EUROPEAN MIGRATION NETWORK

POLICY ANALYSIS REPORT ON ASYLUM AND MIGRATION: IRELAND 2003 TO MID-2004

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ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, Lower House.
Dáil	Parliament, lower House.
FÁS	National Training and Employment Agency
Gardaí/Garda Síochána	Police
Immigrant Council of Ireland	ICI
Irish Council for Civil Liberties	ICCL
ICLMD	Irish Current Law Monthly Digest
ILRM	Irish Law Reports Monthly
Irish Refugee Council	IRC
Migrant Rights Centre Ireland	MRCI
National Action Plan Against Racism	NPAR
National Consultative Committee on Racism and Interculturalism	NCCRI
Office of the Refugee Applications Commissioner	ORAC
Official Journal of the European Union	OJ
Oireachtas	Parliament, both houses.
Personal Public Service Numbers	PPSNs
Refugee Appeals Tribunal	RAT
Tánaiste	Vice-Prime Minister. During the period the Tánaiste was also the Minister for Enterprise, Trade and Employment.
Taoiseach	Prime Minister

Dáil	Parliament, lower House.
FÁS	National Training and Employment Agency
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Gardaí/Garda Síochána	Police
Immigrant Council of Ireland	ICI
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ICLMD	Irish Current Law Monthly Digest
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1. INTRODUCTION

In the last ten years or so Ireland has changed from being a country of net emigration to being a country of net immigration. In the year to the end of April 1994 about 35,000 people left Ireland and about 30,000 people entered so that there was a net loss of population of nearly 5,000 people. In the year to the end of April 2004 about 18,000 people left and just over 50,000 people entered resulting in a net gain in population of almost 32,000 people. Over the same period the number of people who have sought asylum in Ireland under the 1951 Geneva Convention relating to the status of refugees has increased from 91 in 1993 to 7,900 in 2003.

Up to the mid-1990s the general perception was that there was little need to introduce changes to the basic legislation governing the entry and residence of non-nationals because of the relatively small number of immigrants entering the country. This legislation includes the Aliens Act, 1935 and the regulations implementing the EU Rights of Residence Directives. However, the rapid increase in the immigration of non-nationals and the large influx of asylum seekers since then has created a new situation. Arising from this, the Government has introduced new immigration and residence legislation to consolidate existing immigration legislation. The new legislation creates the framework for a streamlined immigration system which is intended to provide for the entry into the country of non-nationals with a view to supporting the social and economic goals of Irish society and the needs of Irish citizens, having regard to the protection of national security and public order, and the capacity of the State to integrate non-nationals. The Government has also introduced comprehensive legislation in relation to asylum in the form of the Refugee Act, 1996 as amended by the Immigration Act, 1999, the Illegal Immigrants (Trafficking) Act, 2000 and the Immigration Act, 2003.

There is, therefore, an ongoing process of policy development in relation to asylum and migration which is expressed in political and legislative changes, implementation of EU legislation at national level, and in answers to the practical questions which arise in the implementation of asylum and migration policy. The purpose of this report is to provide an overview of policy developments in these areas and the main issues that have arisen in Ireland in relation to asylum, migration and integration during the period January 2003 to July 2004. Our treatment of the policy developments and implementation issues will also take into account the perspectives of non-governmental organisations, public institutions, researchers, and migrants' rights groups and organisations.

1.1 General Trends of Immigration and Emigration

The numbers of emigrants continued to decline during the reference period. The UK, once the most popular destination for the Irish emigrant, attracted only 30 per cent of emigrants in 2003 and 27 per cent in 2004. The Rest of World was the dominant destination in both 2003 and 2004.

Table 1.1: Estimated Migration Classified by Country of Destination/Origin, April 2003-April 204

	Emigrants					Immigrants					
	UK	Rest of EU	USA	Rest of World	Total	UK	Rest of EU	USA	Rest of World	Total	Net Migration
	000s					000s					
2003	6.3	4.3	2.5	7.6	20.7	13.5	9.7	4.7	22.5	50.5	29.8
2004	4.9	3.4	2.8	7.4	18.5	13.0	12.6	4.8	19.7	50.1	31.6
	per cent					per cent					
2003	30.4	20.8	12.1	36.7	100	26.7	19.2	9.3	44.6	100	
2004	26.5	18.4	15.1	40.0	100	25.9	25.1	9.6	39.3	100	

Source: CSO, Population and Migration Estimates April 2004. Preliminary figures.

The flow of immigrants remained stable at around 50,000 in the year to the end of April in both 2003 and 2004. In 2004 immigrants from the Rest of the EU and the Rest of the World accounted for nearly two-thirds of the total inflow with about 25 per cent coming from the Rest of the EU and almost 40 per cent from the Rest of the World. The immigrant flows from the UK and the US amounted to about a quarter and a tenth of the total flow respectively in 2004.

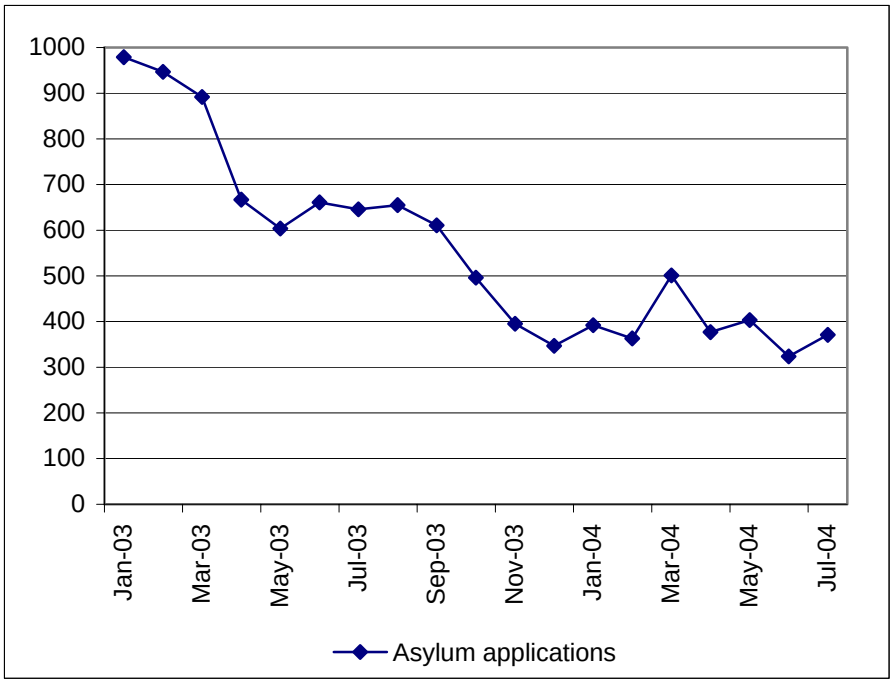
1.2 Summary of the Main Groups of Migrants, Refugees and Asylum Seekers

1.2.1 ASYLUM SEEKERS

1.2.1.1 Applicants

As Figure 1.1 shows the number of asylum applications fell steeply in the period from 979 in January 2003 to 371 in July 2004. The number of asylum applications lodged in industrialised countries generally dropped in the period (UNHCR, 2004a,b). The Minister for Justice, Equality and Law Reform welcomed the 32 per cent fall in annual applications from 11,634 in 2002 to 7,900 in 2003 as the second biggest reduction in the EU (Department of Justice, Equality and Law Reform, June 2004b). Domestic policy appears to have contributed to this downward trend. A possible reason for the fall is the Supreme Court ruling in January 2003 that non-EU parents of Irish-born children did not automatically gain residency rights. In addition, the subsequent Government announcement in July 2003 that applications for leave to remain based on parentage of Irish-born children would no longer be accepted; the elimination of rent supplement for asylum seekers; the introduction of sanctions for the employment of illegal immigrants in the Employment Permits Act, 2003 in April 2003; the introduction of carriers liability in September 2003, and changes in asylum legislation such as the introduction of the 'safe country of origin' concept in September 2003 all contributed to the downward trend. Such policy changes will be discussed in more detail in later sections particularly Sections 3.2.1 and 5.1.

Figure 1.1: Asylum Applications January 2003 – July 2004



Source: Office of the Refugee Applications Commissioner, Monthly Statistics.

The numbers of withdrawals and reapplications for asylum were also significant in the period. During 2002 there were 15,201 cases processed to completion by the Office of the Refugee Applications Commissioner (ORAC, 2003). Of this total 40 per cent (6,073) were cases withdrawn by the applicant. Such people may have been voluntarily repatriated or may have applied for leave to remain based on marriage to an Irish national, or parentage of an Irish-born child (ORAC, 2003, p. 14). The number of cases withdrawn from the process by the applicant in 2003 fell steeply to 14 per cent (1,243) of the 9,552 cases processed to completion (ORAC, 2004, p. 71).[1] The reduction has been widely attributed to developments in relation to citizenship and Irish-born children. See Section 2.3.1. The ORAC Annual Report indicates that 417 people reapplied for asylum during 2003, 359 of whom had withdrawn from the process when applying for leave to remain based on parentage of an Irish-born child (ORAC, 2004, p. 19).

Table 1. 2: Asylum Applications by Country of Origin, 2003

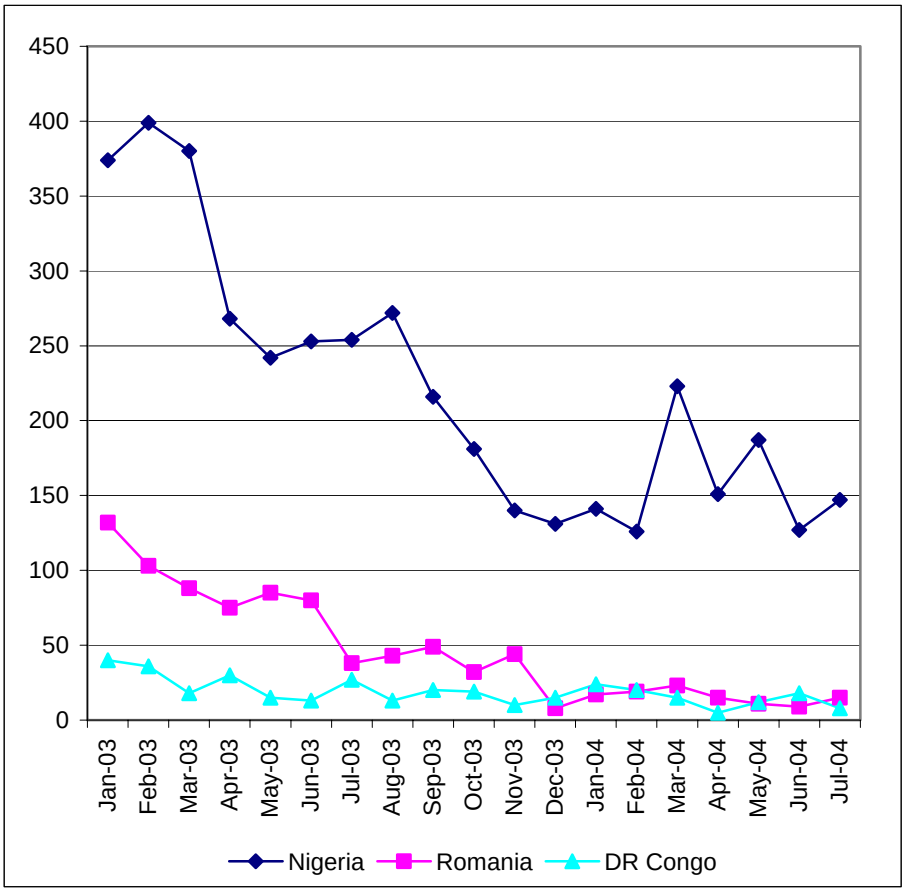
Country	No. applications	Per Cent
Nigeria	3,110	39.4
Romania	777	9.8
DR Congo	256	3.2
Moldova	243	3.1
Czech Republic	186	2.4
Somalia	183	2.3
Other	3,145	39.8
Total	7,900	100.0

Source: Office of the Refugee Applications Commissioner, 2004, 69.

[1] Note that the figure for the total number of recommendations issued here is 9,552. This figure includes 911 cases that for administrative reasons could not be fully processed in previous years. The official figure for the number of cases processed to completion by the ORAC in 2003 is 8,641.

Data on the country of origin of asylum applicants is published only for the top six countries concerned.[2] The breakdown of applications made in 2003 is shown in Table 1.2 above. An analysis of country of origin of applicants per month is difficult due to the fact that published information is limited to the top six countries. Complete information is available for three countries of origin for the period under discussion here: Nigeria, Romania and the Democratic Republic of Congo. Note that while these three countries consistently appeared in the top six on a monthly basis they do not always fall within the top three. Figure 1.2 shows that asylum applications from Nigerian citizens fell most steeply during the period in question.

Figure 1.2: Asylum Applications per Month Made by Persons from Nigeria, Romania and the Democratic Republic of Congo



Source: The Office of the Refugee Applications Commissioner, Monthly Statistics.

1.2.1.2 Appellants

Appeals received: There was a slight decrease in the number of appeals received in 2003 (5,294 in 2003 compared to 5,356 in 2002). The most significant change however between 2002 and 2003 was in regard to the type of appeal lodged. There were 9 per cent fewer substantive appeals received in 2003 than in 2002 and three times as many manifestly unfounded/accelerated appeals received in 2003. The 2003 Refugee Appeals Tribunal Annual Report attributes these changes to the amendments to the asylum process introduced in the Immigration Act, 2003. The Immigration Act contained amendments to the Refugee Act, 1996 which came into effect on 15th September 2003. The stated

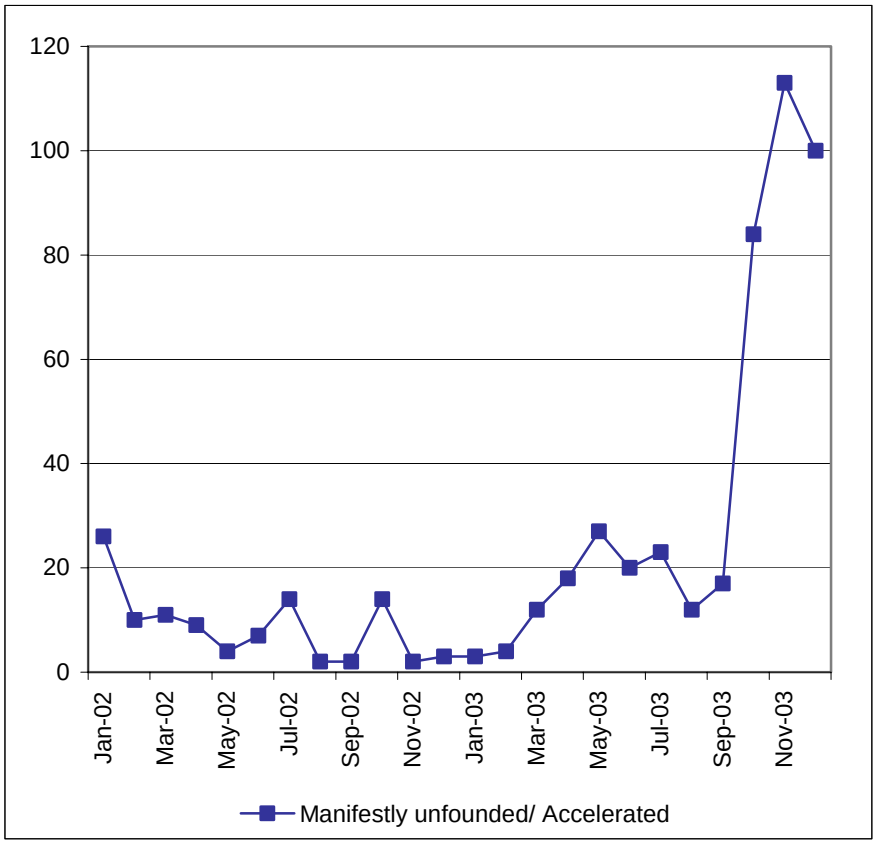
[2] A breakdown of all applications by source country is available on request to the Department of Justice, Equality and Law Reform.

intention of the Minister in introducing these changes was to provide a "…more comprehensive framework for the fair and expeditious processing of asylum applications" (Refugee Appeals Tribunal, 2004, p. 7).

Since September 2003 two sets of appeals procedures have been in operation. Under the old system appeals could be classed as substantive, manifestly unfounded or Dublin Convention. Under the new system appeals may be substantive, prioritised or Dublin II[3] regulation.[4] (The Refugee Appeals Tribunal is currently processing cases under both systems and will do so until all appeals lodged under the previous system are completed.) Figure 1.3 illustrates the effect the Immigration Act, 2003 had in increasing the number of manifestly unfounded/accelerated appeals. The details of the new procedures will be discussed in Section 5.1.1.

Appeals completed: In terms of completions of substantive appeals the 2003 figures show a marked decrease on 2002 figures. This is due to the fact that much fewer asylum applicants withdrew from the process at appeal stage in 2003 than in 2002 (599 compared to 190). Such withdrawn cases would have been included as completed in the 2002 figures. In contrast the number of manifestly unfounded/accelerated appeals completed almost doubled year on year (Refugee Appeals Tribunal, 2004, pp. 35, 37).

Figure 1.3: Manifestly Unfounded/Accelerated Appeals Received By the Refugee Appeals Tribunal, 2002– 2003



Source: Refugee Appeals Tribunal, 2004, pp. 29-30.

[3] See footnote 10 for an explanation of the Dublin Convention/Dublin II Regulation.
[4] Substantive appeals include the option of an oral hearing and may be lodged within 15 days. Manifestly unfounded/accelerated appeals do not involve an oral hearing and the appeal must be lodged in a shorter period.

1.2.2 WORK PERMIT HOLDERS

The work permit system is employer driven. An employer wishing to employ a non-European Economic Area citizen must first have a letter of clearance from FÁS – the Training and Employment Authority certifying that the job vacancy has been registered with FÁS for a period of four weeks. The employer can then apply to the Department of Enterprise, Trade and Employment for a permit prior to the entry of the employee into the State. The permit is issued for up to one year, with the possibility of renewal, for a specific job and for a named individual for posts which cannot be filled by Irish or other EEA nationals

Data on work permits show that the number issued increased by 18 per cent to 47,549 in 2003 but looks likely to fall in 2004 with just under 29,000 permits having been issued by 31st October 2004. Table 1.3 shows the main countries of origin of the workers concerned. Workers from Accession States and other Eastern European countries dominated in 2003. The decline in the numbers of Accession State nationals, who since May 1st no longer require a work permit, will contribute to the anticipated annual fall in 2004.[5] Even before May 1st the government strongly encouraged Irish employers to source their migrant workers in the future from the enlarged EU so a fall in the number of work permit holders from other regions is to be expected (see Section 2.3.2).

Nearly 50,000 people from the new member-States received Personal Public Service Numbers (PPSNs) between January and October 2004. (PPSNs are allocated to all people who seek work or make a social welfare application in Ireland.) This compares with 16,600 work permits issued in respect of Accession State nationals in the entire year of 2003. See Section 5.4.1.

Table 1.3: Work Permits Issued by Nationality 2002, 2003, January – October 2004

Country, Region	2002	2003	2004 (Jan-Oct)	2004 (Jan-Oct) as % of 2003
USA, Canada	1,086	1,265	1,007	80
Australia	1,116	1,149	759	66
India	845	1,030	990	96
Japan	197	209	211	101
Pakistan	840	830	668	80
Phillipines	3,255	4,042	3,455	85
South Africa	2,273	2,468	1,671	68
Baltic States	8,594	9,723	2,824	29
Other EU accession states	5,155	6,883	2,378	35
Other Eastern Europe	7,800	9,974	5,933	59
Other Countries	9,157	9,976	8,805	88
Total	40,318	47,549	28,701	60

Source: Department of Enterprise, Trade and Employment, 2004b.

[5] A small number of migrant workers from the Accession States continue to require a work permit to work in Ireland. These are persons in possession of 'alien passports' from their own country who have been left effectively without any citizenship since the Baltic States gained independence from Russia. The 2004 figures include 123 work permits issued in respect of such 'alien' Accession State workers.

1.2.3 WORKING VISAS/AUTHORISATIONS[6]

The number of work visas/authorisations issued in 2003 was 1,158, down by 56 per cent on the 2002 figure despite the extension of the facility to a broad range of professional occupations in the health sector (see Table 1.4). In its Annual Report the Department of Enterprise, Trade and Employment speculates that the demise of the 'dot com' sector in 2001 played a role and that employers put more effort into staff retention (Department of Enterprise, Trade and Employment, 2004a, p. 45).

Table 1.4: Work Visas/Authorisations Issued 2000-2004

Year	Work Visas	Work Authorisations*	Total
2000 (June - Dec)	991	392	1,383
2001	2,667	1,082	3,749
2002	1,753	857	2,610
2003	791	367	1,158
2004 (Jan - Aug)	616	231	847

Source: Department of Enterprise, Trade and Employment.

* Working visas are held by nationals of countries requiring visas to enter Ireland and Authorisations by those who do not.

[6] In order to facilitate the recruitment of suitably qualified persons from non-EEA countries in areas such as information and computing technologies, construction, and across a broad range of medical, health and social care activities a Working Visa scheme was introduced.

2. POLITICAL DEVELOPMENTS

2.1 Political Changes

The last Irish general election took place in June 2002 so there have not been any significant changes to central government in the period in question. Local elections were held in June 2004 along with the European elections and a Constitutional Referendum. Ireland held the Presidency of the EU between January and July 2004. A government priority during this period was to complete the accession to the EU of ten new Member States. Other stated priorities of the Irish presidency were to promote economic growth with emphasis on the Lisbon Strategy and to pursue a 'safer union, by developing the union as an Area of Freedom, Security and Justice'. The actions undertaken in pursuit of these objectives are explored further in Section 4.

2.1.1 ELIGIBILITY OF NON-NATIONALS TO VOTE

Irish citizens resident in Ireland are entitled to vote in all referenda and elections provided their name has been entered on the Electoral Register. A person resident in Ireland who is not an Irish citizen has the right to stand for election and to vote in local elections. The 2004 elections resulted in a clarification of the rights of refugees and asylum seekers in this regard. In order to be included in the Electoral Register a person must provide proof of identity. Many refugees and asylum seekers, hold no formal identification. On registering with the ORAC, an asylum seeker is given a Temporary Residence Card. If a non-national registers with the Garda National Immigration Bureau (GNIB) they receive a GNIB card. Asylum seekers are required to submit all other forms of identification to the authorities to support their asylum claim. The fact that the GNIB cards state "this is not an ID" led to some non-nationals being refused permission to register as an elector. Following representations on the issue by Integrating Ireland, the Immigrant Council of Ireland, the Irish Refugee Council and other groups the Department of the Environment stated in April 2004 that the Garda National Immigration Bureau cards are acceptable forms of ID for the purposes of registering as an elector (Department of the Environment, Heritage and Local Government, April 2004).

2.1.2 METHOD OF EXERCISING MINISTERIAL IMMIGRATION CONTROLS

An important debate took place within the period regarding the extent of the power of the Minister for Justice, Equality and Law Reform as exercised through secondary rather than primary legislation.[7] The debate related specifically to immigration controls. The following sequence of events illustrates the challenge posed to policy makers by the relatively new trend of increased immigration:

[7] Primary legislation takes the form of an Act which goes through the full legislative process including debate in the houses of the Oireachtas (parliament). Secondary legislation (Statutory Orders) may be made by the relevant Minister provided that he or she is empowered to do so under primary legislation.

- In the case of Laurentiu v Minister for Justice[8] the Supreme Court found in 1999 that the manner in which the 1935 Aliens Act conferred on the Minister the power to make secondary legislation (Aliens Orders) in relation to deportation was inconsistent with the Constitution. In response the Oireachtas enacted the Immigration Act, 1999, which, as well as putting the deportation process in the form of a primary statute, provided as follows at section 2(1): *Every order made before the passing of this Act under section 5 of the Aliens Act 1935 . shall have statutory effect as if it were an Act of the Oireachtas.*
- In January 2004 in the case of Leontjava and Chang,[9] the High Court found that Section 2 of the 1999 Act (quoted above) was an unconstitutional legislative method of giving the effect of primary statute to secondary legislation. Consequently, in February 2004 the Government introduced the Immigration Act 2004. Considerable controversy attended the speed with which this Bill was passed through the legislative process into law. A coalition of Non Governmental Organisations (NGOs) produced a detailed joint response to the legislation at Bill stage. They concluded that the Bill was emergency legislation and urged that it should be withdrawn from the legislative process (Immigrant Council of Ireland, Irish Council for Civil Liberties, Irish Refugee Council, Migrant Rights Centre, February 2004). The State stressed that the Leontjava and Chang judgment had left Ireland without a legislative basis for the operation of immigration controls and that such a situation warranted urgent action (Department of Justice, Equality and Law Reform, January 2004).
- June 2004 the Leontjava and Chang finding was overturned by the Supreme Court. The Court noted that the Irish Constitution afforded "strikingly wide latitude" to the Oireachtas in adopting whatever forms of legislation it considered appropriate in particular cases. The powers given to immigration officers and the Gardaí (police) under the 1935 Act are therefore valid. The Minister for Justice, Equality and Law Reform has decided not to repeal the 2004 Act but to examine the judgment to see if any legislative changes are required in light of the Supreme Court decision.

This sequence of events appears to have affirmed the Minister's power to implement immigration controls through secondary legislation.

2.2 Institutional Developments

A recurrent theme in the current report is the management of asylum applications. Measures have been put in place to process applications more quickly and the fall in the number of asylum applications discussed above is expected to continue. The Minister for Justice, Equality and Law Reform has signalled an intention to move staff from asylum related functions to deal with workloads in the areas of: repatriation, voluntary returns, citizenship and visas (Department of Justice, Equality and Law Reform, June 2004b).

Amendments to the Refugee Act 1996 were introduced during 2003. The changes necessitated recruitment, training and redefinition of roles and objectives. The Refugee Appeals Tribunal adapted to these changes during the period under review (Refugee Appeals Tribunal, 2004, p. 5). Significant developments at the ORAC in the period included the implementation of the amendments, EURODAC (see Section 5.1.6) and DubliNET, an EU wide electronic communication system for the transmission of Dublin Regulation/Convention forms between Member States which reduces

[8] [2000] 1 ILRM 1.
[9] [2005] 1 ILRM (Supreme Court, 24th June 2004).

processing times[10] (ORAC, 2004, pp. 14-15). In addition the Reception and Integration Agency has recently (March 2004) undertaken responsibility for repatriating Accession State nationals who are not entitled to receive social welfare in Ireland because they do not meet the Habitual Residency Condition (see Section 5.4.3).

2.3 Central Policy Debates: *Immigration*

2.3.1 CITIZENSHIP AND IRISH-BORN CHILDREN

The issue of Irish citizenship dominated immigration policy in Ireland during the period under discussion. There were two dimensions to the debate: whether having an Irish-born child entitled non-EU national parents to reside in Ireland, and whether citizenship should be granted to all children born in Ireland.

Since the foundation of the Irish State citizenship has been granted to all persons born on the territory. Prior to the 1998 Belfast Agreement this right was provided for in legislation only. By way of the Belfast Agreement Article 2 was inserted into the Constitution, which stated that any person born on the island of Ireland (Northern Ireland and the Republic) was entitled to Irish citizenship.

A Supreme Court ruling in 1989 found that the Irish-born, and therefore Irish citizen, child of a non-national couple had a right to the "care, company and parentage" of his or her family in the State.[11] This ruling meant that non-national parents were generally granted residency in Ireland. In some cases asylum seekers abandoned their asylum applications and instead claimed leave to remain based on their Irish-born child. As a result of a further Supreme Court ruling in January 2003 the administrative practice was altered and non-EU parents of Irish children ceased to automatically gain residency rights.[12]

In July 2003 the Government announced that immigrants could no longer seek residency based on their child's Irish citizenship and suspended the processing of approximately 11,000 residency claims lodged on that basis. Deportation orders have been served on a number of these families who will be obliged to take their Irish citizen child with them if they leave. There was considerable press coverage of this issue particularly since the 'Opinion' given in May 2004 of the Advocate General of the European Court of Justice (ECJ) in the case of Chen v UK found in favour of the non-national parent of an Irish-born child. The ECJ judgment in October 2004 essentially agreed with the Advocate General and ruled that Ms. Chen, a Chinese national, has the right to reside anywhere in the EU with her Irish-born (and therefore Irish citizen) child.[13] The Chen v UK case was interpreted by the Irish Government as evidence of an urgent need for citizenship to be linked to *jus sanguinis* (the principle of citizenship based on blood descent). Ireland was then the only

[10] On 1 September 2003 the Dublin II Regulation succeeded the Dublin Convention as the instrument which provides the legal basis for determining which EU Member State is responsible for examining an asylum application. All Member States plus Norway and Iceland are subject to the new Regulation, with the exception of Denmark (the Dublin Convention remains in force between Denmark and the other Member States). After an asylum application is made, Ireland has three months under the Dublin II Regulation (as opposed to six months under the Dublin Convention) to ask another country to take responsibility for the application. Under the Dublin II Regulation, Member States are required to respond to these requests within either two months or one month depending on the circumstances of the case (three months under the Convention).

[11] Fajujonu v. The Minister for Justice [1990] 2 I.R. 151.

[12] Lobe v. Minister for Justice, Equality and Law Reform [2003] IESC 1 (Supreme Court, 23 January 2003).

[13] Ms Chen travelled from China and went to Belfast in order to give birth to an Irish citizen child. She then applied for the right to live in the UK with her child. When the British Home Secretary denied her residency she appealed the decision to the European Court of Justice (Case C-200/02).

country in the EU to grant citizenship on the principle of *jus soli* (place of birth) alone. (Department of Justice, Equality and Law Reform, May 2004b).

A Department of Justice 'Information Note' circulated in April 2004 indicated that numbers of asylum seekers had fallen since the Supreme Court judgment in January 2003, as shown in Figure 1.1. This fall was attributed to a variety of factors including the elimination of rent supplement for asylum seekers, the introduction of carrier's liability and changes in asylum legislation such as the introduction of the 'safe country of origin'. Such measures will be discussed further in Section 5.1. It was argued that both within and outside the asylum seeker framework large numbers of non-EEA nationals were coming to Ireland to give birth. This argument was supported by evidence that almost 60 per cent of female asylum seekers aged 16 years and over were arriving in Ireland while pregnant (Department of Justice, Equality and Law Reform, April 2004a).

A referendum was held in June 2004 on the question of a Constitutional amendment. The referendum was passed by a large majority of voters (79 per cent) and turnout was high at 60 per cent. The amendment provides a constitutional entitlement to citizenship only to a child who has one parent who is, or who is entitled to be an Irish citizen. The amendment also reinstates the power of the Oireachtas (parliament) to legislate on the acquisition of citizenship.

2.3.2 ACCESSION

Ireland has pursued a policy of facilitating the access of Accession State nationals to the labour market. All EU-15 States may impose transitional restrictions for up to seven years on freedom of movement of nationals of the new EU Member States. Only Ireland, the UK and Sweden have placed no restrictions on access to the national labour market. After the signing of the EU Accession Treaty in April 2003 Accession State nationals were prioritised in Ireland for work permit applications. Now such permits are no longer required. Ireland has, however, included in the Employment Permits Act a safeguard mechanism whereby for seven years from the date of accession workers from the Accession States could be required to have permits should the labour market suffer a 'disturbance' after EU enlargement.

In its *Annual Report 2003* the Department of Enterprise, Trade and Employment argued that the bulk of Irish labour needs from overseas could be met from within the enlarged EU. As a result they stated that generally '… only higher skilled, higher paid posts will need to be filled by way of recruitment from outside the enlarged EU and economic migration policy will be implemented accordingly'. The Annual Report records that late in 2003 the Department became aware that employers in Ireland were still seeking only around 35 per cent of their overseas labour needs from the Accession States. Accordingly, the Department began to implement a policy of Accession country preference by sending back to employers, with an explanation of policy, applications in respect of third country nationals in cases where experience had shown that the requisite skills were available in the Accession Countries. Employers were also informed that an application to fill the post in question with an Accession State national would be more likely to succeed (Department of Enterprise, Trade and Employment, 2004a, p. 45).

As in the UK, Accession State nationals face restrictions on access to Ireland's social welfare system. Ireland proposed the restrictions in February 2004 after the UK had done so. The measures, which are contained in the Social Welfare Miscellaneous Provisions Act, 2004, apply equally to all EU nationals and restrict access to social assistance and Child Benefit payments by introducing a 'Habitual Residence Condition'. See Section 5.4.3.

2.3.3 RACISM

There were 88 racist incidents recorded by the National Consultative Committee on Racism and Interculturalism (NCCRI) between May 2003 and April 2004 and 70 racist incidents between May 2004 and October 2004 (NCCRI, May-October, 2003; November-April 2004; May 2004-October 2004). Know Racism is the national programme aimed to address racism and promote cultural diversity. The Know Racism Programme is due to be followed by the National Action Plan Against Racism (NPAR). The formation of the NPAR was announced in 2002 and a consultative process was initiated involving the government, the social partners, representatives of minority ethnic groups, the traveller community and other stakeholders. The results of this process were published in July 2003 and the plan itself is expected to be launched shortly. The Minister for Justice, Equality and Law Reform has said that the plan will '…provide strategic direction to combat racism and to develop a more inclusive, intercultural society in Ireland'.[14]

The development of Ireland's anti-racism policy was enhanced recently by the enactment of the Equality Act 2004 which transposed the EU Race Directive and the Framework Directive in July 2004. This Act is discussed further in Sections 3 and 5.

There were a number of anti-racism initiatives connected with the EU Presidency which took place in the first part of 2004. In June the Minister for Justice, Equality and Law Reform held an EU Presidency Seminar in co-operation with the Irish NCCRI and the Vienna-based European Monitoring Centre on Racism and Interculturalism (EUMC). The theme of the conference was combating racism by building a more inclusive and intercultural Europe (Department of Justice, Equality and Law Reform, June 2004a). In addition the NCCRI, the Know Racism Campaign and the Equality Commission for Northern Ireland co-ordinated activities to celebrate International Day Against Racism on March 21st 2004. The theme was the full participation of minority ethnic groups at political, policy and community levels within Irish society.

Asylum

2.3.4 FASTER ASYLUM DETERMINATIONS

One of the goals articulated in the Department of Justice, Equality and Law Reform Strategy Statement 2001-2004 (published in the 2002 Annual Report) is to 'Implement the Government's asylum strategy in order to deliver more speedy decisions in relation to applications for refugee status…'(Department of Justice, Equality and Law Reform, 2003). The goal was articulated previously in the Department's 'Developments in Irish Asylum Policy' document (Department of Justice, Equality and Law Reform, 2002a). There were a number of measures introduced in the period designed to increase the speed of processing asylum applications, principally in the Immigration Act 2003. These will be discussed in more detail at Section 5.1 but include:

- Accelerated procedures/prioritisation
- Safe countries of origin
- Increased obligation on asylum applicants to participate.

The Irish Refugee Council has expressed concern about these faster asylum processes arguing that they are predicated on a 'culture of disbelief' (Irish Refugee Council, June 2003). The Minister for Justice, Equality and Law Reform defended the measures as necessary to '…meet the dual challenge of providing protection speedily to those who require it while at the same time dealing with the high level of abuse of our process which has been taking place

[14] Speech by the Minister at the launch of *Progress Report 2002-2004 and Strategic Plan 2005-2007 NCCRI,* 10th November 2003.

over a considerable period of time' (Department of Justice, Equality and Law Reform, June 2004b).

2.3.5 CARRIER LIABILITY

The introduction of carrier liability in the Immigration Act, 2003 was controversial. Critics felt that carrier companies were being asked to act as immigration officials although the carriers are only required to check that individuals have appropriate documentation and are not required to make any judgement on a person's immigration status. It was also suggested that genuine asylum seekers could be prevented from reaching the State and that without some means of permitting their passage asylum seekers/refugees could be driven into the hands of smugglers and traffickers (UNHCR, 2002). The Government defended the measures on the ground that they were necessary for Ireland to meet its obligations under the Schengen Agreement.

2.3.6 SUPPORTS TO ASYLUM SEEKERS

The Irish State continued its policy of direct provision for asylum seekers during the period. Under this system asylum seekers are housed on a full board basis and are paid €19.10 per adult and €9.60 per child per week. Related issues that arose during the period included the withdrawal of child benefit from asylum seekers as a result of the Habitual Residency Condition inserted in the Social Welfare (Miscellaneous Provisions) Act, 2004. See Section 5.4.3 for a more detailed discussion of the Habitual Residency Condition. In addition the Social Welfare (Miscellaneous Provisions) Act, 2003, which commenced on 27th May 2003, restricted the awarding of a rent supplement to asylum seekers.

The Reception and Integration Agency continued to support the work of a network of over sixty voluntary Support Groups working with asylum seekers in direct provision around Ireland. Grants amounting to a total of €140,000 were awarded in 2003 to these support groups under the Small Grants Scheme. The Agency continues its policy of facilitating the establishment of support groups in the vicinity of new asylum seeker accommodation centres.

2.3.7 UNACCOMPANIED MINORS/SEPARATED CHILDREN

The number of people claiming to be unaccompanied children who presented at the ORAC during 2003 fell slightly in line with asylum applications generally. However, at 841 the number of children involved remains high and necessitated continued development of the policy response.[15] The ORAC Annual Report for 2003 shows that a backlog of asylum applications involving minors built up during the year. This is attributed to a shortage of social workers in the East Coast Health Board. A related issue is that of age testing. Of the 841 people who presented in 2003, 112 were judged to be adults and admitted to the asylum process independently on that basis. The ORAC continues to research age testing methods among EU Member States but has not yet found an entirely reliable method (ORAC, 2004, p. 41).

As one of a series of country reports on trafficking in unaccompanied minors the International Organisation for Migration published a report in 2003 on trafficking in Ireland. The study found evidence of such trafficking and to the related problem of 'disappeared' children, who go missing after arrival or

[15] The Refugee Act, 1996 provides that Immigration Officers must refer non-national children who appear to be under 18 years old to the relevant health board. Health board personnel will try to reunite that child with her family or if that is not possible the health board will decide whether or not to make an application for asylum on that child's behalf. The ORAC has produced guidelines for the processing of such claims. They caution, for example, that children may have difficulty explaining their fears, so investigators should have greater regard to country of origin information.

from public authority care after entering the asylum system (see Conroy, 2003). It was recommended *inter alia*, that there should be more detailed reporting on child trafficking by the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal to heighten awareness of the issue.

Early in 2004 a working group was established involving all of those organisations which provide transition supports to aged-out unaccompanied minors (i.e. those who have reached 18 years of age) and to separated children seeking asylum. It is jointly chaired by the Reception and Integration Agency and the Eastern Regional Health Authority and it comprises representatives of relevant Government Departments, Vocational Educational Committees, Foroige (the national youth development organisation) and non-governmental bodies.

3. CHANGES IN LEGISLATION

3.1. Migration (Immigration and Integration)

3a.1 IMMIGRATION ACT 2003

A large number of amendments to the 1996 Refugee Act were introduced in the 2003 Immigration Act. These amendments will be discussed in detail in Section 3.2 below. In terms of immigration provisions the most significant element of the Immigration Act, 2003 was the introduction of carrier liability, whereby a carrier can be held responsible and fined for bringing an undocumented immigrant to the State. The Act requires carriers to perform basic checks to ensure that passengers from outside the Common Travel Area[16] are in possession of valid documentation necessary for entry into the State. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation. The following are now offences:

- Failure to ensure that a passenger, seeking to land in, or transit through, the State, disembarks in compliance with directions given by immigration officers.
- Failure to present a passenger seeking to land in the State to an immigration officer for examination in respect of leave to land.
- Failure to ensure that a non-national passenger seeking to land in, or transit through, the State, has with him/her a valid passport or other equivalent document which establishes his/her identity and nationality and, if required by law, a valid Irish visa or a valid Irish transit visa.
- Failure to furnish at the request of an immigration officer a list specifying the name and nationality of each person carried on board the vehicle and other information as prescribed.
- Failure to furnish, at the request of an immigration officer, details of the members of the crew of the vehicle.

Other provisions relate to the detention and removal of persons refused leave to land. There were four Statutory Instruments made under the 2003 Act: (1) Approved Ports Regulations[17] (2) Carrier Liability Regulations (3) Removal Direction Regulations[18] and (4) Removal Places of Detention Regulations.[19]

3.1.2 EMPLOYMENT PERMITS ACT, 2003

The Employment Permits Act was introduced in order to facilitate free access to the Irish labour market to nationals of the new EU Accession States after 1st May 2004. However the Act also allows the Minister for Enterprise, Trade and Employment to re-impose a requirement for employment permits in respect of nationals of the Accession States, if the labour market is experiencing, or is

[16] UK, Northern Ireland, the Channel Islands and the Isle of Man.
[17] The order provides a list of approved ports for non-nationals arriving in the State from places outside the State other than Great Britain or Northern Ireland, and those for non-nationals arriving in the State from within the Common Travel Area.
[18] The order prescribes the form to be used by an immigration officer or a member of the Garda Síochána (police) to give a direction in writing to a carrier to remove a person from the State.
[19] The order specifies the places where a non-national who is being removed from the State having been denied leave to land may be detained.

likely to experience a "disturbance". The Act also incorporates a provision whereby, for the first time, the requirements for employment permits in respect of non-nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance by both employers and employees.

3.1.2.1 Anticipated Employment Permits (No. 2) Bill 2003

In its *Annual Report, 2003* the Department of Enterprise Trade and Employment signalled that an Employment Permits (No. 2) Bill would be published in late 2004. This legislation is intended to '…put the various instruments of economic migration on a modern, statutory basis' (Department of Enterprise, Trade and Employment, 2004, p. 44).

3.1.3 SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 2004

The Social Welfare (Miscellaneous Provisions) Act was amended in February 2004 to include restrictions on access to certain social welfare payments. A Habitual Residence Condition was included ahead of the Accession of ten new Member States in May 2004. The test applies to all persons but was introduced to protect the Irish welfare system as Ireland has a common travel area with Britain, which necessitates having similar regulations for the receipt of welfare benefits by immigrants in the two countries. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare. The implementation of the Habitual Residence Condition will be discussed in Section 5.4.3 below.

3.1.4 IMMIGRATION ACT, 2004

Until the introduction of the Immigration Act, 2004 the 1935 Aliens Act and the Statutory Orders made thereunder formed the basic legislation governing the entry and residence of non-nationals in the State. As reported above at Section 2.1.2 a complex series of High and Supreme Court judgments led to the introduction of the 2004 Immigration Act.

The Act includes a wide range of provisions that would previously have been contained in the Statutory Orders made under the 1935 Act. It makes provision for the appointment of immigration officers and criteria for permission to land. The Act empowers the Minister to make Orders regarding visas and approved ports for landing and imposes limits on the duration of a non-national's stay. Certain obligations are imposed on carriers and persons landing in the State are required to be in possession of a passport or identity document and non-nationals are required to register with the Gardaí (police). Certain sections of the 2004 Act have been criticised by human rights and migrant rights groups. For example, the sections making provision for the refusal of permission for leave to land to non-nationals suffering from certain diseases or 'profound mental disturbance', the section making it an offence for an Irish national not to comply with immigration provisions, and the section obliging all persons to inform the authorities if a non-national who is in the State illegally, is living as part of their household. (See Amnesty International, Irish Section, February 2004; Immigrant Council of Ireland, February 2004; Irish Human Rights Commission, February 2004.)

3.1.5 NEW IMMIGRATION LEGISLATION

There is a stated intention to develop immigration policy and bring forward comprehensive new immigration and residence legislation within a structured framework. The development process was slower than expected in the period under discussion here as policy makers had to respond to specific issues as they arose in the wake of rapid immigration. The public consultation part of the process was launched by the Minister for Justice, Equality and Law Reform

in June 2001 and a review of the sixty-six submissions received was published in August 2002. (Department of Justice, Equality and Law Reform, August 2002). A comparative study of migration legislation and practice commissioned by the Department of Justice, Equality and Law Reform was published at the same time (IOM, 2002)

3.2 Asylum

3.2.1 AMENDMENTS TO THE REFUGEE ACT, 1996

The Refugee Act, 1996 was amended substantially under the Immigration Act, 2003. All asylum applicants may now have their fingerprints recorded, including children under 14 under special supervision. The permissible period for detention of asylum applicants between Court appearances was increased from 10 to 21 days. The Act places an increased duty to co-operate on the applicant: where this obligation is not met the application may be deemed withdrawn and his/her application rejected. The Act makes provision for the Minister to designate 'safe countries of origin' for the purpose of considering asylum applications from nationals of those States. Asylum seekers from these countries will be presumed not to be refugees unless they can show reasonable grounds for the contention that they are refugees. The Minister was empowered to issue prioritisation directives to the Refugee Applications Commissioner and the Refugee Appeals Tribunal for certain categories of applicants including apparently unfounded claims, apparently well-founded claims and cases of family reunification. A prioritisation directive requires ORAC and RAT to deal with the specified category of cases as soon as may be possible. In addition, a more streamlined accelerated procedure was introduced at appeal stage aimed at those applicants found not to be refugees at first instance and whose cases display certain features considered to be indicative of abuse of the asylum process including a delay in making an application for asylum without reasonable cause and manifestly unfounded claims. The Act also clarifies that the Chairperson of the Refugee Appeals Tribunal may publish decisions where he or she sees fit. Finally, the Act provides for revised arrangements for dealing with asylum applications which could be the responsibility of another EU Member State or Norway or Iceland and in this context makes provision for giving effect to the Dublin II Regulation.[20] The implementation of these regulations are discussed in Section 5.1 below.

3.2.2 THE REFUGEE ACT 1996 (SAFE COUNTRIES OF ORIGIN) ORDER, 2003

This Order lists the countries designated as safe for the purpose of prioritising applications for refugee status made by nationals of those countries under the Refugee Act, 1996. See Section 5.1.2.

3.2.3 SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 2003

Under the Social Welfare (Miscellaneous Provisions) Act, 2003 asylum seekers are no longer entitled to receive a rent supplement. Their needs are met through the State's direct provision accommodation and dispersal arrangements.

[20] See footnote 10.

3.3 General Legal Changes Affecting Migrants, Refugees and Asylum Seekers

3.3.1 EUROPEAN CONVENTION ON HUMAN RIGHTS ACT, 2003

The European Convention for the Protection of Human Rights and Fundamental Freedoms is a binding International Treaty of the Council of Europe. The Irish Act came into effect in December 2003. It has the effect of requiring the courts to interpret domestic legislation in a manner consistent with the Convention and rights under the Convention are now enforceable in Irish courts. The European Convention on Human Rights Bill was first introduced to the Oireachtas in 2001 and the Minister for Justice, Equality and Law Reform attributed the delay in passing the Bill to a general election in 2002. In response to criticisms that the Act is an inadequate incorporation of the Convention into Irish law the Minister noted that the '…Convention was never intended to have the effect as a shadow constitution for any Member State of the Council of Europe' (Department of Justice, Equality and Law Reform, October 2003).

3.3.2 EQUALITY ACT, 2004

The Employment Equality Act, 1998, the Equal Status Act, 2000 and the Equality Act, 2004 are the main pillars of Ireland's anti-discrimination policy which prohibits discrimination on nine grounds: gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller community. The Equality Act, 2004 was enacted in July 2004 and has the effect of implementing a number of EU directives in the area. The Equality Act extended equality legislation to domestic workers, self-employed people and persons over 65 years old.

3.3.3 THE TWENTY-SEVENTH AMENDMENT OF THE CONSTITUTION ACT, 2004

The Twenty-seventh Amendment of the Constitution Act was passed by way of referendum in June 2004 (see Section 2). The Act inserts a provision into the Constitution which has the effect that now, in order to automatically qualify for Irish citizenship, a child born in Ireland must have an Irish parent unless otherwise provided for by legislation. The Act, therefore, had the effect of restoring the power of the legislature with regard to the acquisition of citizenship.

3.3.4 IRISH NATIONALITY AND CITIZENSHIP (AMENDMENT) ACT, 2004

The legislature's responsibility in regard to the acquisition of citizenship was exercised in December 2004 with the passage of the Irish Nationality and Citizenship (Amendment) Act, 2004. This Act sets out the conditions under which Irish citizenship may be granted to a child born in Ireland with non-national parents. One of the parents must have been legally resident in the island of Ireland for three years during the four years immediately preceding the child's birth. Periods spent in the State pursuing education or awaiting determination of an asylum application do not qualify in this regard.

4. IMPLEMENTATION OF EU LEGISLATION AT NATIONAL LEVEL

4.1 Overview of the Implementation of Different EU Legal Instruments

Primary legislation: The Treaty of Amsterdam gave the European Community its greatest competence to date in asylum and immigration matters. The application of the new Title IV of the EC Treaty to Ireland and the UK is subject to the provisions of a Fourth Protocol to the Treaty of Amsterdam which is discussed below.

Secondary legislation: Secondary EU legislation can take a variety of forms:

- *Regulations* are directly applicable and binding in all EU Member States without the need for any national implementing legislation.
- *Directives* bind Member States as to the objectives to be achieved within a certain time limit while leaving the national authorities the choice of form and means to be used. Directives must be implemented in national legislation.
- *Decisions* are binding in all their aspects for those to whom they are addressed and do not require national implementing legislation. A Decision may be addressed to any or all Member States, to enterprises or to individuals.
- Recommendations and opinions are not binding.

4.2 The Relation Between National Policies and EU in the Fields of Migration and Asylum

The Fourth Protocol to the Amsterdam Treaty means that Ireland and the UK have three months from the date a proposal or initiative is presented to the Council by the Commission to notify the President of the Council in writing of its wish to take part. Ireland has the right to participate fully in discussions whether it opts in to a measure or not. While opting out excludes Ireland from the final vote on the adoption of an instrument, Ireland may still accept a measure at any stage after it has been adopted. Ireland made a declaration at the time the Amsterdam Treaty was signed of its intention to opt in to measures under Title IV of the Treaty as long as they are compatible with the Common Travel Area with Britain.

Table 4.1 shows the main developments in Ireland regarding EU legislation during the period under discussion. Such developments include the expiration of an opt-in date or a notification by Ireland to the President of the European Council of a desire to opt-in to the instrument. This may happen within three months after the proposed instrument has been sent to the Council, or at any time after the adoption of a measure by the Council. Table 4.1 also lists instruments on which there has been active discussion in Ireland during the

period as well as instruments that have been referenced in the period.[21]

In terms of asylum related instruments, Ireland has formally opted out of just one measure and intends to opt-in to two others. The transposition of the measures Ireland participates in into domestic law is quite clear.

The transposition of immigration legislation is less straightforward because the immigration system in Ireland is still largely administrative rather than legislatively based.[22] In their *Submission to the Review of Immigration and Residence Policy* the NCCRI observes "There is considerable discretion in the present legislation and arrangements related to immigration. Some discretion may be usefully retained for exceptional cases, but in general the overall level should be reduced in the interest of transparency and good practice" (NCCRI, 2001). Where possible details of transposition of EU immigration instruments are supplied in Table 4.1. Frequently, however, the only available information relates to whether Ireland opted-in or out under the Fourth Protocol.

Table 4.1: EU Legislative Developments and Related Irish Developments, January 2003-July 2004

Reference	Title and description of transposition	Opt-in Deadline	Ireland Opt-in	Adopted
	Asylum Proposals			
Not published in OJ yet. Ref. No. of Commission proposal COM(2004) 102 final.	*Council Decision establishing the European Refugee Fund (ERF) for period 2005-2010* This Decision does not require active transposition by the Irish government. The purpose of the fund is to support efforts in receiving asylum seekers, integrating refugees and voluntary repatriation projects. €880,000 has been allocated to projects in Ireland under ERF 2004. The Reception and Integration Agency (RIA) of the Department of Justice, Equality and Law Reform is the designated responsible authority for administration of the fund in Ireland. Political agreement was reached during the reference period that support for Ireland under the ERF will continue with a second phase of the ERF (ERF2), which will run from 2005 until 2010 inclusive (Department of Justice, Equality and Law Reform, September 2004).	12 May 2004	Yes	29 November 2004
Council Directive 2003/9/EC	*Council Directive laying down minimum standards on the reception of applicants for asylum in Member States.* Many of the key provisions of this Directive, although the responsibility of a number of Government Departments and agencies, are already covered by national procedures. The Government state that national standards exceed those provided for in the Directive and that the exercise of the option in respect of this Directive is under consideration at the present time.	29 Aug 2001	No – Under consideration	27 January 2003
Council Decision 2002/463/EC	*Council Decision adopting an action programme for administrative cooperation in the fields of external borders, visa, asylum and immigration (ARGO programme).*	N/A	Intend to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval	13 June 2002

[21] Where possible references have been included for instruments in the table. There are a variety of references that may appear in relation to EU instruments. Sometime after adoption the instrument normally appears in the European Commission Official Journal (OJ). This entry gives rise to a reference in the following format e.g. Council Decision/2001/9/EC. Where an adopted instrument has not appeared in the OJ or an instrument has not yet been adopted the reference number of the proposal as published by the Commission is used instead – the COM reference. For instruments proposed by the Council the Council reference has been entered.

[22] Frequently cited examples of the lack of transparency inherent in the administration based immigration system are in regard to the definition and entitlements of long-term residents and family reunification entitlements (see NCCRI, 2001, pp. 4-6). Ireland has opted out of EU measures in both these areas under the Fourth Protocol.

Reference	Title and description of transposition	Opt-in Deadline	Ireland Opt-in	Adopted
Not published in OJ yet. Ref. no of Commission-proposal: COM (2004) 384 final	*Proposal for a Council Decision amending Decision No. 2002/463/EC adopting an action programme for administrative co-operation in the fields of external borders, visa, asylum and immigration (ARGO programme).*	N/A	Intend to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval.	13 December 2004
Council Regulation EC 343/2003	*Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third country national.* The Regulation informally known as the "Dublin II" Regulation has direct effect, however, part of the associated procedural changes necessitated an Irish legislative response. Regarding cases where the asylum application should be dealt with in another Member State the transfer of the applicant is now done by a simple transfer order rather than by the previous mechanism of a deportation order. This part of the change in procedures necessitated an Irish legislative response in the form of an amendment to the Refugee Act, 1996 through the Immigration Act, 2003. The Dublin II transfer order will be immediately effective on arriving at the first-instance decision. An appeal can be made from abroad and any change as a result of the appeal will mean that the applicant will be accepted back into the State to have the asylum claim dealt with here.	3 November 2001	Yes	18 February 2003
Council Directive 2001/55/EC	*Council Directive on the minimum standards for giving temporary protection in the event of a mass influx of displaced persons.* The Temporary Protection Directive was by default transposed through the existing provision in relation to Programme Refugees included in the Refugee Act, 1996 as amended by the Immigration Act, 2003. The 2003 Act added provision for consultation with the UNHCR regarding the reception and resettlement in the State of such persons in need of temporary protection.	5 October 2003	Yes	20 July 2001
COM/2002/0326 Final/2.	*Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.* Ireland has exercised its Fourth Protocol right to opt-in to this directive. It is generally considered that Irish standards are higher than those proposed in the EU Directive. For example, in relation to 'safe third countries' the Irish Refugee Act as amended by the Immigration Act, 2003 provides that the Minister for Justice, Equality and Law Reform and the Minister for Foreign Affairs may draw up a list of safe third countries. In deciding whether or not to make such a designation the Minister should have regard to whether the country is a party to and 'generally complies with' obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights whether the country has a democratic political system, an independent judiciary, and is governed by the rule of law (Refugee Act, 1996 as amended Section 12.4.b). In this respect the Irish government has gone further than is required in the proposal for a Council Directive. The proposed Directive states that Member States may adopt or retain accelerated procedures for the purposes of processing inadmissible applications (including those with a 'safe third country' or 'first country of asylum'), manifestly unfounded and other unfounded applications, repeat applications and in taking decisions on entry at border points. Asylum claims that are found to be abandoned or late may be dealt with through accelerated procedures (Mullally, 2003, p. 148). Ireland's national asylum policy is moving in a similar	14 February 2000	Yes	Yet to be adopted

Reference	Title and description of transposition	Opt-in Deadline	Ireland Opt-in	Adopted
	direction. The majority of the measures mentioned above are to be found in recent immigration legislation in Ireland. They will be discussed in more depth in Section 5.1.			
Council Directive 2004/83/EC	*Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (i.e. subsidiary protection).* This Directive was adopted on April 29th 2004. Ireland has opted-in under the Fourth Protocol and the directive will be transposed in the next two years.	14 February 2002	Yes	29 April 2004
	Migration (Admission) Proposals			
	Proposal for a Council Directive on a specific procedure for admitting third country nationals for the purposes of scientific research.	30 June 2004	Yes	
	Proposal for a Council Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community.	30 June 2004	Not applicable	
	Migration (Expulsion) Proposals			
Council Directive 2003/110/EC	*Proposal from the Federal Republic of Germany for a Council Directive on assistance in cases of transit for the purposes of removal by air (German Air Directive)*	25 Nov. 2003	Intends to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval.	
Council Directive/2001/40/EC	*Council Directive on the mutual recognition of decision concerning expulsion of third country nationals.*	28 May 2001	Intends to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval.	28 May 2001
Council Decision 2004/80/EC	*Council Decision concerning the signing of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation & Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Government of the (Hong Kong) Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation.*	23 Sept 2002	Ireland opted-in as part of Schengen. (does not require domestic legislation.)	17 December 2003
Council Decision 2004/191/EC	*Proposal by the Commission for a Council Decision setting out the criteria and practical arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals.*	23 Feb. 2003	Intends to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval.	23 February 2003
Decision 2004/424/EC	*Council Decision concerning the conclusion of the agreement between the European Community and the Government of the Macao Special Administrative region of the People's Republic of China on the readmission of persons residing without authorisation.*	13 Oct 2003	Intends to opt-in under Art.4 of the fourth Protocol TEC subject to Parliamentary approval.	21 April 2004
	Proposal for a Council Decision concerning the signing of the agreement between the European Community and the Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation and Council Decision concerning the conclusion of the agreement between the European Community and the	25 Nov. 2003	Intends to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary	

Reference	Title and description of transposition	Opt-in Deadline	Ireland Opt-in	Adopted
	Government of the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation.		approval.	
Council Decision 2004/573/EC	*Council Decision on the shared organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are the subject of individual removal orders.*	29 April 2004	Intends to opt-in under Art.4 of the Fourth Protocol TEC subject to Parliamentary approval.	
	Proposal for a Council Decision establishing a secure web-based Information and Coordination Network for Members States' Migration Management Services (ICONet)	Delayed because of technical problems with text. Expected to be adopted soon.	Intend to opt-in under Art.4 of the Fourth Protocol TEC once it is adopted subject to Parliamentary approval.	
	Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation; and Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation.	Adoption by Council awaited	Intend to opt-in under Art.4 of the fourth Protocol TEC subject to Parliamentary approval	
	Visa Proposals, title and description of transposition			
Council Regulation 2003/453/EC	*Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.*		No	
	Proposal for a Council Regulation laying down a uniform format for residence permits for third-country nationals.	2 Jan. 2004	Yes	
	Proposal for a Council Regulation laying down a uniform format for visas for third-country nationals.	2 Jan. 2004	Yes	
	Border Proposals, title and description of transposition			
Council Directive 2004/82/EC	*Initiative of the Kingdom of Spain with a view to adopting a council Directive on the obligation of carriers to communicate passenger data.*	26 June 2003	This automatically applies to Ireland by virtue of Council Decision 2002/192/EC	
Council Regulation 377/2004	*Initiative of the Hellenic Republic with a view to adopting a Council Regulation on the creation of an immigration liaison officers network.*	3 Sept. 2003	No	
	Equality measures, title and description of transposition			
Council Directive 2000/43	'*The Racial Equality Directive' or 'Race Directive'. Council Directive implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin.* The Race Directive prohibits discrimination on grounds of race and ethnic origin in access to employment, vocational training, employment and working conditions, membership of and involvement in unions and employer organisations, social protection including social security and health care, 'social advantage' education as well as goods and services, including housing. It was transposed into Irish domestic law through the Equality Act, 2004 in July 2.	Not applicable	Not applicable	
Council Directive200	'*Framework Employment Directive'. Establishing a general framework for equal treatment in employment and occupation.*	Not applicable	Not applicable	

Reference	Title and description of transposition	Opt-in Deadline	Ireland Opt-in	Adopted
0/78/EC	The Framework Employment Directive was transposed into Irish law through the Equality Act, 2004 in July 2004.			

5. POLICY IMPLEMENTATION ISSUES

5.1 Gates of Entry

5.1.1 ACCELERATED PROCEDURES/PRIORITISATION

The period under discussion saw significant developments in relation to accelerated procedures. The Refugee Act, 1996 included a 'manifestly unfounded' designation to apply to certain categories of asylum applicants. Such applicants had a shorter time to appeal and had no right to an oral hearing at appeal. Accelerated procedures of this type are controversial and some commentators warn of an increased risk to the principle of *non-refoulement*.[23] The UNHCR has however stated that accelerated procedures may be appropriate for dealing with a limited category of asylum claims. Mullally observes that Ireland is not alone in pursuing 'fast tracking' measures. She suggests that the drive towards a harmonised EU asylum policy has increased the emphasis on speed in the determination of asylum claims (Mullally, 2003, p. 147).

Amendments to the Refugee Act introduced in the Immigration Act, 2003 brought to an end the 'manifestly unfounded' designation in Ireland but furthered the policy of speedier determinations in respect of some applicants. Quite complex 'prioritised' and 'accelerated' procedures were put in place instead. The amended Refugee Act now includes lists of asylum claims that may be 'prioritised' subject to an instruction from the Minister for Justice, Equality and Law Reform. These may be apparently unfounded claims, apparently well-founded claims, cases of family reunification or other categories (for example, applicants aged under 18 years or those from safe countries of origin, see below). On 15 September 2003, the Minister for Justice, Equality and Law Reform issued a directive to the Refugee Applications Commissioner to prioritise the countries designated as safe countries of origin under the Refugee Act, 1996 (Safe Countries of Origin) Order 2003. In December 2003 the Minister for Justice, Equality and Law Reform directed the Chairperson of the Refugee Appeals Tribunal to accord priority to asylum applications received from Nigerian nationals as of 11 December 2003 (Refugee Appeals Tribunal, 2004, p. 7). As Figure 1.2 shows recent policy changes have been effective in reducing the number of asylum applications from Nigerian nationals. It is important to note that all applicants irrespective of whether they are prioritised for processing or otherwise receive the same merits consideration of their cases.

The amendments to the Refugee Act also inserted a list of categories of applicants that may be subject to 'accelerated' procedures, which overlaps with the 'prioritised' list. Many of these categories would previously have been deemed 'manifestly unfounded' under the old system. In the case of a negative decision by the ORAC, where the decision includes a finding listed in the new

[23] The principle of *non-refoulement* is one fundamental to refugee protection whereby a person will not be returned to a place where their life or liberty may be threatened.

Section 13 of the Act,[24] the applicant is not entitled to an oral appeal and will have ten working days to appeal a negative status determination instead of fifteen. The Minister has the power to decrease this period of appeal further to four working days for certain categories of applicants although this power has not been exercised to date. Figure 1.3 shows that the changes introduced by way of the Immigration Act in September 2003 resulted in an increase in the number of cases dealt with under accelerated procedures (Refugee Appeals Tribunal, 2004, p. 29).

5.1.2 SAFE COUNTRIES OF ORIGIN

The concept of a safe country of origin was introduced for the first time in the Immigration Act, 2003. With effect from 15th September 2003, applicants for asylum from such designated countries must rebut the presumption that they are not in need of refugee protection. The Refugee Appeals Tribunal makes decisions on the basis of papers alone rather than with an oral hearing. In deciding whether to make a 'safe country of origin' designation, the Minister considers whether the country is party to certain international human rights instruments, whether it has a democratic political system and an independent judiciary, and whether it is governed by the rule of law. The requirement to take account of whether a State is party to and generally complies with the '…Convention Against Torture, the International Covenant on Civil and Political Rights, and, where appropriate, the European Convention on Human Rights…'[25] is welcomed by many as an improvement on the 'manifestly unfounded' system under which all countries party to the Geneva Convention were assumed to be safe.

The list of countries deemed to be 'safe countries of origin' will be kept under review but from September 2003 it comprised the following countries: Bulgaria, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia (obviously the Accession States listed are no longer relevant).

5.1.3 INCREASED OBLIGATION ON APPLICANTS TO PARTICIPATE

During 2003 the ORAC made 1,503 recommendations to refuse refugee status because of non-attendance at scheduled interviews representing 10 per cent of all recommendation issued that year. The problem of poor participation posed serious management and resource challenges to ORAC staff (ORAC, 2003, p. 15). Amendments to the Refugee Act introduced in the Immigration Act, 2003 allow the ORAC to more easily conclude cases were there is unsatisfactory participation in the asylum application process. The amendments require asylum applicants to notify the relevant bodies of address changes, respond promptly to correspondence about asylum applications, turn up for scheduled interviews etc. Applicants failing to co-operate run the risk of having their applications deemed withdrawn and consequently rejected – a status without any right to appeal. In the period since the new measures became effective September 2003 until December 2003, 1,666 asylum applications were deemed withdrawn in this way, representing 17 per cent of total recommendations issued in the year (ORAC, 2004, p. 19).[26] The new regulations appear to have had the effect of improving participation. For

[24] Such findings include a finding that the application showed a weak basis for the contention that the applicant is a refugee; the applicant gave false, contradictory or incomplete evidence; there was unexplained delay between entering the State and making an asylum application; the applicant had lodged a prior application for asylum in another State party to the Geneva Convention; and that the applicant is a national of, or has a right of residence in, a safe country of origin.

[25] Refugee Act, 1996 as amended by the Immigration Act, 2003.

[26] See footnote 1.

example, at the Office of the Refugee Applications Commissioner, 69 per cent of all scheduled interviews were attended and went ahead in December as opposed to 40 per cent in January (ORAC, 2004, p. 28).

The number of cases voluntarily withdrawn by the applicant has dropped markedly from 6,073 to 1,243 between 2002 and 2003 as discussed in Section 1.2.1.1.

5.1.4 CREDIBILITY OF APPLICANTS

The Refugee Act, 1996, as amended by the Immigration Act, 2003, places explicit emphasis on the credibility of asylum applicants in the determination of their claim. The Act now lists a range of factors the ORAC and the Refugee Appeals Tribunal must consider. These include no reasonable explanation for a lack of identity documents or for having forged documents; giving vague, incomplete or obviously false information on how the applicant got to Ireland; and having no reasonable excuse for a delay in making an application. Asylum seeker support groups and other commentators argue that there is potential for *refoulement* in too much emphasis on credibility. They argue that there is increasing emphasis on immigration control rather than protection in asylum policy and they stress the importance of maintaining the principle of benefit of the doubt (Mullally, 2003; Irish Refugee Council, June 2003).

5.1.5 FAMILY REUNIFICATION

Refugees are the only group of non-nationals in Ireland with statutory family reunification entitlements. A number of groups have called for clarification of the rights in this regard of other non-Irish nationals during the reference period. The Immigrant Council of Ireland makes the point that decision-making is discretionary and that the process can take over a year leading to uncertainty and anxiety (Immigrant Council of Ireland, July 2004). The Irish Refugee Council has expressed concern about the backlog of applications made by refugees. It is argued that applications are sometimes refused on improper grounds and that the processing of appeals is too slow (Irish Refugee Council, January 2004). Under the Fourth Protocol to the Amsterdam Treaty Ireland opted-out of the EU Council Directive on the right to family reunification in 2003 citing problems with the Common Travel Area with the UK.

5.1.6 FINGERPRINTING

Since November 2000 a policy of mandatory fingerprinting has been implemented in Ireland. Any asylum-seeker over the age of 14 years must have their fingerprints recorded. Refusal can lead to detention and possible deportation. In January 2003 the EURODAC fingerprinting system became fully operational. The Immigration Act, enacted in September 2003, makes provision for children less than 14 years old to also have their fingerprints recorded. Since 15 January 2003, the fingerprints of anyone who applies for asylum in the European Union (except Denmark, for the time being) and in Norway and Iceland, are stored in a database called EURODAC. In relation to Ireland, in the period between 15 January 2003 and 15 January 2004 the information showed:

- 87 sets of fingerprints sent by Ireland matched those of asylum seekers already sent to EURODAC by Ireland;
- 164 sets sent by Ireland matched stored fingerprints from another State;
- 59 sets sent by other States matched stored fingerprints from Ireland (Commission Staff Working Paper, 2004).

5.1.7 IMPOSITION OF REPORTING AND RESIDENCY REQUIREMENTS

In tandem with the changes introduced in the asylum process by means of the Immigration Act, 2003 a policy change was made with regard to the use of existing powers contained in the Refugee Act, 1996 providing for the imposition of reporting and residency requirements on asylum applicants. Since 15 September 2003 a requirement is imposed on all applicants at the time of making an application to reside in a particular reception centre and in addition a requirement to report at regular intervals is imposed on those applicants falling within the categories subject to the prioritisation directives. The objective of this policy change is to ensure rapid identification of applicants not co-operating with the asylum process thereby ensuring greater efficiency in use of resources.

5.2 Labour Market and Employment (Measures to Reduce Unemployment, Training, etc.)

5.2.1 WORK PERMITS

Until approximately five years ago the small number of work permits issued for non-EEA nationals under the Irish work visa/work authorisation and work permit schemes attracted little attention. A work visa/work authorisation can be applied for at Irish Embassies and Consulates by suitably qualified people from non-EEA countries to work in designated sectors of the economy where there are skill shortages. As already noted, a work permit is issued to an employer wishing to employ a non-EEA national in a job for which no Irish or other EEA national can be found. As migratory flows increased and labour force growth slackened the Department of Enterprise, Trade and Employment in January 2002 strengthened the requirement that employers should seek to employ an Irish or EEA national before applying for a work permit. This means that the job must be advertised with FÁS, the National Employment and Training Authority. If after advertising a vacancy for four weeks, FÁS considers a work permit is justified the employer may apply for one by submitting the appropriate form with supporting documentation from FÁS.

In January 2003 the Department of Enterprise, Trade and Employment announced further changes to the existing work permit procedures. Following an analysis of the skills profile of jobseekers registered with FÁS the Department of Enterprise, Trade and Employment announced that 'Ineligible Occupation Sectors' would be specified on a quarterly basis. It said that applications for work permits in these sectors would not be considered as there were deemed to be sufficient personnel registered with FÁS to fill any positions arising. The first list, published in April comprised a broad range of occupations including clerical and administrative, general labourers and builders, operator and production staff, sales staff and childcare workers. A review was issued in August 2003 in which a number of occupations were removed from the ineligible list.

In April 2003 the Department also introduced a 'fast track' list of occupations. Vacancies arising within these occupations are deemed unlikely to be filled by EEA nationals therefore applications for work permits are processed more quickly. In February 2004 new arrangements were put in place to facilitate the employment of the spouses of non-EEA nationals holding working visa/authorisations in Ireland. The Minister of Enterprise, Trade and Employment drew particular attention to the problem of attracting and retaining nurses from non-EEA countries to a country where their spouses cannot work. The restrictions on work permits described above do not apply to the spouses of such workers. (Department of Enterprise, Trade and Employment, February; April; August 2003).

5.2.2 ACCESS TO TRAINING

Citizens of the new EU Member States were given access to job-seeker and job-guidance services provided by FÁS, Ireland's Training and Employment Authority from 1 May 2004. However, in parallel with the special rules for social welfare rights for citizens of the Accession States they were not allowed to participate in training and employment programmes. A decision was subsequently taken by the Training and Employment Authority that the same guidelines for eligibility for these programmes should apply to citizens of the new Member States as apply to citizens of the EU-15 Member States. Conditions of access to these programmes vary. Some are open to any applicant, while others require prior receipt of social welfare benefits. Access to the Community Employment scheme, for example, is primarily for those who have been on the Live Register of unemployed people for a minimum of a year.

5.2.3 DISCRIMINATION AGAINST MIGRANT WORKERS

The Equality Authority was established in 1999 under the Employment Equality Act, 1998 to enforce the equality legislation.[27] In its *Annual Report 2003* the Equality Authority observed that for the first time race was the largest category within employment equality cases taken in the year. A large number of migrant workers reported incidents of excessive overtime, lack of holiday pay and unfair dismissal. Of the 166 race-based employment equality cases undertaken during 2003, 77 related to working conditions, 34 to dismissals and 22 to access to employment. The changes in the Equality Authority caseload reflect the vulnerability of migrant workers in Ireland, many of whom accept poor conditions rather than jeopardise their work permit (Equality Authority, 2004, p. 19). A number of support groups, for example the Immigrant Council of Ireland and the Migrant Rights Centre Ireland, have made calls for the work permit system to be altered to allow the migrant worker to hold the work permit rather than the Irish employer (Immigrant Council of Ireland, October 2003).

There have been significant developments during the period in relation to domestic workers. During 2003 this group was not covered by employment equality legislation and the Equality Authority expressed frustration about being unable to undertake cases for such migrant workers (Equality Authority, 2004, p. 20). This situation has since been partially remedied as domestic workers are now covered by the Equality Act, 2004 in terms of their conditions of employment but discrimination in relation to their recruitment is still exempt.

5.3 Housing (Accommodation Provision, etc.)

As mentioned above the Social Welfare (Miscellaneous Provisions) Act, 2003 restricts the awarding of a rent supplement to asylum seekers. Asylum seekers are now housed within the direct provision system with some limited exceptions where other arrangements are necessary, for example on health grounds.

Another significant development was the introduction in January 2004 of a rent supplement restriction. Applicants for rent supplement must have already been renting for a six-month period except in exceptional circumstances. Non-governmental groups such as Threshold criticised this measure claiming that returning emigrants among others are being placed in a vulnerable position.[28] In introducing the restriction the Minister commented that the purpose of rent

[27] The Equality Authority replaced the Employment Equality Agency, which was established under the Employment Equality Act, 1977. It has a much-expanded range of functions.
[28] 'Rent supplement cuts result in extreme hardship report'. *The Irish Times*, September 28th 2004

supplement is to meet income maintenance needs, not long-term housing needs and that such a measure is needed to re-focus the scheme on income maintenance e.g. existing tenants who become unemployed and can no longer afford their rent (Department of Social and Family Affairs, November 2003). This measure was rescinded in the December 2004 Budget.

5.4 Welfare System (Healthcare, Social Security Issues, etc.)

5.4.1 PERSONAL PUBLIC SERVICE NUMBERS

A Personal Public Service Number (PPSN) is issued to a person seeking work or applying for social welfare. The number of PPSNs allocated in the first four months after 1 May 2004 to people from the new Member States was around 31,000 compared with about 3,000 in the four months preceding enlargement. However, a significant proportion of the applications after 1 May could have been made by people from the Accession States who were already in the country on that date.

The impact on the figures of those seeking welfare is likely to be quite small because a Habitual Residency Condition is applied to applicants, which many non-nationals would probably find difficult to satisfy (see below).

5.4.2 HEALTHCARE

During the reference period the health service in Ireland became directly involved in the policy debate around Irish citizenship discussed at Section 2.3.1. The Masters of the main maternity hospitals in Dublin claimed that maternity wards were being put under severe pressure by large numbers of non-EU nationals arriving to give birth at short notice.[29]

5.4.3 HABITUAL RESIDENCY CONDITION

A Habitual Residency Condition was introduced in a late amendment to the Social Welfare Miscellaneous Provisions Act, 2004. It restricts access to social assistance and Child Benefit. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social welfare. There was concern that this test might exclude returning Irish migrants from claiming social welfare. The Minister for Social and Family Affairs indicated that although the test will apply to all persons it is intended to protect the Irish welfare system from so called 'welfare tourism' within the EU. Having regard to a range of other factors (e.g. length/continuity of residence; employment prospects; reasons for coming to Ireland; future intentions and centre of interest (e.g. family)) it is argued that people with a valid 'connection' with Ireland will still be able to access social welfare. Data on social welfare claims decided between May and October 2004 are presented in Table 5.1. The majority of Irish and UK[30] applicants had their claims accepted while 58 per cent of nationals from the new Member States were successful. The number of non-EU applicants passing the Habitual Residency Condition was 32 per cent. The residency condition operates in a way that does not generally exclude returning Irish migrants or UK nationals but it is having a greater impact on nationals of the old EU states than on the nationals of the new Member States for whom it was designed.

[29] 'Masters deny seeking change of status on non nationals', *The Irish Times*, March 13th 2004. 'Masters urged tighter controls on immigration', *The Irish Times*, April 22nd 2004.

[30] These figures refer to Irish/UK nationals who answered 'no' to the question of whether they have been resident in Ireland/UK for 'all or most of their lives'. They are likely to be mainly returned emigrants.

Table 5.1: Habitual Residency Condition, Decisions Made May – October 2004

	Nationality			
Claims decided*	Irish	UK	EU 13	New Member States
Yes	1,094	870	168	310
No	108	48	521	228
% Yes	91	95	24	58
% No	9	5	76	42

Source: The Habitual Residency Unit, Department of Social and Family Affairs.
*Claims processed centrally through the Habitual Residency Conditions Unit.

The introduction of the Habitual Residency Condition has also affected asylum seekers. Many asylum seekers who would previously have been entitled to Child Benefit and certain social assistance payments (e.g. One Parent Family allowance, Disability Allowance and Social Welfare Allowance) may no longer claim them if they entered the State after May 1st 2004. The habitual residence test does not apply to Exceptional Needs Payments[31] which asylum seekers may therefore continue to receive along with their weekly payments. Due to concerns expressed by interest groups regarding the Habitual Residency Condition the Department of Social and Family Affairs consult on an ongoing basis with the NCCRI and Immigrant Council of Ireland on the implementation of the Condition.

Since 2nd March 2004, the Reception and Integration Agency has been assigned responsibility for supporting the repatriation of nationals of the ten new EU Member States who fail the Habitual Residency Condition (see section 5.4.3) required for social assistance payments.

5.5 Specific Integration Measures (Integration Programmes, Language Learning, School Programmes)

The Reception and Integration Agency (RIA) is responsible for the implementation of integration policy for refugees and persons granted leave to remain in the State. The RIA also co-ordinates support services for asylum seekers such as English language classes, legal and health services. RIA hosted five regional conferences with relevant voluntary organisations between October 2003 and January 2004 under the theme 'Support for Asylum Seekers – Moving Forward Together'. The Agency also launched a series of regional Commemoration Awards for people with refugee status. Award events were held in December 2003, February and March 2004.

In November 2003 the Reception and Integration Agency hosted an Integration Forum entitled "Exploring Common Goals". Specifically aimed at an audience of service providers and non-governmental organisations, the Forum explored how best the Agency can work with its many partners in the area of integration.

The MORE Project, which commenced in December 2003 and will conclude in April 2005, is working to develop comprehensive resettlement models which would link together all resettlement related measures from interviews and decisions made in the first country of asylum to the local level reception and integration measures. This is a trans-national partnership project between the Reception and Integration Agency and the Ministry of Labour in Finland and is co-funded by the European Refugee Fund. Ireland and Finland are among a group of eighteen countries worldwide which participate in the Resettlement Programme of the United Nations High Commissioner for Refugees. On an annual basis Ireland resettles ten families under the programme.

[31] Exceptional Needs Payments are once-off payments made to asylum seekers under the Social Welfare Allowance scheme towards the cost of necessary travel, clothes, prams and baby baths etc.

5.6 Naturalisation

There were no policy changes in relation to naturalisation during the reference period.

5.7 Return

It is the policy of the Irish Government to repatriate failed asylum seekers to their country of origin, voluntarily if possible. Successfully effecting such repatriations continues to pose challenges. Where the Minister proposes to make a deportation order requiring an unsuccessful applicant to leave the State, that person is given three options: to make representations to the Minister within 15 working days; to leave the State voluntarily within a short period; or to consent to the making of the deportation order within 15 working days.

Table 5.2 shows that while the policy to increase the number of repatriations per year has been successful, many more deportation orders are signed than effected every year. This is because many are subsequently challenged in the courts or the subject evades deportation. In order to facilitate repatriation, Ireland has made return agreements with Poland, Nigeria, Romania, and Bulgaria. The readmission agreement with Nigeria is controversial in light of the Sharia law enforced in some parts of the country.[32] As Table 1.2 shows Nigerian nationals form the largest group of asylum seekers in Ireland.

The table below also shows the increase in the number of voluntary repatriations achieved over recent years. Some of these have been organised through the government funded International Organisation for Migration (IOM) voluntary return programs. Under such programmes returning migrants are given assistance to return and in some cases assistance to reintegrate. Such support is not in the form of a cash payment, but rather assistance with starting a small business, training, job placements, further education and language courses, as well as the provision of information and referral to local health services, social security systems and other services as appropriate. There are three specific IOM programmes in Ireland targeted at asylum-seekers and irregular migrants from non-EU countries, unaccompanied minors, and non-national families with Irish-born children.

Table 5.2: Voluntary Return and Deportation from Ireland, 1999-2004

	Deportation Orders Signed	Deportation Orders Effected	Voluntary Returns Effected
1999	102	6	37
2000	940	187	248
2001	2,025	365	365
2002	2,430	521	506
2003	2,411	590	762
Jan – Jul 2004	1,691	353	401

Source: Department of Justice, Equality and Law Reform.

The methods used to effect deportations came under discussion during the period. Chartered flights were used to return non-Irish nationals to Romania and Moldova in November 2003, February and March 2004 and to Nigeria in April 2004.[33] The Chief Superintendent of the Garda National Immigration Bureau (GNIB) stated that although these operations were expensive they were effective and he signalled that specially chartered flights were likely to

[32] The highly publicised case of Amina Lawal who was faced with the death penalty before a Sharia court at Bakori, Nigeria drew particular attention to this issue during the reference period (Amnesty International Irish Section, March, September 2003).

[33] '25 deported in Irish UK operation', *The Irish Times*, November 19th 2003; 'Seventy failed asylum seekers for deportation', *The Irish Times*, March 31st 2004; 'Concern at covert deportation of 65 immigrants', *The Irish Times*, February 13th 2004; '35 failed asylum-seekers flown back to Nigeria' Ireland.com Breaking news www.ireland.com accessed on 7th April 2004.

become more common as co-operation with other EU states on deportations increased.[34] Organisations such as the Irish Refugee Council have expressed concern about aspects of these GNIB operations (for example, the deportation of minors without guardians, or the arrival of large numbers of Gardaí at night to the home of a deportee). At the end of July 2004 the Irish Refugee Council issued guidelines on deportation drawing attention to the suspensive effect of legal proceedings, the need for appropriate guardianship of minors and calling for independent monitoring of deportations (Irish Refugee Council, July 2004a, b).

5.8 Other

5.8.1 DETENTION

Generally asylum seekers are not detained in Ireland pending determination of their claim. The Refugee Act, 1996 provides that asylum seekers may be detained in a number of specific situations including facilitating deportation, posing a threat to the public or intending to transit through the country to enter another State illegally. In the case of detention in order to deport, all outstanding legal proceedings must have been resolved and there must be a 'proximate or concluded intention to deport'[35]. There were a number of cases in the period involving non-nationals challenging the legality of their detention.

In the case of Bola Funmi Ojo v The Governor of Dóchas Centre and Others[36] the High Court found that the detention of the applicant was unlawful because she had legal proceedings outstanding and therefore there could no 'final and concluded' intention to deport. In the case of Sunny Okoroafor v The Governor of Cloverhill Prison and Others[37] the High Court found that the applicant *could* be detained legally despite the fact that a decision on whether or not to hear his second asylum application was pending. This was because he had entered the State to make a second asylum application despite having been denied refugee status and deported previously. The Court pointed out that the original deportation order required him 'to remain thereafter out of the State'.

The Refugee Act, 1996 provides that in order to detain an asylum seeker that person must be brought before a District Court Judge. The Judge may impose a detention period of 21 days and thereafter the detainee must be brought before the Judge for a review every 21 days. Amendments to the Refugee Act introduced in the Immigration Act, 2003 increased the permissible interval between court appearances from ten to 21 days. Some commentators and support groups have expressed concern about this change (Irish Refugee Council, June 2003; Mullally, 2003).

[34] 'More mass deportations planned using charters', *The Irish Times*, February 13th 2004.
[35] *Source*: Ojo v Governor of Dóchas Centre, Ojo and Others v Minister for Justice, Equality and Law Reform – High Court – 8th May, 2003.)
[36] [2003] 8 ICLMD 118
[37] [2003] 12 ICLMD 82

6. SUMMARY

6.1 Highlights of Migration and Asylum Politics

During the period between January 2003 and July 2004 migration and asylum frequently dominated the political agenda. In particular there were three interrelated issues which stimulated public debate:

- Management of asylum applications;
- Irish citizenship;
- Accession of ten new EU Member States.

As the legal framework is put in place for dealing with asylum migration to Ireland, and the number of asylum applicants continues to fall, attention has moved from the pressure on services which dominated the political agenda up to 2002. Instead the relationship between asylum flows and Irish citizenship became highly political during the reference period. The accession of ten new Member States occurred one month before a referendum on the acquisition of Irish citizenship and may have had an influence on the result, as the Irish electorate reassessed their position within a now much larger European Union. The constitutional referendum and the European Court of Justice case Chen v UK presented the issue of how closely Irish citizenship is now linked to residence in other EU countries.[38] The *jus soli* (place of birth) system for the acquisition of citizenship moved Ireland from a peripheral position to one with responsibilities of central importance within the European Union. A recurrent theme throughout the period was the perceived threat of 'abuse' of Irish citizenship, and the benefits associated with it such as access to the health and social welfare services.

6.2 Interpretation of Current Trends

Asylum: The decrease in the number of asylum applications has been the dominant trend discussed in the current report. This fall (shown in Figure 1.1) may be attributed to the global reduction in asylum applications, the introduction of sanctions for the employment of illegal immigrants, the introduction of carrier's liability, restrictions on rent allowance and to developments around the acquisition of Irish citizenship. The view that some non-EU nationals were coming to Ireland to give birth and therefore acquire Irish citizenship is supported by data showing a high proportion of women seeking asylum arriving in Ireland while pregnant (Department of Justice, Equality and Law Reform, April 2004a). The sharp drop in the number of asylum applicants who withdrew from the process in 2003 compared to 2002 also supports this interpretation.

The period also saw an increase in the number of asylum applicants processed through accelerated/prioritised channels. The amendments to the Refugee Act, 1996 contributed to this trend. The introduction of safe countries of origin and the expansion of the grounds on which applications may be prioritised contributed to the increased number of accelerated appeals shown in Figure 1.3. The particularly steep decline in asylum applications from Nigerian nationals shown in Figure 1.2 may in part be attributed to the restrictions introduced via the 2003 Immigration Act.

[38] See footnote 13.

Immigration: The work permit data for 2003 and 2004 reflect the policies implemented in advance of the accession of the ten new EU Member States. Overall work permit allocations can be expected to fall considerably in 2004 due to the policy of meeting Ireland's labour requirements within the EU. The increase in Personal Public Service Numbers in 2004 suggests that a large number of Accession State nationals have already migrated to Ireland. The introduction of the Habitual Residency Condition in May 2004 was widely accepted as necessary after the UK had introduced similar restrictions on access to its welfare system. The figures provided in Table 5.1 indicate that the Habitual Residency Condition has restricted access to the welfare system although to a greater extent for nationals of EU-13 countries than for nationals of the new Member States.

6.3 Neglected Issues in the Policy Debate

Despite the fact that the EU now has a particular competence in asylum and immigration matters, there is not a high level of awareness of EU measures in Ireland. The Fourth Protocol gives Irish domestic policy makers more latitude in this area but even the measures that have been opted into are not widely known or understood outside of Government departments and agencies and NGOs working on migration and asylum issues. The decision on whether or not to participate in an EU initiative must have the approval of both Houses of the Oireachtas. However, there has been little national debate on the relevant EU measures to date (Costello, 2003, p. 29).

The developments around Irish citizenship have meant that 11,000 non-Irish nationals who lodged applications for leave to remain based on parentage of Irish citizen children before July 2003 were awaiting determination of their status during our reference period . The government announced in December 2004 that applicants in this group who can prove their identity, show that they have not left the State since the birth of their child and are of "good character" will be given a chance to make fresh applications between early January and the end of March 2005.

Ireland has put in place an integration programme for refugees and persons granted leave to remain. As the number of non-Irish nationals attracted to Ireland by the prospect of employment grows, the experience gained in running this programme could be built on to develop integration measures for migrant workers who may have limited knowledge of English and social, economic and cultural aspects of life in Ireland or who may require training, advice about employment rights and access to health, education or social services.

When migrants are reasonably well established in a country the issue of family reunification arises. The entitlement to family reunification in Ireland depends on the legal status of the migrant. Recognised refugees are the only group of non-nationals with statutory family reunification entitlements. Other family members may be allowed to join holders of work visas or work permits at the discretion of the Minister for Justice but the processing of such applications may take a long time. Many migrants appear to be unaware of the reasons governing entitlement to family reunification. More attention could be given by the agencies responsible for issuing work visas, work permits and student visas to explaining why differences exist and how long the processing of applications for family reunification may take.

6.4 Areas of Further Analysis and Research

The effects of EU legislation and regulations on asylum and immigration could be an area for further research. The fact that the Irish immigration system is still substantially administratively based makes an assessment of the transposition of EU measures into Irish law difficult. The introduction of new citizenship and residency legislation may help to address this problem.

The scale of the migration of Accession State nationals to Ireland and their participation in the labour market have not yet been explored in any detail. Data from the Quarterly National Household Survey and the Personal Public Service Number system could be analysed to provide information on the sources of immigration, the qualifications of immigrants and the type of jobs they hold by sector and occupation. The PPSN data may also provide opportunities for investigation of the amount of tax and social insurance contributions paid by immigrants and the demands which they make on a range of public services including the health, education and welfare systems.

APPENDIX A. STATISTICS ON ASYLUM APPLICATIONS

Table A.1: Asylum Applications January 2003 – July 2004

	Asylum Applications	No. of Which Are Reapplications
Jan-03	979	5
Feb-03	947	14
Mar-03	892	59
Apr-03	667	41
May-03	604	31
Jun-03	661	23
Jul-03	646	73
Aug-03	655	106
Sep-03	611	31
Oct-03	496	18
Nov-03	395	10
Dec-03	347	6
Sub total 2003	**7,900**	**417**
Jan-04	392	6
Feb-04	363	34
Mar-04	501	98
Apr-04	377	28
May-04	403	45
Jun-04	324	31
Jul-04	371	82
Sub total 2004	**2,731**	**324**
Total	**10,631**	**741**

Source: ORAC (2003, 2004)

Table A.2: Asylum Applications Per Month Made by Persons from Nigeria, Romania and the Democratic Republic of Congo January 2003 – July 2004

	Nigeria	Romania	DR Congo
Apr-03	268	75	30
May-03	242	85	15
Jun-03	253	80	13
Jul-03	254	38	27
Aug-03	272	43	13
Sep-03	216	49	20
Oct-03	181	32	19
Nov-03	140	44	10
Dec-03	131	8	15
Sub total 2003	**3,110**	**777**	**256**
Jan-04	141	17	24
Feb-04	126	19	20
Mar-04	223	23	15
Apr-04	151	15	5
May-04	187	11	12
Jun-04	127	9	18
Jul-04	147	15	8
Sub total 2004	**1,102**	**109**	**102**
Total	**4,212**	**886**	**358**

Source: ORAC (2003, 2004)

Table A.3: Manifestly Unfounded/ Accelerated Appeals Received by the Refugee Appeals Tribunal, 2002 – 2003

	Substantive/Substantive 15 day	Manifestly unfounded/ Accelerated	Dublin Convention
Jan-02	338	26	2
Feb-02	431	10	4
Mar-02	382	11	8
Apr-02	407	9	9
May-02	523	4	4
Jun-02	432	7	11
Jul-02	523	14	3
Aug-02	488	2	21
Sep-02	395	2	2
Oct-02	469	14	4
Nov-02	533	2	19
Dec-02	230	3	14
Sub total 2002	**5,151**	**104**	**101**
Jan-03	153	3	17
Feb-03	244	4	10
Mar-03	600	12	23
Apr-03	605	18	15
May-03	466	27	12
Jun-03	354	20	4
Jul-03	506	23	6
Aug-03	353	12	16
Sep-03	505	17	12
Oct-03	401	84	16
Nov-03	285	113	12
Dec-03	238	100	8
Sub total 2003	**4,710**	**433**	**151**
Total	**9,861**	**537**	**252**

Source: ORAC (2003, 2004).

APPENDIX B. RELEVANT PIECES OF LEGISLATION

Available at

http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/default.htm

- Equality Act, 2004
- European Convention on Human Rights Act, 2003
- Immigration Act, 1999
- Immigration Act, 2004
- Immigration Act, 2003
- Irish Nationality and Citizenship (Amendment) Bill, 2004
- Refugee Act, 1996 (Safe Countries of Origin) Order, 2003
- Refugee Act, 1996
- Social Welfare (Miscellaneous Provisions) Act, 2003
- Social Welfare (Miscellaneous Provisions) Act, 2004
- Twenty-seventh Amendment of the Constitution Act, 2004

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