



EUROPEAN MIGRATION NETWORK

POLICY ANALYSIS REPORT ON ASYLUM AND MIGRATION: IRELAND MID- 2004 TO 2005

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ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, lower House.
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
ICI	Immigrant Council of Ireland
ICCL	Irish Council for Civil Liberties
ICLMD	Irish Current Law Monthly Digest
ILRM	Irish Law Reports Monthly
IR	Irish Reports
IRC	Irish Refugee Council
JHA	Justice and Home Affairs
MRCI	Migrant Rights Centre Ireland
NCCRI	National Consultative Committee on Racism and Interculturalism
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
RAT	Refugee Appeals Tribunal
SIPTU	Services, Industrial, Professional and Technical Union
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UN	United Nations

Immigration into Ireland reached a record high of 70,000 in the year ending April 2005, having been boosted by large numbers of migrants arriving from the ten EU Accession States. Emigration fell again to 16,600 in the same period. The number of work permits issued in the reference period of this report (July 2004–December 2005) fell substantially reflecting the fact that migrant workers from the EU10 no longer require a permit to work in Ireland. The number of asylum applications continued to fall in the period. This decline may be related to domestic policy as new measures to speed up the asylum system were introduced as well as to a general fall in asylum applications in industrialised countries during the period (UNHCR, 2005). Recent trends in immigration and asylum are discussed in Section 2.

The reference period saw a number of significant advances in the formation of Irish immigration policy, which are discussed in Section 3. The political system and institutional context relevant to migration and asylum are described and the role of the newly created Irish Naturalisation and Immigration Service (INIS) is also discussed. INIS will centralise a range of asylum, immigration and visa functions that are currently spread across a number of government departments. The consultation phase for new comprehensive Immigration and Residence legislation was launched in April 2005 with the publication of a detailed discussion document. In addition a new Employment Permits Bill has been published which proposes a new work permit scheme for highly skilled workers and provides that work permits should be issued to the employee rather than the employer, thereby offering migrant workers increased protection against exploitation. New citizenship legislation commenced in January 2005 which sets out the conditions under which the child of foreign national parents may acquire Irish citizenship. The government's National Action Plan Against Racism (NPAR) was also launched in January 2005.

The issue of misuse of the asylum system was the subject of debate in the period and it is discussed in Section 3.3.4.4. Deportation of unsuccessful asylum applications also attracted a lot of media interest and the events are described at Section 3.3.6.1.

Regarding immigration and the labour market the protection of immigrant workers was the dominant theme during the period, particularly during 2005. Two cases, discussed in Section 5.1.1, prompted trade unions to become active on the issue of immigration. They warned about the negative implications of allowing a gap in standards to open up between underpaid immigrant workers and well-protected Irish workers. In other employment-related developments the spouses of certain migrant workers were given improved access to the labour market while the access of students to the labour market was restricted. In a significant development related to integration the Minister for Justice, Equality and Law Reform announced that the requirement for competency in the Irish language for entry to the Irish police force would be removed. This move is discussed at Section 3.3.3.1.

The implementation of a Habitual Residence Condition, introduced to protect the Irish welfare system ahead of the accession to the EU of ten new Member States in May 2004, came under scrutiny in the period. Concern that the condition was leading to unnecessary hardship among EU10 nationals in Ireland resulted in a review of the condition. The Habitual Residence Condition is discussed in Section 5.8.

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 1995 about 33,000 people left Ireland and about 31,000 people entered so that there was a net loss of population of nearly 2,000 people. In the year to the end of April 2005 nearly 17,000 people left and 70,000 people entered resulting in a net gain in population of over 53,000 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 increased from 362 in 1994 to 4,766 in 2004. There was a significant peak in asylum applications lodged between 2000-2002 when a total of 32,897 foreign nationals claimed asylum in Ireland.

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 foreign nationals because of the relatively small number of immigrants entering the country. However, the rapid increase in the immigration of foreign nationals and the large increase in the number of asylum applicants who have arrived since then created a new situation. Arising from this, the Government has introduced a number of immigration related legislative measures as well as comprehensive legislation in relation to asylum in the form of the Refugee Act 1996.

This report follows on from a similar Policy Analysis Report which covered the period January 2003 to June 2004.¹ Its purpose is to provide a coherent overview of immigration trends and policy development during this period. The period covered by the report was one in which a new longer-term perspective informed the development of Irish immigration policy. The views of non-governmental organisations, public institutions, researchers, and migrants rights groups and organisations have been taken into account where relevant. Comparable Policy Analysis Reports covering the same period are also available for a number of other EU countries participating in the EMN.

¹ Quinn, Emma and Gerard Hughes, (2005), *Policy Analysis Report on Asylum and Migration: Ireland 2003 to mid-2004*, European Migration Network. Accessible at <http://www.esri.ie>.

2. IMMIGRATION

SITUATION: OVERVIEW OF GENERAL TRENDS IN MIGRATION AND ASYLUM

Summary

Immigration in the period April 2004-April 2005 was at a record high while emigration has fallen further. The Accession of ten new EU Member States in May 2004 led to a reduction in the number of work permits issued in the period under discussion (July 2004-December 2005). The Irish Government has encouraged Irish employers to source their labour from within the enlarged EU. Migrant workers from the EU10 already in Ireland now no longer require work permits and the statistics indicate that these workers have been joined by a significant number of newly arrived EU10 nationals. The number of asylum applications continued to fall in the period, particularly those made by Nigerian nationals.

2.1 Main Groups of Migrants, Refugees and Asylum Seekers

2.1.1 MIGRANTS

The main development influencing migration in the period under review is the opening of the Irish labour market to nationals of Cyprus, Malta and the Central and Eastern European countries which joined the European Union on 1 May 2004². Ireland is one of only three EU Member States to have allowed access to its labour markets to nationals of the new Accession States. Ireland and Britain allow general access to these nationals but both countries impose residence restrictions that limit access to welfare benefits. Sweden allows general access without any restrictions. The remaining EU15 countries exercised their option to apply transitional measures that can run at most until 2011.

Table 1 shows annual migration flows, both gross and net, between 1995 and 2005. This period was characterised by considerable volatility in regard to migration flows. There was a net loss of population of around 2,000 persons in 1995 due to emigration exceeding immigration. However the position changed in 1996 when immigration exceeded emigration by 8,000 persons. Every year since 1996 the number of immigrants has exceeded the number of emigrants with the result that immigration has made a significant contribution to the growth of the Irish population during the last ten years. The most up to date figures for the twelve month period to April 2005 show that the estimated gross outflow was about 17,000, but the inflow was 70,000, resulting in net migration of 53,000.

² The Central and Eastern European states that joined the EU on 1 May 2004 comprise the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia. Citizens of Cyprus and Malta, which also joined the EU on the same date, were granted unrestricted access to EU labour markets from the first day of their accession.

Table 1: Emigration, Immigration and Net Migration, 1995-2005

Year to End April	Emigration	Immigration (000)	Net Migration
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003 ¹	20.7	50.5	29.8
2004 ¹	18.5	50.1	31.6
2005 ¹	16.6	70.0	53.4

¹Preliminary.

Source: CSO Annual Population and Migration Estimates (various releases).

<http://www.cso.ie/diska/PECA.csv>

Note: These figures are derived from the CSO series of Annual Labour Force Surveys over the period from 1995 to 1996 and the QNHS series from 1997 onwards. The immigration estimates relate to those persons resident in the country at the time of the survey and who were living abroad at a point in time twelve months earlier.

2.1.1.1 Work Permit Holders

The number of work permits issued fell by 28 per cent between 2003 and 2004 (see Table 2). The figures for January-September 2005 indicate that the number of permits issued are likely to fall substantially again during 2005. Migrant workers from Accession States and other Eastern European countries dominated in 2003. The decline in the numbers of permits issued to Accession State nationals, who since May 1 have free access to the Irish labour market, contributed to the annual fall in 2004 and to the anticipated annual fall in 2005. During 2004 and 2005 a large number of work permit holders in Ireland were of Filipino or Eastern European origin.

Table 2: Work Permits Issued by Nationality in 2003, 2004 and up to 30 September 2005

Country, Region	2003	2004	2005*
USA, Canada	1,265	1,196	1,020
Australia	1,149	908	708
India	1,030	1,253	1,288
Japan	209	235	175
Pakistan	830	846	637
Philippines	4,042	4,01	3,089
South Africa	2,468	2,031	1,353
Baltic States	9,723	2,912	216
Other EU Accession States	6,883	2,378	N.A.
Other Eastern Europe	9,974	7,978	5,241
Other Countries	9,978	10,029	6,704
Total	47,551	34,067	20,431

Figures for 2005 relate to work permits issued from 1 January 2005 to 30 September 2005.

Source: Department of Enterprise, Trade and Employment website. <http://www.entemp.ie>

Note: The EU Accession States comprise the Baltic States, the Czech Republic, Cyprus, Hungary, Poland, Malta, Slovakia and Slovenia.

2.1.1.2 Accession State Nationals

The fall in the number of work permits issued since 2004 is clearly a result of the accession of ten new EU Member States. The number of Personal Public Service numbers issued in the period gives an indication of flows from the Accession States. A Personal Public Service Number (PPSN) is issued to a person seeking work or applying for social welfare. Table 3 shows the allocation of PPSNs to Accession State nationals by State between July 2004 and February 2005.

Table 3: Allocation of Personal Public Service Numbers to Accession State Nationals by State, July 2004-February 2005

	July-04 to February-05
Poland	26,093
Lithuania	11,258
Latvia	5,877
Slovakia	4,477
Czech Republic	2,837
Hungary	1,751
Estonia	1,461
Slovenia	55
Malta	98
Cyprus	19
Total	53,926

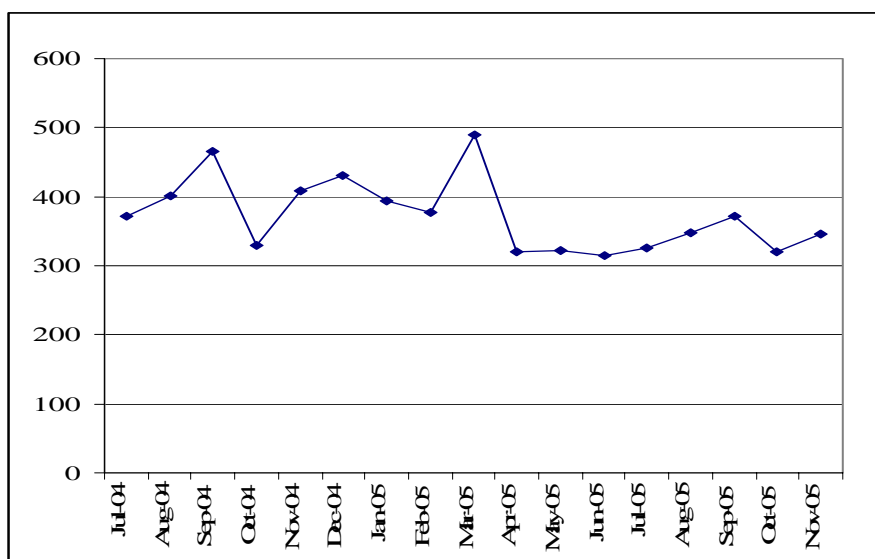
Source: Department of Social and Family Affairs.

More up to date figures indicate that the total number of PPSNs issued to Accession State nationals between May 2004 and September 2005 was 133,258.³ See Section 5.1.2 for a further discussion of PPS numbers.

2.1.2 REFUGEES AND ASYLUM SEEKERS

As Figure 1 shows the number of asylum applications continued to fall in the period. The decline is less pronounced than that experienced in the period covered by the last Policy Analysis Report (January 2003-June 2004).

Figure 1: Asylum Applications July 2004 – November 2005

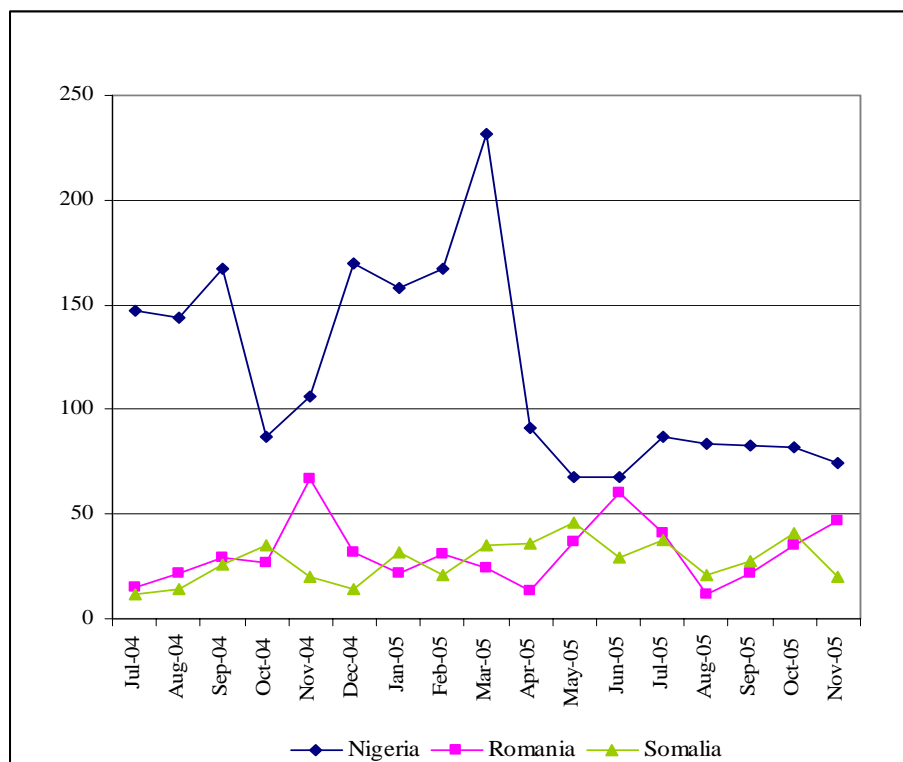


Source: Office of the Refugee Applications Commissioner website (<http://www.orac.ie/>).

³ *The Irish Times*: 'New figures challenge welfare tourism fears', October 24 2005.

Complete information is available for three countries of origin for the period under discussion here: Nigeria, Romania and Somalia. 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 3 shows that the decline in applications made by Nigerian nationals contributed to the overall fall in applications. As discussed at Section 3.3.4.3 Nigerian applicants have been subject to 'prioritised procedures' since 25 January 2005 (see Department of Justice, Equality and Law Reform, January 2005a). The number of applications made by Romanian and Somali nationals was in contrast fairly steady in the period.

Figure 2: Asylum Applications per Month Made by Persons from Nigeria, Romania and Somalia, July 2004 – November 2005



Source: Office of the Refugee Applications Commissioner website (<http://www.orac.ie/>).

2.2 General Trends of Emigration and Immigration

The *Population and Migration Estimates* published by the Central Statistics Office (Central Statistics Office, 2005) for the period April 2004–April 2005 indicate a record total immigration flow of 70,000, up from 50,100 in the same period 2003–2004 (see Table 1). Emigration in contrast reached its lowest level (16,600) since the series began in 1987. The nationality of the immigrants is shown in Table 4. For the first time the ten new EU Member States are identified in the estimates as a separate category. Previously immigrants from these countries were given a 'Rest of World' designation. As Table 4 indicates there was substantial immigration of nationals from the ten new EU Member States between April 2004–April 2005. This flow accounted for 26,400 persons or 38 per cent of total immigration. Polish nationals represented 17 per cent (11,900) and Lithuanians 9 per cent (6,300) of total immigration in the period.

Table 4: Estimated Immigration Classified by Nationality

Nationality	Year to April 2004		Year to April 2005	
	000s	%	000s	%
Irish	16.9	34	19.0	27
UK	5.9	12	6.9	10
Rest of EU 15	10.6	21	7.1	10
EU 10*	-	0	26.4	38
USA	1.8	4	1.6	2
Rest of world	14.9	30	9.0	13
Total	50.1	100	70.0	100

Source: Central Statistics Office, Population and Migration Estimates, 2005.

Note: Data is preliminary.

*Data for the 'EU 10' for 2004 are included in the 'Rest of World' category.

Almost 56 per cent of the immigrants in 2005 were male and 54 per cent were aged between 25-44 years.

All non-EEA nationals who are resident in Ireland for more than 3 months must register with the Garda National Immigration Bureau (GNIB) and obtain permission to remain from the Minister. In 2004 over 130,000 people called in to register at GNIB registration offices. This number is almost three times the number in 2000, when there were only 47,000 people registering (Burns 2005).

3. POLITICAL DEVELOPMENTS IN THE MEMBER STATE

Summary

The reference period saw a number of advances in the development of an Irish immigration policy. A new body was set up with responsibility for a range of asylum, immigration and visa issues that are currently spread across a number of departments: the Irish Naturalisation and Immigration Service (INIS). The consultation phase for new comprehensive Immigration and Residence legislation was launched with the publication of a detailed discussion document in April 2005. It is hoped that the legislation will clarify problematic issues such as family reunification that are currently dealt with on an administrative basis. In addition a new Employment Permits Bill has been published offering migrant workers increased protection and introducing a new employment permit scheme described as a 'Green Card' for certain highly skilled workers. New citizenship legislation came into effect in January 2005 which sets out the conditions under which the child of foreign national parents may acquire Irish citizenship. The government's National Action Plan Against Racism (NPAR) was also launched in January 2005.

Regarding asylum the issue of asylum system 'abuse' was debated in Ireland during the reference period. In November 2004, the Minister designated new safe countries of origin (Croatia and South Africa) and in January 2005 announced measures to speed up the asylum and deportation process in respect of prioritised cases. Deportation of unsuccessful asylum applications attracted a lot of media interest and in one high profile case the Minister for Justice, Equality and Law Reform reversed the deportation of a young man to Nigeria. The State's UN refugee resettlement quota was increased in June 2005. In July 2005 the High Court ruled that unsuccessful applicants for asylum who wish to bring appeals to the Refugee Appeals Tribunal (RAT) are entitled to have access to previous rulings. The State is currently appealing that ruling.

In a significant development related to integration the Minister for Justice, Equality and Law Reform has announced that the requirement for competency in the Irish language for entry to the Irish police force will be removed.

Research into immigration related detention (Kelly, 2005a) published in the period found that physical conditions in the prisons examined were generally good but that overcrowding presented a serious problem. In some cases immigration detainees are held together with people suspected of criminal offences. It was found that some detainees were locked up for over seventeen hours per day. The author recommended that the practice of detention of immigrants in prisons should be ended.

3.1 Political System and Institutional Context Relevant to Migration and Asylum

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937. It defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, currently Bertie Ahern) and Tánaiste (Deputy Prime Minister, currently Mary Harney). Each of the Dáil's 166 members is a Teachta Dála (TD). They are directly elected by the people. General elections take place at least once every five years. The most recent one was in 2002.

There are 15 Government Departments, each headed by a Minister. The present Government is a coalition between Fianna Fáil and the Progressive Democrats. The other main political parties in the Dáil are Fine Gael, the Labour Party, the Green Party, Sinn Féin and the Socialist Party. Fianna Fáil has been the largest party in the Dáil since 1932. It is part of the Union for Europe group in the European Parliament. Fine Gael, the second largest party, is part of the European People's Party.

The Department of Justice, Equality and Law Reform has a range of responsibilities including immigration policy and services, crime and security, law reform, equality and human rights. The Department of Enterprise, Trade and Employment administers the work permit and working visa/authorisation schemes. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants.

The local government system is administered by 114 local authorities and is undergoing a process of renewal and reform. The services they provide include: housing and building, road transportation and safety; water supply and sewerage; development incentives and controls; and some education; health; welfare and other services. Local government is funded partly by central government and partly by local sources including motor tax proceeds, rates on commercial property, and local charges such as refuse and rents. There are eight regional authorities and two regional assemblies whose members are nominated by local authorities.

There are three Government departments involved in the Irish asylum and immigration system: the Department of Justice, Equality and Law Reform, the Department of Enterprise, Trade and Employment and the Department of Foreign Affairs. The immigration functions of these departments are now being brought together in the Irish Naturalisation and Immigration Service, INIS, under the aegis of the Department of Justice, Equality and Law Reform.

3.2 General Political Developments

The last Irish General Election took place in June 2002 so there have been limited changes to central government in the period in question. A Cabinet reshuffle took place in September 2004 which installed Mr. Micheál Martin as the new Minister for Enterprise, Trade and Employment. Other relevant changes included the appointment of Mr. Dermot Ahern as Minister for Foreign Affairs and Mr. Seamus Brennan as Minister for Social and Family Affairs. The Minister for Justice, Equality and Law Reform Mr. Michael McDowell retained his portfolio.

The decision making process in relation to immigration is changing as the number of immigrants have increased. Burns (2005) comments on the degree of flexibility that individual immigration officers used to have in relation to individual cases. The small number of immigrants involved meant that on an operational level a team of staff working closely together could ensure consistent decision making. However, in 2004 over 130,000 people applied for visas to come to Ireland. This is more than double the number in the year 2000. Consequently much greater transparency and accountability is now required. The proposed Immigration and Residence legislation is intended to standardise procedures and to ensure transparency and accountability.

3.3 Central Policy Debates and Political Developments Related to Migration, Integration and Asylum Issues

As discussed below at Section 3.3.2.3 concern has been expressed about the degree of ministerial discretion involved in the immigration related decision-making process. However, the Department of Justice, Equality and Law Reform insist that due to the complexity of the area not all provisions can be set out in primary legislation.

3.3.1 MANAGED IMMIGRATION

The most significant policy development in relation to managed immigration was the introduction in June of the Employment Permits Bill. The Bill has three main objectives: to set out in legislation the procedures relating to the application, grant and refusal of work permits; to provide new protections for migrant employees; and to introduce a new system for highly skilled migrant workers which the government has likened to a 'green card' system. (See Department of Enterprise, Trade and Employment, June 2005).

The Bill provides that employment permits are granted to the employee rather than the employer. The former practice had been widely criticised as one that contributed to the exploitation of workers and NGOs have welcomed this proposed change (see Immigrant Council of Ireland, October 2005 and Migrant Rights Centre Ireland, 2004). It is proposed that the permit will also state certain rights and entitlements of the worker concerned. The Bill prohibits recruitment related deductions from remuneration and the retention by the employer of the employee's personal documents such as a passport. However, the Immigrant Council of Ireland has expressed dissatisfaction with the fact that employers rather than employees will continue to apply for the work permit arguing that this approach puts workers at risk of exploitation.

The Bill provides that higher skilled workers will be given permission to work for a minimum of two years and will have the flexibility to move between employers within their occupational sector. The Immigrant Council of Ireland (ICI) argues that the system closely resembles the existing current work visa/authorisation scheme and falls short of a 'green card' system mainly because the principal of permanent residence is absent (Immigrant Council of Ireland, October 2005).

The Minister for Enterprise, Trade and Employment has indicated that three pillars will form the core of the future managed economic migration policy.

1. The establishment of a 'green card' for occupations where there are skills shortages. This will be for a restricted list of occupations in the annual salary range from €30,000 to €60,000 and for a more extensive list of occupations in the annual salary range above €60,000. (Annual average industrial earnings were about €30,000 in 2005.)
2. The re-establishment of an intra-company transfer scheme for temporary trans-national management transfers.
3. A work permit scheme for a very restricted list of occupations with a salary range up to €30,000, where the shortage is one of labour rather than skills.⁴

Every two years the Minister for Enterprise, Trade and Employment will be able to set a maximum number of work permits to be issued (both in total and by sector), to identify the necessary skills and qualifications required for the granting of a permit and categories of employment for which permits will not be granted (see Department of Enterprise, Trade and Employment, June 2005).

⁴ Wednesday, 12 October 2005. *Dáil Debates*, Vol. 607 No. 3.

The Immigrant Council of Ireland (October, 2005) argue that the proposed changes will create a two tier system whereby some immigrant workers are seen as preferable and will have greater rights and entitlements than others. The ICI also argue that family reunification rights are given insufficient attention in the Bill.

3.3.2 GATES OF ENTRY AND BORDER CONTROL

3.3.2.1 *Family Reunification*

Family reunification continued to be a contentious issue in the period. The Immigrant Council of Ireland (July, 2004) released statistics which showed that family reunification was an issue of concern in 15 per cent of all enquiries it received in the previous year. The ICI argued that the visa assessment procedure took too long and that the absence of a statutory entitlement to family reunification gave rise to a lack of transparency and consistency in the decisions made.

Family reunification was the subject of a legal seminar organised by ICI, the Irish Refugee Council and the Irish Council for Civil Liberties in November 2004. These organisations called on the Government to place family reunification for migrant workers on a statutory footing (Immigrant Council of Ireland, November 2004).

The Immigrant Council of Ireland also made a submission to the All Party Oireachtas Committee on the Constitution⁵ on issues regarding the family (February 2005). The ICI argued that while the State has a right to control immigration individual immigrants have a right to family unity/reunification. It was argued that current administrative arrangements for considering family reunification or unity applications are based on the nuclear model of the family and therefore neglect the needs of unmarried and same sex couples. Finally, the situation of foreign national families of Irish-born children was addressed. The ICI expressed concern that no applications for family reunification will be considered that were made by persons granted residency under the Irish-born child scheme (known as IBC05 this scheme is discussed further at Section 3.3.5).

The current lack of clarity around family reunification is acknowledged in the Government's discussion document *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005b). There is a stated objective that family reunification provisions should be set out in an accessible and transparent fashion in secondary legislation or practice instructions.⁶ In addition, a foreign national entitled to reside in Ireland on a long-term or permanent basis should be entitled to apply to be joined by his/her spouse and minor unmarried children where the family will be economically viable in the State. It is stated that non-marital partnerships and same sex relationships will be considered for family reunification.

The Immigrant Council of Ireland (June 2005) has, however, expressed concern that detailed proposals have not yet been made. They argue that all migrant workers should have family reunification rights set out in primary law, that family members should have access to the labour market and that clear

⁵ The All-Party Oireachtas Committee was established on 17 December 2002 to examine the place and relevance of the Constitution and to establish those areas where Constitutional change may be desirable or necessary.

⁶ Secondary legislation is made in the form of Statutory Instruments (there are five main types of statutory instrument – orders, regulations, rules, by-laws and schemes). Statutory Instruments are not enacted by the Oireachtas but allow persons or bodies to whom legislative power has been delegated by statute to legislate in relation to detailed day-to-day matters arising from the operation of the relevant primary legislation. Statutory instruments are used, for example, to implement European Council Directives and delegate the powers of Ministers.

provision should be made for cases of family breakdown. Media reports indicate that codification of family reunification rules is imminent.⁷

3.3.2.2 Trafficking

In the *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill* the Department of Justice, Equality and Law Reform (2005b) comment that the future Immigration and Residence Bill must "...reflect developments at European level in tackling the problem of illegal immigration and trafficking in human beings and the control measures which have been introduced to combat threats in this area. The Bill must also have regard to relevant judgments of the European Courts in this area" (Department of Justice, Equality and Law Reform, 2005b). In their reaction to the Outline Policy proposals the Immigrant Council of Ireland (June 2005) stressed that the safety and health of victims should be the primary concern of policy makers in this area. The ICI cautions against the granting of residence permits to victims of trafficking dependent on co-operation with competent authorities.⁸

3.3.2.3 Other

Ministerial discretion: The Immigrant Council of Ireland (October, 2005) has expressed concern about a lack of visible co-ordination between the relevant government departments regarding immigration. The publication of the Employment Permits Bill 2005 during the consultation phase of the proposed Immigration and Residence legislation is interpreted as evidence of this problem. It is also argued by ICI that there is a mismatch between the degree of ministerial discretion incorporated in the draft employment permits legislation and that found in the discussion document for the new Immigration and Residence legislation. Both the Immigrant Council of Ireland (October 2005) and Ryan (2005) contend that the Minister for Justice, Equality and Law Reform is given too much freedom to regulate using secondary legislation. The Department of Justice, Equality and Law Reform intend that the newly created body INIS (see Section 3.4.1) will improve co-ordination between the relevant departments.

Prior to October 2004 children could be listed on, and travel with, the passports of their parents. Since that date all children regardless of age must have their own passport. Passports issued before October 2004 which list the names of children are still valid and children may continue to travel on such passports up to their 16th birthday. (In the case of non-Irish passports children may be listed on their parent's passports.)

3.3.3 INTEGRATION AND SETTLEMENT

3.3.3.1 An Garda Síochána - The Police

The Minister for Justice, Equality and Law Reform has announced that the requirement for competency in the Irish language for entry to An Garda Síochána (the police) will be removed (Department of Justice, Equality and Law Reform, September 2005). There will now be a requirement to hold a qualification in two languages, at least one of which must be Irish or English.

⁷ *The Irish Times*, November 9 2005, "Migrant workers may be let bring families".

⁸ Note that there is a distinction to be made between trafficked and smuggled irregular immigrants. People who are trafficked are assumed to have been coerced, not to have given their consent and are considered to be "victims or survivors," people who are smuggled are considered to have willingly engaged in a criminal enterprise. Two protocols to the UN Convention on Transnational Organized Crime (UN TOC), the Trafficking and Smuggling Protocols (also known as the Palermo Protocols) define the difference between the two activities.

To date the current requirement to have a qualification in Irish has effectively limited entry to An Garda Síochána to Irish nationals. Entry to An Garda Síochána will now be open to: (i) nationals of an EU Member States, an EEA State or the Swiss Confederation, and (ii) nationals of any other state who are lawfully present in Ireland and have five years lawful residence here.

The Minister also announced a new recruitment campaign as part of the process of increasing the strength of the police force to 14,000. The Garda Commissioner worked on the campaign with the Department of Justice, Equality and Law Reform, the Public Appointments Service and the National Committee for Racism and Interculturalism. The campaign involved awareness raising with media publicity and further consultations with representatives of the ethnic minority communities. In October 2005 it was reported that of over 8,500 applications received for entry to the Garda some 900 were foreign nationals. The majority of those applications came from Chinese nationals.⁹

3.3.3.2 Racism

The government's National Action Plan Against Racism (NPAR) was launched in January 2005 (Department of Justice, Equality and Law Reform, 2005b). The publication of this plan followed a lengthy consultative process involving the government, the social partners, representatives of minority ethnic groups, the Traveller community and other stakeholders. The plan is underpinned by the following principles: protection, inclusion, provision, recognition and participation. Under each of these broad objectives there is a range of anticipated outcomes. In January 2005 the Minister for Justice, Equality and Law Reform announced the fifth 'Know Racism' grant scheme under which organisations working towards the objectives of the NPAR may receive funding (See Department of Justice, Equality and Law Reform, January 2005b).

Since 2003 the NCCRI, Equality Commission for Northern Ireland and the Know Racism Campaign have co-ordinated activities to celebrate International Day Against Racism on March 21st. All over Ireland, North and South, groups organised events to mark March 21st and European Week Against Racism which took place from March 14 to March 21st 2005. The sixth Irish anti-racist work place week took place in November 2005.

Ireland ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in December 2000 having signed the Convention in 1968. The CERD Committee considered Ireland's combined first and second report in March 2005 (Department of Justice, Equality and Law Reform, May 2004). It was reported by NCCRI (March 2005) that CERD committee members raised a number of concerns with the Irish government, including:

- The status of the Convention in Irish law, and the Irish reservation on Article 4 which relates to hate speech;
- Recognising Travellers as a minority ethnic group;
- Discriminatory statements by political representatives;
- Multi-denominational education;
- The possibility of introducing tougher sentencing for racially motivated crime.
- Aspects of immigration policy including the work permit system and the appeals procedure.

A Shadow Report to Ireland's CERD report was produced by the NGO Alliance (2004). The Alliance welcomed the fact that Ireland had opted in to a provision which allows a right of individual petition to the UN if their concerns have been insufficiently addressed in Ireland. However, the group criticised what it considered government failure to adequately tackle racism in Ireland.

⁹ *The Irish Times*, November 11th 2005, "About 900 foreign nationals apply for Garda jobs".

The National Consultative Committee on Racism and Interculturalism (NCCRI) compiles six-month reports on racist incidents reported in Ireland. The last report (May 2004 to October 2004) indicated an increase in reported incidents (70) both on the previous period and the equivalent period in 2003 (42 and 46 incidents respectively) (National Consultative Committee on Racism and Interculturalism, May 2003-October 2004). Garda National Immigration Bureau statistics indicate a slight increase in racially motivated incidents on a calendar year basis between 2003 (62 incidents) and 2004 (67 incidents).

The Minister for Justice, Equality and Law Reform launched the NCCRI's three-year progress report and strategic plan in November 2004. The NCCRI is a partnership body which brings together government and non-government organisations to work on issues around racism and interculturalism. The strategic plan sets out the priorities for the NCCRI over the next few years, including playing a key role in supporting Government to implement the National Action Plan Against Racism; to facilitate discussion and debate about increasing cultural diversity in Ireland and to ensure that diversity is taken into account when planning and delivering public services (see NCCRI, 2004).

3.3.4 REFUGEE PROTECTION AND ASYLUM

3.3.4.1 The Refugee Appeals Tribunal

In July 2005 the High Court ruled that unsuccessful applicants for asylum who wish to bring appeals to the Refugee Appeals Tribunal (RAT) are entitled to have access to previous rulings. The RAT had previously declined to furnish the asylum applicants with copies of decisions made by the Tribunal. The RAT argued, among other points, that there is no mandatory obligation to provide access to previous judgments due to reasons of confidentiality (the asylum applicant involved in the previous ruling is protected from being identified under section 19 of the 1996 Refugee Act). Previous decisions would have to be fully anonymised before they were released, representing a large administrative burden.

In this ruling the High Court held that administrative difficulties in affording fair procedures are not sufficient reason not to do so. The point that the RAT hearings and decisions are neither conducted nor delivered in public was stressed. The Judge held that conformity and consistency in decision-making are essential facets of fair procedures in a quasi-judicial process of this nature and that these could not be achieved without access to previous decisions. The application for judicial review was granted. This ruling is currently being appealed to the Supreme Court.¹⁰

3.3.4.2 Safe Countries of Origin

In November 2004, the Minister designated Croatia and South Africa as safe countries of origin, with effect from 9th December 2004. Bulgaria, Romania and the ten Accession States were identified as safe in 2003. Applicants for asylum from these countries must rebut the presumption that they are not in need of refugee protection. The RAT 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.

¹⁰ Atanasov, Njuka Fontu, *Opesytan v Refugee Appeals Tribunal*, Minister for Justice, Equality and Law Reform, Attorney General. 07/07/2005.

3.4.4.3 Prioritised Cases

In January 2005 the Minister for Justice, Equality and Law Reform introduced measures to speed up the asylum and deportation process in respect of prioritised cases.¹¹ The aim is to reduce the duration of initial application and appeal to three weeks for each process. Applicants may be housed in dedicated accommodation centres for prioritised cases, they will have statutory obligations placed on them to reside and report daily to immigration officers. Failure to comply with such obligations is an arrestable offence. Unsuccessful asylum applicants will, therefore, be more readily available to immigration authorities/Garda National Immigration Bureau for removal from the State. Applications made by nationals of Nigeria, Romania, Bulgaria, Croatia and South Africa have been subject to accelerated processing arrangements since January 25 2005. (See Department of Justice, Equality and Law Reform, January 2005a).

3.3.4.4 Misuse of Asylum System

A heated public debate followed remarks made by the Minister for Justice, Equality and Law Reform in May 2005 regarding the ‘cock and bull’ stories told by some people in the course of an asylum application. The Minister made the remarks during a meeting of the Oireachtas Justice Committee and also stated that he would prefer to interview asylum applicants at the airport but was prevented from doing so by the 1951 UN Convention relating to the Status of Refugees. He expressed frustration about the ‘political correctness’ that limited information exchange on the asylum issue (RTE, May 2005).

In June 2005 the Minister released a statement on the matter of the ‘abuse’ of the Irish asylum system (Department of Justice, Equality and Law Reform, June 2005b). The Minister presented information on low (6.2 per cent) recognition rates at first instance¹² as evidence of abuse of the system. The rate of recognition in Ireland was compared to a number of other European states and found to be similar. The issue of asylum applicants from Nigeria was addressed directly by the Minister. Nigerian nationals had a first instance recognition rate of 0.6 per cent in 2004 and represent the highest source country in terms of asylum applications (37 per cent of applications in 2004) as a result asylum applicants from Nigeria are subject to prioritised application procedures.

3.3.4.5 Programme Refugees

In June 2005 the Government approved an increase in the State's refugee resettlement quota from 10 cases to around 50 cases, or approximately 200 persons, per annum. Ireland takes an annual quota of refugees from abroad under arrangements agreed with the UNHCR. Many of these refugees would have been residing in refugee camps abroad under the care of the UNHCR (Department of Justice, Equality and Law Reform, June 2005a).

3.3.5 CITIZENSHIP AND NATURALISATION

The commencement of new citizenship legislation (discussed in Section 4.2.2) on 1st January 2005 marked the end of a long period of debate and uncertainty regarding entitlement to Irish citizenship. Until recently Irish citizenship has been granted to all persons born on the island of Ireland. A Supreme Court

¹¹ Under amendments to the 1996 Refugee Act contained in the 2003 Immigration Act the Minister for Justice, Equality and Law Reform was empowered to issue prioritisation directives to the ORAC and the RAT 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 possible.

¹² The rate of positive decisions made by ORAC.

ruling in 1989 found that the Irish-born, and therefore Irish citizen, child of a foreign national couple had a right to the "care, company and parentage" of his or her family in the State.¹³ Following this case foreign nationals who were parents of Irish citizen children were generally granted residency in Ireland. As a result of a further Supreme Court ruling¹⁴ in January 2003 this administrative practice was altered and non-EU parents of Irish children ceased to automatically gain residency. 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 residency claims lodged on that basis. It was argued by the Government that both within and outside the asylum framework large numbers of non-EEA nationals were coming to Ireland to give birth.

A referendum was held in June 2004 to amend the Constitution to reinstate the power of the Oireachtas (parliament) to legislate on the acquisition of citizenship. The referendum was passed by a large majority (79 per cent). In December 2004, the Government announced that procedures would be put in place to regularise the situation of families who had applied for permission to remain on the basis of their Irish citizen child prior to the change in the law. Such persons were invited to resubmit an application for permission to remain between January and March 31st 2005 under the IBC/05 scheme. The Minister for Justice, Equality and Law Reform, Mr. McDowell said "Persons of good character who give honest and complete details of their residence in Ireland with their Irish-born children and make the necessary statutory declaration can expect to be granted permission to remain within a matter of weeks" (Department of Justice, Equality and Law Reform, January 2005c).

Persons must have been normally resident in the State with their child and there will be no family reunification entitlements given to those people who are granted permission to remain (Department of Justice, Equality and Law Reform, January 2005c) (see Section 3.3.2.1). They must also make a declaration that they will not engage in any criminal activity and make every effort to become 'economically viable'. A meeting between the IBC Unit and members of the CADIC¹⁵ coalition in December 2005 was informed that 16,700 applications for permission to remain had been approved and 956 were refused. Approximately 250 cases remained to be processed (reported by the Immigrant Council of Ireland).

3.3.6 RETURN

3.3.6.1 Deportation

In March 2005, 35 Nigerian nationals were deported on a chartered flight. The deportations generated a large amount of public interest. The media focused on the fact that some children were removed by the Gardai from school and that five children were left behind by their parents having been sent into hiding. There were also concerns raised about returning women to Nigeria.

The return of one student who was studying for his Leaving Certificate¹⁶ in Ireland attracted particular attention. Critics argued that the teenager should have been allowed to complete his studies before being sent back. Students and staff of the school concerned organised a campaign on the teenager's behalf. NGOs, politicians and members of the general public also became involved and the Minister for Justice, Equality and Law Reform decided to

¹³ *Fajujonu v. The Minister for Justice* [1990] 2 I.R. 151.

¹⁴ *Lobe v. Minister for Justice, Equality and Law Reform* [2003] IESC 1 (23 January 2003).

¹⁵ Coalition Against the Deportation of Irish Children.

¹⁶ The highest secondary level qualification awarded in Ireland.

return the student in order to “...maintain public confidence in the deportation system”.¹⁷

The Comptroller and Auditor General’s¹⁸ Annual Report for 2004 gave particular attention to the issue of enforcement of deportation orders (Comptroller and Auditor General, 2005). The Office undertook an examination into the effectiveness of arrangements for enforcing deportation orders. Table 5 shows the status of deportation orders in 2004 and 2005.

Table 5: Status of Deportation Orders 2004 and January to 30th June 2005

	2004	Jan-Jun 2005
Deportation Orders Signed	2,723	967
Deported, left State before enforcement or transferred to another jurisdiction	384	92
Evaded*	1,449	522
Through revocation or otherwise, applicant permitted to remain	384	33
Orders remain to be enforced	506	320

Source: Comptroller and Auditor General, 2005.

*Deportation orders are deemed evaded when the subject of the order fails to report to the Bureau as requested in the notification letter sent to them. Cases deemed evaded are not actively pursued. In practice, it is believed that most of those ‘evading’ have already left the State of their own accord.

The Comptroller and Auditor General investigated a specific deportation operation in April 2005. The Department of Justice, Equality and Law Reform targeted 456 failed asylum seekers for deportation to an African country. An analysis of the outcome of the 456 cases written to is given in Table 6.

Table 6: Analysis of the Deportation Operation

Failed to show	228
Made new Applications	90
No Deportation Order Received in the Bureau	32
Injunctions taken out	16
Undertakings Made by Asylum Seeker	14
Unable to Travel for Medical Reasons	10
Deportation Orders Revoked	8
Held	6
Irish Born Child Applications	5
Other	22
Number finally Deported	25
Total	456

In relation to the 228 people who failed to show, some were subsequently located in the United Kingdom and the African country concerned. Others have been subsequently deported or will be deported in the future. It was reported that in many cases there was no trace of the individuals after the initial claim for asylum at a port of entry. Others had left their accommodation after receipt of the deportation arrangements letter. The Comptroller and Auditor General observed that the absence of exit checks at departure points from Ireland and the ease of movement over the land border with Northern Ireland allows for substantial abuse of the common travel area by persons subject to deportation orders.

¹⁷ *The Irish Times*, March 25 2005, “U turn was right thing to do says McDowell”.

¹⁸ The task of the Comptroller and Auditor General is to provide the public with assurance that public money is properly administered and spent to good effect. The Office audits and reports on the accounts of public bodies.

3.3.7 OTHER

3.3.7.1 Detention

Research into immigration related detention was released in November 2005 (Kelly, 2005a). The research was commissioned by the NGOs: the Irish Refugee Council, Irish Penal Reform Trust and Immigrant Council of Ireland. The researcher found that three categories of immigrants may be detained: persons refused leave to land, applicants for asylum¹⁹ and people due to be deported, as well as persons held on remand (i.e., awaiting trial) for immigration related reasons.

It was argued that Irish law does not adequately protect the rights of persons refused permission to land and people detained pending deportation. The author found that conditions in the prisons are generally good but he expressed concerns about overcrowding. It is stressed that immigrant detainees should not be accommodated with people on remand or convicted prisoners. It is recommended that the practice of detention of immigrants in prisons should be ended. The research indicates that while the number of people detained under the Immigration Act 2003 decreased between 2003 and 2004 the number of people detained for 51 days or more increased (see Table 7).

Table 7: Persons Held Under the Immigration Acts 2003, 2004

	2003	2004
Period of Detention (Days)	Number of Persons Detained	
0-3	1,140	199
4-7	324	110
8-14	6	9
15-30	12	7
31-50	3	2
51+	367	619
Total	1,852	946

3.4 Institutional Developments

3.4.1 IRISH NATURALISATION AND IMMIGRATION SERVICE (INIS)

A new body has been set up with responsibility for a range of asylum, immigration and visa issues that are currently spread across a number of departments: the Irish Naturalisation and Immigration Service (INIS). The Director of INIS was appointed in July 2005. The INIS will incorporate the current structures dealing with asylum, immigration and citizenship with the visa section of the Department of Foreign Affairs. The new body will be responsible for the Dublin visa operation while the Department of Foreign Affairs will retain responsibility for visa issuance outside Ireland. INIS will also have a virtual link with the Department of Enterprise, Trade and Employment work permits section (see Department of Justice, Equality and Law Reform, March 2005a). The initiative is intended to improve cost efficiency and will have an emphasis on customer service. There is also a commitment to include in INIS an Immigrant Integration Unit which will deal with issues relating to the integration of migrants into Irish society (Burns, 2005).

¹⁹ In general asylum applicants are not detained in Ireland. However, applicants may be detained under the Refugee Act 1996 for a variety of reasons e.g.: if an immigration officer deems them to pose a threat to national security or public order, believes they have not made reasonable efforts to establish their identity, or that they intend to leave the State and enter another State unlawfully, or without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

3.4.2 IMMIGRATION LIAISON OFFICER NETWORK

The Minister for Justice, Equality and Law Reform announced that the Government has agreed to his proposal that Ireland should accept an EU Council Regulation creating an Immigration Liaison Network.²⁰ The Government's decision to accept this Regulation will be subject to the approval of the Oireachtas.

The objective of this Regulation is to establish a formal network of immigration liaison officers posted abroad in third countries outside the European Union. An immigration liaison officer is a representative of one of the EU Member States posted abroad. He or she is charged with establishing and maintaining contacts with the authorities of the host country with a view to contributing to the prevention of illegal immigration, the return of illegal immigrants and the management of legal migration. Immigration liaison officers will collect and share information on flows of illegal immigrants originating from or transiting through the host country, routes followed by those flows of illegal immigrants in order to reach the territories of the Member States, methods used for counterfeiting or falsifying identity documents and travel documents, and existence and activities of criminal organisations involved in the smuggling of immigrants (Department of Justice, Equality and Law Reform, August 2005).

3.4.3 INTER-DEPARTMENTAL GROUP ON REFUGEE RESETTLEMENT AND INTEGRATION

An inter-departmental group on refugee resettlement and integration commenced in July 2005. The Group was formed following the Government's decision in June to increase Ireland's Refugee Resettlement Programme. See Section 3.3.4.5. The Group represents ten Government Departments and is chaired by the Reception and Integration Agency.

3.4.4 STEERING GROUP TO OVERSEE IMPLEMENTATION OF THE NATIONAL ACTION PLAN AGAINST RACISM

A steering group has been set up to oversee the implementation of the National Action Plan against Racism (NPAR). It includes representatives of government, social partners and relevant interest groups. The group has a budget of €1 million per annum for the lifetime of the Plan (2005-2009) to be used for research, awareness raising and grant schemes. (Department of Justice, Equality and Law Reform, January 2005b, March 2005b.)

3.4.5 TASKFORCE ON CITIZENSHIP

The Taoiseach has created a task force to determine how to promote greater citizen participation in communities and in society, acknowledging that the pressures of modern working life threaten Ireland's traditional family and social ties. The Task force will have six months to report on how to encourage people to volunteer to work in everything from parish activities, credit unions, sporting and scouting activities. NCCRI (April 2005).

²⁰ Council Regulation (EC) NO. 377/2004 was adopted by the Justice and Home Affairs Council in February 2004.

4. LEGISLATIVE DEVELOPMENTS IN THE AREA OF MIGRATION AND ASYLUM

Summary

The relatively recent increase in the number of people immigrating to Ireland has necessitated the development of a range of new legislation dealing with immigration, asylum and citizenship. The principal Acts are discussed briefly below. The main legislative developments in the reference period relate to the anticipated Immigration and Residence legislation and the new Employment Permits Bill, both of which are discussed in the previous section, Section 3. The Nationality and Citizenship Act 2004, discussed below, now sets out the conditions under which Irish citizenship may be granted to a child born in Ireland with foreign national parents. Table 8 at the end of this section sets out relevant EU legislative developments that were progressed, in Ireland or at EU level, during the reference period.

4.1 General Structure of the Legal System in the Area of Migration and Asylum

4.1.1 GENERAL IMMIGRATION

Until recently the 1935 Aliens Act, and the Orders made under that Act, formed the basic legislation governing the entry and residence of foreign nationals in the State. In addition, the regulations implementing the EU Rights of Residence Directives came into effect after Ireland joined the European Union in 1973. The general perception was that there was little need to introduce new legislation in view of the small number of immigrants and foreign residents involved. However, the rapid increase in the immigration of foreign nationals since the mid-1990s has created an entirely new situation. The Department of Justice, Equality and Law Reform has main responsibility for immigration matters in the State. The recent legislative measures introduced to deal with immigration and asylum issues in Ireland are presented briefly below.

The Immigration Act 1999 sets out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and makes provision for the issuing of deportation and exclusion orders. The Immigration Act 2003 introduced carrier liability whereby a carrier can be held responsible and fined for bringing an undocumented immigrant to 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 Immigration Act 2004 includes a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It makes provision for the appointment of immigration officers and establishes 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 foreign 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 foreign nationals are required to register with the Gardai (police).

The Illegal Immigrants (Trafficking) Act 2000 creates an offence of trafficking in illegal immigrants with significant penalties on conviction and extends the powers of the Garda Síochána (Police) to enter and search premises and to detain in relation to such activities.

The statute law governing Irish citizenship is the Irish Nationality and Citizenship Act 1956. The 1956 Act has been amended by the Irish Nationality and Citizenship Act 1986, 1994, 2001 and 2004. Developments around citizenship law are discussed further at Section 4.2.2.

More comprehensive and broadly based Immigration and Residence legislation than the Alien's Act 1935 is in preparation and the discussion document *Immigration and Residence in Ireland: Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005b) was published in April 2005. It is intended that this Bill will codify issues such as family reunification, visitor visas etc. that are currently dealt with on an administrative basis by the Department of Justice, Equality and Law Reform. A consultation phase is ongoing and over 130 submissions were received from NGOs and other interest groups (Burns, 2005). It is expected that the Bill will be published in 2006.

4.1.2 WORK PERMITS AND LABOUR IMMIGRATION

The Employment Permits Act 2003 was introduced to facilitate free access to the Irish labour market to nationals of the new EU Accession States after 1st May 2004. The Act also incorporates a provision whereby, for the first time, the requirements for employment permits in respect of foreign nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance by both employers and employees. The Employment Permits Bill 2005 is discussed at 3.3.1. The employment permits and working visa/authorisation schemes²¹ are administered under the Department of Enterprise, Trade and Employment.

4.1.3 ASYLUM

The 1996 Refugee Act codifies in law the provisions for dealing with applications for asylum: it also provides the legal basis for the Office of the Refugee Applications Commissioner (ORAC), which deals with first instance asylum applications and the Refugee Appeals Tribunal, which hears appeals of negative determinations by ORAC. These agencies are statutorily independent but they operate under the aegis of the Department of Justice, Equality and Law Reform. The ORAC and RAT forward their decisions to the Ministerial Decisions Unit of the Department of Justice, Equality and Law Reform where the final decision in respect of an asylum applicant is taken. The Minister is in general bound to accept the decisions of ORAC/RAT.

The Reception and Integration Agency (RIA) is an agency of the Department of Justice, Equality and Law Reform. RIA is responsible for administering the direct provision accommodation services for asylum seekers and for providing integration supports to recognised refugees.

²¹ Work visas/authorisations differ from work permits in two ways: visas/authorisations are issued for two years and may be renewed for another two years and they are issued directly to the employee rather than the employer. A non visa-required national (i.e., a national of a country on the list of countries whose passport holders are not required to have visas to travel to Ireland) may be given a working authorisation, while nationals of countries requiring visas are given working visas.

4.2 Legislative Developments

4.2.1 MANAGED MIGRATION

The recently published Employments Permits Bill 2005 is discussed at Section 3.3.1.

4.2.2 CITIZENSHIP AND NATURALISATION

The right to Irish citizenship granted to all persons born on the island of Ireland (the Republic of Ireland and Northern Ireland) was inserted into the Constitution by way of the Belfast Agreement in 1998. The acquisition of citizenship was therefore placed beyond the remit of the legislature until recently. The Nationality and Citizenship Act 2004, which commenced on January 1st 2005, now sets out the conditions under which Irish citizenship may be granted to a child born in Ireland with foreign national parents. One of the parents must have been legally resident on 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.

4.3 Implementation of EU Legislation

Regarding domestic legislation the Equality Act, 2004 was enacted in July 2004 and has the effect of implementing three EU Directives: the Race Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC) and the Revised Gender Equal Treatment Directive (2002/73/EC). The Equality Act also provides for a number of procedural amendments to the Employment Equality Act 1998 and the Equal Status Act 2000. The 2004 Act had the effect of extending equality legislation to domestic workers, self-employed people and persons over 65 years of age.

Table 8 shows the main developments in Ireland regarding EU legislation during the period under discussion. 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.²² 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. The measures listed in Table 8 include those on which there was some activity during the reference period, for example the adoption of an instrument, or a notification by Ireland to the President of the European Council of a desire to opt-in to the instrument. Table 8 also lists instruments on which there has been active discussion in Ireland during the period.²³

²² 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.

²³ 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.

Table 8: EU Legislative Developments and Related Irish Developments July 2004 – December 2005

Reference	Title	Opt-in Deadline (relevant to exercise of the opt-in under Art 3 of the fourth Protocol only i.e. before the instrument is adopted)	Adopted	Did Ireland opt- in (Y/N)? Opt-in under Art 3 of the fourth Protocol TEC unless otherwise specified
Asylum Proposals				
Council Decision 2004/904/E	Council Decision establishing the European Refugee Fund for the period 2005-2010.	12.05.04	29.11.04	Y
Not published in OJ yet. Ref. no of Commission proposal: COM/2004/384 final	Council Decision amending Decision No. 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visa, asylum and immigration (ARGO programme).	N/A	13.12.04	Intend to opt-in under Art.4 of the fourth Protocol TEC subject to Parliamentary approval
Council Directive 2005/85/EC	Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.	14.02.00	01.12.05	Y
COM/2005/480 final	Proposal for a Council Decision on the establishment of a mutual information procedure concerning Member States' measures in the areas of asylum and immigration.	14.01.06	Presented to Council 06.10.05	Y
COM/2005/123 final/2	Proposal for a Decision of the European Parliament and the Council establishing the European Refugee Fund for the period 2008-2013 as part of the General programme 'Solidarity and Management of Migration Flows'.	04.11.05	03.05.05	Y
COM/2005/123 final/2	Proposal for a Decision of the European Parliament and the Council establishing the External Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'.	04.11.05	03.05.05	N
COM/2005/123 final/2	Proposal for a Decision of the European Parliament and the Council establishing the Integration of third-country nationals for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'.	04.11.05	03.05.05	Y
COM/2005/123 final/2	Proposal for a Decision of the European Parliament and the Council establishing the European Return Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows'.	04.11.05	03.05.05	Y
Migration (Admission) Proposals				
COM/2002/0548 (Proposal)	Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.	09.01.02	13.12.04	N
COM/2004/178 Final 2004 (0061) CNS	Council Directive 2005/71/ EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research.	30.06.04	12.10.05	Y

Reference	Title	Opt-in Deadline (relevant to exercise of the opt-in under Art 3 of the fourth Protocol only i.e. before the instrument is adopted)	Adopted	Did Ireland opt- in (Y/N)? Opt-in under Art 3 of the fourth Protocol TEC unless otherwise specified
2004/0062/CNS	Council Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the EC.	30.06.04	12.10.05	N
2004/0063/CNS	Council Recommendation to facilitate the issue by Member States of uniform short stay visas for researchers from third countries travelling within the European Community for the purposes of carrying out scientific research.	30.06.04	12.10.05	N
Border Proposals				
2004/ 82/EC	Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data.	26.06.03	29.05.04	Oireachtas approval is being sought
2004/377/ EC	Council Regulation (EC) No 377/ 2004 of the 19 February 2004 on the Creation of an Immigration Liaison Officers Network.	03.09.03	19.02.04	Oireachtas approval is being sought
Visas/borders/immigration (illegal)				
2004/927/EC	Decision of the Council providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty.	08.12.04 (actual opt-in date)	22.12.04	Y
Council Regulation (EC) No 2007/2004	Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.	None. This is a Schengen building measure.	26.10.04	N
Proposal for a Directive COM/2005/391 final	Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals.		01.09.05	
Draft EU Regulation SEC(2004)1628	Draft Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas.		28.12.04	

Source: Department of Justice, Equality and Law Reform and Eurasyllum (<http://www.eurasyllum.org/>)

5. OTHER POLICY IMPLEMENTATION ISSUES

Regarding immigration and the labour market the protection of immigrant workers was the dominant theme in the period, particularly during 2005. Two high profile cases, discussed below, prompted trade unions and others to warn about the negative implications of allowing a gap in standards to open up between underpaid immigrant workers and well protected Irish workers. In other employment-related developments the spouses of certain migrant workers were given improved access to the labour market while the access of students to employment was restricted.

Problems dealing with children in asylum seeker accommodation received attention during the period. There is a continuing problem of children who disappear from Health Board care and it has been argued in the media that insufficient supervision is provided for this vulnerable group. Research published in the period also drew attention to the isolation and loneliness experienced by children who arrive alone. A further research report released in the period also indicated increasing numbers of women who have been trafficked into Ireland working in prostitution.

The implementation of a Habitual Residence Condition, introduced to protect the Irish welfare system ahead of accession in May 2004, came under scrutiny in the period. Concern that the condition was leading to unnecessary hardship among EU10 nationals in Ireland has resulted in a review of the condition.

5.1 Labour Market and Employment

5.1.1 PROTECTION OF MIGRANT WORKERS

Protection of migrant workers was one of the most important issues during the period covered by this report. A Socialist Party TD accused the Turkish company GAMA Construction of paying Turkish workers €2 to €3 an hour and requiring them to work up to 80 hours a week on projects in Ireland. The company admitted that most of its 800 Turkish employees had been receiving less than the legal minimum rate for the construction industry. The company maintained that the difference between the workers' wages and the legal minimum wage was lodged in bank accounts in the Netherlands.²⁴ The trade unions SIPTU, ICTU and the employers' organisation the Construction Industry Federation campaigned on behalf of the Turkish workers. Three hundred GAMA workers began an unofficial strike in March 2005. Most of those workers originally involved in the dispute returned to Turkey after receiving the money lodged in their names in Dutch bank accounts. In May 2005 the Labour Court recommended settlement terms of €8,000 for each year of service for 80 workers still on strike.²⁵

²⁴ The Irish minimum wage rate for an experienced adult employee from 1st May 2005 is €7.65 per hour. Before that date the rate was set at €7.00 per hour.

²⁵ It also emerged that GAMA Construction secured nearly €200 million worth of State contracts between its arrival in Ireland in November 2000 and May 2005. GAMA was also major beneficiary of a scheme that exempted employers from paying social insurance for employees

In response to the GAMA dispute the Minister for Enterprise, Trade and Employment increased the number of labour inspectors from 20 to 31. The Minister stated that the extra inspectors would have a particular focus on sectors where migrant workers are concentrated. In an address to the Seanad (Senate) the Minister outlined how Ireland relies on immigrant workers to fill skills shortages. He warned that incidences of abuse impact negatively on Ireland's capacity to attract and retain such workers (see Department of Enterprise, Trade and Employment, April 2005). NGOs and Trade Unions have characterised the increase in the number of labour inspectors as wholly inadequate (see Immigrant Council of Ireland, October 2005 and Jennings, 2005). Ruhs (2005) observed that only three employers had been convicted of offences under the Employment Permits Act 2003.

The Labour Relations Commission²⁶ (LRC) (2005) noted in its annual report a significant increase in claims from migrant workers under the Payment of Wages Act. The Rights Commissioner service of the Commission dealt with over 1,538 claims under the Act in 2004 compared with 1,285 in 2003.

The Equality Authority (2005) has reported that almost one-third of all cases taken by the Authority in 2004 under the Employment Equality Acts related to allegations of discrimination on the basis of race. Over 10 per cent of cases taken under the Equal Status Act in the same period related to race.

Changes proposed in the new Employment Permits Bill 2005 discussed at Section 3.3.1 mean that employment permits would be granted to the employee rather than the employer.

In September 2005 a company named Irish Ferries sought 543 voluntary redundancies. Workers were offered redundancy or lower pay.²⁷ What was contentious was the company's explicit intention to replace Irish workers with workers sourced from Eastern Europe through agencies. The trade unions SIPTU (Services, Industrial, Professional and Technical Union) and the Seamen's Union of Ireland represented the Irish workers involved but argued that they also acted in the interests of the immigrant workers who would be underpaid if the move went ahead. Irish Ferries argued that the wages of their workers are augmented with food and board while on the vessel and that outsourcing of labour is the only way for the company to remain competitive.

Irish Ferries attempted to 're-flag' two of its vessels by registering them abroad but were initially denied permission to do so by the Irish Minister for the Marine. It was reported that the Taoiseach shared concerns about the fact that Ireland could not regulate employment conditions if the vessels were registered abroad.²⁸

The case generated a large amount of public interest. On 3rd November 2005 approximately 10,000 people marched in support of the unions involved.²⁹ A "national day of protest was held on December 9 2005 and approximately 100,000 people turned out to March in support of the unions" position at nine locations across the country.³⁰ The case has been linked to the issue of the EU services directive as a 'glimpse' of what the future may hold if

from abroad. (Exemption from payment of social insurance for a period not exceeding 52 weeks may be granted in respect of the temporary employment of people who are not ordinarily resident in the State.) *The Irish Times*, May 18th 2005, "GAMA secured 70 per cent of PAYE relief scheme".

²⁶ The Labour Relations Commission was established under the Industrial Relations Act, 1990 in January 1991. The LRC has general responsibility for promoting good industrial relations in Ireland, through industrial relations advisory and mediation services.

²⁷ *The Irish Times*, September 20 2005, "SIPTU threatens strike after Irish Ferries job cuts".

²⁸ *The Irish Times*, November 16th 2005, "No permit for Irish Ferries to deregister vessels".

²⁹ *The Irish Times*, November 4 2005, "10,000 join march for workforce at Irish Ferries".

³⁰ *The Irish Times*, December 10th 2005, "Further effort to end ferry row as thousands march in protest".

the Directive is adopted.³¹ SIPTU (November, 2005) cautions that the proposed Directive would allow employers to bring workers in from other EU countries on less than the agreed national terms of employment.

A compromise solution was reached in December 2005. Irish Ferries may now proceed with its plan to outsource migrant workers for its Irish Sea vessels. The new crew must be paid at least the Irish minimum wage – (reported to be about twice what had been proposed) and crews will have more time off than initially planned. The company has been allowed to "reflag" its vessels to another state but pay and conditions of the crew will be underpinned by a binding agreement grounded in Irish law.³²

5.1.2 ACCESSION STATE NATIONALS

Prior to the accession of ten new EU states in May 2004 there was considerable discussion around whether Ireland should restrict access to the labour market and to the welfare system. Ireland, the UK and Sweden placed no restrictions on access to the national labour market although Ireland and the UK introduced restrictions to welfare benefits.³³

The high flow of immigrants from the Accession States that was suggested by the PPSN data (133,258 between May 2004 and September 2005) generated considerable debate in the period around the impact of migration from the Accession States on the Irish labour market. In general the impact has been found to be positive: accession has had the effect of significantly increasing the pool of labour available to Irish employers (see Traser, August 2005; Bank of Ireland, August 2005) although there has been no quantitative research on this area conducted to date.

The Department of Social and Family Affairs have cross referenced the PPS number allocations discussed at Section 2.1.1 with data from the Revenue and have found that in 70 per cent of cases tax is paid by the PPS number holder. The Department of Social and Family Affairs' analysis of the pattern of the inflows has led them to conclude that the majority of EU 10 immigrants come for a short period only and that many are likely to be students who work for their holidays.³⁴ This partly explains the difference between the number of PPSNs issued and the much lower flows evidenced in the Central Statistics Office data discussed in Section 2.1.³⁵

³¹ At present, the European Treaty allows European service businesses in any Member State to operate in other EU Member States. To do so, however, they must adapt to the laws and practices of the Member States they are selling to. Supporters of the directive say this puts a huge administrative burden on business aiming to deliver value across national borders and prevents European consumers from having the same competitive benefits in relation to services as they have in relation to goods. Opponents fear that the directive will result in a 'race to the bottom' that will erode working conditions across Europe as service companies relocate to eastern Europe to avail of lower labour costs. (*Sunday Business Post*, March 27th 2005, "Directive asks fundamental questions on EU.")

³² *The Irish Times*, December 15th 2005, "Plenty of scope for both sides to claim victory".

³³ All EU-15 Member States have the right to require work permits from citizens of new Member States for at least the first two years after 2004. After 2006, the original Member States may extend the transition period for another three years. The 'transition period' should end five years after the 2004 enlargement, but it may be prolonged for a further two years in those Member States where migration might cause (or threaten to cause) serious disturbance of the labour market. After a total of seven years (i.e., not later than in 2011) no EU Member State will be allowed to require work permits any more from EU citizens. Ireland has 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.

³⁴ Contribution by Mr. Brian O'Raghallaigh (Department of Social and Family Affairs) to the Joint Committee on European Affairs on 26th October 2005.

³⁵ The Population and Migration Estimates compiled by the Central Statistics Office record the number of people who have moved to Ireland in the year before the survey who were not resident in Ireland one year before the survey.

An immigrant who has paid social insurance in another EU Member State may have their previous payments aggregated with social insurance paid in Ireland giving rise to a social insurance benefit in Ireland. However there is frequently a delay in such payments and groups such as FÁS are providing information to workers in Accession States about the initial costs they face and advising intending migrants to save at least €2,000 before moving to Ireland.³⁶

5.1.3 SPOUSAL WORK PERMITS SCHEME

In October 2004 the Tánaiste (Deputy Prime Minister) announced the introduction of new arrangements for the spouses of non-EEA employees working in the State on work visa/work authorisation (provided that their spouse is working in the employment sector specified on his/her visa), or on certain Intra-Company Transfers. The spouses of work permit holders are not eligible for the new scheme unless the original work permit holder is a researcher or academic with a recognised third level institution or a medical professional who is fully registered with the appropriate professional body.

These new arrangements were introduced in order to give greater ease of access to employment for eligible spouses, under specified schemes and facilities.

5.1.4 STUDENTS' ACCESS TO LABOUR MARKET

In the period between April 2000 and December 2004 all non-EEA students in Ireland could work 20 hours per week during term and work full time during vacation. In December 2004 the Minister for Justice, Equality and Law Reform introduced new restrictions on the access of non-EEA students to the Irish labour market. Now only students who are pursuing courses which are of at least one year's duration and which lead to a 'recognised qualification',³⁷ may enter the Irish labour market. The changes were introduced to eliminate the problem of people coming to Ireland as students to circumvent labour migration controls and procedures and then overstaying (see Department of Justice, Equality and Law Reform, December 2004).

5.1.5 INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

There have been a number of calls during the period for Ireland to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (see Immigrant Council of Ireland, October 2005; Blackwell, 2005). None of the Member States of the European Union or the USA or Canada have ratified this Convention. In the *Outline Policy Proposals for an Immigration and Residence Bill* (Department of Justice, Equality and Law Reform, 2005) it is argued that the legislative changes that would be required to ratify the Convention are too far reaching and would stretch across employment, social welfare provision, education, taxation and electoral law. It is further argued that such changes would have implications for relationships within the EU and could impact upon the common travel area between Ireland and the UK.

5.2 Education

The Department of Education (2004) released a report in the period on the internationalisation of Irish education. The report presented the findings of an inter-departmental working group established to look at this issue. It was noted

³⁶ Contribution by Mr. Brian O'Raghallaigh (Department of Social and Family Affairs) to the Joint Committee on European Affairs on 26th October 2005.

³⁷ A register of approved full-time courses was published on the Department of Education website www.education.ie in April 2005 and will be updated monthly.

that total earnings from overseas third level students in 2001/2002 is estimated to be approximately €140 million, of which fees accounted for €68 million. The English as a Foreign Language (EFL) sector brought almost 200,000 visitors to Ireland in 2003. The sector is estimated to account for around €300 million in foreign earnings annually. The working group recommended that the international education market should be further developed in order to generate economic and social benefits for Ireland. The presence of overseas students is deemed to contribute to understanding, tolerance and cohesion both within Ireland and with other societies, cultures and countries.

The time taken to process visas and inconsistency regarding the granting and refusal of visas were identified as major obstacles to the development of the international education sector. Recommendations arising included limiting access to the labour market to students under-taking longer-term courses (since adopted see Section 5.1.4) and closer co-operation between educational institutions and immigration authorities.

Analysis by Barrett, Bergin, and Duffy (2006) of the educational qualifications of immigrants in the labour force in 2003 was undertaken in the period. The research shows that immigrants had considerably better levels of education than the native labour force. Just over 54 per cent of immigrants had third level qualifications whereas the figure for the native population was half of this. The research suggests that weak English language skills may be a contributory factor to a gap between immigrants' skills and their occupations. Difficulties for employers in recognising foreign qualifications may also be a factor. English language classes for economic migrants are now provided by the vocational education colleges. All functions related to the recognition of foreign qualifications have recently been centralised under the new "Recognition Ireland" service provided by the National Qualifications Authority of Ireland.

5.3 Health Care

A new plan to improve the health care and personal social services provision for ethnic minority communities in the eastern region was developed by the Eastern Regional Health Authority (ERHA). Measures include the development of an interpretation service and support and resourcing of NGOs to work in partnership with people from ethnic minority communities to inform health-service planning. (National Consultative Committee on Racism and Interculturalism, October 2004).

The findings of research into the health and social education needs of separated children seeking asylum is discussed below at Section 5.6.1. Conroy and FitzGerald (2005) stress the need for sexual and reproductive health promotion and note that children may be unaware of the services available to them in Ireland free of charge.

5.4 Family, Youth and the Elderly

In October 2005 the Minister of State with Special Responsibility for Children, launched two policy documents for children in asylum seeker accommodation centres. Both documents were developed by the Reception and Integration Agency (RIA), in conjunction with the Health Services Executive. The "Child Protection Policy for Accommodation Centres" aims at promoting the welfare of the children of asylum applicants in accommodation centres. Suggested measures include the provision of indoor and outdoor play areas; on-site pre-school facilities; improved linkages with organisations such as the County Childcare Committees, VEC and youth services; the establishment of a number of local inter-agency working groups, to promote synergy and improve responsiveness, and plans to develop supports for foreign national parents.

"Infant Feeding Guidelines for Direct Provision Centres" were developed in line with recommendations from UNICEF and the World Health

Organisation. They recommend some changes within reception and accommodation centres aimed at improving the health and nutrition of babies and children resident in the centres. (Reception and Integration Agency, October 2005).

5.5 Women and Gender

Research commissioned by Ruhama (2005a) indicates increasing numbers of women who have been trafficked into Ireland working in prostitution here. In the period 2003/2004 Ruhama had encountered over 100 cases of trafficking. These figures include 70 'presumed trafficked' women and 21 victims of trafficking. By including 'presumed trafficked' cases Ruhama hope to account for the women they work with that are too afraid to reveal their true circumstances.³⁸ Efforts to estimate the scale of the problem are also hampered by the fact that trafficked women are almost all forced into 'indoor prostitution' i.e. operating out of flats or brothels (Ruhama, 2005b).

Ireland is a signatory to the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW). Ireland submitted a report on the national situation which was examined by the CEDAW Committee in July 2005. The Committee expressed concern about the vulnerability of migrant women and highlighted the need for a comprehensive strategy to deal with trafficking in women and girls into Ireland (reported in NCCRI, July and August 2005).

5.6 Vulnerable Groups

5.6.1 UNACCOMPANIED MINORS

Conroy (2003) comments on the problem of children who disappear from Health Board care.³⁹ The Minister of State at the Department of Health and Children has indicated that sixty-eight unaccompanied minors disappeared from care in 2004, and twelve disappeared in the first four months of 2005.⁴⁰ In June 2005 there were approximately 210 migrant children in care and around 20 per cent of these were under 16 years of age.⁴¹ Some of the missing children may be 'collected' by an adult from their hostel or centre, sometimes before the State has time to initiate an asylum application on their behalf. It was reported that the Health Service Executive has stressed to the Department of Health and Children the need for additional funding for the adequate supervision of unaccompanied minors. Older teenagers are often placed in private hostels which are not subject to inspection.⁴² A spokesperson for the International Organisation for Migration in Ireland has stated that she is aware of cases of children being trafficked into Ireland who later disappear from care and become the victims of exploitation.⁴³

Research by Conroy and FitzGerald (2005), commissioned by the Health Services Executive and the Crisis Pregnancy Agency, addressed the health and social education needs of separated children seeking asylum. The research looked at children in care aged 15-17 years who had come to Ireland unaccompanied and who had not been reunited with any family members since

³⁸ Ruhama uses the following indicators to identify a presumed victim of trafficking: evidence of fear, recent arrival, evidence of control, lack of English language skills and evidence of physical abuse (2005a).

³⁹ On January 1st 2005 a new Health Service Executive (HSE) replaced the Health Boards in Ireland. The HSE has full operational responsibility for the running of the health services in Ireland.

⁴⁰ Mr. B. Lenihan, Parliamentary Debates (Official Report – Unrevised) Dáil Éireann Thursday 12th April 2005.

⁴¹ *The Irish Times*, "Concern for missing children prompts new service", June 20 2005.

⁴² *The Irish Times*, "Extra money refused despite risks to children". November 21 2005.

⁴³ *The Irish Times*, "Migrant group aware of child victims". November 20 2005.

arrival. Problems identified included isolation, loneliness particularly among young pregnant women and mothers. The action plan that resulted from the research stresses the need for sexual and reproductive health promotion. The authors found that the children were frequently unaware of the services available to them in Ireland free of charge.

5.7 Discrimination

Research published by the Central Statistics Office (August 2005) in the period showed that persons from ‘Other ethnic backgrounds’ reported the highest rate of discrimination among those surveyed with over 31 per cent stating that they felt discriminated against in the past two years (see also Sections 3.3.3.2 and 3.4.4).

5.8 Other

A Habitual Residence Condition (HRC) was introduced ahead of the accession of ten new Member States to the EU in May 2004. 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 test applies to all persons but was introduced to protect the Irish welfare system after the accession of ten new EU Member States. 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. Five factors are considered to determine whether or not a person is habitually resident: main centre of interest, length and continuity of presence, length and reason for any absence, nature and pattern of employment and future intentions.

The implementation of the HRC has raised concerns. The National Consultative Committee on Racism and Interculturalism (NCCRI) together with a number of other organisations has worked with the Department of Social and Family Affairs in the period to address these issues (see Visser, July 2005). There is a concern that the HRC is exposing vulnerable groups to poverty, exploitation and homelessness.⁴⁴ Visser also argues that the number of claims of ‘habitual residence’ that were found in favour of EU10 nationals is higher than the number of claims found in favour of nationals from the old Member States. Figures indicate that 57 per cent of HRC applications made by nationals from ‘new’ EU10 Member States are accepted compared to 36 per cent of applications by nationals from ‘old’ EU15 Member States. These figures suggest that the residency condition 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.

In October 2005 it was reported that just 1,300 people from EU Accession States claimed unemployment benefit or unemployment assistance between May 2004 and September 2005. Less than half of these, or 635, were in receipt of assistance.⁴⁵ These figures may of course be affected by the existence of the Habitual Residency Condition.

It was reported in the media that the European Commission initiated an “infringement procedure”⁴⁶ on the Irish Government over the extent to which benefits were being denied to EU citizens.⁴⁷ There has been a relaxation in the

⁴⁴ See *The Irish Times*, “Migrant workers at risk of poverty due to welfare benefit restrictions”, January 27th 2005 and “EU migrants turn to agencies for homeless”, September 27th 2005.

⁴⁵ *The Irish Times*, “New figures challenge welfare tourism fears”, October 24th 2005.

⁴⁶ If the European Commission finds that an EU country is not applying an EU law, and therefore not meeting its legal obligations, the Commission may first launch a process called the ‘infringement procedure’. This involves sending the government an official letter and setting it a deadline for sending the Commission a detailed reply. If this procedure fails, the Commission must then refer the matter to the Court of Justice, which has the power to impose penalties.

⁴⁷ *The Irish Times*, “State queried on welfare for EU immigrants.” September 23rd 2005.

implementation of the HRC in recent months, The Immigrant Council of Ireland has reported that in November 2005 Community Welfare Officers were informed that EEA nationals with a work history in the State could access benefits under the Supplementary Welfare Allowance scheme. Restrictions on Child Benefit and the One-Parent Family Allowance were also lifted with the effect that all workers whether EEA or third country nationals may now apply for Child Benefit and all EEA workers may apply for the One-Parent Family payment.⁴⁸

⁴⁸ Nationals of EU Member States working in Ireland may claim Child Benefit even if their children are not resident in the State with them. However, third country nationals may only claim Child Benefit if their children are residing in the State with them.

6. ANNEX

Annex Table 1: Asylum Applications (Including Reapplications) July 2004-November 2005

Month	Number of Applications
Jul-04	371
Aug-04	401
Sep-04	466
Oct-04	329
Nov-04	409
Dec-04	430
Jan-05	393
Feb-05	377
Mar-05	489
Apr-05	320
May-05	322
Jun-05	315
Jul-05	325
Aug-05	348
Sep-05	372
Oct-05	320
Nov-05	346

Annex Table 2: Asylum Applications per Month Made by Persons from Nigeria, Romania and Somalia, July 2004-November 2005

Month	Nigeria	Romania	Somalia
Jul-04	147	15	12
Aug-04	144	22	14
Sep-04	167	29	26
Oct-04	87	27	35
Nov-04	106	67	20
Dec-04	170	32	14
Jan-05	158	22	32
Feb-05	167	31	21
Mar-05	232	24	35
Apr-05	91	13	36
May-05	68	37	46
Jun-05	68	60	29
Jul-05	87	41	38
Aug-05	84	12	21
Sep-05	83	22	28
Oct-05	82	35	41
Nov-05	74	47	20

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