



EUROPEAN MIGRATION NETWORK

POLICY ANALYSIS REPORT ON ASYLUM AND MIGRATION: IRELAND 2006

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LIST OF ABBREVIATIONS AND IRISH TERMS

ABBREVIATIONS AND IRISH TERMS

CADIC	Coalition Against Deportation of Irish Citizen Children
Dáil	Parliament, lower House
FÁS	National Training and Employment Authority
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
IRC	Irish Refugee Council
JHA	Justice and Home Affairs
MRCI	Migrant Rights Centre Ireland
NESC	National Economic and Social Council
NESF	National Economic and Social Forum
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
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister

EXECUTIVE SUMMARY

This report is the third in a series of Policy Analysis Reports, a series which is intended to provide a coherent overview of immigration trends and policy development during consecutive periods beginning January 2003. Comparable Policy Analysis Reports are also available for a number of other EU countries participating in the European Migration Network.¹

The most significant developments in Ireland during 2006 centred on the emergence of new immigration, residence and protection legislation. A discussion document published in 2005 (Department of Justice, Equality and Law Reform, 2005) was followed up in 2006 with a proposed Scheme of draft legislation (Department of Justice, Equality and Law Reform, 2006). An actual draft Bill was, therefore, not published in the period but the Scheme stimulated substantial discussion. The proposals for this legislation are far reaching covering most elements of immigration and asylum systems such as visas; entry into the State; residence permits and registration requirements; removal and protection. It was as much the omissions from the Scheme as the provisions that stimulated debate. NGOs and other interested parties welcomed some provisions, such as the introduction for the first time of a statutory long-term resident status, but were critical of others, such as the introduction of identity cards and restrictions on non-Irish nationals' right to marry. Many commentators regretted the absence of family reunification structures or measures to address trafficking. The Scheme of the Bill is discussed in Chapters 1 and 2.

Chapter 2 provides information on central policy debates in the period. The issue of family reunification was kept to the forefront during the period with NGOs calling for improved clarity around entitlements. A number of people granted permission to remain in Ireland under the IBC/05 Scheme (based on parentage of an Irish-born child) have lodged legal challenges against the Minister for Justice, Equality and Law Reform's assertion that they have no family reunification entitlements.

Other significant policy debates in the period related to whether displacement of indigenous workers had taken place post accession, May 2004. Research showed, however, that despite the increase in non-national employment in Ireland, employment among indigenous Irish workers continued to grow and the unemployment rate has remained low. The related issues of employment rights,

¹ The European Migration Network is a network of National Contact Points tasked with gathering accurate, objective and comprehensive information on immigration and asylum. Reports may be downloaded from the EMN website: <http://www.european-migration-network.org/>

labour standards and displacement threatened to stall talks on a social partnership agreement in March 2006 but agreement was reached eventually on certain safeguards. It was announced that nationals of Romania and Bulgaria would continue to require work permits after the accession of their countries to the EU in 2007.

The Irish Refugee Council launched a report on separated children during 2006. Particular problems faced by unaccompanied minors were identified. In particular the author noted that children are at their most vulnerable to sexual exploitation, being trafficked or re-trafficked if they present at 'out of office' times. The Department of Justice, Equality and Law Reform and An Garda Síochána produced a report in 2006 on legislation necessary to deal with the problem of trafficking and the Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill were published in June 2006. The Heads of this Bill do not, however, address the issue of residence and protection of victims of trafficking – an omission that has been criticised by several NGOs. Preliminary research findings on the topic suggested that while Ireland ranks low as a destination country trafficking both for sexual exploitation and for forced labour is a reality in Ireland.

The Employment Permits Act 2006 was also enacted in the period. This legislation provided an enabling structure for a new employment permits system introduced in 2007. The system includes three main elements: A type of "Green Card" for higher paid occupations where there are skills shortages; a re-established Intra-Company transfer scheme; and a revised work permit scheme for non-green card occupations. This Act and other relevant legislative developments are discussed in Chapter 2.

Significant developments relevant to EU legislation are described in Chapter 3. Such developments include the signing into law of the European Communities (Free Movement of Persons) Regulations 2006 which give effect in Irish law to Directive 2004/38/EC. The Directive widens the definition of family member. The admission of partners of European Union citizens who are in a durable relationship is facilitated and a new status of permanent residence for European Union citizens and their family members after five years residence in the State is created. The European Communities (Eligibility for Protection) Regulations, 2006 were also signed into Irish law to give interim effect to the provisions of Council Directive 2004/83/EC, otherwise known as the Qualification Directive. It is expected that the forthcoming Immigration, Residence and Protection Bill will incorporate the Qualification Directive into primary legislation. The Directive means that people who are seeking protection in Ireland, but who may not meet the refugee definition will be able to apply for "subsidiary protection". Finally, compliance with two Framework Decisions on Combating Trafficking and Sexual Exploitation was provided for in the Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill discussed above.

Other policy implementation issues are discussed in Section 4. Work permit data is presented which shows that the number of

work permits issued has decreased post accession 2004 and that a large proportion of the holders of those permits came from non-EU Eastern Europe or the Philippines. Research into the labour market characteristics of immigrants in Ireland in the period showed them to be generally highly educated but not all employed in occupations that fully reflect their education levels. Regarding education the Social Partnership Agreement *Towards 2016* includes a commitment to add an additional 550 support teachers to the system by 2009 and to reform the current limit of support teachers per school which is currently capped at two per school. The first steps were also taken during 2006 towards developing a national English language policy for all adult newcomers. In relation to health the Health Service Executive began to develop a National Intercultural Strategy with the aim of improving health care delivery to people from diverse ethnic backgrounds and cultures.

A research report was published in the period which showed that female migrants tended to work in lower paid, less visible and more exploitative forms of employment than their male counterparts. A survey of work permit holders and asylum applicants showed that over one-third of respondents had experienced race related harassment on the street, in public places or on public transport in Ireland in the past year. Finally, a Census of Population took place in April 2006. Substantial efforts were made to increase participation of immigrant and minority ethnic communities and results will be published in 2007.

1. POLITICAL DEVELOPMENTS IN THE MEMBER STATE

Summary

The most significant political developments in the period centered on the emergence of new immigration, residence and protection legislation. The proposals for this legislation are far reaching and, if they are followed through, will result in a number of important structural changes to the current immigration and asylum systems in Ireland. (It is important to note, however, that draft legislation was not published in the period and the following discussion is based on proposals only.)

The main policy debates in the period related to whether displacement of indigenous workers had taken place post accession, May 2004. Research showed, however, that despite the increase in non-national employment in Ireland, employment among indigenous Irish workers has continued to grow, the unemployment rate has remained at about 4 per cent and has not increased appreciably. The related issues of employment rights and displacement threatened to stall social partnership agreement in March 2006. Agreement was finally reached on the establishment of a National Employment Rights Authority and the expansion of the labour inspectorate. It was announced in the period that nationals of Romania and Bulgaria would continue to require work permits after the accession of their countries to the EU in 2007.

In relation to non-EU nationals' entitlements to family reunification continued to be a contentious issue in the period with NGOs calling for improved clarity. A number of people granted permission to remain in Ireland under the IBC/05 Scheme (based on parentage of an Irish-born child) have lodged legal challenges against the Minister for Justice, Equality and Law Reform's assertion that they have no family reunification entitlements. Development of an integration policy for all legally resident migrants took an important step forward in the period with the announcement of a new fund for that purpose. The Irish Refugee Council launched a report on separated children during the reference period. Particular problems faced by unaccompanied minors are identified including: if a child is reunited with their family on arrival there are no follow up checks on their welfare and if they are not reunited and present outside office hours he or she may be placed in inappropriate accommodation. The author notes that children are at their most

vulnerable at such ‘out of office’ times of sexual exploitation, being trafficked or re-trafficked.

The problem of trafficking received attention during the period from State and non-State actors. The Department of Justice, Equality and Law Reform and An Garda Síochána produced a report in 2006 on legislation necessary to deal with the problem. A conference was also held by the Irish Women Lawyers Association, at which the Migrant Rights Centre Ireland presented preliminary research findings on the topic. It appears that while Ireland ranks low as a destination country trafficking both for sexual exploitation and for forced labour is happening in Ireland.

**1.1
General
Structure of the
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 Michael McDowell). 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 and there will be another in 2007. The present Government is a coalition between Fianna Fáil and the Progressive Democrats.

There are 15 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland. 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 employment permit schemes. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants. Increasingly the immigration related functions of these three departments are being centralised in the Irish Naturalisation and Immigration Service (INIS) under the aegis of the Department of Justice, Equality and Law Reform.

The office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal are statutorily independent offices under the aegis of the Department of Justice, Equality and Law Reform. These bodies have responsibility for processing first instance asylum claims and hearing appeals respectively. (Forthcoming legislation is expected to significantly alter these structures. The functions currently carried out by the Office of the Refugee Applications Commissioner may in the future be subsumed into the Irish Nationality and Immigration Service (INIS). The Refugee Appeals Tribunal may be replaced by the Protection Review Tribunal.

Department of Justice, Equality and Law Reform, September 2006b).²

Finally, the Reception and Integration Agency (RIA), which is also part of the INIS, manages the accommodation of asylum applicants, the development of integration policy and administration of integration funding. The RIA is the state body responsible for pushing forward the integration agenda in Ireland.

1.2 General Political Developments

There were no significant political developments in the area of migration/asylum during 2006. The Minister for Justice, Equality and Law Reform, Mr. Michael McDowell, became Tánaiste (vice prime minister) in September 2006 however his Justice portfolio remained the same.

1.3 Central Policy Debates and Political Developments

1.3.1 MANAGED IMMIGRATION

1.3.1.1 *Development of Managed Migration Policy*

The development of a coherent Irish managed migration policy was progressed significantly in 2006 with the publication of a Scheme for an Immigration, Residence and Protection Bill in September 2006. The draft legislation will be discussed below in Section 2. The debate on future immigration policy was also informed by the publication of two reports by the National Economic Social Council (NESC), the principal institutional forum for social partnership established under the aegis of the Department of the Taoiseach: a migration policy document (NESC, 2006) and a review of Ireland's migration policy (IOM, 2006). NESC called for a clearly articulated Irish migration policy with a "whole of Government approach". The group cautioned against focusing on entry control and advocated control of labour market standards to reduce demand for and therefore supply of poorly paid workers. Three broad policy goals were identified:

- (1) Economic and social development. It is argued that policies for migration must define and manage channels of entry to Ireland, and do so in a way that reflects Ireland's goals for business development, employment, education, the family, culture, and its international commitments.
- (2) The rule of law. NESC caution that migration has the potential to undermine the rule of law in at least three distinct ways. First, it can weaken the ability of the state to define, control and monitor who resides in Ireland. Second, it can create situations of inequity in which relations between parties in civil society for example, between

² It should be noted that the provisions of the forthcoming legislation referred to throughout this report, the Immigration, Residence and Protection Bill, are not definite because a Bill has not yet been published. See Section 2.2.1.1 for more information.

employers and employees, are based on power rather than law or cooperation. Third it has the potential to weaken trust in the ability of public institutions to ensure the rule of law which, the authors warn, can become a self-fulfilling prophecy.

- (3) Integration. It is stressed that people coming to Ireland should be appropriately integrated into the life of Irish society. The 'appropriate' level of integration differs for those settling in Ireland and those here for a shorter time, however, it is argued that this distinction should not be pushed too far; international experience shows that much 'temporary' migration can turn out to be permanent.

1.3.1.2 Displacement of Irish Labour Post Accession 2004

A debate took place in the period over whether the policy of allowing EU10³ nationals free access to the Irish labour market had proved beneficial to Ireland. The key question related to whether there had been displacement of Irish workers. During 2005 there were a number of high profile cases, notably GAMA and Irish Ferries, which suggested that Irish workers were being displaced by cheaper labour from abroad. See the previous report in this series for a fuller discussion of these developments (Quinn, 2006a).

Doyle, Hughes and Wadensjö (2006) showed that although net immigration reached a record high of 53,400 in the post-enlargement year (April 2004 to April 2005), and 40 per cent of the migrants came from EU10 states, there was no evidence of displacement of Irish workers at a macro level. It was shown that EU10 nationals had a 90 per cent labour force participation rate compared with 62 per cent for Irish nationals and that EU10 workers were largely concentrated in the construction, industrial and hospitality sectors. Analysis of labour force survey data (AIB Global Treasury Economic Research, 2006a) showed that despite the increase in non-national employment in Ireland, employment among indigenous Irish workers has continued to grow and the unemployment rate for this group has remained at about 4 per cent and has not increased appreciably. There were three sectors identified, however, where employment of Irish workers fell while non-Irish employment increased: manufacturing, hotels and agriculture. These data offer only very limited evidence that there could be some displacement of Irish workers by non-nationals. There is no detail available on whether individual industries are experiencing displacement and no information on whether Irish workers are perhaps moving on to better jobs. (AIB Global Treasury Economic Research, 2006a.)

A study produced by the National Economic and Social Forum (NESF) in the period states that policy makers must address the barriers that generate labour market vulnerability among those

³ Nationals of the ten new EU member states which acceded in May 2004.

people who experience difficulty in competing for jobs, including those with low-skills and/or poor educational levels (such as early school leavers, some lone parents, or some women returners); those with obsolete skills (including those being made redundant, some women returners and the older unemployed) and immigrants whose qualifications may be unrecognised here. It is stressed that it is important to prevent polarisation of different groups in society. (National Economic and Social Forum, 2006).

The related issues of employment rights and displacement threatened to stall social partnership agreement⁴ in March 2006. Unions and other Social Partners argued that protection of employment standards and the minimum wage is key to avoiding a “race to the bottom” resulting in migrant workers being exploited and Irish workers displaced. The dispute was resolved when a new National Employment Rights Authority was agreed upon (see Section 1.3.3.3).

1.3.1.3 Accession of Romania and Bulgaria

In October 2006 the Minister for Enterprise, Trade and Employment announced that nationals of Romania and Bulgaria would continue to require work permits to work in Ireland after the accession of their countries to the EU on 1 January 2007. The Minister said that this decision was influenced by the substantial flows of immigrants from the ten new EU Member States post accession in 2004.

1.3.1.4 Spousal Employment Permits

In February 2004 the Minister for Enterprise, Trade and Employment announced new measures to attract highly skilled workers, particularly nurses, to Ireland. The spouses of certain categories of migrant workers could apply to work in Ireland under the spousal work permit scheme. Spouses still required a work permit to take up employment in Ireland but the procedure was simplified. Such spouses may apply for work permits in jobs deemed ineligible for the work permit scheme; the employer in question does not need to advertise the job with FÁS in advance of making a work permit application and there was no work permit fee levied. During 2006 the spousal work permit scheme was extended to the spouses of all employment permit holders. Some NGOs have expressed concern that take-up of this scheme has been low because the spouses of migrants have found it difficult to secure employment due to what may be a lack of awareness on the part of employers regarding the scheme. The Department of Enterprise, Trade and Employment records show that 1,718 spousal work

⁴ Social Partnership Agreements address mainly incomes, fiscal, social, economic and competitiveness policies. They are negotiated between the Government and the social partners including trade unions, employers, farming organisations and the community and voluntary sector.

permits were issued in 2006, 1,168 were issued in 2005 and 739 were issued in 2004.

1.3.2 GATES OF ENTRY AND BORDER CONTROL

1.3.2.1 *Family Reunification*

NGOs including the Immigrant Council of Ireland (ICI) and the Migrant Rights Centre Ireland (MRCI) continued to campaign for improved access to family reunification during 2006. At present there is no legislation in Ireland which sets out entitlements to family reunification for non-EEA migrants or Irish citizens with non-EU relatives. A research report was produced by ICI in the period based on the experiences of fifty-six people who had applied for family reunification in Ireland. Those interviewed had a range of immigration statuses including that of spouse/partner of Irish national, parent of Irish citizen children (see below), EU national, non-EU migrant worker, and recognised refugee. It was found that applicants found the system bureaucratic, the criteria for success inconsistent and that applications may take months or years to be processed. Several recommendations arose from this analysis including:

- Entitlements to family reunification for legally resident non-EU migrants and Irish citizens should be set down in primary legislation as part of the forthcoming Immigration, Protection and Residence Bill, rather than in secondary legislation or in administrative guidelines. (As discussed below family reunification is not in fact covered in the Scheme of the Bill as published.)
- The definition of family members who qualify for reunification should be broadened to include partners (opposite and same sex) and dependent family members.
- Ministerial discretion in the decision-making process should be minimised to enhance transparency and accountability.

The ICI also argues that the best interests of children should be prioritised in family reunification applications, that an independent appeals mechanism should be established and that partners of migrants who are admitted on family reunification grounds should be granted automatic access to the labour market. The ICI recommended the creation of the post of Minister responsible for immigration and integration issues (Immigrant Council of Ireland, 2006a).

There is a particularly contentious issue in relation to family reunification applications made by the parents of Irish born children who applied for permission to reside in Ireland under the 2005 Irish Born Child Scheme (a special scheme under which non-national parents of Irish born children could apply for permission to remain in the State also known as IBC/05, see Quinn (2006a) for more information). As part of the application under IBC/05 individuals signed a declaration to the effect that they are aware that if granted permission to remain their status does not confer “any entitlement

or legitimate expectation” of family reunification. The Coalition Against Deportation of Irish Citizen Children (CADIC) argues that under the current system the Minister has a duty to examine each case individually and that a blanket ban on family reunification is not compatible with the State’s obligations under the Irish Constitution or European Convention of Human Rights, to which Ireland is a party. A number of legal challenges have been brought (CADIC, 2006).

In April 2006 the Government established a working group on domestic partnership to look at options available to the legislature for giving legal recognition to alternative forms of partnership or cohabitation, consistent with Constitutional provisions. The Immigrant Council of Ireland made a submission to the group arguing for the clarification of family reunification entitlements for opposite or same sex partnerships (Immigrant Council of Ireland, 2006b). The working group concluded that they did not yet have enough information to make recommendations on this issue and that a comprehensive study of cohabitation in Ireland is required (Working Group on Domestic Partnership, 2006.)

1.3.2.2 Electronic Fingerprint System

An Garda Síochána and Irish Naturalisation and Immigration Service (INIS) signed a contract for the development of a new electronic fingerprint system in November 2006. The project includes:

- The replacement of the Garda Technical Bureau central fingerprinting system to meet new requirements.
- The replacement of manual fingerprinting facilities in the Office of the Refugee Applications Commissioner (ORAC) for asylum seekers with an electronic system. Fingerprints will be taken electronically for matching purposes to detect multiple asylum applications, transmitted electronically to the EU central EURODAC database and results transmitted back to Ireland.
- The introduction for the first time of a capability for the Garda National Immigration Bureau to take the fingerprints of all non-EEA nationals on registration in the State. Fingerprints may then be stored on the electronic registration card issued to non-EEA nationals.
- The provision to GNIB of facilities to take prints at air and sea ports and to provide a mobile fingerprinting capture and search capability.

(Department of Justice, Equality and Law Reform, November 2006).

1.3.3 INTEGRATION AND SETTLEMENT

1.3.3.1 Integration Policy Development

Until recently Irish integration policy was relevant to recognised refugees only. During 2006 there were signs that this position is changing and integration policy is being developed for all legally resident non-Irish nationals. In July 2006 the Minister for Justice, Equality and Law Reform announced the allocation of €5 million for integration-related activities and projects. The fund is being organised by the Reception and Integration Agency (RIA) and it is targeted to include assistance in employment, language, sport and community activities. (Department of Justice, Equality and Law Reform, July 2006a.)

Integration of immigrants was a subject of discussion during 2006 and a number of studies were published on the subject. The Migrant Rights Centre Ireland (Migrant Rights Centre Ireland, 2006c) set out what it considered to be the conditions for, and barriers to, social, political and cultural integration of non-Irish nationals in Ireland. In addition the National Consultative Committee for Racism and Interculturalism (NCCRI) published two research reports on the experiences of Polish workers and Chinese students in Ireland (Wang 2006, Kropiwiiec, 2006).

1.3.3.2 Anti-Racism

In March 2006 the annual Intercultural Week including the United Nations International Day Against Racism 2006 was held in Ireland and Northern Ireland. The overall theme of Intercultural Week in 2006 was 'Participation' – one of the five key themes of the National Action Plan Against Racism in Ireland. The theme refers to participation in key public services, including education, health, employment and policing; community development in local areas; political and public processes (including the 2006 Census); social and cultural life etc; schools and colleges; and the media. (NCCRI, February 2006.)

1.3.3.3 Employment Rights

As discussed above the protection of employment rights and displacement were key issues in 2006. Negotiations on the *Towards 2016* social partnership agreement were launched on 2 February 2006, however, in March talks stalled until agreement could be reached on how best to address the problem of exploitation of migrant workers.

Agreement was finally reached on the establishment, on a statutory footing, of a National Employment Rights Authority (originally named Office of Director for Employment Rights Compliance) and the expansion of the labour inspectorate from 31 to 90 inspectors by end-2007. The Authority will be tasked with maintaining employment rights and labour standards throughout the labour market, with a particular concern for the rights of migrant workers. The Social Partners also agreed to monitor various

indicators with a view to identifying possible displacement of Irish workers in the future.

Measures were introduced in order to address the fear of collective redundancies of Irish workers to make room for cheaper labour. It was proposed that a special panel would examine whether redundancies in a particular situation constituted displacement. The panel would advise the Minister for Enterprise, Trade and Employment on whether a case should be referred to the Labour Court. If the court found that the case was one of displacement rather than legitimate redundancy the employer could face penalties under new legislation to be introduced in 2007.

Exploitation of migrant workers continued to be a problem during 2006. In its *Annual Report 2005* the Equality Tribunal (2006) recorded substantial increases in the percentage of cases claiming discrimination under the Employment Equality Acts, on grounds of race (82 cases of a total 399 in 2005 compared to 51 cases of 297 in 2004). The Migrant Rights Centre Ireland published a report in the period which provides an analysis of the experience of 89 migrant workers who made formal complaints regarding exploitation to bodies such as the Labour Relations Commission and the Employment Appeals Tribunal. Migrant workers from the Philippines and the Ukraine featured most prominently in the study. The organisation found that migrant workers were often unable to access the usual sources of support, such as trade unions or solicitors (Migrant Rights Centre Ireland, 2006a).

The Employment Permits Act 2006, which is discussed below in Section 2, provides for some improvements to protect the rights of non-EU workers in Ireland.

1.3.3.4 Garda (Police) Recruitment

The number of Garda trainees sworn in at Garda College in March 2006 was boosted in part by non-Irish nationals following the removal of the requirement for competency in the Irish language for entry in 2005. The Department of Justice, Equality and Law Reform estimated that approximately 6 per cent of new recruits were from immigrant communities. (Department of Justice, Equality and Law Reform, March 2006b.)

1.3.4 REFUGEE PROTECTION AND ASYLUM

1.3.4.1 Separated Children

The Irish Refugee Council launched a report on separated children during the reference period. The author drew attention to a number of shortcomings in Ireland's system for dealing with children who come into the state alone. Particular problems were identified around education, accommodation, trafficking, the asylum interview process and the provision of adequate guidance, support and protection.

Over 4,500 separated children have arrived in Ireland since 1999. Many are reunited with family (almost 70 per cent of separated

children who arrived in 2005 were subsequently reunited with their family), however, no follow up checks are in place for such children. If the child is not reunited with their family he or she is accommodated in care centres or hostels and the Health Service Executive may make an asylum application on their behalf. If a child presents outside office hours he or she may be accommodated in homeless hostels or other inappropriate accommodation until he or she is placed in longer-term care. The author notes that children are at their most vulnerable at such 'out of office' times of sexual exploitation, being trafficked or re-trafficked.

The majority of separated children in Ireland live in privately managed hostels. Such accommodation is not currently covered by the national standards or inspection system and it is argued that unaccompanied children are at risk as a result. The report states that more than 300 children have gone missing from care since 2001.

The author recommends extending social work services in Ireland to a 24-hour service; putting accommodation centres for separated children under the remit of the Social Services Inspectorate and increasing the availability of foster care; establishing an arrivals project at Dublin airport and independent representation for separated children. (Mooten, 2006).

1.3.4.2 Other

In April 2006 a group of Afghan nationals staged a hunger strike in a prominent Dublin cathedral. They made up a diverse group including some people who were appealing initial negative asylum determinations and some who had already secured leave to remain in Ireland. A large amount of public interest ensued partly because the group of 41 men included minors. A crowd of supporters and people opposed to the protest gathered outside the cathedral and there was sustained media interest. The protest ended peacefully one week after it began.⁵

The annual World Refugee Day Award Ceremony took place as usual in June 2006. The awards are intended to highlight the contribution made by refugees, asylum seekers and local communities who actively promote a positive model of integration in Ireland. (NCCRI, May 2006.)

In July, 65 Iranian Refugees were resettled in Ireland under the United Nation's Refugee Resettlement Programme. This group was the first of a total group of 180 Iranian refugees who are due to be resettled in Ireland.

1.3.5 CITIZENSHIP AND NATURALISATION

The outcomes of the special scheme under which non-national parents of Irish born children could apply for permission to remain in the State (IBC/05) were published in May. Under the Scheme

⁵ *The Irish Times*, May 22 2006: "Peaceful end to Afghan protests"; May 20 2006: "Vigil beside cathedral but not all support Afghans".

almost 18,000 applications were submitted. Of these 16,693 were approved and 1,119 given refusal decisions. Applicants who were rejected were mainly found to have not proved a minimum period of continuous residence or to have not proved their identity. (Department of Justice, Equality and Law Reform, May 2006a). There have been a number of legal challenges against these refusal decisions. In one prominent case, *Bode & Ors. V the Minister for Justice, Equality and Law Reform*,⁶ the non-Irish father of a child born in Ireland prior to 1st December 2005 (who is therefore an Irish citizen), had been refused permission to remain in Ireland under the IBC 05 scheme because it was argued that he was not continually resident in Ireland from the date of birth of his child. The child's mother was granted permission to remain. The High Court quashed the Minister's decision on a number of grounds including that it was in contravention of the European Convention on Human Rights Act 2003. The State has appealed the decision to the Supreme Court and the hearings will be held in 2007.

Successful applicants under the IBC/05 Scheme were granted permission to remain in the State for a period of two years and the permission is renewable at the end of this period. In order to qualify for a renewal an applicant must first have been successful under the first IBC/05 scheme, must have been living in Ireland with his or her child since being granted permission to remain and must have made very effort to become economically viable.

1.3.6 UNAUTHORISED IMMIGRATION AND LEGALISATION

The reality of the problem of human trafficking to Ireland became increasingly clear during 2006. A Department of Justice, Equality and Law Reform and An Garda Síochána Working Group on Trafficking in Human Beings produced a report in 2006 on legislation necessary to deal with the problem. It was reported that Garda operations in Ireland have identified a small number of trafficking cases particularly involving nationals of Bulgaria, Romania and Lithuania. The Gardai have also encountered a small number of cases of eastern European women being trafficked to Ireland for the purpose of sexual exploitation mainly within their own communities. (Department of Justice, Equality and Law Reform, May 2006b). The launch of this report was timed to coincide with the launch of a Crimestoppers⁷ information campaign on trafficking in human beings in May 2006. This was a joint initiative of An Garda Síochána, Crimestoppers, the Department of Justice, Equality and Law Reform and the International

⁶ *Bode & Ors v. Minister for Justice, Equality & Law Reform & Ors* [2006] IEHC 341 (14 November 2006).

⁷ Crimestoppers is a partnership between the Gardai, the business community and the Department of Justice, Equality and Law Reform which operates a confidential free-phone number by which the public can offer information to the Gardai in relation to ongoing criminal investigations.

Organization for Migration. Posters advertising a free phone helpline were distributed for display at airports, ports, bus and railway stations. (Department of Justice, Equality and Law Reform, May 2006c).

A conference was held in November by the Irish Women Lawyers Association entitled “Human Trafficking: Modern Slavery?” The MRCI presented preliminary findings of research based on case studies of victims of trafficking other than for sexual exploitation who had approached the MRCI for help. It was shown that trafficking for forced labour is happening in Ireland. Typically workers make the decision to come to Ireland based on false information provided by traffickers. They may enter legally with a work permit. Victims may then have their documents confiscated and find themselves in a forced labour situation, receiving little or no wages and living in poor accommodation. The victims are coerced into remaining with their trafficker/employer through threats either towards the worker or towards their family in the country of origin, physical abuse or even confinement. Often the victim cannot speak enough English to seek help from outside. The problem of defining trafficking was discussed at length: what constitutes trafficking, especially if the person entered legally? The MRCI stressed that an essential feature of the trafficking victim is fear. IOM Dublin reported that 70 suspected victims of trafficking had been referred to them for return since 2003.

1.3.7 RETURN

In February 2006 the Government confirmed funding for a new Voluntary Assisted Return and Reintegration project to be run by the International Organization for Migration (IOM). The programme targets non-EEA nationals who are asylum seekers and irregular migrants in Ireland and aims to return up to 300 persons over a period of twelve months. For the first time a reintegration assistance payment of €600 will be made available to all returnees on this programme in their country of origin.

1.4 Institutional Developments

The re-entry visa office has transferred from the Department of Foreign Affairs to the Irish Naturalisation and Immigration Service (INIS), which is under the aegis of the Department of Justice, Equality & Law Reform. One of the objectives of the establishment of the INIS was to bring together the immigration functions of the Department of Justice, Equality and Law Reform, the Department of Enterprise, Trade and Employment and the Department of Foreign Affairs.

2. LEGISLATIVE DEVELOPMENTS

Summary

The most significant legislative development in the period was the publication of the scheme for a new immigration, residence and protection Bill. The provisions of such legislation could still change significantly, however, the scheme proposed significant changes in a wide range of areas including visas; entry into the State; residence permits and registration requirements; removal and protection. The addition of the latter category was a somewhat unexpected development, which was not signalled in a discussion document previously published on the legislation. The publication of the scheme stimulated a large amount of debate among NGOs and other interested parties who welcomed some provisions, such as the introduction for the first time of a statutory long-term resident status, but were cautious of others, such as the introduction of identity cards and restrictions on non-Irish nationals' right to marry. The omission of provisions dealing with family reunification and trafficking was also of concern to NGOs and other commentators.

The Employment Permits Act 2006 was also enacted in the period. This legislation provided an enabling structure for a new employment permits system introduced in 2007. The system includes three main elements: A type of "Green Card" for higher paid occupations where there are skills shortages; a re-established Intra-Company transfer scheme; and a revised work permit scheme for non-green card occupations.

The Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill were published in June 2006. This proposed legislation includes a number of measures to protect children against sexual exploitation and has the effect of implementing two EU Framework Decisions in the area. The Heads of this Bill do not however address the issue of residence and protection of victims of trafficking – an omission that has been criticised by several NGOs.

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

2.1.1 LEGISLATIVE STRUCTURE

Ireland is in the process of developing new comprehensive Immigration, Protection and Residence legislation that will help codify a system which to date has evolved in a somewhat piecemeal fashion, responding to individual problems as they emerge. Prior to the mid 1990s, the 1935 Aliens Act, and the Orders made under that Act, together with the EU Rights of Residence Directives which came into effect after Ireland joined the European Union in 1973,

were considered sufficient to manage the small immigration flows. More recently the following legislative measures were introduced to deal with immigration and asylum issues in Ireland:

- The Refugee Act 1996 set out for the first time a system for the processing asylum applications in Ireland.
- 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 smuggling 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.
- The Employment Permits Act 2003 was enacted to facilitate the accession of ten new EU Member States in 2004 and introduced particular offences for both employers/employees working in breach of employment permit legislation. The Employment Permits Act 2006 enabled the introduction of significant changes to the existing employment permits system; it is discussed further below.

The Scheme of the Immigration, Residence and Protection Bill was published in September 2006 and it is discussed in more detail below at Section 2.2.1.1.

2.1.2 MAIN ACTORS

The Department of Justice, Equality and Law Reform is responsible for immigration management and the Minister of that Department has ultimate decision making powers in relation to immigration and asylum. In addition the Department of Enterprise, Trade and Employment administers the employment permit schemes and the Department of Foreign Affairs has responsibility for the issuing of visas to immigrants. Decision making powers in relation to employment permits and visas rests with the respective Minister.

The following actors are involved in the legal asylum/immigration system. All are within, or under the aegis of, the Department of Justice, Equality and Law Reform.

- The Immigration and Citizenship Policy Unit is responsible for the development of immigration and citizenship policy and proposals for legislative change in this area.
- The Immigration and Citizenship (Operations) Division is responsible for the implementation of policy in relation to the admission of non-nationals to the State, their residence in the State, permission to remain in the State and the granting where appropriate of Irish citizenship.
- The Repatriation Unit is responsible for considering the cases of failed asylum seekers and illegal immigrants for leave to remain in the State or repatriation to their countries of origin.
- The Asylum Policy Division has overall responsibility for asylum including developing policy initiatives, the policy aspects of legislation, and the achievement of asylum processing targets.
- Through the Ministerial Decisions Unit, the Department has direct responsibility for ministerial decisions on refugee status based on recommendations/decisions of the Office of the Refugee Commissioners Office and the Refugee Appeals Tribunal.
- A three pillar structure exists for asylum application processing, consisting of:
 - The Office of the Refugee Applications Commissioner.
 - The Refugee Appeals Tribunal.
 - The Reception and Integration Agency.

See Section 2.2.1 for a discussion of anticipated changes to existing protection claims structures.

- Finally the Refugee Legal Service (RLS) was established in 1999 to provide a comprehensive legal aid service for asylum seekers.

2.2 Legislative Developments

2.2.1 MANAGED IMMIGRATION

2.2.1.1 *Scheme of the Immigration, Residence and Protection Bill*

In April 2005, the Government published a discussion document that set out policy proposals for a future Immigration and Residence Bill. Submissions were invited on the discussion document and in September 2006 a Scheme for a draft Immigration, Residence and Protection Bill was published. Information presented below is based on the published Scheme of the Bill. The provisions could change significantly and given the fact that an election is due to take place in Spring 2007 substantial changes are likely before the Scheme is translated into law. For the first time the phrase “foreign nationals” will refer only to those who are from outside the European Union. The scope of the future Immigration, Residence and Protection as set out in the Scheme is very broad covering the following areas:

- **Visas:** The Scheme sets out on a statutory basis for the first time the making and determining of visa applications. It is proposed that in the future, visa exemption will be available for nationals of previously visa-exempt countries only for short-duration visits, longer visits will entail getting visa pre-clearance before travelling.
- **Entry into the State:** Existing legislative provisions are largely restated including regulations around approved ports for entry, requirement to present and power to inspect on arrival, permission and refusal of permission to enter the State; carrier liability.
- **Residence permits and registration requirements:** The scheme proposes a system of different residence permits allocated according to the category a foreign nationals falls into. Residence permits will vary in terms of the duration of the permit, whether or not it is renewable, whether the holder can access public funds or seek employment, etc. There is no detail on the actual rights and entitlements of the various categories of migrant in the Scheme. It is intended that future policy statements will set out the various classes of permits which will be issued and the conditions attaching to them. Residence permits will be issued in credit card format and will contain a photograph of the holder along with biometric data.

An important proposed development will be the introduction of a statutory long-term resident status. This status will be available for those who have at least 5 years’ reckonable residence in the State (periods as an asylum-seeker or short-term student will not be reckoned) and provided the applicant has proficiency in English language and has taken ‘reasonable steps’ to integrate. If granted, the permit will entitle individuals to full access to State-funded services and benefits generally in line with Irish citizens. The introduction of long-term residence status is part of a broader strategy to attract suitably qualified individuals to consider Ireland as a destination for

permanent migration for them and their families. The Immigrant Council of Ireland has called for clarification on what are “reasonable steps to integrate”. It is also noted that long-term residency is currently available in Ireland under administrative arrangements but that it takes a long time to process. The Immigrant Council of Ireland have asked for assurance that sufficient resources will be put in place to ensure that long-term residence applications will be processed efficiently.⁸

Provision is made in this part of the Scheme for those who are permitted to remain as recognised refugees or persons in need of subsidiary protection. Their status in the State will be similar to that of long-term residents.

- **Removal:** Provisions regarding removal from the State are restated such as: definition of refoulement; removal; arrest and detention; carrier liability. The possibility of making a removed person liable for the costs of their removal is proposed. Such a debt would have to be cleared before a person could re-enter the country.
- **Protection:** In quite an unexpected development a reformed system for processing asylum applications was also proposed. Key changes include a shift to a single protection determination procedure meaning that all protection claims, including Geneva Convention and subsidiary protection claims, will be examined under a single procedure. The applicant will be required to set out all of the grounds on which he or she wishes to remain in the State at the outset of the claim. The Scheme also proposes the establishment of a new Protection Review Tribunal to replace the Refugee Appeals Tribunal which will also be statutorily independent. The Office of the Refugee Applications Commissioner will be subsumed into the Irish Naturalisation and Immigration Service. Substantial parts of the asylum application provisions currently provided for through the Refugee Act 1996 are also restated.
- **General:** A range of provisions is included notably regarding the marriage of foreign nationals in the State and the provision of biometric data. The Minister for Justice, Equality and Law Reform has stated in the accompanying press release that marriages of convenience are being increasingly availed of to avoid removal from the State. In the future foreign nationals who wish to contract a marriage in the State will be required to be lawfully resident in the State at the time of the marriage and notify the Minister of the intended marriage. The proposed legislation will also require foreign nationals to provide biometric data (e.g. fingerprints, photographs, etc.) at any time.

⁸ Correspondence with Immigrant Council of Ireland.

(Department of Justice, Equality and Law Reform, September 2006b).

In October 2006 the NCCRI⁹ facilitated a meeting between NGOs and the Department of Justice, Equality and Law Reform in relation to the proposed Immigration, Residence and Protection Bill. In the Submission arising from the meeting the NCCRI made the following points:

- An increased focus on identity checks could lead to racial profiling.
- The introduction of identity cards for immigrants is opposed on a number of grounds including the risk to privacy posed by the collection of biometric data, the risk that without a valid card some immigrants may be denied essential services such as health and the cost of the cards to the migrant and the State.
- The NCCRI opposed restrictions on the right to marry for temporary resident permit holders as a violation of domestic, European and International Human Rights Law. It is also argued that family reunification rights should be defined for groups other than those with protection status and that the definition of the family should be broad taking in the wider family circle relevant in some cultures.
- While the introduction of the status of long-term resident is welcomed the rights associated with that status need to be more explicitly defined.
- Concern was expressed regarding the proposal to revoke or refuse to renew resident permits for people who have been convicted of a crime.
- Finally, the NCCRI expressed concern about the lack of protection offered to vulnerable groups such as children, people who have been trafficked, women, people who have survived torture or trauma, people who have become undocumented and people with disabilities, including psychiatric illnesses. Specifically the NCCRI objects to the lack of effective appeal opportunities proposed, the high level of Ministerial discretion and the extent of the powers given to immigration officers. (NCCRI, November 2006a).

The Migrant Rights Centre Ireland (MRCI) issued a submission on the draft legislation making a range of suggestions. The MRCI called for the provision of a legislative basis for integration, stressing that integration policy development is relevant both for long and short-term migrants (Migrant Rights Centre Ireland, 2006b). The MRCI also object to the lack of provisions relating to family

⁹ The NCCRI is an independent expert body focusing on racism and interculturalism. It is a partnership body, which brings together Government and non-Government organisations, and it is core funded by the Department of Justice, Equality and Law Reform.

reunification and to the proposed restrictions on the right of foreign nationals to marry.

The Irish Refugee Council (IRC) also issued a submission on the draft legislation which included the following points. The IRC expressed concern about the unexpected restructuring of the protection system in Ireland provided for in the draft legislation. They argue that further consultation with stakeholders is necessary.

The IRC object to what they interpret as an “internal inconsistency” of the Heads in relation to the category of persons, who are unable to be returned pursuant to Head 38, Definition of Refoulement,¹⁰ but who have had their protection temporary residence permit lapsed. The IRC argue that such persons are entitled to protection and cannot be penalised but that by creating a situation where they are deemed illegal and put under pressure to leave could be considered as creating a situation of duress. It is claimed that repatriation in situations of duress is considered by some commentators to be tantamount to *refoulement*. (Irish Refugee Council, 2006).

Despite the fact that the discussion document for new Immigration and Residence legislation indicated that trafficking should be addressed in a forthcoming Bill (Department of Justice, Equality and Law Reform, 2005) the Scheme of the Immigration, Residence and Protection Bill subsequently published in 2006 makes no reference to the issue of trafficking. The IRC call for renewable residence permits for victims of trafficking, and the establishment of safe houses for victims. Reassurance that protection residence permits will automatically roll over is called for (except in cases of cessation or revocation as defined by international law). The IRC also recommend that a future Bill should be checked to ensure that the protection obligations of minors under domestic and international law are met.¹¹

The Irish Human Rights Commission (IHRC) was requested by the Minister for Justice, Equality and Law Reform to analyse the Scheme of the Immigration, Residence and Protection Bill. Their submission was published in December 2006. The IHRC welcome the move towards the development of a comprehensive and coherent immigration policy in Ireland.

Concern is expressed however about the inherent tension arising from mixing asylum and protection issues with general immigration provisions in one piece of legislation. The IHRC is concerned that by mixing asylum and immigration provisions the potential is there to create legal uncertainty for the status of protection applicants. The IHRC warns that access to the protection determination process may be impeded as a result. The IHRC is of the view that

¹⁰ The principle of non-refoulement is one fundamental to protection whereby a person will not be returned to a place where their life or liberty may be threatened.

¹¹ In April 2007 Ireland signed the Council of Europe Convention on Action against Trafficking in Human Beings which will eventually provide improved protection for the victims of trafficking.

care should to be taken throughout the legislative proposal to ensure that there is clarity around the applicability of certain provisions to protection applicants.

The degree of Ministerial discretion maintained in the Scheme is also criticised. Exceptions may be made to the general rules on the grounds of the security of the State, public security, public policy, public health or the public good. The IHRC also notes that a large number of substantive issues will be dealt with by way of Ministerial statements and orders which have not yet been published (Irish Human Rights Commission, 2006).

2.2.1.2 Employment Permits Act 2006

The Employment Permits Act was enacted in July 2006, however, the new system was not implemented until January 2007. The key features of the system are as follows:

1. A type of “Green Card” for occupations where there are skills shortages, which 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.
2. A re-established Intra-Company transfer scheme for temporary trans-national management transfers.
3. A revised Work Permit scheme for non-green card occupations in the €30,000 to €60,000 annual salary range and for a very restricted list of occupations up to €30,000, where the shortage is one of labour rather than skills.

This new employment permits system further develops Ireland’s policy of limiting non-EEA labour migration to areas of skills or labour shortages that cannot be met from within the EU.

2.2.2 GATES OF ENTRY AND BORDER CONTROL

The Europol (Amendment) Bill 2006 was published in September and enacted in December 2006. (Europol is the European Union Law Enforcement Organisation established to improve co-operation in efforts to combat international organised crime.) The new Act has the effect of giving force of law to three Protocols to the Europol Convention which have a number of functions including to clarify certain powers in relation to participation in Joint Investigation Teams and to streamline certain elements of the internal working of Europol. (Department of Justice, Equality and Law Reform, September 2006a.)

2.2.3 REFUGEE PROTECTION AND ASYLUM

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 supply the asylum applicants with copies of decisions made by the Tribunal. (See the previous report in this series for more information: Quinn, 2006a). The Refugee Appeals

Tribunal subsequently appealed to the Supreme Court and in July 2006 the Supreme Court ruled that the Tribunal must make its decisions available to applicants for asylum who are bringing an appeal.¹² In March 2006, however, the Minister for Justice, Equality and Law Reform announced that the Refugee Appeals Tribunal would publish a “selection of legally important decisions” and that some decisions will be published on an ongoing basis in the future. (Department of Justice, Equality and Law Reform, March 2006a).

2.2.4 CITIZENSHIP AND NATURALISATION

The Minister for Justice, Equality and Law Reform recently released information on the numbers of citizenship applications received and granted in 2006. Over 7,000 applications were received in 2006 representing an increase of 55 per cent on the 2005 figure and almost five times the number of applications made in 2001. The average processing time for such applications is currently two years.¹³

2.2.5 UNAUTHORISED IMMIGRATION AND LEGALISATION

The Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill were published in June 2006. The following Palermo Protocol’s definition of human trafficking is adopted in this legislation:

*...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs...*¹⁴

The recruitment, transportation, transfer, harbouring or receipt of a child is considered trafficking regardless of whether the perpetrator used any of the means listed above. The Protocol states that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the means listed above have been used. As was discussed above at Section 1.3.5 evidence provided by the MRCI shows that many victims of trafficking enter legally with a work permit and are then abused by their traffickers.

¹² *Opesytan, Fontu, Atanasov -v- Refugee Appeals Tribunal & Attorney General* [2006] IESC 53.

¹³ *Dáil debates. Written Answers*, 31st January 2007.

¹⁴ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

The proposed legislation includes the following measures to provide children with greater protection under the criminal law against sexual exploitation.

- Taking into account the use of modern technology such as the Internet in the sexual grooming of children.
- Provides more protection to children against persons who offer inducements to them to engage in sexual acts and targets persons who control or organise in any way the sexual exploitation of children.
- Proposed changes to the Sex Offenders Act 2001, include raising the penalty for failure to register and giving probation officers power to prosecute offenders who fail to comply with the terms of a post release supervision order.
- Risk assessment of sex offenders, involving the cooperation of An Garda Síochána and the Probation Service. Such information can be shared with police in other jurisdictions where cooperation exists when sex offenders move between jurisdictions. (Department of Justice, Equality and Law Reform, July 2006b).

This proposed Bill would have the effect of implementing two EU Framework Decisions – the Framework Decision on Combating Trafficking in Human Beings (for the purpose of labour and sexual exploitation) and the Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography.

The Heads of this Bill do not address the issue of residence and protection of victims of trafficking and as mentioned above this is not clarified in the Scheme for an Immigration, residence and Protection Bill either.¹⁵ The Irish Human Rights Commission have been asked to comment on the Heads of the Criminal Law Bill but the submission is not yet available.

¹⁵ In April 2007 Ireland signed the Council of Europe Convention on Action against Trafficking in Human Beings which will eventually provide improved protection for the victims of trafficking.

3. IMPLEMENTATION OF EU LEGISLATION

Summary

Table 3.1 includes available information on the main developments in Ireland relating to EU legislation during the period under discussion. Notable developments include the signing into law of the European Communities (Free Movement of Persons) Regulations 2006 which give effect in Irish law to Directive 2004/38/EC. The Directive widens the definition of family member. The admission of partners of European Union citizens who are in a durable relationship is facilitated and a new status of permanent residence for European Union citizens and their family members after five years residence in the State is created. The European Communities (Eligibility for Protection) Regulations, 2006 were also signed into Irish law to give interim effect to the provisions of Council Directive 2004/83/EC otherwise known as the Qualification Directive. It is expected that the forthcoming Immigration, Residence and Protection Bill will incorporate the Qualification Directive into primary legislation. The Directive means that people who are seeking protection in Ireland, but who may not meet the refugee definition will be able to apply for “subsidiary protection”. Finally compliance with two Framework Decision on Combating Trafficking and Sexual Exploitation was provided for in the Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill also published in 2006.

3.1 Transposition of EU Legislation in the Field of Migration and Asylum into National Law/Administrative Practice

Table 3.1 includes available information on the main developments in Ireland relating to 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. 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 3.1 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 or publication in the Official Journal of the European Union.

Table 3.1: EU Legislative Developments and Related Irish Developments 2006

I. ASYLUM			
A. Legislative Acts Adopted after Entry into Force of the Amsterdam Treaty (1st May 1999)			
	Ireland opt in? Y/N	Date of adoption	How is measure transposed into national law?
Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13 December 2005, p. 13;	Y	2.12.05	Full transposition incomplete. Date due 1 December 2007
Commission Decision 2006/399/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards the eligibility of expenditure within the framework of actions co-financed by the European Refugee Fund implemented in the Member States ¹⁶ (OJ L 162 of 14 June 2006, p. 1);			– Not applicable
Commission Decision 2006/400/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards procedures for making financial corrections in the context of actions co-financed by the European Refugee Fund ¹⁷ (OJ L 162 of 14 June 2006, p. 11);			– Not applicable
Commission Decision 2006/401/EC of 20 January 2006 laying down detailed rules for the implementation of Council Decision 2004/904/EC as regards Member States management and control systems, and rules for the administrative and financial management of projects co-financed by the European Refugee Fund ¹⁸ (OJ L 162 of 14 June 2006, p. 20);			– Not applicable
Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304 of 30 September 2004, p. 12;	Y	29.4.04	Refugee Act 1996 and S.I. No. 518 of 2006 – European Communities (Eligibility for Protection) Regulations, 2006.

¹⁶ Notified under document number C(2006) 51/1.¹⁷ Notified under document number C(2006) 51/2.¹⁸ Notified under document number C(2006) 51/3.

	Ireland opt in? Y/N/Not Relevant	Date of adoption	How is measure transposed into national law?
B. International Agreements			
Council decision of 21 February 2006 on the conclusion of an Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 66 of 8.3.2006, p. 37;	No need to opt in – directly applicable	21.02.06	– Not applicable
Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention, 21 February 2006, OJ L 66 of 8.3.2006, p. 38;	No need to opt in – directly applicable		
Information concerning the entry into force of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 and Council Regulation (EC) No 2725/2000 concerning the establishment of Eurodac (OJ L 96 of 5 April 2006, p. 9);	No need to opt in – directly applicable		
Council decision of 21 February 2006 on the conclusion of a Protocol to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 57 of 28.2.2006, p. 15;	No need to opt in – directly applicable	15.3.01	– Not applicable

	Ireland opt in? Y/N/Not Relevant	Date of adoption	How is measure transposed into national law?
Protocol to the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway, OJ L 57 of 28.2.2006, p. 16.	No need to opt in – directly applicable		

II. IMMIGRATION

A. Legislative Acts Adopted after Entry into Force of the Amsterdam Treaty (1 May 1999)

	Ireland opt in? Y/N/Not Relevant	Date of adoption	How is measure transposed into national law?
Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, OJ L 283, 14 October 2006, p. 40;	Y	5.10.06	– Not applicable
Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) OJ L 158, 30 April 2004 p. 77;	Y	29.04/04	European Communities (Free Movement of Persons) Regulations 2006. April 2006.

B. International Agreements

Ukraine (final text of agreement initialled at EU-Ukraine summit on 27 October 2006;	Ireland to opt-in under Article 4 of the fourth protocol TEC subject to Parliamentary approval.		
Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol to prevent, suppress and punish trafficking in human beings, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the Treaty establishing the European Community (OJ L 262 of 22 September 2006, p. 51);			– Not applicable
Council Decision of 24 July 2006 on the conclusion, on behalf of the European Community, of the Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organised Crime concerning the provisions of the Protocol, in so far as the provisions of the Protocol fall within the scope of Part III, Title IV of the			– Not applicable

	Ireland opt in? Y/N/Not Relevant	Date of adoption	How is measure transposed into national law?
Treaty establishing the European Community (OJL 262 of 22 September 2006, p. 34);			
Council Decision of 22 May 2006 (no 9287/06) concerning the signing of the Agreement between the EC and Russia on readmission (not yet published);	Ireland to opt-in under Article 4 of the fourth protocol TEC subject to Parliamentary approval		– Not applicable
Information relating to the entry into force of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation (OJ L 96 of 5 April 2006, p. 9).			

3.2 Developments of Particular Interest

3.2.1 EU FREE MOVEMENT DIRECTIVE

The European Communities (Free Movement of Persons) Regulations 2006 were enacted in April 2006 and give effect in Irish law to Directive 2004/38/EC on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

This means that although an EU citizen does not have to register in Ireland, his or her residence remains subject to conditions. He/she must be either engaged in economic activity or have sufficient resources and sickness insurance to ensure that they do not become a burden on the social services of the host Member State; or be enrolled as a student or a family member of an EU citizen in one of the above categories. Non-EU family members (i.e. spouse, child, dependant relative, other family member requiring the personal care of the EU citizen on health grounds, member of the household of the EU citizen, partner) must apply for a Residence Card.

The Regulations also have the following effects:

- The Directive widens the definition of family member. The admission of partners of European Union citizens who are in a durable relationship is now facilitated.
- The creation of a new status of permanent residence for European Union citizens and their family members after five years residence in the State.

(Irish Naturalisation and Immigration Service, May 2006).

The Immigrant Council of Ireland and the Migrant Rights Centre Ireland both reported that many applications for residence made by

non-EEA family members of EU citizens have been refused since the introduction of the 2006 Regulations giving effect to the EU Free Movement Directive. The applications have been refused on the grounds that the family member did not previously reside legally in another EU Member State with the EU citizen prior to applying for residence in Ireland (as is a requirement under article 3(2) of the 2006 Regulations). A number of High Court challenges have been taken challenging the refusals, arguing that the requirement is not valid in EC law and that the 2006 Regulations have not correctly transposed the Directive. A High Court decision is expected in April 2007. The Council also finds problematic the lack of definition as to what constitutes a durable duly attested relationship under the 2006 Regulations.¹⁹

3.2.2 ASYLUM QUALIFICATION DIRECTIVE

The European Communities (Eligibility for Protection) Regulations, 2006 were signed into Irish law in October 2006. They represent an interim measure to give effect in Irish law to the provisions of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, otherwise known as the Qualification Directive. It is expected that the forthcoming Immigration, Residence and Protection Bill will incorporate the Qualification Directive into primary legislation. The Directive means that people who are seeking protection in Ireland, but who may not meet the refugee definition will be able to apply for “subsidiary protection”. Under the current system subsidiary protections claims will be considered by the Department of Justice, Equality and Law Reform after an application for refugee status is determined. There is currently no appeals mechanism. In general terms, such protection may be available to a person who does not qualify as a refugee but who, if returned to his or her country of origin, would face a real risk of suffering serious harm as defined for the purpose of the Directive.

3.2.3 FRAMEWORK DECISION ON COMBATING TRAFFICKING IN HUMAN BEINGS (FOR THE PURPOSE OF LABOUR AND SEXUAL EXPLOITATION) AND THE FRAMEWORK DECISION ON COMBATING THE SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY

As mentioned above the Heads of a Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006 were published in June 2006 and provide for compliance with two EU Framework Decisions: the Framework Decision on Combating Trafficking in Human Beings

¹⁹ Correspondence with the Immigrant Council of Ireland.

(for the purpose of labour and sexual exploitation) and the Framework Decision on Combating the Sexual Exploitation of Children and Child Pornography. To comply with the EU Framework Decision on Combating Trafficking in Human Beings, a new offence of trafficking in persons for the purpose of their sexual or labour exploitation will be created in Irish law. In cases involving trafficking in children (persons under 18 years of age), it will not be necessary to show that use was made of coercion, force, threat, deceit or fraud etc. for the purpose of exploitation.

4. OTHER POLICY IMPLEMENTATION ISSUES

Summary

The total number of work permits issued in 2006 was down 8 per cent on the previous year. A breakdown of work permit data shows that the majority of workers who received work permits in 2006 worked in the services sector, and that a large proportion of the holders of those permits came from non-EU Eastern Europe or the Philippines (O'Connell and Doyle, 2006). Updated research into the labour market characteristics of immigrants in Ireland in the period showed them to be generally highly educated but not all employed in occupations that fully reflect their education levels (Barrett, Bergin and Duffy, 2006). A second study found immigrants to be earning 18 per cent less than Irish nationals, controlling for education and years of work experience (Barrett and McCarthy, 2006).

In relation to housing the National Economic and Social Council (NESC) called for improved inspection of dwellings in the private rented sector. Research published in the period indicated the Habitual Residency Condition is causing a small group of EU10 nationals living in Ireland to access homeless services. Regarding education the Social Partnership Agreement *Towards 2016* includes a commitment to add an additional 550 support teachers to the system by 2009 and to reform the current limit of support teachers per school which is currently capped at two per school. The role of education in supporting integration was also underlined in the *Migration Policy* report published by NESC in the period. The first steps were taken towards developing a national English language policy for all adult newcomers. The main development in relation to health relates to the Health Service Executive beginning to develop a National Intercultural Strategy with the aim of improving health care delivery to people from diverse ethnic backgrounds and cultures.

A research report was published in the period on the issues faced by female migrant workers. The research showed that female migrants tended to work in lower paid, less visible and more exploitative forms of employment than their male counterparts. NESC also caution that migrant women may work in industries or settings where poor labour standards make them even more vulnerable to exploitation.

Several sources of information on racism became available during 2006. A survey of work permit holders and asylum applicants showed that over one-third of respondents had experienced race related harassment on the street, in public places or on public

transport in Ireland in the past year. An attitudinal poll of the majority population concluded that interaction with “new communities” had increased since 2004 and that fewer respondents felt Irish society is racist.

Finally, a Census of Population took place in April 2006. Substantial efforts were made to increase participation of immigrant and minority ethnic communities and results will be published in 2007.

4.1 Labour Market and Employment

In the period leading up to the accession to the EU of the new Member States on 1 May 2004 the Department of Enterprise, Trade and Employment, in accordance with the EU Accession Treaty, encouraged employers to source their potential work permit requirements from the expanded pool of labour available in the EU-25 countries. This has led to a marked drop in the number of new permits and renewals issued between 2003 and 2006 (O’Connell and Doyle, 2006).

A total of 24,854 work permits were issued in 2006 compared to 27,136 in 2005, a fall of 8 per cent. Table 4.1 gives a sectoral breakdown of new work permits and renewals issued up to end September 2006. The majority of workers who received work permits in 2006 worked in the services sector, notably medical/nursing and other services.

Table 4.1: Work Permits Issued and Renewed by Sector, January-September 2006

Sector	2006*	%
Agriculture	1,672	7.8
Industry	1,415	6.6
<i>Services</i>	18,375	85.9
<i>Medical, Nursing</i>	2,437	11.4
<i>Catering</i>	5,078	23.7
<i>Education</i>	666	3.1
<i>Domestic</i>	527	2.5
<i>Entertaining/Sport</i>	1,115	5.2
<i>Other Services</i>	8,553	40.0
Total	21,395	100.0

Source: O’Connell and Doyle (2006).

Note: Figures for period 1 January to 30 September.

The nationality breakdown of permits issued shown in Table 4.2 indicates that a large proportion of workers (38 per cent) came from non-EU Eastern Europe or the Philippines in 2006.

**Table 4.2: Work Permits Issued and Renewed by Nationality
January-October 2006**

Country, Region	2006*	%
USA, Canada	1,191	5.6
Australia	795	3.7
India	1,805	8.4
Japan	195	0.9
Pakistan	691	3.2
Philippines	3,286	15.4
South Africa	1,469	6.9
Baltic States	155	0.7
Other A 10	0	0.0
Other Eastern Europe	4,763	22.3
Other Countries	7,045	32.9
Total	21,395	100.0

*2006 figures relate to work permits issued from 1 January 2006 to 31 October 2006.

Source: O'Connell and Doyle (2006).

Note: A 10 refers to Estonia, Latvia, Lithuania, the Czech Republic, Cyprus, Hungary, Poland, Malta, Slovakia and Slovenia.

Other Eastern Europe includes Albania, Belarus, Bosnia, Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Macedonia, Moldova, Romania, Russian Federation, Ukraine, Yugoslavia (Federal).

The Economic and Social Research Institute published two particularly relevant economic research studies in the period. Updated research into the labour market characteristics of immigrants showed them to be a highly educated group in general, however, it was found that they are not all employed in occupations that fully reflect their education levels. If this situation persists the researchers showed that the effect on the Irish economy would be a negative one (Barrett, Bergin and Duffy, 2006). A second study found immigrants to be earning 18 per cent less than natives, controlling for education and years of work experience. However, the authors caution that this figure hides differences across immigrants from English-speaking and non-English speaking countries. Evidence was found of a wage gap for immigrants with third level education, relative to comparable natives. On average, immigrants are half as likely to have been in receipt of social welfare payments in the previous twelve months relative to natives. (Barrett and McCarthy, 2006).

4.2 Housing and Urban Development

NEESC (2006) observe that most migrant workers are accommodated at first in the private rented sector but that increasing numbers of migrants are taking out mortgages to buy their own homes. The authors draw attention to the problem of insufficient inspection of dwellings in the private rented sector; this is particularly relevant to migrants given their concentration in such accommodation. Such concerns are echoed by the European

Platform for Migrant Workers' Rights (2006). NESC also make the point that 'tied' or employer-provided accommodation for migrant workers is not conducive to integration: poor language skills may persist and the worker is vulnerable to homelessness should he or she wish to leave their job. As discussed below at Section 4.9.3 research published in the period suggested that the implementation of the Habitual Residency Condition was exposing some migrant workers to poverty and even homelessness.

The NCCRI launched a research project on housing and ethnic diversity in 2006 on behalf of the National Action Plan Against Racism. The research will be published in 2007 and is being carried out by the Centre for Housing Research and UCD.

4.3 Education

A report on the rights of migrant workers in the European Union was published in the reference period (European Platform for Migrant Workers' Rights, 2006). In the Irish section of the report the authors comment on the urgent need for more State-funded, high quality, accessible English language training courses for migrants in Ireland. It is suggested that these could take place in schools or colleges, within community groups and NGOs or in the workplace. It is observed that 600 language support teachers work in primary and secondary schools in Ireland; 400 of these work in primary schools supporting approximately 6,000 international students. In the Social Partnership Agreement *Towards 2016* which was agreed in 2006 there is a commitment to add an additional 550 support teachers to the system by 2009 and to reform the current limit of support teachers per school which is currently capped at two per school. The authors of the report also criticise the fact that the children of migrants must pay full international student fees for third level education in Ireland regardless of how long they have lived here.

The role of education in supporting integration was also underlined in the *Migration Policy* report published by NESC in the period. Provision of adequate language supports is stressed for children and for adults (NESC, 2006). The implications of the research conducted by Barrett, Bergin and Duffy (2006), which showed the negative economic effects of employing immigrants below their skills level, are interpreted as evidence of the urgent need for adequate policy initiatives.

Finally, in the Social Partnership Agreement *Towards 2006* it was agreed that non-EU students should be subject to a work permit application before they access the Irish labour market. Currently non-EEA students may work up to 20 hours part time per week and full time during normal college vacation periods.

4.4 Health Care

During 2006 the Health Service Executive²⁰ began developing a National Intercultural Strategy with the aim of providing a framework within which the health care needs of people from diverse ethnic backgrounds and cultures can be appropriately met. Specific priorities identified include the development of a national interpretation service, staff training and support, ongoing consultation and participation with minority ethnic communities, and the provision of community based services run in partnership with ethnic minority groups and communities. A number of public consultations were held to inform the development of this strategy. (NCCRI, November 2006b).

NESC (2006) observed that changes in immigration flows would require changes in health service delivery to migrants. Until recently health services provided to non-Irish nationals have been tailored to meet the needs mainly of asylum seekers. Now flows of asylum seekers have dropped and the majority of migrants to Ireland are EU nationals, with established rights and entitlements, who can expect to use the health service in a similar way as the general population.

The Irish Contact point of the European Migration Network published a study on labour migration into the health sector in 2006. Data from the Quarterly National Household Survey 1998-2004 were used to show the share of national, EU national and other nationality workers in a range of healthcare occupations. Policy issues including those around education and qualifications were also discussed (Quinn, 2006b).

4.5 Vulnerable Groups

The Migrant Rights Centre Ireland (MRCI) continued their campaign for the introduction of bridging visas for undocumented workers during the period. Specifically they want the Department of Justice, Equality and Law Reform to provide a temporary six-month residency stamp for non-EU/EEA nationals who have entered Ireland lawfully but have become undocumented for reasons beyond their control. The MRCI included information on undocumented workers from their Case Management System in their submission on the Scheme of an Immigration, Residence and Protection Bill (Migrant Rights Centre Ireland, 2006b). The data for the period from January to June 2006 shows that of the 801 new cases files opened 39 per cent involved individuals who came to Ireland legally on a work permit; over half of these were already undocumented when they made contact with MRCI.

4.6 Gender

Pillinger (2006), in partnership with the Immigrant Council of Ireland and the Irish Nurses Organisation, carried out research into the problems and issues faced by 36 female migrant workers. The

²⁰ The Health Service Executive has full operational responsibility for the running of the health services in Ireland.

research argued that female migrants tended to work in lower paid, less visible and more exploitative forms of employment than their male counterparts. It was found that the majority of women interviewed were working in jobs below their skill levels. Women migrant workers were also found to experience a double burden of racism and sexism both in the workplace and in accessing services. The researcher found that specific issues of concern to the women included the need to improve legal rights for spouses of work permit holders, the right to family reunification, access to information about rights and entitlements, as well as access to support services such as childcare and access to health care services.

In the Discussion document for an Immigration and Residence Bill the Department of Justice, Equality and Law Reform (2005) stated that they wished to address in forthcoming draft legislation the immigration situation of family members in the event of the death of head of a family, marriage breakdown or in the event of domestic violence. The Scheme of the Immigration, Residence and Protection Bill published in 2006, however, makes no mention of such provisions. In Ireland this problem may arise for the spouses of employment permit holders who have no automatic entitlement to residency in their own right.

The Immigrant Council of Ireland, along with other groups such as the National Women's Council and Women's Aid have made submissions to the Department of Justice on this issue. In July 2006 the groups held a seminar for service providers such as women's refugees and support services that are seeing a big increase in the number of black and minority ethnic women accessing their services.

As mentioned in Section 1.3.6 female migrants may also be vulnerable to trafficking for sexual exploitation.

In their *Migration Policy* document NESC (2006) caution that migrant women may work in industries or settings where poor labour standards make them even more vulnerable to exploitation. Of particular concern is employment in private domestic settings and the Labour Relations Commission has been asked to draw up a code of practice for those employing people in such settings.

4.7 Discrimination and Anti- discrimination

4.7.1 RACISM RESEARCH

Research into the experiences of racism among non-Irish nationals was published in March (McGinnity *et al.*, 2006). The results of this postal survey of work permit holders and asylum applicants showed that over one-third of respondents had experienced race related harassment on the street, in public places or on public transport in Ireland in the past year. A similar proportion experienced harassment at work. Black Africans and asylum applicants were found to be the most at risk. This study formed the Irish component of a European study commissioned by the EUMC (EUMC, 2006). In general reported experience of racism was lower in Ireland than

in other countries, especially Southern European Countries, however, racism experienced on the street was high in all countries.

Research findings of a study commissioned by the National Action Plan Against Racism were released in November 2006.²¹ Unlike the study above this was a telephone survey of the majority population on opinions on racism and attitudes to minority groups. The study provided a comparison to a similar 2004 study. The researchers concluded that interaction with “new communities” had increased and that fewer respondents felt Irish society is racist.

4.7.2 EQUALITY AUTHORITY AND EQUALITY TRIBUNAL INFORMATION

The Equality Authority launched its *Annual Report 2005* in May 2006. The ‘race’ ground was the largest category (32 per cent) of case files opened under the Employment Equality Acts. Such cases involve discrimination against migrant workers in accessing employment, working conditions, harassment and dismissal. However, case file data must be qualified; the figures are neither a measure of the extent of discrimination or the level of demand on the Equality Authority’s services as the number and type of case files reflect the priorities set by the Board of the Equality Authority, including the decision to reduce a backlog of cases.²²

The Equality Tribunal also published its *Annual Report 2005*. During 2005, under the Employment Equality Acts, substantial year-on-year increases were recorded in the percentage of cases claiming discrimination on the ground of race (82 cases were brought representing an increase of 61 per cent). Race related claims under the Equal Status Acts fell in the same period by 29 per cent to 15 cases.

4.7.3 POTENTIALLY DISCRIMINATORY HIV TESTING BY FINANCIAL INSTITUTIONS

The NCCRI produced an advocacy paper during 2006 acting on anecdotal reports of potentially discriminatory practices relating to HIV testing. Individuals who were born in Africa but who live in Ireland appear to be more likely to be targeted for HIV tests, primarily for the purposes of mortgage protection/life assurance. The NCCRI report that different financial institutions appear to have different policies and practices on this matter, or that general policies are being applied inconsistently. (NCCRI, April 2006a).

²¹ Findings available at http://www.diversityireland.ie/News/Current/Research_into_Opinions.html.

²² Equality Authority (2006), The Equality Authority Annual Report 2005, p.21. Available at: www.equality.ie/index.asp?locID=136&docID=536, retrieved 06/09/06.

4.8 Deviance and Crime

The Garda Annual Report for 2005 indicates that there were 94 racially motivated offences reported in 2005 (as opposed to 84 in 2004).

4.9 Other

4.9.1 CENSUS 2006

A Census of Population took place in April 2006. Substantial efforts were made to increase participation of immigrant and minority ethnic communities including distributing information on the Census in 16 foreign languages and the holding of seminars and public awareness events. Advertisements were published in Polish, Chinese, Lithuanian, Russian, Yoruba, Chinese, Urdu and Swahili. The Census form was also translated into several languages.²³

In addition an ethnicity question was included in the Census for the first time. The categories included in the question were developed in consultation with the Equality Authority, the National Consultative Committee on Racism and Interculturalism and Pavee Point along with relevant government departments but proved to be controversial in some quarters.²⁴

Preliminary results of the Census were published in July 2006 which indicated that the non-Irish population resident in Ireland is in the region of 400,000 (10 per cent of the total population) up from 222,000 (5.8 per cent of the total population) in 2003 (CSO, 2006).

4.9.2 PROVIDING PUBLIC SERVICES TO MINORITY ETHNIC GROUPS

The publication *Improving Government Service Provision to Minority Ethnic Groups* arose from a project undertaken by the NCCRI on behalf of the Office of the First Minister and Deputy First Minister in Northern Ireland. The researchers examined how public authorities provide services for ethnic and immigrant groups in three jurisdictions: Northern Ireland, Republic of Ireland and Scotland. Service domains investigated were health, education, policing, employment and housing (Northern Ireland only).

Conclusions are presented under four themes:

- **Mainstreaming:** Improved communication between relevant government agencies and cross border information sharing is recommended. The problem of racism within service providers must be properly tackled and training of front line staff should be prioritised.
- **Targeting:** The researchers conclude that mainstreaming and targeting used together will improve service provision.

²³ www.cso.ie.

²⁴ *The Irish Times*. April 4 2006. "Skin colour query sours the Census".

- Benchmarking: The importance of comprehensive data collection is stressed using at least the following categories: ethnicity, country of origin, language and religion.
- Engagement: More involvement of specialised and expert bodies and NGOs in service provision is recommended.

4.9.3 HABITUAL RESIDENCY CONDITION

A Habitual Residence Condition (HRC) attached to social welfare payments, which 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 measure was introduced to protect the Irish welfare system in the event of large-scale immigration from EU10 States. Research commissioned by the Homeless Agency on the effects of the Habitual Residence Condition was published in 2006. The research indicated that between 60 and 120 people from the EU10 States sought support (food or accommodation) from services for homeless people in Dublin in an average day in September 2005 (Bergin and Lalor, 2006). The authors of the report conclude that the Habitual Residence Condition is causing hardship to a small group of EU10 nationals living in Ireland.

Some amendments were made to the Habitual Residence Condition during 2006 including the following:

- All EEA workers who have work history in the State are now able to access Supplementary Welfare Allowance: (includes a basic allowance, rent allowance, emergency payments and medical cards). Non EEA nationals must still satisfy the HRC.
- All workers, both EEA and non-EEA will be able to access Child Benefit. EEA workers will be able to draw the payment even if their children are not resident in the State. Non-EEA nationals will have to be resident in the State with their children to get payments. Child Benefit is considered a family payment under European Law and is not therefore subject to the HRC for EEA nationals. The Irish Government has made child benefit available to all non-EEA nationals working in the State, however, all non-EEA nationals must satisfy the HRC unless they have resided and worked in another EEA country (Free Legal Advice Centres, 2006). Asylum seekers will continue to have no entitlement to Child Benefit.
- All EEA nationals working in the State will be able to apply for One-parent Family Payment if necessary as it is considered a family payment along with child benefit under European Law. (NCCRI, April 2006b).

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