

ANNUAL POLICY REPORT ON MIGRATION AND ASYLUM 2015: IRELAND

Anne Sheridan and Susan Whelan

November 2016



EMN Ireland





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The European Migration Network

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

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

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The Authors

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This European Migration Network Study, compiled according to commonly agreed specifications, provides a coherent overview of migration, asylum trends and policy developments for 2015. The report consists of information gathered primarily for the EU-level synthesis report of the EMN *Annual Report on Immigration and Asylum 2015*. All reports are available at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

This report has been accepted for publication by the Institute, which does not itself take institutional policy positions. The report has been peer reviewed prior to publication. The authors are solely responsible for the content and the views expressed do not represent the position of the Economic and Social Research Institute, the Irish Naturalisation and Immigration Service, the Department of Justice and Equality, or the European Commission, Directorate-General Migration and Home Affairs.

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Abbreviations and Irish Terms

CJEU	Court of Justice of the European Union
CTA	Common Travel Area
Dáil	Parliament, lower house
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECRI	European Commission Against Racism and Intolerance
ECtHR	European Court of Human Rights
EDAL	European Database of Asylum Law
ERF	European Return Fund
EU	European Union
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU
Gardaí/ Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HEA	Higher Education Authority
HIQA	Health Information and Quality Authority
HSE	Health Services Executive
ICI	Immigrant Council of Ireland
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IRC	Irish Refugee Council
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
MRCI	Migrant Rights Centre Ireland
NASC	The Irish Immigrant Support Centre
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
QQI	Quality and Qualifications Ireland
RAT	Refugee Appeals Tribunal
RIA	The Reception and Integration Agency

Seanad	Parliament, upper house
SIS	Schengen Information System
STEP	Start-up Entrepreneur Programme
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TUSLA	Child and Family Agency
UKBA	United Kingdom Border Agency
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System
WRC	Workplace Relations Commission

Executive Summary

The purpose of this report is to provide an overview of trends, policy developments and significant debates in the area of asylum and migration during 2015 in Ireland.

STATISTICAL OVERVIEW

Provisional end of year figures for 2015 show 114,000 non-EEA nationals with permission to remain in Ireland compared to 105,000 at the end of 2014. The majority of those registered were in Ireland for work or study purposes and went from Brazil (16 per cent), India (11 per cent), China (9 per cent), US (7 per cent) and Pakistan (6 per cent).

The estimated population of Ireland in the twelve months to April 2016 stood at 4.67 million, an overall increase in the population of 38,400. This was due to the combined natural increase of the population together with net inward migration for the first time since 2009. Central Statistics Office (CSO) figures released in April 2016 estimate the number of newly arriving immigrants increased year-on-year to 79,300 at April 2016 from 69,300 at end April 2015. Non-EU nationals represented 40.1 per cent of this total at end April 2016. Almost half of the persons emigrating from Ireland were Irish nationals (31,800 persons or 41.7 per cent). Net migration for non-EU nationals is estimated to be 13,300.

A total of 97,193 visas, both long and short stay, were issued in 2015. The approval rate for 2015 visa applications was 91 per cent.

Approximately 3,215 persons were refused entry to the State at the external borders with 2,315 persons found to be illegally present. A total of 251 persons were returned from Ireland as part of forced return measures with 115 persons availing of voluntary return, of which 93 were assisted by the International Organization for Migration (IOM) Assisted Voluntary Return Programme (VARRP).

There were 1,282 permissions of leave to remain granted under Section 3 of the Immigration Act 1999 during 2015.

There was a rise of 126 per cent in applications for refugee status (3,276) received by the Office of the Refugee Applications Commissioner in 2015, over

2014. There were 152 positive recommendations for a declaration of refugee status at first instance. The Refugee Appeals Tribunal received 759 new appeals from negative determinations of refugee status during the year. The Tribunal issued decisions in 487 cases with ORAC's original recommendation affirmed in 305 cases. The main nationalities of first instance applicants for refugee status were Pakistan, Bangladesh, Albania, Nigeria and India. Countries of origin were broadly similar at appeal stage with Nigerians lodging the highest number of appeals, followed by Pakistan, Albania, DR Congo and Bangladesh.

During the year, ORAC completed 1,480 subsidiary protection cases and 297 new applications for subsidiary protection were submitted to ORAC. There were 181 recommendations made to grant subsidiary protection. The Refugee Appeals Tribunal received 456 appeals for refusals of the grant of subsidiary protection, 124 decisions were issued and 84 cases saw the Tribunal confirm the decision of ORAC.

272 applications for family reunification in respect of recognised refugees were received by ORAC during the year.

During 2015, a total of 78 alleged trafficking victims were identified, compared with 46 in 2014.

LEGISLATION

Several pieces of legislation relevant to the migration and international protection arena were introduced in 2015. The International Protection Act 2015 was signed into law on 30 December 2015 and provides for a single application procedure for international protection and related provisions. Other Acts of the Oireachtas with relevant provisions were the *Prisons Act 2015* and the *Workplace Relations Act 2015*.

Relevant statutory instruments included:

- *European Union (Subsidiary Protection)(Amendment) Regulations 2015 (S.I. No. 137 of 2015);*
- *Employment Permits (Trusted Partner) Regulations 2015 (S.I. No. 172 of 2015);*
- *European Community (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015);*
- *Immigration Act 2004 (Visas) (Amendment) Order 2015 (S.I. No. 175 of 2015);*
- *Immigration Act 2004 (Visas) (Amendment) Order 2015 (S.I. No. 513 of 2015).*

The Government opted into the two EU decisions on relocation; Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015.

CASE LAW

There were a number of significant cases related to migration and asylum during 2015, in the areas of international protection, legal migration, employment law, visa policy, citizenship and trafficking. Case summaries are included under thematic headings throughout the Report.

IRELAND'S REPORTING UNDER UN INSTRUMENTS

Ireland made its third appearance before the UN Committee on Economic, Social and Cultural Rights in relation to Ireland's implementation of the International Covenant on Economic, Social and Cultural Rights (ICESC). Issues raised included the impact of the Habitual Residence Clause (HRC) on migrants' and other vulnerable groups' access to social assistance and housing issues, including reception facilities for asylum seekers.

Ireland also made preparations during 2015 for its appearances before the Human Rights Council for the second cycle of the Universal Periodic Review and on the Convention on the Rights of the Child, both of which took place during 2016.

INTERNATIONAL PROTECTION

Two major developments in the area of International Protection in 2015 were the signing into law of the International Protection Act on 30 December 2015 and the publication of the *Report of the Working Group on Improvements to the Protection Process, including direct provision and supports to asylum seekers* (McMahon Report) in June 2015.

The International Protection Act will bring into effect a single application procedure where applicants will make one application where all grounds for seeking international protection (refugee status and subsidiary protection) will be examined and determined in one process. Permission to remain will be examined in a separate but parallel process. The Act is to be commenced by the Minister for Justice and Equality through various Statutory Instruments throughout 2016.

The Final Report of the Working Group on the Protection Process was published in June 2015. The report contained over 170 recommendations clustered under three thematic headings: suggested improvements to the existing determination process; suggested improvements to living conditions in direct provision centres; and suggested improvements to supports for persons in the system. One of the key recommendations was the early enactment of the International Protection Bill.

IRISH REFUGEE PROTECTION PROGRAMME (IRPP)

The Irish Refugee Protection Programme (IRPP) was approved by Government Decision on 10 September 2015 in response to the migration crisis. The Government confirmed that Ireland will take in up to 4,000 persons in respect of relocation and resettlement.

ECONOMIC MIGRATION

Trusted Partner Initiative

A Trusted Partner Initiative for employment permit applications was introduced by the Department of Jobs, Enterprise and Innovation in May 2015. The purpose of the Trusted Partner Initiative is to ease the administrative burden relating to the employment permit application process for successfully registered Trusted Partners. Registered Trusted Partners do not need to replicate employer information when applying for the employment permit. Specially designed application forms for each of the employment permit classes are available.

The Department of Jobs, Enterprise and Innovation also developed an online status enquiry system for employment permit applications during 2015, which was launched in February 2016.

Atypical Working Scheme

Numbers of applications under the atypical working scheme expanded significantly in 2015; 2,000 applications were approved in 2015 compared to 1,315 in 2014.

In December 2015, the Atypical Working Scheme was expanded to include permission for non-EEA workers to work in the Irish fishing fleet. This followed recommendations made in December 2015 by the Government Task Force regarding non-EEA workers in the Irish fishing fleet. The Task Force was established following media allegations of labour exploitation in the sector.

Immigrant Investor and Start-up Entrepreneur Programmes

Applications continued to be approved under the Immigrant Investor (IIP) and Start-up Entrepreneur (STEP) Programmes in 2015. A total of 25 applications were approved under the STEP programme and 64 applications under the Immigrant Investor Programme.

The programmes represent a combined investment commitment of approximately €75 million in Ireland.

International Students

2015 saw an intensive period of activity related to reform of the student immigration regime, following on from the set of regulatory reforms announced by the Ministers for Education and Science and for Justice and Equality in September 2014.

In May 2015, reforms restricting the list of eligible educational programmes for immigration purposes were announced. The Interim List of Eligible Programmes, replacing the former Internationalisation Register was implemented in two phases throughout 2015.

Learner protection arrangements for the protection of international students were also introduced, including a separate account facility to safeguard student advance payments. These measures were introduced as a result of concerning practices in the sector with the closure of colleges and students losing fees they had paid for courses. These measures were compulsory from October 2015.

Changes to the student work concession were introduced from January 2015 in relation to the standardisation of holiday periods, during which non-EEA students can work 40 hours per week.

INTEGRATION

Funding of €1,386,109 was allocated by the Office for the Promotion of Migrant Integration (OPMI) for integration purposes during 2015, €215,960 of which was allocated to local authorities.

Events were held during 2015 highlighting the engagement of diaspora communities, including Africa Day 2015, which was supported by Irish Aid and the

first India Day, held with the support of various government departments and agencies. Both took place in Farmleigh Estate, Phoenix Park, Dublin.

MIGRATION AND DEVELOPMENT

Ireland and Kenya led United Nations negotiations on the post-2015 Development Agenda throughout 2015. The 2030 Sustainable Development Agenda was adopted at the United Nations Sustainable Development Summit on 25 September 2015.

Ireland has committed funding of €3 million over the period 2016-2020 for the *EU Emergency Trust Fund for Stability and Addressing Root Causes of Irregular Migration and Displaced Persons in Africa*. The Trust Fund was established at the Valletta Summit on Migration in November 2015.

BORDERS AND VISA POLICY

From 16 November 2015, an online appointments booking system was introduced for the re-entry visa service. This replaced the old ticketing system where customers queued at the re-entry Visa Office in Burgh Quay in Dublin. Applicants may now apply via registered post or make an appointment via the online system.

The British-Irish Visa Scheme was extended to India in February 2015. The British-Irish visa scheme facilitates nationals requiring a short-stay visa to travel freely within the Common Travel Area using a single visa issued by either Ireland or the United Kingdom.

The priority project to civilianise front-line immigration at Dublin Airport was progressed during 2015. On 22 June 2015, around 80 civilian Immigration Officers from the Irish Naturalisation and Immigration Service took on full responsibility for border checks at Terminal 1 on a 24/7 365 basis.

TRAFFICKING

A consultation phase was held for the second National Action Plan to Prevent and Combat Human Trafficking in Ireland during 2015. A Roundtable was held in October with NGOs to discuss the issues raised in the written submissions and priorities for implementation in the second National Action Plan. The Action Plan was expected to be published in autumn 2016.

Chapter 1

Introduction

This report is the twelfth in a series of Annual Policy Reports, a series which is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. Previous comparable Annual Policy Reports are also available for a number of other EU countries participating in the European Migration Network. The purpose of the EMN report is to provide an insight into the most significant political and legislative (including EU) developments at Member State level, as well as public debates, in the area of migration and asylum.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, the EMN National Contact Point (NCP) in each Member State and Norway are tasked with providing an annual report detailing the migration and asylum situation in the Member State, including policy developments and statistical data. The information used to produce this report is gathered according to commonly agreed EMN specifications developed to facilitate comparability across countries. Each EMN National Contact Point produces a national report and a comparative synthesis report is then compiled, which brings together the main findings from the national reports and places them within an EU perspective. Since 2009, EMN Annual Policy Reports also contribute to the Commission's Annual Reports on Immigration and Asylum, reviewing progress made in the implementation of asylum and migration policy.

All current and prior reports are available at www.emn.ie.¹

The EMN *Annual Policy Report on Migration and Asylum 2015: Ireland* covers the period 1 January 2015 to 31 December 2015.

1.1 METHODOLOGY

For the purpose of the 2015 report, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the

¹ Available National Reports from other EMN NCPs can be found at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

definition of a 'significant development/debate' within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development. Developments will also be considered significant if they subsequently led to any proposals for amended or new legislation.

A significant development is defined in the Irish report as an event involving one or more of the following:

- All legislative developments;
- Major institutional developments;
- Major debates in parliament and between social partners;
- Government statements;
- Media and civil society debates;
- If the debate is also engaged with in parliament; or
- Items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit;
- Academic research.

In terms of sources and types of information used, these generally fall into several categories:

- Published and adopted national legislation;
- Government press releases, statements and reports;
- Published government schemes;
- Media reporting (both web-based and print- media);
- Other publications (e.g. European Commission publications; I/NGO Annual Reports; publications and information leaflets);
- Case Law reporting.

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office. Where noted, and where not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Where possible, verified data have been used; where provisional data have been included, this has been highlighted accordingly.

In order to provide a comprehensive and reflective overview of national legislative and other debates, a sample of core partners were contacted with regard to input on a draft report:

- Department of Jobs, Enterprise and Innovation;
- Department of Justice and Equality;
- Department of Foreign Affairs and Trade;
- Child and Family Agency, TUSLA;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM);
- Irish Refugee Council (IRC);
- Migrant Rights Centre Ireland (MRCI);
- Office of the Refugee Applications Commissioner (ORAC);
- UNHCR Ireland.

All definitions for technical terms or concepts used in the study are as per the EMN Migration and Asylum Glossary 3.0.²

Three departments are involved in migration management in Ireland (see Figure 1).

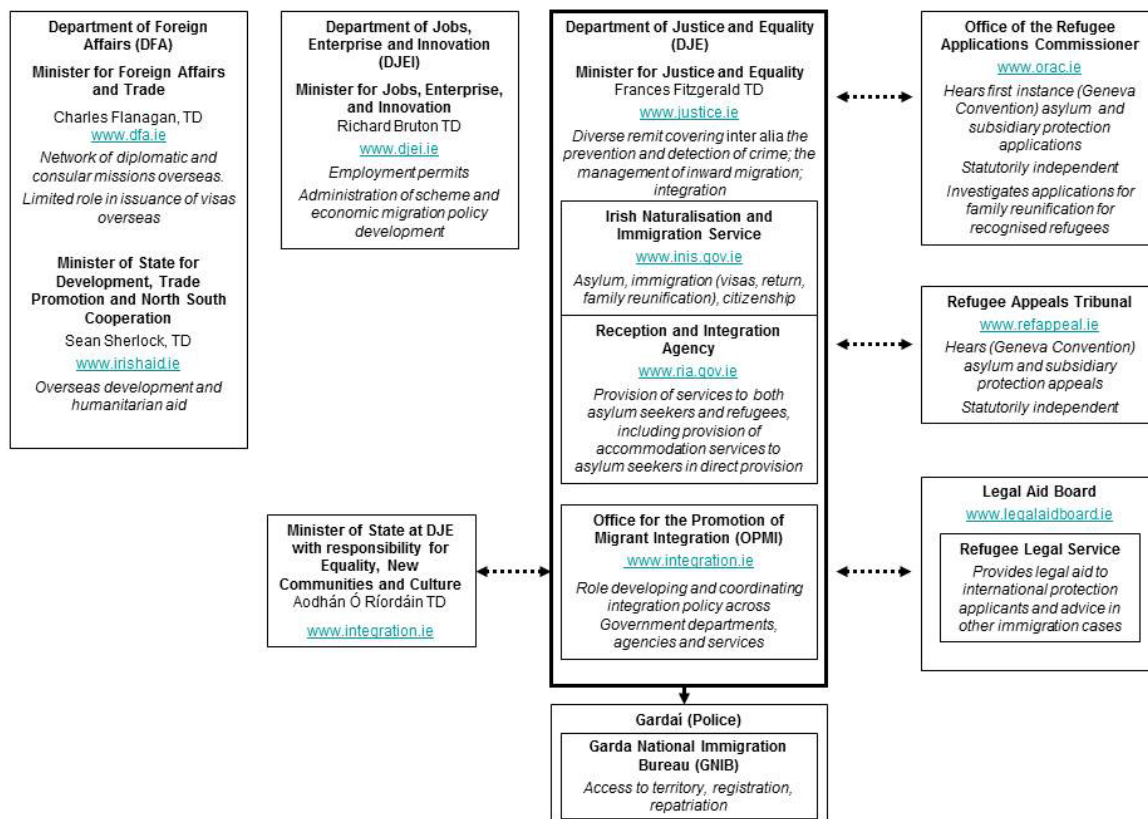
In addition, the Child and Family Agency, TUSLA, is responsible for administration of the care for unaccompanied third-country minors in the State and sits under the Department of Children and Youth Affairs.

² Available at www.emn.ie and http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

1.2 STRUCTURE OF ASYLUM AND MIGRATION POLICY

1.2.1 Institutional Context

FIGURE 1 Institutions in Ireland with Responsibility for Asylum and Immigration 2015



1.2.1.1 Department of Justice and Equality

The Department of Justice and Equality³ is responsible for immigration management. The minister of that Department has ultimate decision-making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice and Equality. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports, and at a border control unit attached to Dundalk Garda Station.

In addition the Anti-Human Trafficking Unit⁴ is part of the Department. Within Ireland, in addition to the Anti-Human Trafficking Unit within the Department of

³ www.justice.ie.

⁴ www.justice.ie/en/JELR/Pages/WP09000005.

Justice and Equality, there are three other dedicated units dealing with this issue; the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised human trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Director of Public Prosecutions (DPP) Office, as well as in the New Communities and Asylum Seekers Unit within the Department of Social Protection which is tasked with providing assistance to suspected victims not in the asylum system, to assist with their transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

The Irish Naturalisation and Immigration Service (INIS)⁵ is responsible for administering the statutory and administrative functions of the Minister for Justice and Equality in relation to asylum, visa, immigration and citizenship processing, asylum, immigration and citizenship policy and repatriation. The INIS also brings the Reception and Integration Agency (RIA)⁶ under its aegis. The Reception and Integration Agency (RIA) is responsible for co-ordinating the provision of services to persons seeking international protection.⁷ It also co-ordinates the provision of services such as health and education to asylum seekers in RIA accommodation. Since 2004, it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social Protection,⁸ of destitute nationals of the 13 new Member States which have joined the EU since 2004. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the *1951 Geneva Convention relating to the status of refugees*, a two-tier structure exists for asylum application processing, consisting of the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT). These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. On 14 November 2013, responsibility for processing all existing and future subsidiary protection applications transferred from the Irish Naturalisation and Immigration Service (INIS) to the Office of the Refugee Applications Commissioner (ORAC) under

⁵ www.inis.gov.ie.

⁶ www.ria.gov.ie.

⁷ Direct provision provides for full board accommodation supports while a final decision is awaited by a person on their protection or any related leave to remain application. See Parliamentary Question No. 323 (18 November 2014). Available on www.oireachtasdebates.oireachtas.ie and www.ria.gov.ie.

⁸ www.welfare.ie.

Statutory Instrument No 426 of 2013, the European Union (Subsidiary Protection) Regulations 2013. Both bodies make recommendations on asylum and subsidiary protection applications to the Minister for Justice and Equality. Under Section 17(1) of the Refugee Act 1996 the Minister is bound to accept a positive recommendation of refugee status but retains a residual discretion in making a final decision on whether refugee status is refused in the case of a negative recommendation.⁹ In the case of subsidiary protection recommendations, the Minister is bound to follow their recommendations.¹⁰ Both ORAC and the Refugee Appeals Tribunal have their own independent statutory existence. The Department also ensures they have input into the co-ordination of asylum policy.

The *International Protection Act 2015* was signed into law on the 30 December 2015. When commenced, it will provide for a single application procedure and changes in the determination structures.¹¹

The Refugee Applications Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications. Applications for family reunification from beneficiaries of subsidiary protection status are submitted directly to the Minister for Justice and Equality for investigation and decision.

The Refugee Documentation Centre (RDC)¹² is an independent library and research service within the Legal Aid Board.¹³ The specialised Services for Asylum Seekers office within the Legal Aid Board also provides ‘confidential and independent legal services’ to persons applying for asylum in Ireland. Legal aid and advice is also provided in ‘appropriate cases’ on immigration and deportation matters.¹⁴ Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as ‘potential victims’ of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also comes under the auspices of the Department of Justice and Equality.¹⁵ With a focus on the

⁹ Section 17(1) of the Refugee Act 1996.

¹⁰ See Regulation 20(1) and (3) of European Union (Subsidiary Protection) Regulations 2013 (*S.I. No 426 of 2013*).

¹¹ *International Protection Act 2015 (Commencement) S.I. No 26 of 2016* and *International Protection Act 2015 (Commencement) (No. 2) S.I. No 133 of 2016* were both introduced under the *International Protection Act 2015* during 2016.

¹² www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.

¹³ www.legalaidboard.ie.

¹⁴ *Ibid.*

¹⁵ www.integration.ie.

promotion of the integration of legal immigrants into Irish society, the OPMI has a cross-Departmental mandate to develop, lead and co-ordinate integration policy across government departments, agencies and services. Ireland joined the UNHCR-led resettlement scheme in 1998. The OPMI co-ordinates the resettlement of refugees admitted by Ireland under the Programme, as well as the administration of EU and national funding for the promotion of migrant integration. The Irish Refugee Protection Programme (IRPP) was approved by Government on 10 September 2015 in response to the migration crisis. Under this Programme, the Government confirmed that Ireland will take in up to 4,000 persons by the end of 2017 in respect of relocation and resettlement refugees.¹⁶

1.2.1.2 Department of Jobs, Enterprise and Innovation

The Department of Jobs, Enterprise and Innovation¹⁷ administers the employment permit schemes under the general auspices of the Labour Affairs Development Division:

- The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.
- The Employment Permits Section¹⁸ implements a skills oriented employment permits system in order to fill those labour skills gaps which cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits, issues guidelines, information and procedures, and produces online statistics on applications and permits issued.¹⁹
- The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national researchers pursuant to *Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research*.

1.2.1.3 The Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade²⁰ has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated Visa Office present within the country.²¹ The Department of Foreign Affairs has operative function only and is

¹⁶ Department of Justice and Equality (10 September 2015). 'Ireland to accept up to 4,000 persons under Relocation and Resettlement Programmes'. *Press Release* Available at: www.justice.ie.

¹⁷ www.djei.ie.

¹⁸ www.djei.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits.

¹⁹ Department of Jobs, Enterprise and Innovation, April 2015.

²⁰ www.dfa.ie.

²¹ See Quinn (2009) for further discussion.

not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality.

Irish Aid, under the auspices of the Department of Foreign Affairs and Trade, administers Ireland's overseas development and humanitarian aid programme, with a focus, in particular, on reducing poverty and hunger in countries in sub-Saharan Africa.²²

1.2.2 General Structure of the Legal System

The Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice and Equality. In accordance with the Constitution, justice is administered in public, in courts established by law, with judges appointed by the President on the advice of the Government. Independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are five types of courts in Ireland which hear different types and levels of cases. In ascending hierarchical order the five types of courts are:

- The District Court;
- The Circuit Court;
- The High Court;
- The Court of Appeal;
- The Supreme Court.

The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review. Judicial review focuses on assessing the determination process through which a decision was reached to ensure that the decision-maker made their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.²³

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under such instruments as the *Hope Hanlon* procedure, the *Aliens Act 1935* (and Orders made under that Act),²⁴ together with the relevant EU free movement Regulations and Directives²⁵ which

²² www.irishaid.ie.

²³ Available at www.citizensinformation.ie.

²⁴ *Aliens Order 1946* (S.I. No. 395 of 1946); *Aliens (Amendment) Order 1975* (S.I. No. 128 of 1975).

²⁵ Relevant EU legislation included *Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC on freedom of movement for workers within the Community, 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, 72/194/EEC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, 73/148/EEC on the*

came into effect in Ireland after it joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act 1996*, as amended. In addition, the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)* seeks to ensure compliance with EU Directive 2004/83/EC.²⁶

The *European Union (Subsidiary Protection) Regulations 2013 (S.I. 426 of 2013)* amended *S.I. 518 of 2006*. The 2013 Regulations were made following the judgement in the ‘MM’ case²⁷ and provided for, amongst other things, the transfer of responsibility for the processing of subsidiary protection applications from the Minister for Justice and Equality to the Office of the Refugee Applications Commissioner. The 2013 Regulations were amended by the *European Union (Subsidiary Protection)(Amendment) Regulations 2015 (S.I. No. 426 Of 2015)* following judgment in the CJEU case *HN v. Minister for Justice, Equality and Law Reform, Ireland and the Attorney General Case C-604/12*. The new Regulations came into effect on 20 April 2015 and give statutory effect to arrangements which were already in operation at ORAC since the 14 of November 2013:

- Any person who makes a new application for refugee status may also make a concurrent application for subsidiary protection to ORAC,;
- Any person who currently has a pending application for refugee status may submit an application for subsidiary protection to ORAC.

Ireland is also a signatory to the ‘Dublin Convention’, and is subject to the ‘Dublin Regulation’ which determines the EU Member State responsible for processing asylum applications made in the EU. Regulation 604/2013²⁸ (‘the Dublin III Regulation’) came into force on 29 June 2013. The *European Union (Dublin*

abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, 75/34/EEC concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, 90/364/EEC on the right of residence, 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity, and 93/96/EEC on the right of residence for students.

²⁶ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Quinn (2009) discusses both current and past development of legislation in great detail.

²⁷ (Case C-277/11) *MM v. Minister for Justice* [2012] ECR I-744.

²⁸ Regulation (EU) No 604/2013 (Dublin III Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See *EMN Asylum and Migration Glossary 3.0*. Available at www.emn.ie.

System) Regulations 2014 were adopted for the purpose of giving further effect to the Dublin III Regulation.

S.I. No. 310 of 2008 amended the *European Communities (Free Movement of Persons)(No. 2) Regulations 2006 (S.I. No. 656 of 2006)* following the *Metock* judgment of the European Court of Justice (ECJ). The *European Community (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015)* were signed into law on 1 December 2015 and give further effect to Directive 2004/38/EC ('Free Movement Directive').

Domestic immigration law in Ireland is based on various pieces of legislation including the *Aliens Act 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*; and the *Immigration Acts 1999, 2003 and 2004*.²⁹

Regarding the situation of Ireland concerning an 'opt-in' provision regarding EU measures in asylum and migration, under the terms of the *Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union*, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the TFEU unless it decides to participate in the measure pursuant to a motion of the Houses of the Oireachtas. Under Declaration number 56 to the TFEU, Ireland has declared its

*firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.*³⁰

²⁹ See Quinn (2009) for further discussion on this issue, particularly legislative development.

³⁰ Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (TFEU). Ireland also 'affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety'. An example is Ireland's participation in Council Directive 2005/71/EC ('the Researchers' Directive').

Chapter 2

Legislative and Statistical Context

2.1 LEGISLATION

Several pieces of legislation relevant to the migration and international protection arena were introduced in 2015.

Relevant Acts of the Oireachtas were the *International Protection Act 2015*, the *Prisons Act 2015* and the *Workplace Relations Act 2015*.

Relevant statutory instruments included the following:

- *Freedom of Information Act 2014 (Effective date for certain bodies) Order 2015 (S.I. No. 148 of 2015);*
- *European Union (Subsidiary Protection)(Amendment) Regulations 2015 (S.I. No. 137 of 2015);*
- *European Community (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015);*
- *Immigration Act 2004 (Visas)(Amendment) Order 2015 (S.I. No. 175 of 2015);*
- *Immigration Act 2004 (Visas)(Amendment) Order 2015 (S.I. No. 513 of 2015);*
- *Employment Permits (Trusted Partner) Regulations 2015 (S.I. No. 172 of 2015);*
- *National Minimum Wage Order 2015 (S.I. No. 442 of 2015);*
- *Immigration Act 2004 (Student Probationary Extension)(Giving of Permission)(Fee) Regulations 2015 (S.I. No. 133 of 2015).*

2.2 IRELAND'S REPORTING UNDER UNITED NATIONS INSTRUMENTS

2.2.1 *International Covenant on Economic, Social and Cultural Rights (ICESC) Periodic Review*

During 2015, Ireland made its third appearance before the Committee on Economic Social and Cultural Rights (CESCR) in its Periodic Examination of Ireland's compliance with the Covenant on Economic Social and Cultural Rights.

The Committee issued a series of questions to Ireland on its compliance with its obligations under the Covenant³¹ to which the Government responded in April 2015.³² Oral examination hearings took place in June 2015.³³

Much of the focus in this review was on examining the recession in Ireland from 2008 and the impact of austerity policies in responding to the economic and financial crises within that period. Of most relevance to this report is the examination of areas of relevance to the treatment of migrants and asylum seekers in the State; mainly in relation to access to housing and the effect of the Habitual Residence Condition (HRC)³⁴ on social welfare entitlements.³⁵

The Committee asked Ireland to comment on whether or not consideration would be given to review the HRC 'with a view to eliminating its discriminatory impact on vulnerable persons, such as victims of domestic violence, asylum seekers and Travellers.'³⁶ It also asked for clarification of measures to ensure adequate accommodation for asylum seekers and to ensure that migrants are not discriminated against in accessing housing.³⁷

In its reply to the List of Issues, the State informed the Committee that it had no plans to review the application of the HRC. In relation to asylum seekers specifically, the State outlined its position that, as asylum seekers reside in the

³¹ UN Committee on Economic Social and Cultural Rights (17 December 2014). *List of Issues in relation to the third periodic report of Ireland* UN Doc. E/C.12/IRL/Q/3 Available at: www.ohchr.org.

³² UN Committee on Economic Social and Cultural Rights (8 April 2015). *List of Issues in relation to the third periodic report of Ireland Reply of Ireland to the list of issues* UN Doc. E/C.12/IRL/Q/3/Add.1 Available at: www.ohchr.org

³³ UN Committee on Economic Social and Cultural Rights (8 June 2015). *Summary record of the 32nd meeting* UN Doc. E/C.12/2015/SR.32 and UN Committee on Economic Social and Cultural Rights (8 June 2015). *Summary record of the 33rd meeting* UN Doc. E/C.12/2015/SR.33 Available at: www.ohchr.org.

³⁴ Habitual Residence Condition (HRC) is a condition which applicants must satisfy for certain social welfare payments and Child Benefit. Habitual Residence means you are residing in Ireland and have proven close links to the State. Source: Department of Social Protection (February 2016). SW 108: Habitual Residence Condition Available at: www.welfare.ie.

³⁵ Article 9, the right to social security and Article 11, the right to an adequate standard of living.

³⁶ UN Committee on Economic Social and Cultural Rights (17 December 2014) *List of Issues in relation to the third periodic report of Ireland* UN Doc. E/C.12/IRL/Q/3 paragraph 14. Available at: www.ochr.org.

³⁷ *Ibid.*, paragraph 17.

State on a temporary basis pending the outcome of their application for asylum, they could not be considered to be habitually resident. The State also informed the Committee that the biggest problem with social assistance payments to victims of domestic violence was not the HRC but the right to reside in Ireland. The Department of Justice and Equality has commenced issuing 'Stamp 4' residence permissions to victims of domestic violence whose residence entitlement is based on their relationship with the perpetrator of domestic violence. This permission allows the victim to reside and work independently. The State therefore argued that once the person had resided for some time and had formed an attachment to the country, there should be no difficulty with the habitual residence condition.³⁸

The current policy of accommodating asylum seekers in direct provision accommodation was set out in the Irish response and the response also reported on the Working Group which was to report to Government on improvements in the system. The response also stated that the proposed International Protection Bill would streamline existing arrangements, thus reducing the length of time applicants spend in direct provision accommodation.³⁹

The Irish Human Rights and Equality Commission (IHREC) reported to the Committee⁴⁰ and civil society produced a Parallel Report.⁴¹

The IHREC also raised concerns about the Habitual Residence Condition (with regard to its impact on migrants, asylum seekers, victims of domestic violence)⁴² and living conditions in direct provision accommodation, including that families should not be accommodated in direct provision centres.⁴³

The IHREC report also made recommendations in relation to forced labour and trafficking including calling for the State to put in place a statutory scheme for the identification and protection of alleged victims of trafficking in line with EU

³⁸ UN Committee on Economic Social and Cultural Rights (8 April 2015) *List of Issues in relation to the third periodic report of Ireland. Reply of Ireland to the list of issues* UN Doc. E/C.12/IRL/Q/3/Add.1, paragraph 55. Available at: www.ochr.org.

³⁹ *Ibid.*, paragraphs 79 and 80.

⁴⁰ Irish Human Rights and Equality Commission (May 2015). *Ireland and the International Covenant on Economic, Social and Cultural Rights. Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*. Available at: www.ihrec.ie.

⁴¹ FLAC (May 2015). *Our Voice, our rights: An Update to the Civil Society Parallel Report in response to Ireland's Third Report under the International Covenant on Economic, Social & Cultural Rights* Available: www.flac.ie.

⁴² Irish Human Rights and Equality Commission (May 2015). *Ireland and the International Covenant on Economic, Social and Cultural Rights. Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review* Available at: www.ihrec.ie, Section 7.1.

⁴³ *Ibid.*, Section 9.1.3.

Directive 2011/36/EU.⁴⁴ In relation to unaccompanied minors, the report recommended that the State consider extending aftercare provision for aged-out separated children and for the ongoing review of the Joint Protocol between the Gardaí and Health Service Executive in relation to missing separated children.⁴⁵

The IHREC report also regretted the lapse of the *National Action Plan Against Racism 2005-2008* and the closure of the National Consultative Committee on Racism and Interculturalism (NCCRI) in 2008.⁴⁶ The report recommended for the new Integration Strategy to combine elements of both the National Action Plan against Racism and the previous integration strategy to promote positive social inclusion measures to combat racism, intolerance and xenophobia and for an appropriate body to monitor such incidents and gather the data to inform evidence based policy responses.⁴⁷

The updated *Our Voice, Our Rights* parallel report from civil society to the CESCR⁴⁸ also highlighted the difficulties for migrant victims of domestic violence in accessing social welfare supports due to the application of the Habitual Residence Condition.⁴⁹ The report's recommendations also included calling for the introduction of an earned regularisation scheme for undocumented migrants,⁵⁰ for the State to opt in to the recast Reception Conditions Directive (2013/33/EU)⁵¹ and for the introduction of ethnic identifiers in data collection to inform policy development by the State.⁵²

In its concluding observations, the Committee recommended a review of the Habitual Residence Condition, in particular in relation to how it impacts on access to social security for vulnerable groups.⁵³ The Committee also recommended that living conditions in direct provision centres be improved and that the State take

⁴⁴ Irish Human Rights and Equality Commission (May 2015). *Ireland and the International Covenant on Economic, Social and Cultural Rights. Report to UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review* Available at: www.ihrec.ie, Section 6.3.

⁴⁵ Ibid., Section 8.5.1.

⁴⁶ The IHREC noted that it is currently charged with promoting interculturalism, however the IHREC 'does not consider itself to be the appropriate body to monitor racist incidents and calls for an appropriate mechanism to be established' Irish Human Rights and Equality Commission (May 2015). *Submission to the Committee on Economic, Social and Cultural Rights on the Examination of Ireland's Third Periodic Report under the International Covenant on Economic, Social and Cultural Rights* Available at: www.ihrec.ie.

⁴⁷ Ibid., Section 4.3.

⁴⁸ FLAC (May 2015). *Our Voice, Our Rights: An Update to the Civil Society Parallel Report in response to Ireland's Third Report under the International Covenant on Economic, Social & Cultural Rights* Available at: www.flac.ie.

⁴⁹ Ibid., Section 9.1.1.

⁵⁰ Ibid., Section 7.

⁵¹ Ibid., Section 11.4.

⁵² In relation to health and education. Ibid. Sections 12 and 13.

⁵³ UN Committee on Economic Social and Cultural Rights (8 July 2015). *Concluding observations on third periodic report of Ireland* UN Doc. E/C.12/IRL/CO/3, paragraph 21. Available at: www.ohchr.org.

steps to improve reception conditions for asylum seekers with a view to ensuring their economic, social and cultural rights.⁵⁴

2.2.2 Second Cycle of the Universal Periodic Review

The first cycle of the UN's Universal Periodic Review (UPR) of Ireland took place in 2011 with the second cycle hearing due to take place in May 2016. Ireland submitted an Interim Report on the Universal Periodic Review in February 2014.⁵⁵ Preparations for the second cycle examination were undertaken during 2015 by both the State and civil society actors. The focus of the second and subsequent cycles of the UPR is to review the 'implementation of accepted recommendations and the developments of the human rights situations in the State under review' as decided by a resolution of the UN Human Rights Committee in April 2011.⁵⁶

The Interdepartmental Committee on the UPR was reconvened in June 2015⁵⁷ and the Department of Justice and Equality sought written submissions in October in relation to the preparation of the Irish National Report under the second cycle of the UPR process from civil society and interested stakeholders.⁵⁸ This was followed by a public consultation meeting in November to discuss these submissions.⁵⁹ The issues raised were similar to those raised in the civil society submissions to the UN Human Rights Council in September.⁶⁰

Many similar issues as those highlighted during the third periodic report of the ICESCR were raised in the stakeholder submissions to the Human Rights Council.⁶¹ These included the need for a robust monitoring mechanism to address racial discrimination, review of existing legal framework in regard to racially motivated

⁵⁴ UN Committee on Economic Social and Cultural Rights (8 July 2015). *Concluding observations on third periodic report of Ireland* UN Doc. E/C.12/IRL/CO/3, paragraph 14. Available at: www.ohchr.org.

⁵⁵ Universal Periodic Review Ireland National Interim Report (February 2014). Available at www.upr.ie.

⁵⁶ Human Rights Council (April 2011). *Resolution 16/21: Review of the work and functioning of the Human Rights Council* UN Doc. A/HRC/RES/16/21 Available at www.ohchr.org.

⁵⁷ During the first review under the UPR, the Government established an interdepartmental working group, supported by the Department of Justice and Equality. A dedicated website www.upr.ie was launched which provided information on the UPR process and facilitated the making of submissions.

⁵⁸ Department of Justice and Equality (7 October 2015) 'Minister for Equality announces details of consultation processes on human rights in Ireland' *Press Release* Available on www.justice.ie.

⁵⁹ Department of Justice and Equality (November 2015) *Report of the issues raised at UPR public and civil society consultation meeting*.

⁶⁰ These contributions included:

Irish Human Rights and Equality Commission (September 2015) *Irish Human Rights and Equality Commission Submission to the Second Cycle on Universal Periodic Review* Available at www.ihrec.ie.

Immigrant Council of Ireland et al. (September 2015). *Joint Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review* Available at: www.statelessness.eu.

Your Rights, Right Now (September 2015). *Submission by the Irish Civil Society Coalition, Your Rights, Right Now for the 25th Session of the UPR Working Group April/May 2016* Available at: www.rightsnow.ie.

⁶¹ Summary of 49 stakeholder submissions. This covered both the submission of the national human rights body IHREC and submissions by other stakeholders, including civil society. United Nations General Assembly (23 February 2016). *Summary prepared by the Office of the UN High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21* UN doc. A/HRC/WG.6/25/IRL/3. Available at www.ohchr.org.

crime; problems with the interpretation of the Habitual Residence Condition for access to social security payments and calls to implement an earned regularisation scheme for undocumented migrants and issues with the direct provision accommodation system. The discretionary nature of the wider immigration and residence system in Ireland and the lack of comprehensive legal reform was also noted.⁶² Issues within the direct provision system and the asylum determination process were also raised.

The issue of statelessness had not been raised in the first cycle of the UPR and as such, no specific recommendation in relation to statelessness had been made. A joint submission by the Immigrant Council of Ireland, the Institute on Statelessness and Inclusion and the European Network on Statelessness to the Human Rights Council sought to highlight the issue to add it to the deliberations of the second cycle. They recommended for Ireland to fully incorporate the relevant instruments into national law, to collect statistics in relation to the numbers of persons affected by statelessness and for the State to adopt a formal statelessness determination procedure.⁶³

The Irish National Report was submitted to the UN Human Rights Council in February 2016.

2.2.3 Examination under the UN Convention on the Rights of the Child

During 2015, the State, national human rights bodies⁶⁴ and civil society stakeholders⁶⁵ participated in the preliminary stages of the examination under the Convention on the Rights of the Child. In July 2015, the Committee on the Convention on the Rights of the Child issued its List of Issues in relation to the combined third and fourth reports of Ireland.⁶⁶ Among the issues listed for response were a number of questions of relevance to the treatment of migrant and protection seeking children within the State, including access to independent

⁶² Immigrant Council of Ireland (September 2015). *Universal Periodic Review: Ireland Submission by the Immigrant Council of Ireland to the Human Rights Council at the 25th Session of the Universal Periodic Review*, paragraph 8. Available at: www.immigrantcouncil.ie.

⁶³ Immigrant Council of Ireland et al. (September 2015). *Joint Submission to the Human Rights Council at the 25th Session of the Universal Periodic Review* Available at: www.statelessness.eu.

⁶⁴ Irish Human Rights and Equality Commission (December 2015). *Ireland and the United Nations Convention on the Rights of the Child. Report by the Irish Human Rights and Equality Commission to the UN Committee on the Rights of the Child on Ireland's combined third and fourth periodic reports*. Available at: www.ihrec.ie; Ombudsman for Children (April 2015). *Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on Ireland's consolidated Third and Fourth Report to the Committee*. Available at www.oco.ie; Ombudsman for Children (December 2015). *Supplementary Submission by the Ombudsman for Children to the UN Committee on the Rights of the Child further of the Replies of Ireland to the Committee's List of Issues concerning Ireland's combined Third and Fourth Periodic Reports* Available at www.oco.ie.

⁶⁵ Children's Rights Alliance (September 2015). *Are we there yet? Parallel Report to Ireland's Third and Fourth Periodic Report under the UN Convention on the Rights of the Child* Available at: www.childrensrightrights.ie; Children's Rights Alliance (December 2015). *Submission on the Replies of Ireland to the List of Issues* Available at: www.childrensrightrights.ie.

⁶⁶ UN Committee on the Rights of the Child (15 July 2015). *List of Issues in relation to the combined third and fourth reports of Ireland* CRC/C/IRL/Q/3-4 Available at www.ohchr.org.

complaints mechanisms on issues related to asylum, immigration, naturalisation citizenship, access to independent legal advice for asylum seekers, measures taken to ensure that unaccompanied minors in an irregular migration situation are not left stateless or in a situation of legal ambiguity as regards their migration status upon attaining the age of majority and the impact of austerity measures and the operation of the Habitual Residence Condition (HRC) on children from a migrant background. There was also a specific question on the direct provision system and its impact on children.

The Irish reply to the List of Questions, submitted in October 2015, outlined the State's various complaints mechanisms and the welfare measures designed to mitigate the impact of austerity policies on children.⁶⁷ It provided an overview of the HRC which is used for determining access to social protection schemes, noting that the policy does not apply to ascertaining eligibility for health services.⁶⁸ Details on planned consultations by the Department of Children and Youth Affairs in cooperation with the Reception and Integration Agency with children living in direct provision were also included in the submission.

The impact of the HRC on ethnic minority children was among the issues discussed in a number of the human rights bodies and civil society contributions, particularly in relation to Child Benefit.⁶⁹ The Children's Rights Alliance noted that the use of the HRC in this manner excludes, by their estimation, over 10,000 children from Child Benefit payments due to their parents' immigration status or migration history.⁷⁰

The hearings took place in January 2016.

2.3 POPULATION AND MIGRATION ESTIMATES 2016

Central Statistics Office (CSO) figures in the *Population and Migration Estimates 2016* show an overall increase in the population which brings the population

⁶⁷ UN Committee on the Rights of the Child (15 July 2015). *List of Issues in relation to the combined third and fourth reports of Ireland Replies of Ireland to the list of issues CRC/C/IRL/Q/3-4/Add.1* Available at www.ohchr.org.

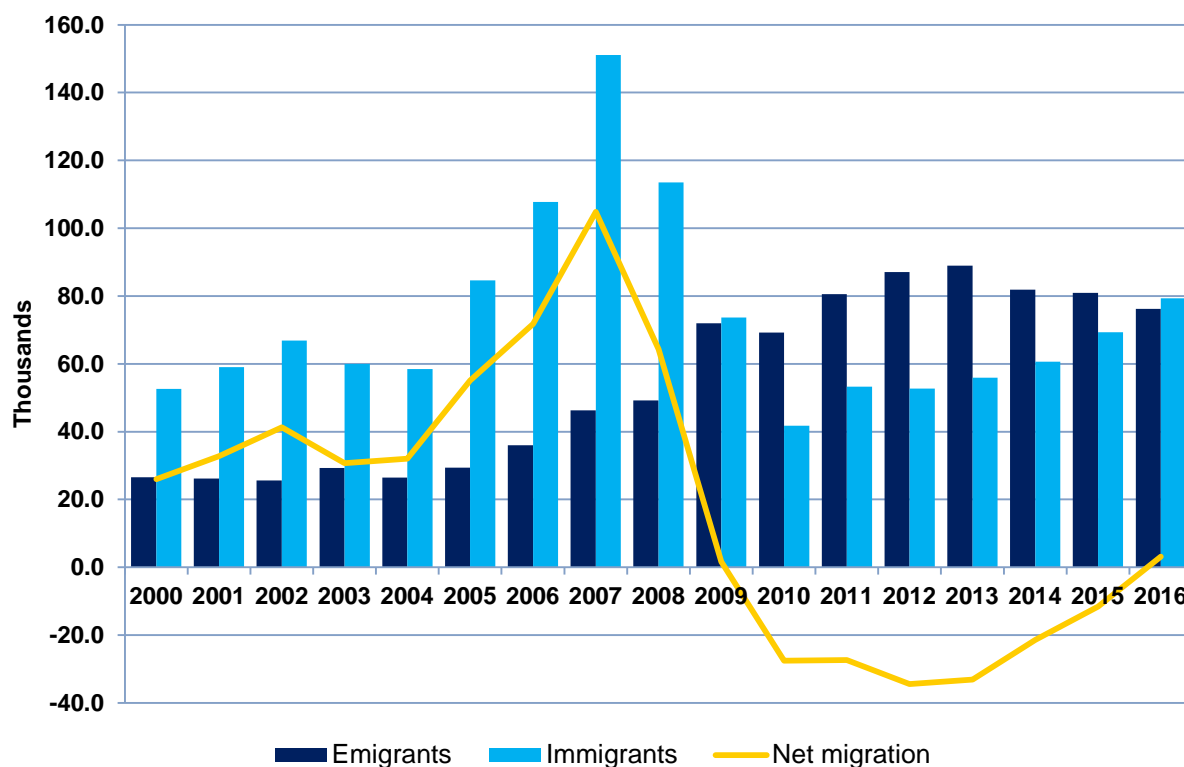
⁶⁸ Entitlement to health services, including primary health services, is primarily based on means and being ordinarily resident in the State (a person is ordinarily resident if he/she is living in Ireland and has lived here, or intends to live here, for at least one year). Committee on the Rights of the Child (15 July 2015). *List of Issues in relation to the combined third and fourth reports of Ireland Replies of Ireland to the list of issues CRC/C/IRL/Q/3-4/Add.1* Available at www.ohchr.org.

⁶⁹ Child Benefit is not a social welfare entitlement but rather a non-means tested 'universal' payment which is not reliant on parents making social insurance contributions in order to receive it. See www.welfare.ie.

⁷⁰ Children's Rights Alliance (December 2015). *Submission on the Replies of Ireland to the List of Issues* Available at: www.childrensrights.ie.

estimate to 4.67 million for the year to April 2016.⁷¹ This was due to the combined natural increase of the population together with net inward migration for the first time since 2009 which led to an overall increase in the population of 38,400.

FIGURE 2 Gross and Net Migration, Ireland 2000-2016



Source: Population and Migration Estimates, CSO.

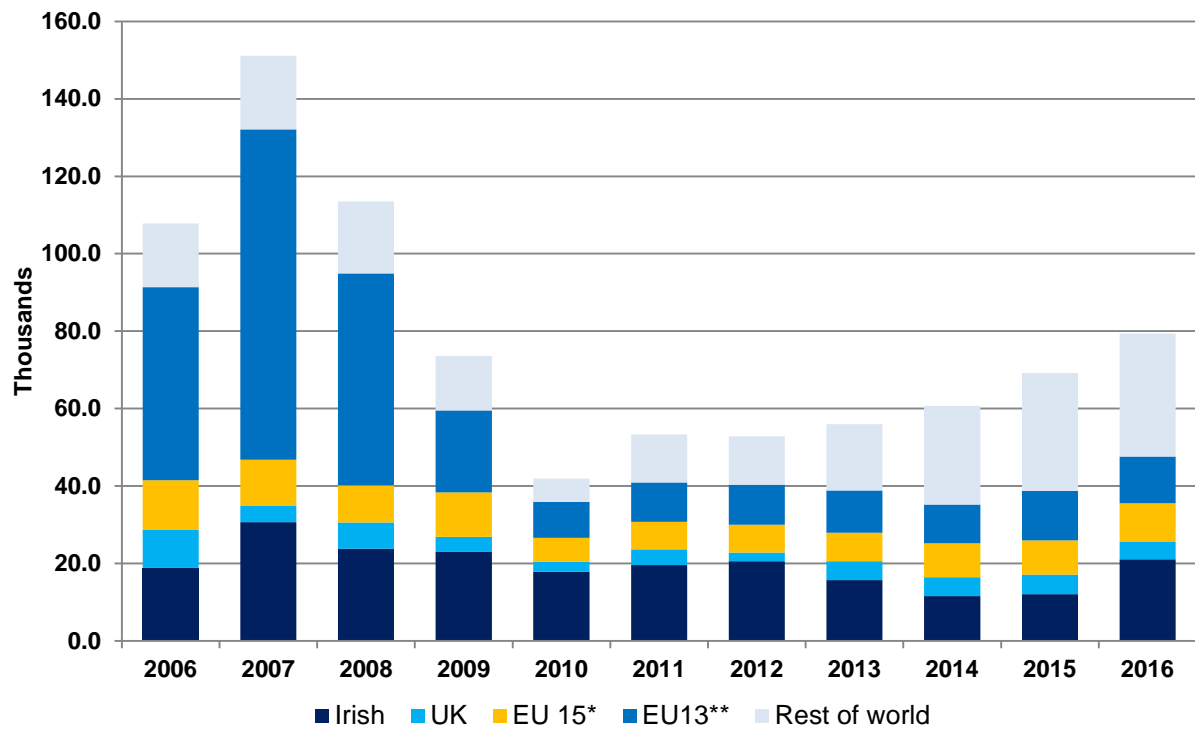
Notes: *EU15 excluding UK and Ireland.

** EU13 Member States that joined in 2004, 2007 and 2013.

Figure 2 shows gross and net migration for Ireland from 2000 to end April 2016. The overall migration flows among non-EU nationals was represented strongly in the overall figures, as they accounted for 40.1 per cent of total immigrants (31,800) and 24.3 per cent of total emigrants (18,500). This resulted in an overall net inward migration figure of 13,300 for non-EU nationals.⁷²

⁷¹ Preliminary results from the 2016 Census of Population show a population of 4.76 million, a difference of 84,000 from the population estimates. The CSO plans to revise the usual residence estimates for 2012-2016 following the release of the final detailed Census results in 2017.

⁷² Central Statistics Office (2016). *Population and Migration Estimates*. Available at www.cso.ie.

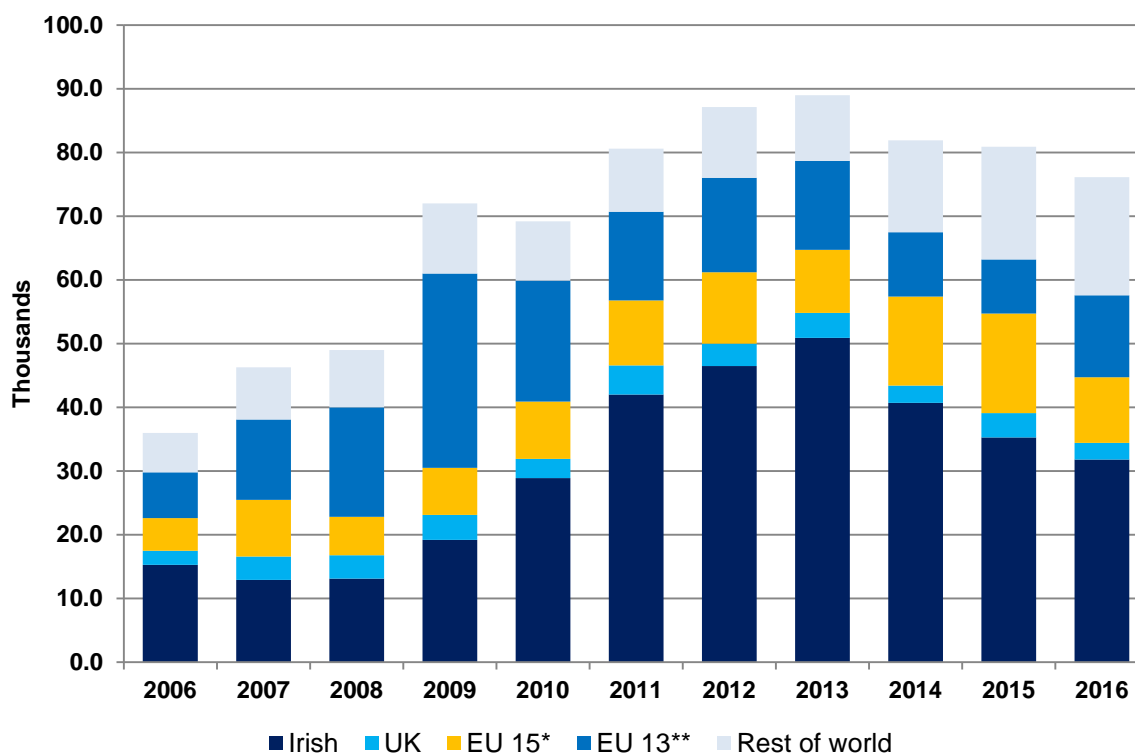
FIGURE 3 Estimated Immigration to Ireland, 2006-2016

Source: Population and Migration Estimates, CSO.

Notes: *EU15 excluding UK and Ireland.

** EU13 Member States that joined in 2004, 2007 and 2013.

The estimated total number of immigrants entering Ireland increased year-on-year to 79,300 in the 12 months to April 2016 from 69,300 in April 2015, an increase of 14.4 per cent (see Figure 3). The largest group of immigrants during this period were non-EU nationals (31,800) followed by returning Irish nationals (21,100). Compared to the April 2015 figure, returning Irish nationals increased by 74.4 per cent (9,000) in the year to April 2016.

FIGURE 4 Estimated Emigration from Ireland, 2006-2016

Source: Population and Migration Estimates, CSO.

Notes: *EU15 excluding UK and Ireland.

** EU13 Member States that joined in 2004, 2007 and 2013.

Whilst there has been an overall drop in the numbers of people emigrating from Ireland year-on-year (see Figure 4), the number of non-EU nationals emigrating from Ireland continues to increase from an estimated 17,700 in April 2015 to 18,500 in April 2016, an increase of 4.5 per cent. Irish nationals remained the largest category of emigrants, accounting for 41.7 per cent of persons emigrating (31,800). However, it was a slight decrease on the 35,300 Irish nationals who emigrated in the year to April 2015. Overall, there was a decrease of 5.8 per cent in the numbers of persons emigrating in the period April 2015 to April 2016.

Chapter 3

International Protection

3.1 INTERNATIONAL PROTECTION PROCEDURES

3.1.1 *International Protection Statistics*

During 2015, a total of 3,276 applications for refugee status were submitted to the Office of the Refugee Applications Commissioner (ORAC). This was the highest number of applications since 2008 and a marked increase of 126 per cent on 2014 figures when 1,448 applications were made.

A total of 1,552 cases were finalised during the course of the year with 2,582 cases awaiting completion by the end of 2015, as compared with 743 cases awaiting completion at the end of 2014. The majority of cases awaiting completion at the end of 2015 had been with ORAC for less than six months.⁷³ Of the cases processed during the year, a total of 152 positive recommendations were made at first instance by ORAC.⁷⁴

There was an increase in the numbers of applications which were deemed withdrawn in 2015 with 319 applications deemed to be withdrawn compared to 189 applications in 2014, an increase of 68 per cent.⁷⁵

When cases which were processed under the Dublin Regulation are excluded, around 150 applicants were recognised as refugees at first instance by ORAC during the year which corresponds to 12.3 per cent of recommendations.⁷⁶

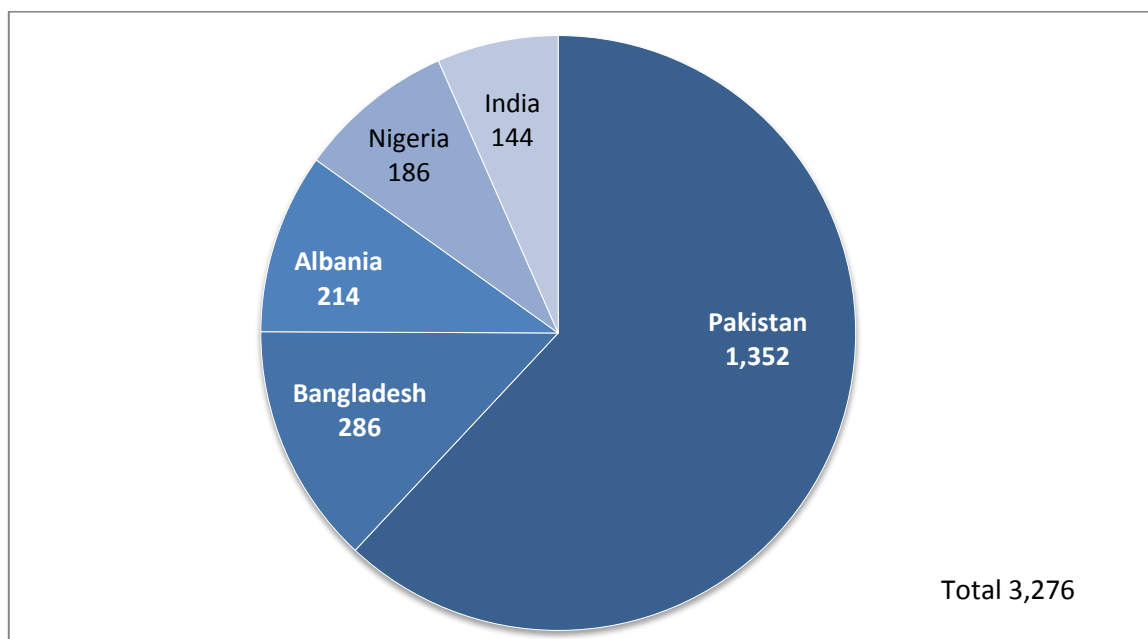
The main countries of origin for first instance applicants for refugee status in 2015 were Pakistan (41.3 per cent), Bangladesh (8.7 per cent), Albania (6.5 per cent), Nigeria (5.7 per cent) and India (4.4 per cent).

⁷³ Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁷⁴ Office of the Refugee Applications Commissioner (December 2015). *Monthly Statistical Report December 2015*. Available at www.orac.ie.

⁷⁵ Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁷⁶ *Ibid.*

FIGURE 5 Asylum Applications by Top Five Nationalities, 2015

Source: Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie

As shown in Figure 5, there was a marked increase year-on-year in the numbers of applications submitted by those of Pakistani nationality with 1,352 applications submitted in 2015 compared with 292 applications made in 2014. There was also an increase in the numbers of applications from Bangladeshi nationals with 286 applications submitted in 2015 compared to the 99 applications made in 2014. It was noted by the Commissioner, that the majority of Pakistani and Bangladeshi applicants had previously been resident in the United Kingdom.⁷⁷

Throughout the year, some 759 new appeals in relation to refugee status⁷⁸ were submitted to the Refugee Appeals Tribunal. A total of 697 appeals in relation to applications for refugee status were completed by the Tribunal during the year. Decisions were issued in 487 cases, with ORAC's original recommendation affirmed in 305 cases, an affirmation rate of 63 per cent.

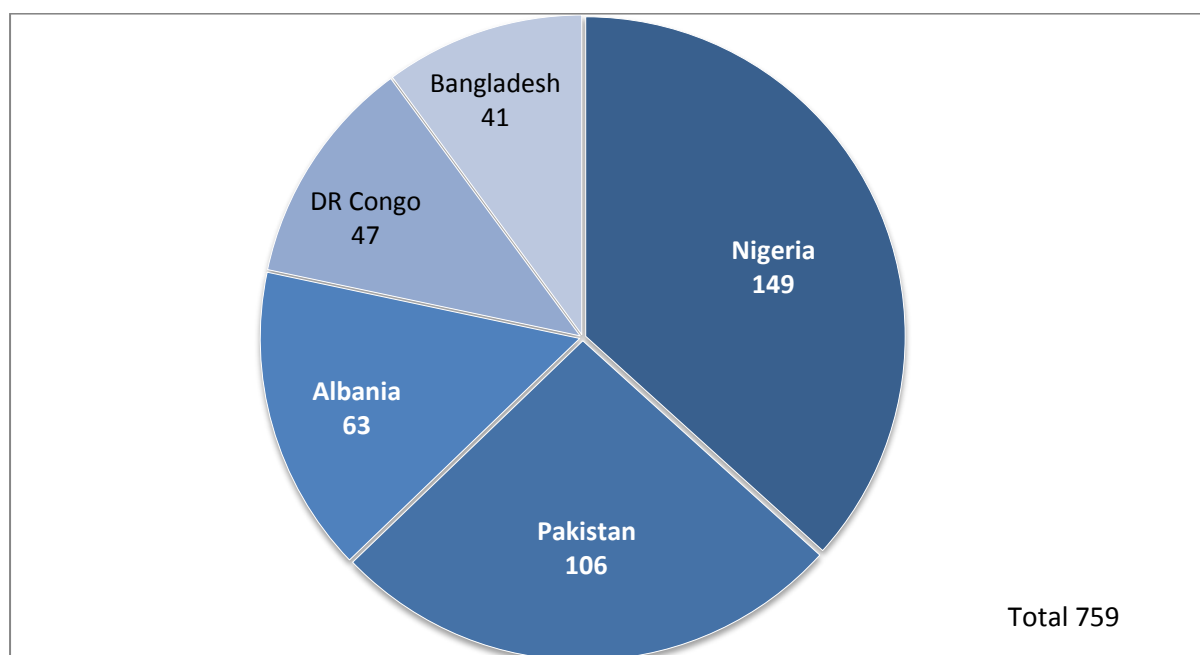
As shown in Figure 6, the countries of origin at appeal stage,⁷⁹ were broadly similar to those at first instance, with Nigeria (20 per cent), Pakistan (14 per cent), Albania (8 per cent), DR Congo (6 per cent) and Bangladesh (5 per cent) as the top five countries of origin.⁸⁰

⁷⁷ Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁷⁸ These figures include both substantive 15-day and accelerated appeals. Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

⁷⁹ For both substantive 15-day and accelerated appeals.

⁸⁰ Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

FIGURE 6 Asylum Appeals Lodged by Top Five Nationalities, 2015

Source: Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

From the date of application, applications for refugee status examined by ORAC under the Ministerial Prioritisation Directive (from the only designated safe country of origin, South Africa)⁸¹ were processed within a median time of 10.8 weeks with all other cases processed within a median time of 29 weeks. The increase in timelines compared to 2014 (where cases were processed in 4.4 and 15.3 weeks respectively) was due to the increase in the number of applications during the year. The Tribunal processed cases classified as substantive 15-day appeals within an approximate processing time of 69 weeks and within 77 weeks for cases processed as accelerated appeals.⁸²

Under the Dublin Regulation,⁸³ which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, 149 formal requests to take responsibility for applications were received by Ireland from other Dublin III Regulation Member States⁸⁴ during 2015, including both ‘take back’ and ‘take charge’ requests.⁸⁵

⁸¹ A total of 53 cases were processed under the Ministerial Prioritisation Directive.

⁸² Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

⁸³ Regulation (EU) No 604/2013 (Dublin III Regulation) which lays down the criteria and mechanism for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See *EMN Asylum and Migration Glossary 3.0*. Available at www.emn.ie.

⁸⁴ ‘Dublin’ Member States are all EU Member States plus Norway, Iceland, Switzerland and Liechtenstein.

⁸⁵ An example of a “take charge” request is where another Member State has issued the applicant with a visa, residence permission or a work permit, or the applicant has irregularly crossed the border of another Member State. A “take back” request may be made where an application has been made in another Member State and is not yet finalised, an application has been withdrawn or rejected in another Member State. See www.orac.ie

Ireland accepted 109 requests during the year⁸⁶ which represented an acceptance rate of just over 70 per cent.⁸⁷ Ireland made a total of 617 formal requests⁸⁸ to other Dublin III Regulation Member States in 2015. A total of 479⁸⁹ formal requests from Ireland were accepted during the year, an acceptance rate of 82 per cent. A total of 52 transfers into Ireland and 19 transfers out of Ireland were completed under the Regulation during the year.

The Tribunal received 171 appeals in relation to the Dublin Regulation during the year. This was a marked increase on the 15 appeals which had been submitted in 2014. It should be noted that 80 per cent of Dublin Regulation appeals were submitted by Pakistani and Bangladeshi nationals (being 62 per cent and 18 per cent of all appeals respectively). The Tribunal completed 45 appeals⁹⁰ in relation to ORAC's recommendation under the Regulation. A total of 29 decisions were issued during the year, all affirming ORAC's recommendation.⁹¹

As regards subsidiary protection applications, 1,480 cases were completed during the year by ORAC. A total of 609 applications were awaiting finalisation by year end, down from 1,792 cases which were on hand at the start of the year. Throughout the year, some 297 new applications for subsidiary protection were submitted. During the year, 680 applications were refused, 181 applications were granted and 619 cases were closed for various reasons.⁹²

Figure 7 shows the main countries of origin for subsidiary protection applicants at first instance were Pakistan (17.2 per cent), Nigeria (16.8 per cent), Zimbabwe (8.1 per cent), Malawi (6.4 per cent) and Algeria (4.7 per cent).⁹³

⁸⁶ The replies to formal requests made in 2015 include replies to a number of requests received in 2014. Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁸⁷ The total of 149 requests includes 119 'take back' and 30 'take charge' requests. Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁸⁸ The total of 617 requests includes 204 'take back' and 413 'take charge' requests. Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

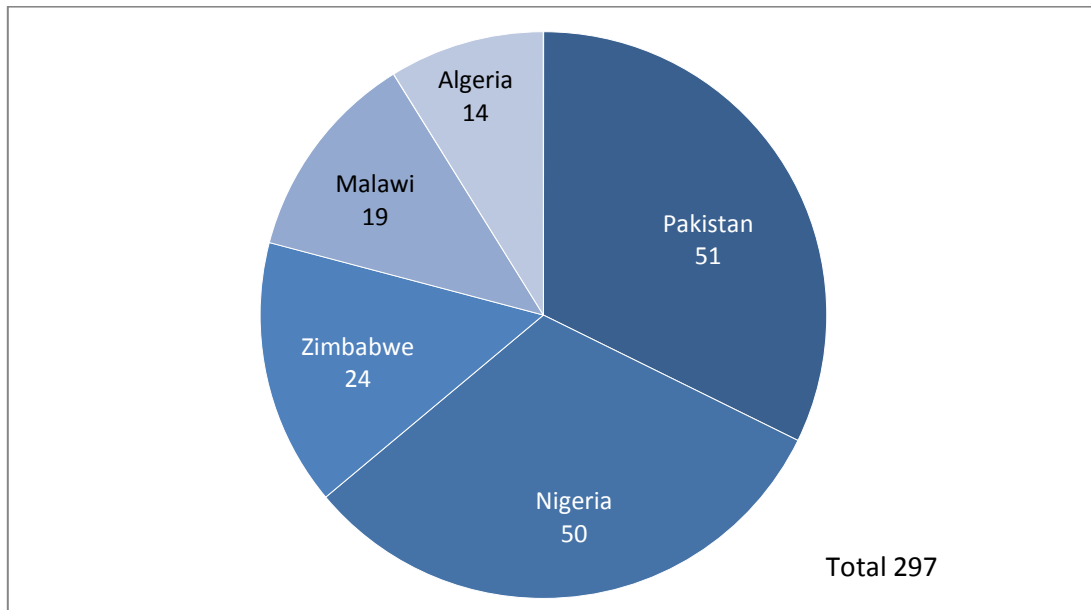
⁸⁹ This figure also includes replies to requests made in 2014.

⁹⁰ Completed appeals include cases withdrawn.

⁹¹ Refugee Appeals Tribunal (2016) *Annual Report 2015* Available at: www.refappeal.ie.

⁹² This included 256 cases voluntarily withdrawn, 321 cases deemed withdrawn and 42 cases closed due to the applicant being declared as a refugee or naturalising as a Irish citizen.

⁹³ Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

FIGURE 7 Subsidiary Protection Applications by Top Five Nationalities, 2015

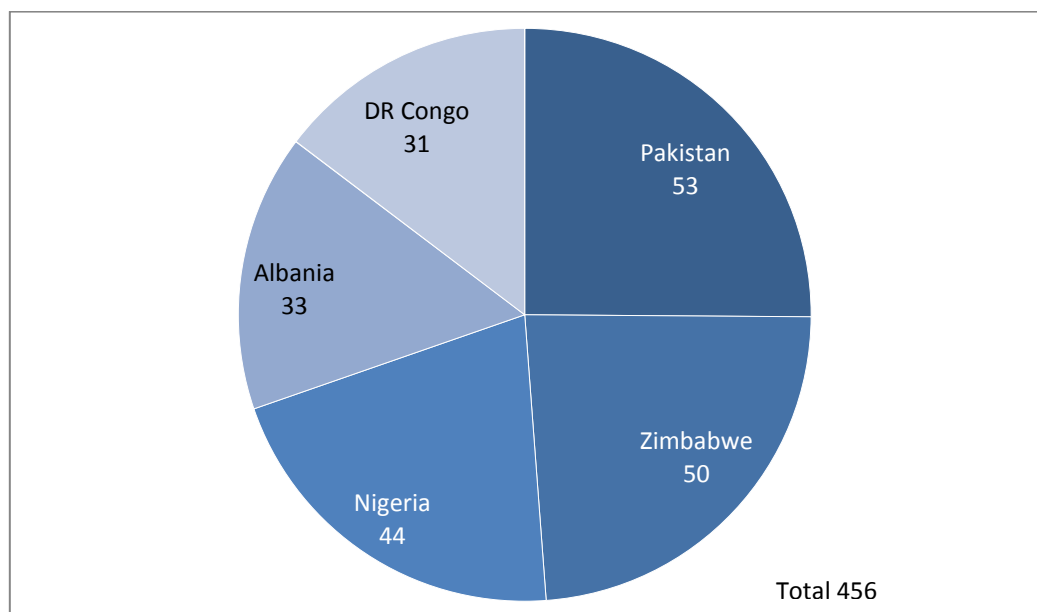
Source: Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

During the year, a total of 456 appeals in relation to subsidiary protection were submitted to the Tribunal. Decisions were issued in 124 cases, with the original recommendation of ORAC affirmed in 82 cases. Overall 273 appeals were completed during the year and 442 subsidiary protection cases were on hand by year end.⁹⁴

At the appeal stage, as shown in Figure 8, the countries of origin were broadly similar, with Pakistan (12 per cent), Zimbabwe (11 per cent), Nigeria (10 per cent), Albania (7 per cent) and DR Congo (7 per cent) among the top five countries of origin.⁹⁵

⁹⁴ Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

⁹⁵ Ibid.

FIGURE 8 Subsidiary Protection Appeals Lodged by Top Five Nationalities, 2015

Source: Refugee Appeals Tribunal (2016). *Annual Report 2015*. Available at www.refappeal.ie.

A total of 1,282 persons were granted leave to remain under Section 3(6) of the *Immigration Act 1999* in 2015 and of these 1,196 were failed asylum seekers.⁹⁶

In relation to the numbers accommodated within direct provision, the Reception and Integration Agency reported at year end a total of 4,696 person's resident within 35 centres across the country.⁹⁷

There was an increase of 63 per cent in 2015 in the number of applications submitted to ORAC for family reunification.⁹⁸ 272 applications for family reunification were submitted by persons with refugee status during the year. The top five nationalities of applicants were Somalia, Iraq, Syria, Afghanistan and Sudan.⁹⁹

3.2 JUDICIAL REVIEW

A significant decrease in waiting time was reported by the Courts Service in relation to obtaining leave from the High Court to review seek judicial review of asylum decisions.¹⁰⁰ Over a two-year period to end 2015, there had been a decrease from 30 months to six months for these types of decisions. The waiting time once leave is granted by the High Court was reported as being four months.

⁹⁶ Irish Naturalisation and Immigration Service, August 2016.

⁹⁷ Reception and Integration Agency (2015). *Monthly Statistics Report December 2015*. Available at www.ria.gov.ie.

⁹⁸ Office of the Refugee Applications Commissioner (2016). *Annual Report 2015*. Available at www.orac.ie.

⁹⁹ Reception and Integration Agency (2015). *Monthly Statistics Report December 2015*. Available at www.ria.gov.ie.

¹⁰⁰ Courts Service (2016). *Courts Service Annual Report 2015*. Available on www.courts.ie.

During the year, 164 judicial review applications were submitted to the High Court, a decrease of 12 per cent from the number of judicial review applications in 2014. Of the asylum related cases on hand before the High Court in 2015, 349 of these were resolved by the High Court with 306 cases being settled out of court with orders¹⁰¹ being made in 941 cases. Asylum related judicial reviews before the Court remained at similar levels as in 2014 at 23 per cent of all judicial review applications before the High Court (22 per cent in 2014).

The Court of Appeal received 16 new asylum related cases during the year with nine cases determined and one case withdrawn during the year. The Court of Appeal also had 42 asylum related cases pending before it which had been transferred from the Supreme Court.¹⁰² The Supreme Court issued determinations in relation to 35 asylum related judicial review cases on appeal from the High Court (legacy cases from prior to the establishment of the Court of Appeal).

At the time of publication of the *Working Group Report on Improvements to the Protection Process*, it was reported that judicial reviews in relation to approximately 400 persons were currently before the courts.¹⁰³

3.3 ASYLUM POLICY

An overview of asylum policy-related developments was given by the (acting) Secretary General of the Department of Justice and Equality in his presentation to the Public Accounts Committee on the 2014 Report of the Comptroller and Auditor General on the Justice Votes, which took place in November 2015.¹⁰⁴ The discussion covered changes to the international protection determination process planned to be implemented through the International Protection Bill and the aims of the proposed changes, in particular in relation to streamlining and speeding up the application process. The growth in the number of asylum applications, the recognition rate of applicants and the options regarding those who are unsuccessful in their claims were also raised by the Committee.

¹⁰¹ Orders made during the year included: Liberty to apply for judicial review (granted or refused); Interim Orders and Final Orders (relief granted or refused, miscellaneous or struck out).

¹⁰² These cases had been initiated before the Supreme Court prior to the establishment of the Court of Appeal on 28 October 2014 but had not yet been fully or partly heard prior to the Court of Appeal establishment date and were transferred to the Court of Appeal for determination. These cases are known as Article 64 cases.

¹⁰³ Department of Justice and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process including Direct Provision and supports to Asylum Seekers, Final Report*, Available at: www.justice.ie.

¹⁰⁴ Public Accounts Committee (5 November 2015). Annual Report and Appropriation Accounts of the Comptroller and Auditor General 2014, Vote 21: Prisons, Vote 24: Department of Justice and Equality, Chapter 9: Development of Prison Accommodation in Dublin Houses of the Oireachtas. Available at: www.oireachtasdebates.oireachtas.ie.

One issue raised by the Committee was the position of persons who had been within the asylum determination process for an extended period. The Department explained the European context to this issue and that, at EU level, there is a political consensus that there should not be general regularisation schemes. Ireland, like other EU countries, makes decisions on a case-by-case basis.¹⁰⁵

The Joint Oireachtas Committee on Public Service Oversight and Petitions published a report¹⁰⁶ in May 2015 which considered if the remit of the Ombudsman should be extended to include the direct provision accommodation System.¹⁰⁷

In preparation of the report, the Joint Committee conducted a number of public hearings, sought submissions from relevant NGOs, and members of the Joint Committee visited four direct provision centres. In the Report, the Joint Committee noted the comments of the Ombudsman in relation to the constraint on her jurisdiction that;

*nearly every publicly funded organisation in the State now has a right to an independent, impartial and free investigation of their complaint by my Office.... I remain prohibited from investigation of actions taken in 'the administration of law relating to immigration or naturalisation'.*¹⁰⁸

The Ombudsman for Children, in his appearance before the Joint Committee on 11 March 2015, had also stated his belief that the exclusion from the remit of his Office in relation to immigration and asylum related only to decisions on status, and that 'issues regarding accommodation, administrative processes and internal complaint handling are in remit.' He called for 'clear unambiguous access for protection applicants to [his] office.'¹⁰⁹

¹⁰⁵ This European context is reflected in the 'European Pact on Immigration and Asylum' Adopted by the European Council of 15-16 October 2008. Document Number: 13440/08 Available at: www.consilium.europa.eu.

¹⁰⁶ Joint Committee on Public Service Oversight and Petitions (May 2015). *Report on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors* Houses of the Oireachtas Available at: www.oireachtas.ie.

¹⁰⁷ The Report also considered the extent of the application of Freedom of Information to the direct provision system, including to all the suppliers of goods and services, whether from the private or public sectors. In response to the Committee's recommendations in this regard, Minister of State at the Department of Justice and Equality noted that that Freedom of Information had long been applicable to the Irish Naturalisation and Immigration Service and the Reception and Integration Agency, and that its remit had been extended to the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) via the Freedom of Information Act 2014.

¹⁰⁸ Office of the Ombudsman (2013). *Annual Report 2012*. Available at www.ombudsman.gov.ie

¹⁰⁹ Joint Committee on Public Service Oversight and Petitions (11 March 2015). *Role and Remit: Office of the Ombudsman for Children* Available at: www.oireachtasdebates.oireachtas.ie.

Among its recommendations, the Joint Committee recommended the

*extension of the jurisdiction of the Ombudsman for Public Service and the Ombudsman for Children to cover the Direct Provision System, the Reception and Integration Agency (RIA) in addition to the administration of the law in relation to immigration and naturalisation.*¹¹⁰

In an address to the Dáil debate on the Report of the Joint Committee, Minister of State for New Communities, Culture and Equality, Aodhán Ó Ríordáin, T.D. noted that the administrative process in relation to asylum claims, and the functions of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT), were already set out in legislation and that there were no plans for any change pending consideration by the Government of the *Working Group Report on Improvements in the Protection Process*.¹¹¹ The Working Group subsequently recommended that the remit of the Ombudsman and the Ombudsman for Children should be extended to hear complaints relating to direct provision accommodation services and transfer decisions following a breach of house rules.¹¹²

3.4 LEGISLATIVE AND ADMINISTRATIVE CHANGES

3.4.1 Legislative Changes

The *Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015*¹¹³ set out the effective date under Section 2(1) of the application of the Freedom of Information Act 2014 to the Office of the Refugee Application

¹¹⁰ Joint Committee on Public Service Oversight and Petitions (May 2015). *Report on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the Direct Provision System (DPS) and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the DPS including all the suppliers of goods and services, whether from the Private or Public Sectors* Houses of the Oireachtas Available at: www.oireachtas.ie.

¹¹¹ Department of Justice and Equality (12 June 2015). Speech by Minister of State Aodhán Ó Ríordáin, T.D. Minister of State for New Communities, Culture and Equality. Consideration by Dáil of report of Joint Committee on Public Service Oversight and Petitions on the extension of the remit of the Ombudsman to cover all aspects and bodies associated with the direct provision system and the extension of the remit of Freedom of Information to cover all aspects and bodies associated with the system of direct provision including all the suppliers of goods and services, whether from the Private or Public Sectors Available at: www.justice.ie and www.oireachtasdebates.oireachtas.ie.

¹¹² *Recommendation 4.135*, Department of Justice and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process including Direct Provision and supports to Asylum Seekers, Final Report*, Available at: www.justice.ie This Recommendation is in progress. According to the Department of Justice and Equality: 'It is intended that residents in accommodation centres will have access to the Offices of the Ombudsman and Ombudsman for Children following amendments to legislation. These Offices will examine complaints which do not cover the process for seeking international protection. Department of Justice and Equality (June 2016). *Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers. Position as at 16 June, 2016 in respect of the 173 Recommendations of the Working Group* Available at: www.justice.ie.

¹¹³ *Freedom of Information Act 2014 (Effective Date for Certain Bodies) Order 2015 (S.I. No. 148 of 2015)*.

Commissioner and the Refugee Appeals Tribunal as 14 of October 2014. The purpose of this Order was to provide effective dates (retrospective dates) back to which the records of certain bodies including the Refugee Applications Commissioner and the Refugee Appeals Tribunal would be available under Freedom of Information once they became public bodies under the Act on 14 April 2015.

The *European Union (Subsidiary Protection) Regulations 2013*¹¹⁴ were amended by the *European Union (Subsidiary Protection)(Amendment) Regulations 2015*.¹¹⁵ The 2015 Regulations were introduced in light of a ruling of the Court of Justice of the European Union.¹¹⁶ They came into effect on 20 April 2015 and give statutory effect to arrangements which were already in operation at ORAC from 16 November 2013:

- Any person who makes a new application for refugee status may also make a concurrent application for subsidiary protection to ORAC;
- Any person who currently has a pending application for refugee status may submit an application for subsidiary protection to ORAC.

Such applications for subsidiary protection will be determined by ORAC in accordance with the provisions of the *European Union (Subsidiary Protection) Regulations 2013*¹¹⁷ and will be investigated should a person's application for refugee status be refused by the Minister for Justice and Equality.¹¹⁸

3.4.1.1 International Protection Act 2015

The General Scheme of the International Protection Bill was published in March 2015.¹¹⁹ Following its publication, it was forwarded by the Minister for Justice and Equality to the Joint Committee on Justice, Defence and Equality who were invited to comment on the provisions of the proposed legislation. The Irish Human Rights and Equality Commission (IHREC) also carried out a review of the General Scheme following a request from the Minister for Justice and Equality and submitted its observations to the Oireachtas in June 2015.¹²⁰ In July 2015, the Joint Committee published its '*Interim Report on Pre-legislative Scrutiny Report of the General Scheme of the International Protection Bill*' which outlined its

¹¹⁴ *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)*.

¹¹⁵ *European Union (Subsidiary Protection)(Amendment) Regulations 2015 (S.I. No. 137 of 2015)*.

¹¹⁶ *HN v. the Minister for Justice, Equality and Law Reform, Ireland and the Attorney General Case C- 604/12*.

¹¹⁷ *European Union (Subsidiary Protection) Regulations 2013 (S.I. No. 426 of 2013)*.

¹¹⁸ Irish Naturalisation and Immigration Service, March 2016.

¹¹⁹ Department of Justice and Equality (March 2015). *General Scheme for the drafting of the International Protection Bill* Available at www.justice.ie.

¹²⁰ Irish Human Rights and Equality Commission (30 June 2015). 'IHREC recommendations on International Protection Bill 2015 and Direct Provision' *Press Release* Available at: www.ihrec.ie.

observations on the Bill.¹²¹ The 12 written submissions received by the Joint Committee from relevant stakeholders were published as an Annex to the Interim Report.¹²² Common themes within these submissions included the length of time spent within the asylum determination procedure; calls to put direct provision/reception on a statutory footing; right to work for applicants; issues impacting on children including the application of the best interests of the child principle and procedural guarantees for separated children/unaccompanied minors; provisions in relation to family reunification including the impact of domestic abuse on the requirement for a continued subsisting relationship to maintain the immigration permission of spouses/partners; and time limits allowed to access voluntary return. The IHREC submission raised similar concerns including application of the best interests of the child principle and opting into the recast Reception Conditions Directive to allow asylum seekers a limited right to work and also on credibility assessment and on place of detention where this occurs.¹²³

UNHCR, the Law Society of Ireland and the Immigrant Council of Ireland also suggested that the Bill could offer an opportunity to introduce a formal determination procedure to recognise statelessness as defined by the 1954 Convention on the Status of Stateless Persons.¹²⁴

The International Protection Bill 2015 was published on 17 November 2015. While publication of the Bill was broadly welcomed, commentary on the Bill echoed many of the concerns of earlier submissions including provisions relating to family reunification and the continued prohibition on employment reflected in the Bill,¹²⁵ despite the recommendation in the *Working Group Report on Improvements to the Protection Process* on a right to work for asylum seekers after nine months in the determination process awaiting a first instance decision.¹²⁶ This recommendation was tabled as an amendment to the Bill in

¹²¹ Joint Committee on Justice, Defence and Equality (July 2015) *Interim Report on Pre-legislative Scrutiny Report of the General Scheme of the International Protection Bill* Houses of the Oireachtas Available at www.oireachtas.ie.

¹²² Submissions were received from Barnardos; Children's Rights Alliance; National Women's Council of Ireland; Spiritan Asylum Services Initiative; Doras Luimní; Irish Refugee Council; Jesuit Refugee Service Ireland; Law Society of Ireland; NASC; Immigrant Council of Ireland; UNHCR Ireland and Women's Aid.

¹²³ Irish Human Rights and Equality Commission (June 2015). *Recommendations on the General Scheme of the International Protection Bill* Available at: www.ihrec.ie.

¹²⁴ This recommendation was not taken up by the International Protection Act 2015.

¹²⁵ See, for example, UNHCR Ireland (20 November 2015). 'UNHCR welcomes publication of the International Protection Bill' *Press Release*. Available at: www.unhcr.ie; Doras Luimní (1 December 2015). 'New refugee protection legislation to be enacted before end of year' *Press Release*. Available at: www.dorasluimni.org. In addition, the Irish Refugee Council and NASC published recommendations related to the Bill in addition to their original submissions on the General Scheme provided to the Joint Committee on Justice Defence and Equality. See Irish Refugee Council (November 2015). *Recommendations on the International Protection Bill 2015* Available at: www.irishrefugeecouncil.ie and NASC (30 November 2015). *Recommendations on the International Protection Bill 2015* Available at: www.nascireland.org.

¹²⁶ 'Provision for access to the labour market for protection applicants who are awaiting a first instance decision for nine months or more and who have cooperated with the protection process' *Recommendation 5.49*, Department of Justice

Seanad Éireann. In her Second Stage speech to Dáil Éireann on the Bill, the Minister for Justice and Equality responded to this amendment saying that the intention under the Bill, when successfully implemented, would be to deliver the decision within six months with people granted status being allowed to work.

The Bill was signed into law by the President on 30 December following a meeting of the Council of State which considered whether or not to refer the Bill to the Irish Supreme Court to examine the constitutionality of its provisions.¹²⁷ Two Statutory Instruments commencing certain provisions of the Act were made in 2016 and it is planned that the remaining provisions of the Act will be commenced by the Minister for Justice and Equality via Statutory Instrument throughout 2016.¹²⁸

The main objective of the Act is to create a single application procedure for the international protection determination process. The Act addresses certain recommendations made by the *Working Group Report on Improvements to the Protection Process*.¹²⁹

The Act also gives further effect to the following EU Directives in the field of international protection which are binding on Ireland:

- *Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.*
- *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.*

and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process including Direct Provision and supports to Asylum Seekers, Final Report* Available at: www.justice.ie.

¹²⁷ The Council of State is a body composed of current and former officer holders and appointed members who provide aid and counsel to the President. Following consultation with the Council, the President can refer a Bill to the Supreme Court for its determination on its constitutionality. This is known as an Article 26 reference. Should a Bill referred to the Supreme Court under the procedure be found to be constitutional then the subsequent Act can never be the subject of a future constitutional challenge (see www.president.ie/en/the-president/council-of-state). It decided against making such a reference in this instance. However it should be noted that the President convening this type of meeting is a rare occurrence in the Irish legislative process with only one previous Council of State meeting convened to consider whether to refer a Bill to the Supreme Court having occurred during the term of the current President (i.e. since 2011).

¹²⁸ *International Protection Act 2015 (Commencement) Order 2016 (S.I. No. 26 of 2016)* and the *International Protection Act 2015 (Commencement) (No.2) Order 2016 (S.I. No. 133 of 2016)*.

¹²⁹ The Minister for Justice and Equality noted in her Second Stage speech on the International Protection Bill that the Bill responded to '26 of the Working Group's 78 specific recommendations in the area of the Protection Process.' Department of Justice and Equality (10 December 2015). 'International Protection Bill 2015 Second Stage – Dáil Éireann Statement by Frances Fitzgerald T.D., Minister for Justice and Equality' Available at: www.justice.ie.

- *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.*¹³⁰

Ireland did not opt into the recast of the Qualifications Directive in 2011 (Directive 2011/95/EU). However, according to the Minister for Justice and Equality, the Act was prepared in compliance with the provisions of the 2011 recast.¹³¹ Ireland also does not participate in the Recast Procedures Directive (Directive 2013/32/EU).¹³²

When the *International Protection Act 2015* is fully commenced, it will repeal the *Refugee Act 1996* and amend the *Immigration Acts 1999, 2003 and 2004*. Various other Statutory Instruments will also be revoked under Section 6 of the Act.

3.4.1.2 New International Protection Determination Procedure

International Protection applicants will make one application where all grounds for seeking international protection (refugee status and subsidiary protection) will be examined and determined in one process. Permission to remain will be examined in a separate but parallel process. This will move Ireland into line with the European norm in this area.

The Office of the Refugee Applications Commissioner (ORAC) is to be replaced by a new dedicated unit within the Department of Justice and Equality, the 'International Protection Office'. The Office will also examine grounds for any other reason to remain in the State.

International Protection Officers will make recommendations on applications for international protection. It is proposed that staff from ORAC who are specialists in the processing of protection cases and trained in conjunction with UNHCR will be transferred to the new International Protection Office.^{133,134}

¹³⁰ Department of Justice and Equality (10 December 2015). 'International Protection Bill 2015 Second Stage – Dáil Éireann Statement by Frances Fitzgerald T.D., Minister for Justice and Equality' Available at: www.justice.ie.

¹³¹ Ibid.

¹³² Calls to implement provisions from the recast Procedures Directive were made in submissions on the General Scheme of the Bill by, for example, NASC, the Irish Refugee Council and UNHCR. UNHCR commented in its submission that: 'the General Scheme also transposes in places the more favourable provisions of the Recast Procedures Directive.'

¹³³ Department of Justice and Equality (19 November 2015). 'Minister Fitzgerald publishes International Protection Bill 2015'. *Press Release* Available at www.justice.ie.

¹³⁴ The abolition of ORAC has attracted criticism with the Irish Refugee Council highlighting the general agreement at the time of the passage of the Refugee Act, 1996 on the need for the body which assesses refugee applications to be independent of the body responsible for the enforcement of immigration controls. Irish Refugee Council (November 2015) *Recommendations on the International Protection Bill 2015* Available on www.irishrefugeecouncil.ie.

The existing Refugee Appeals Tribunal will be replaced by a newly constituted and independent appeals body, named ‘The International Protection Appeals Tribunal’.

The ‘best interests of the child’ principle is confined to specific sections of the Act. In her Second Stage speech on the International Protection Bill, the Minister of Justice and Equality said that the Bill must be read in the context of the Constitutional obligations regarding the best interests of the child set out in Article 42A (1) of the Irish Constitution and in the context of Article 24(1) of the EU Charter on Fundamental Rights.¹³⁵

There is no definition of unaccompanied minors (UAMs) within the legislation. Under the Act, children will still be unable to submit an application for international protection except through an adult. However, the Act provides for the allocation of an employee or other person by the Child and Family Agency (Tusla) to assist and represent them in the asylum process and provide for their care utilising the *Child Care Act 1991*, as amended.

With regard to family reunification, Sections 56 and 57 of the Act specifically set out the rights and circumstances in which a person who is granted international protection in the State is entitled to apply to have family members enter and remain in the State. These provisions introduce a number of key changes to the family reunification provisions in the *Refugee Act 1996* and the 2013 Subsidiary Protection Regulations (as amended). The definition of a family member has been changed to include only spouses, civil partners, children (under age 18) of the sponsor, and parents and siblings of the sponsor (if sponsor and siblings are under age 18). In the case of spouses/civil partners, the relationship must have been subsisting on the date the application for international protection was made.¹³⁶ This is a change from the *Refugee Act 1996* where the relationship must only be subsisting when the family reunification application is made.

The discretionary power of the Minister to allow dependent family members to enter the State contained in previous legislation is not included in this Act.¹³⁷

¹³⁵ The constitutional imperative to consider the best interests of the child relates to (a) child protection and (b) guardianship, access and custody disputes. Article 24 of the EU Charter of Fundamental Rights provides that the child’s best interests must be a primary consideration in all actions relating to children. The Charter applies to EU law and when Member States are implementing EU law. Department of Justice and Equality (10 December 2015). ‘International Protection Bill 2015 Second Stage – Dáil Éireann Statement by Frances Fitzgerald T.D., Minister for Justice and Equality’ Available at: www.justice.ie.

¹³⁵ Section 18, Refugee Act 1996.

¹³⁶ Irish Naturalisation and Immigration Service, October 2016.

¹³⁷ Section 18, Refugee Act 1996.

Time limits for family reunification applications have been introduced. Applications must be made within twelve months of the granting of a declaration for international protection. A permission for family reunification under Section 56 will cease to be valid if the person does not enter the State by the date specified by the Minister when giving the permission.¹³⁸

The Department of Justice and Equality has commented that:

*The new provisions provide specific rights to family reunification and a path to reunification for family members of those granted international protection which is less restrictive both in terms of application of those limits and economic conditions than many other EU Member States. The fact that people seeking protection in the State can expect to have a decision within six months under the new single application procedure will ensure that applications for family reunification are dealt with in a timelier manner, bringing certainty to this previously open-ended process.*¹³⁹

The existing complete prohibition on employment at any time during the determination process continues unchanged by the Act. The absence of gender-sensitive procedures and in particular no reference to ‘domestic violence’ as an act of persecution was noted by commentators.¹⁴⁰

For the purpose of age assessment, the Act contains powers to require the applicant to undergo a medical examination, with the consent of the applicant or an adult taking responsibility for the care of the applicant, or an employee of the Child and Family Agency (Tusla).¹⁴¹

If a question arises as to the health of the applicant, the Minister or international protection officer may require that the applicant undergo a medical examination with a medical practitioner of their choosing.¹⁴² There is no provision requiring the consent of the applicant in this section.

¹³⁸ Irish Naturalisation and Immigration Service, October 2016.

¹³⁹ Ibid.

¹⁴⁰ Irish Refugee Council (Nov 2015). *Recommendations on the International Protection Bill 2015* Available on www.irishrefugeecouncil.ie. This was also raised by the Immigrant Council of Ireland in its submission to Joint Committee on Justice, Defence and Equality on the General Scheme of the Bill.

¹⁴¹ Sections 24 and 25, International Protection Act 2015.

¹⁴² Section 23, International Protection Act 2015.

3.4.2 Administrative Changes

ORAC indicated that new report templates and guidelines introduced in 2015 have helped streamline the refugee status determination process considerably. These were developed with the assistance of UNHCR.

Processing capacity was increased in Quarter 3, 2015 with the recruitment of additional members to the existing Office of the Refugee Applications Commissioner (ORAC) Case Processing Panel of legal graduates. Following extensive training, provided in conjunction with UNHCR, ORAC were in a position to increase the number of weekly scheduled asylum interviews threefold and reduce the waiting time for such interviews by some 100 working days (from approximately 150 to approximately 50).¹⁴³

The Office of the Refugee Applications Commissioner (ORAC) has stated that, to ensure the quality of its process, ORAC continued to give priority to staff development and training throughout 2015. The UNHCR continued to provide substantial ongoing assistance during the year with particular regard to the provision of training on refugee law and procedures and in the area of subsidiary protection. This included the assistance of an international protection expert from Canada, who was based in ORAC, to work with the Office on the development of quality initiatives including best practice training for refugee status and subsidiary protection.¹⁴⁴

During the year, ORAC, with the assistance of UNHCR, reviewed and updated its report templates for both the subsidiary protection and refugee status determination processes, as well as developing guidance notes to accompany the roll-out of the templates. The new template and guidance notes assist decision-makers to prepare reports that are legally robust and of a high quality. Following the introduction of these new templates and revised guidelines, and the recruitment of additional members to the existing legal panel, processing capacity increased substantially towards the end of 2015. As a result, the number of weekly scheduled asylum interviews trebled and the waiting time for such interviews reduced by some 100 working days from approximately 150 to approximately 50 working days. Refugee status determinations issued in 2015 also increased by 21 per cent over 2014.¹⁴⁵

¹⁴³ Office of the Refugee Applications Commissioner, March 2016.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

3.4.2.1 Working Group on Protection Process and Direct Provision System

Throughout the first half of 2015, work continued within the Working Group on the Protection Process and Direct Provision System which had been established the previous November.¹⁴⁶

The Minister for Justice and Equality published the *Working Group Report on Improvements to the Protection Process*, following a Government Decision in June 2015. The report contains a total of 173 recommendations many of which have implications for a number of Government Departments and services. The report also gives a comprehensive overview of the Protection System in operation in Ireland.

A number of written submissions from residents of direct provision centres were considered by the Working Group, with 107 received by the closing date in January 2015. Regional consultation sessions with applicants took place, alongside visits to centres and consultations with particular groups of applicants (including children, victims of torture, trafficking/sexual violence victims, and members of the LGBTI community) together with some consultation participants making oral submissions to a plenary meeting of the Working Group. A summary of protection seekers' submissions to the Working Group is contained within an Appendix to the final report.

The recommendations were clustered under three thematic headings: suggested improvements to the existing determination process; suggested improvements to living conditions in direct provision centres; and suggested improvements to supports for persons in the system. One of the key recommendations in the report for improving the determination process was the early enactment of the International Protection Bill which provided for the introduction of a single application procedure for international protection. Certain recommendations of the Working Group on improvements to the determination process were reflected in the *International Protection Act 2015*.¹⁴⁷

Improving living conditions within Direct Provision Accommodation Centres included a number of practical recommendations such as the provision of an

¹⁴⁶ The establishment of the Working Group on the Protection Process was reported in Joyce, C., and S. Whelan (2015). *Annual Policy Report on Migration and Asylum 2014: Ireland* Available at www.emn.ie and www.esri.ie

¹⁴⁷ Department of Justice and Equality (16 June 2016). 'Tánaiste and Minister Stanton welcome significant progress on Direct Provision and supports for asylum seekers' *Press Release* Available at: www.justice.ie.

individual storage locker for residents;¹⁴⁸ all families should have access to cooking facilities and their own private living space insofar as is practicable;¹⁴⁹ single people should not be sharing rooms after 15 months insofar as practicable;¹⁵⁰ transport services should be provided for residents to meet their reasonable needs;¹⁵¹ the remit of the Ombudsman and the Ombudsman for Children should be extended to hear complaints relating to direct provision accommodation services and transfer decisions following a breach of house rules.¹⁵²

The *Working Group Report on Improvements to the Protection Process* included a number of recommendations in relation to increasing supports to residents such as removal of the prescription charge and an increase in the weekly allowance paid to adults and children.¹⁵³

The Working Group also recommended provisions allowing protection applicants who have been awaiting a first instance decision for nine months or more to access the labour market be included in the upcoming International Protection Bill and commenced when the single procedure is operating efficiently.¹⁵⁴ As described in Section 3.4.1.1, the fact that this recommendation was not implemented in the International Protection Act 2015 attracted considerable criticism. It is the view of the Department of Justice and Equality, however, that

*successful implementation of the International Protection Act will result in decisions being issued within this timeframe and therefore the matter should no longer arise.*¹⁵⁵

The Department of Justice has indicated that work is ongoing, in conjunction with other relevant Departments, to progress the recommendations of the Working Group, in line with the advice from the Cabinet Committee on Social Policy and Public Service Reform.¹⁵⁶

¹⁴⁸ Recommendation 4.58, Department of Justice and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process including Direct Provision and supports to Asylum Seekers, Final Report*, Available at: www.justice.ie.

¹⁴⁹ Ibid., Recommendation 4.75.

¹⁵⁰ Ibid., Recommendation 4.87.

¹⁵¹ Ibid., Recommendation 4.111.

¹⁵² Ibid., Recommendation 4.135.

¹⁵³ Ibid., Recommendation 5.100 and 5.30.

¹⁵⁴ Ibid., Recommendation 5.49.

¹⁵⁵ Irish Naturalisation and Immigration Service, October 2016.

¹⁵⁶ Department of Justice and Equality (June 2016). *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum seekers. Position as at 16 June, 2016 in respect of the 173 Recommendations of the Working Group* Available at: www.justice.ie.

Also arising from the *Working Group Report on Improvements to the Protection Process* recommendations, a transition Task Force was established in 2015 which put in place important supports to facilitate people with status to integrate into the community. The Task Force went on to report that 87 per cent of people granted status had moved into the wider community within six months.¹⁵⁷

Since the publication of the Report, a number of important recommendations have been implemented, including:

- Pilot scheme for school leavers who are in the protection system (other than at deportation stage) for the 2015/2016 academic year which grants access to student support in line with the current Student Grant Scheme on a pilot basis.
- Exemption from prescription charges for direct provision residents.
- An increase of €6 in the direct provision allowance for children was announced in January 2016.¹⁵⁸

The Report also included recommendations to review the cases of persons subject to deportation orders who had been in the system for five years or more from the date of initial application and to revoke the deportation orders and grant leave to remain subject to the applicant meeting certain conditions.¹⁵⁹ INIS has reported that these cases are being expedited.¹⁶⁰

3.4.2.2 Reception

Revised House rules for residents within direct provision accommodation centres were issued by RIA during the year. They contained an overview of the house rules in operation in each centre, including the services provided in the centres, fire safety procedures and an outline of the complaints procedure including a template complaints submission form.¹⁶¹

In November 2015, the Department of Social Protection presented to the Joint Committee on Public Service Oversight and Petitions on social welfare supports

¹⁵⁷ Irish Naturalisation and Immigration Service, October 2016.

¹⁵⁸ Department of Social Protection (5 January 2016). 'Government announces increases to the direct provision allowance for children.' *Press Release*. Available at: www.welfare.ie.

¹⁵⁹ *Recommendations 3.134 and 3.135* Department of Justice and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and supports to asylum seekers. Final Report*. Available at: www.justice.ie.

¹⁶⁰ Irish Naturalisation and Immigration Service, October 2016. It is estimated that almost all of those identified in the Report as being over five years in the Direct Provision system and who do not have any impediments, such as ongoing judicial reviews, have now had their cases processed to completion.

¹⁶¹ Reception and Integration Agency (2015). *Direct Provision and Accommodation Centers House Rules and Procedures*. Available on www.ria.gov.ie.

available to both asylum applicants within the direct provision system and for those leaving the system after recognition of their protection claim.¹⁶²

3.5 RESETTLEMENT AND RELOCATION

The Irish Refugee Protection Programme (IRPP) was approved by Government Decision on 10 September 2015 in response to the migration crisis.¹⁶³ A cross-Departmental Task Force chaired by the Department of Justice and Equality was announced, to implement and coordinate the Programme, working with NGOs, religious bodies, local authorities and the Irish Red Cross. The Government confirmed that Ireland will take in up to 4,000 persons by the end of 2017 in respect of relocation and resettlement.¹⁶⁴ This figure of 4,000 includes 780 programme refugees from Lebanon, 520 of which the Irish Government has committed to taking in by the end of 2016 under Ireland's Refugee Resettlement Programme.¹⁶⁵ The Resettlement Programme is administered by the Office for the Promotion of Migrant Integration (OPMI) of the Department of Justice and Equality.

In relation to the Resettlement Programme, 176 programme refugees were brought into the State from Jordan and Lebanon in 2015 (only 163 of these cases, all of whom came from Lebanon, are reckonable against the commitment of 520 refugees mentioned above). A selection mission to Lebanon to select refugees to fill the balance of the 520 places took place in January 2016.¹⁶⁶

The Government opted into the two EU decisions on Relocation (Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015).

A dedicated Relocation Unit was established in the Office of the Refugee Applications Commissioner as part of the new Irish Refugee Protection Programme (IRPP).

Among the measures agreed under the IRPP was the establishment of a network of Emergency Reception and Orientation Centres (EROCs) which would be used to

¹⁶² Joint Committee on Public Service Oversight and Petitions (18 November 2015) 'Direct Provision: Department of Social Protection'. See www.oireachtasdebates.oireachtas.ie.

¹⁶³ Department of Justice and Equality (10 September 2015) "Update on Ireland's response to EU migration and refugee crisis" *Press Release*, Available at: www.justice.ie.

¹⁶⁴ Office of the Refugee Applications Commissioner, March 2016.

¹⁶⁵ Office for the Promotion of Migrant Integration (OPMI) September 2016.

¹⁶⁶ It is expected that the balance of the 520 refugees will be admitted by mid-October 2016. Correspondence with Office for the Promotion of Migrant Integration September, 2016.

provide initial accommodation in order to meet the basic needs of asylum seekers relocated from hotspots in Italy and Greece, while their applications for refugee status are processed. These EROCs would also facilitate a rapid delivery of initial orientation services.¹⁶⁷

The first persons (a Syrian family of ten) to be relocated to Ireland under the 2015 Relocation Decisions arrived on 22 January 2016 from Greece.

The Department of Justice and Equality has remarked that relocation numbers were expected to increase steadily over 2016 but it may be some time before substantial numbers arrive in Ireland under these relocation measures.¹⁶⁸

Ireland has deployed four experts to the European Asylum Support Office (EASO) to be assigned to the hotspots in Italy (two) and Greece (two).¹⁶⁹

3.6 OTHER ASPECTS OF IRELAND'S OVERALL CONTRIBUTION TO MIGRATION CRISIS

In addition to resettlement and relocation, Ireland also contributed to related forms of cooperation in managing the crisis.

On 16 May 2015, following a Government decision, the first Irish naval vessel, the L.É. Eithne,¹⁷⁰ was deployed to the Mediterranean to assist in the search and rescue effort, on the basis of a bilateral agreement with the Italian navy. This cooperation has continued with deployment of different vessels into 2016.¹⁷¹

There was some debate around the issue of whether or not the asylum claim of a rescued asylum seeker should be determined on board an Irish vessel, rather than at a port of disembarkation in Italy. Responding to a Parliamentary Question on this issue in June 2015,¹⁷² Minister Fitzgerald said that it had been agreed with

¹⁶⁷ Office of the Refugee Applications Commissioner, March 2016.

¹⁶⁸ Department of Justice and Equality, March 2016.

¹⁶⁹ The first deployments occurred in January 2016. Irish Naturalisation and Immigration Service, March 2016.

¹⁷⁰ Department of Defence (13 May 2015). 'Minister for Defence, Mr. Simon Coveney, T.D., secures Government approval for the Deployment of a Naval Vessel to Assist in the Humanitarian Crisis in the Mediterranean' *Press Release*. Available at www.defence.ie.

¹⁷¹ Department of Defence (28 April 2016). 'Naval vessel L.É. Róisín to assist in the humanitarian crisis in the Mediterranean'. *Press Release*. Available at: www.defence.ie and Department of Defence (16 May 2016). 'Minister Kehoe commends crew of L.É. Róisín for their role in Mediterranean'. *Press Release*. Available at: www.defence.ie.

¹⁷² Deputy Clare Daly asked the Minister for Justice and Equality the reason the L.É. Eithne is depositing refugees that it finds in the Mediterranean in Malta and in Italy because if it is the case, under the Refugee Convention of 1951, once the refugees are on the L.É. Eithne, they are in effect on Irish sovereign territory and should be granted refugee status. [21538/15] (9 June 2015).

the Italian Government that the L.É. Eithne would conduct search and rescue operations in the Mediterranean in accordance with relevant international law on rescue at sea

under which persons in distress at sea who are rescued shall be disembarked by the rescuing vessel at the nearest safe port in Italy. In accordance with relevant international and European Law any claims for international protection by persons who are rescued is the responsibility of the state of disembarkation.

Minister Fitzgerald also noted that there was no legal basis under the Refugee Act 1996 for accepting extra-territorial applications.

In terms of humanitarian aid, Ireland contributed €14 million in humanitarian aid to Syria in 2015. This formed part of an overall contribution of €42 million for Syria since the beginning of the crisis until the end of 2015.¹⁷³

Under Ireland's Rapid Response Initiative, managed by the Department of Foreign Affairs and Trade, Irish Aid deployed five members of its Rapid Response Corps to the Balkans and the Middle East in 2015. The Rapid Response Initiative, a central feature of Ireland's overseas humanitarian assistance programme, is an operational tool designed to contribute to Ireland's overarching humanitarian goal of saving and protecting lives in crisis situations by deploying highly-skilled personnel into crises and by sending in emergency relief supplies.

Five rapid responders were deployed to Serbia, Macedonia and Jordan to work as surge capacity in the UN partners' humanitarian response operations in these countries. These responders worked to improve access to electricity and to water, sanitation and hygiene in camps and settlements, and in transit centres, and to provide assistance in emergency field co-ordination and in logistics. In December 2015, Irish Aid also dispatched 5,000 blankets to Serbia for distribution to refugees and migrants travelling through the country to the EU. These relief items were dispatched by Irish Aid from the UN Humanitarian Response Depot in Brindisi in southern Italy, one of the locations around the world in which Irish Aid prepositions and stockpiles emergency and humanitarian relief items.¹⁷⁴

¹⁷³ Irish Aid (1 April 2015). 'Ireland pledges €12 million for humanitarian crisis in Syria in 2015'. *Press Release*. Available at: www.irishaid.ie.

¹⁷⁴ Department of Foreign Affairs and Trade, September 2016.

3.7 RESEARCH

A manual on *Providing Early Legal Advice to Persons Seeking Protection* was produced by the Irish Refugee Council based on their Early Legal Advice project which has been running within their independent Law Centre since 2011. The production of the manual was funded by the European Programme for Integration and Migration (EPIM).

Early legal advice in the international protection context is concerned with assisting the recognition of those in need of protection at the earliest possible stage. There are three strands to this work; firstly it enables the applicant to fully articulate the basis for their application, usually through the preparation of a personal statement ahead of the personal interview with the first instance decision-maker. Secondly, advice is given on the types of relevant evidence to obtain for submission in support of the application. Finally, a legal submission is prepared by the ELA advisor which ties the protection needs of the applicant to the State's international legal obligations for consideration by the first instance decision-maker.

The manual provides practical guidance to legal practitioners, caseworkers and NGOs who give legal advice and assistance to asylum applicants during the first instance protection procedure. It provides advice on meeting the needs of protection applicants, and also considers the particular needs of vulnerable persons and children within the protection process and the role which ELA can play in meeting these needs. It aims to be a guide to ELA across the EU and its analysis is prepared by reference to the recast CEAS directives standards throughout the publication, notwithstanding that Ireland has chosen not to participate in these directives. It is planned for the manual to be translated into a number of languages to facilitate this.¹⁷⁵

In December, an informal group of civil society organisations, the Migration Coalition published a briefing paper which considered the Irish response to the refugee and migration crises.¹⁷⁶ It outlined a series of recommendations to improve the State's response which included enhancing legal channels for migration, improving integration of asylum applicants and refugees through a

¹⁷⁵ Irish Refugee Council (2015). *A Manual on Providing Early Legal Advice to Persons Seeking Protection*. Available on www.irishrefugeecouncil.ie.

¹⁷⁶ The Migration Coalition includes: ActionAid Ireland, Community Workers' Co-operative, Christian Aid, Comhlámh, the Conference of the Religious of Ireland, Cultúr, Dóchas, Doras Luimní, ENAR Ireland, Immigrant Council of Ireland, Irish Missionary Union, Irish Refugee Council, Jesuit Refugee Service, Mayo Intercultural Action, Mercy International Association, Migrant Rights Centre Ireland, Misean Cara, NASC Ireland, Oxfam Ireland, Trócaire and World Vision Ireland.

community response and, through the EU, to contribute to developing solutions which effectively address conflict situations.¹⁷⁷

3.8 CASE LAW

MA v. Refugee Appeals Tribunal, Minister for Justice and Equality, Attorney General and Ireland [2015] IEHC 528

The applicant was a national of Pakistan who applied for asylum. His application failed before the Refugee Applications Commissioner on credibility grounds and a Section 13(6) finding was made which meant that his appeal to the Refugee Appeals Tribunal was on the papers only. In affirming the recommendation of the Commissioner, the Tribunal made a number of new credibility findings and found that internal relocation was available to him. The applicant challenged the decision of the Tribunal on the basis that it ought not to have made such findings against him without putting them to him for comment beforehand.

The Court rejected that argument and held that where the Tribunal intended to make negative credibility findings based on statements made by the applicant during the asylum process, whether on a 'papers only' appeal or following an oral hearing, there was no obligation to revert to him or to give him an opportunity of explaining perceived inconsistencies, contradictions, implausibilities or any other circumstances arising from what he had personally said during the application process, and which led the Tribunal to conclude that credibility should be rejected. It did not exclude the possibility that there might be situations where matters might have to be put to an applicant for comment, such as where reliance might be placed on material unknown to him, such as country of origin information which contradicted his narrative. Insofar as the instant case was concerned, an applicant was to be assumed to be aware of what he had said during the asylum process and, even on a paper appeal, such a person had a full opportunity to address any inconsistencies or other matters arising out of the application process. In the instant case, no negative credibility finding had been made which was based on material unknown to the applicant.

The court also agreed with the Tribunal that there was no obligation on it to have considered country of origin information pertaining to the claim, because the applicant was not considered subjectively credible. It also held that, even if the internal relocation finding was unlawful, it was severable from the credibility findings.

The court refused leave to challenge the Tribunal's decision.

¹⁷⁷ Migration Coalition (2015). 'Protection, Resettlement and Integration Ireland's Response to the Refugee and Migration 'Crises'. Available at www.mrci.ie.

TAJ v. Minister for Justice and Another [2015] IEHC 726

The applicant was a Bangladeshi national who claimed asylum in the State. He denied ever having been outside Bangladesh before travelling to the State and said that he had never applied for asylum anywhere. He failed to disclose previous asylum history in other EU Member States. The Refugee Applications Commissioner made a request for information to the United Kingdom authorities pursuant to Article 34 of Regulation (EU) No. 604/2013, ('the Dublin III Regulation'). This disclosed a previous immigration history in the United Kingdom, which the applicant accepted was correct. A decision was then made by the Commissioner that the United Kingdom was the responsible Member State for examining his application under Art. 12(4) of the Dublin III Regulation. The applicant issued proceedings and obtained leave ex parte to challenge the decision of the Refugee Appeals Tribunal, affirming the decision of the Commissioner that the United Kingdom was responsible for dealing with his application. He sought an interlocutory injunction enjoining the Minister for Justice from transferring him to the United Kingdom.

The court refused to grant the injunction sought. First, it rejected his contention that, by virtue of Article 29(1) of the Dublin III Regulation, the Minister was required to transfer him to the United Kingdom at the latest within six months of the British authorities' acceptance of the 'take back' request. It held that his appeal to the Tribunal operated to suspend the six-month time limit, which began to run from the date of the decision of the Tribunal. It also rejected his argument that his proceedings constituted a 'review' within the meaning of Article 27(1) of the Dublin III Regulation and that he was entitled to remain in the State pending their outcome. It noted that, under the Dublin III Regulation, the State was obliged to provide an effective remedy against a transfer decision. The remedy was an appeal to the Tribunal. No part of Article 27(1) required the State to provide, in addition to an appeal or a review, a further level of appeal or review. Thus, the availability in Ireland of judicial review to challenge a decision on an appeal was not a requirement of EU law but purely a matter of domestic law provision.

In those circumstances, the application for an interlocutory injunction fell to be determined in accordance with the decision of the Supreme Court in *Okunade v. Minister for Justice* [2012] 3 IR 152, which indicated that prima facie valid orders, including transfer orders, were to be given effect. There was nothing to indicate that this should not apply in the applicant's case and no harm would come to him from having his asylum application dealt within the United Kingdom. The court therefore refused the injunction sought.

NHV and FT v. Minister for Justice and Equality [2015] IEHC 246

The applicants were asylum seekers who had been in the State since 2008. They requested temporary permission to work in the State from the Minister for Justice, claiming to have an entitlement to do so pursuant to Section 4 of the Immigration Act 2004 and Section 9(11) of the Refugee Act 1996 or, in the alternative, on foot of the exercise by the Minister of her executive discretion. Both applications were refused on the grounds that the Minister was precluded by Section 9(4) of the Act of 1996 from considering or granting such permission, and that she had no discretionary power to do so.

The applicants challenged that decision in the High Court, which held that the Minister had no discretion under Section 9(3) or Section 9(11) of the Act of 1996 to permit them to work in the State. Section 9(4) of the Act precluded them from seeking or entering employment in any form pending the determination of their asylum applications, and failure to comply with those conditions rendered them liable to prosecution. To adopt a contrary approach would be at variance with the plain or literal meaning of the sub-section. It also held that the Minister did not have any executive discretion to grant them permission to enter employment contrary to the express provisions of Section 9(4).

In the court's view, Section 9(4) was compatible with the Constitution. The applicants did not have a right to work under Article 40.3 of the Constitution. Their presence in the State was permitted and restricted by the provisions of the Act of 1996 (as amended). The right of non-Irish nationals to enter the State other than as asylum seekers was regulated by the provisions of the Immigration Act 1999. Non-Irish nationals (except in cases governed by EU law) did not have any statutory or constitutionally vested right to work in the State, or to apply for and be granted permission to work in the State. The applicants' rights to seek and obtain employment as asylum seekers in the State were regulated entirely by the Act of 1996.

It also held that, even if the applicants had a constitutional right to work or earn a livelihood under Article 40.3 or 43 of the Constitution, the scope and exercise of such rights could be defined and regulated pursuant to the very wide power which the State had to control non-Irish nationals and their entry into the State and activities whilst present on its territory. It was well established that that power could involve legislation and administrative measures which could not be applied to citizens of the State. It rejected their claim that restricting their right to access the labour market was disproportionate, as it was rationally connected to the objective of regulating the access of asylum seekers to the labour market, was not arbitrary, unfair or based on any irrational considerations, and was to be

considered against the fundamental right of the State to protect its borders and its national territory and to have regard to wider issues of social policy.

The court also rejected the argument that Section 9 of the Act of 1996 breached EU law and, in particular, the Charter of Fundamental Rights. It noted that the CFR only applied to the State insofar as it was implementing EU law. The decision to exclude asylum seekers from access to the labour market was a domestic law matter and did not conflict with any EU law binding on the State. It noted that Ireland had opted out of the Reception Directive (2003/9/EC and 2013/33/EU), which entitled asylum seekers to access the labour market in certain circumstances.

Finally, the court rejected the applicants' contention that refusing them access to the labour market breached their rights under Article 8 ECHR, owing to what was said to be an unreasonable delay in processing their asylum applications. It noted that there was no authority to support the extension of a right to work under that article to asylum seekers or irregular migrants.

The court refused the relief sought by the applicants.

GO v. Minister for Justice and Others [2015] IEHC 646

The applicant, a national of Nigeria, applied for asylum in the State. Having investigated his application, the Refugee Applications Commissioner recommended that he be refused refugee status. The applicant sought to challenge this by way of judicial review, contending that there was a legal obligation on the part of a decision-maker to consult relevant general and/or specific country of origin information in every single application for refugee status, which the applicant claimed followed from Reg. 5(1) of the EC (Eligibility for Protection) Regulations 2006, the Procedures Directive (2005/85/EC) and the decision of the CJEU in C-277/11 *MM*.

The court rejected that argument. It held that where the credibility of the applicant was fundamentally rejected, then the claim presented and rejected did not have to be checked against country of origin information. It noted, in any event, that the Tribunal had consulted country of origin information, as the information in question had been exhibited by the Tribunal.

The court also rejected the applicant's argument that Irish Superior Court case law restricting review of a Commissioner's decision in the light of the appellate remedy to the Tribunal was in breach of EU law. It held that EU law required

there to be an effective remedy against errors in first instance decisions. It did not require or direct Ireland to ensure that judicial review was available in respect of first instance decisions. Rather, it required an effective remedy which, in the court's view, Ireland had achieved by putting in place an appellate remedy to the Tribunal where every question of law, every question of fact, and every single complaint sought to be advanced in these proceedings could be advanced and pursued without any hindrance.

The court upheld the Commissioner's decision.

PDO v. Minister for Justice and Others [2015] IEHC 145

The applicant applied for asylum in the State. Having investigated her application, the Refugee Applications Commissioner recommended that she be refused refugee status. She challenged this by way of judicial review and also appealed to the Refugee Appeals Tribunal, which affirmed the recommendation before the judicial review proceedings came on for hearing. The court was asked to rule on a preliminary issue raised by the Commissioner as to whether or not the proceedings were moot in the light of the Supreme Court's decision in *MARA v. Refugee Applications Commissioner* [2014] IESC 71.

The High Court held that, in line with the decision in *MARA*, once a decision on an appeal had issued, it rendered moot any judicial review of a recommendation of the Commissioner. It did not accept that the fact that the applicant in the instant case only had an appeal on the papers to the Tribunal, unlike the applicant in *MARA*, was a sufficient basis for not following *MARA*.

The court held that the proceedings were moot.

GSK v. Refugee Appeals Tribunal and Others [2015] IEHC 852

The applicant, a national of the Democratic Republic of Congo ('DRC') applied for asylum in the State. Her application was unsuccessful at first instance and she appealed to the Refugee Appeals Tribunal. The Tribunal affirmed the Commissioner's recommendation and the applicant sought to challenge it by way of judicial review, claiming inter alia that the Tribunal had acted unlawfully in not allowing her to be accompanied to the appeal hearing by a legal academic suggested by her solicitor. In refusing to allow her to be so accompanied, the Tribunal had relied upon Section 16(14) of the Refugee Act 1996, which stated that '*An oral hearing under this section shall be held in private.*' The Tribunal considered that allowing the academic to attend the hearing would breach this section.

The High Court considered that that was an unnecessarily strict interpretation and had not, in fact, always been applied by the Tribunal, which indicated on affidavit that it had, in the past, permitted an applicant to have the support of a psychologist to assist in some particular way with the presentation by a person at the Tribunal, but on a strict condition that the psychologist could not speak at the hearing. It held that, on a proper interpretation of the provision, some leniency should be displayed by the Tribunal with regard to allowing persons who might wish to attend appeal hearings in order to support the representation of an applicant. The court did not wish to be taken, however, as delivering a decision on the proper meaning of the rule as to privacy in the provision. It held that it was not required to do that because even if it had held that the Tribunal had misinterpreted it, it was unable to detect any mischief or harm caused to the decision-making process on that account. No evidence of any harm had been adduced by the applicant.

The High Court upheld the Tribunal's decision.

AK v. Minister for Justice and Another [2015] IEHC 599

The applicant, a Ghanaian national, applied for asylum in the State on the basis of his homosexuality. Having investigated his application, the Refugee Applications Commissioner recommended that he be refused refugee status on account of lack of credibility. He complained inter alia that the decision unlawfully included a finding that Section 13(6)(b) of the Refugee Act 1996 applied to the decision, namely he had made statements or provided information in support of the application of such a false, contradictory, misleading or incomplete nature as to lead to the conclusion that the application is manifestly unfounded, which finding meant that any appeal to the Refugee Appeals Tribunal would be on the papers only and not by way of oral hearing.

The High Court quashed the Section 13(6)(b) finding, noting that the adverse credibility findings made by the Commissioner were partly based on an appraisal of the applicant's demeanour. It was therefore necessary that the applicant have an oral appeal to challenge them. To do otherwise would be to deprive him of an oral hearing and thereby breach the State's obligation under Article 39 of the Procedures Directive which required it to provide an effective remedy to a person in respect of whom a decision on an application for asylum had been taken.

MA v. Minister for Justice and Others [2015] IEHC 287

The applicant, an Afghan national, sought to quash a decision of the Minister for Justice refusing him subsidiary protection, contending that it was based upon a

flawed internal relocation finding. The Minister objected that that complaint was not pleaded in the statement of grounds.

The High Court expressed some sympathy for the view that the internal relocation argument was not pleaded in the applicant's challenge. However, it allowed the challenge to proceed, noting that the pleadings were just about wide enough to embrace the issue. It noted that the internal relocation finding was based on country of origin information and that the pleadings made numerous complaints about the misuse of such information and, therefore, could be said to encompass the alleged misuse of the information which led to the flawed internal relocation finding. It considered that it was entitled to take a generous view of the pleadings because the court, as an organ of the State, had a duty under Article 4 (3) TEU to ensure that the obligations of EU law were achieved and the multiple breaches of Article 8 of the Directive not be permitted to stand.

The court quashed the subsidiary protection decision.

DA (A minor) v. Refugee Appeals Tribunal and Others [2015] IEHC 208

The applicant was born in the State to parents from Pakistan who claimed to be Ahmadi Muslims. Application for asylum was made on her behalf on the basis of fear of persecution as an Ahmadi Muslim. It was said that her father was a preacher in Pakistan and that, when she grew up, she would become a preacher too. Similar applications for asylum which had been made by her parents had failed. Her application was equally unsuccessful before the Refugee Applications Commissioner and the Refugee Appeals Tribunal, which was influenced by the fact that her parents' claims had failed and that they were considered to be unexceptional Ahmadis and not at risk of persecution in Pakistan. She challenged the Tribunal's decision and the High Court quashed it. It noted that the country of origin information provided numerous examples of the difficulties for Ahmadis in Pakistan. In its view, the judgment of the CJEU in C-71/11 and C-99/11 *Y and Z v. Germany* was of decisive importance, concerning as it did two Ahmadis from Pakistan and establishing that, for the purpose of determining which acts could be regarded as constituting persecution within the meaning of Article 9(1)(a) of the Qualification Directive, it was unnecessary to distinguish acts that interfered with the 'core areas' of the basic right to freedom of religion, which did not include religious activities in public, from acts which did not affect those purported 'core areas.' The High Court considered that the CJEU's understanding of the interpretation of Article 9(1) was that acts which might constitute a severe violation within the meaning of Article 9(1)(a) of the Qualification Directive included serious acts which interfered with an applicant's freedom not only to practice his faith in private circles but also to live that faith publicly. It observed that the CJEU had held that such an interpretation was likely to ensure that

Article 9(1) of the Directive would be applied in such a manner as to enable the asylum authorities to assess all kinds of acts which interfered with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they were sufficiently severe as to be regarded as amounting to persecution. The High Court therefore concluded that there was no requirement for a person to be an 'exceptional' Ahmadi to be entitled to refugee protection, and that the Qualification Directive indicated that serious acts which interfered with the applicant's freedom not only to practice his faith in private but also to live that faith publicly were to be protected.

The court quashed the Tribunal's decision.

Chapter 4

Unaccompanied Minors and Other Vulnerable Groups

As reported in Annual Policy Report on Migration and Asylum 2014, TUSLA, the Child and Family Agency, was established in January 2014 under the *Child and Family Agency Act 2013*, as an independent legal entity. Child and family services are the sole focus of a single dedicated State agency, overseen by the Department of Children and Youth Affairs. The Agency brings together key services relevant to children and families including child protection and welfare services previously operated by the Health Services Executive (HSE); the Family Support Agency; and the National Educational Welfare Board. The Social Work Team for Separated Children Seeking Asylum (Dublin) sits under TUSLA.

A total of 109 referrals were made to the Social Work Team for Separated Children Seeking Asylum (TUSLA) in 2015, as compared with 97 referrals in 2014.¹⁷⁸

The Social Work Team for Separated Children Seeking Asylum (TUSLA) participated in the European Asylum Support Office's (EASO) Special Support Plan to Cyprus in November 2015. The mission focussed on best practice exchange on implementing the EASO Age Assessment methodology, especially with regard to psychosocial age assessment.¹⁷⁹

4.1 UNACCOMPANIED MINORS

4.1.1 Research

The Irish Refugee Council, Social Work Team for Separated Children (Child and Family Agency, TUSLA) and the School of Social Policy, Social Work and Social Justice, University College Dublin were joint lead partners in a project to examine best practice in determining and implementing durable solutions for separated children in Europe in the following participating European Union Member States:

¹⁷⁸ Social Work Team for Separated Children Seeking Asylum, September 2016.

¹⁷⁹ Ibid.

Belgium, Cyprus, England, Germany, Greece, Ireland, Malta, the Netherlands and Slovakia.¹⁸⁰

The project was funded by the European Commission's Pilot Project on Unaccompanied Minors fund. Outputs from the project were published in 2015, including an international comparative report based on findings in eight national reports and a toolkit entitled '*Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe: A Multidisciplinary Approach*.'¹⁸¹

The Social Work Team for Separated Children (TUSLA) is also a lead partner in the SUMMIT project 'Safeguarding Unaccompanied Migrant Minors from going Missing by identifying Best Practices and Training Actors on Interagency Cooperation' funded by the European Commission, which was launched in October 2014.¹⁸² The project duration was 18 months.

The aim of the project was to identify best practices in the prevention and response to the disappearance of vulnerable Unaccompanied Minors (UAMs), including guidance for interagency cooperation.

The project produced an in-depth study on the issue of the disappearance of unaccompanied migrant children from reception centres and other types of care conducted in Belgium, Cyprus, Greece, Ireland, Italy, Spain and the United Kingdom. The report specifically investigated the cooperation between law enforcement agencies, carers (guardians, social services and reception centre workers) and hotlines for missing children. A handbook for front-line professionals was produced, building on the results of the study, and translating the research findings into practical examples. Online modules on preventing and responding to unaccompanied children going missing, detailing practices in use in several EU countries, for use as a training aid, were also produced.¹⁸³

¹⁸⁰ Participating partners in the project were: Greek Council for Refugees, Greece; The Children's Society, England; Hope for Children UNCRC Policy Centre, Cyprus; Defence for Children – ECPAT the Netherlands; The People for Change Foundation, Malta; Service Droit des Jeunes, Belgium; Bundesfachverband Unbegleitete Minderjährige Flüchtlinge, Germany; and Human Rights League, Slovakia. Separated Children in Europe (SCEP) also collaborated with the project.

¹⁸¹ Arnold et al. (2015). *Durable Solutions for Separated Children in Europe* Irish Refugee Council and Arnold et al. (2015). *Best Practice in Determining and Implementing Durable Solutions for Separated Children in Europe: A Multidisciplinary Approach* Irish Refugee Council. Available at: www.irishrefugeecouncil.ie.

¹⁸² See Missing Children Europe – SUMMIT. <http://missingchildreneurope.eu/summit>.

¹⁸³ <http://missingchildreneurope.eu/summit>.

4.2 OTHER VULNERABLE GROUPS

4.2.1 Migrant Children

The annual Children's Rights Alliance (CRA) Report Card reviews developments which occurred in 2015.¹⁸⁴ Within the chapter on the Right to Equality and non-Discrimination of Migrant, Traveller and Roma children¹⁸⁵ the latest Report saw an improvement in the overall mark for Migrant Children to a 'D-', from the 'E' grade at the commencement of the reporting period in 2012. The CRA Report Card made reference to the recommendations of particular relevance to children made by the *Working Group on Improvements to the Protection Process*¹⁸⁶ as being the main reason for the Grade improvement.

The CRA Report Card recommended the continued implementation of the Working Group recommendations, in particular the development of national standards for the management of direct provision and the development of a dedicated child welfare and protection strategy for direct provision accommodation.¹⁸⁷

The Report Card also noted consultations which took place in October and November 2015 with approximately 90 asylum-seeking children living in direct provision accommodation. This initiative was led by the Citizen Participation Unit of the Department of Children and Youth Affairs in cooperation with Reception and Integration Agency (RIA) of the Department of Justice and Equality. RIA undertook to consider the views expressed by the children within the context of their forthcoming implementation of reforms to the direct provision system.¹⁸⁸

The Report Card highlighted concerns that, whilst in June 2015, the *Working Group on Improvements to the Protection Process* had recommended that all new tenders for accommodation for asylum seeker families include a requirement for self-contained units with cooking facilities or access to a communal kitchen and

¹⁸⁴ Children's Rights Alliance (February 2016). *Report Card 2016 Is Government keeping its promises to children?* Available at: www.childrensrights.ie.

¹⁸⁵ The Report Card 2016 includes chapters covering children's Constitutional rights, the right to education, right to health, right to an adequate standard of living, the right to protection from abuse and neglect and the right to equality and non-discrimination as they relate to children.

¹⁸⁶ Department of Justice and Equality (June 2015). *Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report*. Available at: www.justice.ie.

¹⁸⁷ See Chapter 3 for further discussion of the *Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*.

¹⁸⁸ Children's Rights Alliance (February 2016). *Report Card 2016 Is Government keeping its promises to children?* Available at: www.childrensrights.ie.

adequate recreational space for children.¹⁸⁹ In July 2015, when a new accommodation tender was issued, it did not reflect this recommendation.¹⁹⁰

The Report Card also commented on the opportunity presented by the planned Government Integration Strategy as being a mechanism by which the State can meet its obligations under the UN Convention on the Rights of the Child and the overarching National Policy Framework for Children and Young People.¹⁹¹ The Report Card recommended that the new Integration Strategy be published immediately with a plan and timeline for its implementation.

In May 2015, it was reported by the Health Inspection and Quality Authority (HIQA) that 14 per cent of the total cohort of children residing in direct provision had been the subject of child welfare and protection referrals to the Child and Family Agency (Tusla).¹⁹²

The management of child protection and welfare concerns for ethnic minority children living in direct provision accommodation was among a number of areas identified by external stakeholders for evaluation by HIQA under its assurance programme.¹⁹³ HIQA subsequently chose to examine how the Child and Family Agency's provision of services to children living in direct provision came into line with the *National Standards for the Protection and Welfare of Children*.¹⁹⁴ The report is based on two phases, a documentation and data review of child protection and welfare referrals which took place between August 2013 and 2014 relating to children living in direct provision¹⁹⁵ and fieldwork inspections¹⁹⁶ which took place in November and December of 2014.

¹⁸⁹ Recommendation 4.75, Department of Justice and Equality (June 2015). *Working Group to Report to the Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers. Final Report*. Available at www.justice.ie.

¹⁹⁰ See also RTÉ News (8 September 2015). 'RIA accused of failing to enforce direct provision recommendations'. Available at www.rte.ie.

¹⁹¹ Department of Children and Youth Affairs (2014) *Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*. Available at: www.dyca.ie.

¹⁹² Based on data provided by the Child and Family Agency for the 12 months between August 2013 and 2014 Health Inspection and Quality Authority (May 2015). *Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1)c of the Health Act 2007*. Available at: www.hiqa.ie.

¹⁹³ This arose in the context of HIQA's consultation process in November 2013 on its three-year regulatory programme. External stakeholders such as advocacy organisations and social care professionals were consulted as part of this process and children living in direct provision were among the issues they highlighted as being in need of investigation. Health Inspection and Quality Authority (May 2015). *Report on inspect of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1)c of the Health Act 2007*. Available at: www.hiqa.ie.

¹⁹⁴ Health Inspection and Quality Authority (July 2012). *National Standards for the Protection and Welfare of Children*. Available at: www.hiqa.ie.

¹⁹⁵ Documentation and data provided by the Tusla, the Child and Family Agency.

¹⁹⁶ Based on an analysis of the information provided by the Tusla, the Child and Family Agency, HIQA selected four geographic Tusla service areas from seventeen service areas overall (namely Midlands, Sligo/Leitrim/West Cavan,

Within the reference period of the report, it was found that 209 referrals of child protection and welfare concerns had been made to TUSLA representing 14 per cent of the population of children living in direct provision. The referral rate for the general child population was 1.6 per cent.

Child protection concerns included excessive physical chastisement, exposure of children to domestic violence, children being left alone unsupervised or in the care of older children. Child welfare concerns included parental physical or mental illness affecting their capacity to care for children and children's mental health issues.¹⁹⁷

A number of referrals arose from the living conditions within direct provision centres which are outside the control or remit of TUSLA, i.e. cramped living conditions being a contributing factor to accidental injuries, inappropriate contact by adults towards some children and the exposure of children to violence between residents within the direct provision centre.

A recurring finding was that there was a lack of sufficient understanding by social workers of ethnic, cultural and religious differences with very little evidence that these considerations informed assessments and interventions by social workers. There was some evidence of culturally sensitive practices e.g. addressing cultural differences in child rearing norms and understanding of gender issues with the use of female interpreters. However, social workers identified that 'they did not always have sufficient knowledge and understanding of families' ethnicity, religion or culture... to inform their practice'. Social work practitioners also expressed a desire for training on the asylum application and determination process in Ireland and how it might affect social work interventions.¹⁹⁸

The Children's Rights Alliance and the Law Centre for Children and Young People jointly published '*Making rights real for children: A Children's Rights Audit of Irish law*' in 2015.¹⁹⁹ The Audit includes one chapter dedicated to the impact of

Louth/Meath and Dublin North City) as these represented the areas with the highest numbers of children living in Direct Provision.

¹⁹⁷ Health Inspection and Quality Authority (May 2015). *Report on inspection of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and Section 8(1)c of the Health Act 2007*. Available at: www.hiqa.ie.

¹⁹⁸ Ibid.

¹⁹⁹ Ursula Kilkelly in her introduction to the Audit described it as a comprehensive review of the law as it relates to children across a range of areas, including youth justice, guardianship, access and custody arrangements. It also includes analysis of other areas of law which whilst having a direct impact on children are less often considered from a children's rights perspective namely housing and welfare law.

immigration and asylum law on migrant children.²⁰⁰ It noted commentary on how migrant children have been found to be particularly vulnerable and faced barriers in vindicating their rights.²⁰¹ The chapter outlines Ireland's international legal obligations in relation to migrant children and asylum-seeking children. It assesses the law in three core areas by reference to the UN Convention on the Rights of the Child as follows:

- Providing a child centred protection status determination process;
- Immigration law and family reunification; and
- Deportation of non-EU citizen children.

The chapter reviews Irish law, policy and practice within each area and makes a series of recommendations designed to bring Ireland into closer compliance with its obligations under international law.

4.2.2 Health

4.2.2.1 FGM Health Services

In February 2015, *The Irish Times* reported on the operation of Ireland's only dedicated clinic for sufferers of female genital mutilation (FGM).²⁰² The clinic has treated up to a dozen women in the year since its opening in 2014. The women were mainly under 30 and grew up in families where FGM was a common cultural practice. Most of the women seen by the clinic were from Somalia or Sudan. The clinic is funded by the HSE under its social inclusion programme. It also conducts awareness raising initiatives among medical practitioners and within affected communities. FGM was made illegal in 2012²⁰³ but according to a report in *The Irish Times*, up to February 2015 there had not been a prosecution arising from the legislation.²⁰⁴

²⁰⁰ Cosgrave, C and Thornton, L (2015). 'Immigration and Asylum law' in Children's Rights Alliance and the Law Centre for Children and Young People (2015). *Making rights real for children: A Children's Rights Audit of Irish law*. A child's rights analysis of Direct Provision by Liam Thornton is included in Baneham, K (2015). 'Welfare and Material Deprivation' in Children's Rights Alliance and the Law Centre for Children and Young People *Making rights real for children: A Children's Rights Audit of Irish law*.

²⁰¹ Kilkelly, U. (2007). *Barriers to the Realisation of Children's Rights in Ireland* Office of the Children's Ombudsman; Shannon, G. (2013). *Sixth Report of the Special Rapporteur on Child Protection* Department of Children and Youth Affairs referenced in Children's Rights Alliance and the Law Centre for Children and Young People (2015). *Making rights real for children: A Children's Rights Audit of Irish law*.

²⁰² *The Irish Times* (6 February 2015) 'Circumcised women treated by first specialist clinic in Dublin'. Available at www.irishtimes.com.

²⁰³ Criminal Justice (Female Genital Mutilation) Act 2012.

²⁰⁴ It has been argued by AkiDwa that, as FGM does not have a crime classification code, this makes it difficult for FGM to be recorded as a specific crime. See AkiDwa (2016). *Towards a National Action Plan to combat FGM 2016-2019*. Available at www.akidwa.ie.

In November 2015, Ireland signed the *Council of Europe Convention on preventing and combating violence against women and domestic violence* (the ‘Istanbul Convention’).²⁰⁵ Provisions in relation to female genital mutilation are included under Article 38 of the Convention. The Minister for Justice and Equality announced an Action Plan towards full ratification of the Convention.²⁰⁶

4.2.2.2 Research

In 2015 Cairde published *‘Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations’*.²⁰⁷ The report sought to identify recommendations to overcome the barriers in accessing mental health services which had been identified in previous research by Cairde.²⁰⁸ It also aimed to raise awareness of mental health issues within ethnic minority communities. It achieved this by engaging people from ethnic minority backgrounds to participate in the research where they identified their mental health needs and made recommendations on how the barriers which affect them in accessing mental health services could be addressed.²⁰⁹ Barriers identified included: language barriers affecting quality of assessment and treatment; barriers resulting from the lack of full cultural sensitivity in clinical procedures by health service providers; lack of understanding by migrants of how to access supports and services within the Irish healthcare system.

There were three key sets of recommendations contained within the report. Firstly, it was recommended to build the capacity of ethnic minority communities to address mental health needs within their communities. The second set of recommendations was in relation to improving access to mental health services by members of ethnic minority communities. There was a focus on addressing the additional costs incurred by individuals due to language barriers.²¹⁰ It recommended interpreters undertake training in medical terms. Intercultural training was also recommended for health service providers. Finally, collaboration between health service providers and ethnic minority communities in tackling the barriers identified in the report was recommended. Revising the

²⁰⁵ Council of Europe (April 2011). *Council of Europe Convention on preventing and combating violence against women and domestic violence*. Available at: www.coe.int.

²⁰⁶ Department of Justice and Equality (5 November 2015). ‘Minister Fitzgerald welcomes the signature by Ireland of the Istanbul Convention on preventing and combating violence against women and domestic violence’ *Press Release*. Available at: www.justice.ie. See also Department of Justice and Equality (November 2015). *Istanbul Convention Action Plan*. Available at: www.justice.ie.

²⁰⁷ Bojarczuk, S, Marchelewska, E and Prontera, M (2015). *Ethnic Minorities and Mental Health in Ireland: Barriers and Recommendations*. Cairde. Available at www.cairde.ie.

²⁰⁸ Cairde has previously conducted a health needs assessment in 2005 with ethnic minority groups in Dublin North Central. Another Cairde research project in 2008 identified some of the barriers facing ethnic minority groups in accessing mental health services.

²⁰⁹ 16 focus groups were created, composed of either community members from a particular ethnic minority background or health professionals working with particular ethnic minorities. The focus groups included members of the African, Chinese, Lithuanian, Muslim, Polish, Romanian, Roma, Russian speaking and Eastern European communities, or health professionals serving specific communities. One focus group consisted of Irish health service providers.

²¹⁰ Private health service providers are usually not covered by the Medical Card.

rules for the accreditation of professional qualifications obtained by individuals outside Ireland was recommended. Establishing a directory of mental health professionals with a migrant background was also recommended in order to facilitate referrals to mental health professionals with particular language skills.

4.3 CASE LAW

GH (a minor) v. Refugee Appeals Tribunal and Others [2015] IEHC 583

The applicant and her mother arrived in the State from Pakistan and claimed asylum on the basis of fear of persecution as Ahmadi Muslims. Their applications were unsuccessful before the Refugee Applications Commissioner and the Refugee Appeals Tribunal. The applicant, who was seven years old, challenged the Tribunal's decision, which considered her to be an 'unexceptional Ahmadi' and therefore not likely to be persecuted if returned to Pakistan.

The High Court quashed the Tribunal's decision. It noted that the appeal to the Tribunal was *de novo* and that the first relevant principle applicable to an application by a minor applicant was that the best interests of the child were to be the primary consideration for the Commissioner and for the Refugee Appeals Tribunal. In minor applicant cases, the Tribunal had to assume a greater share of the burden of proof, as opposed to the requirement in adult asylum claims that the burden of proof remained with the applicant at all times. Another relevant principle was that actions which might not constitute persecution when experienced by an adult, could satisfy the persecution element of the refugee definition when experienced by a child, minors being necessarily more vulnerable to the effects of torture and other forms of serious harm, in particular physical and psychological harm. The 'best interests' principle required that the harm feared upon return be assessed from the child's perspective.

Taking those principles into account, it held that the Tribunal failed properly to analyse the country of origin information in relation to the treatment of Ahmadis, both by organisations and by the Pakistani state, which was responsible for prosecuting Ahmadis for blasphemy. It also noted that Article 10 of the Qualification Directive provided that Member States were to take into account, when assessing the reasons for persecution, that the concept of religion was, in particular, to include the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief. In its view, the descriptions in the country of origin information represented far more than mere discrimination against Ahmadis, and the Tribunal's decision that it merely amounted to discrimination was irrational and unreasonable.

AD and Others v. Refugee Appeals Tribunal and Others [2015] IEHC 779

The first applicant was a Nigerian applicant and the mother of the second and third applicants, who were born in the State. She arrived in the State on a visitor's visa to visit her sister. She suffered a relapse of bi-polar disorder whilst visiting, and was treated for this in the State. The Minister for Justice declined to renew her permission and made a deportation order in respect of the applicants. They then claimed asylum. The first applicant alleged that she suffered from a mental disorder which caused her to have seizures, and that she had previously been raped in Nigeria when she had suffered a seizure. She alleged that she would not be able to get proper medication for her illness in Nigeria and that her children would be without her if she were hospitalised.

Her claim failed at first instance and on appeal to the Refugee Appeals Tribunal. The Tribunal held that her delay in claiming asylum undermined the credibility of the claim. It also noted that she had previously availed of medical treatment in Nigeria and that information before it indicated that it would be available to her were she to return to Nigeria.

The applicants argued that the Tribunal failed to have regard to the provisions of paragraphs 206 to 212 of the UNHCR Handbook dealing with vulnerable applicants. They contended that the first applicant's circumstances and the consequences for the minor applicants, were they to return to Nigeria, merited a 'searching' investigation of the sort, they said, recommended in paragraph 212 in respect of mentally disturbed persons.

The High Court noted that paragraphs 206 and 212 of the Handbook were designed to alert a decision-maker to the fact that, in particular circumstances, a protection applicant might be at a disadvantage in relaying his claim, requiring the use of particular techniques to investigate it. It was not satisfied that the first applicant fell into the category of protection applicants for whom the paragraphs catered, there being nothing in the evidence before it to suggest that she was unable, by reason of mental illness, to articulate her case, either orally or in writing. Nothing of the sort had been asserted in the notice of appeal and the mere fact that she was legally assisted in completing her questionnaire would not of itself be sufficient to put a decision-maker on inquiry that the procedure provided for paragraph 212 was required.

QSA v. Refugee Appeals Tribunal and Others [2015] IEHC 238

The applicant was a Nigerian national who claimed asylum in the State, claiming to fear female genital mutilation. She claimed to be a minor, supporting her claim

in that regard with a birth certificate, but was age-assessed by the Health Service Executive as an adult, and her claim was dealt with on that basis by the Refugee Applications Commissioner and, on appeal, the Refugee Appeals Tribunal.

In dealing with its challenge to the Tribunal's decision, the High Court held *inter alia* that the Tribunal ought to have made a specific finding as to the applicant's age, notwithstanding that she had been assessed as an adult by the HSE and treated as such by the Commissioner. In its view, whether she was a minor or an adult would have been relevant to its appraisal of her credibility and whether internal relocation would be available to her. It held that its failure to make such a finding undermined the credibility findings made by it.

The court therefore quashed the Tribunal's decision.

Chapter 5

Legal Migration

5.1 ECONOMIC MIGRATION

5.1.1 Statistics

Provisional end of year figures for 2015 show 114,000 non-EEA nationals with permission to remain in Ireland, compared to 105,000 at the end of 2014. Approximately 96,000 new or renewed registrations of permission were issued by the Garda National Immigration Bureau. The majority of these were in Ireland for work or study purposes. The top five nationalities account for over 47 per cent of all persons registered and were Brazil (16 per cent), India (11 per cent), China (9 per cent), US (7 per cent) and Pakistan (6 per cent).²¹¹

7,253 employment permits were issued during 2015; 6,076 new permits and 1,177 renewals. The top nationality was India with 2,112 permits²¹² and the top three sectors were the service industry (2,663 permits), medical and nursing (1,880 permits) and industry (1,302).²¹³

5.1.2 Legislation

The Workplace Relations Act came into force in 2015. The National Employment Rights Authority (NERA) was integrated into the Workplace Relations Commission (WRC) under the Workplace Relations Act 2015. Labour inspectors in the WRC carry out workplace inspections to ensure compliance with all aspects of employment law.²¹⁴ The Workplace Relations Commission employs 57 State Labour inspectors who carried out over 5,100 workplace inspections in 2015 (over 2,800 of these were unannounced). A total of 69 employers were prosecuted for employment law offences in 2015 and over €14 million in outstanding wages were recovered for employees.²¹⁵

²¹¹ Irish Naturalisation and Immigration Service (March 2016). *Immigration in Ireland Annual Review 2015*. Available at: www.inis.gov.ie.

²¹² Permits issued by Nationality 2015. Available at: www.djei.ie.

²¹³ Permits issued by Sector 2015. Available at: www.djei.ie.

²¹⁴ See www.workplacelrelations.ie.

²¹⁵ Correspondence from Anti-Human Trafficking Unit, Department of Justice and Equality, March 2016.

In October 2015, the *National Minimum Wage Order 2015 (S.I. No 442 of 2015)* set the national minimum wage level at €9.15 per hour, with effect from January 2016. The Employment Regulation Orders for the Security and Contract Cleaning sectors set minimum wages for those sectors, with effect from October 2015. The Employment Permits (Amendment) (No. 2) Regulations 2015 (*S.I. No 602 of 2015*) reflected these increases in minimum wage levels and came into effect on 1 January 2016.

The *Employment Permits (Trusted Partner) Regulations 2015 (S.I. No. 172 of 2015)*, signed in May 2015, provide the legal basis for the Trusted Partner Initiative introduced by the Department of Jobs, Enterprise and Innovation during the year.

On 1 December 2015 the Minister for Justice and Equality signed the *European Community (Free Movement of Persons) Regulations 2015 (S.I. No 548 of 2015)*.²¹⁶ These regulations were made for the purpose of giving further effect in Irish law to the Directive on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC).

5.1.3 Atypical Working Scheme

During 2015, the number of applications approved under the Atypical Working Scheme, which streamlines entrance into the State for non-EEA nationals for work not covered by normal arrangements under the Employment Permits schemes,²¹⁷ expanded significantly; 2,000 applications were approved in 2015 compared to 1,315 in 2014.²¹⁸ The greatest increases in applications were in the categories of contracts for services and medical applicants.²¹⁹

Since its inception in September 2013, the scheme has expanded to include different employment categories for which special arrangements are required. In 2014, the Scheme was expanded to cover locum doctors in both public hospitals and the primary health care sector. In June 2015, certain changes were made to the conditions for locum doctors, agreed between the Health Services Executive (HSE), the Department of Health, the Department of Jobs, Enterprise and

²¹⁶ The Regulations came into operation on 1 February 2016.

²¹⁷ The Atypical Working Scheme (AWS) was introduced in September 2013 as a mechanism for streamlining entrance to the State for non-EEA nationals for the purpose of legitimate short-term work or to provide a specialised/high skill to an industry/business in the State which would not otherwise be covered by the normal arrangements under the Employment Permit Acts 2003-2014. Immigration permission issued from the Department of Justice and Equality (INIS) instead allows such persons to enter the State in order to work/provide a service without the requirement for an employment permit.

²¹⁸ Irish Naturalisation and Immigration Service, September 2016.

²¹⁹ Irish Naturalisation and Immigration Service, March 2016.

Innovation and the Irish Naturalisation and Immigration Service (INIS). The conditions for locum doctors under the Atypical Working Scheme include that they may work as locum doctors in either the primary care or hospital sector only, not both, and that locum work cannot be undertaken in conjunction with an employment permit. All applications to undertake locum work under the Atypical Working Scheme must be made from outside the State. There is a maximum duration of stay as a locum doctor under the AWS of six months in the hospital setting and of 90 days in the primary care setting. In the hospital setting only one six-month permission will be given in any 12-month period. The doctor must either apply for an employment period (prior to the expiry of the Atypical Working Scheme permission) or leave the State for six months. In the primary care sector, the doctor must leave the State on or before the expiry of the 90 day permission and at least one month must elapse before making a new application for another locum contract from outside the State.²²⁰

In December 2015, the Atypical Working Scheme was expanded to include permission for non-EEA workers to work in the Irish fishing fleet. This followed recommendations made in December 2015 by the Government Task Force regarding non-EEA workers in the Irish fishing fleet.²²¹ The Task Force was established following media allegations of labour exploitation in the Irish fishing fleet (see Chapter 9 for further detail). The number of permissions under this category is capped at 500.²²² Applications have been accepted in respect of this category since 15 February 2016.²²³

According to the Irish Naturalisation and Immigration Service, under the Atypical Working Scheme to date, the turnaround of applications has been considerably shorter than employment permit applications and the Scheme has been highly flexible and responsive to specialised Irish labour market requirements.²²⁴

5.1.4 *Trusted Partner Initiative*

A Trusted Partner Initiative for employment permit applications was introduced by the Department of Jobs, Enterprise and Innovation in May 2015. The purpose of the Trusted Partner Initiative is to ease the administrative burden relating to

²²⁰ Irish Naturalisation and Immigration Service 'Notice – new arrangements for locum doctors under the Atypical Working Scheme effective from 02 June 2015'. See also 'Doctors providing Locum Services in the Primary Care Sector'; 'Doctors providing Locum Services in the Hospital Sector'. Available at: www.inis.gov.ie.

²²¹ Irish Naturalisation and Immigration Service (15 February 2016). 'Atypical Working Scheme – Non-EEA workers (Irish fishing fleet)'. Available at: www.inis.gov.ie.

²²² Interdepartmental Government Task Force chaired by Simon Coveney T.D., Minister for Agriculture, Food and the Marine (December 2015). *Report of the Government Task Force on Non-EEA workers in the Irish Fishing Fleet*. Available at www.agriculture.gov.ie.

²²³ Irish Naturalisation and Immigration Service (11 February 2016). 'Atypical working scheme: Non-EEA crew in Irish Fishing Fleet'. Available at: www.inis.gov.ie.

²²⁴ Irish Naturalisation and Immigration Service, March 2016.

the employment permit application process for successfully registered Trusted Partners.²²⁵ The *Employment Permits (Trusted Partner) Regulations 2015 (S.I. No. 172 of 2015)* set out the application process and prescribed forms for Trusted Partner Registration and for Trusted Partners to make applications for the different classes of employment permit.

Under the Trusted Partner Initiative, a Person who intends to make an offer of employment, Employer, Connected Person,²²⁶ and EEA contractor may apply for Trusted Partner status for the purposes of future employment permit applications.

The Trusted Partner Initiative streamlines the application process for the person making the offer of employment/employer/connected person/EEA contractor when applying for employment permits. It is open to companies in expansion mode, start-up companies and regular users of the employment permits regime.

Registered Trusted Partners do not need to replicate employer/connected person related information on each employment permit application. Application forms for the different classes of employment permits, specially designed for Trusted Partners, are available.²²⁷

The Trusted Partner Initiative applies to all employment permit types except in the case of Contract for Services Employment Permits where it will only facilitate EEA contractors. The Department of Jobs, Enterprise and Innovation consider the benefits of the Trusted Partner Initiative to be:

- Fast turnaround of Trusted Partner registration application;
- Status valid for two years;
- No fee to register;
- Reduced paperwork for every permit applied for under the scheme;
- Shortened employment permit application forms;
- Faster turnaround of Trusted Partner employment permit applications.

²²⁵ Department of Jobs, Enterprise and Innovation (12 May 2015). Trusted Partner Initiative. Available at: www.djei.ie.

²²⁶ The 'connected person' is the Irish entity in the Intra-Company Transfer scenario. Department of Jobs, Enterprise and Innovation, March 2016.

²²⁷ Department of Jobs, Enterprise and Innovation Trusted Partner Application Forms. Available at: www.djei.ie.

5.1.5 Online Status Enquiry System for Employment Permits

The Department of Jobs, Enterprise and Innovation developed during 2015 an online status enquiry system for employment permit applications, which was launched in February 2016.²²⁸ It allows applicants for employment permits to enquire about the current status of their application and an automatic response will issue informing them of the current stage of processing of their application, and where possible, an indication of how much longer it will take for a decision to be made.²²⁹

5.1.6 Immigrant Investor and Start-up Entrepreneur Schemes

During 2015, 25 applications were approved under the Start-up Entrepreneur Programme (STEP).²³⁰

The purpose of the Start-up Entrepreneur Programme is to enable non-EEA nationals and their families who commit to a high potential start-up business in Ireland to acquire a secure residency status in Ireland.²³¹ In total, 55 projects have been approved since the launch of the STEP in 2012.²³²

An additional 64 applications for residence were approved under the Immigrant Investor Programme (IIP)²³³ in 2015, bringing the total number of applications approved since the launch of the IIP in 2012 to 105.

INIS reported that the programmes represent a combined investment commitment of approximately €75 million in Ireland.²³⁴

5.2 STUDENTS AND RESEARCHERS

5.2.1 Reform of Student Immigration Regime

2015 saw an intensive period of reform of the student immigration regime, based on a series of regulatory reforms set out in a joint policy statement by the Minister for Education and Science and Minister for Justice and Equality,

²²⁸ Department of Jobs, Enterprise and Innovation (15 February 2016). New Employment Permits Online Status Update Enquiry. Available at: www.djei.ie.

²²⁹ Department of Jobs, Enterprise and Innovation, March 2016.

²³⁰ Irish Naturalisation and Immigration Service, March 2016.

²³¹ Irish Naturalisation and Immigration Service (2015). 'Guidelines for Start-up Entrepreneur Programme, 2015'. Available at: www.inis.gov.ie.

²³² Irish Naturalisation and Immigration Service, March 2016.

²³³ The Immigrant Investor Programme (IIP) is open to non-EEA nationals and their families who commit to an approved investment in Ireland. See Irish Naturalisation and Immigration Service (2015). 'Guidelines for Start-up Entrepreneur Programme, 2015'. Available at: www.inis.gov.ie.

²³⁴ Irish Naturalisation and Immigration Service, March 2016.

originally published in September 2014.²³⁵ The reforms included the introduction of an Interim List of Eligible Programmes (ILEP), learner protection arrangements, and changes to the student work concession. The Minister for Justice and Equality has said that these reforms were necessary to

*to maintain Ireland's well established reputation, to tackle immigration abuses identified in the sector and provide meaningful learner protection for international students.*²³⁶

5.2.1.1 Interim List of Eligible Programmes (ILEP)

In May 2015, reforms restricting the list of eligible educational programmes for immigration purposes were announced.²³⁷ This Interim List of Eligible Programmes (ILEP) was part of the first pillar in a series of regulatory reforms set out in the joint policy statement originally published by the Ministers for Education and Science and Justice and Equality in September 2014. The ILEP will replace the former Internationalisation Register. The ILEP was originally intended to be published on 1 January 2015 but was stalled by legal challenge from two colleges regarding the impact of some of the reforms on the language sector.²³⁸

The ILEP was implemented on a phased basis.²³⁹ The first phase involved removing non-language programmes from the list; specifically all further education programmes (below National Framework of Qualifications (NFQ) Level 6) and all overseas accredited vocational and training programmes. From June 2015, non-language programmes eligible for inclusion on the list have been limited to the following:

- Higher education programmes leading to major awards at NFQ 6 and above which are made by statutory Irish awarding bodies and have a minimum of 60 ECTS associated with the programme;
- Higher education programmes leading to non-major awards at NFQ 6 and above which are made by statutory Irish awarding bodies and which have an associated workload of at least 60 ECTS credits per year;

²³⁵ Three pillars of regulatory reform: Restrictions on the programmes permitted for student immigration purposes; an enhanced compliance and inspection regime; strengthening the terms of the student work concession. Irish Naturalisation and Immigration Service (2 September 2014). 'Ministers O'Sullivan and Fitzgerald launch major reform of student immigration and the international education sector' *Press Release*. Available at: www.inis.gov.ie. The lead-up to the Joint Statement, including controversy about abuse in the sector and closure of several schools is reported on in Joyce, C., and S. Whelan (November 2015) *Annual Policy Report on Migration and Asylum 2014: Ireland*. Available at www.emn.ie and www.esri.ie.

²³⁶ Department of Justice and Equality, March 2016.

²³⁷ Department of Education (May 2015). *Reform of the International Education Sector and Student Immigration System Government Policy Statement May 2015*. Available at: www.education.ie. Irish Naturalisation and Immigration Service (May 2015). Interim List of Eligible Programmes. Available at: www.inis.gov.ie.

²³⁸ *National Employee Development Training Centre Ltd v. Minister for Justice and Equality and Qualifications and Quality Assurance Authority of Ireland* [2015] IEHC 140. Discussed in Joyce, C., and S. Whelan (November 2015) *Annual Policy Report on Migration and Asylum 2014: Ireland*. Available at www.emn.ie and www.esri.ie.

²³⁹ It was fully implemented by the end of January 2016. Irish Naturalisation and Immigration Service, September 2016.

- ACCA professional accountancy programmes and providers that have been designated by ACCA as Platinum Providers.
- On a temporary basis until 2016 existing overseas accredited bachelor and master's degree programmes currently on the Internationalisation Register with a minimum of 180 ECTs (or equivalent credits) at undergraduate level, and 60 ECTS (or equivalent credit value) at post-graduate level.

The second phase concerned private English language education providers seeking to have their programmes listed on the ILEP. Such education providers are now expected to comply with certain additional requirements before they can be included on the ILEP. These requirements, among other things, now provide for such services to demonstrate transparency of ownership, good governance, and adequate learner protection and quality educational products. The vetting process involved a written application and unannounced on-site inspections. The second phase of the introduction of the ILEP was completed with the publication of the list on 20 January 2016. All programmes for which non-EEA students are now eligible to apply for residence are included on a single list. The January 2016 phase involved applications from 84 English language providers totalling more than 520 English Language Training (ELT) programmes in all.²⁴⁰

5.2.1.2 Attendance Requirements under ILEP

As part of the approach to tackle immigration abuse in the sector, non-EEA students attending English language courses must have 85 per cent attendance over the length of the course. If a student has 25 per cent or more uncertified absence in the first six weeks of their programme, this must be communicated to the Garda National Immigration Bureau and INIS.²⁴¹

5.2.1.3 Student Work Concession

Changes to the student work concession were introduced on 1 January 2015.²⁴² The work concession for non-EEA students²⁴³ had been 20 hours per week during term time and 40 hours per week during holiday periods. However, variability between term time and holiday periods between colleges had left the scheme open to abuse. From 1 January 2015, the holiday periods, during which non-EEA students can work 40 hours per week, were standardised to May, June, July and August and 15 December to 15 January.²⁴⁴ The one exception to this rule is for

²⁴⁰ Irish Naturalisation and Immigration Service, March 2016.

²⁴¹ Irish Naturalisation and Immigration Service 'Attendance requirements under the ILEP.' Available at: www.inis.gov.ie Updated 15 September 2016.

²⁴² Irish Naturalisation and Immigration Service 'Note to Employers – Changes to the Employment entitlements of Non-EEA Students holding Immigration Stamp 2 – with effect from 1 January 2015'. Available at: www.inis.gov.ie.

²⁴³ On Stamp 2 student immigration permission.

²⁴⁴ From 1 September 2016 students holding a valid immigration Stamp 2 permission will be permitted work 40 hours per week only during the months of June, July, August and September and from 15 December to 15 January inclusive. At all

students on the Graduate Scheme; students with a honours bachelor's degree can work up to 40 hours per week for 12 months, and students with an ordinary level bachelor's degree can work up to 40 hours per week for six months upon receipt of the results of their final college exams.²⁴⁵

5.2.1.4 Learner Protection

The reforms introduced in May 2015 included measures for the protection of international students, including compulsory learner protection arrangements and a separate account facility to safeguard student advance payments. These reforms were introduced in response to concerning practices in the sector with the closure of colleges and international students losing fees they had paid for courses. These measures were compulsory from October 2015.²⁴⁶

5.2.1.5 Guidelines on Expulsion of English Language Students 2015

The Irish Naturalisation and Immigration Service (INIS) drew up Guidelines for Providers in December 2015 regarding expulsion of non-EEA students, as a result of becoming aware of issues around the expulsion of English language students for non-attendance at courses. INIS drew attention to existing guidelines on expulsion and absenteeism which are part of the ILEP conditions. These guidelines did not specify what policy should be in place, other than disciplinary action should be taken in a timely manner and be fully documented. INIS considered it legitimate to have an expulsion policy in place, once the policy is fair to the student and is outlined clearly to that student before they enrol.²⁴⁷

The INIS guidelines provide that:

- *The disciplinary system which may ultimately lead to expulsion must be clearly laid out in writing, including the issue of forfeiture of fees;*

other times students holding Immigration permission Stamp 2 will be limited to working 20 hours per week. See Irish Naturalisation and Immigration Service 'Changes to the Employment entitlements of Non-EEA Students holding immigration Stamp 2 – with effect from 1 September 2016.' Available at: www.inis.gov.ie.

²⁴⁵ Since January 2016, students on the Graduate Scheme are issued with a Stamp 1G, rather than the general Stamp 2 for student permission. This helps give greater clarity to employers in distinguishing this group from general non-EEA students. See Irish Naturalisation and Immigration Service 'Introduction of new Stamp for students availing of the Third Level Graduate Scheme – Stamp 1G'. Available at: www.inis.gov.ie.

²⁴⁶ 'Learner protection will be compulsory from 1 October 2015 onwards. All Private providers will be required to provide documentary evidence verifying the mode and adequacy of their learner protection arrangements. These arrangements may consist of an agreement between a group of providers that they will, in the event of closure of one of their number, make available to the affected students replacement courses free of charge or, alternatively, some form of insurance or bond arrangement with a financial institution that would refund the student with, as a minimum, the cost of the unused part of the course for which they had paid. In such circumstances the cover being provided to the student cannot be voided by the actions or inactions of the college.'

Department of Education (May 2015). *Reform of the International Education Sector and Student Immigration System Government Policy Statement May 2015*. Available at: www.education.ie.

²⁴⁷ Irish Naturalisation and Immigration Service 'Expulsion of English Language Students – Guidelines for Providers 2015.' Available at www.inis.gov.ie.

- *It should be communicated to the student in a language that he or she can reasonably be expected to understand*
- *Save in the case of most serious events, e.g. where the student has engaged in violent conduct against the staff or fellow students, it must be progressive with the student receiving a number of warnings before the expulsion step is taken*
- *The student should have recourse to some form of appeal or review.*

5.2.2 International Education Strategy

The Department of Education consulted widely in 2015 on a follow up strategy to the 2010 to 2015 International Education Strategy.²⁴⁸ The Department of Justice and Equality has explained that a key element of the Government's approach to international education in recent years has been the close alignment of Ireland's internationalisation strategy and its immigration regime. The Departments of Education and Skills and Justice and Equality have worked closely on a reform agenda aimed at ensuring that the industry operates to high quality standards, including student protection and immigration compliance. A reformed international sector can grow substantially in future years through incentives for high performing students to come to Ireland and to remain on after their studies through access to the labour market or further studies or research. In the context of the next phase of the Strategy, the current 12-month post-graduation permission is being re-examined.

5.2.3 Education in Ireland Information Campaigns

Information campaigns for non-EEA student recruitment under the Education in Ireland²⁴⁹ umbrella continued in 2015. Education in Ireland and participating colleges participated at several international education fairs throughout the year, including in India, Saudi Arabia, Oman and Malaysia.²⁵⁰ These fairs enabled prospective international students to meet representatives of Education in Ireland and from Irish universities and higher education institutions.

5.2.4 2004 Student Probationary Extension

The Student Probationary Extension introduced in August 2012 allowed eligible non-EEA national students to register for a two-year probationary period. As reported in the Annual Policy Report on Migration and Asylum 2012, the Student Probationary Extension was intended as a final measure to assist students

²⁴⁸ Irish Naturalisation and Immigration Service, March 2016. The International Education Strategy 2016-2020 was published in October 2016. See Department of Education and Skills (October 2016). *Irish Educated. Globally Connected. An International Education Strategy for Ireland, 2016-2020*. Available at: www.education.ie.

²⁴⁹ Enterprise Ireland manages the *Education in Ireland* national brand under the authority of the Minister for Education and Skills. Enterprise Ireland is responsible for the promotion of Irish Higher Education Institutions overseas. See www.educationinireland.com.

²⁵⁰ See www.educationinireland.com.

transitioning to the new student immigration regime and was for students who had been continuously resident in the State before 1 January 2005.²⁵¹ Eligible students who were granted permission during 2012 were registered for a period of two years on Stamp 2 immigration permission and their status continued to be that of a student. During this period those qualifying students were permitted to work for a maximum period of 40 hours per week without being required to hold an employment permit.

As part of the Student Probationary Extension it was indicated that at the conclusion of the two-year probationary period the eligible students could apply for a Stamp 4 permission to reside in the State subject to satisfying certain conditions. Stamp 4 permission entitles the holder to work without an employment permit or be self-employed and is also reckonable towards citizenship. The application process for Stamp 4 permission was undertaken during 2015. The students were not automatically entitled to Stamp 4 permission but had to go through an application process and pay a fee of €1,000. This fee was prescribed in the *Immigration Act 2004 (Student Probationary Extension) (Giving of Permission) (Fee) Regulations 2015 (S.I. No. 133 of 2015)*. Applications from legally resident spouses of Student Probationary Extension permission holders were considered after their spouse's application was finalised.²⁵²

5.2.5 Qualifications Recognition

As discussed in previous reports in this series, Quality and Qualifications Ireland (QQI) was established in November 2012, by the Qualifications and Quality Assurance (Education and Training) Act 2012 (the '2012 Act'). In July 2015, QQI published a *Code of Practice for Provision of Programmes of Education and Training to International Learners*,²⁵³ issued under Section 60(1) of the 2012 Act. The Code contains criteria to be met by education providers under four categories: General Requirements (including protection of enrolled learners); Marketing, Recruitment and Admissions; Fees, Refunds and Subsistence (including providing prospective students with information on the fees and other costs associated with undertaking a programme of study in Ireland); and Supports and Services for International Learners.

²⁵¹ Joyce, C. (September 2014). *Annual Policy Report on Migration and Asylum 2012: Ireland*. Available at www.emn.ie and www.esri.ie.

²⁵² Irish Naturalisation and Immigration Service 'Conclusion of 2004 Student Probationary Extension'. See www.inis.gov.ie.

²⁵³ See: www.qqi.ie.

5.2.6 Researchers

Ireland has not exercised its discretion to participate in the recast Students and Researchers Directive²⁵⁴ which was agreed during 2015. Ireland continued to participate in the Researchers Directive during 2015 (2005/71/EC) and will continue to operate the original Directive.²⁵⁵

5.2.7 Research

The Migrant Rights Council of Ireland (MRCI)'s paper *All Work and Low Pay*²⁵⁶ represents the findings of the MRCI's Worker Justice Group, which brings together migrant workers employed in sectors with low paid precarious jobs, e.g. in the food, retail, healthcare-related and personal household services sectors. The Worker Justice Group conducted surveys of migrant workers in the restaurant, domestic, home care, retail and security sectors.

The findings published in the paper are an analysis of 104 surveys of migrant workers conducted between November 2014 and March 2015. The top five nationalities represented were Pakistani, Filipino, Bangladeshi, Chinese and Indian. Immigration status of the respondents varied from Irish citizens or full access to the labour market (53.3 per cent); Student permission (30.5 per cent); Work permit holders (12.2 per cent); and Undocumented (4 per cent). The survey indicated breaches of employment law with respondents reporting, for example, that they received less than the minimum wage of €8.65 per hour (44 per cent); that they did not receive payslips (26 per cent) or that they were not compensated for Sunday work (82 per cent). While migrant workers surveyed were aware of their employment rights, the survey revealed difficulty in and reluctance to step forward to assert and claim those rights. None surveyed were members of Trade Unions. Fear of making complaints was also reported, due to fear of losing a job or an associated employment permit. The Focus Groups also highlighted a perception among migrant workers that the National Employment Rights Authority's (NERA)²⁵⁷ main function was to enforce immigration rules rather than inspect working conditions, during its inspections of workplaces.

Recommendations covered labour migration, including to introduce a regularisation scheme for undocumented workers and to review ineligible categories in the employment permit system; more enforcement of employment rights for all workers regardless of immigration status; raising wages; resourcing

²⁵⁴ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast).

²⁵⁵ Irish Naturalisation and Immigration Service, (March 2016).

²⁵⁶ Migrant Rights Centre Ireland (November 2015). *All Work and Low Pay*. Available at www.mrci.ie.

²⁵⁷ Now part of Workplace Relations Commission, following commencement of Workplace Relations Act 2015.

workers to enable them to actively participate in negotiating and enforcing their rights; and strategies to combat racism and discrimination. These conclusions were consistent with the findings and recommendations contained in the MRCI study *Workers on the Move* published in December 2015.²⁵⁸ In addition, this study also recommended a reform of the employment permits system away from the current model of tying the worker to a particular employer and moving instead to occupation-based employment permits. They also called for transitional measures such as a different salary threshold for international students to enter the labour market post-graduation. Skills recognition and skills development were also a focus of the report with the introduction of a dedicated structure responsible for skills recognition being recommended. Increasing the reach of English language courses was recommended which would assist integration processes. The need for tailored activation measures as a response to the impact of the recession on migrant workers to curb long-term unemployment was also highlighted.

The MRCI also published a factsheet on migrant workers in the home care sector; *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*.²⁵⁹ This project was part-funded by the European Commission under the European Integration Fund and supported by the Office for the Promotion of Migrant Integration and Pobal; and by the Equality Mainstreaming Unit, which is jointly funded by the European Social Fund 2007-2013 and the Irish Human Rights and Equality Commission.

In the paper, the MRCI draws on its experience working with migrant workers employed in care and domestic work since 2001, to highlight concerns about equality and labour market disadvantage experienced by migrant workers in this rapidly expanding sector. The paper notes that the home care workforce will need to double by 2050 to cope with the increase in the ageing population in OECD countries.

The paper recorded concerns expressed in MRCI consultations by home care workers in general and by migrant workers directly employed by families in the sector and makes recommendations directed both at improving standards of care in the sector and conditions for home care workers.

The Policy Recommendations cover:

²⁵⁸ Migrant Rights Centre Ireland (December 2015). *Workers on the Move*. Available at: www.mrci.ie.

²⁵⁹ Migrant Rights Centre Ireland (2015). *Migrant Workers in the Home Care Sector: Preparing for the Elder Boom in Ireland*. Available at: www.mrci.ie.

- Regulation and Monitoring, including to expand the remit of the Health Inspection Quality Authority (HIQA) to inspect the home care sector; to establish a register of professional home care workers and to introduce a flexible employment permit for the home care sector, facilitating mobility in line with the sector's demands;
- Workforce Development and Planning, including access to training and accreditation of skills; and
- Empowerment of families employing care workers to be compliant with employment legislation and of workers to participate in decision-making structures for standards in the sector.

5.3 FAMILY REUNIFICATION

Policy guidelines regarding family reunification applications in the immigration system in Ireland were published in late December 2013 and were generally applicable from early 2014. These policy guidelines did not cover family reunification applications arising from EU Treaty Rights applications (under Directive 2004/38/EC) or from the immediate family members (spouse and minor children) of recognised refugees or beneficiaries of subsidiary protection which were covered by existing legislation.²⁶⁰

One of the proposals in the Policy Guidelines was the proposed introduction of a statutory appeals mechanism in a revised *Immigration, Residence and Protection Bill*.²⁶¹ However, in 2015 the Bill was split and only the Protection aspects of the Bill (with some miscellaneous amendments to the Immigration Acts relating to deportation and border control aspects)²⁶² were taken forward during 2015. The *International Protection Act 2015* was signed into law on 30 December 2015. The remaining Immigration and Residence aspects of the Bill, including the proposed statutory appeals mechanism, still remain to be republished.

5.4 VISA POLICY

5.4.1 Visa Statistics

A total of 97,193 visas for both short and long stays were issued in 2015²⁶³. This was up from 90,382 visas issued in 2014.²⁶⁴ The approval rate for 2015

²⁶⁰ Irish Naturalisation and Immigration Service (2013). *Policy Document on Non-EEA Family Reunification*. Available at www.inis.gov.ie.

²⁶¹ Ibid.

²⁶² Irish Naturalisation and Immigration Service (19 November 2015). 'Minister Fitzgerald publishes International Protection Bill 2015' *Press Release*. Available at: www.inis.gov.ie.

²⁶³ European Migration Network (2016) *EMN Annual Report on Immigration and Asylum 2015: Statistics Annex* Available at: www.emn.ie.

applications was 91 per cent and the top five nationalities applying for visas in 2015 were India (18 per cent); China (12 per cent); Russia (10 per cent); Pakistan (7 per cent); and Nigeria (5 per cent).²⁶⁵

5.4.2 Legislation

The *Immigration Act 2004 (Visas) (Amendment) Order 2015 (S.I. No. 175 of 2015)* removed the requirement for nationals of Ethiopia transiting the State directly from Ethiopia en route to the United States of America or Canada (with a valid permission from those States) or returning directly from the United States of America or Canada (having held a valid permission there) to Ethiopia, to hold a transit visa to transit the State. It also added the United Arab Emirates to the list of countries whose diplomatic passport holders are exempt from holding a valid Irish visa when landing in the State.

The *Immigration Act 2004 (Visas) (Amendment) (No. 2) Order 2015 (S.I. No. 513 of 2015)* removed Malawi from the list of countries whose citizens are exempt from the requirement to hold an Irish visa when landing in the State.

5.4.3 Online Appointments Booking System

From 16 November 2015, an online appointments booking system was introduced for the re-entry visa service.²⁶⁶ This replaced the old ticketing system, where customers queued at the re-entry Visa Office. Customers may apply for a re-entry visa by registered post or make an appointment using the online system. This removes the need to queue for a re-entry visa.²⁶⁷

5.4.4 British-Irish Visa Scheme (BIVS)

The British-Irish Visa Scheme was extended to India in February 2015. The Scheme had been launched by the Irish Minister for Justice and Equality and the UK Home Secretary in October 2014, and initially applied to China. The British-Irish Visa Scheme facilitates nationals requiring a short-stay visa to travel freely within the Common Travel Area using a single visa issued by either Ireland or the UK. The British and Irish authorities will agree further roll-out of the scheme to other countries.²⁶⁸

²⁶⁴ European Migration Network (2016) Country Factsheet: Ireland 2015 Available at www.emn.ie.

²⁶⁵ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

²⁶⁶ Irish Naturalisation and Immigration Service (13 November 2015). 'Online Appointments Service for Re-Entry Visas'. See www.inis.gov.ie.

²⁶⁷ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

²⁶⁸ Department of Justice and Equality (9 February 2015). 'Minister for Justice announces extension of the British-Irish Visa Scheme to India' *Press Release* www.justice.ie.

The British-Irish Visa Scheme (BIVS) has a dual purpose, to promote business and tourism visits by nationals of countries included under the Scheme, and to increase cooperation to promote the border security of the Ireland-UK Common Travel Area. An agreement for the sharing of immigration data between both jurisdictions was signed at the time of the launch of the BIVS in October 2014. In 2015, under data sharing arrangements the details of over 100,000 Irish visa applicants were checked against UK records.²⁶⁹

At the time of the extension of the Scheme to India, the Minister for Justice and Equality remarked:

*The British-Irish Visa Scheme is a unique opportunity for the tourism promotion bodies on both islands to jointly promote tourism travel to Ireland and the UK. With that objective Tourism Ireland and Visit Britain are working together to market the British-Irish Visa Scheme in China and India.*²⁷⁰

After its first full year of operation in 2015, the Irish Naturalisation and Immigration Service has noted a 27 per cent increase in visas granted to Chinese and Indian citizens travelling for tourism or business purposes.²⁷¹

The requirement for applicants for Irish visas to provide their fingerprints was extended to India in February 2015. This had been a requirement for Nigeria since 2010 and Pakistan and China since 2014. The collection of this data is also a necessary part of the operation of the British-Irish Visa Scheme with the UK.²⁷²

5.4.5 Case Law

Li and Another v. Minister for Justice [2015] IEHC 638

The applicants were Chinese nationals who were married. They had an adult daughter who married an Irish citizen in May 2011, and obtained Irish residency thereafter. In 2012 the applicants obtained a 90-day visitor's visa to come to Ireland to visit their daughter. They returned to China immediately before the visa expired. They subsequently applied for a further 90-day visitor's visa, which was also granted. They arrived in Ireland in 2014. During this visit, however, they decided to seek an extension of their visa to enable them to live in Ireland on a more permanent basis with their daughter as dependants. The Minister for Justice refused, pointing out that, as visa-required nationals, they had to apply for

²⁶⁹ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

²⁷⁰ Department of Justice and Equality (9 February 2015). 'Minister for Justice announces extension of the British-Irish Visa Scheme to India' *Press Release* www.justice.ie.

²⁷¹ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

²⁷² *Ibid.*

the appropriate visa from outside the State. The applicants challenged this by way of judicial review.

The High Court upheld the Minister's decision, accepting her argument that, if persons who came to the State on 90-day visitor visas were entitled to apply for longer term permission to remain, without first returning to their home countries, this would necessitate a greater degree of scrutiny of applications for visitor visas which, in turn, would have a knock on effect which would act to the detriment of persons who genuinely wished to visit for short periods.

Ford and Another v. Minister for Justice and Equality [2015] IEHC 720

The applicants were a married couple. The first applicant, the wife, was an Irish national. She had three children from another relationship who were all Irish citizens and aged approximately 21, 12 and 6. Her husband was a Nigerian national. She was introduced to him by a mutual friend in or around 2010 and they maintained contact via telephone and social media, including Skype, thereafter. She met him in person in the United Kingdom in January, 2011, after which they commenced a relationship which continued after he returned to Nigeria in February, 2011. Thereafter they maintained their relationship by electronic and telephonic communication. In October, 2013 the first applicant travelled to Nigeria and remained there for two weeks, during which time the applicants were married. She did not intend living in Nigeria and assumed that her husband would be able to join her in Ireland.

In or around December, 2013 / January, 2014, the second applicant applied for a visa to join his wife in Ireland. His application was refused by the Minister for Justice in April, 2014. He applied for a review, in the course of which his wife submitted a letter outlining their relationship and how they had maintained contact since they had met. She referred to daily telephone calls between them and also contact on Facebook and Skype. The review was not successful, a decision being made in June, 2014 to uphold the refusal of the visa. An Article 8 ECHR consideration was carried out, which noted that the couple had never lived together, that he was not dependent on his wife, and at the time they married, she could not have had any expectation that he would be permitted to join her in the State. It was considered that refusing the application would not breach their right to respect for family life under Article 8(1) ECHR.

The applicants challenged the refusal of the review. They contended that it breached their rights under Article 41 of the Constitution and was unreasonable in assuming that the marriage could, in effect, be continued without their living together and on the basis of the first applicant's visiting Nigeria.

The High Court quashed the decision. It considered that the letter and the manner in which the couple had kept in contact did not appear to have been considered in the appeals officer's decision. It also considered that the refusal was vitiated by the fact the bulk of the consideration of family rights had been under Article 8 ECHR and that insufficient consideration had been given to Article 41 of the Constitution. In its view, family rights under Article 41 were not merely theoretical and their essence had to be respected. The refusal decision, however, effectively compelled the married couple to live apart and represented a very significant interference by the State with the core principle valued and protected by Article 41. This decision is under appeal.

5.5 BORDER MANAGEMENT

5.5.1 Schengen Information System II

In 2001, Ireland asked the Council to take part in limited aspects of the Schengen *acquis*. Council Decision 2002/192/EC on Ireland's participation in the *acquis* was published on 28 February 2002. Ireland will not take part in the border related aspects of the *acquis* but will, subject to Schengen evaluation,²⁷³ participate in certain horizontal aspects including police cooperation provisions and the Schengen Information System II (SIS II).

In December 2015, the Minister for Justice and Equality announced that she had secured additional capital funding of €4 million in 2016 to allow Ireland to advance its national SIS II project.²⁷⁴ The total timeframe to implement the necessary systems and structures in An Garda Síochána to support the integration with SIS II is expected to be 18-24 months.²⁷⁵

5.5.2 Civilianisation of Border Control

A priority project to civilianise front-line immigration at Dublin Airport was progressed during 2015.²⁷⁶ On 22 June 2015, around 80 civilian Immigration Officers from the Irish Naturalisation and Immigration Service took on full responsibility for border checks at Terminal 1 on a 24/7, 365 basis, a function which had previously been carried out by the Garda National Immigration

²⁷³ The Schengen Evaluation and Monitoring Mechanism monitors the implementation of the Schengen *acquis*. See European Commission DG Migration and Home Affairs, *What We Do: Schengen Evaluation and Monitoring*. Available at www.ec.europa.eu.

²⁷⁴ Irish Naturalisation and Immigration Service (1 December 2015). 'Minister secures funding for Schengen Information System' *Press Release*. Available at: www.inis.gov.ie.

²⁷⁵ Department of Justice and Equality, July 2016.

²⁷⁶ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

Bureau.²⁷⁷ Department of Justice stated that the transfer of these functions at Terminal 2, Dublin Airport, is a priority for 2016. The Garda National Immigration Bureau will continue to carry out investigative and detention functions at Dublin Airport.²⁷⁸

The civilian immigration officers underwent a comprehensive programme of classroom and on-the-job training. The subjects covered included relevant legislation; fraudulent documentation; unaccompanied minors, human trafficking and international protection, among other topics.

In September 2015, the Minister for Justice and Equality stated that the civilianisation programme will result in reduction in costs of the immigration function from €7 million to approximately €3 million once completed.

The immigration services at both terminals in Dublin Airport processed 12.4 million visitors in 2015. Despite a 15 per cent increase in passenger numbers at Dublin Airport in 2015, or an additional 3.3 million people, INIS reports that the average queue times for passengers from outside the EU at passport control are approximately five minutes.²⁷⁹

5.5.3 Automated Border Control Technology

As reported in the *Annual Policy Report on Migration and Asylum 2014*, the extension of the use of e-gates throughout Dublin Airport was seen as a priority for the Irish Naturalisation and Immigration Service in 2015. The piloting of self-service automated border control gates at Terminal 1, Dublin Airport, continued during 2015. INIS reported that these gates were operating very successfully with up to 17,500 persons using this facility at peak times.²⁸⁰ A procurement competition is planned for 2016 to expand the use of self-service gates.²⁸¹

5.5.4 Frontex

During 2015, Ireland continued to participate in activities of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

²⁷⁷ Irish Naturalisation and Immigration Service (16 September, 2015). 'Minister Fitzgerald reviews new civilian immigration and border control arrangements at Dublin Airport.' *Press Release*. Available at: www.inis.gov.ie.

²⁷⁸ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

²⁷⁹ Irish Naturalisation and Immigration Service (16 September, 2015). 'Minister Fitzgerald reviews new civilian immigration and border control arrangements at Dublin Airport.' *Press Release*. Available at: www.inis.gov.ie.

²⁸⁰ *Ibid.*

²⁸¹ Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

In December 2015, the European Commission published proposals to repeal the Frontex Regulations and establish a European Border and Coast Guard.²⁸² The legal base of the new proposals falls within those aspects of the Schengen *acquis* in which Ireland does not participate and thus Ireland will not be bound by the proposals, once adopted. The proposal contains provisions on operational cooperation between Ireland and the proposed Border and Coast Guard, similar to the current arrangements with Frontex,²⁸³ whereby there can be limited cooperation between Ireland and Frontex as approved by the Frontex Management Board.

Frontex's Operation Triton was expanded in the Mediterranean during 2015, following the humanitarian tragedy of loss of life from migrant boats. Ireland deployed several naval vessels in the Mediterranean off the coast of Libya throughout 2015 to assist the Italian authorities in search and rescue of migrants (more detail is reported in Chapter 3).²⁸⁴ Ireland's participation in search and rescue operations in the Mediterranean was by means of a bilateral agreement with the Italian navy.²⁸⁵

5.6 INTEGRATION

5.6.1 Integration Strategy

As previously reported in the *Annual Policy Report on Migration and Asylum 2014*, a Cross-Departmental group on Integration was established in March 2014 with a mandate to review the activities being undertaken by Government Departments and agencies directed to promoting the integration of migrants, preparing a Draft Integration Strategy taking account of the policies and actions already being implemented, and undertaking consultation with key stakeholders. A public consultation process was subsequently launched as part of the review. Over 80 submissions were received from stakeholders, a large number of whom met with the Cross-Departmental Group on Integration. The Group also held a number of thematic meetings focussing on key policy areas relevant to the integration of migrants, including education, access to public services and social inclusion, and the promotion of intercultural awareness and combating racism.

²⁸² Proposal for a Regulation of The European Parliament and of The Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC COM (2015) 671 final.

²⁸³ See Article 50 of proposal.

²⁸⁴ Department of Defence (12 May 2015). 'Minister for Defence, Mr. Simon Coveney, T.D., secures Government approval for the Deployment of a Naval Vessel to Assist in the Humanitarian Crisis in the Mediterranean' *Press Release*. Available at: www.defence.ie.

²⁸⁵ Department of Justice and Equality (10 September 2015). 'Update on Ireland's Response to EU Migration Crisis'. *Press Release*. Available at: www.justice.ie.

Work on the development of the updated Integration Strategy continued during 2015. Work on the Strategy is at an advanced stage.²⁸⁶

5.6.2 Funding

A total of €1,386,109 was allocated by the Office for the Promotion of Migrant Integration (OPMI) for integration purposes during 2015. Some €215,960 was allocated to local authorities to promote integration at local level.²⁸⁷

A number of funding initiatives under the European Refugee Fund (ERF) and the European Integration Fund for Third-Country Nationals (EIF) continued up to June 2015. Ireland's National Programme for the Asylum, Migration and Integration Fund envisages that 27.9 per cent of the national AMIF programme will be spent on integration.²⁸⁸

On behalf of OPMI, Business in the Community Ireland (BITC) manages the Employment of People from Immigrant Communities (EPIC) programme. The EPIC programme aims to assist European Economic Area nationals and immigrants who can work in Ireland without a work permit to find employment and/or further training and education in Ireland. The training programme includes workplace language and social skills training, CV preparation, one-on-one coaching, interview skills, working in Ireland and IT.²⁸⁹ According to BITC:

*EPIC brings huge benefits to immigrants in terms of improving their English language, their job seeking skills, raising their motivation and confidence, increasing their understanding of the work environment and the Irish system; building their networks and promoting overall social integration.*²⁹⁰

A total of €389,229.71,²⁹¹ co-financed (50 per cent) by the European Social Fund, was provided for the EPIC programme in 2015.

In 2015, OPMI continued to provide funding to the New Communities Partnership for the Citizenship Application Support Service, a no-charge service aimed at supporting migrants in completing applications for citizenship.

²⁸⁶ www.integration.ie.

²⁸⁷ Ibid.

²⁸⁸ The National Programme for AMIF was officially adopted by the Commission on 21 March 2016. See www.integration.ie.

²⁸⁹ www.integration.ie.

²⁹⁰ See www.bitc.ie.

²⁹¹ See www.integration.ie.

OPMI also continued to provide funding in 2015 to information campaigns and initiatives to combat racism such as Show Racism the Red Card (€50,000) and Sport Against Racism Ireland (€10,000).²⁹²

5.6.3 National Traveller and Roma Inclusion Strategy

In June 2015, the Department of Justice and Equality invited interested parties to make submissions on a revised National Traveller and Roma Inclusion Strategy (NTRIS) 2016-2020 to replace the National Traveller /Roma Integration Strategy 2011. The Strategy is being developed in response to the EU Framework for National Roma Integration Strategies.²⁹³

The development of the Strategy will have three phases, the first of which, an initial consultation round to identify priority themes, took place in 2015. Phase 2; the identification and agreement of high-level objectives under each agreed theme took place in February 2016. This included a series of consultation meetings and an online survey to allow stakeholders to comment on the draft objectives. The third phase, which will identify detailed actions, associated timescales, Key Performance Indicators, institutional responsibilities and monitoring arrangements, will be completed in 2016 with the presentation of a new Strategy for Government Approval.²⁹⁴

5.6.4 Racism

The Office for the Promotion of Migrant Integration (OPMI) is the focal point for the Government's commitment on anti-racism as a key aspect of integration, diversity management and broader national social policy. The Office continues to work with all the relevant sectors to further progress the integration and diversity management agenda.²⁹⁵

OPMI continued in 2015 to publish awareness raising information on racism, information regarding reporting racist crime and statistics on racially motivated crime on its website www.integration.ie. By the end of the third quarter of 2015, there were a total of 74 incidences of reported racially motivated crime (including anti-Semitism) (statistics from the Central Statistics Office).²⁹⁶

²⁹² See www.integration.ie.

²⁹³ Department of Justice and Equality *Summary of the submissions received for the revised National Traveller and Roma Inclusion Strategy*. Available at: www.justice.ie. See also www.travellerinclusion.ie.

²⁹⁴ Department of Justice and Equality *New National Traveller and Roma Inclusion Strategy (2016-2020)*. Available at: www.justice.ie.

²⁹⁵ See Parliamentary Question No. 34570/15 (6 October 2015) On actions taken to prevent racism. Available on www.oireachtasdebates.oireachtas.ie.

²⁹⁶ www.integration.ie.

5.6.5 Engagement of Diaspora Communities

Examples of engagement of diaspora communities in 2015 included Africa Day, held in Farmleigh Estate, Phoenix Park, Dublin and the first India Day, also held in Farmleigh, in September 2015.

Africa Day 2015 was supported by Ireland's Development Agency, Irish Aid. Speaking at the launch of Africa Day 2015, the Minister for Foreign Affairs and Trade, Charles Flanagan, said that the annual Africa Day celebrations in Ireland show how 'Ireland's contribution to international development has helped forge strong links between our country and a wide range of African nations', and that the celebrations highlight the contribution made by the African diaspora in Ireland to Ireland's economy, society and 'evolving culture.'²⁹⁷

The first India Day was held at Farmleigh Estate on 5 September 2015. The event was inaugurated by the Minister for Social Protection, Joan Burton, and the Indian Ambassador to Ireland, H.E. Mrs. Radhika Lal Lokesh. Both speakers emphasised the contribution of Indian professionals in the Irish IT and Health sectors. The Ambassador recognised the role of Indians in Ireland to the economic development of Ireland and encouraged the Indian community to also 'contribute to the growth story of India.'²⁹⁸

5.6.6 Research

The *Voices of Young Migrant Men*²⁹⁹ report formed part of the Migrant Men's Well-Being in Diversity (MiMen) Project, funded by the European Commission, which was conducted with partners in seven countries, including Ireland. Its focus was to identify and analyse the factors which influenced social integration by young migrant (non-EU national) men. In Ireland, the Integration Centre implemented the project between January and December 2014 with the Immigrant Council of Ireland bringing the project to completion in 2015.

The participants were 40 young men from 19 different non-EU countries aged between 16 and 27 years of age. The majority of the young men were in their twenties and had been living in Ireland for several years, with many having arrived in their early or mid-teens thus allowing the researchers to get a sense of how they had settled in Ireland whilst also coming of age. The research was

²⁹⁷ Africa Day (7 May 2015). 'Official launch of Africa Day 2015' *Press Release*. Available at: www.africaday.ie

²⁹⁸ Embassy of India, Ireland (October 2015). Newsletter. Available at: www.indianembassy.ie

²⁹⁹ Szlovák, P., and J. Szewczyk (2015) *Voices of Young Migrant Men* Immigrant Council of Ireland. Available at: www.immigrantcouncil.ie.

conducted through three focus groups³⁰⁰ and 26 individual biographical narrative interviews.

The report had findings under a number of themes including: migration journey; cultural differences; home and belonging; importance of family; expectation and support from family; cultural integration and its impact on relationships; accessing education; early experiences in school; teaching style; negative experience in education; gender differences; authorities; friendships; socialisation and leisure activities; access to employment; treatment at the workplace and ambitions.

The recommendations focused on education; community, youth and sport; authorities; immigration and asylum and employment support and training.

5.7 CITIZENSHIP AND NATURALISATION

5.7.1 Citizenship Statistics

A total of 10,421 non-EEA nationals acquired Irish citizenship in 2015. The top three nationalities of applicants who acquired citizenship were India, Nigeria and Philippines.³⁰¹ INIS have noted that processing times ‘for the vast majority of standard applications’ have now reduced from 31 months to less than six months.³⁰²

16 citizenship ceremonies took place during the year. The 100th citizenship ceremony took place on 23 January 2015.

5.7.2 Case Law

MY and Others v. Minister for Justice and Others [2015] IEHC 7

The first and second applicants were a married couple from Pakistan residing in the State with their three children. The applicants sought inter alia declarations that the first and second applicants had lawfully resided in the State since the birth of their first child (the third applicant) in 2002, who was an Irish citizen. The fourth and fifth named applicant twins were born in 2005. The case arose from an application on behalf of the twins for Irish passports which was rejected by the Minister for Justice on the basis that their parents lacked the required period of lawful residence prior to their birth.

³⁰⁰ In which 22 interviewees participated.

³⁰¹ Irish Naturalisation and Immigration Service, August 2016.

³⁰² Department of Justice and Equality (March 2016). *Irish Naturalisation and Immigration Service Immigration in Ireland: Annual Review 2015*. Available at: www.justice.ie.

The applicants argued that, as the third applicant was an Irish / EU citizen, the first and second applicants' rights of residence derived from that citizenship, and that, even if that was not the case, such rights would exist independently by operation of Article 20 TFEU. They stated that the Minister was obliged retrospectively to acknowledge such rights and to consider the periods of residency from the birth of the child in 2002 to be 'reckonable residence' within the meaning of the Irish Nationality and Citizenship Act 1956, contending that such retrospective recognition was what the CJEU required in C-34/09 *Zambrano*. The respondents submitted that the right identified in *Zambrano* was a qualified one and did not entitle the applicants to disregard the necessity of obtaining permission to remain. Rather, when read alongside subsequent judgments of the CJEU, it merely set out the circumstances in which third-country national parents of Union citizens might be granted permission to reside in the State. They contended that the right of the Union citizen child did not arise automatically at birth, but was dependent upon the circumstances of the family and on an assessment of whether it would be denied the genuine enjoyment of the substance of their rights as a Union citizen if its parent(s) was not permitted to remain and work in the Member State.

The High Court rejected the applicant's argument that *Zambrano* was authority for the proposition that they were lawfully present in the State from the date of birth of the Irish citizen child in 2002 and that, on account of such birth, parents unlawfully present in the State overcome that illegality and automatically enjoy such rights. It held that no provision of EU law exempted third-country nationals from complying with the laws of Member States as to residence and employment. The State's regime requiring non-EU persons to have permission to be in the State was not affected by EU law, save that such permission could not be withheld if the applicants were parents/carers of dependent EU citizens who, upon failed applications for residence, would be obliged to leave the territory of the Union. The court noted that the CJEU, rather than conferring automatic rights of residence, stated that no exemption from work permit rules was automatically created by EU law, but that there were circumstances where such effect *might* be found. It was left to a national court to decide whether the refusal of an application would have the effect of depriving an EU citizen child of his/her right to remain in the EU. Similarly, there might be circumstances in which Ireland was obliged retrospectively to acknowledge lawful residence of parents, or retrospectively confer permission to be in the State from the date of birth of the citizen child. However, no such facts or argument were advanced in the instant case. The court did not consider that the child's EU citizenship had been impaired by the historic unlawful presence of the parents in the period from the birth of the child until the date they were granted permission to be in the State in 2005.

The court therefore refused the reliefs sought by the applicants.

5.8 DERIVATIVE RIGHTS OF RESIDENCE UNDER EU LAW

5.8.1 Case Law

AGA v. Minister for Justice and Equality [2015] IEHC 446

The applicants, who were mother and daughter, sought to quash a decision of the Minister for Justice whereby she refused the first applicant's application for residency, which was based on the decision of the CJEU in C-200/02 *Zhu and Chen*. They claimed that the second applicant was a national of the United Kingdom residing in the State; that the first applicant was her primary parental carer; that the applicants were residing with a named person; that both applicants had comprehensive private sickness insurance cover; and that the first applicant's partner, an Irish national, had sufficient resources to provide for the applicants and he made financial provision for them. The application was refused on the basis that there was no evidence to show that the first applicant had sufficient resources to support herself or her daughter. The applicants obtained leave to challenge the decision.

The court upheld the Minister's decision. It considered that the practicality of the second applicant's situation was that she has no resources of her own, and such resources as might be imputed to her would have to be supplied to her by her mother, the first applicant. However, the first applicant also had no apparent resources of her own and was dependent upon the support of third parties, namely a man who, it was stated, provided her with a weekly sum of money and paid day-care for the second applicant, and a woman, who let them live rent free with her. The court held that the Minister was entitled to inquire into the resources available to the primary parental carer. The third parties giving her support were not related to the second applicant and did not supply any resources directly to her but rather supplied them to her mother. It rejected the applicants' contention that any potential resources from any source constituted sufficient resources. Such an argument, in its view, was incompatible with CJEU case law that national authorities were entitled to check the existence, amount and availability of the alleged resources in any given case. The Minister was entitled to investigate those resources at the outset. In this case, the court held that the Minister's decision had clearly stated that there had not been adequate evidence submitted as to the sufficiency of resources, namely as to their existence, amount and availability contemplated by the CJEU, and that the Minister was entitled to have regard to that. It therefore upheld the impugned decision.

5.9 OTHER IMPORTANT DEVELOPMENTS: CHANGE OF IMMIGRATION STATUS

5.9.1 Case Law

2015 saw important case law emerge regarding the interpretation of Section 4(7) of the *Immigration Act 2004* which gives the legal base for change of immigration status. Section 4(7) provides that an immigration permission granted under Section 4 of the Immigration Act 2004 can be renewed or varied by the Minister for Justice and Equality or an immigration officer acting on his/her behalf. In *Luximon v. Minister for Justice* [2015] IEHC 227, the applicant sought to judicially review the decision of the Minister for Justice to refuse her application for change of status from ‘Stamp 2’ student status to Stamp 4 status.³⁰³ The High Court quashed the Minister’s decision on both the grounds put forward by the applicant (see case summary below).

This decision is under appeal.³⁰⁴

Luximon v. Minister for Justice [2015] IEHC 227

The applicant was a Mauritian student who had arrived in the State in July 2006 to study and was permitted to remain in the State on that basis. She was joined in the State by her two daughters. Her permission to remain on student conditions expired in June 2012. She applied to the Minister for a change of status and permission to reside in the State on ‘Stamp 4’ conditions, pursuant to Section 4(7) of the Act of 2004, which would allow her to remain in Ireland for a specific period of time and to work without a work permit. The Minister refused the application.

The decision was challenged by the applicants on a number of grounds: first, it was contended that in refusing the application for change of status, the Minister failed to have any regard to the personal, family and/or private life rights of the applicants as protected under Article 40.3 and 41 of the Constitution and Article 8 of the European Convention on Human Rights. It was also argued on behalf of the applicant that the policy in respect of applications for change of status/permission to reside on the basis of Stamp 4 conditions, pursuant to Section 4(7) of the Act of 2004 for students, was not published. As a result the applicant could not be aware of the information or evidence that might entitle her to a change of status/permission to reside on the basis of Stamp 4 conditions.

³⁰³ Stamp 4 grants residence for a set period of time and imposes no particular restrictions. Holders can access labour market without an employment permit.

³⁰⁴ Leave to appeal was granted in *Luximon v. Minister for Justice* [2015] IEHC 383.

The High Court quashed the Minister's decision on both grounds. First, Barr J. held that where private and family life rights were engaged under the Constitution or the ECHR, the Minister was obliged to consider them in the context of an application for change of status under Section 4(7). Secondly, Barr J. held that, whilst the Minister had published detailed guidelines for non-EEA students who wished to avail of various options under the non-EEA student scheme, there did not appear to have been publication of any guidance as to what criteria she would take into account when considering an application pursuant to Section 4(7) for a change to a 'Stamp 4' permission from someone in the first applicant's position, namely a 'timed-out' non-EEA student who held a 'Stamp 2' permission. The court therefore held that the Minister failed to comply with the principles of natural and constitutional justice, and basic fairness of procedures, in failing to publish such criteria.

This decision is under appeal.

Chapter 6

Migration and Development

6.1 2030 SUSTAINABLE DEVELOPMENT AGENDA

In October 2014, Ireland and Kenya were appointed to lead the inter-governmental negotiations on the post-2015 Development Agenda, the successor to the Millennium Development Goals.³⁰⁵

Ireland and Kenya led the negotiations throughout 2015, culminating in the adoption of the 2030 Sustainable Development Agenda at the United Nations Sustainable Development Summit on 25 September 2015.³⁰⁶

The 2030 Sustainable Development Agenda contains 17 development goals and 169 targets, with an accompanying Political Declaration, a section on the financial and other means of implementation to achieve the goals and targets and a section on follow-up and review.³⁰⁷ The ‘five P’s’ set out in the Preamble – People, Planet, Prosperity, Peace and Partnership – underpin the principles behind the Declaration.

The Sustainable Development Goals explicitly recognise the interlinkage between migration and development and the role of migration in sustainable development. Paragraph 29 of the Declaration states:

We recognise the positive contribution of migrants for inclusive growth and sustainable development. We also recognise that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination which requires coherent and comprehensive responses. We will cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the

³⁰⁵ Department of Foreign Affairs and Trade (19 October 2014) ‘Ireland appointed to lead UN negotiations on a new Global Development Agenda’. *Press Release*. Available at: www.dfa.ie.

³⁰⁶ Department of Foreign Affairs and Trade (3 August 2015) ‘Ministers Flanagan and Sherlock welcome historic agreement on Sustainable Development Agenda’. *Press Release*. Available at: www.dfa.ie.

³⁰⁷ ‘Transforming our world: the 2030 Agenda for Sustainable Development’ Document A/RES/70/1. Available at: <https://sustainabledevelopment.un.org>; See also Permanent Mission of Ireland to the United Nations, New York (2 August 2015). ‘Transforming Our Word: the 2030 Agenda for Sustainable Development’. *Press Release*. Available at: www.dfa.ie.

humane treatment of migrants regardless of migration status, of refugees and of displaced persons. Such cooperation should also strengthen the resilience of communities hosting refugees, particularly in developing countries. We underline the right of migrants to return to their country of citizenship, and recall that States must ensure that their returning nationals are duly received.

Goal 10 – Reduce inequality within and among countries – provides a target to;

*Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well managed migration policies.*³⁰⁸

In addition, other targets include provisions in relation to migrant rights³⁰⁹ and the reduction of remittance costs.³¹⁰

6.2 REGIONAL DEVELOPMENT AND PROTECTION PROGRAMME IN THE MIDDLE EAST AND SYRIA

Ireland is one of a platform of donors who contributed to the Regional Development and Protection Programme (RDPP) in the Middle East and Syria. Ireland has provided €2.5 million to the RDPP, which is led by the European Commission and Denmark, to support refugees and host communities in Lebanon and Iraq, using both humanitarian and development programming.³¹¹

6.3 VALETTA SUMMIT ON MIGRATION

The Minister for Justice and Equality, Frances Fitzgerald T.D., represented Ireland at the Valetta Summit on Migration on 11 and 12 November 2015. The Summit brought together EU and African leaders to discuss cooperation on migration. The Summit agreed a Declaration and Joint Action Plan, structured around five themes:

- address the *root causes* of irregular migration and forced displacement;
- enhance cooperation on *legal migration and mobility*;
- reinforce the *protection of migrants and asylum seekers*;
- prevent and fight irregular migration, migrant *smuggling* and *trafficking* in human beings;

³⁰⁸ ‘Transforming our world: the 2030 Agenda for Sustainable Development’, Goal 10, Target 10.7.

³⁰⁹ Target 8.8 ‘Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment’.

³¹⁰ Target 10.c ‘By 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs of higher than 5 per cent.’

³¹¹ Department of Foreign Affairs and Trade (8 October 2015) ‘Minister of State Sean Sherlock T.D. to meet with Syrian refugees in Jordan’ *Press Release*. Available at www.dfa.ie.

- work more closely to improve *cooperation on return, readmission and reintegration*.³¹²

The Minister placed emphasis on the role of the Summit as representing an opportunity deepening cooperation between Europe and Africa in addressing the root causes of the migration crisis.³¹³

The EU Emergency Trust Fund for Stability and Addressing Root Cause of Irregular Migration and Displaced Persons in Africa was established at Valetta, to which Ireland has committed €3 million over the period 2016-2020. Ireland is vice-chair of the Trust Fund's board and a member of the Operational Committee.³¹⁴

Some commentators³¹⁵ emphasised that the outcome of the Valetta Summit and the use of the Trust Fund must focus on human rights rather than migration management.

In a response to a Parliamentary Question asking that Ireland ensure a clear separation between overseas development funding and migration management funding, Minister for Foreign Affairs and Trade, Charles Flanagan T.D., said:

*Ireland has made it clear at all times in discussions leading to the establishment of the Trust Fund and subsequently, that it is essential that all programming under the Trust Fund which comes from development budgets must be for activities which are clearly eligible to count as Official Development Assistance, in accordance with the agreed rules.*³¹⁶

³¹² Valetta Summit on Migration, 11/12 November 2015, www.consilium.europa.eu.

³¹³ Irish Naturalisation and Immigration Service (11 November 2015). 'Minister Fitzgerald attends Valletta Summit of EU and African leaders on migration crisis'. *Press Release*. Available at: www.inis.gov.ie.

³¹⁴ Response of Charles Flanagan, T.D., Minister for Foreign Affairs and Trade to Parliamentary Question no 46714/15. (Written Answers 13 January 2016).

³¹⁵ Oxfam Ireland (11 November 2015). 'Oxfam Ireland: Valletta migration summit must focus on human rights and not be hijacked by EU border agenda'. *Press Release*. Available at: www.mediahq.com/story/oxfamireland/123980.

³¹⁶ Question 46714/15 put by Sean Crowe TD 'To ask the Minister for Foreign Affairs and Trade as a contributor to the European Union Trust Fund for Africa and as member of the strategic board, how he will ensure effective governance and oversight of the fund to ensure that projects approved for migration management including border control and policing are compatible with Ireland and the EU's objectives of promoting respect for human rights; and what Ireland will do to ensure a clear separation between funding that is consistent with the rules for overseas development assistance and funding for migration management'. Written Answers 13 January 2016. Available at: www.oireachtas.ie.

6.4 IRISH CONSULTATIVE PROCESS FOR WORLD HUMANITARIAN SUMMIT 2016 – DIASPORA ENGAGEMENT

The Irish Consultative Process for the World Humanitarian Summit 2016³¹⁷ was co-ordinated throughout 2015 by the Centre for Humanitarian Action, University College Dublin. This was part of the Centre for Humanitarian Action's project 'A Shared Vision for Ireland's contribution to set the agenda for the Future of Humanitarian Action', funded by the Department of Foreign Affairs and Trade, under the Irish Aid Development Education Funding Scheme.³¹⁸ The Consultative Process culminated in an Irish Humanitarian Summit in July 2015, attended by representatives from NGOs, higher education and research institutions, private sector companies, diaspora networks, the United Nations and the Irish Government.³¹⁹

One of the issues addressed during the consultative process was engagement with diaspora communities of conflict and disaster-affected countries in Ireland. A diaspora engagement stakeholder paper was developed and a Concept Note for the Development of a Diaspora Mapping Mechanism in Ireland for use by Humanitarian Actors.³²⁰ The Concept Note notes the role that diaspora communities can potentially play in humanitarian action and that 'there are many untapped opportunities for engaging with the diaspora such as knowledge of the local operating areas, capacity to mobilise resources and collaborative advocacy.' The Concept Note, however, notes that there is very little information available about diaspora communities in Ireland. It states that:

information available[...] indicate the diaspora/migrant communities are predominantly working on the promotion of culture, access to rights and entitlements, equality and integration issues. There are no coherent groupings bridging their country of origin to the Irish development or humanitarian sectors.

The Concept Note planned the implementation of an information hub with an up-to-date database of diaspora organisations in Ireland to enable easy access to the information by all the key humanitarian actors.

³¹⁷ The inaugural World Humanitarian Summit was organised at the initiative of UN Secretary-General Ban Ki-Moon and held in Istanbul in May 2016. The Irish delegation was headed by President Michael D. Higgins. See Office of the President (23 May 2016). 'President attends the World Humanitarian Summit, Istanbul'. *Press Release*. Available at: www.president.ie.

³¹⁸ See http://cha.ucd.ie/sh_projects/world-humanitarian-summit.

³¹⁹ See PQ response of Minister for Foreign Affairs and Trade to Parliamentary Question 28344/15 (24 July 2015): 'My Department took the initiative to instigate a consultation process with the Irish humanitarian community in response to the UN Secretary General's initiative to convene a World Humanitarian Summit in Istanbul in May next year. It will address the challenges, and the suffering, posed by the unprecedented number of humanitarian crises across the world. The Irish Summit involved the public and private sectors, civil society and diaspora and academic communities in Ireland.'

³²⁰ UCD Centre for Humanitarian Action – Irish Consultative Process for the World Humanitarian Summit Concept Note for the Development of a Diaspora Mapping Mechanism in Ireland for use by Humanitarian Actors. Available at cha.ucd.ie/irish-consultative-process-core-documents.

Chapter 7

Irregular Migration

7.1 LEGISLATION

On 18 August 2015, the Minister for Social Protection commenced certain provisions in the *Civil Registration (Amendment) Act 2014*. These legislative changes give Marriage Registrars extensive new powers to prevent the abuse of the institution of marriage and the exploitation of women for immigration purposes including in the context of abuse of the right of free movement. The new legislation makes ‘marriages of convenience’ an impediment to marriage and allows a Registrar the right to investigate and to form an opinion, based on the information presented by the two parties, of the veracity of the application to marry. Ultimately, they can refuse to issue a marriage registration form and are empowered to inform and make enquiries of the Irish Naturalisation and Immigration Service of the Department of Justice and Equality. NGOs cautiously welcomed the legislation commenting on the need for the proportional application of these new measures to ensure ‘interventions are not based on unconfirmed suspicion.’ They also highlighted the necessity for support to be given to those who may be victims of trafficking for forced marriage as this form of trafficking does not currently fall within the existing legislative provisions tackling human trafficking.³²¹

From the commencement of the legislation until November 2015, some 55 formal objections to pending marriages had been made through the Garda Operation Vantage. Following Garda enquires, a further 30 marriages between EU and non-EU nationals had not proceeded.³²²

On 1 December 2015 the Minister for Justice and Equality signed the *European Community (Free Movement of Persons) Regulations 2015*.³²³ These regulations were made for the purpose of giving further effect in Irish law to the Directive on the rights of citizens of the Union and their family members to move and reside

³²¹ Doras Luimní (18 August 2015.) ‘Introduction of New Measures to prevent ‘marriages of convenience’. *Press Release*. Available at www.dorasluimni.org. See also *Irish Examiner* (20 August 2015). ‘Fears over crackdown on sham marriages’. Available at www.irishexaminer.ie.

³²² An Garda Síochána (25 November 2015). ‘Operation Vantage – Investigation into Sham Marriages and Immigration Issues’. *Press Release*. Available at: www.garda.ie. See also Department of Justice and Equality (25 November 2011). ‘Garda Operation Vantage targeting sham marriages and illegal migration’ *Press Release*. Available at: www.justice.ie.

³²³ The Regulations came into operation on 1 February 2016.

freely within the territory of the Member States (Directive 2004/38/EC). According to the Irish Naturalisation and Immigration Service, one of the more significant changes related to extensive updating of the provisions dealing with abuse of rights (including marriages of convenience) which are complementary to the powers in the *Civil Registration (Amendment) Act 2014*. The new provisions in the Regulations allow the Minister to disregard a marriage or certain other relationships for the purposes of a determination under the Regulations where they can be deemed to be a family relationship of convenience.³²⁴

7.2 NATIONAL MEASURES TO REDUCE IRREGULAR MIGRATION

Operation Vantage was established in August 2015 by the Garda National Immigration Bureau to investigate illegal immigration and identify marriages of convenience as defined under the Civil Registration Act 2014. The Operation involves cooperation with a number of other State agencies including the Irish Naturalisation and Immigration Service, the Department of Social Protection, the Revenue Commissioners, the Office of the Director of Corporate Enforcement and the Workplace Relations Commission.³²⁵ The operation focuses on the prevention of immigration abuses, including abuse of free movement through the facilitation of marriages of convenience. It is specifically targeted at those engaged in organised facilitation of marriages of convenience for financial gains. It also focused on those who seek to gain illegal immigration status by engaging in such arranged marriages.³²⁶ In November 2015, a number of Garda raids on residential and business premises took place throughout the State where 11 people were arrested for a range of offences under the *Immigration Acts and Criminal Justice (Theft and Fraud Offences) Act 2011*. In addition, a number of computers, memory devices, phones and documents, including false identity documents and a substantial quantity of cash were seized.³²⁷

The Irish Naturalisation and immigration Service has remarked that Operation Vantage:

was not a once-off intervention. Operation Vantage is ongoing and forms part of the overall response of the Department of Justice and Equality to prevent marriages of convenience from taking place. This includes a review of relevant applications by INIS with a view to

³²⁴ Irish Naturalisation and Immigration Service, March 2016.

³²⁵ An Garda Síochána (25 November 2015). 'Operation Vantage – Investigation into Sham Marriages and Immigration Issues' *Press Release*. Available at: www.garda.ie.

³²⁶ Irish Naturalisation and Immigration Service (March 2016).

³²⁷ An Garda Síochána (25 November 2015) 'Operation Vantage – Investigation into Sham Marriages and Immigration Issues' *Press Release*. Available at: www.garda.ie. See also *The Irish Times* (25 November 2015) 'Eleven arrested in nationwide crackdown on sham marriages'. Available at www.irishtimes.com.

*revoking immigration permission which may have been obtained under false pretences.*³²⁸

7.3 UNDOCUMENTED MIGRANTS

7.3.1 Regularisation

In March 2015, Fianna Fáil introduced a Private Members' Bill in the Dáil proposing to introduce a regularisation scheme to allow undocumented migrants resident in the State for two years or more to earn 'residency rights through a series of tough but fair measures'.³²⁹

In November 2015, the Joint Committee on Justice, Defence and Equality wrote to the Minister for Justice and Equality to recommend the introduction of a one-off time bound regularisation scheme for undocumented migrants resident in the State for more than four years (or three years with children), and conforming to certain other criteria.³³⁰ The Migrant Rights Centre Ireland (MRCI) welcomed the leadership of the Justice Committee in making this recommendation.³³¹

The Minister for Justice and Equality in responding to a Parliamentary Question,³³² posed in November 2015, regarding the possible introduction of a regularisation scheme said she had no plans to implement such a scheme. She noted a programme of this nature had the potential to lead to 'very large, unpredictable and potentially very costly impacts across the full range of public and social services.' In her response, she also noted the political commitment at EU level in the European Pact on Immigration and Asylum to using 'only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons'.³³³

7.3.2 Supreme Court Appeal in *Hussein v. Labour Court*

In June 2015, the Supreme Court upheld the decision of the Labour Court to award €92,000 in compensation and unpaid wages to a chef who had been

³²⁸ Department of Justice and Equality (March 2015). *Irish Naturalisation and Immigration Service, Immigration in Ireland: Annual Review 2015*. Available at: www.inis.gov.ie.

³²⁹ Fianna Fáil (5 March 2015). 'Fianna Fáil Bill proposes residency rights for Undocumented Migrants' *Press Release*. Available at: www.fiannafail.ie.

³³⁰ Joint Committee on Justice, Defence and Equality (19 November 2015) 'Justice Committee asks Minister for Justice to consider proposals for a regularisation programme for undocumented migrants'. *Press Release*. Available on www.oireachtas.ie.

³³¹ Migrant Rights Centre Ireland (19 November 2015). 'Migrant Rights Centre Ireland welcomes Justice Committee recommendation to introduce a regularisation scheme for undocumented migrants'. *Press Release*. Available at www.mrci.ie.

³³² Parliamentary Question No. 322 (24 November 2015). Immigration Controls. Available on www.oireachtasdebates.oireachtas.ie.

³³³ *Ibid.*

employed without a legal right to work for a period of seven years. The High Court had previously overturned the award on the grounds that an undocumented worker cannot have a valid contract. See Section 7.5 for case summary. The Migrants Rights Centre of Ireland who had supported Mr Younis in his case welcomed this outcome.³³⁴

7.3.3 Undocumented Migrant Fisherman

Following a year-long investigation, the Guardian newspaper published an article in relation to the high numbers of undocumented migrants employed in the Irish fishing industry. The article expressed concerns in relation to labour exploitation and potential human trafficking within the industry.³³⁵

The Government established an Inter-Departmental Task Force on non-EEA workers in the Irish Fishing Fleet chaired by the Minister for Agriculture, Food and the Marine.³³⁶ This Taskforce published its report on 14 December 2015.³³⁷ Following the Recommendations of the Task Force, the Atypical Working Scheme has been expanded to include applications for worker permissions in this category. Further detail on the Task Force Recommendations is included in Chapter 8 on Trafficking and on the Atypical Working Scheme in Chapter 5 on Legal Migration.

7.4 CASE LAW

Hussein v. Labour Court [2015] IESC 58

The applicant was a restaurateur in Dublin, who employed his relative, the notice party, to carry out work in his restaurant pursuant to a contract of employment. Both of them were Pakistani nationals. The notice party brought claims against the applicant under inter alia the Organisation of Working Time Act 1995 and the National Minimum Wage Act 2000, alleging various breaches thereof. A rights commissioner decided that the claims were made out and awarded him approximately €92,000 compensation in respect thereof. The applicant was notified of that decision but did not appeal it nor judicially review it. He failed to pay the notice party the sums due, whereupon the notice party decided to enforce the awards under, respectively, Section 28(8) and Section 31(1) of

³³⁴ Migrant Rights Centre Ireland (25 June 2015). 'Supreme Court overturns High Court judgement in Mohammed Younis case'. *Press Release*. Available at: www.mrci.ie.

³³⁵ *The Guardian* (2 November 2015). 'Revealed: trafficked migrant workers abused in Irish fishing industry.' Available at: www.theguardian.com.

³³⁶ Department of Agriculture, Food and the Marine (3 November 2015). 'Government Establishes Taskforce on Allegations Regarding Treatment of Workers on Irish Fishing Trawlers'. *Press Release*. Available at: www.agriculture.gov.ie.

³³⁷ Department of Agriculture, Food and the Marine (14 December 2015). 'Coveney Publishes Report of the Government Task Force on Non-EEA Workers in Irish fishing fleet' *Press Release*. Available at: www.agriculture.gov.ie Department of Agriculture, Food and the Marine (December 2015). '*Report of the Government Task Force on Non-EEA workers in the Irish Fishing Fleet*'. Available at: www.agriculture.gov.ie.

aforementioned Acts in the Labour Court. Those provisions entitled the Labour Court to enforce a decision of a rights commissioner where it had not been appealed or complied with. It accordingly directed enforcement in the circumstances.

The applicant then sought judicial review of the Labour Court's decisions. He was successful before the High Court (Hogan J.), which quashed them. It did so having found that the notice party did not have an employment permit in respect of the work being done for the applicant, in contravention of the Employment Permits Act 2003, as amended, and that the contract of employment between him and the applicant was therefore illegal. It concluded that neither the rights commissioner nor the Labour Court had jurisdiction to entertain an application for the relief sought by the notice party in respect of such a contract.

The notice party appealed to the Supreme Court (Murray, Hardiman and MacMenamin JJ.) which allowed the appeal.

The Supreme Court noted that, under the aforementioned legislation, the Labour Court's function was limited to establishing whether there was an existing decision of the rights commissioner in favour of the notice party; that the applicant had not appealed and that the time for doing so had expired; and that the applicant had not complied with the decision of the rights commissioner. The Labour Court had no jurisdiction to review the decisions of the rights commissioner and, once it was satisfied as to the existence of the objective elements referred to, it was bound to determine that the applicant pay the sums due to the notice party.

The Supreme Court noted that the High Court had made a finding of fact that the notice party did not have an employment permit for at least most of the period when he worked for the applicant and that he was therefore precluded from making claims against him before the rights commissioner, and that the Labour Court had adopted the reasoning of the rights commissioner in making its decisions. The Supreme Court held the High Court to have erred in both respects: first, because it was not open to the High Court in judicial review to make a new finding of fact on the merits; and, secondly, because it was not within the statutory function of the Labour Court under the relevant legislation to consider or make any finding of fact concerning the merits of the rights commissioner's decision. The Supreme Court noted that the Labour Court had not made any finding of fact relating to the merits of the claim before the rights commissioner, least of all any finding related to the existence of a work permit. It held that, in setting aside its decisions, the High Court had wrongly allowed the applicant to impugn unchallenged decisions of the rights commissioner.

The Supreme Court pointed out that if the applicant had been dissatisfied with findings of fact in the decisions of the rights commissioner or considered that he had erred in law in his decisions, he could have appealed them under the legislation to the Labour Court (and thereafter on a point of law to the High Court). In such a situation, the Labour Court would have had jurisdiction to hear the matter on its merits as to both fact and law. The applicant had not done that. The Supreme Court therefore rejected his argument that he was entitled to relief *ex debito justitiae*, i.e. as of right. It distinguished the applicant's reliance on the case of *State (Vozza) v. O Floinn* [1957] IR 227, pointing out that in that case, the court was concerned with a criminal conviction and that the applicant had sought certiorari by way of judicial review of the convictions recorded at first instance in the District Court and, on appeal, in the Circuit Court.

Finally, the Supreme Court noted in passing that, given the multiplicity of regulatory measures in a modern economy concerning employment relationships and the supply of goods and services, the question of the circumstances in which some form of illegality in a contractual relationship might be considered a ground for not enforcing it, was a complex one. It indicated that traditional judicial dicta on the point might have to be reviewed or nuanced in the light of the modern regulatory environment, and applied with the principle of proportionality in mind.

The Supreme Court therefore allowed the appeal of the notice party, allowing the decisions of the Labour Court to stand.

Chapter 8

Return

8.1 DEPORTATION ORDERS, TRANSFERS AND REMOVAL FROM THE STATE

Approximately 3,790 persons were removed or deported from Ireland in 2015. This included some 3,215 persons who were refused entry into the State at ports of entry and were returned, which is a 30 per cent increase on the numbers refused entry in 2014.³³⁸ 251 persons were deported from Ireland during the year and 19 asylum seekers were transferred under the Dublin Regulation.³³⁹ Some 2,315 persons were found to be illegally present in the State during the year which represented an increase of some 157 per cent from the 900 persons found illegally present in 2014.³⁴⁰

During 2015, 1,282 permissions were granted of leave to remain in Ireland under Section 3 of the *Immigration Act 1999* of which 1,196 were rejected asylum seekers.³⁴¹

Almost double the number of persons were deported from Ireland in 2015 (251) compared to 2014 (114). As reported in the *Annual Policy Report 2014*, UNHCR had commented that the decision in the 2013 case *Omar v. Governor of Cloverhill Prison*³⁴² which highlighted the lack of a power of entry to private dwellings to enforce a deportation order, had impacted on the implementation of deportation orders in 2014.³⁴³

Table 1 shows that, during 2015, 251 persons were returned as part of forced return measures and 115 persons chose to return home voluntarily of which 93 were assisted by the International Organization for Migration (IOM).

³³⁸ Eurostat. Third-County Nationals refused entry at the external borders. [migr_eirfs].

³³⁹ Department of Justice and Equality (March 2016). '*Immigration in Ireland: Annual Review 2015*'. Available at www.justice.ie.

³⁴⁰ Eurostat. Third-country nationals found to be illegally present. [migr_eipre].

³⁴¹ Correspondence from INIS, August 2016.

³⁴² *Omar v. Governor of Cloverhill Prison* [2013] IEHC 579. This case held that whilst it is possible for the Gardaí to arrest a person with a deportation order under certain conditions as set out in Section 5(1) of the *Immigration Act 1999*, there is no corresponding legal provision for a power of entry to a private dwelling for the purposes of enforcing a deportation order.

³⁴³ Joyce, C., and S. Whelan (2015). *Annual Policy Report on Migration and Asylum 2014: Ireland*. Available at www.emn.ie.

TABLE 1 Returns from Ireland, 2015

Year	Returned as part of forced return measures	Total returned voluntarily	Returned through the IOM Assisted Voluntary Return Programme (VARRP)
2015	251	115	93

Source: Irish Naturalisation and Immigration Service, April 2015.

8.2 LEGISLATIVE DEVELOPMENTS

Section 24 of the *Prisons Act 2015*³⁴⁴ provides that where a person is serving a sentence of imprisonment, and is also subject to a deportation order or removal order, the Minister for Justice may direct that the person can be taken from the prison in order to facilitate the person's deportation or removal from the State, before the term of imprisonment is completed (provided that there is not more than one year of the term of imprisonment remaining to be served).³⁴⁵ This statutory power was introduced in response to the decision in *NBO, NL and LO v. Minister for Justice and Equality*.³⁴⁶ (See case summary at Section 8.5).

Section 78 of the International Protection Act 2015 amends Section 5 of the Immigration Act 1999 and includes a power of entry to a private dwelling for the purpose of executing a deportation order. Section 78 was commenced on 10 March 2016 via the *International Protection Act 2015 (Commencement) (No.2) Order 2016 (S.I. No. 133 of 2016)*.³⁴⁷

8.3 ASSISTED RETURN

Provisional figures show that 115 persons chose to return home voluntarily in 2015, including persons provided with administrative assistance (e.g. return of documents) by INIS and those in receipt of voluntary assisted return by IOM Ireland.³⁴⁸ 93 nationals of non-EEA countries were offered voluntary return assistance. The combined Voluntary Assisted Return and Reintegration Project (VARRP/IVARRP 2015) facilitated the voluntary return and reintegration of asylum seekers (both pending and rejected) and irregular migrants. Its main target group is non-EEA nationals who are currently seeking asylum, or who have been refused

³⁴⁴ This Act came into force on commencement on 25 December 2015. The *Prisons Act 2015 (Section 24) Regulations 2016 (S.I. No 52 of 2016)* were signed by the Minister in February 2016 and set out the form of the Notice to be provided to the person whom the Minister is proposing to deport. See www.irishstatutebook.ie.

³⁴⁵ See Dáil Debates Prison Bill 2015 [Seanad]: Instruction to Committee, 14 December 2015. Available at <http://oireachtasdebates.oireachtas.ie>.

³⁴⁶ *NBO, NL and LO v. Minister for Justice and Equality* [2015] IEHC 392.

³⁴⁷ Certain provisions of the International Protection Act 2015 were commenced in the first half of 2016 via two Commencement Orders – *S.I. No. 26 of 2016* which commenced Section 1 and certain aspects of Section 2 and Section 6(1) of the Act, and *S.I. No. 133 of 2016* which commenced Sections 78, 80 and 81 of the Act.

³⁴⁸ Irish Naturalisation and Immigration Service, April 2015.

asylum, with an additional target group of needy irregular migrants who meet specific vulnerability criteria. IOM Ireland also provide return assistance to both EU and third-country national victims of trafficking, with just under 20 individuals assisted last year, the majority of whom were EU nationals.³⁴⁹

The top countries for which IOM Ireland provided assisted return in 2015 were Brazil; Malawi; Pakistan/South Africa/Moldova; and Bolivia/Venezuela.³⁵⁰

The majority of returnees were male (70) with 40 females. In terms of family breakdown, it was mainly individuals returning (76 persons), with eight single parent family units, two couples, four one-child families and two unaccompanied minors.³⁵¹

In addition, IOM Ireland provided victims of trafficking with assisted voluntary return and reintegration services during 2015, with services tailored to meet their specific needs through IOM country offices in Ireland and upon return.³⁵²

As noted in previous reports, IOM Ireland is the sole provider of voluntary return assistance services operating in Ireland. In order to promote their VARRP services to potential returnees, i.e. current asylum seekers and irregular migrants, IOM Ireland engaged a number of Outreach Consultants in Spring-Autumn 2014 as a pilot project. During 2015, four Consultants were contracted in the Dublin, South and Mid-West Regions. A key aspect of their work will focus on delivering regular outreach visits, presentations and training on voluntary return in a variety of languages.³⁵³

Recognising the specific relationship of trust which NGOs often have with clients, during 2015 IOM began a series of NGO information events across Ireland, with a view to building capacity among NGOs regarding the provision of information on voluntary return. The strategy aims to embed assisted return as a service within NGOs, so that staff members are aware for example of the operational and logistical details of the voluntary return process and where they can obtain further information or refer a client where relevant and appropriate.³⁵⁴

³⁴⁹ IOM Ireland, September 2016.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Ibid.

³⁵³ Interview with IOM Ireland, May 2015 and Correspondence with IOM Ireland, June 2015.

³⁵⁴ During 2015, a number of information events took place including within Dublin (Dublin City Council, faith-based centres, the HSE, NGOs), Galway and Limerick (health centres, NGOs, information centres, CICs, domestic abuse service providers). It was noted that onward referral by IOM to NGOs and other stakeholders often takes place in many

8.4 READMISSION AGREEMENTS

No new readmission agreements were entered into during 2015.

8.5 CASE LAW

NBO, NL and LO v. Minister for Justice and Equality [2015] IEHC 392

The applicant was serving a custodial sentence in prison, during which time a deportation order was made in respect of him. He applied to revoke the order. His application for revocation was refused and he was notified thereof. On the same date, he was granted temporary release under Section 2 of the Criminal Justice Act 1960, as inserted by Section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003, following which he was transferred into the custody of the Gardaí and deported. The temporary release notice stated that the purpose of the release was ‘pre-release/resocialisation.’

Section 2 of the Criminal Justice Act 1960, as inserted by Section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003 provides inter alia:-

(1) The Minister [for Justice] may direct that such person as is specified in the direction (being a person who is serving a sentence of imprisonment) shall be released from prison for such temporary period, and subject to such conditions, as may be specified in the direction or rules under this section applying to that person —

(a) for the purpose of —

(ii) preparing him for release upon the expiration of his sentence of imprisonment, or upon his being discharged from prison before such expiration...

Proceedings were instituted on behalf of the applicant, in which he argued that the decision to grant him temporary release was unlawful because deportation was not one of the purposes for which a person could be released from prison in accordance with the Act of 1960. He pointed to the regulations made under the Act, which provided that the person being released had to return to the prison from which he was released on or before the expiration of the period for which he was released.

The respondent contended that the applicant had been released in accordance with Section 2(a)(ii) of the Act of 1960 and that the purpose of the release was

‘preparing him for release upon the expiration of his sentence of imprisonment, or upon his being discharged from prison before such expiration.’

The respondent relied upon a dictum from the decision of Fennelly J. in the Supreme Court’s decision in *Dowling v. Minister for Justice* [2003] 2 IR 535 to the effect that temporary release decisions were entirely within the Minister’s discretion, acting in the exercise of executive clemency on behalf of the State. The applicant argued that that dictum applied to the legal framework governing temporary release which predated the 2003 amendment of the Act of 1960.

The court held that the applicant’s submission was correct and that there was a significant difference between the old rules and the amended rules. The legislature had established a comparatively elaborate scheme under the Act of 2003 and the rules implemented under it in 2004, which set out the basis upon which the executive could grant temporary release.

The court also rejected the respondent’s contention that it was not open to a person like the applicant to challenge the legality of a temporary release order. Whilst the executive enjoyed discretion in the manner in which it granted the privilege of temporary release, the extent of that discretion had been significantly curtailed by the considerations set out in Section 2 of the Act of 1960.

The court held that Section 2(1)(a)(ii) of the Act of 1960 provided for the temporary release from prison of a person in preparation for ultimate release on the expiration of sentence.

The court held that the grant of temporary release to the applicant was not in preparation for the applicant’s ultimate release from prison. The only reason the applicant had been released from prison was to facilitate his immediate deportation from the State. This was not permitted by Section 2 of the Act of 1960. The temporary release notice therefore also mis-stated the purpose of the applicant’s release.

In the court’s view, it would be inappropriate to quash the temporary release order, as that would effectively direct the applicant, should he return to the State, to return to prison. Instead, the Court made a declaration that the temporary release order was made for an unlawful purpose.

SA and NA v. Minister for Justice and Equality (No. 2) [2015] IEHC 226

The first applicant, a national of Nigeria, was a failed asylum seeker and the subject of a deportation order. His wife was an Irish citizen. She had four children from previous relationships, none of whom had been fathered by the first applicant. He applied to revoke the deportation order and it was affirmed by the Minister for Justice. The analysis noted the contents of the request for revocation, which contended that the applicants were in a loving and stable relationship, that the first applicant was a father figure to his wife's children, and that his wife was in poor health. The analysis accepted that the applicants enjoyed family rights but noted that they were not absolute and, in the circumstances, yielded to the State's right to uphold immigration controls.

The applicants challenged that decision and obtained leave on two grounds: first, that it was irrational and based on an error of law because the constitutional rights of the applicants were not lawfully considered; and, secondly, that it was disproportionate because it failed to take as its starting point that they had a prima facie right to live together as a married couple.

The court upheld the decision.

Relevant to the court's deliberations was the fact that the first applicant falsely claimed protection in the State on the basis that he was a national of Sierra Leone. Furthermore, at no stage prior to his marriage did he inform his wife that he had unsuccessfully sought protection in the State and was the subject of a deportation order. He had led her to believe that he had an existing application for asylum and she was not aware of his true status. She had relationships with other third-country nationals before she met the first applicant and had married him without inquiring as to the true basis of his presence in the State. She said in evidence that, had she known of the deportation order, she would not have married him.

The court held that the applicants' constitutional rights as a married couple and as a family had been fully and properly considered, and that it was irrelevant that the analysis did not refer to particular provisions of the Constitution. It noted that the analysis had noted that they enjoyed constitutional rights arising from their relationship, and that they were not absolute. The first ground was therefore not made out.

The court held that the second ground of challenge was not made out either. It was not incumbent upon the Minister to commence an assessment of a revocation request which had been based upon a recent marriage by noting

expressly a prima facie right on the part of the married couple to reside together. In any event, the court noted that, given that the analysis acknowledged the existence of constitutional rights deriving from marriage and the existence of family life, it was to be inferred that the Minister accepted that the couple had a prima facie, albeit qualified, right to live together in the State.

The court held that, even if it were wrong in that regard, it would refuse relief to the applicants based upon their conduct in respect of their marriage. Information which emerged during an earlier interlocutory application for an injunction about their relationship had not been made known to the Minister, namely the failure of the first applicant to tell his wife that he was a failed asylum seeker and a person in respect of whom a deportation order existed. The court took the view that he had been proposing to marry his wife without being honest with her. She, in turn, had given insufficient regard to his status when contemplating marriage to him, which was reckless given her earlier relationships with non-nationals. They only notified the Minister of the existence of their relationship after their marriage had been contracted. In all the circumstances, their right to live together was outweighed by the State's interests in controlling unlawful immigration.

The court therefore refused the reliefs sought.

Odenis Rodrigues dos Santos and Others v. Minister for Justice and Others [2015] IECA 210

The appellants were all members of a Brazilian family who arrived in Ireland at various dates between 2002 and 2007. The father had arrived in Ireland lawfully on a work permit in 2002. It expired in 2003. Nevertheless he remained in the State, continued initially to work and paid all appropriate taxes without the relevant immigration permission. His unlawful status was discovered in 2007 and culminated in the making of a deportation order against him in 2012. The mother arrived in the State in 2003 for the purpose of a holiday with her brother who was in the State on a work permit. Their five children arrived in 2006 and 2007, accompanied by their uncle. They all remained in the State unlawfully and, after their existence came to the Minister's attention, he ultimately made deportation orders in respect of them.

Three grounds arose on the appeal, which focused on the children's rights. First, it was said that the making of the orders breached a personal right to a private life in the State under Article 40.3 of the Constitution. Secondly, it was said that the Minister was obliged under Section 3 of the Immigration Act 1999, when construed in accordance with Article 3(1) of the UN Convention on the Rights of

the Child ('UNCRC'), to consider and treat as a primary consideration the best interests of the child when deciding whether or not to deport a child. Thirdly, whether the Minister adopted the correct approach in determining whether Article 8 ECHR was engaged in relation to whether there was a potential interference with the children's right to private life.

The Court of Appeal dismissed the appellants' appeal.

On the first ground, the Court of Appeal upheld the High Court's decision that the children, as they were not citizens of the State, could not have a personal right within the meaning of Article 40.3 to remain in the State and/or participate in community life in the State. Such rights only arose for non-Irish citizens when they were given a right by law or executive decision to live in the State.

Turning to the second ground, the Court of Appeal upheld as correct the High Court's conclusion that Section 3(6)(a) of the Act of 1999, which obliged the Minister to take account of an applicant's age when deciding whether or not to make a deportation order against him or her, did not require him, when dealing with a minor applicant, to treat as a primary consideration the best interests of that child or, alternatively, to decide expressly whether deportation would be consistent with its best interests. The UNCRC, although ratified by the State, had not been implemented by an Act of the Oireachtas and therefore did not form part of the domestic law of the State pursuant to Article 29.6 of the Constitution. That conclusion was reinforced by Article 42A of the Constitution. It required that laws be enacted in respect of a number of decisions to provide that the best interests of the child should be 'the paramount consideration' when making them, but the decisions listed did not include the deportation of a child. In making a deportation order, the Minister had, however, to have regard pursuant to Section 3(6) to a number of factors (in particular the family circumstances) which related to the child's welfare or best interests and, in reaching his decision, to take them into account. While reference was made in the appellants' submissions to Article 24.2 of the EU Charter of Fundamental Rights, the Court noted that the Charter was not applicable to these deportation decisions.

Thirdly, it upheld the High Court's finding that the Minister's conclusion that the alleged interference with the right to private life under Article 8 did not have consequences of such gravity potentially to engage its operation was reasonable on the facts before him.

The Court of Appeal accordingly dismissed the appellants' appeal.

OO (a minor) and Others v. Minister for Justice and Equality [2015] IESC 26

The appellants comprised a Nigerian woman, her daughter, and her daughter's three children, two of whom were minors and Irish citizens. The daughter had arrived in the State from Nigeria and had given birth to two children, who were Irish citizens by operation of law. She was estranged from her husband and her mother came from Nigeria to help her with her children. The mother did not seek a visa but arrived in the State and claimed asylum, although she admitted she had no fear of persecution. Her application was unsuccessful and she applied for leave to remain, laying emphasis on the domestic circumstances of her extended family in Ireland and her involvement with them. She claimed to have no family to return to in Nigeria. A deportation order was nonetheless made against her and her legal representatives then requested that it be revoked, relying again on her family circumstances in Ireland. The order was affirmed and she was deported. The appellants then launched judicial review proceedings seeking to quash it. It was contended that no regard had been had by the Minister to the right of the minor citizens to the company and care of their grandmother under Article 41 of the Constitution and Article 8 ECHR. Leave was refused by the High Court and the appellants appealed his decision to the Supreme Court. By the time of the appeal, the mother had been out of the State for six years, having been deported on foot of the order, and a preliminary question arose as to whether the appeal was moot.

The Supreme Court dismissed the appeal against the refusal of leave. It noted that grandmothers were not entitled to protection under Article 41 of the Constitution. In any event, the claim made on the mother's behalf could not be divorced from the context in which it was made. Whilst it was apparent that the mother was important to her extended family in the State, she had, as a foreign national, entered Ireland on foot of an untenable argument that she was seeking asylum, and had neither sought nor been granted a visa. Her position as a visitor lacked any long-term viability, save that which might be obtained from the asylum system and delay caused by court challenges. A valid deportation order existed against her following the making of humanitarian representations under Section 3(6) of the Immigration Act 1999. A humanitarian representation as to why she should be allowed to remain did not constitute a constitutional right. It held that her position was no better under the ECHR and it was untenable to claim that the Minister had breached it, the State having a wide margin of appreciation when deporting non-Irish nationals. It held that it was not open to non-Irish nationals to arrive in the State on a false basis and then to arrange their affairs so as to frustrate the operation of the immigration system.

PO and Another v. Minister for Justice and Equality and Others [2015] IESC 64

The applicants were a mother and her nine-year-old son. Both of them were Nigerian nationals, although the son had been born in the State. They both

applied unsuccessfully for refugee status, after which proposals to make deportation orders issued to them. They did not make representations for leave to remain and the Minister for Justice decided to make deportation orders against them. Their legal representatives then made lengthy submissions seeking revocation of the said orders, following which the Minister affirmed them. The appellants then unsuccessfully sought judicial review of that decision before the High Court and appealed its decision to the Supreme Court.

The Supreme Court upheld, first, the High Court's finding that the Minister was entitled to source country of origin information when assessing the revocation request and, as it was publicly available, was not required to put it to the applicants for comment. Secondly, it rejected the applicants' claim that the Minister should have had guidelines regarding how to deal with applications from non-Irish nationals seeking leave to remain in Ireland, which would include when a child would be considered young enough to be returned to the country of origin of a parent, and when a family would be considered to have established ties within Ireland sufficient to require consideration under Article 8 ECHR. The court held that the question of whether or not to revoke a deportation order was discretionary and to be exercised on a case-by-case basis in accordance with general principles of law. Thirdly, the court rejected the contention that the Minister had disregarded the applicants' Article 8 ECHR rights for a number of reasons. It held *inter alia* that the State was entitled to control entry to its territory and non-Irish nationals, by claiming asylum rights that turned out to be unfounded, could not rely on mere presence to invoke rights under Article 8 ECHR. The position of children was, save for extraordinary circumstances, dependent upon the approach of the parent(s) who made claims on their behalf.

WT and Others v. Minister for Justice and Others [2015] IESC 73

The appellants were Nigerian nationals who were subject to deportation orders which had not been signed personally by the Minister for Justice. They contended that this breached the Immigration Act 1999 which, they said, required the Minister to make such orders personally. The High Court held, by reference to the *Carltona* principle, pursuant to which acts of ministerial officials are imputed to the relevant minister, that the Minister was not required to make the orders personally. The appellants appealed to the Supreme Court, which upheld the High Court's decision.

The Supreme Court observed that, whilst the *Carltona* principle was not of 'general application,' it was nonetheless one where a court had to analyse carefully the scope of the administrative decision-making power in the context of the relevant statute. The intention of the Oireachtas in any given case was expressed in the statute and to exclude the *Carltona* principle required very clear

words. It could be dis-applied only where the Oireachtas clearly intended or implied in the legislation in question that the Minister, *and the Minister alone*, should make the decision.

The court held that there was nothing either express or implied in the Act of 1999 to suggest that the Minister was obliged to have signed the deportation orders personally or that the decisions in question were of such gravity as to require him to have done so. Although Section 3(6) of the Act of 1999 referred to '*humanitarian considerations*', '*the common good*', and the '*considerations of national security and public policy, so far as they are known to the Minister*,' those words were insufficient to enable the conclusion to be reached that the Minister had to sign the orders personally. The section would have to have gone much further so as to indicate that it *had to* be the Minister who would make the decision, *and no other person*. It did not preclude him from devolving (as opposed to delegating) his powers to a departmental official. It relied on its decisions in *Tang v. Minister for Justice* [1996] 2 ILRM 46, where the refusal of a residence permission by an official of the Minister was upheld by reference to the *Carltona* principle, pursuant to which acts of ministerial officials are imputed to the Minister. It also relied on its decision in *Devanney v. Minister for Justice* [1998] 1 ILRM 81 where it was held that the Minister for Justice was not required personally to consider the appointment of each district court clerk. It declined to overrule *Tang* and *Devanney*, holding that they were correctly decided. It rejected the appellants' argument that its decision in *Meadows v. Minister for Justice* [2010] 2 IR 701 required the interpretation advanced by them, pointing out that the *Carltona* principle was not in issue in that case. It also rejected their argument that the Refugee Act 1996 implied that the orders had to be signed by the Minister personally.

The Supreme Court dismissed the appellant's appeal.

Chigaru and Others v. Minister for Justice and Others. [2015] IECA 167

The applicants were a father, a mother and their two children. They were all nationals of Malawi who unsuccessfully sought asylum and subsidiary protection in the State, following which deportation orders were made against them in 2011. They unsuccessfully sought leave from the High Court to challenge the orders and appealed its decision, following which they evaded deportation, with the Minister for Justice only becoming aware of their whereabouts in 2015 following correspondence with their solicitor. They then applied to the Court of Appeal for an interlocutory injunction to restrain their deportation pending the outcome of an appeal to the Court of Appeal.

The Court of Appeal granted the injunction sought. It considered that they had shown an arguable case by reference to the decision of the High Court in *MM v. Minister for Justice (No. 3)* [2013] IEHC 9 on account of the Minister's having adopted a finding of the Refugee Appeals Tribunal on their asylum application when refusing their applications for subsidiary protection, a practice which was held to have been unlawful in *MM*. Turning to the balance of convenience, it noted that the parents' conduct had little to commend it to the court, given their evasion of their obligations under the immigration system. However, their conduct could not be considered in isolation from their children. They were eight and a half and seven years of age. They had known no country but Ireland and were blameless in respect of their parents' conduct. The dislocation caused by their deportation would be significant. The balance of convenience favoured enjoining their deportation. Under Articles 41, 42 and 42A of the Constitution, they were entitled to the company and care of their parents, who had fully attended to their education and welfare needs. It followed, therefore, that it was necessary to enjoin their deportation too.

The Court of Appeal granted the appellants an interlocutory injunction enjoining their deportation.

CI and Others v. Minister for Justice, Equality and Law Reform and Others [2015] IECA 192

The applicants were citizens of Nigeria. The first applicant was the mother of the second, third and fourth named applicants. She applied unsuccessfully for asylum in the State in 2005, including the second and third applicants in her claim. Deportation orders were subsequently made against them by the Minister for Justice. The fourth applicant was born in the State. Application for asylum was also made unsuccessfully on her behalf and culminated in the making of a deportation order against her too. The first applicant applied for revocation of the deportation orders made in respect of her and the second and third applicants. The orders were affirmed, the Minister taking the view that whilst deportation might potentially interfere with their right to respect for their private life under Article 8 ECHR, it would not have consequences of such gravity as to engage the operation of that article. He took the same view when making a deportation order against the fourth applicant.

The applicants challenged those decisions by way of judicial review successfully in the High Court, which held that the Minister had erred in its appraisal of the impact of deportation on their rights under Article 8 ECHR. The Minister appealed to the Court of Appeal.

The Court of Appeal noted that Section 4 of the ECHR Act 2003 required it, when interpreting and applying the ECHR, to take due account of the principles laid down in the judgments of the European Court of Human Rights ('ECtHR'). Accordingly, it noted that those judgments were important in deciding the extent of the State's obligations under the ECHR. Having examined relevant ECtHR case law, it held that they supported an approach of, first, identifying a potential interference with a right to respect for private life within the meaning of Article 8 ECHR, and then considering, secondly, whether the proposed deportation would have consequences of such gravity for the individual as to engage the operation of Article 8.1 ECHR.

Examining the ministerial decisions in the light of that approach, it held, first, that the Minister had correctly approached consideration of the applicants' claims by adopting the position that the proposed deportation potentially constituted an interference with the right to private life within the meaning of Article 8. It rejected the High Court's view that the Minister had accepted that the applicants had established a private life in the State which was protected by Article 8 ECHR. Secondly, it held that the High Court had erred in deciding that the relevant consequence of deportation to be examined for the purpose of determining whether the interference by deportation would have consequences of such gravity as to engage the operation of Article 8 ECHR, was the ending of the applicants' private life in the State, in the sense of their existing social and educational ties. It held that the case law of the ECtHR required the Minister and, on review, the court, to consider the gravity for an individual of the consequences of deportation, including the ending of his or her social and educational ties or relationships and, in particular, how it affected his or her moral or physical integrity. Something more than a technical or inconsequential interference was required. This would depend on the individual facts and circumstances of a given case.

The Court of Appeal concluded that, in considering the gravity of the consequences of deportation on the right to respect for private life of an individual who had never been permitted to reside in the host State, save pending a decision on an asylum claim, it was permissible to take into account that it was a private life consisting of relationships, including educational and social ties, which had been formed at a time when the right of the individual to remain in the State was precarious. It held that, in accordance with the judgments of the ECtHR, it would require wholly exceptional circumstances to engage the operation of Article 8 ECHR in relation to a proposal to deport such a person, which followed from the fact that any consideration of the gravity of the consequences of deportation had to be in the context of the long-standing principles stated by the ECtHR, namely that Article 8 ECHR did not place a general obligation on a Contracting State of respecting a non-Irish national's choice of

residence on its territory. In order to engage Article 8 ECHR, the gravity of the consequences for an irregular migrant or for his or her physical or moral integrity had to be above the normal consequences of the impact of enforcement of immigration law, including deportation.

The Court of Appeal allowed the appellants' appeal.

Chapter 9

Countering Trafficking in Human Beings

9.1 STATISTICS REGARDING TRAFFICKING

Table 2 gives a breakdown of trafficking data for 2015. In total, 78 alleged³⁵⁵ trafficking victims were identified during 2015, compared to 46 in 2014.

TABLE 2 Trafficking Data Ireland 2015

Gender	52 were female and 25 were male; one transgender
Age	56 were adults and 22 were children
Type of Exploitation	48 were victims of sexual exploitation, 28 were victims of labour exploitation and two were victims of both sexual and labour exploitation.

Source: Anti-Human Trafficking Unit, Department of Justice and Equality.³⁵⁶

Twenty-six of the victims were Third-Country Nationals (TCNs). Of the 26 TCN alleged victims, Nigeria, South Africa and the Philippines were the largest discernible groups.

There was an increase in the number of trafficking related investigations initiated in 2015 at 91 cases, compared to 2014 when 79 cases were initiated.³⁵⁷

9.2 NATIONAL DEVELOPMENTS

9.2.1 Labour Exploitation in the Irish Fishing Industry

9.2.1.1 Government Task Force on Non-EEA Workers in the Irish Fishing Fleet

In response to concerns expressed about labour exploitation and potential human trafficking in the Irish fishing industry,³⁵⁸ the Government decided on 3

³⁵⁵ Alleged victims refer to both potential and suspected victims of human trafficking. Anti-Human Trafficking Unit, Department of Justice and Equality, September 2016.

³⁵⁶ Also reported in US Department of State (June 2016). *Trafficking in Persons Report 2016*. Available at www.state.gov.

³⁵⁷ US Department of State (June 2016). *Trafficking in Persons Report 2016*. Available at www.state.gov.

November 2015³⁵⁹ to establish an Inter-Departmental Task Force on non-EEA workers in the Irish Fishing Fleet chaired by the then Minister for Agriculture, Food and the Marine, Simon Coveney, T.D. The Report of the Task Force was published on 14 December 2015.³⁶⁰ Following the Recommendations of the Task Force, the Atypical Working Scheme (the scheme which allows for worker permission in certain categories which are not accommodated by the employment permits system, see Chapter 5) has been expanded to include applications for worker permissions in this category. The number of permissions available is capped at 500.

The new arrangements recommended by the Task Force in its Report are as follows:

- System of atypical worker permissions to be put in place for the employment of non-EEA workers in the sector to address the position of existing and future workers (maximum 500).
- Cross-sectoral pre-clearance system to be put in place for prospective workers (to be retrospectively applied to existing workers who register within a period of three months maximum, with effect from the commencement date of the scheme).
- Employees to provide all necessary backup documentation such as proof of identity, birth certificates, passports, evidence of previous employment and/or relevant experience in the fishing sector, professional qualifications/training in fishing and safety at sea etc.
- Employer (who must be a licensed vessel owner) to be responsible for ensuring that a valid contract of employment (certified by a Solicitor) and drafted in accordance with National and EU employment rights is in place.
- Employer responsible for providing evidence of provision of healthcare policy for prospective employee.
- Employer responsible for putting in place repatriation arrangements for employee on termination of the contract.
- A Memorandum of Understanding is to be put in place by the relevant State enforcement bodies. There is no alteration to any of the existing obligations currently being discharged by the State bodies concerned.

³⁵⁸ The Guardian newspaper published an investigation into alleged abuses of migrant workers in the Irish fishing fleet: *The Guardian* (2 November 2015) 'Revealed: trafficked migrant workers abused in Irish fishing industry'. Available at: www.theguardian.com.

³⁵⁹ Department of Agriculture, Food and the Marine (3 November 2015). 'Government Establishes Taskforce on Allegations Regarding Treatment of Workers on Irish Fishing Trawlers'. *Press Release*. Available at: www.agriculture.gov.ie.

³⁶⁰ Department of Agriculture, Food and the Marine (14 December 2015). 'Coveney Publishes Report of the Government Task Force on Non-EEA Workers in Irish fishing fleet'. *Press Release*. Available at: www.agriculture.gov.ie. See also Department of Agriculture, Food and the Marine (2015). *Report of the Government Task Force on Non-EEA workers in the Irish Fishing Fleet*. Available at: www.agriculture.gov.ie.

- A depository of contracts is to be set up by the State which will monitor overall level of contracts (capped at a maximum of 500).³⁶¹

A Memorandum of Understanding on the issue of enforcement was finalised between the different agencies having a role in the oversight of the industry.³⁶²

The Parties to the *Memorandum of Understanding for the Monitoring and Enforcement of the terms of employment of non-EEA crewmen in parts of the Irish commercial Sea Fishing Fleet pursuant to the establishment of the Atypical Worker Permission Scheme* are: Department of Jobs, Enterprise and Innovation; Department of Justice and Equality/INIS; Department of Transport, Tourism and Sport/Marine Survey Office; Department of Defence (Irish Naval Service); An Garda Síochána; Bord Iascaigh Mhara; Health and Safety Authority; Office of the Revenue Commissioners; Sea Fisheries Protection Authority; Workplace Relations Commission; and the Department of Agriculture, Food and the Marine (insofar as the Central Depository is concerned).³⁶³

9.2.2 Second National Action Plan to Prevent and Combat Human Trafficking in Ireland

The Second National Action Plan to Prevent and Combat Human Trafficking in Ireland was issued for consultation to civil society organisations active in this field in 2015. In October, a Roundtable meeting was held with NGOs to discuss the issues raised in the written submissions and priorities for implementation in the second National Action Plan. The new National Action Plan, which is expected to be published in autumn 2016, will outline both the Government's strategic approach to this issue as well as setting out a clear work programme for the relevant state authorities to collaborate with civil society and agencies in other jurisdictions in advancing the fight against trafficking and enhancing the protection of victims.

Among the significant proposals contained in the draft Plan are:

- A fundamental re-examination of the victim identification process and the role to be played in that process by all stakeholders including non-governmental organisations.
- A related review of the National Referral Mechanism to ensure that it remains fit-for-purpose and is adequate to address the complexity of both well understood and more recently identified forms of trafficking.

³⁶¹ Department of Agriculture, Food and the Marine (2015). *Report of the Government Task Force on Non-EEA workers in the Irish Fishing Fleet*. Available at: www.agriculture.gov.ie.

³⁶² Department of Justice and Equality, March 2016.

³⁶³ Department of Agriculture, Food and the Marine (15 February 2016). 'Scheme for Employment of Non-EEA Workers in the Fishing Industry Launched Today'. *Press Release*. Available at: www.agriculture.ie.

- Examination of the ongoing appropriateness and efficacy of all victims support services.
- Examination of criminal justice measures, including investigative methodologies by An Garda Síochána.
- Enhanced data analysis systems, including proposals based on *Multiple Systems Evaluation* to examine the feasibility of determining the undetected level of human trafficking in Ireland.
- The development, in conjunction with civil society, of a Training and Awareness Needs Spectrum to better inform and better co-ordinate the role that can be played by all stakeholders in this key area.
- Specific measures in relation to enhancing the effectiveness of anti-trafficking policy and practice concerning labour exploitation.
- New evaluation methodologies for examining the effectiveness of the Plan implementation, including consideration of the role of standing independent evaluation.³⁶⁴

A joint submission by a number of NGOs³⁶⁵ active in this space was submitted in July 2015 to the Department of Justice and Equality.³⁶⁶ The joint submission noted the absence of timeframes within the draft plan. Recommendations included a call for the establishment of an independent national rapporteur, the enactment of the *Criminal Law (Sexual Offences) Bill 2015* and ensuring the formal identification of all victims regardless of their immigration status. Responding to trafficking with a gender-sensitive approach, increased access to legal aid and non-punishment of victims for crimes they are forced to commit were also recommended for inclusion within the draft plan. The examination of compensation possibilities for victims, outlined in the draft plan, was also welcomed.³⁶⁷

9.2.3 Other Developments

A Roundtable on victim identification was convened in November 2015 as a joint initiative by the Department of Justice and Equality and a NGO coalition comprising the Migrant Rights Centre of Ireland (MRCI), the Immigrant Council of Ireland (ICI) and Ruhama with funding provided by the Council of Europe. It was

³⁶⁴ Anti-Human Trafficking Unit, Department of Justice and Equality (March 2016).

³⁶⁵ Ruhama, Nasc, Doras Luimní, Barnardos, Sexual Violence Centre Cork, Act to Prevent Trafficking and the Immigrant Council of Ireland.

³⁶⁶ The Immigrant Council of Ireland also made a separate submission to the Anti-Human Trafficking Unit as part of this process. See Immigrant Council of Ireland (July 2015). *Submission to Anti-Human Trafficking Unit of Department of Justice. Second National Action Plan*. Available at www.immigrantcouncil.ie.

³⁶⁷ Joint Submission (July 2015). *Draft Second National Action Plan on Trafficking in Human Beings*. Available at www.ruhama.ie.

agreed by State and NGOs that Identification was the priority issue to be addressed in the National Action Plan.³⁶⁸

In February 2015, three NGOs (Doras Luimní, Immigrant Council of Ireland and Ruhama) made a joint submission³⁶⁹ to the European Commission in relation to responding to the questions raised in the report template for National Rapporteurs or Equivalent Mechanisms (NREM).³⁷⁰ In the Irish context, the functions of the NREM are performed by the Department of Justice and Equality. The purpose of the joint submission is to provide an independent response to the questions originally raised within the report and commentary on the reply of the Irish NREM within their official report.

Following its first report on Ireland in 2013,³⁷¹ the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) visited Ireland in May 2015. They met with stakeholders and expert groups to review the State's efforts to combat trafficking in human beings to date.³⁷² In October, the Anti-Human Trafficking Unit of the Department of Justice and Equality submitted its official response to the 2013 GRETA report. In their submission, they outlined recent significant developments in this area together with an overview of actions contained in the draft Second National Action Plan to Prevent and Combat Human Trafficking in Ireland which corresponded with recommendations of the GRETA report.³⁷³

In its Annual Report, Ruhama³⁷⁴ noted it provided casework supports to 94 female victims of trafficking during the year, which included 27 new trafficking cases. A mobile app 'Know Sex Trafficking' to aid in the identification of trafficking victims was developed under the auspices of the REACHproject.³⁷⁵ Training in the

³⁶⁸ Anti-Human Trafficking Unit, Department of Justice and Equality (March 2016).

³⁶⁹ Doras Luimní, Immigrant Council of Ireland and Ruhama (February 2015). *Submission to the European Commission in response to the Template for National Rapporteurs or Equivalent Mechanisms and in contribution to the upcoming report according Art.20 of Directive 2011/36/EU by the Irish Civil Society Organisations (CSO) in the EU Anti-trafficking Platform: Doras Luimní, Immigrant Council of Ireland and Ruhama.*

³⁷⁰ The report is required under Article 20 of *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.*

³⁷¹ Council of Europe GRETA (2013). *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland.* Available at: www.coe.int.

³⁷² Migrant Rights Centre Ireland (27 May 2015) 'MRCI welcomes visit of European anti-trafficking experts to Ireland'. *Press Release.* Available at: www.mrci.ie.

³⁷³ Department of Justice and Equality (2015). *Report submitted by the Irish authorities on measures taken to comply with Committee of the Parties Recommendation CP(2013)9 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings.* Available at: www.coe.int.

³⁷⁴ Ruhama is an NGO which provides support and assistance to women who are victims of sex trafficking or who are currently active in or have a history of prostitution.

³⁷⁵ The REACH project is a two-year project aimed at activities that promote zero tolerance of human trafficking as a form of violence against women. It is a multi-agency partnership of State actors and civil society organisations. See www.reachproject.eu.

use of this resource was provided to a number of front-line service providers who might encounter victims of trafficking.³⁷⁶

In April, Ruhama reported the results from an online Red C survey of over 1,000 adults it had conducted in March 2015 in relation to Irish attitudes to trafficking in the sex trade.³⁷⁷ Among the survey findings were that 62 per cent of respondents believed that women who sell sex had been pimped or trafficked into the sex industry with 79 per cent of people reporting they believed the main beneficiaries of prostitution and trafficking are pimps or criminal gangs. This survey was conducted under the REACH project, an all of Ireland European Commission funded project to raise awareness of trafficking and improve responses to it.

The Irish Human Rights and Equality Commission (IHREC) was joined as amicus curie to a case where the State's administrative scheme for the identification and protection of victims of trafficking was found to be inadequate by the High Court under EU law during the year.³⁷⁸ Following the decision in the case, the Commission recommended that the 'State take a holistic approach to strengthening, protecting and upholding human rights of victims of trafficking in the State.'³⁷⁹

9.3 LEGISLATION

The *Workplace Relations Act 2015* came into force in 2015 and is of relevance to victims trafficked for the purposes of forced labour.³⁸⁰ The National Employment Rights Authority (NERA) was integrated into the Workplace Relations Commission (WRC) under the *Workplace Relations Act 2015*. Labour inspectors in the WRC carry out workplace inspections to ensure compliance with all aspects of employment law.³⁸¹

Criminal Law (Sexual Offences) Bill 2015

The *Criminal Law (Sexual Offences) Bill 2015* was published on 23 September 2015.³⁸² Section 21 of the Bill as initiated amends Section 5 of the *Criminal Law*

³⁷⁶ Ruhama (2016). *Ruhama Annual Report 2015*. Available at: www.ruhama.ie.

³⁷⁷ Ruhama (22 April 2016). 'New Poll outlines public perceptions of trafficking in the sex trade'. *Press Release*. See www.ruhama.ie.

³⁷⁸ *P v. Chief Superintendent of the Garda National Immigration Bureau, DPP, Ireland and the Attorney General* [2015] IEHC 222. See case summary in Section 9.7.

³⁷⁹ Irish Human Rights and Equality Commission (15 April 2015) 'IHREC calls for immediate action to protect victims of human trafficking following High Court Judgment' *Press Release*. Available at www.ihrec.ie.

³⁸⁰ Anti-Human Trafficking Unit, Department of Justice and Equality, March 2016.

³⁸¹ See www.workplacelrelations.ie.

³⁸² Criminal Justice (Sexual Offences) Bill 2015 Explanatory and Financial Memorandum. Available at: www.oireachtas.ie.

(*Human Trafficking*) Act 2008 by providing for an offence of payment for sexual activity with a person, for the purpose of prostitution, where it is known that person was trafficked.³⁸³

In December 2015, the Minister for Justice and Equality commented:

*The Bill provides for two new offences of purchasing sexual services in the context of prostitution. The purpose of these offences is to target the demand for prostitution. These proposals have been developed following extensive consultation, and implement the recommendation of the Joint Oireachtas Committee on Justice, Equality and Defence which called for the introduction of an offence criminalising the purchase of sexual services. This Bill builds on already strong legislative, administrative and operational measures that have been put in place in Ireland to combat and prevent trafficking in human beings.*³⁸⁴

9.4 TRAFFICKING IN PERSONS REPORT 2016

Ireland remains a Tier 1 country which fully complies with the minimum standards for the elimination of trafficking according to the 2016 *US State Department Trafficking in Persons Report* (TIP).³⁸⁵ Ireland is classified as a destination and source country for women, men and children subjected to sex trafficking and forced labour. During the year, an increase in suspected victims from Nigeria and Romania was noted by authorities.

Victims of forced labour were identified within domestic service, the restaurant industry and car washing services with the Irish government acknowledging that the ‘problem of forced labour in the country is growing’. Trafficking for forced marriage purposes was also noted in the Report as an emerging trend.

As noted in previous TIP reports, Ireland includes the sexual abuse of children, including the creation or possession of child pornography, within the definition of sexual exploitation in the relevant anti-trafficking legislation.³⁸⁶ According to the Report, this is inconsistent with the 2000 UN TIP Protocol and has led to the ongoing situation whereby a high number of non-trafficking crimes have been

³⁸³ A number of interest groups (SWAI, HIV Ireland) have expressed concern with this Bill. Correspondence with Migrant Rights Council of Ireland (MRCI), September 2016.

³⁸⁴ Answer to Parliamentary Question 44429/15 Deputy Róisín Shortall asked the Minister for Justice and Equality the steps she is taking to address the serious issues relating to prostitution and trafficking, as highlighted in the RTÉ ‘Prime Time’ programme on 30 November 2015. Available at: www.justice.ie.

³⁸⁵ The reference year for the report is 2015. US Department of State (June 2016). *Trafficking in Persons Report 2016*. Available at www.state.gov.

³⁸⁶ *Criminal Law (Human Trafficking) Act 2008*.

prosecuted under the *Criminal Law (Human Trafficking) Act 2008*. All prosecutions in 2015 under anti-trafficking legislation were in relation to the sexual abuse of children with no labour or sex traffickers being prosecuted or convicted under the 2008 Act since 2013.

A national protective services bureau was established in 2015 which includes a unit in An Garda Síochána to co-ordinate human trafficking investigations.

The maritime industry was identified by government as a potentially high risk area for human trafficking. As noted in Section 9.2.1.1, media reports during the year claimed migrant workers within the Irish fishing industry were routinely subjected to exploitative practices. The TIP Report noted that one victim of labour trafficking was identified by authorities within the fishing industry during 2015.

Recommendations for Ireland to consider included ensuring victims of trafficking are not penalised for crimes committed as a result of being trafficked, replacing the existing practice of housing victims within direct provision accommodation with specialised emergency accommodation, allowing persons within the asylum process to also be formally identified as victims of trafficking and publishing the second national anti-trafficking action plan.

9.5 RESEARCH

Doras Luimní, a Limerick based NGO, conducted research titled *No chances, no changes, human trafficking and prostitution in Limerick*.³⁸⁷ The report examined human trafficking and prostitution in Limerick and the responsiveness of State systems in addressing the needs of the men and women affected by these issues to identify any barriers in accessing mainstream services. The report included detailed analysis of the case files and interviews with ten victims of trafficking and persons involved in prostitution.

The report noted that victims of trafficking are socially marginalised by current policy and where they do not fulfil the narrow criteria for state supports face grim circumstances, including a heightened risk of poverty and homelessness.

The report noted instances of the imprisonment of victims of trafficking for the crimes they were forced to commit due to their being trafficked. The report

³⁸⁷ Doras Luimní (2015). *No chances, no changes, human trafficking and prostitution in Limerick*. Available at: www.dorasluimni.org.

considered that this goes against the non-prosecution principle contained within EU and Council of Europe legal instruments relating to the treatment of victims of trafficking.³⁸⁸

The Report found, among other concerns, issues in accessing state services under the National Referral Mechanism for victims of trafficking outside Dublin. Concerns were expressed that existing poor mental health can be exacerbated by long periods of time accommodated within the direct provision accommodation system. Satisfying the documentary requirements of the Habitual Residency Condition (HRC)³⁸⁹ for access to social welfare supports can prove challenging for victims of trafficking as the Report noted there can be little information or documentation available for assessment on their lives in Ireland prior to exiting exploitation. A lack of cheap or affordable counselling services for victims of trafficking was also noted in the report. Where free counselling services are available, they are only offered in English.

Recommendations included the publication of the National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland. Accommodating victims of trafficking within domestic abuse shelters with a secure entrance and trained staff was recommended as an alternative to the existing practice of housing victims of trafficking within the direct provision system. The Report also recommended the introduction of legislation to protect victims of trafficking for forced marriage.

A European Commission funded transnational project Upholding Rights! Early legal intervention for Victims of Trafficking with partners in Bulgaria, England, Finland, Ireland,³⁹⁰ Lithuania and Scotland took place during the year. The research examined the legislation, policies and systems in place in each country

³⁸⁸ Council of Europe Convention on Action against Trafficking in Human Beings, 2005. Available: www.coe.int; Ireland signed this convention in 2007 and ratified it in 2010. Council of Europe Chart of signatures and ratifications of Treaty 197 *Council of Europe Convention on Action against Trafficking in Human Beings*. Available at: www.coe.int. See also Department of Justice and Equality (13 April 2007). 'Ireland signs Council of Europe Convention on Action against Trafficking in Human Beings.' *Press Release*. Available at: www.justice.ie
Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Available: <http://eur-lex.europa.eu>. The majority of the criminal law measures contained in Directive 2011/36/EU were implemented by the *Criminal Law (Human Trafficking) Act 2008*. The *Criminal Law (Human Trafficking) (Amendment) Act 2013* provided for the criminalisation of two additional forms of exploitation not covered by existing legislation which were introduced by Directive 2011/36/EU, i.e., trafficking for the purposes of forced begging and trafficking for criminal activities.

³⁸⁹ The HRC is a qualifying condition which must be met in order for persons to access social welfare payments. Whilst the term 'habitually resident' is not defined in Irish law, claimants must establish that Ireland is their 'centre of interest'. For further information, see www.welfare.ie.

³⁹⁰ The Immigrant Council of Ireland was the Irish partner in this project.

related to identifying and supporting victims of trafficking in order to establish models of best practice regarding the provision of early legal advice to victims.³⁹¹

The anti-trafficking machinery in each country was mapped and a series of interviews with key stakeholders with a remit related to trafficking was conducted in order to identify how legal aid and legal interventions are currently operated within the overall anti-trafficking response.

The report concluded that the identification process continues to be problematic across the partner countries. This is partly due to the significant differences in treatment between suspected victims of trafficking referred into the National Referral Mechanism and those who are subsequently formally identified as victims and can therefore access a wide range of victim supports. The need to formalise existing inter-agency collaboration was accepted in all countries, this included putting the roles and responsibilities of relevant agencies on a statutory basis. The necessity of protecting the rights of victims of trafficking in legislation was also identified.

A number of recommendations were made which included standardising the criteria for the formal identification process across the EU, to establish early legal interventions and advice for victims of trafficking. There were also a number of recommendations in relation to improving service provision, training and inter-agency collaboration.

The findings of the report will be utilised in developing three pilot projects in relation to delivering early legal advice to victims of trafficking and modelling best practice in this area which is transferrable across the EU.

9.6 TRAINING

Training on trafficking indicators was delivered to inspectors from the Workplace Relations Commission and to immigration officials.³⁹²

IOM Ireland continued to co-ordinate the provision of 'Tackling Trafficking in Human Beings – Prevention, Protection, Prosecution and Partnership' training to An Garda Síochána on an inter-agency basis.³⁹³

³⁹¹ O'Connor, M (2015). *Upholding Rights! Early legal intervention for Victims of Trafficking Comparative Report*. Available at www.earlylegalintervention.eu.

³⁹² US Department of State (June 2016). *Trafficking in Persons Report 2016*. Available at www.state.gov.

³⁹³ This co-ordination has been taking place since 2006.

Gardaí who have investigative duties within the force undertake this training. It was provided to approximately 150 Gardaí in 2015. The training brings together a wide range of key agencies working within the Irish Government's National Referral Mechanism, and provides participants with a background on key definitions and indicators, the Irish model of service provision to victims of trafficking, the Irish National Action Plan and the work of the Anti-Human Trafficking Unit, as well as a broad overview of key services available within this mechanism, and how to refer appropriately to these services. It covers both State and Non-Statutory responses to Trafficking for both sexual exploitation and labour exploitation, with further forms of exploitation also touched upon.³⁹⁴

9.7 CASE LAW

P v. Chief Superintendent of the Garda National Immigration Bureau, DPP, Ireland and the Attorney General [2015] IEHC 222

The applicant made an application in December 2012 seeking to be identified as a victim of human trafficking under the administrative arrangements drawn up for that purpose by the Department of Justice and Law Reform. The applicant had been arrested and charged in respect of charges under the Misuse of Drugs Acts. In the High Court, the applicant sought judicial review of what she alleged was the GNIB's decision in September 2013 to refuse her application to be identified as a victim of human trafficking. In so doing, the applicant alleged that the GNIB had failed to give reasons for this decision, and had acted in breach of fair procedures and contrary to the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and the requirements of Directive 2011/36/EU. The applicant further sought a stay of her criminal proceedings and an injunction restraining the DPP from taking any further steps in the prosecution of the applicant pending the determination of her judicial review proceedings. The applicant also argued that the administrative arrangements put in place had not properly transposed into Irish law her rights under Directive 2011/36/EU.

The High Court (O'Malley J.) held that the provisions of *Directive 2011/36/EU on preventing and combating trafficking in human beings* had not been adequately transposed into Irish law. O'Malley J. noted that Art.11 of Directive 2011/36/EU required the State to put in place appropriate mechanisms for the early identification of victims of human trafficking and held that there were a number of difficulties with the administrative arrangements operated by the State for the identification of victims of human trafficking, including the onus of proof, the approach to what was required to be proved before recognition would be given

³⁹⁴ IOM Ireland, September 2016.

and the appropriate procedure to be followed in circumstances where a separate but closely linked criminal investigation into the activities of the applicant was in being. Having held that the current administrative arrangements had not adequately transposed Directive 2011/36/EU, O'Malley J. stated that it was for the executive or the legislature and not the courts to determine the precise means by which the appropriate mechanisms would be put in place.

In a separate decision delivered on 10 June 2015, O'Malley J. made declarations that Ireland had failed adequately to transpose Directive 2011/36/EU insofar as it had failed to adopt an appropriate mechanism for the early identification of, and provision of assistance to, victims of human trafficking who are suspected of involvement in criminal offences, and the applicant's application to be considered as a victim of trafficking was not assessed in a manner which was compliant with Directive 2011/36/EU and in particular Art.11 thereof. O'Malley J. also awarded the applicant the sum of €30,000 in damages in respect of the breach of her rights under the Directive.

LTC and I-BJK (a minor) (No. 2) v. Minister for Justice and Equality and Others [2015] IEHC 225

The applicants, who were mother and daughter, sought to amend the proceedings by joining a new respondent, the Garda National Immigration Bureau ('GNIB') and adding new grounds. The daughter claimed in her asylum appeal in 2012 that her mother had been the victim of human trafficking, which was the first time that had been mentioned. Letters were sent by the mother's solicitors seeking revocation of a deportation order existing against her and asking for reliefs available to victims of trafficking, which proceeded on the basis that the Refugee Appeals Tribunal had found that she was such a victim.

As originally framed, the proceedings sought an order directing the Minister for Justice to process an application for protection, relief and ancillary benefits, based upon what was said to be the Refugee Appeals Tribunal's finding that the mother had been the victim of human trafficking. The pleadings made numerous allegations against the State for its failure to implement various international legal obligations, and in respect of the failure of the respondents to deal with the request for administrative immigration arrangements for the protection of such victims. The mother claimed that her entitlement to assistance and support arose once the GNIB had reasonable grounds to believe that she might have been subjected to trafficking. She stated on affidavit that the GNIB had visited her in 2013, and the GNIB furnished a report in May, 2014 stating that they had investigated the matter and interviewed her.

The High Court concluded that the Refugee Appeals Tribunal had not made any finding that the applicant had been a victim of trafficking. The Court invited the applicants to consider their remaining grounds in light of its ruling. On foot of this, the mother sought an order to quash the decision of GNIB that she was not a victim of trafficking; an order demanding a senior member of GNIB to determine if there were reasonable grounds for so believing her to have been such a victim; and leave to add the Human Trafficking Investigation and Co-Ordination Unit of GNIB as a respondent.

The court stated that the amendment sought to change the case from one which alleged that the Refugee Appeals Tribunal had made a positive finding on the trafficking issue to one which alleged that GNIB had made a negative finding on it, and that the decision should have been taken by a person of a particular rank. The court stated that that was not an amendment but the raising of a new complaint which contradicted the case as originally pleaded. Various grounds were advanced in favour of the new reliefs sought. The court refused the application for an amendment. It stated that there was a significant delay in pursuing the reliefs and that it would be inappropriate to extend the time to add the proposed respondent due to the fact that the applicants' lawyers seemed fully conversant with the alleged responsibilities of the proposed respondent prior to the institution of the proceedings, but provided no explanation as to why it had not been named as a party originally. The court stated that the investigation of GNIB into the trafficking issue was ongoing but was dependent upon the cooperation of the applicant. It was therefore inappropriate to grant the order sought to quash the GNIB decision. The report of May, 2014 was not a final decision on whether the mother was a victim of trafficking; rather, it was a step in a stalled investigation into that question. Consequently, the third relief commanding a senior member of GNIB to make a determination on the issue was held to be premature and inappropriate due to the ongoing nature of the investigation. The court therefore refused the application to amend proceedings.

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EMN Ireland
The Economic & Social Research Institute
Whitaker Square
Sir John Rogerson's Quay
Dublin 2, Ireland + 353 1 863 2000
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