

RESPONSES TO IRREGULARLY STAYING MIGRANTS IN IRELAND

MICHAŁ POLAKOWSKI AND EMMA QUINN



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ABOUT THIS REPORT

This EMN study examines the situation of irregularly staying migrants in Ireland and the policy responses towards this group. It presents information collated by way of a common template for an EU-level report which was published by the EMN, Responses to long term irregularly staying migrants- practices and challenges in the EU and Norway, available at: www.emn.ie.

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 author is solely responsible for the content and the views expressed do not represent the position of the Economic and Social Research Institute, the Department of Justice, or the European Commission, Directorate-General Migration and Home Affairs.

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ABBREVIATIONS AND IRISH TERMS

An Garda Síochána	Ireland's national police service
CSO	Central Statistics Office (Ireland)
EEA	European Economic Area
EMN	European Migration Network
ESRI	Economic and Social Research Institute
EU	European Union
FRA	European Union Agency for Fundamental Rights
GNIB	Garda National Immigration Bureau
HRC	Habitual Residence Condition
HSE	Health Service Executive
ICTU	Irish Congress of Trade Unions
IOM	International Organization for Migration
IPAS	International Protection Accommodation Service
IPAT	International Protection Appeals Tribunal
IVARRP	Irregular Voluntary Assisted Return and Reintegration Programme
MRCI	Migrant Rights Centre Ireland
Nasc	Nasc, the Migrant and Refugee Rights Centre
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
PPSN	Personal public service number (Irish social security number)
Teachta Dála (T.D.)	Member of parliament
UNHCR	Office of the United Nations High Commissioner for Refugees
VARRP	Voluntary Assisted Return and Reintegration Programme
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

Irregularly staying migrants are more likely to face material deprivation and instability, and are more vulnerable to exploitation and crime than legal residents (FRA, 2011). Ultimately, they may face deportation to their country of origin. The fear of detection and deportation can lead to underutilisation of public services (Vintila and Lafleur, 2020). The recent introduction of the Regularisation of Long-Term Undocumented Migrants Scheme (discussed below) is a major policy development that should improve the situation of many people living in Ireland. However, it is likely that irregular migration will persist, and related policy challenges will remain. This report aims to provide an overview of the situation of irregularly staying migrants in Ireland, including access to public services, and to outline major public debates and policy measures introduced to address related issues.

IRREGULARLY STAYING MIGRANTS IN IRELAND

In the Irish context, two broad categories of irregularly staying migrants are found: persons who are unknown to the authorities, either because they entered irregularly or entered legally and then lost their legal right to reside, and a much smaller group of people who were refused international protection but who, for a variety of reasons, remain in the State and are known to the authorities. When considering the latter group, this study focuses on those who reside in the International Protection Accommodation Services (IPAS) system of accommodation with a deportation order pending (358 in December 2020).

No official data exist on the size of the irregularly staying group. The Migrant Rights Centre Ireland (MRCI) estimated in 2020 that there were 17,000–20,000 undocumented persons in the State, including 2,000–3,000 children. For reference, in April 2021, 646,000 non-Irish nationals (including 180,000 who were neither UK nor EU nationals) resided in the State (CSO, 2021). NGOs report that the majority of irregularly staying migrants in Ireland entered legally, mainly as students and workers.

RETURN

In the case of unsuccessful international protection applicants, return procedures are set out in the International Protection Act 2015. In all other cases that fall within the scope of this report, it is the Immigration Act 1999 which regulates return. Ireland does not participate in the EU Return Directive 2008/115/EC, which sets out minimum standards of benefits and services that should be available to

individuals with return decisions that cannot be executed. However, Ireland does allow unsuccessful international protection applicants with deportation orders to reside in the IPAS system of accommodation (commonly known as Direct Provision) and use all associated services.

In some EU Member States, if a return cannot be concluded for legal or practical reasons, a temporary authorisation to remain or permit may be issued to some irregularly staying migrants. Ireland belongs to a group of Member States in which no written confirmation or other documentation is issued if a return cannot be enforced. The report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (Government of Ireland, 2020) recommended that Ireland develop a strategy and, if necessary, legislation for dealing with unsuccessful protection applicants who are deemed 'non-returnable'.

REGULARISATION

Regularisation has been a topic of much debate in Ireland in recent years. Regularisation may be viewed by a State as preferable to pursuing return, in terms of reducing costs and addressing the vulnerability of the irregularly resident group. An opposing view is that the illegality of irregular migrants' stay is central and, as such, should not be rewarded (Gonzales Beilfuss and Koopmans, 2021). States may adopt a case-by-case approach to regularisation, and several European countries have also used collective regularisation programmes in recent decades; for example France, Poland and Spain (Levinson, 2005).

Ireland's first scheme for undocumented former students was introduced in 2018, through which 2,253 persons were granted residence permission. Following a commitment in the 2020 Programme for Government, and a public consultation in 2021, the Regularisation of Long-Term Undocumented Migrants Scheme was opened in 2022. The scheme was broadly welcomed by NGOs. Submissions to the public consultation had stressed that the scheme should have broad eligibility conditions, reasonable fees and flexibility in terms of documents accepted. The Ombudsman for Children's office stressed that residence permissions issued to children should be consistent. Applications are invited from adults who have been living in the State (without an immigration permission) continuously for the previous four years, reduced to three years in the case of families with minor children. Persons with deportation orders pending are eligible to apply. A scheme covering international protection applicants, who had been in the process for at least two years, was also launched in parallel.

LABOUR EXPLOITATION OF IRREGULARLY STAYING MIGRANTS

Irregularly staying migrants are more vulnerable to labour exploitation due to the clandestine nature of their stay. NGOs and media reports have highlighted particular issues in the meat processing and fishing sectors. In terms of policy measures to address the potential for labour exploitation, the Reactivation Employment Permit, introduced in 2014, is a scheme for workers whose permit lapsed through no fault of their own. However, applications require evidence of permission to reside in the State. In 2015, an inter-departmental government taskforce recommended an expanded scope for the Atypical Working Scheme as a means of addressing issues faced by non-EEA workers, including undocumented workers, in the fishing industry.

SERVICES AVAILABLE TO IRREGULARLY STAYING MIGRANTS

Access to services by irregularly staying migrants is a topic of debate. Some argue that welfare services might attract irregular migration (Borjas, 1999). Others stress the human rights dimension and the vulnerability of the group. The EU-level synthesis report for this study shows that, across the EU, the scope of rights depends on a migrant's background: in general, those who remain unknown to the authorities have significantly constrained access to services when compared to individuals issued with a decision to return (EMN, 2021). EMN (2021) shows an inherent tension exists in many Member States, between national-level policies which focus on reducing the scale of irregular migration and local-level government which provides services to individuals in need. Research indicates that urban settings can be seen as 'sanctuary spaces'; that is, spaces that are more welcoming of (irregular) migrants.

The Department of Justice stated that authorities providing services at local or state level in Ireland do not need to check the migration status of persons before providing access to a service. However, aside from a COVID-19-related announcement, no specific firewall provisions were found, i.e. provisions in relation to using (public) services, guaranteeing that an undocumented migration status will not be forwarded to the migration authorities.

In terms of migrants whose stay is unknown to the authorities, access to social housing is limited to legally resident persons. However, responses to homelessness are devised on the local level and the Dublin City Homelessness Action Plan states that all individuals, including irregular migrants, should receive services, though MRCI observed that access is difficult in practice. Access to mandatory education and emergency healthcare is universal in Ireland and across the EU (EMN, 2021). Basic medical care can be accessed by irregular migrants in Ireland if they can afford payment. NGOs indicated that access to specialised care is difficult if a

migrant does not have a medical card. In principle, it is possible for irregularly resident migrants to access higher education, but several obstacles to access exist in practice.

Unsuccessful international protection applicants with deportation orders may reside in the IPAS system of accommodation and use all associated services. The Legal Aid Board noted that international protection applicants' access to legal aid is limited once the procedure has concluded and a deportation order has been issued. Unsuccessful applicants with a deportation order pending are not eligible to apply for a permission to work.

COVID-19 AND IRREGULARLY STAYING MIGRANTS

The situation of irregularly staying migrants emerged regularly in the public debate in the context of the COVID-19 pandemic. The media reported on fears among the irregularly-staying population of being detected by the authorities and of using public services such as healthcare. Reports also highlighted that undocumented workers were performing essential caring duties during the pandemic. The Department of Justice published information in March 2020 assuring irregular migrants that if they accessed services such as the Pandemic Unemployment Payment and healthcare services during the pandemic their details would not be shared with immigration authorities.

POLICY IMPLICATIONS

The Regularisation of Long-Term Undocumented Migrants Scheme should significantly reduce the number of long-term irregularly staying migrants in Ireland. Although an exhaustive survey of international schemes was beyond the scope of this study, the current Irish scheme has a broad reach in terms of eligibility. Moreover, it is not limited to the economically active population and there are several ways available to prove residence in the State. Certain policy challenges remain for those who do not regularise under this scheme and for future irregularly staying migrants. NGOs continue to campaign for clear firewall provisions between migration authorities and the police, labour inspectors and social service providers. The report shows that the national response to irregular migration is multi-level and driven by sometimes contradictory goals, with the local level response to the individual needs of irregular migrants potentially at odds with national policy.

CHAPTER 1

Introduction and context

Due to its very nature, irregular migration lies in the ‘shadow zone’. Compared to other streams of migration, relatively little is known about individuals with irregular migration status – their motivation for migration, pathways to irregularity or socio-economic situation. Yet the topic of irregular migration is regularly debated in public discourse.

From the perspective of such migrants, their irregular migration status is challenging as they are more likely to face material deprivation and instability and are vulnerable to exploitation and crime (FRA, 2011). Ultimately, they may face deportation to their country of origin. The fear of detection and deportation can lead to underutilisation of public services (Vintila and Lafleur, 2020).

EU and national policymakers have taken various approaches to the issue of irregular migration over several decades. Recent EU policy has aimed at curbing irregular migration; for example, the 2016 EU–Turkey Statement, which included EU humanitarian aid for refugees residing in Turkey as well as the return of unsuccessful international protection applicants from Greece to Turkey. The funding for these activities totalled six billion euro over four years (MEDAM, 2019).

Synthesising developments in EU Member States since the 1970s, Delvino (2017) shows that, from the 1970s to the 1990s, policies related to entry and stay became stricter. In the 1970s, increased controls of entry were introduced in countries which had a long history of immigration and of attracting foreign workers, such as Germany, France and the United Kingdom (UK). The countries of southern Europe introduced similar measures in the mid-1990s when their status shifted from emigration to immigration states. The period from the late 1990s to 2000s was characterised by further attempts to curb irregular migration. One of the main instruments, according to Delvino, was legislation on the criminalisation of irregular migration status accompanied by restrictions on access to public services. The latter could take the approach of excluding irregular migrants from being eligible recipients, but also of involving service providers in the identification of migrants with irregular status. Finally, in some countries engagement with irregular migrants might be seen as a criminal offence; this goes beyond traffickers and might extend to landlords. The European Union Agency for Fundamental Rights (FRA, 2016) shows that all EU Member States, other than Malta, Portugal and Spain, have sanctions in place for irregular entry (although those three states do initiate return procedures). Since the 2000s, Delvino argues, one can see some signs of trend reversals towards guaranteeing more rights to irregular migrants.

Alongside the policy developments discussed above, occasional mass regularisations have taken place in EU Member States (Delvino, 2020).

In general, the governance of irregular migration should be seen as multi-level and driven by sometimes contradictory goals: it ‘materialises at the local level, under national and transnational (European) rules, with a high degree of discretion (as often happens in many types of public policies) at the street-bureaucracy level’ (Spencer and Triandafyllidou, 2020).

There are many reasons why a person might become an irregularly staying migrant. Firstly, a person may have entered irregularly or have lost permission to reside in a state (due to the expiration of a visa or other document). Secondly, irregularity of stay might be a result of remaining in a receiving state despite having had an international protection application rejected.

Like in other EU Member States and at the EU level, debates on the topic of irregular migrants residing in Ireland occur quite frequently and, to a large extent, originate from the non-governmental sector (EMN, 2021). Recently, two issues dominated the debate in Ireland: the role played by irregularly staying migrants in the Irish economy during the COVID-19 pandemic; and the parameters of the Regularisation Scheme for Long-term Undocumented Migrants, which was announced by Government in 2020 and opened for applications on 31 January 2022.

1.1 STUDY CONTEXT AND OBJECTIVES

This study is based on information gathered for the Irish contribution to the European Migration Network (EMN) synthesis report, *Responses to long-term irregularly staying migrants: Practices and challenges in EU Member States and Norway* (2021). The synthesis report aims to provide an overview of existing policies and practices, at central and local authority levels, towards third-country nationals¹ in a prolonged situation of irregular stay. It also examines access by irregularly staying migrants to mainstream services.

The Irish legal framework does not distinguish between long-term and short-term categories of migrants; therefore, the report does not make this distinction. This is also true of all other Member States that participated in the comparative study (EMN, 2021). The objective of this Irish national report is to provide an overview of the situation of irregularly staying migrants in Ireland. It achieves this objective

¹ A third-country national is a citizen of a non-EEA state. The EMN glossary defines third-country nationals as ‘any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU and who is not a person enjoying the European Union right to free movement as defined in Art. 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code)’.

firstly by presenting the relevant legal provisions and available data on characteristics of this group of migrants, as well as describing different categories of irregularly staying migrants. It then focuses on major public debates related to irregularly staying migrants and policy measures introduced to address related issues. Regularisation is discussed in depth and the study includes details on the Regularisation of Long-Term Undocumented Migrants Scheme opened in early 2022. Another specific objective is to map access to services by irregular migrants and to discuss provisions available via non-state actors. In general, the goals and structure of this report reflect the common EMN study template and, where possible and useful, parallels and contrasts will be drawn with other Member States.

1.2 DEFINITIONS AND SCOPE

An ‘irregular migrant’ is defined in the EMN Glossary as ‘a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State’.^{2,3} The term undocumented migrant is more commonly used by nongovernmental organisations (NGOs) such as the Migrant Rights Centre Ireland (MRCI),⁴ Nasc and the Immigrant Council of Ireland. This report adopts the terminology used in the common study template and refers mainly to ‘irregularly staying’ migrants.

In the Irish context, two broad categories of irregularly staying migrants can be found. The first category covers individuals who are unknown to the authorities, either because they entered irregularly or lost a legal right to reside in Ireland, such as visa ‘overstayers’ or persons who absconded during their international application procedure. Secondly, individuals who applied in Ireland for international protection and received a negative decision followed by a deportation order, may for a variety of reasons remain in the State and are known to the authorities. When analysing the situation of the second category, this report considers only those unsuccessful international protection applicants who remain in the International Protection Accommodation Services (IPAS) system of accommodation (commonly known as Direct Provision).

This study focuses therefore on what Delvino (2020) refers to as ‘policies on irregular migrants’ while only selectively touching upon ‘policies on irregular migration’. Thus, the main focus of the study is on irregularly staying migrants,

² It should be mentioned, nonetheless, that this definition also applies to Ireland, which is not a Schengen State.

³ EMN Glossary, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/irregular-migrant_en.

⁴ MRCI runs a longstanding campaign called Justice for Undocumented.

their situation, the main debates relating to this group and access by this group to public services. To a limited extent, the study looks at policies to combat trafficking, return and discouragement of irregular migration.

Reflecting the specifications of the EU-wide study, this report focuses on the situation in the period 2015–2020, with some key updates to early 2022.

1.3 METHODOLOGY

This report is based on desk research as well as interviews and consultations with several stakeholders. The topic of irregular migrants lies in the ‘shadow zone’ and there is a scarcity of written sources, statistical data and policy documents (Jauhiainen and Tedeschi, 2021). As a result, this study to a large extent draws on primary data obtained through interviews with government officials and non-state stakeholders. The interviews were conducted with officials from the Department of Justice (Migration Policy Unit and Repatriation Division), an official from Dublin City Council as well as representatives of two NGOs: Nasc, the Migrant and Refugee Rights Centre and MRCI. Written input was also received from IPAS within the Department of Children, Equality, Disability, Integration and Youth, the Department of Enterprise, Trade and Employment, the Department of Education and Skills and the Legal Aid Board. Comparative information on other EU Member States has been included where relevant and useful, from the EMN synthesis report (EMN, 2021).

1.4 EU POLICY CONTEXT

Since the Tampere summit meeting of 1999, migration policy has become the subject of a common approach at EU level. While mentioned in the 1999 Presidency Conclusions, the issues of irregular migration and irregular migrants were seen there in terms of preventing the arrival of such migrants. As discussed below, several strategic EU documents and legal acts have addressed various aspects of this phenomenon since then. However, as has been the case in relation to other issues in the migration area, Ireland does not participate in key EU Directives related to irregular migrants such as the Return Directive (2008/115/EC) and the Employers Sanctions Directive (2009/52/EC). Instead, national provisions apply.

In a 2001 Communication on a common policy on illegal immigration, the European Commission defined illegal migration and stated that it is ‘multifaceted in terms of the individuals concerned and the patterns of their illegal entry and residence’ (Commission of the European Communities, 2001, p. 7). The Commission indicated that it involves those who cross borders illegally, but also ‘overstayers’. Further, the Commission emphasised the criminal aspect of illegal migration, especially

when it comes to illegal entry, and the necessity to fight against this phenomenon. Similarly, in 2003, in a Communication on the development of a common policy on illegal migration, smuggling and trafficking of human beings, external borders and the return of illegal residents, highlighted actions referred mostly to the fight against irregular migration (Commission of the European Communities, 2003). A 2004 Communication focused on the linkages between legal migration and illegal migration (Commission of the European Communities, 2004). The documents issued in subsequent years continued this focus on fighting illegal migration both in terms of push and pull factors as well as smuggling and strengthening cooperation between Member States.

In 2008, the European Pact on Migration and Asylum dealt with illegal migration in the context of return. Similar priorities were indicated in the European Agenda on Migration published in 2015, which identified the reduction of incentives for irregular migration as one of four priorities (European Commission, 2015).

As for the legal framework, important aspects related to irregular migration were addressed by the Return Directive (2008/115/EC), which provides that irregular migrants should receive a return decision so that the situation of legal uncertainty is reduced. The Directive also stipulates minimum standards with respect to social services available to this category of migrants. Ireland opted not to participate in this Directive; therefore, these provisions do not apply and, in the context of this study, it should be noted that the legal provisions relating to return in Ireland depart significantly from those included in the Directive. For example, while the Directive sets a period for voluntary return after receiving a return decision, in Ireland voluntary return is only possible before the deportation order is issued (Byrne and Quinn, 2017).

In Ireland, the area of return is governed by two legal acts. First, in the case of unsuccessful international protection applicants, return procedures are set out in the International Protection Act 2015 (the 2015 Act). The Irish international protection application set out under this Act is a single stage procedure, meaning that all grounds for protection and the non-refoulement principle are given consideration during this process and not afterwards.⁵ In the case of all other categories of third-country nationals, it is section 3 of the Immigration Act 1999 which regulates issues related to return.

⁵ Non-refoulement is 'a core principle of international refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion' See EMN Glossary, https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/non-refoulement_en.

At the EU level, Directive 2009/52/EC prohibits the employment of irregular migrants and introduces minimum standards on sanctions for employers along with other deterrent measures. Ireland does not participate in this Directive either. The Directive stipulates that an employer of an irregularly staying migrant is liable for wages, any back payments, and any taxes or social security contributions that would have been payable had the person been employed legally. Further, any costs related to transferring remuneration to a country to which a migrant returned or was returned, are to be borne by the employer. The Directive also stipulates that effective instruments for claiming rights by irregular migrants, even when residing outside the territory, should be made available (including a national authority to institute procedures on behalf of the workers). Moreover, the Directive states that Member States in their legislation shall presume that the employment of an irregular migrant lasted at least three months. Liability regarding irregular migrants extends to contractors whose sub-contractors are employers of such individuals (Verschuere, 2018).

To sum up, from the EU policy perspective, irregular migration has been an important topic in recent decades, with a key focus placed on reducing its scale, both in terms of reducing inflow (e.g. by curbing trafficking) but also an increased emphasis on return. This explains why the EU policy debate on irregular migration has been approached mainly from the perspective of security and less from the perspective of human rights. Mass regularisations and opening access to public services should be seen as an exception to this 'securitisation' approach (Delvino, 2020).

1.5 DATA ON CHARACTERISTICS AND CATEGORIES OF IRREGULAR MIGRANTS IN IRELAND

No official data exist on the number of undocumented persons in the State. Ireland is no different in this respect from other EU Member States (EMN, 2021). There is no agreed method of estimating undocumented migrant populations, especially when it comes to 'overstayers'. The report published by Pew Research Centre (Connor and Passel, 2019) cites four basic approaches to estimating such populations: residual method (legally staying migrants subtracted from the total foreign population), considered to be the best method of estimation; demographic method (by updating from the last reliable estimate); regularisation method (where the number of regularised migrants is the lower band of the estimate); and a proportional ratio method (where a population of undocumented migrants is estimated as a fixed share of migrants observed in other countries with similar characteristics). For Ireland, the Pew study used a residual method, estimating that in 2017, less than 100,000 undocumented migrants lived in the State. In the absence of official information on irregularly staying migrants, NGOs represent an

important source of information, including on the estimated size of the group, its demographic composition as well as its socio-economic characteristics.

In 2014, MRCI and its Justice for Undocumented campaign carried out research with 540 undocumented migrants (MRCI, 2014). The research methodology was based on an approach to research within communities which emphasises participation and action. All participating individuals (540) were surveyed between July and September 2014.⁶ An analysis of MRCI's case management system (2,600 files) complemented and supported these data. The estimate published by MRCI (2014) indicated that between 20,000 and 26,000 undocumented migrants lived in Ireland in that period. More recent estimates take into account, among other factors, policy changes that led to a reduction in the size of the group (such as the 2018 scheme for undocumented former students discussed in Section 3.2.2.1). Accordingly, MRCI estimated that there were some 17,000 to 20,000 undocumented persons in the State, including 2,000 to 3,000 children.⁷ For reference, in April 2021, there were 646,000 non-Irish nationals, including 180,000 individuals from neither the UK nor the EU residing in the State (CSO, 2021). The NGO surveyed 1,000 irregularly staying migrants in Ireland and discussed some characteristics of the group (MRCI, 2020a).⁸ More than three-quarters of them (75.5%) had resided in the State for five years or more. The vast majority (93%) were economically active. Over half (56%) of respondents were women and 70% of respondents were aged between 25 and 44 years old. The migrants surveyed tended to work in services – 27% were carers in private homes, while 20% were employed in restaurants and catering, and a further 17% worked in cleaning and maintenance. As for their conditions of employment, 46% worked for more than 40 hours a week while 26% were paid below the minimum wage level.

From a policy point of view, one can distinguish categories of irregularly staying migrants present in Ireland as identified in practice. These categories include: irregular migrants subject to a return decision for whom the return cannot be enforced due to legal obstacles (such as medical or humanitarian reasons); irregular migrants subject to a return decision for whom the return cannot be enforced due to practical obstacles (cooperation of the person concerned, problems with travel documents etc.); former (rejected) applicants for international protection who absconded, third-country nationals whose short-stay visa or residence permit expired and/or was not renewed; and other irregular

⁶ The research approach was agreed with Justice for Undocumented members to ensure representation of undocumented migrants throughout the process. Interviews consisted of 29 closed-ended questions, were administered in person and collected anonymously. The questions focused on the length of residency, family life, employment and engagement with the immigration system. Other MRCI surveys cited in this report are also based on the Justice for Undocumented methodology.

⁷ Information obtained during an interview with a representative of MRCI on 3 November 2020.

⁸ The precise figures presented should be treated with caution and are only indicative of the characteristics of this group.

migrants who were not (yet) detected by national migration authorities. A separate category includes dependent children, under the age of 16, of parents who overstay their permission.

In relation to the two broad categories of irregularly staying migrants discussed in this report, people who have 'overstayed' their immigration permission, and people who have a deportation order pending who reside in state accommodation, no official regularly published data exist. However, in 2015 the McMahon report showed that 9% of residents within the Direct Provision system of accommodation (714 people) had deportation orders pending (Department of Justice and Equality, 2015). Data from the end of 2020 showed that out of 6,996 residents in International Protection Accommodation Services accommodation, 358 were unsuccessful protection applicants with deportation orders pending (Government of Ireland, 2021).

CHAPTER 2

Relevant Irish law and practice

2.1 INTRODUCTION

This chapter provides an overview of law and administrative practice in order to provide context around pathways in and out of irregular residence status. Legal provisions on residence and return in Ireland are outlined and assisted voluntary return is discussed. The law and practice around challenging a deportation order is also set out, including available information on revocation of deportation orders. Finally, the concept of non-returnable migrants is considered.

2.2 LEGAL RESIDENCE IN IRELAND

Section 5 of the Immigration Act 2004 provides that a non-national who is present within the State without a valid immigration permission is for all purposes unlawfully present in the State. Section 9 of the Immigration Act 2004 sets out the legal requirement for non-EEA nationals to register for immigration purposes when staying in the State for more than three months. However, as a matter of law and practice, children under the age of 16 are not subject to the requirement to register for immigration purposes and are instead treated as being covered by the immigration permission of the parent with whom they reside in the State.⁹ If a parent loses their immigration status, so therefore does the child (Mannion, 2016).

2.3 RETURN

In the case of unsuccessful international protection applicants, return procedures are set out in the International Protection Act 2015 (the 2015 Act). In all other cases which fall into the scope of this report, it is the Immigration Act 1999 which regulates return.¹⁰

Section 3 of the Immigration Act 1999, as amended, provides that specified persons can be subject to a deportation order requiring them to leave the State.

⁹ Subsection (6)(a) expressly excludes non-nationals under the age of 16 from the obligation to register. Information received from EMN Ireland legal consultant on 14 January 2021.

¹⁰ Another category of return power applies to persons who have been refused leave to land in the State, therefore falling outside of the scope of this paper. Under section 5 of the Immigration Act 2003, the Minister can make a deportation order against a person who has been in the State for less than a continuous period of three months without following the procedure set out in section 3 of the Immigration Act 1999.

Such persons may include those deemed to have contravened a restriction or condition related to landing, entering or staying in the State (section 3 (2)).¹¹

In Ireland, in accordance with the provisions of the Immigration Act 1999, the 'return decision' covers a two-part process. Firstly, a notification of an intention to deport is issued, which requests the non-national concerned to leave the State, and informs them that they can consent to the deportation order or make representations to the Minister within 15 days for leave to remain on non-protection grounds. Secondly, if the leave to remain application is unsuccessful and the individual has not already left the State, a deportation order is issued, after assessment of the prohibition on refoulement, which requires the non-EEA national to leave the State and remain outside the State thereafter.

Commenced on 31 December 2016, the International Protection Act 2015 introduced a single protection procedure which includes assessment of permission to remain on non-protection grounds. If an applicant receives a negative first instance decision on an international protection application, a separate decision is later issued on whether that person should be granted 'permission to remain' under section 49 of the 2015 Act. If the person appeals their protection refusal to the International Protection Appeals Tribunal (IPAT),¹² and a negative decision is issued, that decision triggers a five-day period to make final representations to the Minister on the permission to remain application or to opt to leave voluntarily. If the Minister does not grant permission to remain, or the person does not avail of voluntary return, then a deportation order will issue.

2.3.1 Assisted voluntary return

As discussed in section 1.4, comparisons between return decisions under the Return Directive and deportation orders under Irish national law are difficult, mainly because a return decision issued in accordance with the Return Directive has a period for voluntary return (including assisted voluntary return) built into it. In the Irish system, the period for availing of voluntary return has expired when a deportation order is issued.

When an applicant for international protection is advised of the decision that they no longer have permission to remain in the State, they are required to confirm within five days that they will accept the option of voluntary return, for which the International Organization for Migration (IOM), funded by the Department, will

¹¹ Persons refused leave to land in the State are also included under this section, although it is less used in practice than section 5 of the Immigration Act 2003. Comments from EMN legal consultant, April 2022.

¹² Note that the IPAT does not have jurisdiction to deal with permission to remain.

provide assistance.¹³ If they do not confirm that they will leave voluntarily, a deportation order will then be made against them. However, the concept of voluntary return is actively encouraged prior to a deportation order being made, as demonstrated by the letter an applicant receives at this point in the process.¹⁴

When it comes to voluntary return options, there are two main instruments, both co-ordinated by the IOM office in Ireland (Sheridan, 2019). One is the Voluntary Assisted Return and Reintegration Programme (VARRP), which applies to individuals who have not received a deportation order and are unsuccessful asylum applicants or victims of trafficking. The second is the Irregular Voluntary Assisted Return and Reintegration Programme (IVARRP), which is available to irregular migrants. It is co-funded by the EU on a 75/25 basis (Sheridan, 2020).

Under these programmes, the flights home for such persons are paid and, where required, the IOM will assist in securing travel documents and give assistance at the airport, both at departure and arrival. Persons availing of these programmes can apply for reintegration assistance to allow them to start up a business or enter further education or training when they are back in their country of origin. This takes the form of an ‘in-kind’ rather than cash payment (ibid.).

2.3.2 Challenging deportation orders

The Immigration Act 1999 provides for the possibility to apply for the revocation of a deportation order. There is no appeal against a decision to make a deportation order. Apart from revocation, the only available legal remedy to seek to set aside a deportation order is via judicial review, which is a challenge to the legality of the deportation order. Examples of types of judicial review challenges include challenges on procedural grounds or on the basis that the deportation order infringes a substantive right, such as the right not to be subjected to torture or inhuman and degrading treatment, or the right to family life. The Illegal Immigrants (Trafficking) Act 2000 provides that a shorter time limit applies to bringing judicial review proceedings challenging a deportation order than a judicial review issued in respect of other administrative decisions.¹⁵ If a judicial review is successful, the decision is quashed and the matter is referred back to the Minister for Justice for re-consideration.

¹³ One of the recommendations (Recommendation 4.8) of the Catherine Day report on Direct Provision was to extend this period to 30 days and to allow children and students to finish a school year before departure (Government of Ireland, 2020).

¹⁴ Information received from Department of Justice official on 10 December 2020.

¹⁵ The limitation period is 28 days.

The Department of Justice indicated that a written confirmation of postponement of return may be issued during judicial review proceedings only.¹⁶ If Immigration Service Delivery, on behalf of the Minister for Justice, agrees then an undertaking can be provided not to deport a person until the next court date. This can be extended on agreement and such undertakings are subject to the person cooperating with the Garda National Immigration Bureau (GNIB) in terms of the requirements of their deportation order. The Department of Justice indicated that no data were available on the number of such written confirmations.¹⁷

2.3.2.1 Revocation of deportation orders

Section 3(11) of the Immigration Act 1999 provides a statutory mechanism under which the Minister for Justice can revoke an existing deportation order. A Department of Justice official commented that this happens in cases where a person makes a compelling case to the Minister for doing so, which is invariably based on a material change in the relevant person's circumstances since the issuance of the deportation order. For example, a deportation order will be revoked when a person with an irregular migration status applies for international protection. When an application for revocation is accepted for processing, the person concerned is given a temporary, and limited, permission to remain in the State until the application for international protection has been determined and immediate steps will be taken to have the deportation order revoked.¹⁸ An application for revocation can be made at any time before the actual enforcement of the order or thereafter by a person who is outside the State and is seeking readmission to the State (Becker, 2012). Only previously unknown circumstances submitted by an applicant can be considered in a revocation application.¹⁹ In the period 2015–2019, 1,686 deportation orders were revoked. For context, in the same period 6,377 deportation orders were issued.²⁰ Table 2.1 presents a breakdown of submissions to revoke a deportation order and revoked deportation orders in the analysed period.

¹⁶ If the Minister is not willing to provide written confirmation of postponement of return during judicial review proceedings, the court can grant an injunction restraining enforcement of the deportation order. Comments from EMN legal consultant, April 2022.

¹⁷ Information received from Department of Justice official on 10 December 2020.

¹⁸ Information received from Department of Justice official on 10 December 2020.

¹⁹ Information received from Department of Justice official on 10 December 2020.

²⁰ Information received from Department of Justice official on 10 December 2020.

TABLE 2.1 SUBMISSIONS TO REVOKE A DEPORTATION ORDER AND REVOKED DEPORTATION ORDERS (N.)

Year	Submissions to revoke a deportation order	Revoked deportation orders
2015	595	469
2016	444	268
2017	291	158
2018	415	318
2019	540	377
2020	372	222 (March–November)

Source: Submissions to revoke a deportation order 2015–2020 and revoked deportation orders 2015–2019 are based on the information received from Department of Justice (Repatriation Division) on 7 January 2021; Department of Justice (2 December 2020); Revoked deportation orders March–November 2020 are based on the response to Parliamentary Question 40550/20, available at <https://www.oireachtas.ie/en/debates/question/2020-12-02/124/>.

Notes: Government of Ireland (2020) records that the yearly numbers of asylum and protection-related deportation orders issued were as follows: 2015: 532; 2016: 908; 2017: 511; 2018: 278; 2019: 941. Data on deportation orders issued to unsuccessful asylum and protection applicants, excluding persons refused leave to land, were not available. Data on submissions to revoke and revocations relate to different years.

The Department of Justice indicated that such data should be interpreted with caution. First, the relatively bigger number of revocations in the beginning of the reference period to some extent resulted from the recommendations of the 2015 ‘McMahon report’ on improvements to the protection process.²¹ Second, comparing the numbers of applications and revocations cannot be interpreted as a ‘success rate’ because the data do not refer to the same cases; in other words, cases might be submitted in one year and decided in a subsequent year. Further, the Department of Justice stated that data on submissions capture case files opened rather than every request for revocation that was received.²²

As was signalled above, the single international protection application procedure, based on the International Protection Act 2015, takes into account circumstances such as non-refoulement and other legal obstacles to return. Similarly, before issuing a deportation order in respect of an individual who was not an applicant for international protection under section 3 of the 1999 Immigration Act, the Minister must have regard to the non-refoulement principle and other legal obstacles to return.

The Repatriation Division of the Department of Justice indicated that a decision to revoke a deportation order must be based on an unusual or material change of circumstances in an individual’s case since the issuance of the deportation order.²³

²¹ Paragraph 3.134 of the Report states that ‘All persons with a deportation order who have been in the system for five years or more from the date of initial application should have their deportation order revoked under section 3(11) of the Immigration Act 1999 as soon as possible and within a maximum of six months from the implementation start date subject to the conditions’ (Department of Justice and Equality, 2015).

²² Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

²³ Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

Often a deportation order is revoked when an individual with irregular migration status applies for international protection.²⁴

Other instances which might lead to revocation of a deportation order include a significant change in a person's family situation or a positive action taken to avoid a possible breach of the person's right to family life in the State.^{25,26}

While section 3(11) provides for the revocation of a deportation order, the type of residence permission granted to a successful applicant for revocation is at the discretion of the Minister. There is no single type of permission to remain granted, and no standard period of such a permission. The Repatriation Division in the Department of Justice indicated that the type and length of permission depends on the individual case and that a range of factors are taken into account, including the individual's past stay in the State.²⁷ For example, if a deportation order is revoked on the basis of an application for international protection described above, such individuals receive a temporary permission to remain. The Repatriation Division indicated that if an individual submits a request to revoke the deportation order on the basis of their family situation, they may receive a Stamp 3. In other circumstances, they may receive a Stamp 4 or Stamp 1 immigration permission. The duration of permit normally ranges from one to three years, and can be shorter in cases where there are criminality-related concerns. It is possible to renew these permits if the conditions remain unchanged.²⁸

2.3.3 Non-returnable migrants

In some EU Member States, if a return cannot be concluded for legal or practical reasons (e.g. Belgium, Cyprus, Estonia, Finland, Germany, Greece, Luxembourg and Spain) a temporary authorisation to remain or permit may be issued to some irregularly staying migrants. In other Member States, a certificate or other written confirmation of postponement of the return may be issued (e.g. Bulgaria, Croatia, Estonia, Greece, Luxembourg and Slovakia) (EMN, 2021). Ireland belongs to a group of Member States in which no written confirmation or other documentation is issued if a return cannot be enforced. The only exception relates to the issuing of a written undertaking not to deport a person until the next court date in the context of judicial review proceedings (see Section 2.3.2). Further, Ireland does not distinguish deportation orders that cannot immediately be enforced from other deportation orders and, consequently, does not apply the concept of 'tolerated

²⁴ Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

²⁵ The recent (23 September 2020) *Gorry & anor v Minister for Justice and Equality, A.B.M. & anor v Minister for Justice and Equality* Supreme Court judgment stated that the Minister had to balance applicants' constitutional rights as well as their rights stemming from the European Convention on Human Rights and the important interests of the State. Available at https://emn.ie/case_law/gorry-v-minister-for-justice/.

²⁶ Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

²⁷ Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

²⁸ Information received from Department of Justice official (Repatriation Division) on 7 January 2020.

stay' to persons in receipt of deportation orders who cannot immediately be returned (Sheridan, 2017).

The report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process was published in October 2020. This major report recommends that Ireland develop a strategy and, if necessary, legislation for dealing with unsuccessful protection applicants who are deemed 'non-returnable'. It is foreseen that such a scheme would prevent people 'living in limbo', often in Direct Provision (IPAS) accommodation centres, by granting temporary or tolerated leave to remain (Government of Ireland, 2020).

CHAPTER 3

Key debates on irregular migration in Ireland and policy responses

3.1 INTRODUCTION

In all Member States that took part in the EU-wide study, irregular migration is the subject of policy and public debates. Interestingly, in many of them, the main topics of discussion relate to the simplification of return procedures and the effectiveness of such procedures (EMN, 2021). As the following demonstrates, the Irish debate on irregular migration has more dimensions, including repeated calls for the regularisation of the status of irregularly staying migrants (EMN, 2021). This section sets out the main aspects of public debates on irregular migration and the policy responses that have resulted.

In Ireland, a topic of particular debate and case law, and one which resulted in policy change, was the situation of former foreign students who entered the Irish State legally in mid-late 2000s and subsequently ‘fell out’ of immigration permission (Arnold et al., 2017). In 2022, a major new regularisation scheme for long-term irregularly staying migrants was introduced, as discussed below. Other threads of the discussion relate to persons who entered the State during the same period, as tourists or as employment permit holders. The situation of children born in the State to parents who do not have immigration permission has become prominent in debates in recent years. The public debates on the situation of migrants with irregular status has also entered policy discussions in parliament. Between 2015 and 2020, several legislative attempts were observed to amend the situation of this group in general or some specific groups such as children.

3.2 REGULARISATION

Two main types of regularisation have been identified in the literature (for a recent review, see Gonzalez Beilfuss and Koopmans (2021)). One is that of large-scale, one-off programmes that might be based on humanitarian reasons (with examples in Germany in 2002 or the Netherlands in 2007) or driven by the labour market situation (with examples in Italy in 1982 and 2022). Another is the use of regularisation as a mechanism to deal with individual situations on a case-by-case basis. In the latter case, the parameters of eligible groups are not defined in terms of nationality or length of stay. According to Levinson (Levinson, 2005), case-by-case mechanisms are less controversial as they draw less public attention.

Another distinction concerns the purpose of regularisation (Gonzales Beilfuss and Koopmans, 2021). Regularisations can deal with individuals already irregularly residing in a state and who, for example, entered its territory before a specified

date; that is, to solve the issue of existing residence. Similarly, regularisations can aim at solving the situation of non-returnable migrants who have received a return decision (deportation order). Another major purpose of regularisations is to provide a humanitarian solution to undocumented migrants so that their needs, such as medical ones, can be met. The authors recall victims of trafficking in this context. Finally, according to Gonzales Beilfuss and Koopmans (2021), regularisation might be seen as a reward for contribution to a host society (in economic terms). Regularisation mechanisms may also focus specifically on children's rights (OSCE, 2021).

As argued by Gonzalez Beilfuss and Koopmans (2021), given all costs related to deportation, regularisation might be seen by the State as a preferable alternative from a financial point of view, as well as in terms of reducing further vulnerabilities within the group, such as the risk of exploitation. An opposing view is that the illegality of irregular migrants is central and, as such, should not be rewarded. The regularisations conducted in southern Europe in the 2000s were viewed by some as largely inefficient. Two main concerns lay behind this: that regularised migrants might move to other EU Member States; and that regularisations might constitute a 'pull factor'. However, no evaluations pointing to such effects were identified.

Several European countries have applied collective regularisations (regularisation programmes) in recent decades. For example, France had a regularisation scheme in 2006 that targeted parents with school-age children, which resulted in almost 7,000 individuals regularising (Chou and Baygert, 2007). In Poland, three regularisations took place over a ten-year period (Reichel, 2014). The first was in 2003, with a regularisation programme targeting no specific nationality, but that had particular relevance to Armenian, Ukrainian and Vietnamese citizens. The second was in 2007, when individuals eligible for the 2003 programme were offered another opportunity to apply. In the first round, 2,696 individuals were regularised with a further 1,341 in the second stage. The third was applied in 2012, with 4,697 positive decisions issued (Reichel, 2014). Spain has also seen several regularisation programmes take place since 1986, with a total of 1.2 million permits issued (Gonzalez Beilfuss and Koopmans, 2021). In Portugal, regularisation took place in the context of the COVID-19 pandemic, as a response to a backlog of unprocessed regularisation applications. Under this programme, all applicants were issued with regularised status until they received a final decision (Gil, 2021).

A recent OSCE report (OSCE, 2021) discusses key lessons from regularisation mechanisms and programmes. The authors note the departure from one-off programmes towards mechanisms embedded in national legal systems and policy. Yet programmes continue to serve an adjustment role 'caused by the system failures' (OSCE, 2021, p. 16). Further, the COVID-19 pandemic highlighted the importance of flexibility with respect to regularisation modalities.

3.2.1 Debates on regularisation in Ireland

The issue of regularisation was a frequent topic of policy debates and legislative proposals in Ireland between 2015 and 2020, although the first limited regularisation scheme, which targeted international students, was not introduced until 2018 (see Section 3.2.2.1 below).

NGOs consulted for the purpose of this study, MRCI and Nasc, confirmed that the biggest group of irregularly staying migrants in Ireland consists of individuals who entered Ireland legally and whose status subsequently became irregular: mainly former students and workers.²⁹ Much of the debate on irregularly staying migrants in Ireland centres on former international students. Prior to 2011, the student immigration regime in Ireland was lightly regulated: students could register annually for permission to reside without any condition as to the number of renewals. Since 2011, the student regime has become increasingly regulated, with time limits introduced to cap the maximum time a non-EU national can remain in the State as a student, along with an academic progression requirement (Finn and O’Connell, 2012). Commentators such as MRCI have argued that the status of a significant number of irregular migrants in Ireland fell into irregularity as a result of the move to a more regulated international student regime after 2011 (Arnold et al., 2017). Gilmartin et al (2016) argued that the fact that international students tend to work in precarious, low-pay jobs, combined with increased regulation of immigration controls, meant that it became ‘relatively easy’ for international students to fall into irregularity (Gilmartin et al., 2016).

MRCI has been campaigning for a regularisation scheme since 2001 (with a dedicated initiative ‘Justice for Undocumented’ since 2009) by providing its own estimates on the size of the irregularly staying migrant population, its composition as well as socio-economic features. It made the case that regularisation would be beneficial in economic terms as the vast majority of adult irregular migrants are in work and could regularise their employment situation (MRCI, 2020a).

In March 2015, a Private Members Bill, the Migrant Earned Regularisation Bill 2015,³⁰ was introduced to the Dáil. Under the Bill it was proposed that undocumented migrants who had overstayed their permission and who had been in the State for more than 24 months could apply for an earned regularisation scheme. If accepted, they would have five years (on annually renewable immigration permissions) to earn a number of credits under different categories, including language proficiency, contribution to the State and payment of taxes. On

²⁹ Information obtained during an interview with a representative of MRCI on 3 November 2020 and with a Nasc representative on 16 November 2020.

³⁰ Dáil Éireann (5 March 2015), Migrant Earned Regularisation Bill 2015 [Dáil Éireann]: First Stage [Private Members], 5 March, <https://www.oireachtas.ie/en/bills/bill/2015/19/>.

completion they would be granted a long-term permission to stay. The Bill lapsed with the dissolution of parliament prior to a general election in 2016.

In June 2016, the Immigration (Reform) (Regularisation of Residency Status) Bill 2016 was proposed to Seanad Éireann, again by a Private Members group.³¹ It was the second version of a Bill submitted two years earlier. This 2016 Bill proposed regularisation of migration status for two categories of individuals. The first group consisted of individuals who had been in the international protection application process for more than four years. The second group, more relevant to this study, covered rejected international protection applicants for whom a deportation order had been issued but had not been effected within one year and would not be effected within a further half year. The Bill proposed a three-year-long residence permit for both groups. It lapsed with the dissolution of the Dáil and Seanad (lower and upper houses of parliament) in 2020.

In June 2017, the Oireachtas Committee on Justice and Equality called on the Minister for Justice and Equality to introduce a time-bound scheme, with transparent criteria, to regularise the position of undocumented migrants in Ireland. In the report *Immigration, Asylum and the Refugee Crisis*, the Committee said such a scheme would give undocumented migrants a window of opportunity to come forward, pay a fee and regularise their situation (Houses of the Oireachtas and Joint Committee on Justice and Equality, 2017). The Committee Chair said:

*There are many potential benefits to such a scheme, allowing individuals, many of whom are already in employment and have a long-term connection to the State, to regularise their situation, pay taxes, and make a positive contribution to Irish society generally at a time when the country is returning to steady growth in employment opportunities.*³²

3.2.2 Policy measures related to regularisation

3.2.2.1 Scheme for undocumented former students, 2018

A scheme for undocumented former students was introduced in October 2018 and ran until January 2019. The scheme allowed certain non-EEA nationals resident in the State, who first came to Ireland as a student between 2005 and 2010, to apply for permission to remain (Sheridan, 2019). The Minister announced that the scheme would address ‘a significant cohort of people who have been in the State for a long number of years and who form part of the “undocumented” persons in the State by virtue of them having moved from a position of having permission to

³¹ Seanad Éireann (2016), Immigration (Reform) (Regularisation of Residency Status) Bill 2016 Seanad Éireann: Second Stage [Private Members], 23 June, <https://www.oireachtas.ie/en/bills/bill/2016/49/>.

³² See Houses of the Oireachtas (2017). ‘Ireland must regularise the position of undocumented migrants: Justice & Equality Committee report’, press release, <https://www.oireachtas.ie/ga/press-centre/press-releases/20170629-ireland-must-regularise-the-position-of-undocumented-migrants-justice-equality-committee-report/>.

be in the State some years ago to having fallen out of permission'. Permission was to be granted for an initial probationary period of two years, following which qualifying persons would be required to demonstrate self-sufficiency.^{33,34}

The scheme was open for applications for three months: between 15 October 2018 and 20 January 2019. The application fee was €700, with €450 refundable if the application was unsuccessful. The main conditions included a requirement to have held a student permission in the period between January 2005 and 31 December 2010 and not having held an alternative permission in the intervening period. In addition, applicants must not have had a criminal record. Successful applicants were granted Stamp 4S permission, which gave them the right to reside and work in Ireland for two years. After this period, upon meeting certain conditions, the permission could be renewed.³⁵ Some 2,253 individuals were granted immigration status under this scheme.³⁶

NGOs such as MRCI welcomed the scheme for undocumented former students introduced in 2018, stating that 'regularisation schemes are good for families, good for the economy and good for our society as a whole'. However, they expressed caution about high fees and the short window for applications.³⁷ The Immigrant Council of Ireland also welcomed the scheme but criticised high application fees, the probationary two-year period and the lack of certainty offered regarding residence permission after that period concludes.³⁸

This scheme was noted to be an important policy development by one of the NGOs consulted for this study,³⁹ while an official from the Department of Justice observed that it was an example of the case-by-case approach taken to the regularisation of irregular status in Ireland. This was highlighted as good practice because, according to the Department, such an approach allows for a better

³³ Department of Justice and Equality (2018). 'Minister Flanagan announces Special Scheme allowing certain non-EEA nationals to apply for permission to remain in the State', media release, 15 October, <http://www.justice.ie/>.

³⁴ The scheme addressed concerns raised in the *Luximon and Balchand v Minister for Justice* ([2018] IESC 24) judgment of April 2018 (see https://emn.ie/case_law/luximon-v-minister-for-justice-and-equality/), providing a residency pathway for persons who may have acquired family rights and private life rights in the State under Article 8 of the European Convention on Human Rights (ECHR). The judgment held that the Minister's policy of requiring students seeking to change their immigration permission to allow that permission to lapse and then enter the deportation process in order to have their circumstances considered was unlawful.

³⁵ Department of Justice and Equality (2018). 'Minister Flanagan announces Special Scheme allowing certain non-EEA nationals to apply for permission to remain in the State', media release, 15 October, <http://www.justice.ie/>.

³⁶ Information received from Department of Justice official on 10 December 2020.

³⁷ MRCI (2018c). 'MRCI welcomes "long-awaited, life-changing" scheme and calls for "clarity, flexibility and common sense" from decision makers', press release, 15 October, www.mrci.ie.

³⁸ Immigrant Council of Ireland (2018). 'More compassion needed for new immigration regularisation scheme', media release, October, <https://www.immigrantcouncil.ie/>.

³⁹ Information obtained during an interview with a representative of MRCI on 3 November 2020.

understanding of the irregular migration phenomenon in the State, while at the same time providing an opportunity for irregular migrants to regularise their stay.⁴⁰

3.2.3 Regularisation of Long-Term Undocumented Migrants Scheme 2022

In 2022, the Regularisation of Long-Term Undocumented Migrants Scheme was introduced (described below). This scheme follows a commitment in the 2020 Programme for Government to bring forward proposals for the regularisation of long-term undocumented migrants and their dependants, which was intended to ‘[c]reate new pathways for long-term undocumented people and their dependents, meeting specified criteria to regularise their status within 18 months of the formation of the Government, bearing in mind EU and Common Travel Area commitments’.

3.2.3.1 Public consultation

A public consultation process on the scheme took place in spring 2021, during which several stakeholders expressed their views. In their submission, MRCI emphasised the need to make as many irregular migrants as possible eligible for the scheme; for example, by limiting the required period of irregular residence or by accepting applications from all irregular migrants (MRCI, 2021a). Furthermore, MRCI called for a simple, transparent yet secure procedure so that information provided by applicants would not be used against them.

The submission of Nasc (2021) echoed calls for a wide scope and put emphasis on the eligibility of individuals who applied for revocation of their deportation orders as well as those whose deportation orders remain unenforced. The NGOs Nasc and the Immigrant Council of Ireland called for flexibility regarding the documents and proofs of residence required. Nasc indicated that permission should be valid for three to five years, be easily renewable, and be granted to each applicant independently.

The submission by the Immigrant Council of Ireland also called for inclusion of all categories of undocumented migrants, including unaccompanied children irrespective of length of their stay (Immigrant Council of Ireland, 2021). The Immigrant Council of Ireland indicated that the proposed scheme should not put too great an administrative burden on applicants and that therefore individuals who applied for residence permission under another scheme should not also be required to apply for regularisation under the proposed scheme. Regarding access

⁴⁰ Information received from Department of Justice official on 10 December 2020.

to the labour market, the Immigrant Council of Ireland emphasised the scheme should include self-employment.

It should be mentioned that social partners submitted their opinions on the scheme. Chambers Ireland's submission emphasised that irregular migrants are workers who 'play an important role in local economies throughout the country, responding to skills shortages, providing essential services, and playing critical roles in their communities, workplaces, and wider local economies' (Chambers Ireland, 2021). The submission of the Irish Congress of Trade Unions, in turn, emphasised the importance of the regularisation scheme as 'undocumented workers should be provided with possibilities to regularise their status and be protected against unlawful or irregular forms of employment' (ICTU, 2021). The ICTU called for inclusion of individuals in the 'Section 3 process' and those issued with deportation orders.

Family Carers Ireland emphasised the care sector's reliance on irregular migrants (Family Carers Ireland, 2021). In its submission, the organisation argued for the use of the widest possible definition of an irregular migrant (including their family members) and for allowing a family to submit a single application, both paper-based and online.

The submission by the Ombudsman for Children's Office argued that the regularisation of children may be at risk due to a lack of awareness or unwillingness of adult migrants to submit an application (Ombudsman for Children, 2021). It was therefore suggested that:

the Department clearly outline children's eligibility for the scheme not only as dependents of a primary applicant but also as applicants in their own right, including where an adult member of their family is unable or unwilling to submit an application on their behalf. In this regard, we recommend that undocumented children in care be included within the scope of the scheme.

The submission also argued for affordable fees, including for children applying in their own right. While the submission welcomed the proposed residence permission which allowed for employment, the Ombudsman for Children's Office argued for consistency in immigration permissions issued to all successful applicants. It was noted that, currently, children in the State receive a variety of immigration permissions upon turning 16 years old. The Ombudsman for Children's Office argued for clear and accessible procedures that would guide conferral of immigration permission beyond the time limits of the proposed scheme.

3.2.3.2 Details of the scheme

The 2022 Regularisation of the Long-Term Undocumented Migrant Scheme is open, for online applications only, between 31 January 2022 and 31 July 2022.⁴¹ The announcement of the scheme was welcomed by NGOs, which reiterated a need for the scheme to be inclusive in terms of eligibility criteria.⁴² The Department of Justice in its Policy Paper on the Scheme to Regularise Long-Term Undocumented Migrants in Ireland referred to MRCI's estimates on the number of undocumented migrants (15,000–17,000 including 2,000–3,000 children), noting that it 'includes those whose residence permissions recently expired as well as those who are resident long-term in the State without an immigration permission' (Department of Justice, 2022).

The following eligibility criteria were outlined. Single or principal applicants must be over the age of 18. They must have been living in the State continuously without an immigration permission for the four years prior to the commencement of the scheme and to continue to reside there on the date of application. All applicants must be of good character and have no criminal record in Ireland or abroad. Importantly, individuals with an existing deportation order are eligible to apply provided they meet the eligibility criteria. A spouse, civil partner or de facto partner of a principal applicant must also be over 18 and have resided for at least two years without immigration permission before the commencement of the scheme and must continue to reside in Ireland at the date of application.

For families with children under 18 years, the requirement of continuous stay without immigration permission of a principal applicant is reduced from four to three years. Dependent minors must be residing with the principal applicant immediately prior to the publication of the scheme (13 January 2022). It is also possible to include persons aged 18-23 years in a family application with adults and minor children, and the requirements are the same as in the case of a spouse. In the situation of a family application with dependent adult children aged 18-23 (and no minor children), the principal applicant must have been residing in the State without immigration permission for at least four years and the spouse for two years. The residence requirements for partners extend to adult children. Dependent children of a principal applicant older than 23 years can be included in the family application, but only in the case of mental or physical disability.

The scheme requires payment of a non-refundable fee of €550 in the case of single applications and €700 in case of family applications. It should be stated that each

⁴¹ All information related to the scheme is based on its official website: <https://www.irishimmigration.ie/regularisation-of-long-term-undocumented-migrant-scheme/>.

⁴² Nasc (2021). 'Nasc welcomes Regularisation Scheme', <https://nascireland.org/index.php/news/2021/nasc-welcomes-regularisation-scheme> and MRCI (2021). 'Justice for Undocumented wins major victory after 11 year campaign', <https://www.mrci.ie/2021/12/02/justice-for-undocumented-wins-major-victory-after-11-year-campaign/>.

applicant receives a separate decision. Information on the scheme is provided in nine languages on its website.

The application must be accompanied by documents, but there is some flexibility in the types of document accepted. For example, regarding identity documents a range of documents may be submitted, including a valid or expired passport, travel document, driver's licence, national identity card, Irish residence permit card, temporary residence card or the birth certificate of children born in Ireland. Similarly, while applicants have to provide evidence of years of stay in Ireland, the list of documents which can be used for this purpose is extensive. It includes migration-related documents, social welfare and education documents, utility bills, official correspondence and COVID-19 vaccination cards.

In parallel with the Regularisation of Long-Term Undocumented Migrants Scheme, a scheme covering individuals who had been in the international protection application process for at least two years, was launched on 7 February 2021. This strand also follows the commitment outlined in the Programme for Government and responds to the recommendation of the Catherine Day report on Direct Provision (Department of Justice, 2022).

3.2.3.3 International context

The Regularisation of Long-Term Undocumented Migrants Scheme was still open during the period that this report was being compiled; moreover, an exhaustive survey of international schemes was beyond the scope of this study. Nonetheless, some initial observations may be made. First, the scope of the scheme is comparatively broad as it covers the whole population of undocumented migrants (within the conditions detailed above). It belongs to a category of 'broad, inclusive regularisation programmes' (OSCE, 2021) with minimal requirements. Other examples of this type of approach could be found in Poland in 2012, although the regularisations of that initiative only targeted a small part of the population of undocumented migrants (OSCE, 2021); the Irish scheme appears to be more comprehensive.

Second, and connected to this, the scheme is not limited to the economically active population. This type of targeted regularisation took place in Spain in 2005, in a programme that required only six months of stay but for which neither children nor spouses were eligible and employers were expected to submit the applications (Gonzalez Beilfuss and Koopmans, 2021). Similarly, an employer-sponsored regularisation took place in Italy in 2020. In this case, family members were eligible, but it was argued that this model of linking migrants with a specific employer could perpetuate exploitation (Caritas, 2021).

Third, by international comparisons, the required undocumented period in Ireland is relatively short, with a number of options provided for proving stay in Ireland. The regularisation scheme has the same minimum undocumented stay (four years for a principal applicant) as the 2012 Polish one, which has been highlighted as an example of a scheme with low eligibility requirements (OSCE, 2021). In addition, no further conditions are attached, such as showing official proof of accommodation before applying for regularisation, as was required in the case of an earlier (2003) Polish regularisation scheme (Reichel, 2014).

Finally, the Regularisation of Long-Term Undocumented Migrants Scheme provides successful applicants with a durable and predictable solution, especially when compared to more temporary schemes, such as the 2020 one in Portugal, whereby, in response to a backlog of unprocessed regularisation applications, applicants were issued with regularised status until they received a final decision (Gil, 2021).

3.3 CHILDREN WITH IRREGULAR MIGRATION STATUS

3.3.1 Debates related to children with irregular migration status

As discussed above, one topic that has been present in the public debate during the whole analysed period is that of irregularly resident children with a migration background – both those born in Ireland as well as those born abroad. Much of the debate stems from the policy impact of a 2004 referendum that had the effect of restricting the automatic right of those born in Ireland to acquire Irish citizenship. Commentators also point to the absence of pathways to regularise the status of Irish-born undocumented children (Groarke and Dunbar, 2020).

Prior to 2005, citizenship acquisition in Ireland was based largely on the *jus soli* principle, which refers to acquisition of citizenship on the basis of the country in which an individual is born. The 2004 referendum on the 27th amendment to the Constitution resulted in legislation which changed these comparatively liberal rules of citizenship acquisition. The Irish Nationality and Citizenship Act 2004 now provides that any person born in Ireland after 1 January 2005 to non-Irish parents may only obtain citizenship at birth provided at least one of their parents has been legally resident in Ireland for three out of the previous four years prior to their birth.⁴³ They may also only apply for naturalisation if a parent can show legal residence in the State (see Groarke and Dunbar, 2020). The regularisation of the

⁴³ Certain types of legal residence are excluded from reckonability, such as residence on a student permission, or residence on the basis of an application for international protection.

children of irregularly staying migrants and easier access to citizenship for children born in Ireland to irregularly staying parents have been discussed regularly.⁴⁴

Apart from general insecurity regarding their status, irregularly resident migrant children face practical obstacles in their lives. For example, a child with undocumented status might not progress from secondary education to further education in the same way as an Irish or EEA student. MRCI stated that when an irregularly staying student seeks to enrol for tertiary education, their migration status will be checked.⁴⁵ A person in this situation who is accepted onto a course and can produce a personal public service number (PPSN) would face the much higher tuition fees applicable to third-country nationals.⁴⁶ Similarly, when entering the labour market, obstacles might be experienced both in obtaining a PPSN and in finding legal employment.⁴⁷

In 2017, a Private Members Bill called the Irish Nationality and Citizenship (Restoration of Birthright Citizenship) Bill 2017 was submitted to the Dáil.⁴⁸ Aimed at returning to the pre-referendum citizenship situation, during its Dáil debate the proponents of the Bill focused on the issue of unequal treatment of children born in Ireland to non-Irish parents and the lack of a systemic solution to this challenge. The opposing side, which included the then Government, emphasised the risk of exploitation of pregnant women, including a risk of insufficient pre-natal care, as well as other complex consequences of granting all children born on the island of Ireland Irish citizenship. In 2019, this Bill was defeated.

The naturalisation prospects of children of non-Irish parents who are irregular migrants are particularly limited. They need to meet the legal residence condition and one of the five years of reckonable residence must take place immediately before submitting an application. As emphasised by the Ombudsman for Children report published in 2020, '[a]t present, for persons who do not otherwise have an entitlement to Irish citizenship by birth or associations, it is not possible to access a pathway to citizenship without already having an immigration permission' (Arnold, 2020). Further, 'no regularisation scheme exists to assist children of undocumented parents' (ibid., 2020).

⁴⁴ There is some evidence that public opinion on that matter may have changed. The results of a survey completed in 2018 showed that while in 2004, 74% of those who participated in the 2004 referendum supported restricting citizenship granted on the *ius soli* principle, in a 2018 survey, 71% of participants indicated that any child born in Ireland should have an automatic entitlement to citizenship. S. O'Brien, 'Huge swing in favour of citizenship for all born in Ireland', The Sunday Times, 18 November 2018, <https://www.thetimes.co.uk/edition/ireland/huge-swing-in-favour-of-citizenship-for-all-born-in-ireland-mcqqd2ttw>.

⁴⁵ Interview conducted with the MRCI representative on 3 November 2020.

⁴⁶ A PPSN is a unique reference number that is needed for all dealings with public service agencies in Ireland.

⁴⁷ Interview conducted with the MRCI representative on 3 November 2020.

⁴⁸ Dáil Éireann (9 March 2017). Irish Nationality and Citizenship (Restoration of Birthright Citizenship) Bill 2017 [Dáil Éireann]: Second Stage, <https://www.oireachtas.ie/en/bills/bill/2017/36/>.

In 2020, two Bills were introduced to the Oireachtas by private members, both of which deal with the situation of irregularly staying migrant children and which are currently being debated. The first one, the Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018, was first submitted to Seanad Éireann in November 2018.⁴⁹ It proposed to alter the requirement for the applicant to have resided legally in the territory of Ireland. The Bill would reduce the current residence requirement from five to three years. It would also enable a child born in Ireland to apply irrespective of the legality of their parents' residence status. In calculating the period of residence, the Bill would waive the requirement that the parent or child would have had permission to remain during the period of residence in the case of an Irish-born child. The Bill had reached the third (or committee) stage in the Seanad, before lapsing with the dissolution of the Dáil and Seanad in light of the general election held in February 2020. It was reintroduced in July 2020 and had reached the committee stage in early December 2020. The Minister for Justice welcomed the Bill.⁵⁰

The second one, The Irish Nationality and Citizenship (Citizenship for Children) Bill 2020, was submitted to Dáil Éireann in September 2020.⁵¹ This Bill takes a more radical approach by proposing that every child born in the island of Ireland would be entitled to be an Irish citizen and that access to Irish citizenship would be assumed by stateless children with a specified length of stay in Ireland. (Currently, stateless persons may apply for naturalisation with a reduced residence requirement; see Groarke and Dunbar, 2020.) Similarly, any child resident in Ireland for a specified period of time would be entitled to Irish citizenship. In all instances, residence would be understood as any kind of stay, irrespective of its legality.

3.4 LABOUR EXPLOITATION OF IRREGULARLY STAYING MIGRANTS

3.4.1 Debates related to labour exploitation

Some studies by MRCI emphasise that a share of irregular migrants perform '3-D jobs', those that are 'dirty, dangerous and difficult' (MRCI, 2015; 2020a). As irregular migration status often means illegal employment, this group of migrants often cannot avail of employment standards available to workers who are legally employed. As noted by the MRCI representative, for an irregular migrant, submitting a complaint to the Workplace Relations Commission (WRC) would lead

⁴⁹ Seanad Éireann (2018). Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018. Seanad Éireann: Third Stage [Private Members], 15 November, <https://www.oireachtas.ie/en/bills/bill/2018/124/>.

⁵⁰ Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018: Committee Stage Wednesday, 2 Dec 2020, <https://www.oireachtas.ie/en/debates/debate/seanad/2020-12-02/21/>.

⁵¹ Dáil Éireann (24 September 2020), Irish Nationality and Citizenship (Citizenship for Children) Bill 2020. Dáil Éireann: Second Stage [Private Member], <https://www.oireachtas.ie/en/bills/bill/2020/33/>.

to the illegality of their status being disclosed to another party, which they could perceive as a risk.⁵²

A media report quoted MRCI's representative who stated that 'the "small number" of undocumented migrants working in the meat sector are based in "smaller, less on-the-radar, meat plants"'.⁵³ It was argued that such workers were facing vulnerability, lower wages and threat of deportation. A report by MRCI published in November 2020 stated that 1% of workers in the sector are irregular (though 23% of respondents did not disclose their status) (MRCI, 2020b). Meat Industry Ireland refuted such claims, arguing that all employees in the sector, regardless of nationality, are protected by the same Irish employment and health and safety legislation.⁵⁴

Following a year-long investigation, in 2015 the Guardian newspaper published an article on 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.⁵⁵ See also Murphy et al. (2021), Sheridan and Whelan (2016) and Cuniffe and Ayodele (2022).

3.4.2 Policy measures related to labour exploitation

3.4.2.1 Reactivation permits

The Reactivation Employment Permit was introduced in 2014. It provides for an employment permit aimed at regularising the situation of workers who fell out of the system through no fault of their own, including through redundancy, or who, due to mistreatment or exploitation in the workplace, no longer hold a valid employment permit.

The Reactivation Employment Permit is available to non-EEA nationals who entered the State legally (with a valid employment permit). The applicant's prospective employer does not have to conduct a Labour Market Needs Test in order for the applicant to access it. In addition, no minimum threshold salary condition applies other than the National Minimum Wage. An application for a Reactivation Employment Permit should be accompanied by evidence of permission from the Minister for Justice to remain in the State and is considered subject to standard criteria and processing timeframes.⁵⁶ A 2017 EMN Ireland study

⁵² Interview conducted with the MRCI representative on 3 November 2020.

⁵³ Pollak, S. (2020). "'I go into work feeling scared': Migrant meat plant workers tell their stories', The Irish Times 13 August, <https://www.irishtimes.com/news/social-affairs/i-go-into-work-feeling-scared-migrant-meat-plant-workers-tell-their-stories-1.4329344>.

⁵⁴ Phelan, S. (2020), 'Meat industry "strongly refutes" MRCI claims on safety and employment', Agriland, 25 November, <https://www.agriland.ie/farming-news/meat-industry-strongly-refutes-mrci-claims-on-safety-and-employment/>.

⁵⁵ See Lawrence, F., E. McSweeney, A. Kelly, M. Heywood, D. Susman, C. Kelly and J. Domokos (2015). 'Revealed: Trafficked migrant workers abused in Irish fishing industry', *Guardian*, 2 November, <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry>.

⁵⁶ Information received from the Department of Enterprise, Trade and Employment on 13 January 2021.

noted that the procedure may be longer than for other employment permits as the situation of applicants of immigration permission is usually complicated and involves the regulation of migration status (Arnold et al., 2017).

3.4.2.2 Atypical working scheme for seafarers

In 2015, an inter-departmental government taskforce was established to investigate allegations of exploitation and potential human trafficking in the Irish fishing industry. The taskforce report recommended an expanded scope for the Atypical Working Scheme as a means of addressing the employment rights of non-EEA workers in the fishing industry (Cunniffe and Ayodele, 2022). Such workers were offered the opportunity to regularise their stay in Ireland via application to a new scheme, the Atypical Working Scheme for Seafarers.

Under this new scheme, some 152 individuals residing in Ireland regularised their immigration status and employment status, between February 2016 and June 2016 (the programme was capped at 500 individuals). After this one-off action, an application for this scheme may now be lodged only from abroad.⁵⁷ In January 2021, the Workplace Relations Commission (WRC) provided an update on this issue, stating that between April 2016 and end 2020, 351 port inspections of vessels participating in the Atypical Working Scheme were undertaken. In 2020, there were five instances of fishermen found without permission to work in the State. During 2020, some 64 fisheries investigations/cases coming within the scope of the Atypical Working Scheme were closed, with prosecutions initiated in just three cases. A further 60 cases are currently open for investigation.⁵⁸ See Cunniffe and Ayodele (2022) for further discussion.

3.5 COVID-19 AND IRREGULARLY STAYING MIGRANTS

3.5.1 Debates related to irregularly staying migrants and COVID-19

The topic of irregularly staying migrants emerged regularly in the public debate in the context of the COVID-19 pandemic. The media reported on fears within the irregularly staying population – of being detected by the authorities and of using public services such as healthcare.⁵⁹ Reports highlighted that undocumented workers were performing essential caring duties during the pandemic, but may have been afraid to access basic services or report crimes to the Gardaí.⁶⁰ However,

⁵⁷ Department of Justice and Equality (2018). Response to Parliamentary Questions 54494/17, 54495/17 and 544946/17, 16 January, <http://www.justice.ie/en/JELR/Pages/PQ-16-01-2018-465>.

⁵⁸ Information received from the Department of Enterprise, Trade and Employment on 29 January 2021.

⁵⁹ See Holland, K. and Pollak, S. (2020). 'Concerns for undocumented migrants seeking medical care', *Irish Times*, <https://www.irishtimes.com/news/social-affairs/concerns-for-undocumented-migrants-seeking-medical-care-1.4202558>.

⁶⁰ See Freyne, P. (2020). 'Meet Ireland's unofficial COVID-19 essential workforce', *Irish Times*, <https://www.irishtimes.com/news/social-affairs/meet-ireland-s-unofficial-covid-19-essential-workforce-1.4240089>.

efforts by Government to encourage undocumented migrants to contact healthcare if necessary during the COVID-19 pandemic were acknowledged.⁶¹

The role of undocumented workers in key sectors of the economy (e.g. care, cleaning and agriculture) and their vulnerabilities in terms of income loss and/or increased health risks were also highlighted. For example, media reports indicated that irregularly staying Filipino migrants were supported by the Consulate with food baskets and that NGOs such as MRCI provided irregular migrants with support in applying for Filipino government cash allowances for workers residing overseas.⁶² Recently published research by MRCI indicates that 27% of irregular migrants are employed in the care sector, providing care to children and the elderly, including in households with essential workers (MRCI, 2020a).

In April 2020, the media reported that several stakeholders – employers’ organisations, trade unions, sectoral employers’ organisations, NGOs representing migrants’ rights, other NGOs and student unions – signed an open letter addressed to those political parties expected to form Government. The letter called for ‘urgent regularisation’ of undocumented workers, stating ‘[u]ndocumented workers have stepped up and continue to work providing essential services in this crisis. They are working in sectors where Ireland needs workers right now – in elder care, healthcare, retail, cleaning, food processing, agriculture and fishing.’⁶³

In December 2020, a Private Members Bill was submitted to the Seanad: the Deportation Moratorium (COVID-19) Bill 2020 (Bill 71 of 2020). This Bill proposed to suspend deportations on various grounds.⁶⁴ It was argued in the parliamentary debate that it ‘would effectively ensure that there would be no further issuing or execution of deportation orders during the period for which the State has recognised that we are in a health emergency, as set out in our own COVID-19 legislation’.⁶⁵ In her responding statement, the Minister for Justice stated that her Department had been applying a pragmatic approach since the outbreak of the pandemic, minimising the number of individuals deported from Ireland. The Minister emphasised that ‘the process whereby those who have been served with deportation orders are required to periodically register with the authorities, does

⁶¹ See Holland, K. and Pollak, S. (2020). ‘Concerns for undocumented migrants seeking medical care’, *Irish Times*, <https://www.irishtimes.com/news/social-affairs/concerns-for-undocumented-migrants-seeking-medical-care-1.4202558>.

⁶² See Polak, S. (2020). ‘Filipinos in Ireland “disproportionately affected” by coronavirus, says consul’, *Irish Times*, <https://www.irishtimes.com/news/health/filipinos-in-ireland-disproportionately-affected-by-coronavirus-says-consul-1.4293616>.

⁶³ See Holland, K. (2020). ‘Coalition of firms and unions calls for regularisation of undocumented workers’, *Irish Times*, <https://www.irishtimes.com/news/social-affairs/coalition-of-firms-and-unions-calls-for-regularisation-of-undocumented-workers-1.4228862>.

⁶⁴ Seanad Éireann (2020). Deportation Moratorium (COVID-19) Bill, <https://www.oireachtas.ie/en/bills/bill/2020/71/>.

⁶⁵ See Seanad Éireann (2020). ‘Deportation Moratorium (Covid-19) Bill 2020: Second Stage’, Seanad Éireann debate, <https://www.oireachtas.ie/en/debates/debate/seanad/2020-12-09/17/>.

not mean that a deportation itself is imminent’ and that ‘this is only to keep the State authorities up to date and informed of the status of those who have been served with deportation orders. It does not relate to any intention for these people to be deported’.⁶⁶ This Bill was defeated by a single vote.

An important finding was presented in April 2021 on the perception of An Garda Síochána among migrants during the pandemic. The Policing Authority in its report stated that ‘[t]hose working with migrants – documented and undocumented – cited uncertainty around immigration rules and renewal of documentation, domestic violence and homelessness as the key issues which had arisen for those in contact with them during the last year’ (Policing Authority, 2021, p. 10). In reference to irregular migrants, the report stated that the confidence of this group in An Garda Síochána is low and that the reporting of hate crime or abuse was not treated with due attention.

3.5.2 Policy developments related to irregularly staying migrants and COVID-19

In July 2020, the Government sought to assure migrants in an irregular situation that accessing COVID-19 related healthcare and other state services would not lead to deportation. The Department of Justice published information on its website in March 2020 assuring irregular migrants that during the pandemic if they accessed services under remit of the Department of Social Protection (social welfare benefits and other cash benefits such as Pandemic Unemployment Payment) or healthcare / Health Services Executive (HSE) services, their details would not be shared with the Department of Justice.⁶⁷ The same notice also encouraged irregularly staying migrants to come forward if they wished to regularise their situation, stressing that such cases are assessed and processed on a case-by-case basis.⁶⁸

During the pandemic, several measures were taken to avoid people entering an irregular situation. The automatic renewal of residence permissions was introduced to ensure people did not enter into an irregular situation and could continue to work and access services as required. In addition, in March 2020, the Department of Enterprise, Trade and Employment implemented a COVID-19 contingency plan to ensure that the employment permit regime could continue to operate throughout the crisis and that employment permit applications, including renewals of existing permits, could continue to be processed through a fully online

⁶⁶ See Seanad Éireann (2020). ‘Deportation Moratorium (Covid-19) Bill 2020: Second Stage’, Seanad Éireann debate, <https://www.oireachtas.ie/en/debates/debate/seanad/2020-12-09/17/>.

⁶⁷ See Department of Justice (2020). ‘Information regarding the Justice Sector COVID-19 plans’, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans.

⁶⁸ Department of Justice (2020), ‘Information regarding the Justice Sector COVID-19 plans’, http://www.justice.ie/en/JELR/Pages/Information_regarding_the_Justice_Sector_COVID-19_plans. Accessed December 2020.

process.⁶⁹ Information on these arrangements was made available on the Department of Enterprise, Trade and Employment and Department of Justice websites.⁷⁰

NGOs sought to disseminate information on these measures. MRCI made information available on its website, confirming that in principle access to the Pandemic Unemployment Payment was available to all migrants (either employees or self-employed), irrespective of their immigration status (see MRCI, 2020c). The NGO also highlighted that benefits such as the Exceptional Needs Payment and the Urgent Needs Payment can be applied for, although both types of payment require a PPSN. In addition, MRCI publicised the fact that the Government had confirmed that no details provided to the Department of Social Protection in the application process for benefits would be transmitted to the Department of Justice.

⁶⁹ Information received from Department of Enterprise, Trade and Employment on 13 January 2021.

⁷⁰ Details of the contingency arrangements can be found at <https://enterprise.gov.ie/en/Publications/COVID-19-Employment-Permits-System-Contingency-Arrangements.html>.

CHAPTER 4

Services available to irregularly staying migrants

4.1 INTRODUCTION

The issue of services available to irregular migrants is a highly debated topic in the academic literature. On the one hand, some researchers argue that welfare services might be perceived as an incentive that could attract irregular migrants (Borjas, 1999). On the other hand, there is a growing body of literature on the human rights dimension of irregular migration, which emphasises the lack of access to services and the fact that irregular status is linked to precarious living conditions (including labour market situation, health and housing), exploitation, and vulnerability to crime (Cholewinski, 2005; Spencer and Triandafyllidou, 2020).

The complexity of analysing access to public services and benefits lies in the intersection of the irregular migration status and the rules governing access to services and benefits. The very status of individuals with an irregular migration situation means that they do not meet residence or contributions payment criteria. At the same time, there is a human rights standards dimension which in some instances impacts on policies in Member States of the European Union. Examples of relevant services are healthcare and education, which to differing extents are provided to irregularly staying migrants across the EU. When it comes to healthcare, the 1966 United Nations International Covenant on Economic, Social and Cultural Rights (Article 12(1)), as well as the Convention on the Rights of the Child and the Convention on the Elimination of all Forms of Discrimination against Women, are pertinent. In the field of education, the relevant international standards are stipulated in, among other instruments, the International Covenant on Economic, Social and Cultural Rights.

This chapter maps access to services by irregularly staying migrants in Ireland, looking first at irregularly staying migrants who are unknown to the authorities, followed by migrants who have been issued with a deportation order and who continue to reside within the International Protection Accommodation Services (IPAS) system of accommodation, commonly known as Direct Provision. The institutional response to irregular migration and in particular the role of central and local government in determining access to services in Ireland will then be discussed.

In the framework of this study (and the EU synthesis report (EMN, 2021), the following policy fields are analysed: accommodation; healthcare; social assistance; access to labour market; education; and legal aid and legal assistance.⁷¹

EMN (2021) shows that the scope of rights depends on the particular background of a migrant with irregular status: in general, irregular migrants who remain unknown to the authorities have significantly constrained access to services when compared to individuals issued with a decision to return. In terms of services available to undetected irregular migrants, access is in line with Member States' obligations under the international standards mentioned above, in particular those relating to education and healthcare.

Cash benefits (in the form of social assistance payments) and access to targeted housing supports are least accessible. In the case of cash payments, registration could be required (often with local governments where the benefits are disbursed), which might be impossible due to an individual's migration status (EMN, 2021).

As this report covers two separate categories of irregularly staying migrants – irregularly staying migrants who are unknown to the authorities and individuals issued with deportation orders but who cannot be returned, who are known to the public authorities – the description of policies that follows will follow this structure. It should be noted that while referring to individuals issued with a deportation order, this chapter reflects the situation of a specific subgroup; that is, unsuccessful international protection applicants who avail of IPAS accommodation.

4.2 BENEFITS AND SERVICES AVAILABLE TO IRREGULAR MIGRANTS UNKNOWN TO THE AUTHORITIES

Access to services by irregularly staying migrants who remain unknown to the public authorities is significantly limited when compared to unsuccessful international protection applicants with deportation orders who reside in IPAS accommodation. The scope of available services is narrower and, in some instances, depends on discretionary decisions by service providers. This finding is consistent with the analysis presented in the EU synthesis report (EMN, 2021). The recent study by McGinnity et al. (2022) finds that, in general, homelessness rates are significantly higher among non-EEA/EU migrants than those born in Ireland.

When it comes to housing services, Housing Circular 41/2012 December 2012 prohibits irregularly staying migrants from using any type of accommodation

⁷¹ As mentioned in the introductory chapter, this selection stems from listing these services and benefits in the Return Directive.

because they do not meet requirements, legal stay being one of them.⁷² However, responses to the challenge of homelessness are devised on the local level. For example, strategic documents such as the Dublin City Homelessness Action Plan (Dublin Region Homeless Executive, 2019) states that all individuals, including irregular migrants, should receive housing services if faced with a risk of homelessness. A representative of Dublin City Council confirmed that in his experience this approach was adopted in practice. However, a representative of the Dublin-based NGO, Migrant Rights Centre Ireland (MRCI), observed that access to homeless services was in fact restricted for irregularly staying migrants.⁷³ A representative of the NGO Nasc stated that the local practice in Cork city is to restrict access to housing services if a person does not meet the conditions.⁷⁴

The EMN synthesis study (EMN, 2021) reports that, in several Member States, irregular migrants unknown to authorities have no access to accommodation. Only France reported the same access to accommodation compared to other categories of migrants.

While access to emergency healthcare is universal in Ireland and other Member States (EMN, 2021), access to more advanced forms of healthcare is limited.⁷⁵ In the case of emergency services in Ireland, the consulted NGOs stated that, in principle, no difficulties in access have been noted. However, there is a risk that irregular migrants might be sent bills after treatment.⁷⁶ Basic medical care can be accessed by irregular migrants if they can afford payment. According to Nasc, it might be possible for an irregularly staying migrant to hold a medical card and in this way use basic medical care at no cost, but this is unusual.⁷⁷ NGOs indicated that access to specialised care is difficult if a migrant does not have a medical card.⁷⁸

In terms of COVID-19 related supports, a partnership involving the HSE, the charity Safetynet Primary Care and the Department of Health established a COVID-19 helpline. On 8 May 2020, the Mater Hospital Dublin, the HSE and Safetynet Primary Care opened a COVID-19 community assessment hub aimed at those experiencing homelessness and others unable to access COVID-19 testing and treatment. The hub specifically cares for vulnerable groups in the Dublin inner city, including migrants in an irregular situation (IOM Ireland, 2020). The Minister for Justice

⁷² Housing Circular 41/2012 December, 2012, <https://www.housing.gov.ie/sites/default/files/migrated-files/en/Publications/DevelopmentandHousing/Housing/FileDownload%2C29412%2Cen.pdf>.

⁷³ Interview conducted with MRCI representative on 3 November 2020.

⁷⁴ Information obtained from a Nasc representative on 16 November 2020.

⁷⁵ Malekmian, S (2022). 'For some immigrants in need of organ transplants, hurdles and ambiguities', *Dublin Inquirer*, 12 January.

⁷⁶ Interview conducted with MRCI representative on 3 November 2020.

⁷⁷ Information obtained from a Nasc representative on 16 November 2020.

⁷⁸ Interview conducted with the MRCI representative on 3 November 2020 and information obtained from a Nasc representative on 16 November 2020.

announced that all persons, regardless of their status, should come forward to receive a vaccine when it was made available. She made a commitment that no information gathered as part of that process would be passed to the immigration authorities.⁷⁹

By default, irregular migrants in Ireland are not eligible to receive social assistance payments, yet some discretion in the application of this rule was noted here as well. One of the preconditions for coverage by social welfare benefits is meeting the Habitual Residence Condition (HRC) requirement. Irregular stay precludes meeting this requirement. Exceptional Needs Payments are not subject to the HRC and access is granted on case-by-case principle, and depends on the particular social welfare officer. NGOs have pointed out that such access might be facilitated in cases involving children or domestic violence.⁸⁰

Across the EU, irregularly staying migrants who are unknown to the authorities cannot be legally employed (EMN, 2021). In Ireland, while it might be possible for irregular migrants to have a Personal Public Service Number (PPSN), or to have been working legally and paying taxes at some point, this does not create entitlement to tax or contribution-financed benefits.⁸¹

All Member States that participated in the EU study provide access to education to migrant children irrespective of their status, although the modalities of this provision differ (EMN, 2021). In Ireland, access to mandatory education for irregularly staying migrants is one area where access to services is formally equal, as compared to access for other migrants and for Irish citizens. The right to education stems from the legal obligation of the State to provide access to education to any child, as set down in the Irish Constitution. Children aged between 6 and 16 years and who are residing in the State are required to receive an education regardless of their immigration status: they receive an education on the same basis as an Irish citizen.⁸²

While it is clear that access to education for irregularly resident children should not be based on any conditions, MRCI observed that in practice sometimes school

⁷⁹ Department of Justice (2020), Speech by Minister for Justice, Helen McEntee TD – Deportation Moratorium (COVID-19) Bill 2020, 9 December, <https://www.gov.ie/en/speech/26178-speech-by-minister-for-justice-helen-mcentee-td-deportation-moratorium-covid-19-bill-2020/>.

⁸⁰ Information obtained from a Nasc representative on 16 November 2020.

⁸¹ In a recent decision of the Supreme Court in *Sobhy v Chief Appeals Officer* [2021] IESC 81, it was held that social welfare benefits under the Social Welfare Consolidation Act 2005 cannot be claimed by a person who has made the relevant statutory contributions, but who does not have a work permit or permission to be in the State. On the facts of this case, Ms Sobhy was therefore found not to be entitled to maternity benefit because she did not have an immigration permission for over six years prior to her application for benefits, even though she was working and paying PAYE and PRSI throughout this time. See https://emn.ie/case_law/sobhy-v-the-chief-appeals-officer-minister-for-employment-affairs-and-social-protection-and-the-attorney-general/.

⁸² Information received from the Department of Education and Skills on 15 January 2021.

principals may request parents' PPSN. However the representative from MRCI stressed that in his experience it was very rare for irregularly resident migrant parents not to send their children to school.⁸³

In the case of third-level education, adult education, or professional courses, the situation is more complex. In principle, it is possible for irregularly resident migrants to access higher education. In practice, MRCI noted several obstacles: the fee for international students will apply (which is significantly higher than for domestic/EEA students); migration status might be checked during the admission; and in order to receive a certificate, a PPSN is required.⁸⁴ When it comes to other educational programmes, irregularly staying migrants have no access to supports such as Student Universal Support Ireland. In addition, during the admission process proof of residence permission is usually requested.

Finally, while access to means-tested legal aid is in principle possible, in practical terms it is limited by the capacity of the system. As noted by one NGO, while no specific barriers exist when it comes to access to the Legal Aid Board services, their limited capacity might make access difficult in practice.⁸⁵

4.2.1 Migration status check when accessing public services

Under section 8 of the Immigration Act 2003, 'information holders' may be required to pass information to other 'information holders' for immigration purposes.⁸⁶ A migration status check, carried out prior to accessing public services, could be seen as a way to protect access to public services by ineligible groups. However, it might also act as a deterrent to accessing services, even in situations where the assistance of public authorities is unconditional and necessary (such as in the situation of a health emergency or crime being committed).

The Department of Justice stated that authorities providing services at local or state level in Ireland do not need to check the migration status of persons before providing access to a service.⁸⁷ However, aside from the COVID-19-related announcements presented in Section 3.5.2, no specific firewall provisions were

⁸³ Interview conducted with the MRCI representative on 3 November 2020.

⁸⁴ Interview conducted with the MRCI representative on 3 November 2020.

⁸⁵ Information obtained from a Nasc representative on 16 November 2020.

⁸⁶ 'Information holders' are defined as including a Minister of the government, a local authority, the HSE, the Child and Family Agency, An Garda Síochána (national police) or any other body established by statute (other than the Companies Acts 1963-2001, unless established under those Acts in pursuance of powers conferred by another statute), which is financed wholly or partly by means of money provided, or loans made or guaranteed by, a Minister of the government or the issue of shares held by or on behalf of a Minister of the government and a subsidiary of any such body. Information received from EMN Ireland legal consultant on 14 January 2021.

⁸⁷ Information received from Department of Justice official on 10 December 2020.

found.⁸⁸ The Irish Network Against Racism's *Alternative report on racial discrimination in Ireland* called for specific firewall provisions for migrants engaging with the police; for example, in the areas of crime reporting and between immigration enforcement and labour inspectors in cases of labour exploitation (Irish Network Against Racism, 2019). MRCI also campaigns for a firewall to prevent information sharing between government departments and migration authorities in order that people are not deterred from using services (MRCI, 2021b).

The NGO MRCI stated that they generally advise irregularly staying migrants against applying to the Department of Social Protection for a PPSN, as this could lead to an individual's irregular status being detected.⁸⁹ MRCI and Nasc noted that by providing a PPSN to state agencies, irregular migrants might put themselves at risk of detection as these agencies might relay such data to bodies responsible for immigration.⁹⁰ This concern stems from section 8 of the Immigration Act 2003 discussed above. However, information obtained from a Dublin City Council representative suggests that, on the ground, priority is given to solving immediate social problems such as homelessness and physical and mental health supports, irrespective of a person's migration status.⁹¹ This information suggests that, in some cases, section 8 of the 2003 Act may not be applied in practice.

Finally, the Department of Education and Skills indicated that primary and post-primary schools must enrol children in accordance with their respective enrolment policies and that schools are not concerned with a child's immigration status.⁹²

4.3 BENEFITS AND SERVICES AVAILABLE TO UNSUCCESSFUL ASYLUM APPLICANTS RESIDING IN THE IPAS ACCOMMODATION SYSTEM

As noted above, this section relates to unsuccessful international protection applicants with deportation orders who reside in the IPAS system of accommodation.⁹³ Ireland does not participate in the Return Directive, which sets out minimum standards of benefits and services that should be available to individuals with return decisions that cannot be executed. However, unlike the majority of Member States, Ireland allows unsuccessful international protection applicants with unenforceable deportation orders to use all services available to international protection applicants within the framework of the IPAS system of

⁸⁸ Firewall provisions are guarantees, in relation to using (public) services, that a migration status will not be forwarded to the migration authorities. With the existence of such provisions, undocumented migrants can access services without fear of deportation.

⁸⁹ Interview conducted with the MRCI representative on 3 November 2020.

⁹⁰ Information obtained during an interview with a representative of MRCI on 3 November 2020 and from a Nasc representative on 16 November 2020.

⁹¹ Information obtained during the interview with a Dublin City Council representative on 2 December 2020.

⁹² Information received from the Department of Education and Skills on 15 January 2021.

⁹³ An overhaul of the IPAS accommodation system is underway following the publication of a government White Paper in February 2021 (Government of Ireland, 2021).

accommodation, commonly known as Direct Provision (EMN, 2021). This means that while there are no tailored services provided to such individuals, and in principle they should vacate the premises, they can still avail of services related to their previous status (of international protection applicant). Access is based on practice rather than national law.⁹⁴

When it comes to accommodation services, IPAS provides full board accommodation. Social housing is not available to this group of migrants.⁹⁵ No special IPAS accommodation is available to accompanied children or the victims of trafficking or other vulnerable categories of migrants. A special accommodation facility for female victims of trafficking, regardless of their status, was expected to be opened by IPAS by mid-2021.⁹⁶ However at time of writing this was still pending (Cunniffe and Ayodele, 2022).

All individuals residing in IPAS accommodation have access to a means-tested medical card, which is a mainstreamed service that provides free access to medical services.⁹⁷ All individuals who have received a deportation order, including applicants for international protection whose application has been rejected, are ineligible for cash benefits as by law they are excluded from meeting the Habitual Residency Condition (HRC). The HRC applies to means-assessed payments only. In exceptional cases, individuals residing in IPAS accommodation centres, including those who have received a negative decision on their protection claim, can receive an Exceptional Needs Payment, which is discretionary and means tested.

As stated above, all children aged between 6 and 16 years and who are residing in Ireland are required to receive an education regardless of their immigration status, which means children in this situation receive an education on the same basis as an Irish citizen. Children must attend mandatory education and may complete secondary school. If they remain in IPAS accommodation facilities, they can use transport services and other facilities (Department of Justice and Equality, 2015).

In principle, it is possible for irregularly resident migrants, including unsuccessful asylum applicants, to access higher education. However, in practice, the higher fee

⁹⁴ There have been instances of unsuccessful international protection applicants with deportation orders being issued with letters requiring them to leave IPAS accommodation. However, these letters were subsequently withdrawn after representations by NGOs such as Nasc and the Irish Refugee Council. Comments from EMN legal consultant, April 2022. See: Pollack, S (2017), 'Asylum seekers facing deportation given a month to leave hostels' *The Irish Times*, 20 September; and Response to Parliamentary Question 45206/17, <https://www.oireachtas.ie/en/debates/question/2017-10-25/182/>.

⁹⁵ Information received from International Protection Accommodation Services, the Department of Children, Equality, Disability, Integration and Youth on 15 January 2021.

⁹⁶ Information received from International Protection Accommodation Services, the Department of Children, Equality, Disability, Integration and Youth on 15 January 2021.

⁹⁷ Information received from International Protection Accommodation Services, the Department of Children, Equality, Disability, Integration and Youth on 15 January 2021.

for international students will apply, migration status might be checked during the admission process and, in order to receive a certificate, a PPSN would be required.⁹⁸ Former asylum applicants with deportation orders pending may not apply for the Student Support Scheme for asylum applicants Meaney et al., 2021).

The Legal Aid Board noted that access by international protection applicants to legal aid is limited, once the international protection procedure has concluded and a deportation order has been issued. Depending on the particular circumstances of the case the Legal Aid Board may, for example, consider submitting grounds upon which a deportation order should be revoked, or advise on seeking judicial review.⁹⁹

When it comes to employment, migration policies in general regulate access to the labour market. In Ireland, unsuccessful international protection applicants with a deportation order pending are not eligible to apply for a permission to work. Across the EU, irregular migrants can rarely work legally. In the case of migrants who remain unknown to the authorities, access to employment is allowed only in Malta (and only in cases where the individual concerned has applied for asylum in the past). In the case of individuals issued with a return decision, in Poland, Hungary and Sweden migrants can work irrespective of authorisation (EMN, 2021).

It should be stated that the White Paper on Ending Direct Provision recognises the particular situation of this group in the context of the envisioned overhaul of the Direct Provision system. At the same time, the document states that the number of such individuals (358 out of 6,996 residents on 31 December 2020) represents a small share of the total number of residents (Government of Ireland, 2021).

4.4 INSTITUTIONAL ROLES IN THE PROVISION OF SERVICES

EMN (2021) highlights an inherent tension, in many Member States, between national-level policies which focus on reducing the scale of irregular migration and local-level government which provides services to individuals in need. Research indicates that urban settings can be seen as ‘sanctuary spaces’; that is, spaces which might be considered to be friendlier towards (irregular) migrants.¹⁰⁰ As

⁹⁸ Information obtained during an interview with a representative of MRCI on 3 November 2020.

⁹⁹ Comments received from the Legal Aid Board, 18 January 2021.

¹⁰⁰ It should be mentioned that no agreed definition exists of sanctuary policies or sanctuary cities. According to Lambert and Swerts (2019), ‘Sanctuary policies are regularly interpreted as expressions of urban citizenship because they safeguard immigrant rights at the city level and often implicate a certain degree of protection against the risk of arrest and deportation. Furthermore, such policies tend to circumscribe the extent to which undocumented city residents can make use of local initiatives in domains like welfare, work, education, culture, transportation and community participation, despite their illegalized status. Scholarship that explores such formal modes of sanctuary tends to underscore its importance by highlighting the shift in power relations that takes place between nation states and (global) cities. While demarcating the terms of belonging and non-belonging used to be the undisputed terrain of

noted by Spencer and Triandafyllidou (2020), irregular migration is a multifaceted and multilevel phenomenon. This tension can be understood to result from different priorities: central government tends to be concerned with return and reducing pull factors for irregular migration, whereas local government deals with identifying, financing and providing services to individuals who already reside in their territory.

Compared to the scale of such discussions elsewhere in Europe, in Ireland there is limited debate on the interaction of national policy with local-level service provision.¹⁰¹ Examples of such debates (and indeed the cooperation involved) can be found in Belgium, Germany and the Netherlands (EMN, 2021). In Austria, too, in 2019, the adoption of new legislation that excluded persons with an obligation to leave from social assistance benefits was debated. In the Netherlands, the provision of so-called ‘bed-bath-bread’ facilities was established by municipalities in cooperation with civil society and local authorities following a public and institutional debate. In Norway, the right to education for undocumented migrants’ children is a topic of discussion (EMN, 2021).

In Ireland, irregularly staying migrants are not covered by the national Migrant Integration Strategy (2017–2021),¹⁰² which applies to legally resident migrants and contains priority integration actions (Department of Justice and Equality, 2017).

Healthcare is the main policy area where irregular migration has been identified as a separate issue and the Intercultural Health Strategy is the only clear example of a national strategy where irregularly staying migrants are specifically mentioned.¹⁰³ There, it is noted that they form a group needing additional consideration due to ‘disproportionally greater needs for healthcare and supports’. The main stakeholder in this field is the state agency, the Health Service Executive (HSE).

The National Intercultural Health Strategy contains the following action: ‘Provide ongoing support to NGOs who assist undocumented migrants and other vulnerable groups in accessing appropriate care’ (HSE, 2018b). It also states that irregular migrants who reside in Ireland usually face multiple and co-existing vulnerabilities, such as homelessness and health risks. An example provided in the National Intercultural Health Strategy concerns maternity-related health services: ‘[f]ear of hospital bills, lack of knowledge of the Maternity and Infant Care Scheme and fear of children being taken into care can act as key barriers to undocumented migrant

the nation-state, cities have increasingly become assertive actors that define citizenship in terms that deviate from national standards’ (Lambert and Swerts, 2019, p. 91).

¹⁰¹ This is likely to be due to the highly centralised nature of social policy in Ireland, with few services or welfare benefits devolved to local government (housing being the main exception).

¹⁰² Originally 2017–2020, but extended to 2021.

¹⁰³ The Second National Intercultural Health Strategy 2018–2023 employs the IOM definition of a migrant, which does not differentiate between categories of migrants depending on their residence status.

women accessing maternity services’ (ibid., p. 64). Significant challenges related to the access of irregular migrants were identified in consultations on the strategy and included, ‘poverty, lack of education and language, lack of access to Department of Social Protection payments, legal status, lack of trust in service providers and racism and discrimination’ (HSE, 2018a, p. 3).

Housing is another policy area of particular concern in relation to irregularly staying migrants. The Homelessness Inter-Agency Group Report to the Minister for Housing, Planning and Local Government published in June 2018 (Homelessness Inter-Agency Group, 2018) deals with migrants covered by this study (referred to as individuals who ‘do not have the right to reside in Ireland or do not meet the habitual residency requirements to apply for social housing supports’). The report states that, ‘[i]n many cases, individuals without an entitlement to housing supports can spend significant time in emergency accommodation with no option to move on. In other cases, local authorities may only provide emergency accommodation on a night-to-night basis. This presents particular challenges for families with children’.

The report also highlights a need for a ‘closer relationship between the Department of Justice and Equality and the local authorities in relation to non-nationals presenting as homeless or in homeless services. There also needs to be a clearer policy on the State’s position on the provision of supports to those with no rights to reside in the State. This matter should be considered by the Department of Justice and Equality and the Department of Housing, Planning and Local Government’ (ibid., p. 29). It recommends that the Department of Justice and Equality and the Department of Housing, Planning and Local Government should develop an agreed policy, including a communications protocol, on the services to be provided to individuals who may have no rights to reside in the State.

At local authority level, none of the local integration strategies consulted for this study directly discusses the issues of undocumented migration in general, or the availability of services for this specific group in particular. A representative of Dublin City Council suggested that relevant local-level actions stemmed rather from an operational framework developed at the local level which aimed to resolve specific social problems (such as homelessness) irrespective of a service user’s nationality or migration status.¹⁰⁴ This means that, at the local level, and in general, undocumented migrants do not constitute a separate target group. However, a briefing paper published by the Dublin Region Homeless Executive in 2015 did identify undocumented migrants as being particularly vulnerable (Gilmartin and Gallwey, 2015).

¹⁰⁴ Information obtained during interview with a Dublin City Council representative on 2 December 2020.

Migrants experiencing exclusion are identified separately in the Dublin City Council Integration Strategy 2016–2020 (Dublin City Council, 2016). The Dublin City Council representative emphasised the relevance of related actions to the undocumented population. Actions targeting migrants at risk of and experiencing exclusion, initiated by Dublin City Council in cooperation with the Dublin Region Homeless Executive, helped to stimulate further coordination of activities by stakeholders such as the HSE, approved housing bodies and NGOs.¹⁰⁵

The issue of migrants who have no right to public housing services is mentioned in the Homelessness Action Plan Framework for Dublin, 2019–2021. In its Protection theme (Action 2.11), the Action Plan states that the Dublin Region Homelessness Initiative ‘responds to all people experiencing homelessness, including migrants, who are not in a position to establish eligibility for social housing and/or social protection supports on a case by case basis’ (Dublin Region Homeless Executive, 2019). The representative of that body noted that both the Dublin City Council Integration Strategy and the Homeless Action Plans represent the strength of local government’s commitment to maintaining a minimum standard of service for all those in need of shelter and support, regardless of their migrant status. Attention was also drawn to the use of discretion at local level in addressing the issues arising.¹⁰⁶

4.5 THE ROLE OF NGOS IN THE PROVISION OF SERVICES

Across all Member States that contributed to the synthesis report, NGOs play an important role in providing services for irregular migrants. The types of engagement by non-governmental actors in Europe range from providing information and guidance to delivering specialised services such as housing (EMN, 2021).

Two key NGOs working with irregularly staying migrants in Ireland were interviewed for this study: the MRCI and Nasc. MRCI is a national organisation working for ‘justice, empowerment, and equality for migrants and their families’. It runs a drop-in centre that provides free and confidential information as well as support to irregular migrants.¹⁰⁷ Nasc is a national organisation based in Cork. It works with migrants and refugees, ‘to advocate and lead for change within Ireland’s immigration and protection systems, to ensure fairness, access to justice

¹⁰⁵ In relation to vulnerable migrants, the Strategy’s actions were grouped into four themes: developing information and training; supporting inclusive communities; facilitating language and education; and supporting business and employment.

¹⁰⁶ Comments received from a Dublin City Council representative on 25 March 2022.

¹⁰⁷ See www.mrci.ie.

and the protection of human rights'. Nasc is funded through statutory and philanthropic funding, and private donations.¹⁰⁸

The focus of both NGOs is on legal advice and information support (the target group receiving such services is broader than irregular migrants). The organisations do not report any information on the identity of beneficiaries to migration authorities.¹⁰⁹

Many other NGOs work with irregularly staying migrants in Ireland. Organisations such as Focus Ireland or the Capuchin Day Centre for Homeless People, for example, tackle homelessness, provide basic health services (including addiction treatment) and may deliver food.

Safetynet is an organisation that targets vulnerable groups (including migrants without access to healthcare) with health services.¹¹⁰ This NGO offers mobile screening and mobile clinics. It also cooperates with other NGOs working with vulnerable individuals in Ireland. The Mobile Health and Screening Unit for Vulnerable Migrants and other hard-to-reach groups was planned and established by the HSE Social Inclusion Office, in partnership with Safetynet. This project is co-financed by the National Social Inclusion Office and the European Commission under the Asylum, Migration and Integration Fund and is supported by the Department of Justice.

¹⁰⁸ See <https://nascireland.org>.

¹⁰⁹ Interview conducted with a MRCI representative on 3 November 2020.

¹¹⁰ Safetynet is a primary care facility for marginalised people in society who do not have access to healthcare. Safetynet is part-funded by the HSE and receives voluntary donations. See <https://www.primarycaresafetynet.ie/>.

CHAPTER 5

Conclusions

Irregularly staying migrants are more exposed to material deprivation, instability, exploitation and crime than the rest of the population. A fear of detection can lead to underutilisation of public services. The recent introduction of the 2022 Regularisation of Long-Term Undocumented Migrants Scheme is a major policy development that should improve the situation of many people living in Ireland. However, it is likely that irregular migration will persist and that related policy challenges will remain.

This report provides an overview of the situation of irregularly staying migrants in Ireland, including access to public services, and outlines major public debates and policy measures introduced to address related issues. The report reviews the legislation, parliamentary and public debates and policy instruments relevant to this group. Desk research was supplemented with interviews and consultations with a range of government and NGO stakeholders.

No official data exist on the number of undocumented persons in the State. In 2020, the Migrant Rights Centre Ireland (MRCI) estimated that there are some 17,000 to 20,000 undocumented persons in the State, including 2,000 to 3,000 children. The issue of irregular migration has been important in both policy and public debates in the analysed period. The main topic of these debates has been that of regularisation. The issue of irregularly staying migrant children has also been high on the agenda. More recently, in the context of the COVID-19 pandemic, the media has highlighted the role of irregular migrants in providing key services in the Irish economy.

This report has highlighted a range of policy challenges for irregularly staying migrants in Ireland. In terms of access to services, the particular vulnerability of irregularly staying migrants who are unknown to the authorities has been discussed in depth. Irregular migrants who are visa/residence permission 'overstayers' (former tourists, workers or students), and are unknown to authorities, have little access to public services and benefits. As the vast majority of non-contributory social welfare payments are based on the Habitual Residence Condition (HRC), by default irregular migrants are not eligible for them. In general, only mandatory education (i.e. for children) and emergency healthcare are based on the principle of unconditional access irrespective of migration status. Other services and benefits may be available, but this depends on local authorities and discretionary decisions. As noted in this study, the fact that people have an

irregular status, with the associated fear of being apprehended, reduces their probability of using public services and NGOs have called for clear firewalls between service providers and migration authorities.

The position of people who are 'non-returnable' was highlighted by the Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process. The Group cautioned that people should not be left in limbo but granted temporary or tolerated leave to remain, as happens in several other Member States (EMN, 2021). The Advisory Group report recommended extending the period available to persons issued with a deportation order to avail of assisted voluntary return.

In other respects, the Irish system is based on a humanitarian response to irregularly staying migrants. Unsuccessful asylum applicants with deportation orders pending may continue to reside in IPAS accommodation with access to all services. Going forward, the White Paper to End Direct Provision and to Establish a New International Protection Support Service recommends that accommodation and welfare supports continue to be provided to unsuccessful asylum applicants for six months following the exhaustion of all avenues of appeal, in order to help them prepare for departure. During the COVID-19 pandemic, public authorities encouraged irregular migrants to approach healthcare providers whenever necessary, seeking to reassure them that information on their migration status will not be transferred to migration authorities. Similarly, irregular migrants could avail of the Pandemic Unemployment Payment, which was available to individuals whose employment situation has been affected by the pandemic. At local government level, discretion is used to respond to individual situations as they arise. As discussed above, the recently introduced Regularisation of Long-Term Undocumented Migrants Scheme seeks to reduce the vulnerability of the irregularly staying group, through a scheme with terms that are widely welcomed by NGOs.

This report has shown that the governance of irregular migration should be seen as multi-level and driven by sometimes contradictory goals. It is embedded in local-level policies as well as national and international legal norms, but is also characterised by the potential for discretion at the local level.

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