completed form must be signed by you personally or, in the case of a minor, by a parent or guardian.

You can attach any additional letters or documents from other people in support of your case when you fill in the form. Please contact us immediately if any of the details you have stated in your representations change after you submit them. If you choose this option it is very important that you understand the following:

The Minister will proceed to decide on your case in accordance with the provisions of Section 3 of the *Immigration Act, 1999*, (as amended). If the Minister decides to make a Deportation Order in respect of you, you will no longer have the option of leaving the State voluntarily, i.e.: without a Deportation Order.

Please complete and return the attached Address Notification Form to the address below. This confirms your current address and advises you of the obligation that you inform the Minister if you change address in the future.

What happens when a deportation order is made:

Some of the options listed above involve the making of a Deportation Order. It is important that you understand what this means. A Deportation Order will require you to leave Ireland and to remain outside the State.

If no response is received to this letter within 15 working days, it will be assumed that you do not wish to return home voluntarily and that you do not wish to make representations against the making of a Deportation Order. In such circumstances, the Minister will proceed to consider your case under Section 3 of the *Immigration Act, 1999* (as amended), on the basis of the information already on your file.

It is recommended that you retain a copy of all documentation submitted to the Minister, for your own records.

You should send all correspondence to: Arrangements Unit, Repatriation Section, Irish Naturalisation and Immigration Service (INIS), Department of Justice and Equality, 13/14 Burgh Quay, Dublin 2.

Yours sincerely,

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## Annex 2 Deportation Order

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

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

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

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

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

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

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Minister for Justice, Equality and Law Reform

## Annex 3 Arrangements Letter

Registered Post

Person ID:

Application ID:

Legacy Ref:

Dear xxx

I am directed by the Minister for Justice and Equality to refer to your current position in the State and to inform you that the Minister has decided to make a deportation order in respect of you under Section 3 of the *Immigration Act, 1999* (as amended). A copy of the order and a copy of the Minister's considerations pursuant to Section 3 of the *Immigration Act, 1999* (as amended) and Section 5 of the *Refugee Act, 1996* (as amended) are enclosed with this letter.

In reaching this decision the Minister has satisfied himself that the provisions of Section 5 (prohibition of *refoulement*) of the *Refugee Act, 1996* (as amended) are complied with in your case.

The reasons for the Minister's decision are that xxxx.

Having had regard to the factors set out in Section 3(6) of the *Immigration Act, 1999* (as amended), including the representations received on your behalf, the Minister is satisfied that the interest of the public policy and the common good in maintaining the integrity of the asylum and immigration systems outweigh such features of your case as might tend to support your being granted leave to remain in this State.

The deportation order requires you to leave the State and to remain outside the State thereafter.

You are obliged to leave the State by XX XX 20XX. Please advise this office of the travel arrangements that you make to comply with the deportation order.

If you do not leave the State by XX XX 20XX you are liable to be deported and the following requirements under the provisions of Section 3(9)(a)(i) of the *Immigration Act, 1999* (as amended) must be observed:

You are required to present yourself to the Member in Charge, Booth No 1, Garda National Immigration Bureau, 13/14 Burgh Quay, Dublin 2 on Thursday, XX XX 20XX at 2.pm to make arrangements for your removal from the State.

You are required to produce at that appointment any travel documents, passports, travel tickets or other documentation in your possession which may facilitate your removal from the State.

You are required to cooperate in any way necessary to enable a member of An Garda Síochána or Immigration Officer to obtain a travel document, passport, travel ticket or other document required for the purpose of such removal.

You are required to reside at the above address pending your removal from the State.

Please also note that failure to leave the State by XX XX 20XX is a failure to comply with a provision of the deportation order. As a result, an Immigration Officer or a member of An Garda Síochána may arrest and detain you without warrant in accordance with Section 5(1) of the *Immigration Act, 1999* (as amended).

A member of An Garda Síochána or an Immigration Officer may require you, in writing, if he or she considers it necessary for the purpose of ensuring your deportation, to comply with any further conditions as outlined in Section 3(9)(a)(i) of the Act referred to above. When satisfactory documentation has been organised, arrangements will be put in place to effect your removal from the State.

If you fail to comply with any provisions of the deportation order, or with a requirement in this notice, an Immigration Officer or a member of An Garda Síochána may arrest and detain you without warrant in accordance with Section 5(1) of the *Immigration Act, 1999* (as amended). It is also an offence of the *Immigration Act, 1999* (as amended) to obstruct or hinder a person authorised by the Minister to effect your removal from the State.

The enforcement of the Minister's Deportation Order is a matter for the Garda National Immigration Bureau (GNIB) and any queries regarding its enforcement should be directed in writing to the GNIB at 13/14 Burgh Quay, Dublin 2 or to Fax number (01) 666 9141.

Yours sincerely,

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Repatriation Unit

cc: Garda National Immigration Bureau

cc: Solicitor on file

## Annex 4 Relevant/Referenced Legislation and Case Law

### Legislation

*S.I. No. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013*

*Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*

*Illegal Immigrants (Trafficking) Act 2000*

*S.I. No. 55 of 2005, Immigration Act 1999 (Deportation) Regulations 2005*

*Immigration Act 2004*

*Immigration Act 2003*

*Criminal Justice (United Nations Convention Against Torture) Act 2000*

*Immigration Act 1999*

*Refugee Act 1996*

### Case Law

*FE v. Minister of Justice [2014] IEHC 62*

*Amobi v. Minister for Justice [2013] IEHC 47*

*AG v. Refugee Appeals Tribunal [2013] IEHC 247*

*Omar v. Governor of Cloverhill Prison [2013] IEHC 579*

*Smith v. Minister for Justice [2013] IESC 4*

*Okunade v. Minister for Justice [2012] IESC 49*

*Sivsivadze v. Minister for Justice and Equality [2012] IEHC 244; [2015] IESC 53.*

*Gerardo Ruiz Zambrano v. Office National de l'Emploi, Case C-34/09, decision of the Court of Justice of the European Union in 2011*

*XA v. Minister for Justice [2011] IEHC 397*

*Meadows v. Minister for Justice [2010] 2 IR 701*

*EAI v. Minister for Justice [2009] IEHC 334*

*Oguekwe v. Minister for Justice, Equality and Law Reform [2008] IESC 25*

*Akujobi v. Minister for Justice [2007] IEHC 19*

*Cirpaci v. Minister for Justice [2005] 4 IR 109*

*Lobe and Osayande v. Minister for Justice, Equality and Law Reform [2003] 1 IR 1 and [2003] 3 ICLMD 57*

*F.P. v. Minister for Justice [2002] 1 IR 164*

*Lord Phillips in R. (Mahmood) v. Secretary of State for the Home Department [2001] 1 WLR 840*



European Migration Network

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