

EUROPEAN MIGRATION NETWORK

POLICIES ON UNACCOMPANIED MINORS IN IRELAND

Corona Joyce
and
Emma Quinn



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THE ECONOMIC AND SOCIAL
RESEARCH INSTITUTE

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The authors are solely responsible for the content and any errors contained therein.

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ABBREVIATIONS AND IRISH TERMS

AHTU	Anti-Human Trafficking Unit
CIS	Crisis Intervention Service
CWO	Community Welfare Officer
Dáil	Parliament, lower House
DETE	Department of Enterprise, Trade and Employment
DJELR	Department of Justice, Equality and Law Reform
EEA	European Economic Area
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HSE	Health Service Executive
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IRC	Irish Refugee Council
MRCI	Migrant Rights Centre Ireland
NGO	Non-Governmental Organisation
Oireachtas	Parliament, both houses
OCO	Ombudsman for Children's Office
ORAC	Office of the Refugee Applications Commissioner
OSCE	Organisation for Security and Co-operation in Europe
PSNI	Police Service of Northern Ireland
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
RLS	Refugee Legal Service
SCEP	Separated Children in Europe Programme
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UNHCR	United Nations High Commissioner for Refugees
VARRP	Voluntary Assisted Return and Reintegration Programme

EXECUTIVE SUMMARY

Introduction

There is considerable lack of clarity on provisions for unaccompanied minors in Ireland and relatively little printed policy information. This study is intended to provide an overview of the complex system of provision in the area, and to highlight presenting issues and gaps as well as instances of best practice. In Ireland, the Health Service Executive (HSE) is responsible for the welfare of unaccompanied minors. The HSE devolves this responsibility to locally-based social work teams within Community Care Areas. These local teams have a degree of autonomy in exactly how they process and care for unaccompanied minors in their care. In addition there are a range of other actors involved in the provision of services to unaccompanied minors and their various roles are summarised in Chapter 1.

In the absence of comprehensive documentary material, this study involved wide ranging consultation with those working with unaccompanied minors in Ireland and we are very grateful to all who contributed their time and expertise. A major challenge in compiling the current report was that national-level statistical data on unaccompanied minors does not exist. This current study relies on the administrative records of the Social Work Team for Separated Children Seeking Asylum, HSE Dublin South (responsible for the majority of unaccompanied minors in Ireland and hereafter referred to as the HSE Dublin Social Work Team for Separated Children) and statistics from the Office of the Refugee Applications Commissioner regarding data on applications for asylum submitted by unaccompanied minors.

Available data begin in 2000 when there were 520 unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children. This figure had more than doubled by the next year 2001. Since the 2001 peak, the numbers referred has steadily declined and in 2008 some 319 unaccompanied minors were referred to this service.

Motivation for Seeking Entry to Ireland

The reasons behind minors travelling unaccompanied to Ireland are often complex and unclear and are discussed in Chapter 2. A great number of unaccompanied minors who arrive in Ireland are subsequently reunited with family already resident here. Between 2002 and 2007, over one-half of unaccompanied minors were reunited with family members following referral to the HSE Dublin Social Work Team for Separated Children. The proportion of unaccompanied minors travelling to Ireland who were then informally reunited with family grew steadily from 21 per cent in 2000 to peak at 69 per cent in 2005 and remained high in 2006 and 2007 at 60 per cent and 54 per cent respectively. Crucially, the minors concerned often do not know why they have been sent to Ireland and the motivation behind their migration is actually that of a parent or guardian.

It is likely that recent changes to Irish citizenship law in 2005 were associated with increases in this type of “informal” family reunification. Even after the change in citizenship laws which came into effect in January 2005, some non-Irish parents of Irish children who had secured permission to reside in Ireland under the *IBC/05 Scheme* had older siblings travel to join them in Ireland on an informal basis. This was due to a lack of surety regarding whether they would be granted formal family reunification. These issues are discussed in detail in section 2.1. It may be that minors travel to Ireland unaccompanied to claim asylum. Many of those reunited with family members may also proceed to claim asylum either on a separate application or as part of the family member’s application for asylum. The number of asylum applications made by unaccompanied minors has fallen from 288 in 2002 to 98 in 2008. This fall is in line with an overall decrease in asylum applications. Other reasons behind minors travelling alone to Ireland include to seek medical attention or educational opportunities, or because they have been trafficked here for exploitation.

Available information on the nationality of unaccompanied minors from the HSE Dublin Social Work Team for Separated Children indicates that Nigeria is consistently the top nationality of unaccompanied minors referred to the service, followed by Romania and in more recent years, China. The gender breakdown of the minors referred to the service is quite even throughout the period while the age profile of the group has shifted somewhat. In 2004 almost two-thirds of unaccompanied minors referred to the HSE Dublin Social

Work Team for Separated Children were under 14 years old. In 2008 this had fallen to 44 per cent.

**Entry
Procedures,
Including
Border
Control**

It is official policy not to refuse any unaccompanied minor entry to the Irish State and the best interests of the child must always take precedence regardless of whether or not a minor claims asylum. A minor identified as unaccompanied by an Immigration Officer or official of the Office of the Refugee Applications Commissioner is automatically referred to the HSE who then assumes responsibility for that child. Exactly how the referral proceeds depends on the time, place and circumstances regarding which a minor presents. The minor must be referred to the social work team operational in the geographical area in which the child presents (in the case of the wider Dublin area to the dedicated Social Work Team for Separated Children Seeking Asylum) and the exact nature of the referral depends on how that social work team applies the *Child Care Act, 1991*. There are significant regional disparities in terms of the provision of social work supports, particularly outside of normal office hours. An Out-of-Hours social work service exists only in the greater Dublin area.

There is an inherent tension between immigration concerns and the principle of the best interests of the child taking precedence at all times. These two imperatives may conflict particularly at the border. The issue of age assessment at the border is crucial and certain NGOs argue that minors have been detained and/or returned due to a lack of age assessment or an incorrect conclusion being drawn. The GNIB and consulted social workers stated that they believed that Immigration Officers tend to exercise great caution in this regard.

**Reception
Arrangements
Including
Integration
Measures**

Responsibility for the welfare of all children considered to be 'at risk' in the country (regardless of nationality) is delegated locally by the HSE. Each HSE Administrative Region has determined which application of the *Child Care Act, 1991* best suits their local situation based on legal advice, current practice, and available resources especially child placements. Three social work teams were interviewed for the current study and each applies the *Child Care Act, 1991* in a different way. The approach taken by the Administrative Region has an impact on the services available to unaccompanied minors, including accommodation provision. While this manner of providing care may work at a local level, the absence of a

national approach leads to an absence of national-level data and inhibits information sharing across the country.

Information-related difficulties are particularly pertinent in relation to unaccompanied minors going missing from HSE care. Between 2000 and 2008, 463 unaccompanied minors have gone missing from State care of which just 58 have been confirmed as traced. An insufficient quality of care (for example, no dedicated social worker) and level of supervision (certain accommodation centres have no dedicated, trained childcare workers on site) have also been cited as possible reasons for the high levels of disappearances. These issues are discussed in detail in Chapter 4. There are some signs of improvements in relation to this ongoing problem: a Joint Protocol was published in 2009 between the HSE and the Gardaí which attempts to clarify the joint responsibilities of both bodies in the event of a minor going missing from State care. A *National Action Plan to Prevent and Combat Human Trafficking* also recently published indicates that the practice of housing unaccompanied minors in privately run and poorly supervised hostels will be phased out.

Age assessment is a difficult issue and decisions can have a wide margin of error attached. Bone density testing is not officially in use in Ireland. Social work teams, Immigration Officers and ORAC officials use interviews and age assessment tools to inform their decision regarding age determination. Minors should not be detained in Ireland except if they commit a crime. However, immigration concerns and concern for the best interests of the child may again come into conflict here. NGOs consulted in the course of this research reported cases in which minors have arrived without the necessary documentation and were detained on immigration matters prior to referral to the HSE.

Unless unaccompanied minors are declared to have refugee or subsidiary protection status or are awaiting a decision on a protection claim, they do not have an official legal status beyond that of a child in the care of the HSE. This leads to many problems, especially for unaccompanied minors who are nearing or have reached 18 years old. At this age the HSE's responsibility towards such "aged out" minors becomes discretionary, and if they have applied for asylum in the State they are placed into the adult direct provision system. More discussion is provided on these and a wide range of other issues in Chapter 4.

**Return
Practice,
Including
Reintegration**

While no legislative prohibition to deportation of unaccompanied minors under 18 years is in effect, in practice no such deportations have taken place to date. Aged-out unaccompanied minors may be subject to a deportation order. The return of unaccompanied minors from Ireland tends to take place in conjunction with the IOM and the numbers involved are low: just 21 unaccompanied minors returned with IOM between 2002 and 2008. Difficulties in verifying family information provided by the unaccompanied minor is cited as the most common reason for low numbers of returns. Numbers of Dublin Regulation transfers concerning unaccompanied minors are low. Return is discussed in Chapter 5 and available statistics presented.

Some concluding observations arising from the research are provided in Chapter 6.

1. INTRODUCTION

1.1

Purpose of the Study

The current study aims to provide information on the numbers of unaccompanied minors in Ireland, and current policies and practices on reception, integration and return of unaccompanied minors. The study is intended to provide an overview of provision in the area and to highlight presenting issues and gaps as well as instances of best practice. Where they are available, data are provided for the period 2002-2008. It is hoped that policymakers, Health Service Executive (HSE) officials, NGOs and other interested parties working with unaccompanied minors will find the report useful.

There is considerable lack of clarity on provisions for unaccompanied minors in Ireland and relatively little printed policy information. However, new sources have emerged recently, particularly in the context of trafficking of minors. In the absence of official documentary sources the current study involved interviews with a wide range of service providers, policymakers, NGOs, IGOs and other interested parties and we are grateful to everyone who gave of their time.

A similar report is to be produced by 24 other European Migration Network (EMN) National Contact Points (NCPs). As with all EMN outputs, a synthesis report will subsequently be compiled that will draw together the findings of individual studies and provide an overview of the situation of unaccompanied minors in a European context.

1.2

Methodology

As with all European Migration Network outputs the current study was compiled according to a commonly agreed specification. The definition of an ‘unaccompanied minor’ for the purpose of this study derives from the *Temporary Protection Directive*.¹

¹ Council Directive 2001/55/EC of 20 July 2001 regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons. The definition is almost identical to that found in the *Qualification Directive* 2004/83.

...a third country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of the Member States (Council Directive 2001/55/EC).

Within social work and NGO contexts in Ireland, a more common term for such minors is that of ‘separated child’,² however, in the immigration and asylum context the term ‘unaccompanied minor’ is primarily in use.

Interviews were conducted with the following Irish actors:

- Anti-Human Trafficking Unit, Department of Justice, Equality and Law Reform.
- Garda National Immigration Bureau (GNIB).
- Liberty House Social Work Team, Cork, HSE South.
- HSE Crisis Intervention Service.
- Social Work Team for Separated Children Seeking Asylum, HSE Dublin South.
- Social Work Team, HSE Wexford.
- International Organization for Migration (IOM) Dublin.
- Irish Naturalisation and Immigration Service (INIS), Department of Justice, Equality and Law Reform.
- Irish Refugee Council.
- Office of the Refugee Applications Commissioner (ORAC).
- Refugee Legal Service (RLS).

² The EMN glossary (available at <http://emn.sarenet.es>) defines a ‘separated child’ as a child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Some may be totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. This definition covers both Third-Country National and EU National children, while unaccompanied minors can refer only to Third-Country Nationals.

A number of other agencies including the Immigrant Council of Ireland, the Ombudsman for Children's Office and the Reception and Integration Agency (RIA) provided valuable comments on a draft report.

Desk research was also undertaken for the current study. Important policy statements such as the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* and the *Joint Protocol between An Garda Síochána and the Health Service Executive regarding children going missing from care* emerged during the course of this research. Parliamentary debates and questions were also relied upon. Previous research in Ireland on unaccompanied minors is relatively limited. Submissions and articles compiled by the Irish Refugee Council, the Irish Human Rights Commission, Barnardos and the Immigrant Council of Ireland proved very useful in the compilation of this study.

1.2.1 DATA ISSUES

One of the most significant difficulties in compiling this current study was the lack of accurate, national statistics on unaccompanied minors in Ireland. The limited statistics that exist are confined to specific geographical HSE areas and cannot be aggregated to the national level because (a) not all HSE social work teams collect data on unaccompanied minors, (b) there is no agreed standard on exactly which data to collect, and (c) there is no way of safeguarding against double counting of minors who move from the care of one social work team to another. Even within one social work team double-counting of individual minors who move care placements can be a problem. These information issues are symptomatic of wider difficulties related to the nationally unstructured provision of services to unaccompanied minors that will be discussed further within this report.

As will be discussed below most unaccompanied minors in Ireland fall under the care of the HSE Dublin Social Work Team for Separated Children Seeking Asylum, hereafter referred to as the HSE Dublin Social Work Team for Separated Children. Statistics collected by this team will be the main source of quantitative data in the current report. For illustration purposes a sample of data collected by the Liberty House Social Work Team, Cork is also supplied in Appendix A. Regarding the data supplied by the HSE Dublin Social Work Team for Separated Children problems emerged

reconciling disaggregated data (by nationality, age, gender, placement type) with overall total referrals. Such problems are highlighted in individual tables within the text.

Statistics on entry and refusal at the border and detention were not available. The International Organization for Migration (IOM) Dublin supplied statistics on the voluntary assisted return of unaccompanied minors in Ireland, but due to the low numbers concerned and best practice procedures regarding identification of minors these are not provided where there are less than 10 cases. The Office of the Refugee Applications Commissioner (ORAC) also supplied detailed data on asylum applications lodged, granted, refused and withdrawn by unaccompanied minors. Figures lower than 10 cannot be published, however, for identity protection reasons as the Commissioner is obliged under Section 19 of the *Refugee Act, 1996* (as amended) to take all practical steps to ensure that the identity of applicants is kept confidential.

Appendix A contains the closest approximation possible to the detailed statistical tables set out in the EMN specifications for this study. Summary tables of the information within Appendix A are provided in the body of the text.

1.3 Overview of Recent Trends in Unaccom- panied Minors Arriving in Ireland

Table 1.1 below shows the number of unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children during the period 2000 to 2008. The number of minors referred peaked in 2001 and has declined steadily since then. This trend is similar to that of total asylum applications in the same period which peaked in 2002 before falling off quite steadily.

Although these data relate to referrals to the HSE Dublin Social Work Team for Separated Children only, the other Social Work Teams consulted in Cork and Wexford related a similar trend at a much lower level. As will be discussed in Chapter 2 a large proportion of unaccompanied minors who arrive in Ireland are subsequently reunited with family.

Table 1.1: Total Referrals to HSE Dublin Social Work Team for Separated Children 2000-2008

	2000	2001	2002	2003	2004	2005	2006	2007	2008	Total
Total Referrals	520	1,085	863	789	617	643	516	336	319	5,688

Source: HSE Dublin Social Work Team for Separated Children.

1.4 Main Actors and Institutions Involved in the Provision of Services to Unaccom- panied Minors

The provision of services to unaccompanied minors in Ireland is very complex. For this reason the main actors involved are introduced below.

1.4.1 AN GARDA SÍOCHÁNA AND THE GARDA NATIONAL IMMIGRATION BUREAU (GNIB)

The Garda National Immigration Bureau (GNIB) is part of An Garda Síochána (the police force). The GNIB is responsible for all immigration-related Garda (police) operations in the State and is under the auspices of An Garda Síochána. The GNIB carries out deportations, border control, and investigations related to illegal immigration and trafficking in human beings. The GNIB operates an information system for the registration of immigrants in the State currently only for those aged 16 years or older. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and at all approved ports and airports.

1.4.2 HEALTH SERVICE EXECUTIVE

The Health Service Executive (HSE) was established in January 2005 as the single national body responsible for meeting Ireland's health and social care needs, including social work services. Child Protection and Social Work Services provide frontline services to children who are not receiving adequate care and protection via 32 Local Health Offices around the country. The HSE has defined its role regarding unaccompanied minors via the *Refugee Act, 1996* (as amended) and *Child Care Act, 1991* and stated that its main responsibilities relate to immediate and ongoing needs concerning accommodation, medical, social needs and application for refugee status, as follows:

- the decision as to whether it is in the best interests of the child to make an application for asylum,
- if so, to support the child through the application process,
- to provide for the immediate and ongoing needs and welfare of the child through appropriate

placement and links with health, psychological, social and educational services.³

Social work services are provided via social work teams within local Community Care Areas and under geographical Administrative Areas.

1.4.2.1 Social Work Teams

Social work teams, under the overall responsibility of the HSE, are charged with providing day-to-day services to unaccompanied minors within State care. As referenced above, social work teams are generally under the remit of a Community Care Area which administers services to a local area. In cases involving unaccompanied minors presenting at a port of entry where a team tasked with service provision to unaccompanied minors in that area does not exist, the responsible local social work team is that which covers the port's geographical area or is attached to the local hospital to which the minor may be referred.

1.4.2.1.1 HSE Social Work Team for Separated Children Seeking Asylum

The HSE Social Work Team for Separated Children Seeking Asylum (referred hereafter as the HSE Dublin Social Work Team for Separated Children) is based within the Dublin South East Administrative Area under the HSE Dublin Mid-Leinster region. The first separated child arriving in Ireland for the purpose of seeking asylum was identified in 1996. In 2002 a dedicated team was established in order to provide services to an increasing number of unaccompanied minors arriving in Ireland. The HSE Dublin Social Work Team for Separated Children only receives referrals concerning separated children seeking asylum and all referrals are non-EU nationals. The vast majority of referrals to the HSE Dublin Social Work Team for Separated Children are from the Department of Justice, Equality and Law Reform (including GNIB and the Office of the Refugee Applications Commissioner), with a small proportion of referrals from other social work teams where unaccompanied minors have been identified and where the social work team may not have the means to meet their needs appropriately. The majority of referrals are from ports of entry

³ HSE *Services for Separated Children Seeking Asylum*. Available at http://www.hse.ie/eng/Find_a_Service/Children_and_Family_Services/Child_Welfare_and_Protection/Services_for_Separated_Children_Seeking_Asylum/

within the Dublin area (particularly from Dublin Airport and Dublin Port) and from the wider Dublin South East area.

1.4.2.1.2 Crisis Intervention Service and Out-of-Hours Service

In the Dublin area⁴ the HSE operates an out-of-hours Crisis Intervention Service (CIS) for social work child protection services which can be accessed by emergency services such as hospitals and the Garda Síochána outside of office hours. This CIS service is utilised for referrals in cases where an unaccompanied minor presents at a port of entry or other venue outside office hours. Outside of Dublin, local hospitals and child protection social work teams are charged with providing care to unaccompanied minors arriving outside office hours. See section 3.4.1 for further discussion of this issue.

1.4.3 OFFICE OF THE REFUGEE APPLICATIONS COMMISSIONER

The statutorily independent Office of the Refugee Applications Commissioner (ORAC) is tasked with investigating applications from persons seeking a declaration for refugee status and to issue appropriate recommendations to the Minister for Justice, Equality and Law Reform. It is also tasked with the investigation of applications for family reunification by refugees and reporting to the Minister for Justice, Equality and Law Reform on such applications.⁵ ORAC refer those unaccompanied minors initially presenting to their services to the HSE (see section 3.1).

1.4.4 REFUGEE APPEALS TRIBUNAL

The Refugee Appeals Tribunal decides appeals of those asylum seekers whose applications for refugee status have not been recommended by the Office of the Refugee Applications Commissioner. The Tribunal is a statutorily independent body and exercises a quasi judicial function under the *Refugee Act*, 1996.

⁴ Dublin, Kildare and Wicklow.

⁵ Set forth in the *Refugee Act*, 1996 (as amended).

1.4.5 REFUGEE LEGAL SERVICE

The Refugee Legal Service (RLS), under the auspices of the Legal Aid Board, provides independent legal services to persons applying for asylum in Ireland. Legal aid advice is provided also in appropriate cases on immigration and deportation matters. Assistance is provided with initial advice before submitting a questionnaire to ORAC, with written submissions to ORAC supporting the application for asylum, and with attendance at the ORAC interview with the applicant. Representation before the RAT is also provided.

The RLS provides assistance related to judicial reviews and deportation, and provides representation if an applicant is detained in the District Court under Section 9(8) of the *Refugee Act, 1996*. In cases where a claim for refugee status may have been refused, the RLS provides assistance in submission of applications for Leave to Remain in Ireland and applications for subsidiary protection. The cost of the service is means tested, with contributions required on a sliding scale.

2. MOTIVATIONS FOR SEEKING ENTRY INTO IRELAND

2.1 Motivation for Migration to Ireland

The reasons why unaccompanied minors travel to Ireland are generally unclear. Crucially, the minors concerned often do not know why they have been sent to Ireland and the motivation behind their migration is actually that of a parent or guardian. Social workers interviewed for the current study indicated that occasionally children in poor health are sent to Ireland by their parents in order to receive medical attention. Such children tend to present with chronic illnesses such as sickle-cell anaemia or Hepatitis B. Minors may also be sent to Ireland by parents or other customary caregivers in order to access educational services not available to them in their home countries. Substantial numbers of unaccompanied minors travel to Ireland to be reunited with family and/or to claim asylum. Some are trafficked into the country to enter forced labour or prostitution.

There is an important distinction to be made between minors who arrive unaccompanied but who have family resident in Ireland and those that arrive alone and have no family in the State. Figures from the HSE Dublin Social Work Team for Separated Children supplied in Table 2.1 indicate that between 2002 and 2007 one-half to two-thirds of unaccompanied minors were reunited with family members after referral to the service. In 2008, just under half of minors referred to the service were reunited with family. It cannot be

assumed that this type of informal⁶ family reunification is the motivation behind all such minors travelling to Ireland, for example some may proceed to claim asylum. Regarding persons with refugee status the waiting time between an application for family reunification and decision is currently approximately two years. The Irish Refugee Council has stated that it is concerned that such lengthy waiting times contribute to the families of people with refugee status taking risks through these informal channels of family reunification.

Table 2.1: Outcome of Initial Referrals to HSE Dublin Social Work Team for Separated Children 2000-2008

Year	Placed in Care %	Reunited %	Other*	Total of Disaggregated Data	Total Referrals**
2000	78.1	20.6	1.3	520	520
2001	78.0	21.3	0.7	1,085	1,085
2002	38.8	58.6	2.5	863	863
2003	35.1	55.6	9.3	789	789
2004	28.2	67.7	4.1	617	617
2005	28.0	68.6	3.4	643	643
2006	36.3	59.5	4.2	518	516
2007	37.8	53.8	8.4	344	336
2008	46.0	46.3	7.7	339	319
Total	47.1	48.8	4.1	5,718	5,688

* “Other” includes: Age reassessed and deemed over 18 years by ORAC, child arrived accompanied by family member, child arrived on valid visa, child placed in care and subsequently reunited, child arrived from EU Member State, Dublin II Convention.

** “Total referrals” indicate the number of minors referred to the service in the period. In the years 2006, 2007 there appears to have been double counting of minors in the “placed in care” column and the “reunited” column, therefore, the total of disaggregated data is higher than the total referrals figure. Percentages are calculated as proportions of disaggregated data totals.

Source: HSE Dublin Social Work Team for Separated Children. Data quoted in answer to Parliamentary Question, 18 December 2008.

Table 2.1 indicates that the proportion of unaccompanied minors travelling to Ireland who were then informally reunited with family grew steadily from 21 per cent in 2000 to peak at 69 per cent in 2005.

In January 2005 there was a very significant change in relation to non-Irish nationals and Irish citizenship. Prior to the enactment of the *Irish Nationality and Citizenship Act, 2004* which commenced in 2005, Ireland granted citizenship to

⁶ Not proceeding via a formal family reunification application to the Department of Justice, Equality and Law Reform.

everyone born on the territory. Non-Irish parents of Irish-born children could apply for residency based on the Irish citizenship of their child, up to January 2003 when the processing of such claims was suspended. This provision led to concerns that immigrants were travelling to Ireland and having children in order to gain residency in Ireland. It is possible that during this period (and subsequently – see below) older siblings of Irish-born children were sent to join their parents in Ireland. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted which mean that any person born in Ireland after 1 January 2005 to non-Irish parents would not be automatically entitled to be an Irish citizen unless one of the parents was lawfully resident in Ireland for at least three out of the four years preceding the child's birth. In January 2005 the families of Irish-born children were invited to apply for permission to remain in Ireland under the *Irish Born Child 2005 Scheme (IBC/05)*. Almost 18,000 applications were submitted under the Scheme and of these almost 16,700 were approved. During 2007 arrangements were put in place for the processing of applications for renewal under the *IBC/05 Scheme* and 14,117 renewals had been granted by year-end 2008 (Joyce 2009). Applicants under the *IBC/05 Scheme* were asked to sign a declaration which stated that they understood that, if they were granted residency, this would not give them any entitlement to reunification with any other family members residing outside of the country. This was widely (and incorrectly) interpreted as a ban on family reunification applications made by parents resident here under the *IBC/05 Scheme*. NGOs have commented that this confusion probably led to large numbers of older siblings being brought into the country by informal channels, and as unaccompanied minors in some cases.

No data exist on whether or not minors are pregnant on arrival. Anecdotally, this was not believed to be a major issue, even prior to the change in the citizenship law. The forthcoming *Dartington Report*⁷ cites 12 girls out of a case file

⁷ Abunimah, A. and Blower, S. (Forthcoming) The circumstances and needs of separated children seeking asylum in Ireland. *Child Care in Practice*.

sample of 100 unaccompanied minors as arriving pregnant in Ireland and likely to be victims of sexual assault.⁸

Between 2002 and 2008, approximately 2-3 per cent of the total applications for asylum per year have been made by unaccompanied minors. Table 2.2 shows the number of unaccompanied minors who proceeded to claim asylum. Due to the lack of national data on the number of unaccompanied minors arriving in Ireland it is not possible to say what percentage of the overall number claim asylum.

Table 2.2 Asylum Applications Made by Unaccompanied Minors 2002-2008

	2002	2003	2004	2005	2006	2007	2008
Asylum applications made by UAMs	288	271	128	131	131	94	98
Total asylum applications	11,634	7,900	4,766	4,323	4,314	3,985	3,866
UAMs as % of total asylum applications	2.5	3.4	2.7	3.0	3.0	2.4	2.5

These data refer to minors that are deemed to be unaccompanied at the time of their application for asylum. It is not possible to disaggregate minors who are subsequently reunited with family and may possibly be added to their parent or guardian's application for asylum.

Source: Office of the Refugee Applications Commissioner.

The issue of 'motivation' behind migration is further complicated by the fact that in Ireland unaccompanied minors do not technically have an immigration status unless they apply for asylum, are granted refugee status, subsidiary protection or Leave to Remain. In addition the HSE could, in exceptional circumstances, make representations to the Minister for Justice, Equality and Law Reform regarding using his discretionary power to grant Leave to Remain in the State. The lack of alternative options may lead some to pursue an asylum application in order to regularise their status, particularly if they are soon to turn 18 years old. (See section 4.9). In their submission on the *Immigration, Residence and Protection Bill* the Irish Refugee Council draws attention to the need for an alternative path to temporary residence for minors who do not satisfy the conditions for refugee status or

⁸ Using a qualitative thematic analysis of the case file data and applying a cluster analysis, the report identified four main 'types' of unaccompanied minors:

1. Traumatized children with health problems needing high support;
2. Children in good health, likely to go missing;
3. Children who appear resilient and who are highly-motivated;
4. Girls who arrive pregnant, likely to be victims of sexual assault.

subsidiary protection but are nonetheless in need of special assistance and protection. This document summarises similar positions expressed by UNHCR, the Ombudsman for Children and the Special Rapporteur on Child Protection (Irish Refugee Council, 2008).

It is clear that minors are also being trafficked to Ireland. Accessing reliable data on trafficking is a huge problem, partly because the crime is so hard to prove. A recently published report on sex trafficking and prostitution (Kelleher Associates *et al.*, 2009) indicated that over a 21-month period between 2007 and 2008, 102 women and girls presented at Irish services who may be considered victims of trafficking using the definition set out in the *UN Palermo Trafficking Protocol*.⁹ Of these, 11 were children at the time they were trafficked, and mainly from African countries. The authors believe that this figure significantly underestimates the problem. In addition, their focus lay on the trafficking of women and girls for sexual exploitation only. It is likely that further children, male and female, are trafficked into forced labour in Ireland.

At the time of writing, the GNIB has indicated that in three of the cases currently being investigated there are allegations that the minor was trafficked for the purpose of sexual exploitation.

2.2 Profile of Unaccompanied Minors Arriving in Ireland

As discussed in Chapter 1 national data on unaccompanied minors do not exist. The most comprehensive data sources are referrals to the HSE Dublin Social Work Team for Separated Children and data on asylum applicants from the Office of the Refugee Applications Commissioner. The demographic profile of unaccompanied minors, based on these sources, is discussed below.

⁹ Under the *UN Palermo Trafficking Protocol*, the 'consent' of the victim to the intended exploitation is irrelevant, provided that the trafficker has used threats, force, coercion, abduction, fraud, or deception, the abuse of power of a position or payments or benefits to achieve the consent of a victim. Significantly, where minors are concerned, consent to exploitation can never be present regardless of what methods are used. In the case of minors, the overall element of consent is also not relevant given the age of the victim. See section 4.4.2 for a fuller discussion on the trafficking of minors into Ireland.

2.2.1 NATIONALITIES OF UNACCOMPANIED MINORS ARRIVING IN IRELAND

The nationalities of unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children are shown in Table 2.3. Nigeria is consistently the top nationality of unaccompanied minors referred to the service, followed by Romania and in more recent years, China. Other common nationalities include DR Congo, Somalia and Moldova.

Table 2.3: Top Five Nationalities of Unaccompanied Minors Referred to HSE Dublin Social Work Team for Separated Children, 2002 and 2004-2008

2002		2004		2005		2006		2007		2008	
Nigeria	453	Nigeria	356	Nigeria	378	Nigeria	266	Nigeria	162	Nigeria	163
Romania	90	Romania	40	Romania	65	Romania	68	China	22	China	20
Congo	35	DR Congo	21	Somalia	38	Somalia	35	Ghana	17	Zimbabwe	20
South Africa	29	Moldova	19	DR Congo	18	Guinea	13	Somalia	17	DR Congo	19
Moldova	27	Somalia	18	Moldova	14	China	12	Cameroon	9	Malawi	9
Total of disaggregated data*											
857		594		641		514		321		336	
Total referrals*											
863		617		643		516		336		319	

Reliable nationality data are not available for 2003.

* The annual totals of the disaggregated nationality data do not match the data on total referrals. This is because nationality data were not available for all referred minors. Furthermore, in some years minors were “double counted” in the HSE records.

Source: HSE Dublin Social Work Team for Separated Children.

Data from the Office of the Refugee Applications Commissioner (ORAC) shown in Table 2.4 indicate that the majority of asylum applications from unaccompanied minors in 2002-2008 came from Nigerian nationals. This is in line with overall trends in asylum applicants in Ireland. Somalia is the second most common nationality among unaccompanied minors. Officials consulted for the study observed that trends in the numbers of unaccompanied minors who seek asylum reflects global and political changes but not all will be entered into the asylum system immediately upon arrival (see section 4.6.2 on unaccompanied minors and the asylum system).

Table 2.4: Top Five Nationalities of Unaccompanied Minors who Applied for Asylum 2002-2008

2002		2003		2004		2005		2006		2007		2008	
Nigeria	130	Nigeria	77	Nigeria	31	Somalia	31	Nigeria	26	Nigeria	30	Nigeria	29
Angola	15	Somalia	21	Somalia	13	Nigeria	18	Somalia	22	Somalia	15	Somalia	<10
Sierra Leone	14	DR Congo	16	Eritrea	<10	Afghanistan	10	Guinea	10	Ghana	<10	Ghana	<10
DR Congo	12	Georgia	16	Ethiopia	<10	Romania	<10	Sudan	<10	DR Congo	<10	Kenya	<10
Moldova	12	Kenya	14	Guinea	<10	Angola	<10	Iran	<10	Georgia	<10	Angola	<10
Total	288	Total	271	Total	128	Total	131	Total	131	Total	94	Total	98

Source: Office of the Refugee Applications Commissioner.

Note: Figures under 10 cannot be disclosed for data protection reasons.

2.2.2 GENDER AND AGE OF UNACCOMPANIED MINORS ARRIVING IN IRELAND

Table 2.5 shows the gender and age breakdown of unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children between 2004 and 2008. The gender breakdown of the minors is quite even throughout the period. This is unusual in an international context: UNHCR data indicate that in most European countries unaccompanied minors tend to be predominantly male (UNHCR, 2007).

Table 2.5: Gender and Age Percentage Breakdown of Unaccompanied Minors Referred to HSE Dublin Social Work Team for Separated Children

	% Gender		% Age		Total of Disaggregated data	Total Referrals*
	Female	Male	0-13	14-17		
2004	52.4	47.6	62.8	37.2	594	617
2005	49.1	50.9	58.5	41.5	641	643
2006	52.7	47.3	50.6	49.4	514	516
2007	53.6	46.4	45.2	54.8	321	336
2008	47.9	52.1	43.5	56.5	336	319

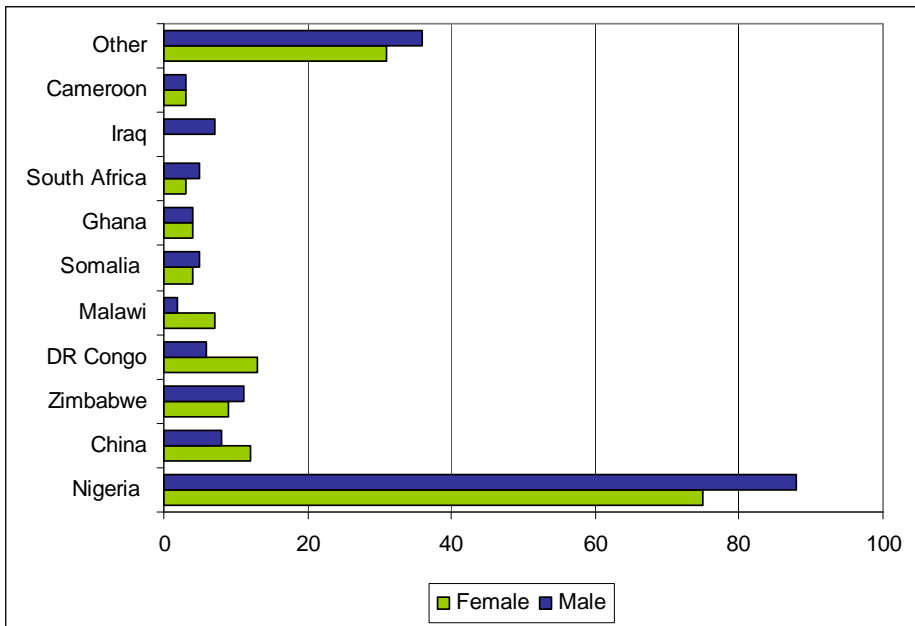
Reliable gender and age data are not available for 2003 or 2002.

*The annual totals of the disaggregated nationality data do not match the data on total referrals. This is because age and gender data were not available for all referred minors. Furthermore, in some years minors were “double counted” in the HSE records.

Source: HSE Dublin Social Work Team for Separated Children.

Figure 2.1 shows how the gender composition of flows of unaccompanied minors varied with nationality in 2008. Minors with Nigerian nationality were predominantly male in 2008 although in the years 2004 to 2007 inclusive, females held the larger share of the flow. Unaccompanied minors from the Democratic Republic of Congo are also more likely to be female while unaccompanied minors from Iraq and Afghanistan are often male.

Figure 2.1 Gender Breakdown of Top Ten Countries of Nationality of Unaccompanied Minors Referred to HSE Dublin Social Work Team for Separated Children 2008



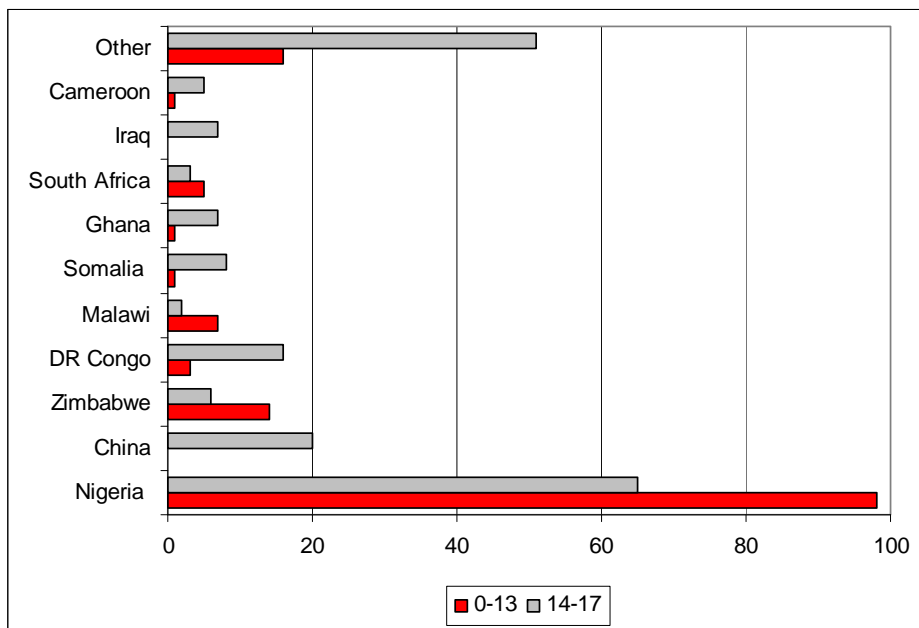
Source: HSE Dublin Social Work Team for Separated Children.

Table 2.5 shows that trends related to age have been much more dynamic than gender over the period 2004-2008. In 2004, 63 per cent of unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children were under 14 years old and 37 per cent were aged 14-17 years. The balance steadily shifted and in 2008, 57 per cent of unaccompanied minors referred were aged 14-17 years, while 44 per cent were aged 13 years and under.

Figure 2.2 shows how the age profile of unaccompanied minors varied with nationality in 2008. The flow of Nigerian unaccompanied minors is dominated by children aged 0-13 years and this has been the case in each year between 2004 and 2008. In 2004, 78 per cent of unaccompanied Nigerian minors referred to the HSE Dublin Social Work Team for Separated Children were aged under 14 years, the share grew to 80 per cent in 2005 and fell to 60 per cent in 2008. In contrast, Chinese and Somali unaccompanied minors tend to fall almost exclusively into the older age category during the period 2004-2008. Minors arriving alone from DR Congo were mainly aged 14 years and older in 2007 and 2008 while the flow was dominated by younger children in the years 2004-2006. Although sufficient data are not available to properly investigate the issue, it is reported anecdotally that the majority

of very young unaccompanied minors who arrive in Ireland are subsequently reunited with family.

Figure 2.2: Age Breakdown of Top Ten Countries of Nationality of Unaccompanied Minors Referred to HSE Dublin Social Work Team for Separated Children 2008



Source: HSE Dublin Social Work Team for Separated Children.

2.3

Profile of Unaccompanied Minors Who Have Claimed Asylum in Ireland

Table 2.6: Gender and Age Percentage Breakdown of Unaccompanied Minors who Applied for Asylum 2002-2008

	% Gender		% Age		Total
	Female	Male	0-13	14-17	
2002	42	58	5	95	288*
2003	53	47	3	97	271
2004	56	44	2	98	128
2005	46	54	1.5	98.5	131
2006	47	53	3	97	131
2007	59	41	8	92	94*
2008	48	52	15	85	98

*The percentage age breakdowns for 2002 and 2007 are calculated on totals of 285 and 87 respectively. This is because the statistics do not cover minors who were subsequently deemed to be minors after they made their initial asylum claim.

Source: Office of the Refugee Applications Commissioner.

Unaccompanied minors who claim asylum have had a fairly even gender breakdown in the period 2002-2008. As noted above, this is unusual in an international context. The age

breakdown supplied in Table 2.6 shows that these minors tend to be older. This may be because the majority of very young unaccompanied minors do not proceed to claim asylum or because the HSE may wait until they are older before guiding the minor through the process.

2.4

EU National Unaccompanied Minors

During the course of this study no information was available on EU nationals travelling to Ireland as unaccompanied minors. Procedures regarding unaccompanied EU minors are unclear and statistics on the number of EU nationals presenting as unaccompanied minors are unavailable, perhaps mainly because such minors would not be referred to the HSE Dublin Social Work Team for Separated Children or be able to make an asylum application.¹⁰ Social workers consulted as part of this study have reported that presenting unaccompanied EU minors was not a major issue. However, in 2006 the second most common nationality among minors referred to the HSE Dublin Social Work Team for Separated Children was Romanian, with 68 Romanian minors referred during that year. The vast majority of these children were reunited with family in Ireland. It is unlikely that this flow simply ceased when Romania joined the EU in January 2007 but the data are not available to investigate further.

It should be noted that regardless of the nationality of a child if a member of the Garda Síochána has reasonable grounds for believing that the child is at risk then Section 12 of the *Child Care Act, 1991* will apply and the child can be taken to a place of safety. The child is then placed in the care of the HSE as soon as possible. Alternatively, an emergency care order can be sought by the HSE under Section 13 of the 1991 Act.

¹⁰ Since January 2007, EU citizens cannot apply for asylum in Ireland as Ireland currently applies the *EU Treaty Protocol on asylum for nationals of Member States of the European Union*. The Protocol provides that applications for refugee status from EU nationals shall be inadmissible for processing by another EU Member State except in very exceptional circumstances. These exceptions flow from failure to meet obligations relating to respect for human rights and the rule of law under the *European Convention on Human Rights* and the EU Treaties.

3. ENTRY PROCEDURES, INCLUDING BORDER CONTROL

3.1 Legislative Framework for the Treatment of Unaccom- panied Minors in Entry Procedures

It is official policy in Ireland not to refuse any minor entry to the Irish State; the best interests of the child must always take precedence regardless of whether or not a child claims asylum. This is a policy position however, rather than a requirement set out explicitly in domestic law. The *Immigration Act, 2003* Section 5 (2) (b) and (c) does state that provisions in that Act for the arrest and detention of persons refused leave to land shall not apply to persons under 18 years of age for as long as the Immigration Officer concerned believes that the person is a minor. Under the *UN Convention on the Rights of the Child* (1989) the State is obliged to provide all unaccompanied minors with the same level of treatment as national or resident minors and “...shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.”¹¹ There is no dedicated domestic instrument dealing with unaccompanied minors in Ireland. The two Acts that are most relevant here are the *Refugee Act, 1996* and the *Child Care Act, 1991*. The *Refugee Act, 1996* states that in cases where it appears that a minor presenting at the border or within the state is alone or in the company of an adult with whom the Immigration Officer is not satisfied has a genuine relationship with the child, the Immigration Officer must

¹¹ Article 22, *UN Convention on the Rights of the Child* (1989).

contact the HSE and thereafter, the provisions of the Child Care Act, 1991 apply:

Where it appears to an Immigration Officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer shall, as soon as practicable, so inform the health board in whose functional area the child is and thereupon the provisions of the Child Care Act, 1991, shall apply in relation to the child. (Refugee Act 1996, Section 8 (5)(a)).

The Office of the Refugee Applications Commissioner (ORAC) also refer a significant number of unaccompanied minors to the HSE under Section 8(5)(a) of the *Refugee Act, 1996*. It is noteworthy that an Immigration Officer or authorised official does not need evidence to refer the child into the care of the HSE, it needs only to “appear” to be necessary.¹²

The statement that the “provisions of the Child Care Act, 1991, shall apply” means that the HSE assumes responsibility for that child. Section 3.1 and 3.2 of the 1991 Act places the responsibility for the promotion of the welfare of children up to 18 years of age who are not receiving adequate care and protection onto the HSE, having regard to the principle that it is generally in the best interest of a child to be brought up in his/her own family (Durville, 2009).

¹² *The Immigration, Residence and Protection Bill, 2008* which will replace the *Refugee Act, 1996* when enacted, states that “Where (whether or not in the performance of his or her functions under Section 23) it appears to an immigration officer that a foreign national under the age of 18 years who has arrived at a frontier of the State—

(a) is not accompanied or to be accompanied by a person of or over that age who is taking responsibility for the foreign national, the officer shall, as soon as practicable, notify the Health Service Executive of that fact, (b) is accompanied by such a person, the officer may require that person to satisfy him or her that the person is taking that responsibility and is authorised to do so.” Section 24 (1).

3.2 Pre-embarkation Stage

Carrier sanctions and liability were introduced under the *Immigration Act, 2003*. Carriers are required to carry out basic checks to ensure that all passengers boarded for carriage into the State from outside the Common Travel Area are in possession of valid documentation necessary for entry into the State. Different carriers have different policies on the carriage of unaccompanied minors. Under the *Immigration Act, 2003* a carrier is responsible for returning persons refused leave to land due to insufficient documentation to the point of embarkation. However, an unaccompanied minor arriving in Ireland should not be returned under these provisions as Section 5 (2) (b) and (c) of the 2003 Act states that provisions in that Act for the arrest and detention of persons refused leave to land shall not apply to persons under 18 years of age for as long as the Immigration Officer concerned believes that person is a minor.

3.3 Border Controls

The main points of entry to Ireland are the airports at Dublin, Shannon, Cork and Knock and sea ports at Dublin, Cork and Rosslare. Each of these air and sea ports is staffed by Immigration Officers. The land border with Northern Ireland is not subject to fixed controls.

The majority of unaccompanied minors present within the greater Dublin area, at Dublin airport or the Office of the Refugee Applications Commissioner. The majority of the unaccompanied minors coming to the notice of An Garda Síochána are encountered at the ports of entry. The Irish Refugee Council has stated that most unaccompanied minors are identified inland when they try to claim asylum or when they present for family reunification. Data were not available of the number of unaccompanied minors presenting at the border as this type of data is not collected in a systematic manner.

While the official position is that unaccompanied minors are not to be refused permission to enter the State, the Irish Refugee Council is concerned that on occasion unaccompanied minors are turned away at the border due to age disputes. The Garda National Immigration Bureau refutes such claims arguing that while mistakes may be made when a child first presents with an Immigration Officer (such as age-assessing minors as adults), such errors are resolved working with the relevant social work teams and do not result in the refusal of entry of an unaccompanied minor to the State. It was also stressed that a decision to refuse leave to land is not solely taken by an individual Immigration Officer but is

checked by a supervisor. Social work teams consulted for the current study and the GNIB themselves emphasise that Immigration Officers tend to be cautious on this matter and give individuals the benefit of the doubt regarding age. There is no current written policy regarding age assessment determination, and as discussed later in this study, such assessment is carried out by different actors in different manners.

The nature of the GNIB recording system is such that children may be recorded as having been refused leave to land when in fact they were admitted to the territory but did not meet immigration requirements and so were refused permission to “land” in an administrative and legal sense. The fact that unaccompanied minors have no official legal status beyond being a child in care in Ireland unless they choose to claim asylum is a recurrent problem impacting in this case on reliable data collection.

The IRC have called for an amendment to the *Immigration Residence and Protection Bill, 2008* which would specify that a suspected separated child should never be refused entry or returned at the point of entry and that individuals should be given the benefit of the doubt in cases where age is disputed (Irish Refugee Council, 2008).

3.3.1 AGE ASSESSMENT AT PORT OF ENTRY

Age assessment interviews are conducted by the Immigration Officer with an interpreter present or available over the phone. Basic questions are asked on topics such as school, the reason for travel, age of siblings etc., while taking account of the maturity of the person. If the Immigration Officer decides the person is not a minor he or she must be informed of the decision in simple terms. This decision is open to reassessment by an Immigration Officer at a later stage in conjunction with the HSE.

3.3.2 ASSESSMENT OF FAMILY RELATIONSHIPS AT PORT OF ENTRY

In cases where an Immigration Officer has concerns that a minor is being brought into Ireland or met by an adult who is not a carer the Immigration Officer conducts interviews with the adult and child to ascertain whether a genuine relationship exists. At such interviews an interpreter is present or at least available by phone. In interviews with an unaccompanied minor a social worker should also be present. Immigration Officers pose simple questions on the minor’s birthday or

other family members for example, which can often reveal that the minor is in fact an unaccompanied minor not accompanied by a guardian or customary caregiver. It has been commented by NGOs including the Irish Refugee Council that such questioning may, at times, not take cultural nuances into account such as the lack of importance placed on birth dates etc.

If it is suspected that the minor has been smuggled or trafficked into Ireland or other types of criminality have been exposed, the Gardaí may invoke an Emergency Care Order under Section 12 of the *Child Care Act*. Such Orders are invoked if a Garda has reasonable grounds¹³ for believing that there is an immediate and serious risk to the health or welfare of a child, and that the situation is too urgent to risk waiting for a HSE worker to make an application for an emergency care order under Section 13 of the Act. The Garda may then “remove the child to a place of safety” and “the child shall as soon as possible be delivered up to the custody of the health board [HSE] for the area in which the child is for the time being” (*Child Care Act 1991*, Section 12). Some commentators felt the need for a ‘secure setting’ in which to accommodate particularly at risk minors, such as those from a community with a strong history of disappearance from care soon after arrival. Some social workers consulted observed that a reduced level of freedom for minors may not be appropriate but that a residential or family care placement would present the best alternative.

¹³ Regarding ‘reasonable grounds’, the *National Action Plan to Prevent and Combat Trafficking of Human Beings* in Ireland states: “While ‘reasonable grounds’ are not the same as evidence, in the context of contemplation of any criminal offence, to arrive at a state of mind that a person is a suspected victim of human trafficking the Garda Superintendent must be in possession of sufficient information to afford reasonable grounds for that belief. The test of reasonable is whether or not a reasonable person, acting without passion or prejudice, believes what he/she is being told.” Department of Justice, Equality and Law Reform, (2009).

3.4

Referrals to the HSE

Section 8 (5) (a) of the *Refugee Act, 1996* (as amended) states that when an Immigration Officer or other authorised officer encounters a minor who is not in the custody of any person that child must be referred to the HSE as soon as is practicable. The GNIB complete an unaccompanied minor referral form for each third country national under 18 years referred to the HSE. If the child is the subject of an Emergency Care Order a second form is completed. Photographing and/or fingerprinting of minors is not standard practice at the border, although the GNIB are now taking photos and fingerprinting at the airport in cases of unaccompanied minors who present there and who are identified as being at high risk of going missing or being re-trafficked.

In the course of this research social workers have stressed the importance of their presence when a minor arrives in the country. Immigration Officers or others visibly in positions of authority will have a greater challenge gaining a child's trust. The GNIB also indicated that they would prefer the HSE to be present when a child is being interviewed at the border and discussions on putting such a procedure in place at Dublin airport are at an advanced stage.

It is particularly relevant for the current study that the unaccompanied minor must be referred to the social work team operational in the geographical area in which the child presents, with the exact nature of the referral depending on how the local social work team applies the *Child Care Act, 1991*. For example, in the greater Dublin area unaccompanied minors are referred to the dedicated HSE Dublin Social Work Team for Separated Children as taken into voluntary care under Section 4 of the Act while in Cork children are treated as out of home (homeless) under Section 5 of the Act. See Chapter 4 for a further discussion.

There are significant regional disparities in terms of the provision of social work supports. Within the greater Dublin area if a child presents within normal working hours i.e. between 9.00 am and 5.00 pm on Monday to Friday, they are referred to the dedicated HSE Dublin Social Work Team for Separated Children. This unit conducts initial assessments and arranges accommodation. Outside of Dublin unaccompanied minors who present inside office hours are referred to the local social work team and exactly how they are dealt with depends on the local application of the *Child Care Act, 1991*. In Cork for example, unaccompanied minors are referred by Immigration Officers or Gardaí directly to the social work

team at Liberty House for assessment and accommodation. Minors under 15 years old are referred first to the local child protection team who make a preliminary assessment.

3.4.1 REFERRALS TO THE HSE OUTSIDE OFFICE HOURS

It is outside of office hours that a particular gap in service provision exists between the greater Dublin area and the rest of the country. Within Dublin unaccompanied minors are referred to the Out-of-Hours Social Work Team which is part of the Crisis Intervention Service (CIS). The Out-of-Hours Team provides a service between 6.00 pm. to 6.00 am, 365 nights of the year and also from 9.00 am to 5.00 pm each Saturday, Sunday and Bank Holiday. If an unaccompanied minor presents the team is contacted by an Immigration Officer or Garda. Usually two social workers will meet the child, often at the airport, and conduct an initial interview and arrange accommodation until the HSE Dublin Social Work Team for Separated Children reopens.

Outside the greater Dublin area no such service exists and how children are dealt with varies greatly. In Cork unaccompanied children who are not deemed to be at high risk are referred directly to emergency hostel accommodation, with details on the placement supplied to the Gardaí. These hostels are staffed by childcare workers on a 24-hour basis who are briefed on the minor's arrival and refer him or her to the local social work team as soon as the office reopens. In other parts of the country, for example Wexford, children are often sent to local hospitals if they present outside office hours and are referred to the local social work team when the office reopens.

Quite often children go missing at the weekends or at night when supports are at their weakest (see section 4.4). In cases of suspected trafficking, a minor may not yet realise that he or she has been trafficked and may have either placed their trust in the trafficker or be afraid to disobey. The initial interview with a social worker is an essential step towards trying to persuade the child that safety lies within the care home rather than with the trafficker. It was reported by the Anti-Human Trafficking Unit, among other bodies, that there are indications that traffickers or smugglers deliberately bring children in at those times when social work supports are low, though this is not possible to verify based on information currently available. See section 4.4 and 4.5.

3.5

Training of Border Officials

All Gardaí including GNIB/Immigration Officers receive training in how to interview victims and witnesses and this includes children. Children under 14 years must be interviewed by Child Specialist Interviewers (Department of Justice, Equality and Law Reform, 2009).

The *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* sets out in detail the training offered to Gardaí in relation to trafficking. A continuous professional development training course entitled “Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution” has been designed by the Garda Síochána, assisted by the International Organization for Migration (IOM) and completed by 250 members of the Gardaí. The course aims to alert operational personnel to the existence of trafficking and to enable them to identify potential or suspected victims. These courses involve input from the HSE on separated children and unaccompanied minors. There is also an element of cooperation with the UK as members of the Police Service of Northern Ireland (PSNI) have attended the training and the Head of the United Kingdom Human Trafficking Centre (UKHTC) has presented at almost all of the courses.

As part of their training, new Gardaí attend a module on the identification of potential/suspected victims of trafficking and its elements. So far 520 probationer Gardaí have received this training, which will be delivered on an ongoing basis. The Garda Síochána also participates in courses related to human trafficking organised by CEPOL (the European Police College) by the International Organization for Migration and by EU Member State governments in co-operation with the European Commission.

Awareness training has also been provided by International Organization for Migration (IOM) with input from NGOs, the HSE, the GNIB and the AHTU, to other officials who may encounter trafficking victims in the course of their work. Such officials are from organisations including ORAC, INIS, HSE, the Department of Social and Family Affairs (Social Welfare Inspectors) and the National Employment Rights Authority (NERA). Between July 2008 and February 2009 this type of awareness training was provided for approximately 130 officials (Department of Justice, Equality and Law Reform, 2009).

4. RECEPTION ARRANGEMENTS, INCLUDING INTEGRATION MEASURES

4.1

Legislative Framework for the Reception of Unaccom- panied Minors

The main legislative instrument relevant to the care of unaccompanied minors in Ireland is the *Child Care Act, 1991*. The Act places a responsibility for the welfare of all children in Ireland under 18 years of age and who are not receiving adequate care and protection onto the Health Boards – now called the Health Service Executive (HSE). Section 24 of the *Child Care Act 1991*, as amended, specifically states that the “welfare” of the child is “paramount” in all dealings with any child. Once a child comes within the ambit of the HSE the “welfare principle” is automatically triggered. The Act places an obligation on the HSE to have regard to the principle that it is generally in the child’s best interests to be with his or her own family. The Act is wide ranging and makes no specific reference to unaccompanied minors.

Responsibility for the welfare of all children considered to be ‘at risk’ in the country (regardless of nationality) is delegated by the HSE to HSE Administrative Areas,¹⁴ which in turn, administer local Community Care Areas on an operational

¹⁴ HSE West; HSE South; HSE Dublin North East; and HSE Dublin Mid Leinster.

level. In practice, this has resulted in each Administrative Area seeking legal advice and applying their own decision on how best to apply the *Child Care Act, 1991* to presenting unaccompanied minors. Each Administrative Region has determined which application of the 1991 Act best suits their local situation based on this legal advice, current practice, and available resources especially child placements.

The three social work teams interviewed¹⁵ for the current study apply the *Child Care Act, 1991* in three different ways: the HSE Dublin Social Work Team for Separated Children has Ireland's only dedicated Social Work Team for Separated Children and has been in operation since 2002. This team invokes Section 4 of the *Child Care Act, 1991* and takes unaccompanied minors into care on a voluntary basis. In cases where there may be an element of perceived risk or concerns regarding a minor's safety (such as in suspected trafficking cases or where alleged family members may present) the team may apply for an interim care order under Section 17 of the Act as voluntary care may not offer sufficient protection.

In Cork, the Liberty Street Social Work Team which provides services to out-of-home minors over the age of 16 years, mainly applies Section 5 of the *Child Care Act, 1991* and provides services to unaccompanied minors on par with out-of-home Irish minors. This approach, and Section of the Act, was deemed most suitable locally due to the generally low number of unaccompanied minors presenting. In addition, when a decision was taken to invoke Section 5 of the Act in cases of unaccompanied minors, it was felt that for those over 16 years the homeless services already in existence was the best developed service and would allow the social work team an element of flexibility regarding this group. In cases where an unaccompanied minor is under 16 years, they are referred to standard child protection services under Section 18 of the Act. Table 2.1 shows that in 2008 approximately 49 per cent of unaccompanied minors referred to the Dublin Social Work Team for Separated Children were officially placed in State care, while in Cork the majority of children were processed as "other" (mainly homeless) with almost none technically placed in care (see Table A1).

¹⁵ Social Work Teams in the Dublin, Cork and Wexford areas were selected because they are believed to deal with the majority of presenting unaccompanied minors in Ireland, primarily as all house major ports of entry.

In Wexford, the responsible social work team invokes several parts of the *Child Care Act, 1991* depending on the exact circumstances and nature of the case. For example, if the child is over 16 years they are usually treated as out-of-home minors. If they are under 16 years, they are usually taken fully into care under Section 13 (Emergency care order) followed by Section 17 and 18 (Interim Care Order and Care Order).

As referenced earlier, one implication of having no dedicated legislative instrument for unaccompanied minors is that unless declared to have refugee or subsidiary protection status or granted Leave to Remain status in Ireland, unaccompanied minors do not have an official legal status beyond that of a child in the care of the HSE. Another resulting issue is the difficulty in accessing national data and information sharing between social work teams due to the differing applications of the *Child Care Act, 1991*. These issues are discussed further in Chapter 6.

4.2

Reception Provisions for Unaccompanied Minors

4.2.1 MINORS PLACED IN HSE CARE

As discussed in Chapter 1, one of the primary presenting issues regarding unaccompanied minors is the lack of verifiable national data. The presented data regarding reception relate to referrals to the HSE Dublin Social Work Team for Separated Children.

Between 2000 and 2008 some 5,688 unaccompanied minors were referred to the HSE Dublin Social Work Team for Separated Children. Of these, almost half (47 per cent) were subsequently placed in care under either Section 4 of the *Child Care Act 1991*, mainly with Interim Care Orders applied only in cases where there is an element of perceived risk to the unaccompanied minor. A further 49 per cent were subsequently reunified with family members in Ireland, and 4 per cent were either age reassessed and deemed over 18 years by ORAC; a minor arriving accompanied by family member; a minor arriving on a valid visa; a minor placed in care and subsequently reunited; a minor arriving from another EU Member State or a Dublin Convention or Dublin Regulation transfer case.

Trends show that from 2002, as the overall yearly referrals began to decrease so too did the percentage placed in care. This may be attributable to overall higher immigration flows in preceding years and the increased possibility of family members being resident in Ireland.

Table 4.1: Outcome of Initial Referrals to HSE Social Work Team for Separated Children Seeking Asylum, 2000-2008

Year	Placed in Care	Reunited	Other*	Total of Disaggregated Data	Total Referrals**
2000	406	107	7	520	520
2001	846	231	8	1,085	1,085
2002	335	506	22	863	863
2003	277	439	73	789	789
2004	174	418	25	617	617
2005	180	441	22	643	643
2006	188	308	22	518	516
2007	130	185	29	344	336
2008	156	157	26	339	319
Total	2,692	2,792	234	5,718	5,688

*“Other” includes: Age reassessed and deemed over 18 by ORAC, child arrived accompanied by family member, child arrived on valid visa, child placed in care and subsequently reunited, child arrived from EU Member State, Dublin Regulation.

** “Total referrals” indicate the number of minors referred to the service in the period. In the years 2006, 2007 and 2008 there appears to have been double counting of minors in the “placed in care” column and the “reunited” column, therefore, the total of disaggregated data is higher than the total referrals figure.

Source: HSE Social Work Team for Separated Children Seeking Asylum, Dublin South East Area. Data quoted in answer to Parliamentary Question 18th December 2008.

4.2.2 SOCIAL CARE PLACEMENT

Greater Dublin Area: The type of placement available to the HSE Dublin Social Work Team for Separated Children for the care of unaccompanied minors varies according to age and perceived vulnerability of the child. The standard of care available to unaccompanied minors has been criticised by NGOs and child rights organisations, in particular the lack of equity with that provided to Irish out-of-home minors. The *Child Care Act 1991* does not provide for the enforcement of Children’s Centre regulations for children residing in hostels which are contracted to private entities by the HSE. In practice this means that there is no legislative provision for inspection of environment and accommodation against the standard for Children’s Residential Centres for unaccompanied minors in hostels which are managed by private service providers.¹⁶

¹⁶See Conroy (2004) *Trafficking in Unaccompanied Minors* for further discussion on this topic.

In this region, minors under 12 years old are always placed in foster homes. Additional residential units are now opening and minors between 12 and 16 years are, or will be, housed in 4 residential units where each residential unit can house 6 young people. There are also 6 hostels: 3 hostels for males aged between 16 and 18 years and 2 for females aged between 16 and 18 years. There will also be one for mothers (aged 16-18 years) with babies. Care workers are not on site and the hostels are staffed by a manager and other staff. The social work team provides social work services to minors in these hostels on a Monday to Friday office hour basis. The number of available placements varies according to each hostel and sometimes from day-to-day, with approximately 178 placements available overall. Residential units have a maximum capacity of 6 places and according to social workers consulted are usually at full capacity. Residential units have trained social care staff on site, with 3 staff members during the daytime and 2 staff members on site during the night.

The use of hostel accommodation without care staff present on site for unaccompanied minors has been criticised by many child rights NGOs and by the Ombudsman for Children's Office. Social workers working in the area have called for a higher standard of care and accommodation for the children who are in this service and equitable to that available to Irish out-of-home minors. Some efforts have been made recently to improve the situation by providing supported lodgement placements in family homes. The HSE Dublin Social Work Team for Separated Children has nearly 20 supported lodging and foster placements available, generally for minors aged between 15 and 17 years and at particular risk and for younger age minors. Efforts are made to locate culturally appropriate placements for the minors. In the longer term, the HSE Dublin Social Work Team for Separated Children state that there are plans to disperse all unaccompanied minors nationwide into appropriate residential or family placements.

The Department of Justice, Equality and Law Reform (2009) has indicated that in 2008 a new residential care home (which satisfies the *National Standards for Children in Residential Care* and *HIQA standards*) opened for children who have been or are at risk of being trafficked. Upon publication of the *Anti-Human Trafficking Plan* in June 2009, the Minister for Justice, Equality and Law Reform stated as part of the HSE Plan to mainstream services provided to unaccompanied minors, the practice of accommodating children in hostels will be brought to an end as alternative arrangements become available. The main focus of the Plan is to place children with families in

local communities and thus minimise the risk in relation to exploitation.

In cases where an unaccompanied minor presents outside of office hours, the Out-of-Hours Crisis Intervention Service (CIS) Social Work Team will place that child at one of the accommodation centres discussed above. If the child is felt to be at significant risk of abduction or going missing from care, the CIS will use one of their emergency placements. These placements are very temporary in nature (on a night-to-night basis), with referral onwards to the HSE Dublin Social Work Team for Separated Children as soon as possible.

Outside Dublin: In Cork City unaccompanied minors are in receipt of the same services as out of home Irish children, with social service provision mainstreamed. Upon referral to the service, minors over 15 years old are first housed in hostels for homeless children. There are two hostels: a 5 bed hostel for males and a 6 bed hostel for females. This hostel accommodation has fully trained childcare workers on site 24 hours a day. There is a 3-month maximum stay in these hostels, after which time minors are transferred to supported lodging placements similar to foster placements. In certain cases, independent living places can be available for minors over 17 years old. In Wexford, placements for unaccompanied minors tend to be either foster care placements or supported lodgings. Hostel accommodation is not used. See section 3.4.1 for a discussion on placement if minors present outside of office hours.

Accommodation for unaccompanied minors in care in Ireland is under-resourced. Although the situation is improving there is still inadequate provision. As discussed earlier, the exemption of privately contracted hostels by the HSE from the Social Service Inspectorate remit attracts much controversy and the Irish Refugee Council (among other parties) have drawn repeated attention to this fact (Mooten, 2006; Barnardos, 2009). Many argue that the inadequate staffing of hostel accommodation by trained childcare professionals is seen as contributory factor to the numbers of unaccompanied minors going missing while in State care (see below). The Irish Refugee Council and the Ombudsman for Children among others have called for care facilities for non-Irish children to be of an equitable standard as those provided for Irish children. In the *Implementation Plan of the Report of the Commission to Inquire into Child Abuse, 2009* the Irish government announced a 99-point plan to strengthen the child protection system including the cessation of separately run hostels for unaccompanied minors. By December 2010, all

unaccompanied minors are to be accommodated in mainstream care ‘on a par with other children in the care system’. In the interim period the HSE will inspect and register residential centres and hostels where unaccompanied minors are placed, pending the commencement of the *Health Act, 2007* for children’s residential services.

Within the *Anti-Human Trafficking Plan 2009* the Department of Justice, Equality and Law Reform indicated that the HSE is devising a National Operational Plan for all separated children. This Operational Plan is reportedly nearing completion but a draft could not be accessed for the current report. The Department of Justice, Equality and Law Reform state that it is a principle of this policy that all children in the care of the HSE should receive the same standard of care whether they are unaccompanied minors or national/resident children. Reportedly the Operational Plan indicates that the Dublin-based Service for Separated Children Seeking Asylum will be decentralised, with a reduction in the current hostel type accommodation provision together with increased use of registered child placements and foster care placements. It is also acknowledged within the Anti-Human Trafficking Plan that, historically, funding has been inadequate in relation to accommodation for unaccompanied minors (Department of Justice, Equality and Law Reform, 2009).

4.3 Family Reunification of Unaccom- panied Minors While in Care

In 2008, 46 per cent of unaccompanied minors referred to the HSE Social Work Team for Separated Children were subsequently reunited with family members in Ireland. In general and in cases where alleged family members are presenting upon referral of the unaccompanied minor to the HSE, the social work team undertakes a series of checks to verify the relationship of the minor to the alleged family members. There are no follow-up checks carried out on these reunifications by the HSE. The HSE Dublin Social Work Team for Separated Children routinely uses DNA testing of the minor and family member before allowing reunification. This is not standard practice in all parts of the country.

More often than not a familial relationship is proven with DNA testing but this alone is not sufficient grounds for reunification. All social work teams conduct social work assessment interviews to check for a familial relationship. Documents such as birth certificates and photographs are routinely requested. Crosschecks may also be made with ORAC’s records where asylum applicants are asked to list their children and/or family members upon completion of their initial questionnaire. Social work teams may also undertake

verification checks with the GNIB, local Guards, Community Welfare Officers, Public Health Nurses and social workers in the local area of residence of the family member if different to the area where the child presented.

If the minor's social worker is not satisfied that it is in the minor's best interests to be reunified with the alleged family member, the minor will continue to reside in State care. If a challenge by the alleged family member is made, the HSE can apply for an interim court order in order to retain custody of the child rather than keeping the child in care on a voluntary basis. In the majority of cases the minor goes on to join his or her family member or guardian. Upon reunification, the unaccompanied minor's social worker will contact all agencies/organisations involved in the original checks and notify them of the family reunification.

The follow-up and monitoring of children reunited with family members and/or guardians in Ireland continues to be a controversial issue. A lack of resources means that social workers are not able to conduct follow-up on such cases. The history of separation between the unaccompanied minor and their family members/guardians, and the move of country, means that there is a potential for substantial relationship difficulties upon reunification. If families move social work area, the potential for follow-up is even less likely. Very often the responses to notification of reunification letters indicate that recipients do not have time to follow-up as requested. In cases where problems have already started to emerge with the family prior to relocation, the social work team in the area of relocation try to follow up.

Another aspect of family reunification concerns unaccompanied minors arriving in Ireland to join siblings or parents resident here based on Leave to Remain under the *IBC/05 Scheme*. As discussed in Chapter 2 Ireland significantly reformed its citizenship laws in recent years and until 2005 Ireland granted citizenship to anybody born in Ireland (the *jus soli* principle). As from 2005, non-Irish parents of Irish-born children prior to January 2005 could apply for residency in Ireland based on the Irish citizenship of their child. In January 2005 the Department of Justice, Equality and Law Reform invited non-Irish national parents of Irish born children to apply to remain under the *Irish Born Child 2005 Scheme* (IBC/05). Almost 16,700 applications were approved under this scheme and 14,117 renewals have since been granted.

No data exist on the number of unaccompanied minors who have arrived in recent years for family reunification who

are the siblings (or otherwise related to, such as underage aunts or uncles) of Irish-born children. Of those that do arrive, their legal position may remain ambiguous. The Immigrant Council of Ireland has indicated that in cases where siblings arrive in Ireland without the required documentation their parents often notify the immigration authorities and the minor may be allowed to remain in the State although they may not officially register here until they are 16 years old. The implications of that minor turning 18 years or of sibling/family relationships breaking down for example, are unclear.

4.4

Unaccompanied Minors Missing from State Care

Table 4.2 shows that 486 unaccompanied minors have gone missing from State care in the period 2000 to May 2009. Of these, 61 have been accounted for. This issue has resulted in much media attention both in terms of likely reasons for the disappearances and follow up.¹⁷ While it is likely that some of the missing minors may simply have reunited with family either in Ireland or elsewhere, some may have been trafficked into forced labour or prostitution.

Table 4.2: Number of Unaccompanied Minors Who Have Gone Missing From State Care 2000-2009

	2000	2001	2002	2003	2004	2005	2006	2007	2008	Jan-May 2009	Total
No. placed in care	406	846	335	277	174	180	188	130	141*	**	2,677
Missing	34	81	54	47	66	65	53	41	22	23	486
Traced	-	-	2	5	14	14	6	12	5	3	61

Sources: Health Service Executive, 18 December 2008. Response to parliamentary question on 10 December 2008, No.138. *The Irish Times* 17 June 2009.

* January to November 2008.

** Unavailable.

Recent reports include that of a 2008 parliamentary committee debate when it was reported that five Nigerian girls went missing from their State accommodation in June 2007, the youngest of who was 11 years of age. It is feared that some

¹⁷ *The Irish Times*, 12 February 2009, "Over 400 children in State care missing"; *The Irish Times*, 6 April 2009, "HSE 'failing' in caring for asylum seeking children.; *The Sunday Business Post*, 6 October 2008, "Missing: Ireland's Lost Children".

of these children may have been trafficked into the United Kingdom or other parts of continental Europe or are being used in Ireland's sex industry.¹⁸

There was a significant decrease in the number of children going missing from care in 2008. The Department of Health and Children attributed the fall to increased cooperation with the Gardaí and the Department of Justice, Equality and Law Reform.¹⁹ Data for January to the end of May 2009 indicate that numbers of unaccompanied minors going missing from care in 2009 is on the increase. As discussed earlier, an insufficient quality of care placement and supervision provided to unaccompanied minors has also been cited as a reason for the high levels of disappearances, particularly the many cases where a minor was residing in a privately run, contracted hostel with no childcare professionals staffed on site. The provision of appropriate placements is particularly pertinent in cases where the minor may be believed to have been a victim of trafficking. In several interviews conducted for this study it was felt that traffickers were aware of the locations of the unaccompanied minor hostels and whether they were staffed appropriately by qualified childcare workers. It was also reported that traffickers may wish for a minor to be housed by the HSE until the trafficker is ready to relocate them. This may be achieved by the trafficker suggesting to the minor that they submit an application for asylum, with the minor subsequently referred by ORAC to the HSE. Social workers consulted for the study stressed the importance of having trained professionals available in order to try to gain the trust of vulnerable minors, and in the case of trafficked children to counteract potential 'grooming' of the minor.

As referenced earlier the recently published *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* stated that the HSE is currently developing a Plan to mainstream the services provided to separated children and "...the practice of accommodating children in hostels will be brought to an end as alternative arrangements become available. The main focus of the Plan is to place children in families and local communities throughout the State." Of note, the Plan cites the change in placement structure as minimising risks of disappearances and (re) trafficking as "the involvement

¹⁸ Debate at Select Committee on Justice, Equality Defence and Women's Rights. 29 April 2008.

¹⁹ *Source:* Health Service Executive, 18th December 2008. Response to parliamentary question.

of teachers, public health nurses and G.P.s can be important in ensuring the legitimacy of family/guardian relationships.”

4.4.1 PROCEDURES RELATING TO UNACCOMPANIED MINORS GOING MISSING FROM STATE CARE

Current practice in cases whereby an unaccompanied minor goes missing from State care involves immediate notification of the GNIB and police station local to where the unaccompanied minor is residing. A missing persons report and a photograph of the child (if one exists) is distributed to the local Child Care Manager who in turn will distribute these to all other Child Care Managers on a national scale. The minor’s social work team may also submit a completed Garda form, for the missing child to be placed on an Irish and international online missing persons website, provided that it is deemed to be in the minor’s best interests. Social workers have stated that once referred as a missing case, the predominant responsibility lies with the GNIB and/or Gardaí. In an effort to clarify the joint responsibilities of the HSE and the Gardaí in this regard and the procedures to be followed a Joint Protocol was published in 2009 (as discussed below).

As discussed above, the number of missing unaccompanied minor cases who are traced is extremely low. This lack of follow-up and information has been heavily criticised in media and parliamentary debates, with social work practitioners stating that a lack of resources also hinders follow-up on their part. Historically, newspaper articles such as in *The Village Magazine* have also criticised the lack of automatic placing of missing unaccompanied minors on the missing persons website.²⁰ The Department of Justice, Equality and Law Reform addressed this protocol in 2009 and stated that “It is the policy of the HSE not to disclose details of any child in care except in exceptional circumstances. These circumstances include the tracing of family members and other measures to secure the well being and protection of the child” (Department of Justice, Equality and Law Reform, 2009).

Currently, insufficient information exchange exists between the various social work teams about missing children. Resources do not exist for social workers to sufficiently follow

²⁰ *The Village Magazine*, 28 January 2005. ‘The health services and the Garda are indifferent to missing non-national children’; *Village Magazine* (29 January 2005) ‘The scandal of missing children’.

up cases of missing children. Without proper registration at the border it is often difficult to track minors who may reappear in another part of the country or indeed another country. While the HSE Dublin Social Work Team for Separated Children and GNIB regularly meet to discuss trends in suspected trafficking cases, regional social work teams do not feed into this process.

Related to the number of unaccompanied minors missing from State Care is the wider difficulty in identification of minors. Minors may be afraid to reveal their true identity, age or route of travel or may have been instructed not to. Fingerprinting of minors at the border is not routine and its possible introduction has raised concerns regarding the ‘criminalisation’ of minors. Fingerprints are currently taken within the immigration system for identity purposes, including all applicants for asylum over 14 years.

Section 38 of the published *Immigration, Residence and Protection Bill, 2008* contains provisions which will, for the first time, allow for the registration of ‘foreign national children’ in the State, not only those over 16 years. In general, at present, only those aged 16 years or over are required to register with the GNIB. However, Section 38 of the Bill relates only to foreign nationals who receive a residence permit or make a protection application and would not include separated children who did not submit an application for protection. The Irish Refugee Council has called for an amendment to the Bill that would establish a “Register of Separated Children” and to provide separated children with an identity document as soon as possible (Irish Refugee Council, 2008).

The amount of identifying information on unaccompanied minors stored by each social work team varies greatly according to region and perceived vulnerability of the minor. In the Cork and Dublin Social Work Teams a photograph of the unaccompanied minor is taken upon arrival by the social work team and is kept on file. It is reported that the HSE has adopted a national policy on photographing minors in care which is expected to be ratified and implemented in the near future (An Garda Síochána and the Health Service Executive, 2009). As mentioned above the Office of the Refugee Applications Commissioner takes fingerprints of children aged 14 years and older who make an asylum application, including for the EURODAC system. In addition, provision for fingerprinting of dependent children of asylum applicants is also provided for. Refusing to allow fingerprints to be taken is deemed to be a failure to make reasonable efforts to establish

true identity and cooperate in the investigation of the asylum claim.

In cases where a minor may go missing, both the taking of fingerprints and photographing of unaccompanied minors is seen as crucial and an aid for tracing both within Ireland and internationally.

All social work teams interviewed stated that they had observed certain patterns in the disappearance of children. In Cork, Romanian children and in Wexford, Romanian and Moldovan children have been deemed to be at risk of disappearing, while in recent years numbers of Chinese minors have disappeared from Dublin care placements. It is repeatedly reported that most children go missing at the weekend when social work supports are limited. The Anti-Human Trafficking Unit, among others, has observed that there are indications that traffickers or smugglers deliberately bring children in at those times when social work supports are low, though this is not possible to verify based on information currently available.

In March 2009, the Garda Inspectorate published a report on missing persons (Garda Inspectorate, 2009). Among the recommendations in the report was the allocation of extra resources to the Garda Missing Persons Bureau and improvements to the Garda missing persons website. The Report also recommended the establishment of an urgent alert system to help find missing or abducted children, and the Minister for Justice, Equality and Law Reform subsequently confirmed that an 'Amber Alert' system will be introduced in Ireland. This system involves police seeking help in searching for a child by sending an urgent bulletin to the public through the media and other agencies. Before an alert can be issued, he Gardaí must believe a child has been abducted and is in imminent danger.

In addition, a new *Joint Protocol on Children Missing from Care* was signed by the Garda Síochána and the Health Service Executive in April 2009. This Protocol set out the roles and responsibilities of various agencies dealing with missing children and defines the course of action which should be taken by both organisations in cases where a missing child report is made. The Protocol explicitly states that separated children seeking asylum will be covered under the agreement, as will minors missing from non-statutory and private care providers. A missing child from care report may only be made by the HSE to the Gardaí under clearly defined circumstances. Each report will then be treated as a high risk missing person incident, meaning that District Officers (Police

Superintendents) and Principal Social workers (HSE) will be informed without delay. Under the Protocol, a recent good quality photograph of the child will be kept on record where the child is resident and the HSE will ensure that sufficient information about the child is recorded in order to assist An Garda Síochána if the child goes missing. The Protocol will result in the establishment of a Garda Liaison Role with each HSE care placement at a local level. In addition, in each Garda district in which a HSE children's care home is situated, a designated sergeant will be appointed in order to liaise with the care home and the Garda Missing Persons Bureau.

4.4.2 TRAFFICKING OF UNACCOMPANIED MINORS

Ireland's response to issue of trafficking has been criticised, most recently in the US State Department *Trafficking in Persons Report 2008* which stated that 'The Government of Ireland does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.' There have been significant administrative and legislative developments in relation to trafficking in recent months which impact on children trafficked into Ireland.

A new Anti-Human Trafficking Unit was established within the Department of Justice, Equality and Law Reform in February 2008, with a new interdepartmental High Level Group on Combating Trafficking in Human Beings also established during 2008. One of the main tasks of this group was to produce a *National Action Plan to Prevent and Combat Human Trafficking*, discussed below, and to monitor its implementation. A National Round Table and five thematic Working Groups comprising experts in the field from a range of government and non-governmental parties feed recommendations into the work of this High Level Group.

In June 2008 the *Criminal Law (Human Trafficking) Act, 2008* was enacted. This was the first dedicated piece of anti-human trafficking legislation in the State since the *Child Trafficking and Pornography Act, 1998*. Under the Act it is an offence punishable by up to life imprisonment to traffic a child for the purpose of the child's sexual exploitation. The offence can be committed by Irish persons or persons normally resident in the State when in other countries. The 2008 Act sought to give effect to the criminal law elements of the *Council Framework Decision of 2002 on Combating Trafficking in Human Beings*; the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women*

and Children; and the *Council of Europe Convention on Action against Trafficking in Human Beings*.²¹ The Act creates separate offences of trafficking in children for the purpose of labour exploitation or the removal of their organs and trafficking in children for the purpose of their sexual exploitation. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose. It was also made an offence to solicit or importune a trafficked person for the purpose of prostitution. The Act does not include a non-punishment provision as suggested by Article 26 of the *Council of Europe Convention on Action against Trafficking in Human Beings*. Upon signing of the Act, the Minister for Justice, Equality and Law Reform noted that the published *Immigration, Residence and Protection Bill 2008* would provide protection for victims of trafficking, including a period of recovery and reflection and temporary residence. (This piece of draft legislation has been delayed and may now be enacted in 2010.)²²

On 6 June 2008 the Anti-Human Trafficking Unit of the Department of Justice, Equality and Law Reform published

²¹ Ireland became a signatory to the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime* on 13 December 2000, but had not ratified by the time of writing of this report in August 2009. Repeated calls by a number of NGOs, in particular the Irish Refugee Council, for Ireland to ratify the Protocol continue to be made.

²² The Council of Europe Convention provides that State parties shall provide for the possibility of not imposing penalties in accordance with the basic principles of its legal system. The Explanatory Report to the Convention states that the obligation is to provide for a substantive criminal or procedural criminal law provision, or any other measure, allowing for the possibility of not punishing victims when the aforementioned mentioned legal requirements are met, in accordance with the basic principles of every national legal system. In accordance with the Irish legal system the matter is for the Director of Public Prosecutions who is independent in the discharge of his authority. The *National Action Plan to Prevent and Combat Human Trafficking 2009 – 2012* states that the Office of the Director of Public Prosecutions has decided to assign cases involving trafficking in human beings to a number of lawyers in a specific unit of that Office. It is hoped that this initiative will lead to greater awareness and understanding of the issues surrounding such cases within the Office as specialised knowledge of the issues surrounding trafficking in human beings will thereby be built up in the office. The Office of the Director of Public Prosecutions will also decide on a policy for dealing with such cases whether by way of specific guidelines or by an amplification of the existing Guidelines for Prosecutors.

Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking. The document sets out the administrative arrangements whereby a suspected victim of human trafficking from outside the EEA may be granted a 45 day period of 'recovery and reflection' in the State (later increased to 60 days in a further published note in November 2008) and may also, in certain circumstances, be granted one or more periods of Temporary Residence Permission for a period of 6 months. (See Joyce, 2009 for a fuller discussion of these developments.) The administrative arrangements provide that where a person is under age, regard will be had to the best interests of the child in the granting and revocation of a temporary residence permission.

The issue of reliance on cooperation by a victim of trafficking in an investigation for the issuance of a temporary residence permit is one which has courted much controversy and comment. Repeated calls for clear domestic legislation which enshrines the provision of a temporary residence permit for suspected victims of trafficking and is not reliant on cooperation in an investigation have been made (for example, Immigrant Council of Ireland, 2007; Irish Human Rights Commission, 2007). Under the published Department of Justice, Equality and Law Reform Administrative Arrangements discussed above, the Temporary Residence Permit does not require cooperation with an investigation for the 60 day recovery and reflection permit, but it is required for the 6-month temporary residency status. There is also a wide interpretation of 'cooperation' in use, not necessarily evidence giving during the course of an investigation. The provisions for granting of a temporary residence permit as contained in the *Immigration, Residence and Protection Bill, 2008* links the granting of temporary residency to cooperation with a criminal investigation and improperly incentives such cooperation. It also instrumentalises the victim as a tool for the investigation and prosecution, disregarding their rights and protection needs (Kanics, 2008). During debate on the *Immigration, Residence and Protection Bill, 2008* at the Select Committee on Justice, Equality, Defence and Women's Rights, the Minister for Justice, Equality and Law Reform stated that regarding cooperation of a suspected victim of trafficking in an investigation:

From a legislative perspective, I do not believe the provision is flawed by linking residence to assistance...This requirement does not stop me intervening where necessary in particular cases of possible hardship. If a person is incapable of providing assistance and there are compelling reasons for the grant[ing] of another form of permission, I can deal with that situation, and the Bill generally caters for that flexibility. It is simply the

*case that such a person will have been dealt with outside the framework of this section.*²³

The NGO *Shadow Report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights* recommended that the (then draft) Criminal Trafficking Act should be ‘amended to allow for protection for victims of trafficking who are too afraid or unable to participate in a Garda inquiry.’ This recommendation was endorsed in the concluding observations of the UN Human Rights Committee (Human Rights Committee, 2008). Ireland has not opted-in to the *EU Council Directive 2004/81/EC*²⁴ on residence permits for victims of trafficking who cooperate with authorities during the course of an investigation. The Ombudsman for Children is also cited as having stated that while reflection periods and temporary residence in primary legislation are central to child protection, assistance to victims of trafficking should “never be contingent on their participation in criminal proceedings”.²⁵

Of important note is the identification of a minor victim of trafficking and during the course of interviews for this study all interviewees agreed that identification of a victim of trafficking presented in many forms. In particular, members of GNIB and social work teams interviewed noted that a minor would rarely self-identify as a victim of trafficking and indeed may not even understand the terminology.²⁶ In addition, the requirement by the Administrative Arrangements for a suspected victim of trafficking to cease contact with their traffickers has attracted discussion. Social workers interviewed for this study spoke of the challenges involved in trying to prevent trafficked children from contacting their trafficker after arrival in Ireland. The minors may not be aware that they have been trafficked or may be afraid not to follow prior instructions which they have been given.

²³ Select Committee on Justice, Equality, Defence and Women’s Rights, 11 November 2008.

²⁴ *Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.*

²⁵ Ombudsman for Children Office, *Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006*, page 21, 31 May 2007 as cited in the NGO *Shadow Report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights*.

²⁶ Barnardos (2009) also commented on the difficulties associated on self-identification of minors as a victim of trafficking.

In June 2009 a *National Action Plan to Prevent and Combat Human Trafficking 2009-2012* was published. The National Action Plan introduces measures designed to ‘create a hostile environment’ for those involved in human trafficking, awareness campaigns, the development of a national referrals mechanism²⁷ and improved collection of data on the nature and extent of trafficking. The National Action Plan explicitly refers to child victims of trafficking and recognises that the protection needs of trafficked children are specific to that of adults. The National Action Plan provides for immediate referrals of minors identified as suspected victims of trafficking to the HSE Social Work Team for Separated Children. This team will develop services for children who are suspected victims of trafficking. Children identified as suspected victims of trafficking should receive initial counselling and debriefing, a multidisciplinary needs assessment, and a Care Plan and an allocated social worker to oversee and implement his/her care plan. Significantly, and as discussed earlier in this report, the National Action Plan states that the HSE will place suspected underage victims of trafficking with local families and not in hostels so as to minimise the risk of exploitation and re-trafficking. The National Action Plan states that co-operation between the HSE and GNIB on unaccompanied minors is currently good and should be further extended.

4.4.3 ENFORCEMENT OF ANTI-TRAFFICKING MEASURES

The Garda National Immigration Bureau (GNIB) ‘Operation Snow’ initiative was launched in 2007 and designed to detect and prevent the trafficking of minors and to prosecute criminal activity. In the period since the commencement of this initiative in late 2007 to the end of 2008, almost 200 incidents were the subject of investigation and assistance was provided for 164 minors. In the majority of these cases, minors were found to be in the State for informal family reunification and no evidence of trafficking was found. Cooperation with the United Kingdom was also effected in the course of anti-trafficking investigations. (Department of Justice, Equality and Law Reform, 2009). The *Joint Protocol on Children Missing from Care* signed between the Gardaí and the

²⁷ A co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating efforts in a strategic partnership with civil society (Organisation for Security and Co-operation in Europe).

HSE (see section 4.4.1) is also considered to be a step forward in the protection of trafficked children. A Human Trafficking Investigation and Coordination Unit was established in the Garda Síochána in 2009.

In late 2007 an individual suspected of involvement in an international child trafficking ring and of trafficking up to one hundred children into Europe was arrested in Ireland on foot of a European Arrest Warrant. He was subsequently surrendered to the Netherlands where he is now awaiting trial. Initially trafficked into Amsterdam with false documents and told to apply for asylum, the trafficked minors were accommodated in care centres before being moved by the traffickers to other countries.

The Gardaí have also participated in Operation ‘Pentameter 2’ – a UK initiative aimed at ensuring a coordinated approach to human trafficking within the Common Travel Area, which operates between the UK and Ireland. This cooperation took the form of intelligence sharing, joint training exercises and operational co-operation where investigations had a cross-border (Ireland/UK) dimension. There is ongoing co-operation between the Garda Síochána and international organisations such as EUROPOL, INTERPOL, EUROJUST and FRONTEX. For example, following a joint police trafficking investigation between Ireland and Romania four people were prosecuted in Romania for trafficking for the purpose of labour exploitation.²⁸ In addition, Operation Quest sought to investigate allegations that non-Irish nationals were being illegally brought into the State for the purpose of employment and/or exploitation in the sex industry. The main target of these investigations was activity associated with lap dancing clubs.

4.5

Guardians ad litem

While Section 26 of the *Child Care Act, 1991* makes provision for the appointment of a *guardian ad litem* under certain circumstances, this is not common practice in any of the HSE Regions interviewed. A *guardian ad litem* is an independent representative appointed by the court to both ensure that the views of the child are heard by the court and to advise the court on the best interests of the child. Guardians may be appointed by judges for the purposes of appeals or court order applications but it is uncommon. The Refugee Legal Service has indicated that, in practice, a *guardian ad litem* is

²⁸ Department of Justice, Equality and Law Reform, 2009.

usually appointed for children who have been taken away from the care of family members rather than those taken into care voluntarily as most unaccompanied minors are.

The *National Children's Strategy* adopted in November 2000 states that "Unaccompanied children seeking refugee status will be treated in accordance with best international practice, including the provision of a designated social worker and Guardian-Ad-Litem."

The practice of non-routine appointment of *guardian ad litem*s for unaccompanied minors has been criticised by many NGOs, including the IRC and Barnardos who called for the insertion of provision for appointment of a *guardian ad litem* for all unaccompanied minors in the *Immigration, Residence and Protection Bill, 2008* so that "...the children can apply for protection residency permits in their own right."²⁹ The NGO *Shadow Report to the Third Periodic Report of Ireland under the International Covenant on Civil and Political Rights* also called for the formal placing of unaccompanied minors with 'legal guardians where appropriate'. In calling for a dedicated legislative response to unaccompanied minors in Ireland certain commentators have dismissed the Child Care Act, 1991 as entirely unsuitable because it assumes the presence of a guardian, and therefore neglects the particular vulnerability of this group of minors.³⁰

The Department of Justice, Equality and Law Reform (2009) has stated that under the *Child Care Act, 1991* the HSE project and/or social worker involved must regard the "welfare of the child as the first and paramount consideration" which therefore mitigates the need for a *guardian ad litem*.

Others have questioned whether the HSE has a conflict of interest in taking on such a role.³¹

²⁹ Barnardos (2008) Barnardos' submission to the Joint Committee on Justice, Equality, Defence and Women's Rights: Immigration, Residency and Protection Bill 2008.

³⁰ Geoffrey Shannon, author of the First and Second *Reports of the Special Rapporteur on Child Protection*. "In the best interests of the child" Conference, Trinity College Dublin, 16 June 2008.

³¹ The Irish Refugee Council and University College Cork held a conference on "Guardianship and Migrant Children" in 2007. Some of the presentations may be viewed at

<http://ns3.ucc.ie/en/ccjhr/NewsandEventsArchive/bodytext,64751,en.html>.

4.6

Unaccompanied Minors and Applications for Protection

4.6.1 LEGISLATIVE PROVISIONS FOR APPLICATIONS FOR PROTECTION

The *Refugee Act, 1996*, as amended by the *Immigration Act, 1999*; the *Illegal Immigrants (Trafficking) Act, 2000*; and the *Immigration Act, 2003* sets out core aspects of the current law governing the processing of applications for refugee status in Ireland for both adults and minors. Section 22 facilitates the application of the *Dublin Convention* and, latterly, *Council Regulation No. 343/2003*, enabling the transfer of applicants for asylum in the State to a Member State in which they previously applied for asylum, and the transfer into the State of applicants who applied for asylum in other Member States subsequent to applying in Ireland. Ireland has opted in to the *Procedures Directive*³² which states that the best interests of the child should be a ‘primary consideration’ of Member States. Article 17 of the Directive provides for guarantees for unaccompanied minors, in particular regarding legal assistance and clear explanation of the procedure to unaccompanied minors, and specific training for interviewers conducting asylum interviews with minors.³³

The *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)* came into force on 10 October 2006. These Regulations were intended to give effect to the *Qualification Directive*,³⁴ which Ireland has opted in to and which seeks to ensure that Member States apply common criteria for the identification of persons in need of international protection. Section 2(1) of these Regulations provides the criteria for eligibility for subsidiary protection. These provisions are not only relevant to subsidiary protection claims as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal are also required to apply the Regulations to decisions within the asylum process. The *Qualification Directive* also states that the best interests of the child should be a ‘primary consideration’ of Member States. It notes that regarding applications for protection from minors,

³² *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.*

³³ See Quinn *et al.*, (2008) for further discussion on the specific provisions contained in these Acts.

³⁴ *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.*

Member States should have regard to ‘child-specific’ forms of persecution. Article 30 of the Directive specifies assistance (legal/guardianship) to unaccompanied minors who have been declared as a refugee or granted subsidiary protection status. It also notes that appropriate care placements and family tracing should be facilitated by Member States for unaccompanied minors, and that those working with unaccompanied minors “have had or receive appropriate training concerning their needs”.

Ireland partakes in the *Dublin Regulation*³⁵ regarding determination of the Member State responsible for examining an application for asylum. There are specific provisions for unaccompanied minors seeking asylum within the European Union, and reunification with family members legally present in another Member State is highlighted, if at all possible. Under the Humanitarian Clause contained in the Regulation, Member States shall if possible reunite such minors with a relative(s) in another Member State who may take care of them, if it is determined to be in the minor’s best interests. A family member definition for unaccompanied minors is that of “...the father, mother or guardian when the applicant or refugee is a minor and unmarried”. In the absence of a family member in another State, the Member State responsible for hearing an unaccompanied minor application for asylum shall be that where the minor has lodged their own application for asylum.

Ireland has not opted in to the *Reception Directive*³⁶ which lays down minimum standards for the reception of asylum seekers.

4.6.2 UNACCOMPANIED MINORS AND APPLICATIONS FOR ASYLUM

Table 2.2 provides national information on the number of asylum applications made by unaccompanied minors between 2002 and 2008. Data are not available on the percentage of unaccompanied minors referred to the HSE Dublin Social Work Team for Separated Children who subsequently apply for asylum but it is believed to be a majority. In Cork,

³⁵ Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

³⁶ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

historically the majority of unaccompanied children also claim asylum. For the unaccompanied minors who do not claim asylum, their legal and immigration position is ambiguous: they are simply minors within State care. For this reason it appears that in practice unaccompanied minors who are approaching their eighteenth birthday are often advised to apply for asylum in order to regularise their status. See section 4.9 below.

During the course of interviews for this study, both social workers and NGO partners expressed concern regarding the appropriateness of the asylum system as a whole for an unaccompanied minor. It was felt that the system is an adult-oriented process, with legalistic language in use and the potential for re-traumatisation. The Irish Refugee Council has expressed concerns about the asylum system and the need to make it more child-friendly. Specifically, they recommend explaining procedures in an age appropriate, child-friendly manner. Kilkelly (2007) notes that the asylum process (both law and practice) has "...not been adapted to take into account children's specific characteristics despite international guidance".

In cases where a social worker does not feel it is appropriate for a minor to enter the process, they may wait until they are older and/or in a more appropriate position before recommending that they make an asylum claim. If the child has an asylum case the social work team assists them to apply to the Office of the Refugee Applications Commissioner (ORAC) for refugee status. As an asylum applicant, an unaccompanied minor is also entitled to legal aid from the Refugee Legal Service. When the new Single Procedure is introduced under the *Immigration, Residence and Protection Bill 2008*, protection applications will be made to the Minister for Justice, Equality and Law Reform.

ORAC has stated that it recognises that some minors may manifest their fears in ways different from adults, and they may not be able to fully elucidate the reasons why they left their country of origin. In the examination of these claims, it may therefore be necessary to have greater regard to certain objective factors such as country of origin information, and to determine, based upon these factors, whether a minor may be presumed to have a well-founded fear of persecution.

ORAC provides both specialised training to staff when dealing with minors (in conjunction with the RLS, HSE and UNHCR) and has also developed best practice guidelines for working with unaccompanied minors, taking into account international guidelines including that of the *Separated Children*

in Europe Programme (SCEP) and the *EU Children First Programme*. Caseworkers dealing with minors under 12 years receive additional training. Training is provided by ORAC on dealing with particularly sensitive claims which was developed in conjunction with the Dublin Rape Crisis Centre. Child-friendly interview rooms are used and the unaccompanied minor is accompanied at all stages of the asylum process by their social or project worker and legal representative. Interpreter training is provided by UNHCR and is based on the Children First protocol. ORAC has stated that it aims to have shortened processing times for unaccompanied minors, with their first instance case heard within 30 working days – a substantive interview to take place within 20 working days and the case finalised within 10 working days. However, it was reported by social workers and NGOs that the length of time before first instance interviews is still an issue, with cases of unaccompanied minors waiting over 4 months for such an appointment.

Quarterly meetings between the ORAC, HSE (Dublin) and the RLS take place to discuss arising issues, with all parties stating that they have a good working relationship. If an unaccompanied minor presents directly to ORAC they are immediately referred to the HSE Dublin Social Work Team for Separated Children, with all further dealings with ORAC conducted in the presence of a social or project worker, and a legal representative at times. In cases whereby an unaccompanied minor is residing outside Dublin and is required to travel to have their asylum interview, a social worker will accompany them.

Social workers based outside Dublin have stated that the ORAC has been accommodating at times in providing caseworkers to hear asylum claims on a decentralised basis in limited, vulnerable cases. However, it was also noted by non-Dublin based social work teams that their requests for interviews at specific times so as to accommodate their travel with the minor and not necessitate an overnight stay has not always been met with. ORAC has stated that they endeavour to incorporate an element of flexibility into the processing of unaccompanied minors, for example scheduling interviews later in the day in order that children in care outside of Dublin can travel there and back in the one day.

Procedures for working with minors under 14 years were introduced by ORAC in 2003, in particular that of a ‘conversational’ rather than structured interview whereby the child and ORAC have a conversation, with the HSE and RLS present. All such procedures and indeed structured interviews

for unaccompanied minors are recorded (in writing or on a laptop,) so as to allow for quality monitoring. The Refugee Legal Service believes this method is effective and child friendly and should be extended to older minors. ORAC also indicated that given a minor's potentially reduced ability to articulate their fears and experiences it can be necessary to have greater regard to country of origin information, in determining the asylum application of the child.

Section 74(10) of the *Immigration, Residence and Protection Bill* provides for dispensing with interviews of minors in certain circumstances. In particular Section 74(10)(b) states "...where the applicant is a minor, he or she is of such an age and degree of maturity that an interview would not usefully advance the investigation." The Irish Refugee Council has recommended such a move should take account of the child's views and wishes in line with their age and maturity in line with Article 12 of the *UN Convention on the Rights of the Child*.

The Irish Refugee Council is currently working on guidelines with UNICEF on drafting information materials for unaccompanied minors within the asylum process, especially in regard to the move to the single protection procedure foreseen under the Immigration, Residence and Protection Bill, 2008.

4.6.3 FAMILY REUNIFICATION FOR UNACCOMPANIED MINORS WITH REFUGEE STATUS

All recognised refugees are entitled to apply for family reunification. Applications are made to Irish Naturalisation and Immigration Service (INIS) and then passed to ORAC for investigation under the *Refugee Act, 1996*. On completion of its investigation, ORAC submits a report to the Minister for Justice, Equality and Law Reform for a final decision. A refugee may apply for permission for his/her children who are under the age of 18 and unmarried, and refugees under 18 years of age may apply for their parents/guardians. The Minister for Justice, Equality and Law Reform also has discretion to grant permission for other dependent family members to be reunified with a refugee (grandparent or sibling for example) provided clear evidence of dependency is shown on the part of the family member outside the State. The number of unaccompanied minors with refugee status who successfully applied for family reunification was unavailable.

Where the Minister grants permission for family reunification, subjects of an application who are outside the

State may then be instructed to apply for a visa. Subjects of an application over the age of 16 years who are already present in the State may, on foot of a decision to grant an application, be instructed to register with GNIB. If the application is denied there is no way in which to appeal the decision unless significant new information becomes available in which instance an application may be re-submitted. Provision for a statutory footing for family reunification of persons for whom a protection declaration is in force is provided in the *Immigration, Residence and Protection Bill, 2008*.³⁷

The process of how familial relationships are verified is currently under great scrutiny by many actors in the field, and the Department of Justice, Equality and Law Reform has not commented on its internal procedure mechanism. In cases involving unaccompanied minors, comprehensive background checks and family assessments are recommended as per best practice procedure. DNA testing to verify the authenticity of the child-family relationship is not in routine use in the case of the unaccompanied minor as a holder of refugee status applying for family reunification, while organisations such as Barnardos have issued calls to support such testing.

The total processing time in INIS from the date of receipt of a family reunification application to date of issue of a decision is approximately 24 months. The processing time for the investigation in ORAC from date of receipt of an application from INIS to the issue of Section 18 report under the *Refugee Act, 1996* is approximately four months.

There is a lack of resources to support social care follow-up after family reunification. Social workers report that while follow-up with families reunified in Ireland is essential due in part to previous history of family separation and possible traumatic experiences, generally the necessary resources to do so do not exist. The Cork Social Work Team tries to provide follow-up on such families for a 12 month period. Anecdotally, there are reports of family breakdown in such situations with minors subsequently coming back into State care. There are also reports of some indications of trafficking in some cases.

³⁷ Section 50 of the *Immigration, Residence and Protection Bill, 2008*.

4.6.4 UNACCOMPANIED MINORS AND APPLICATIONS FOR SUBSIDIARY PROTECTION AND LEAVE TO REMAIN IN IRELAND

Unaccompanied minors in Ireland also have the right to apply for subsidiary protection in the State in accordance with the provisions of the *European Communities (Eligibility for Protection) Regulations 2006* and leave to remain in the State in accordance with the provisions of Section 3 of the *Immigration Act, 1999* (as amended). No figures on the numbers of unaccompanied minors granted either subsidiary protection or leave to remain status were available during the course of this study. The Refugee Legal Service (RLS) indicate that a number of unaccompanied minors in their service who applied for leave to remain during 2004 or 2005 are still awaiting a decision to date. Many have “aged-out” in the interim. Overall numbers of subsidiary protection status granted remains low.

The *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012* states that where an application for asylum, subsidiary protection or leave to remain from a child or unaccompanied minor is being considered, the threshold for approving an application is lowered to take account of the applicant’s stage of development, vulnerability etc.

4.7 Age Assessment

Age assessment is a difficult and cross-cutting issue. Adults may state that they are aged less than 18 years in order to be allowed leave to land and to benefit from the special protections available to children. Conversely, young people aged under 18 years may hold identity documents which suggest that they are adults, thus enabling them to cross borders without arousing suspicion. All of those interviewed for this study have stated that the nature of age assessment is not a precise matter, with a potential for a margin of error several years in each direction particularly in cases of minors close to 18 years.

In Ireland, interviews (by social workers, Immigration Officers and ORAC officials) and age assessment tools are used to assess age. No bone testing is currently provided for although it was in evidence in the past. Of note regarding the bone density testing of unaccompanied minors is the need for consent for the practice to be carried out. Anecdotally, the Irish Refugee Council has reported that bone density testing still occurs in practice (but is not carried out on behalf of ORAC), particularly in a hospital setting. The official position

is that in some cases the opinions of professionals such as dentists may be included in assessments when offered informally but such opinions should not be sought. The GNIB and/or members of An Garda Síochána assess whether or not a third-country national is under 18 years at the port of entry or if the person presents inland. The Irish Refugee Council has called for the adoption of a clear policy on age assessment in line with best international practice (Irish Refugee Council, 2008). They have criticised the high level of discretion on the part of individual officers in making an initial age assessment and the lack of a national policy.

Social work teams assess an unaccompanied minor's age when a minor enters State care by using a social work assessment tool. ORAC also assesses the age of an unaccompanied minor applying for asylum via a specific interview for assessing age and officers receive training for this purpose. In cases of age dispute the asylum applicant has the right to a review of his or her age assessment by a more senior officer in ORAC. In such cases the Refugee Legal Service will advise clients to get independent opinions for example from a doctor or social worker or documents from the country of origin to support their claim. Doctors in Ireland tend to be reluctant to make such assessments as the margin of error is so large. The Department of Justice, Equality and Law Reform (2009) has stated that such age assessments are conducted with regard to the *Separated Children in Europe Programme (SCEP) Statement of Good Practice, 2004* when dealing with cases of unaccompanied minors. The Separated Children in Europe Programme (SCEP) is a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees. NGO child rights organisations have commented that the Department of Justice, Equality and Law Reform does not conform to the *SCEP Statement of Good Practice* which calls for 'independent professionals with appropriate expertise' to conduct such an assessment.

In practice there is a large degree of consensus between ORAC and the HSE on this matter. In all cases, an inter-agency decision is taken regarding disputed age status decisions. If the authorities cannot agree on a precise age the final benefit of the doubt is given to the individual concerned. Social workers and ORAC have expressed concern about the potential for adults to be housed alongside children in hostel accommodation.

It is believed that the introduction of formal age assessment tools has reduced the number of adults claiming fraudulently to be minors. The Refugee Legal Service indicated that prior to

approximately 2005, many age-disputed minors were presenting for services. Significant case law regarding age assessment of minors includes *A.M. v Refugee Applications Commissioner*³⁸ and *A.S.O. (A Minor) v Refugee Applications Commissioner & Ors*.³⁹ Both cases concern age assessments within the asylum process and outlined provisions for minimum procedural requirements for age assessment of minors in the asylum process, and that fair procedures must be applied in age assessments of applicants for asylum. In *A.S.O. v Refugee Applications Commission & Ors* the issue of credibility of an applicant by the ORAC and RAT if a minor was age assessed over 18 years was also raised.

The IRC and others have advocated for minimum standards regarding age assessment in line with the *Procedures Directive*.⁴⁰

4.8 Detention

Minors should not be detained in Ireland except if they commit a crime. However, NGOs consulted in the course of this research reported cases in which minors have arrived without the necessary documentation and were detained on immigration matters under Section 9 (8) of the *Immigration Act, 2004* prior to referral to the HSE. In cases detention lasted possibly for several weeks, with minors either treated as adults without an age assessment interview or having been age assessed by an Immigration Officer as being over 18 years. The GNIB argue that in some cases the person initially claims to be an adult or is holding documents identifying them as an adult and this may be why they do not receive an age assessment interview until they identify themselves as a minor.

Ireland has not opted-in to the *Reception Directive*⁴¹ or the *Return Directive*.^{42, 43}

³⁸ *A.M. v Refugee Applications Commissioner* [2005] IEHC 317 Unreported, High Court, Finlay-Geoghegan J, 06/10/2005.

³⁹ *A.S.O. (A Minor) v Refugee Applications Commissioner & Ors* [2006] IEHC 28 Unreported, High Court, Clarke J, 01/02/2006 (Leave).

⁴⁰ *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.*

⁴¹ *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.*

⁴² *Council Directive 2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals*

⁴³ *Council Directive 2008/115 of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.*

It appears that such cases are becoming more infrequent as immigration authorities are exercising more caution regarding age assessment. The Irish Refugee Council believes that detention of minors may happen when insufficient or fraudulent documents are produced. They stress that the best interests of the child must always take precedence over immigration matters but that in practice minors may be refused leave to land and detained pending removal due to inadequate age assessment measures and a lack of clear policies in this area.

4.9

Aged-out Minors

Due to the fact that in most cases unaccompanied minors have no immigration or legal status beyond being a minor ‘in care’ unless they have applied for or have been granted refugee status, they often exist in an ambiguous legal status when they turn 18 years old. With regard to minors who were in the care of the HSE, the *Child Care Act, 1991* states that the HSE’s responsibility towards them changes from ‘shall’ to ‘may’ upon turning 18 years. In regard to continued social welfare and after-care support, social workers advocate on a case-by-case basis as entitlements to social welfare for such minors are not explicitly clear. Within the Dublin region the HSE Dublin Social Work Team for Separated Children has a dedicated Aftercare unit for aged-out minors who are holders of a protection status which is staffed by two aftercare workers. This Unit allows the aged-out minor to deinstitutionalise, to learn skills which they will need once they move out on their own (cooking, cleaning, shopping, saving) and it helps them attend school. All such minors are at various levels of education, including some at third level.

In some instances the way in which a minor has been processed under the *Child Care Act, 1991* can influence the ease or otherwise of their transition into adulthood in terms of state supports available. For example, a child registered as an out-of-home minor may progress more smoothly to being an out-of-home adult and benefit from additional support than a minor taken in under voluntary care.

Upon turning 18 years, those aged-out minors who are still awaiting a decision on a protection or leave to remain application are transferred from the care of the HSE to the direct provision accommodation system for adult asylum seekers, administered by the Reception and Integration Agency (RIA). Social workers consulted for this study argue that such direct provision centres can be very unsuitable and stress the vulnerability of these young adults: they may have been through long and traumatic journeys and/or have been in care

for a long time. In addition, they may have no family support available to them in Ireland or in their country of origin. Prior to 2009, unaccompanied minors who turned 18 years were mainly sent to one of four dedicated accommodation centres in the Dublin area. The pressure on resources in Dublin is such that aged-out unaccompanied minors in the area do not receive after care service from the HSE and have very limited access to supports such as health, education, therapeutic and welfare services.

Since the beginning of 2009, RIA has implemented a new policy of targeted dispersal of aged-out unaccompanied minors. Aged-out minor asylum applicants are now housed in one of five direct provision centres in Cork, Limerick, Sligo, Galway or Athlone. RIA states that the centres were selected because they are family centres and are close to education facilities and other supports such as youth networks. Some also have public health nurses available on site. A policy document issued by RIA states that young people have a better chance of accessing supports and aftercare service from the HSE in regions where there is less pressure on resources. It is further argued that the young person is less exposed to risks such as exploitation, crime and drug abuse if they are located outside Dublin.⁴⁴ RIA has stated that each case is discussed with the HSE before placement occurs and the young person's views are taken into account. If a minor has siblings in the Dublin area he or she should not be dispersed and no dispersals should occur within term time if a young person is studying.

Aged-out unaccompanied minors are identified in the HSE *Intercultural Health Strategy* (2008) as a particularly vulnerable group that may be at risk of becoming involved in prostitution. Between 2006 and 2007 the International Organization for Migration Mission in Ireland operated a specific assisted return and reintegration programme for unaccompanied minors, which is discussed in Chapter 5.

Regardless of where an aged-out minor is accommodated there exists a lack of tracking or follow-up within the HSE, with a lack of resources available to social workers to follow-up on cases and to provide information on their situation post-18 years. Gibbons (2007) notes that this lack of resources for follow up is a wider presenting issue, with minors in care

⁴⁴ Reception and Integration Agency (2009). "Policy on the accommodation of Aged-out Minors (AOM) in RIA Accommodation Centres from the 1st January 2009".

moving from “one care area to another without proper reference onwards or communication to those who should be responsible.”⁴⁵

4.10 Integration Measures for Unaccom- panied Minors

In most instances, unaccompanied minors attend school in mainstream classes as soon as possible. Often social work teams make contact with local NGOs or programmes offering integration services on behalf of the child such as the CDVEC Separated Children Education Service and the Dun Laoghaire Refugee Project in Dublin. In Cork the child may access youth groups etc. targeted at out-of-home Irish children. Social work teams also attempt to place at-risk unaccompanied children in culturally appropriate foster placements. Aside from facilitating integration it is believed such placements may help to keep children safe from traffickers. In Wexford training has been provided regarding cultural practices for foster families.

⁴⁵ Gibbons (2007) “Aspects of Child Care in the District Court”. *Judicial Studies Institute Journal*. Vol. 7, No. 2.

5. RETURN PRACTICE, INCLUDING REINTEGRATION

The return of third-country unaccompanied minors living in Ireland does take place, primarily in conjunction with the International Organization for Migration (IOM) office in Ireland. While no legislative prohibition to deportation of unaccompanied minors under 18 years is in effect, in practice no such deportations have taken place to date. Transfers of unaccompanied minors from Ireland under the *Dublin Regulation* do take place, and is in evidence as an operational policy since May 2007. Ireland has not opted-in to the *Directive COM/2008/115 on common standards and procedures in Member States for returning illegally staying third-country nationals*. There are no readmission agreements specific to the return of unaccompanied minors, and current readmission agreements (on both an EU and bilateral national level) which are in effect and of which Ireland is a party do not contain specific provision in relation to the return of unaccompanied minors.

5.1

Dublin Regulation

The transfer of unaccompanied minors under the *Dublin Regulation*⁴⁶ is in operation in Ireland, although numbers remain low. No legislative prohibition to the transfer of an unaccompanied minor was or is in existence in Ireland. Between 2004 and 2008, 3 unaccompanied minors were transferred under the Regulation; to date in 2009⁴⁷ some 4 minors have been transferred. In May 2007 enhanced operational procedures between the HSE and GNIB regarding the transfer of unaccompanied minors under the Regulation was agreed.

As with the practice of transfer under the *Dublin Regulation* for adult asylum applicants, the Office of the Refugee Applications Commissioner (ORAC) processes the taking of fingerprints and cross-matching under the EURODAC system. It must be noted that the taking of fingerprints of unaccompanied minors in Ireland is primarily limited to those seeking asylum, as non-asylum seeking unaccompanied minors are not routinely fingerprinted unless the minor is considered to be at risk e.g. in suspected trafficking cases. In general, strong coordination between the ORAC, the HSE and the Refugee Legal Service (RLS) is in operation, in particular in cases where an age assessment of a minor may be a presenting issue.

A joint ORAC and HSE protocol is in place regarding the processing of UAM transfers, with at least two weeks notice of the prospective transfer provided to the HSE in order to facilitate their contact with the responsible agency in the country of transfer. In practice, once the relevant receiving agency and/or body in the country of transfer has been established, the HSE will then effect procedures for the transfer of a social work assessment file to the body. In certain cases, additional time to effect the transfer is also provided so that the HSE may coordinate file and assessment transfers.

Unaccompanied minor transfers under the Regulation do not take place in cases where the social work team is either unable to establish contact with the referring body in the country of transfer or the standard of care in the receiving country is not deemed to be of an adequate standard. Transfer

⁴⁶ Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

⁴⁷ Between 1 January 2009 and 23 July 2009 inclusive.

under the Dublin Regulation also takes place in instances where a minor's family may be located in another EU country and it is believed to be in the best interests of the child for the minor to be reunified with these family members. Given the difficulties in conducting family social work assessments in separate countries, DNA testing of alleged family members is routinely used in such cases. The transfer process is enacted by the INIS, principally by the Repatriation Unit. Provision for accompaniment of the unaccompanied minor by a member of the HSE is provided for, but this has not happened in practice yet. A submission to prevent an unaccompanied minor's transfer may be made by their legal representative if it is believed that the level of reception care available there is lower than that considered to be in the best interests of the child.

5.2 Deportation

No explicit legislative prohibition to the practice of deportation of third-country unaccompanied minors from Ireland is in place. However, the operational practice of deportation by the Irish government has not, to date, included unaccompanied minors under the age of 18 years and within the care of the Health Service Executive (HSE). As referenced earlier in this study, operational policy regarding the practice of issuance of a deportation order of 'aged-out' minors upon turning 18 years and in receipt of a negative asylum and/or leave to remain determination in Ireland had been in evidence in preceding years.

5.3 Return and Reintegration

Ireland has not opted-in to the *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals* and as such does not currently participate in return practices under this piece of the EU *acquis*. Regarding readmission agreements, Ireland neither operates readmission agreements specific to the return of unaccompanied minors nor do current agreements of which it is a signatory contain specific provisions in relation to the return of unaccompanied minors. Of the six EU Readmission Agreements with third-country partners, Ireland has exercised its option to opt-in to the Agreement concerning Hong Kong which entered into force on 1 March 2004. In addition, a *National Readmission Agreement* with Nigeria was concluded in 2001. This Agreement has not yet been fully ratified by Nigeria but it is reported that immigration authorities in both countries

are acting “in the spirit” of the agreement which has since been “reviewed and agreed to be working well.”⁴⁸

5.3.1 RETURN

All social work teams who were interviewed as part of this research study stated that the issue of return was raised with unaccompanied minors at some stage during their interaction with each minor, with the exception of younger minors who may not be of a suitable age as to understand the concept. The option of return is always explained particularly clearly to minors whose protection claims are not believed to be of a strong nature.

No specific legislative provisions regarding return are in place in Irish legislation, and all decisions regarding return are taken by the HSE in conjunction with the unaccompanied minor. To date, assisted voluntary return of unaccompanied minors in Ireland under the care of the Health Service Executive (HSE) has primarily taken place in conjunction with the IOM Mission in Ireland. The wishes of the minor are taken into account regarding return, particularly in cases where the unaccompanied minors may be of an older age. All decisions regarding return are taken by social worker (and judge when relevant and according to the nature of the care order which the minor may be under the care of) and according to the principles of the best interests of the child. Specific HSE return procedures vary according to the relevant care team and particular case, but generally include extensive family assessment in the country of origin and agreement regarding monitoring of the unaccompanied minor post-return.

Currently, IOM assistance to unaccompanied minors in Ireland is provided for under the Voluntary Assisted Return and Reintegration Programme (VARRP), which contains a number of vulnerable categories each with their own specific procedures. Between 2002 and 2008 some 126 cases have been referred to IOM programmes in Ireland with family tracing and assessment begun in all referred cases.⁴⁹ Sub-Saharan African countries have accounted for almost half of all referrals.

⁴⁸ Dail Eireann Parliamentary Question No. 289, 31 March 2009.

⁴⁹ In limited cases, family tracing and/or social work assessments are also conducted via International Social Services (ISS).

Table 5.1: Unaccompanied Minors Referred to IOM for Return and Numbers Actually Returned 2002 – 2008

Year	Total Referrals	Total Returns
2002	7	4
2003	5	3
2004	38	8
2005*	31	3
2006	19	1
2007*	13	1
2008	13	1
Total	126	21

* Includes 18 year olds who entered the country as minors.

Source: International Organization for Migration, Dublin..

Table 5.2: Top Three Nationalities of Unaccompanied Minors Referred for Return to IOM 2002-2008

2002	2003	2004	2005	2006	2007	2008
Romania	South Africa	Nigeria	Nigeria	Nigeria	Nigeria	Nigeria
Zambia	Sudan	Romania	Romania	Cameroon	Kenya	Uganda
Lithuania	Albania	South Africa	Russia	Iran	Brazil	Moldova

Source: International Organization for Migration, Dublin.

Upon receipt of a referred case from a minor's social worker, in most instances contact with family members in the country of origin is begun by the relevant IOM office. Local government agencies with a remit for social care are consulted if possible. Resulting information received from the IOM office in the country of origin is passed on to the IOM Dublin office and then directly as received to the referring HSE social worker. In many cases more than one family assessment in the country of origin is conducted. Reintegration needs post-return are also addressed in the initial assessments.

Between 2002 and 2008 some 21 unaccompanied minor returns have taken place via IOM Dublin to 8 countries.⁵⁰ Difficulties in verifying family information as provided by the unaccompanied minor is cited as the most common reason for

⁵⁰ Due to the low numbers of return and possibility of identification of returnees from this information, the exact nationality breakdown is not provided here in accordance with best practice procedures.

low numbers of returns. Information as received from the minor can often be vague, particularly regarding verifiable school and local area details. Often such information as provided by the minor is often found to be unverifiable, and leads to questions surrounding motivation of travel to Ireland. In cases concerning younger children, their ability to recount details or to provide information is also a factor.

Under the IOM assisted return programme, transit (from departure in Ireland and in the intervening country of transit, if relevant) and arrival assistance is provided. Funding is also provided for a returnee escort, and during travel at least one social worker will accompany the minor. In most cases the accompanying social worker will be known to the minor. Upon return the accompanying social worker may travel to the family's home to oversee the child's reunification with their family, and further follow-up visits may be arranged for the days after arrival. Upon return to Ireland the social worker can then provide a detailed post-monitoring request to IOM Dublin.

To date, the majority of unaccompanied minors have returned to a family environment. In particularly vulnerable cases assisted by IOM Dublin, a small number of returns have been to specialist, non-State care accommodation centres. In general, the Irish government does not currently operate a policy of returning unaccompanied minors to alternative care facilities. In cases where a suitable care arrangement within an extended family and/or guardian situation is not available, a decision has been taken for the minor to remain in care in Ireland. In cases of victims of trafficking, specialised counter-trafficking facilities have been utilised to provide best practice accommodation upon return.

5.3.2 MONITORING POST-RETURN AND REINTEGRATION

Overall monitoring of the unaccompanied minor after return to their country of origin is conducted usually by either a local social work agency or IOM mission office in the country of return. Post-return overall monitoring of the returned minor may be in the form of weekly or monthly telephone conversations with the minor and their family over a specified period of time, home visits to the family etc. Monitoring is however, dependent on the capacity of the IOM local office to carry out these activities. All information regarding the minor's return and reintegration is referred back to the unaccompanied minor's social worker in Ireland at regular

intervals: immediate arrangements (1-4 weeks after return), a medium-term plan (5- 8 weeks) and a long-term plan (6-12 months). No specific safeguards regarding resolutions of family disputes post-return are in place, although post-return monitoring does provide a potential for observation of reunified family relationships.

Reintegration assistance in the form of an administered grant is provided for all returning unaccompanied minors under the IOM VARRP. Currently, €600 is provided per minor under the programme, with an element of flexibility regarding an additional amount of reintegration in cases of particular vulnerability. Reintegration assistance can be given either to a unaccompanied minor or their relatives if it is deemed to be the best option for assisting the minor's overall living conditions. Reintegration assistance can include school fees of a standard educational level⁵¹ or assistance in starting a small business. Prior to return, the unaccompanied minor's social worker, in conjunction with the minor (depending on age), guardian and/or foster parent, will examine what the minor's needs may be upon return. These can include needs of a health/medical or psychosocial nature; education/training requirements; and accommodation and financial needs. A return and reintegration plan is completed as far in advance as possible to examine what is available to the minor on return and is carried out with the cooperation of the IOM office in the country of return.

If there is no local IOM office in the country of return, IOM has stated that it endeavours to identify a local agency to assist in implementation of the return and reintegration plan. Monitoring of the reintegration assistance is undertaken by staff of the IOM local office, upon dispensing of the reintegration grant and at regular intervals thereafter with review of the implementation of this grant six months after it has been fully administered. This monitoring form is returned to IOM Dublin and can, in turn, be shared with the referring social worker in Ireland to help provide an update on the minor's progress post-return.

5.3.3 RETURN OF VICTIMS OF TRAFFICKING

The National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012 explicitly examines the

⁵¹ Of a non-fee paying nature, unless that is the only available education standard in the country of return.

appropriateness of return of a potential or suspected minor victim of human trafficking. Recognising that the best interests of the child must be paramount at all times, the return of a minor victim of trafficking should take place in a 'safe and secure manner'. Of note, the National Action Plan ascertains that the responsibility for a minor victim of trafficking "...falls not only on the country of origin which accepts the child, but also on Ireland when it returns a potential/suspected victim to the country of origin." Citing Article 16.7 of the *Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report*, it states that "If it is deemed that repatriation is not in the best interest of the child, taking into consideration the safety and security of the child and the protection and promotion of his/her human rights, then repatriation should not proceed."

The Garda National Immigration Bureau (GNIB) has publically stated that the removal of a suspected victim of trafficking will not take place. This non-removal of a suspected victim of trafficking is an administrative decision, possible by way of a recommendation to the Minister for Justice, Equality and Law Reform.

6. CONCLUDING REMARKS

The current research study highlights a number of issues and problems regarding the provision of services to unaccompanied minors in Ireland. During the course of this research, the commitment of many individual social workers and others working with unaccompanied minors was evident, often in the context of limited resources and structural difficulties as discussed below. Underpinning the issues highlighted in this study was the potential conflict between the unaccompanied minor as a protection applicant or person of otherwise undefined legal (immigration) status, versus a minor who should invoke the ‘best interests’ of the child principle.

6.1

Regional Nature of Service Provision and Lack of Information

The HSE devolves its responsibility for unaccompanied minors to locally based social work teams. Outside of the greater Dublin area, services for such minors are at varying levels of development and influenced by the number of unaccompanied minors presenting, the work load of the team and the available resources. Local teams may also choose how to apply the *Child Care Act, 1991* to unaccompanied minors based on advice received from their relevant Administrative Areas. Within the Dublin Social Work Team for Separated Children unaccompanied minors are treated as “in voluntary care” while in Cork they are processed as “out of home minors”. Such apparently technical distinctions have significant implications for the type of care and aftercare which these unaccompanied minors receive.

In addition the locally-based nature of care provision has other implications:

Lack of information and information sharing: There is no national forum for information sharing between social work teams on their experience of working with unaccompanied minors. Standardised national data do not exist. In a related vein, there

is no national register of unaccompanied minors and this compromises the Gardaí or HSE's ability to trace a minor who goes missing in one part of the country and reappears in the services of another social work team or indeed in another country. IOM Dublin does coordinate a small working group on unaccompanied minors under the UAM Voluntary Assisted Return and Reintegration Programme (VARRP) which in the past has gathered social workers from Dublin, Cork and Galway at regular intervals to share experiences on UAMs, mainly in the context of return and reintegration.

Absence of body/individual who assumes ultimate responsibility: The devolved nature of care provision to this group and the many stakeholders involved has the effect that no individual actor, body or agency is ultimately held accountable for the type and quality of reception and care of unaccompanied minors.

6.2

Lack of Suitable Accommo- dation

As discussed in Chapter 4 not all unaccompanied minors are accommodated in HSE care homes. The privately run hostels fall outside of the remit of the Irish Social Services Inspectorate and are inspected by the HSE only. As Mooten (2006) notes, HSE inspections are not independent, nor are the resulting reports publically available. In effect, therefore, the accommodation of unaccompanied minors may fall below the standard required for Irish children in care. It is widely acknowledged that hostel accommodation is unsuitable for a group as vulnerable as unaccompanied minors and various commitments to providing more appropriate accommodation (and which is open to wider inspection) have been made in recent months. It should be noted that the supply of more appropriate accommodation is improving with three residential units specifically for unaccompanied minors, registered with the Social Services Inspectorate and subject to inspection, currently in operation in the wider Dublin area. An additional residential unit is due to open in the next couple of weeks at time of writing.

Existing hostels for unaccompanied minors do not have trained childcare workers on site and are run instead by managers and security personnel. This situation increases the vulnerability of the group and may contribute to minors going missing from care. It also represents a lack of equity with the level of service provided to Irish children in care.

6.3 Insufficient Social Work Supports

Only the most vulnerable unaccompanied minors, such as suspected victims of trafficking and mothers with babies, are guaranteed a dedicated social worker in the Dublin region. The situation regionally varies widely: in Cork for example all unaccompanied minors are allocated a social worker. In addition, trained social care staff supports are not available at all accommodation placements as outlined above. Responsibility for the welfare of the majority of unaccompanied minors is generally shared among under-resourced local social work teams. As a result many unaccompanied minors do not receive adequate social work supports while in care or follow up in cases of family reunification.

The absence of a national Out-of-Hours social work service is a problem for unaccompanied minors as well as many other vulnerable groups in Ireland. Outside Dublin unaccompanied minors who present between the hours of 5 pm and 9 am may be accommodated in an ad hoc manner, in hospitals for example. These children are recognised as being at high risk of going missing and are poorly protected from traffickers.

Both the accommodation placements and levels of social work supports available to unaccompanied minors have raised questions concerning the lack of equitable care provisions between Irish out-of-home minors and unaccompanied third-country minors. This situation, and in particular the role of the Social Services Inspectorate in monitoring care placements, is currently undergoing significant change.

6.4 Lack of Clear Immigration Status

An unaccompanied minor who presents in Ireland, whether at a border or inland, automatically falls under the protection of the *Child Care Act, 1991*. This means that the HSE assumes responsibility for the promotion of the welfare of that child. However, in the vast majority of the cases concerning unaccompanied minors, the minor has no official immigration status and, therefore, no defined independent right to be in the country. If identified at a port of entry, some may even have been administratively registered as having been refused leave to land although allowed to physically enter the country.

This lack of legal status places individual minors in a very ambiguous position. The regional nature of service provision to unaccompanied minors has the effect that minors may have very different experiences reaching the age of majority depending on how their local team applies the *Child Care Act*,

1991. Social workers may recommend that unaccompanied minors make an asylum claim when nearing 18 years simply to regularise their status in order that they can access adult supports.

Minors who turn 18 years and are not asylum seekers, refugees or persons in need of subsidiary protection have no clear legal right to be in Ireland and may be issued with a deportation order, possibly after spending a large part of their childhood in the country. The UNHCR, Irish Refugee Council and others have advocated for an alternative route to temporary residency when determined to be in the child's best interests (Irish Refugee Council, 2008).

6.5

Lack of Follow-up on Aged-out Minors

When an unaccompanied minor turns 18 years old the Child Care Act, 1991 states that the HSE's responsibility towards them becomes discretionary. While dedicated units for aged-out unaccompanied minors used to be favoured, increasingly minors who have applied for asylum are being transferred from the care of the HSE into the direct provision system with adult asylum applicants. In recognition of the vulnerability of this group the Reception and Integration Agency (RIA) have made some efforts to place young people in the most suitable accommodation centres. This group of young people was identified in the HSE *Intercultural Health Strategy* (2008) as at risk of becoming involved in prostitution. Resources available to social workers to follow-up on cases are insufficient and there exists a lack of tracking or overall follow-up regarding aged-out minors.

APPENDIX A:

AVAILABLE STATISTICAL DATA

Table A1: Referrals to Cork (Liberty Street House) Social Work Team 2002-2008

Year	Placed in Care		Re-united		Age re-assessed older		Other*		Total		Grand Total
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	
2002	0	0	5	6	2	3	8	8	15	17	32
2003	0	2	3	10	4	3	8	13	15	28	43
2004	1	0	1	3	1	0	4	7	7	10	17
2005	0	0	6	4	1	2	2	5	10	10	20
2006	0	0	5	8	0	0	3	7	8	15	23
2007	0	0	1	1	0	1	4	3	5	5	10
2008	0	0	1	1	0	0	2	4	3	5	8

* Mainly processed as homeless minors.

Source: Cork (Liberty Street House) Social Work Team.

Table A2: Referrals to HSE Dublin Social Work Team for Separated Children 2008. Nationality, Age and Gender Breakdown

Country of Nationality	Total	Female (Age in years)						Male (Age in years)					
		Unknown	0-13	14	15	16	17	Unknown	0-13	14	15	16	17
Nigeria	163	0	46	5	8	7	9	0	52	9	16	6	5
China	20	0	0	1	4	3	4	0	0	0	0	3	5
Zimbabwe	20	0	6	0	0	0	3	0	8	3	0	0	0
DR Congo	19	0	1	2	1	5	4	0	2	1	1	2	0
Malawi	9	0	5	0	1	1	0	0	2	0	0	0	0
Somalia	9	0	1	0	0	2	1	0	0	0	0	1	4
Ghana	8	0	0	0	1	3	0	0	1	0	2	1	0
South Africa	8	0	1	0	0	0	2	0	4	0	0	0	1
Iraq	7	0	0	0	0	0	0	0	0	1	1	3	2
Cameroon	6	0	0	0	0	1	2	0	1	0	1	0	1
Other	67	0	9	2	3	7	10	0	7	2	6	10	11
Total	336	0	69	10	18	29	35	0	77	16	27	26	29

* Note that the totals supplied in Tables A2-A7 do not match those supplied in Table 4.1. This is mainly because nationality and gender data were not available for all referred children. There also appears to have been double counting of children placed in care and subsequently reunited

Source: HSE Dublin Social Work Team for Separated Children.

Table A3: Referrals to HSE Dublin Social Work Team for Separated Children 2007. Nationality, Age and Gender Breakdown

Country of Nationality	Total	Female (Age in Years)						Male (Age in Years)					
		Unknown	0-13	14	15	16	17	Unknown	0-13	14	15	16	17
Nigeria	162	0	57	5	9	12	6	0	54	3	6	5	5
China	22	0	0	0	0	1	10	0	0	0	1	6	4
Ghana	17	0	8	1	1	0	2	0	3	0	1	0	1
Somalia	17	0	0	0	1	2	6	0	0	0	1	2	5
Cameroon	9	0	3	0	1	1	1	0	2	0	1	0	0
Dr Congo	14	0	2	1	4	0	0	0	3	1	1	1	1
South Africa	6	0	1	1	1	0	0	0	3	0	0	0	0
Togo	6	0	1	0	1	1	1	0	2	0	0	0	0
Angola	5	0	1	1	0	0	0	0	1	0	0	2	0
Uganda	4	0	0	0	0	1	2	0	0	1	0	0	0
Other	59	0	3	1	6	8	8	0	1	2	6	7	17
Total	321	0	76	10	24	26	36	0	69	7	17	23	33

Source: HSE Dublin Social Work Team for Separated Children.

Table A4: Referrals to HSE Dublin Social Work Team for Separated Children 2006. Nationality, Age and Gender Breakdown

Country of Nationality	Total	Female (Age in Years)						Male (Age in Years)					
		Unknown	0-13	14	15	16	17	Unknown	0-13	14	15	16	17
Nigeria	266	0	91	11	18	21	14	0	91	1	11	8	0
Romania	68	0	22	3	2	5	1	0	16	2	2	6	9
Somalia	35	0	0	1	2	11	8	0	2	1	1	6	3
Guinea	13	0	0	1	0	1	2	0	1	0	0	3	5
China	12	0	0	0	2	4	4	0	0	0	1	0	1
Dr. Congo	9	0	3	0	1	0	1	0	3	0	1	0	0
Georgia	9	0	0	0	0	1	0	0	1	0	1	4	2
Liberia	9	0	2	0	1	2	0	0	1	1	1	0	1
Sudan	9	0	0	0	0	0	1	0	0	2	0	3	3
Ghana	8	0	3	0	0	0	0	0	0	0	2	2	1
Other	76	0	10	1	2	12	7	0	14	3	7	12	8
Total	514	0	131	17	28	57	38	0	129	10	27	44	33

Source: HSE Dublin Social Work Team for Separated Children.

Table A5. Referrals to HSE Dublin Social Work Team for Separated Children 2005. Nationality, Age and Gender Breakdown

Country of Nationality	Total	Female (Age in Years)						Male (Age in Years)					
		Unknown	0-13	14	15	16	17	Unknown	0-13	14	15	16	17
Nigeria	378	0	159	10	10	21	6	0	142	11	12	3	4
Romania	65	0	8	2	3	6	4	0	13	5	1	6	17
Somalia	38	0	0	0	3	8	7	0	0	0	4	6	10
Dr. Congo	18	0	7	0	1	1	1	0	3	0	0	4	1
Moldova	14	0	3	0	0	3	0	0	4	0	0	1	3
Ghana	13	0	2	1	0	3	1	0	2	0	0	1	3
Angola	10	0	0	0	2	2	0	0	0	0	1	3	2
Afghanistan	10	0	0	0	0	0	0	0	0	0	3	4	3
Zimbabwe	10	0	5	1	0	0	2	0	1	0	0	1	0
Georgia	9	0	1	0	2	1	0	0	2	1	0	0	2
Other	76	0	9	1	2	4	13	0	14	3	1	11	18
Total	641	0	194	15	23	49	34	0	181	20	22	40	63

Source: HSE Dublin Social Work Team for Separated Children.

Table A6. Referrals to HSE Dublin Social Work Team for Separated Children 2004. Nationality, Age and Gender Breakdown

Country of Nationality	Total	Female (Age in years)						Male (Age in years)					
		Unknown	0-13	14	15	16	17	Unknown	0-13	14	15	16	17
Nigeria	356	0	145	17	8	17	14	0	133	3	4	6	9
Romania	40	0	10	1	3	3	4	0	11	0	3	3	2
Dr Congo	21	0	6	1	2	4	1	0	7	0	0	0	0
Moldova	19	0	7	0	1	0	1	0	5	1	1	2	1
Somalia	18	0	0	0	2	2	2	0	0	1	2	5	4
Cameroon	11	0	5	0	0	0	0	0	4	1	0	1	0
Ethiopia	8	0	0	0	0	3	1	0	0	0	0	3	1
Ghana	8	0	3	0	1	1	1	0	2	0	0	0	0
Grenada	8	0	3	0	1	0	1	0	0	2	0	0	1
Guinea	8	0	0	0	1	2	1	0	0	0	0	2	2
Other	97	0	15	1	2	12	6	0	17	1	11	22	10
Total	594	0	194	20	21	44	32	0	179	9	21	44	30

Source: HSE Dublin Social Work Team for Separated Children.

Note that a breakdown of 2003 referrals to HSE Dublin Social Work Team for Separated Children is not available.

**Table A7: Referrals to HSE Dublin Social Work Team for Separated Children
2002. Nationality Breakdown***

Country of Nationality	Total
Nigeria	453
Romania	90
Congo	35
South Africa	29
Moldova	27
Zimbabwe	24
Angola	20
Georgia	20
Lithuania	18
Sierra Leone	15
Others	126
Total	857

*Gender and Age Breakdown Unavailable.

Source: HSE Dublin Social Work Team for Separated Children.

Table A8: Top Ten Nationalities of Unaccompanied Minors who made an Application for Asylum 2002-2008

2002		2003		2004		2005		2006		2007		2008	
Nigeria	130	Nigeria	77	Nigeria	31	Somalia	31	Nigeria	26	Nigeria	30	Nigeria	29
Angola	15	Somalia	21	Somalia	13	Nigeria	18	Somalia	22	Somalia	15	Somalia	<10
Sierra Leone	14	DR Congo	16	Eritrea	<10	Afghanistan	10	Guinea	10	Ghana	<10	Ghana	<10
DR Congo	12	Georgia	16	Ethiopia	<10	Romania	<10	Sudan	<10	DR Congo	<10	Kenya	<10
Moldova	12	Kenya	14	Guinea	<10	Angola	<10	Iran	<10	Georgia	<10	Angola	<10
Romania	12	Angola	13	DR Congo	<10	DR Congo	<10	Kenya	<10	Iraq	<10	Cameroon	<10
Somalia	12	Albania	<10	China	<10	Moldova	<10	Afghanistan	<10	Cameroon	<10	DR Congo	<10
Zimbabwe	<10	Cameroon	<10	Ghana	<10	Georgia	<10	China	<10	Angola	<10	Iraq	<10
Albania	<10	Liberia	<10	Kenya	<10	Kenya	<10	Ethiopia	<10	Bhutan	<10	Eritrea	<10
Cameroon	<10	Moldova	<10	Liberia	<10	Eritrea	<10	Romania	<10	Guinea	<10	Malawi	<10
Total	288	Total	271	Total	128	Total	131	Total	131	Total	94	Total	98

Source: Office of the Refugee Applications Commissioner.

Table A9: Age Breakdown of Unaccompanied Minors on Application for Asylum 2002-2008

	2002*	2003	2004	2005	2006	2007*	2008
0-13	13	<10	<10	<10	<10	<10	15
14	15	<10	<10	<10	<10	<10	<10
15	36	23	19	19	12	13	15
16	94	99	55	51	44	28	29
17	127	132	44	53	62	36	33
Total	288	271	128	131	131	94	98

* Note that the age categories in these columns do not add to total because some applicants were deemed to be minors after application.

Source: Office of the Refugee Applications Commissioner

Table A10: Top Five Nationalities of Unaccompanied Minors Granted Asylum 2002-2008

2002		2003		2004		2005		2006		2007		2008	
DR Congo	11	Nigeria	<10	Somalia	10	Somalia	14	Somalia	<10	Somalia	10	Somalia	<10
Nigeria	11	Somalia	<10	Nigeria	<10	Eritrea	<10	DR Congo	<10	Nigeria	<10	Nigeria	<10
Cameroon	<10	Albania	<10	Kenya	<10	Kenya	<10	Ethiopia	<10	Sudan	<10	Cameroon	<10
Sierra Leone	<10	Zimbabwe	<10	Albania	<10	Uganda	<10	Nigeria	<10	Uganda	<10	Uganda	<10
Somalia	<10	Sudan	<10	Angola	<10	Ethiopia	<10	Afghanistan	<10	Iraq	<10	Ethiopia	<10
Total	93	Total	38	Total	58	Total	56	Total	30	Total	24	Total	13

Source: Office of the Refugee Applications Commissioner.

Table A11: Top Five Nationalities of Unaccompanied Minors Refused Asylum 2002-2008

2002		2003		2004		2005		2006		2007		2008	
Nigeria	280	Nigeria	77	Nigeria	77	Nigeria	22	Nigeria	17	Nigeria	27	Nigeria	25
Sierra Leone	38	DR Congo	<10	DR Congo	10	Somalia	17	Somalia	13	Somalia	<10	DR Congo	<10
Romania	35	Moldova	<10	Georgia	<10	Afghanistan	<10	Guinea	<10	Ghana	<10	Iraq	<10
Moldova	30	Angola	<10	Cameroon	<10	Angola	<10	Romania	<10	Georgia	<10	Somalia	<10
Angola	21	Kenya	<10	Ghana	<10	Kenya	<10	Afghanistan	<10	Kenya	<10	Ghana	<10
Total	564	Total	147	Total	152	Total	114	Total	91	Total	76	Total	82

Source: Office of the Refugee Applications Commissioner.

Table A12: Percentage Gender breakdown of Unaccompanied Minors Applied for, Granted and Refused Asylum and Those Withdrawn from Procedure 2002-2008

Applications	2002	2003	2004	2005	2006	2007	2008
Female (%)	42	53	56	46	47	59	48
Male (%)	58	47	44	54	53	41	52
Total	288	271	128	131	131	94	98
Granted*							
Female (%)	44	58	53	75	57	71	77
Male (%)	56	42	47	25	43	29	23
Total	93	38	58	56	30	24	13
Refused*							
Female (%)	31	46	55	48	41	58	45
Male (%)	69	54	45	52	59	42	55
Total	564	147	152	114	91	76	82
Withdrawn*							
Female (%)	27	38	43	18	50	23	36
Male (%)	73	63	57	82	50	77	64
Total	124	16	30	17	14	13	11

* Year refers to year in which recommendation made.

Source: Office of the Refugee Applications Commissioner.

Table A13: Unaccompanied Minors Referred to IOM for Return by Gender and Age and Numbers Actually Returned 2002-2008

Year	Gender		Age		Total Referrals	Total Returns
	Female	Male	0-13	14-18		
2002	15	2	2	5	7	4
2003	1	4	1	4	5	3
2004	18	20	8	29	38	8
2005*	21	10	8	23	31	3
2006	7	12	9	10	19	1
2007*	10	3	5	8	13	1
2008	7	6	5	8	13	1

* Includes 18 year olds who entered the country as minors.

Source: International Organisation for Migration, Dublin.

Table A14: Top three Nationalities of Unaccompanied Minors Referred for Return to IOM 2002 - 2008

2002	2003	2004	2005	2006	2007	2008
Romania	South Africa	Nigeria	Nigeria	Nigeria	Nigeria	Nigeria
Zambia	Sudan	Romania	Romania	Cameroon	Kenya	Uganda
Lithuania	Albania	South Africa	Russia	Iran	Brazil	Moldova

Source: International Organisation for Migration, Dublin.

APPENDIX B:

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