

Policies and Practices on Unaccompanied Minors in Ireland

Emma Quinn, Corona Joyce, Egle Gusciute

November 2014

EMN

European Migration Network



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The European Migration Network

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About this Report

This European Migration Network Study, compiled according to commonly agreed specifications, provides an overview of policies, administrative practices and available data on unaccompanied minors in Ireland.

The report consists of information gathered primarily for an overview, EU-level Synthesis Report on *Policies, Practices and Data on Unaccompanied Minors in 2014*. All reports will be made available at www.emn.europa.eu.

The opinions presented in this report are those of the authors and do not represent the position of the Economic and Social Research Institute, the Irish Department of Justice and Equality, the Child and Family Agency (TUSLA) or the European Commission, Directorate-General Home Affairs.

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Abbreviations and Irish Terms

AHTU	Anti-Human Trafficking Unit
An Garda Síochána	Irish Police Force
CDETB	City of Dublin Education and Training Board
CEPOL	European Police College
CIS	Crisis Intervention Service
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
ECRE	European Council on Refugees and Exiles
EMN	European Migration Network
EPSS	Emergency Place of Safety
EU	European Union
FLAC	Free Legal Advice Centres
FRA	Fundamental Rights Agency
GNIB	Garda National Immigration Bureau
HIQA	Health Information and Quality Authority
HSE	Health Service Executive
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IRC	Irish Refugee Council
LAB	Legal Aid Board
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MDU	Ministerial Decision Unit
NERA	National Employment Rights Authority
NGO	Non-Governmental Organisation
OCO	Ombudsman for Children's Office
ORAC	Office of the Refugee Applications Commissioner
PPSN	Personal Public Service Number
RAP	Refugee Access Programme
RAT	Refugee Appeals Tribunal

RIA	Reception and Integration Agency
RLS	Refugee Legal Service
SCEP	Separated Children in Europe Programme
SWTSCSA	Social Work Team for Separated Children Seeking Asylum
TCN	Third-Country National
TUSLA	Child and Family Agency
UNCRC	United Nations Committee on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
VARRP	Voluntary Assisted Return and Reintegration Programme

Executive Summary

Background and Study Objectives

This study is a broad-ranging exploration of the policies and practices in place for unaccompanied minors in Ireland. Unaccompanied minors and separated children, broadly defined as children below the age of eighteen, who are not in the care of/accompanied by a responsible adult, form a particularly vulnerable migrant group. While at EU-level there are indications that the number of unaccompanied minors moving to and within the region is increasing, in Ireland the trend is downward. For example, between 2000 and 2008 some 5,688 unaccompanied minors were referred to the specialist TUSLA Social Work Team for Separated Children Seeking Asylum (SWTSCSA) in Dublin, while in the period January 2009 - October 2014, 661 referrals took place. In addition to reduced flows, recent years have seen the introduction of a generally improved model of care for such children. Notwithstanding these improvements key challenges remain and these are discussed in detail in this report.

The study investigates: the availability of data on the group; the motivations and circumstances of unaccompanied minors seeking entry to Ireland; the policy and practices at play at the border and when claiming asylum; and the policies and practices in place on age assessment and guardianship. The absence of a clearly defined immigration status for unaccompanied minors is considered and the implications are examined. The application of the law and practices regarding reception and care of unaccompanied minors are also discussed in detail. In addition available information is provided on minors going missing from State care and the situation of unaccompanied minors who turn 18 years of age and therefore potentially 'age-out' of the system. The issue of return of unaccompanied minors is examined as one of several possible 'durable solutions'.

The report is based on the Irish contribution to an EU-wide, European Migration Network study on *Policies, Practices and Data on Unaccompanied Minors in 2014*, which updates and expands on a 2010 study. A similar study to this one will be undertaken by each European Migration Network (EMN) National Contact Point (NCP) and a synthesis report will be produced in 2015.

DATA

In Ireland there are currently no national-level statistics on unaccompanied minors referred to or placed in State care. Furthermore very little is known about unaccompanied minors located outside greater Dublin, particularly those who are

not seeking asylum. TUSLA reports forthcoming progress in this regard. Detailed national-level data on unaccompanied minors who seek asylum are available but it is not known what proportion of total unaccompanied minors pursues this course. The most complete data on unaccompanied minors in Ireland relate to those children referred to the dedicated social work team in Dublin. Non-EEA nationals aged under 16 years are not currently required to register with the Garda National Immigration Bureau, a fact that compounds the data challenges.

MOTIVATIONS AND CIRCUMSTANCES

Many Irish stakeholders observe that the situation of unaccompanied minors arriving in Ireland has shifted in recent years. The GNIB and SWTSCSA note that there has been a reduction in the number of unaccompanied minors travelling, or being sent to Ireland to seek work. TUSLA argues that recent improvements in the model of care provided to unaccompanied minors have also had an impact and that the development of a 'more intensive and holistic child protection risk assessment with a focus on age' has acted as a deterrent to adults wishing to circumvent the immigration process, and has therefore contributed to the overall decrease in numbers.

ENTRY AND ASSESSMENT PROCEDURES INCLUDING BORDER CONTROLS

While unaccompanied non-EEA minors are subject to immigration legislation and can be refused permission to land, it is official policy not to return/remove an unaccompanied minor from the State. In practice such minors are permitted entry and are referred to TUSLA.

APPLYING FOR PROTECTION

The Office of the Refugee Applications Commissioner (ORAC) cannot statutorily accept an asylum application directly from an unaccompanied minor. A TUSLA social worker makes the decision as to whether or not it is in the best interests of the child to make an application for asylum, taking account of the wishes of the child. The number of asylum applications made by unaccompanied minors has fallen from some 288 in 2002 to 56 in 2009 and 20 in 2013.

General child-specific procedures are now in place within ORAC, reducing concerns regarding the appropriateness of the asylum system for unaccompanied minors and children in general. Despite the fact that ORAC and the Refugee Appeals Tribunal (RAT) prioritise applications from unaccompanied minors, this current research found that a final residence decision is generally not received until after he or she reaches 18 years of age. The Irish Naturalisation and Immigration Service (INIS) stated that no policy or practice is in place to delay decisions according to age, and that the same legal provisions apply to

unaccompanied minors as apply to accompanied minors and to adults. INIS has noted that each case is examined on its own merits, having regard to all relevant factors, including the applicant's age. Furthermore before arriving at a decision in any case involving an unaccompanied minor, INIS indicates that it seeks to ascertain that all efforts to reunite him or her with his or her birth family, in the applicant's country of origin or place of former habitual residence, have been exhausted.

AGE ASSESSMENT PRACTICES

In practice in Ireland, while interviews and age assessment tools are used to assess age, no statutory or standardised age assessment procedures appear to exist. Under existing legislation some ambiguity exists as to who has the statutory responsibility for determining age. TUSLA and ORAC stated that a large degree of consensus exists between the two bodies on age assessment in the case of minors referred to TUSLA care. ORAC and Garda National Immigration Bureau (GNIB) stated that officers will generally be guided by TUSLA'S clinical assessment of the child's age.

GUARDIANSHIP

In the context of unaccompanied minors a guardian may refer to a legally-appointed advocate or a person offering more general support to a child. Following referral to TUSLA, the social work team decides under which section of the *Child Care Act 1991* an unaccompanied minor should be provided with care. This decision may have implications for legal guardianship of the child; commentators argue that legally the parents of the child retain guardianship if Sections 4 and 5 are applied, despite the fact that in the case of unaccompanied minors, they may not be in the State or contactable in any way; only when a full care order is sought may TUSLA act as legal guardian.

LEGAL STATUS

In Ireland there is no specific legal status for unaccompanied minors. An unaccompanied minor who is not a protection applicant, holder of refugee or subsidiary protection status, or a victim of trafficking, has no specific immigration permission to be in the State and remains at the discretion of the Minister for Justice and Equality. INIS indicated that if TUSLA had reason to bring an unaccompanied minor in its care to the attention of INIS, because he/she is in need of a residence permit, he or she would generally be given a Stamp 4 permission; however INIS stated that this is not common practice and no specific procedure exists in this regard.

RECEPTION AND INTEGRATION

Significant changes have taken place to the care and reception for unaccompanied minors since 2010. Often accommodated in hostels in the past, all unaccompanied minors are now placed in supported lodgings, foster care or residential placements provided by TUSLA.

An unaccompanied minor must be referred to the TUSLA social work team operational in the geographical area in which the child presents. The two local social work teams located outside Dublin consulted for this study, reported low numbers of referrals: nine unaccompanied minors were referred to the team from Limerick between 2009 and 2014, while the Cork team estimated there had been two or three referrals each year over recent years. While the majority of unaccompanied minors present within the greater Dublin area, where the expert SWTSCSA is operational, there is no national strategy or national-level guidance to social work teams caring for non-EU unaccompanied minors who present outside Dublin. Instead ‘equity of care’ is the guiding principle in place, which means that unaccompanied minors should be treated on a par with other children in the care system. Some regional disparities are in evidence: three social work teams interviewed for the current study apply the *Child Care Act 1991* in different ways; however the nature of care provision is the same in all regions.

The SWTSCSA (Dublin) indicated that in recent years a significant proportion of minors presenting to the service arrive in Ireland to seek reunification with family members located in Ireland or the UK. The team notifies the relevant local social work teams when a reunification takes place in Ireland; however a lack of resources may hamper the follow-up and monitoring of children reunited with family members and/or guardians.

MISSING CHILDREN

There has been a marked decrease in the number of children going missing from State care in recent years, a development likely to be related to the closure of hostels that were used to accommodate most separated children prior to 2010. In 2008, 22 children went missing from SWTSCSA (Dublin) care of which five were found (Joyce and Quinn, 2009). In 2013 by comparison, four unaccompanied minors went missing from SWTSCSA (Dublin) care and two were found.

AGEING-OUT

The transition of an unaccompanied minor to adulthood has potentially far-reaching consequences for that young person’s legal status, accommodation and care provisions. Within Ireland there is potentially wide variation in the experience of aged-out unaccompanied minors, depending on whether or not an asylum application has been made, which section of the *Child Care Act 1991* has

been applied, and the local delivery of aftercare policy and practice. Commentators argue that the majority of unaccompanied minors eventually lodge applications for asylum in order to normalise their legal status in the country. The SWSCSA noted that if a minor is still in care when approaching 18 years of age the team will usually make an asylum application on his or her behalf. An aged-out unaccompanied minor who has claimed asylum in the State may enter the direct provision system of accommodation operated by the Reception and Integration Agency (RIA). Research indicates that carers, young people and practitioners have concerns regarding the practice of moving aged-out minors to RIA accommodation. Barnardos has called for additional supports and recommends that the 'care leaver' status of such minors is prioritised over their 'asylum seeker' status.

RETURN PRACTICES

In general terms, the three general areas where durable solutions may operate include a return and/or reunification to a child's country of origin; reunification or relocation to a third country; and integration in the host country (based on Arnold and O'Keeffe, forthcoming). There are no specific provisions regarding the return of unaccompanied minors in Irish legislation, with all decisions regarding return being taken by TUSLA in conjunction with the unaccompanied minor.

No legislative prohibition exists on the deportation of unaccompanied minors aged under 18 years and in practice no such deportations have taken place. Transfers of unaccompanied minors under the Dublin Regulation (an EU law that determines the Member State responsible for examining an asylum application) do occur and between 2009 and 2013, 16 unaccompanied minors were transferred under the Regulation. A Dublin transfer is initiated by ORAC under the Regulations only at the request of TUSLA, for the purposes of reunifying a child with his or her family or parents in another contracting state, and when TUSLA has deemed that it is in the best interest of the child for such a reunification to take place. Between 2009 and 2013, eight unaccompanied minors were returned as part of the assisted (voluntary) return through the International Organization for Migration, Ireland.

Section 1

Introduction

Section 1 provides an introduction to the study and its objectives. In order to facilitate the discussion in later sections, key legislative instruments and the main service providers in Ireland are briefly introduced. The methodology used to compile the study, and issues encountered relating to data availability, are discussed.

1.1 OBJECTIVES AND BACKGROUND TO THE STUDY

Unaccompanied minors and separated children, broadly defined as children below the age of eighteen who are not in the care of/accompanied by a responsible adult, form a particularly vulnerable migrant group. Ensuring the adequate care and protection of such children, separated from home and family, places urgent and complex demands on receiving States. The availability of reliable data on this group is a problem and data are often limited to unaccompanied minors who claim asylum. At EU-level there are indications that the number of unaccompanied minors moving to and within the region is increasing: 12,730 unaccompanied minors claimed asylum in the EU28 in 2013, compared to 11,700 in 2008, an increase of nine per cent.¹ In Ireland the trend is downward: 20 unaccompanied minors claimed asylum in 2013, compared to 98 in 2008, and some 288 in 2002.² However unaccompanied minors who claim asylum represent just a fraction of the total group: in Ireland in 2013 some 120 separated children were referred to the Child and Family Agency (TUSLA).

In 2010, the European Migration Network (EMN) published the first comprehensive overview of Member State policies and practices relating to elements of the migration process affecting unaccompanied minors (European Migration Network, 2010), such as entry procedures, asylum, reception and return, which informed the *2010 European Commission Action Plan on Unaccompanied Minors (2010-2014)*, which proposes a common approach towards unaccompanied or separated non-EU children.³ At that time the EMN

¹ Eurostat (Table migr_asyunaa accessed October 2014). Note 2010 data refers to EU27.

² Communication received from Office of the Refugee Applications Commissioner, September 2014 and Joyce and Quinn (2009).

³ Policymaking has continued to develop at Member State and EU-levels since: in September 2013 a European Parliament resolution on the situation of unaccompanied minors called for the EU to adopt 'strategic guidelines' to better protect unaccompanied children (including avoiding detention, providing special care regarding education, integration and family tracing where possible), as well as to develop a handbook drawing together the various legal bases in Member States.

Ireland study identified a range of issues and problems regarding the provision of services to unaccompanied minors in the Irish context, including: regional variations in care and aftercare, in part according to how local social work teams were applying the provisions of the *Child Care Act 1991*; a lack of suitable accommodation; insufficient out-of-hours social work supports; a lack of national level data; insufficient national-level information exchange; and the absence of a clearly defined immigration status for many unaccompanied minors (Joyce and Quinn, 2009).

The EMN has now undertaken to update and expand upon the 2010 study, targeting new information gaps on: unaccompanied minors who have not applied for asylum, those in the return process or whose application for protection was rejected, those reaching 18 years of age while in the care of the public authorities, and next steps in terms of service provision, integration or return.

This 2014 Irish report revisits the policies and practices in place for unaccompanied minors in Ireland after a period of substantial change, both in flows as well as in available supports. As noted above, the number of unaccompanied minors referred to TUSLA was 120 in 2013; this compares to 339 in 2008 and 863 in 2002. Improvements have been made to the asylum application procedures which are now more child-friendly than at time of writing the 2009 study. The model of care provided for these children, officially identified to be ‘especially vulnerable’ (Department of Children and Youth Affairs, 2011), has been overhauled, moving from one of emergency hostel-based care in the late 1990s-2000s, to a model of foster care, supported lodgings and residential placements, provided in line with a principle of ‘equity of care’ with Irish children since 2010.

An unaccompanied minor must be referred to the TUSLA social work team operational in the geographical area in which the child presents.⁴ While the majority of unaccompanied minors present within the Dublin area where an expert social work team is operational, and all national, long-term foster placements for unaccompanied minors are provided through the TUSLA Dublin Mid-Leinster Region (see Section 5),⁵ there remains a lack of a national strategy or national-level guidance to social work teams caring for non-EU unaccompanied minors who present outside Dublin. Progress and key remaining challenges in relation to policy and practice for unaccompanied minors will be discussed below.

Section 1 introduces key legislative instruments and the main service providers working with unaccompanied minors in Ireland, as well as the methodology used to compile the study including data availability. Section 2 is concerned with what we know of the motivations and circumstances of unaccompanied minors seeking entry to Ireland. The law, policy and practices at play at the border, and when

⁴ Communication with the Information, Data Protection and Research Unit, TUSLA, November 2014.

⁵ *Ibid.*

claiming asylum, are discussed in Sections 3 and 4 respectively. Section 4 also contains discussion on age assessment, guardianship and the immigration status of unaccompanied minors. The reception arrangements in place for unaccompanied minors are outlined in Section 5 and available information on minors going missing from State care is supplied in Section 6. Section 7 considers the situation of unaccompanied minors who are ‘ageing-out’ i.e. turning 18 years. Return is discussed in Section 8 and the study concludes at Section 9.

1.2 KEY DOMESTIC LEGISLATIVE INSTRUMENTS

There is no dedicated domestic instrument dealing with unaccompanied minors in Ireland. The two Acts that impact upon unaccompanied minors are the *Refugee Act 1996* (as amended) and the *Child Care Act 1991* (as amended). As the study makes frequent reference to these Acts it is useful to outline the key sections of each at the outset.

1.2.1 *Refugee Act 1996 (as amended)*

The Refugee Act 1996 (as amended) sets out core aspects of the law governing the processing of applications for refugee status in Ireland. The principal purpose of the Act is to give statutory effect to the State’s obligations under the *Geneva Convention Relating to the Status of Refugees 1951* and the 1967 New York Protocol.

The Refugee Act 1996 states that in cases where it appears that a minor presenting at the border or within the state is ‘not in the custody of any person’, the Immigration Officer must contact TUSLA and thereafter, the provisions of the *Child Care Act 1991* apply (*Refugee Act 1996* Section 8 (5)(a)).

1.2.2 *Child Care Act 1991 (as amended)*

The primary legislation regulating child care policy in Ireland is the *Child Care Act 1991*, as amended. The Act places a responsibility for the welfare of all children in Ireland under 18 years of age, and who are not receiving adequate care and protection, onto TUSLA. The Act is wide-ranging and makes no specific reference to unaccompanied minors. Different sections of the Act may be used to take unaccompanied minors into HSE care and these are discussed in detail in Section 5.1.

1.2.3 *UN Convention on the Rights of the Child 1989*

Ireland ratified the *UN Convention on the Rights of the Child* (CRC) in 1992. In Ireland, principles of international law enter domestic law only to the extent that no constitutional, statutory or judge-made law is inconsistent with the principles in question. Where a conflict arises, the rule of international law must, in every

case, yield to domestic law.⁶ Specific principles in the UN CRC that affect unaccompanied minors include, amongst others: the principle of non-discrimination (Article 2);⁷ that the best interests of the child shall be a primary consideration (Article 3); and that a child temporarily or permanently deprived of their family environment shall be entitled to ‘special protection and assistance provided by the State’. Alternative care shall be provided by State parties and due regard shall be given to the ‘desirability of continuity in a child's upbringing’ as well as their ethnic, religious, cultural and linguistic background (Article 20). The Convention also provides for the right of the child to be heard (Article 12), which obliges the Contracting States to ensure that in decisions affecting them, the views of the child are considered and given due weight, having regard to their age and maturity.

Under Article 22 of the CRC, the State is obliged to take appropriate measures to ensure that minors, including unaccompanied minors seeking refugee status or who are considered refugees, are provided with appropriate protection or humanitarian assistance in the enjoyment of the rights set out in the Convention and other international human rights or humanitarian instruments to which it is a party. In cases where no parents or family members of the child can be found, the child must be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the Convention.

The EU-level synthesis report for the current study will provide an overview of the International and EU Legislative Framework supplementing national legislation in relation to unaccompanied minors.⁸

1.2.3.1 UN Convention on the Rights of the Child 1989 in Irish law

While Ireland has ratified the CRC it is not yet transposed into law. Despite the lack of formal transposition of the Convention, Irish legislation incorporates its principles in a number of respects:

- Section 3 of the *Child Care Act 1991*, as amended, obliges TUSLA to regard the welfare of the child as the first and paramount consideration and, as far as practicable, to give due consideration to the wishes of the child. The Agency is also obliged to have regard to the fact that it is generally in the interests of a child to be brought up in his or her own family.

⁶ Comments received from EMN legal consultant.

⁷ In the General Comment No. 6, the UN Committee on the Rights of the Child (UNCRC) determines the principle of non-discrimination in relation to unaccompanied minors and separated children as prohibiting any discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum-seeker or migrant. This principle, when properly understood, does not prevent, but may indeed call for, differentiation on the basis of different protection needs such as those deriving from age and/or gender (UN Committee on the Rights of the Child, 2005).

⁸ The synthesis report and other country studies will be made available at: www.emn.europa.eu.

- Section 24 of the Act also obliges a court in any proceedings under the Act to regard the welfare of the child as the first and paramount consideration, and so far as practicable, to give due consideration to the wishes of the child.

Other Acts requiring consideration of the best interests of the child include the *Guardianship of Infants Act 1964*, as amended, and the *Children Act 2001*.

Case law has also introduced Convention principles into Irish law by a process of statutory interpretation, for example regarding the appointment of guardians (see *FN v. CO*⁹ discussed further in Section 4.4.1). The relationship between the UN Convention and Irish law has recently received consideration in the immigration context, specifically regarding return (*FBA v. Minister for Justice*¹⁰ and *Dos Santos v. Minister for Justice*¹¹).¹²

1.2.3.2 Thirty-first Amendment to the Irish Constitution

While the CRC it is not yet transposed into Irish law there has been some recent progress in this respect: in 2012 an amendment to the Irish Constitution was passed in a referendum, which allows for the repeal of Article 42.5 of the Constitution and its replacement with a new article 42A.¹³ The new Article 42A contains a number of principles which are broadly consistent with those outlined above from the UN CRC. In particular Article 42A.1 affirms the inalienable and imprescriptible rights of all children and obliges the State to defend and vindicate those rights. Article 42A.4 incorporates the principles of the best interests of the child and the right of the child to be heard. It requires the best interests of the child to be the *paramount* consideration. In that regard, it is more far-reaching than the UN Convention, which merely requires them to be a *primary* consideration. The material scope of the two principles is restricted to proceedings brought by the State in child protection and adoption, guardianship, custody and access cases. The application of the principles to other proceedings brought by or against the State, such as criminal or asylum/immigration proceedings, is not included.¹⁴

⁹ *FN v. CO* [2004] 4 IR 311.

¹⁰ *FBA v. Minister for Justice* [2013] IEHC 554.

¹¹ *Dos Santos v. Minister for Justice* [2013] IEHC 237.

¹² Comments received from EMN Legal Consultant.

¹³ Owing to a constitutional challenge in the High Court, an appeal in which is yet to be determined by the Supreme Court, the Bill containing the amendment has not yet been signed into law.

¹⁴ Comments received from EMN Legal Consultant.

1.3 KEY ACTORS AND INSTITUTIONS INVOLVED IN THE PROVISION OF SERVICES TO UNACCOMPANIED MINORS

1.3.1 *An Garda Síochána and the Garda National Immigration Bureau (GNIB)*

The Garda National Immigration Bureau (GNIB) is responsible for immigration-related Garda (police) operations in the State and exists under the auspices of An Garda Síochána¹⁵ within the remit of the Department of Justice and Equality.¹⁶ The GNIB carries out registrations of all non-EEA nationals aged 16 and above, deportations, border control, and investigations related to illegal immigration and trafficking in human beings. Outside of Dublin, Immigration Officers who report to local Superintendents carry out immigration-related functions. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and at all approved ports and airports. The GNIB monitors the movement of non-Irish nationals at all air and seaports throughout the State and along the border with Northern Ireland, with a view to the prevention of, and detection of, irregular immigration

1.3.2 *Child and Family Agency (TUSLA)*¹⁷

TUSLA, the Child and Family Agency¹⁸ was established in January 2014 under the *Child and Family Act 2013* as an independent legal entity. Under the Act it is required to support and promote the development, welfare and protection of children, and to support and encourage the effective functioning of families. The Agency has assumed responsibility for child welfare and protection services previously provided by the HSE and services previously provided by the Family Support Agency and the National Educational Welfare Board. Services are provided mainly on a local basis through 17 Local Areas each of which has a social work team in operation. Under the provisions of the *Refugee Act 1996* (above) TUSLA is responsible for the welfare of unaccompanied minors; the responsibility is discharged by application of the *Child Care Act 1991*.

1.3.2.1 *Social Work Team for Separated Children Seeking Asylum (SWTSCSA), Dublin*

The Child and Family Agency Social Work Team for Separated Children Seeking Asylum¹⁹ (SWTSCSA) is a specialist team for separated children based in Dublin.

¹⁵ www.garda.ie/Index.aspx.

¹⁶ www.justice.ie/.

¹⁷ TUSLA is the name of the Child and Family Agency. The word TUSLA, borrows from the Irish words ‘tus’ and ‘lá’ (meaning ‘beginning’ and ‘day’), but is a new word reflecting a shared desire for a new beginning, forging a new identity. See www.tusla.ie/.

¹⁸ www.tusla.ie/.

¹⁹ www.tusla.ie/services/alternative-care/separated-children/.

The SWTSCSA (Dublin) receives referrals from Dublin South East/Wicklow, mostly from two national services: the Garda National Immigration Bureau (GNIB) and the Office of the Refugee Applications Commissioner (ORAC). Referrals may also be accepted from other Social Work teams in the State which do not have the necessary resources or experience to care for the separated child in question.²⁰ The decision as to whether or not to accept a referral from another social work team is a joint decision taken by the Principal Social Workers in the SWTSCSA and the sending local area.

The SWTSCSA (Dublin) is tasked with providing initial intake and assessment for separated children from outside the EU. The SWTSCSA carries out a needs assessment, and appropriate placements are then arranged for the child, generally in supported lodgings or foster care placements located throughout the State. The SWTSCSA (Dublin) often works with local social work teams to carry out the transfer from intake units in Dublin to local placements (see Section 5.2).

The Team also operates a reunification service where authorities refer families or adults presenting with children, if parentage/guardianship is not clear. The SWTSCSA conducts an assessment which may include DNA testing.²¹ The Team also provides an aftercare function, currently to 85 young adults (see Section 7.2).

1.3.2.2 Local Social Work Teams

An unaccompanied minor must be referred to the TUSLA social work team operational in the geographical area in which the child presents. Local TUSLA social work teams are charged with providing day-to-day services to unaccompanied minors who present in their area.

1.3.3 Crisis Intervention Service (CIS)

The Crisis Intervention Service (CIS)²² provides an out-of-hours emergency social work service to minors including unaccompanied minors. The service operates across the greater Dublin area²³ and referrals are made by service providers (e.g. Gardaí, hospital staff) outside of normal working hours (see Section 3.3.2).

1.3.4 Irish Naturalisation and Immigration Service (INIS)

Irish Naturalisation and Immigration Service (INIS)²⁴ is responsible for administering the statutory and administrative functions of the Minister for Justice and Equality in relation to asylum, immigration, citizenship and visas matters.

²⁰ Interview with SWTSCSA (Dublin) Social worker, August 2014.

²¹ www.tusla.ie/services/alternative-care/separated-children/.

²² See www.dcy.gov.ie/docs/Out_of_Hours_Services/1904.htm.

²³ Dublin, Kildare and Wicklow.

²⁴ www.inis.gov.ie.

1.3.5 Office of the Refugee Applications Commissioner (ORAC)

The statutorily independent Office of the Refugee Applications Commissioner (ORAC)²⁵ is tasked with investigating applications from persons seeking a declaration for refugee status under the 1951 Geneva Convention and issuing appropriate recommendations to the Minister for Justice and Equality. ORAC investigates applications for subsidiary protection, and applications for family reunification made by refugees, and reports to the Minister for Justice and Equality on such applications.

1.3.6 Reception and Integration Agency (RIA)

The Reception and Integration Agency (RIA)²⁶ is responsible for accommodating asylum seekers in the direct provision accommodation system while their applications for asylum are processed. RIA works with TUSLA in relation to separated children seeking asylum who reach 18 years of age and enter the direct provision system (i.e. aged-out unaccompanied minors).

1.3.7 Refugee Appeals Tribunal (RAT)

The Refugee Appeals Tribunal (RAT)²⁷ determines the appeals of those asylum seekers whose applications for refugee status have not been recommended for acceptance by the Office of the Refugee Applications Commissioner. The Tribunal is a statutory independent body and exercises a quasi-judicial function under the *Refugee Act 1996*.

1.3.8 Refugee Legal Service (RLS)

The Refugee Legal Service (RLS),²⁸ under the auspices of the Legal Aid Board, provides independent legal services to persons applying for asylum in Ireland. Legal aid advice is provided also in appropriate cases on immigration and deportation matters. The Legal Aid Board (incorporating the Refugee Legal Service), through its specialised Separated Children's Unit, offers legal advice to all unaccompanied minors seeking asylum who register with its service.

1.4 METHODOLOGY, DATA AND DEFINITIONS

1.4.1 Methodology

Extensive desk research was undertaken at the outset of the current study including a review of existing literature on the issue. A key source of information

²⁵ www.orac.ie.

²⁶ www.ria.gov.ie/.

²⁷ www.refappeal.ie/.

²⁸ See www.legalaidboard.ie/lab/publishing.nsf/Content/Home.

for the study was a Roundtable meeting convened with key actors and institutions in the area. A Roundtable format was chosen to help the report authors gain a full understanding of the interplay of responsibilities between the various bodies. Prior to the Roundtable, study specifications were sent to participants and the most relevant issues to the particular expertise/remit of the body were individually highlighted.

Roundtable attendees comprised representatives from: the Garda National Immigration Bureau (GNIB); Social Work Team for Separated Children Seeking Asylum (Dublin), TUSLA; Office of the Refugee Applications Commissioner (ORAC); Crisis Intervention Service (TUSLA); Residence Division, Irish Naturalisation and Immigration Service (INIS), Department of Justice and Equality; Reception and Integration Agency (RIA), Department of Justice and Equality. At the Roundtable, the results of desk research to date were presented by the authors and comments were invited. Key findings from the previous Irish national report (Joyce and Quinn, 2009) were also presented and participants were asked to report any relevant updates.

Invitations were also extended to three social work teams located outside Dublin who did not attend the roundtable. In at least one case very limited involvement with unaccompanied minors in recent years was cited as the reason for non-participation. The lack of a regional perspective was considered unfortunate, especially in light of the continued lack of national-level statistical data (see below). In order to address this gap individual telephone interviews were subsequently undertaken with: Liberty House Social Work Team, TUSLA Cork; Social Work Team, TUSLA Waterford; Youth Homeless and Aftercare Team, TUSLA Limerick. An interview was requested with the Social Work Team, TUSLA Wexford but this did not take place. An individual interview was also undertaken with the NGO the Irish Refugee Council.

A draft of the study was subsequently circulated to all participants at the Roundtable and all others interviewed for the study. Detailed comments and further information were received and incorporated as relevant. Outstanding information gaps were addressed with input bilaterally requested and received from: the International Organization for Migration (IOM) Ireland; the Legal Aid Board (LAB); the Anti-Human Trafficking Unit (AHTU), Irish Naturalisation and Immigration Service (INIS); the Repatriation Division, INIS; Refugee Appeals Tribunal (RAT); TUSLA Information, Data Protection and Research Office; the City of Dublin Education and Training Board, Separated Children's Service; the Border Management Unit, INIS; and the EMN legal consultant. Further telephone contact was made with the Social Work Team for Separated Children Seeking Asylum (Dublin), TUSLA and the Garda National Immigration Bureau. An interview was also sought with a senior TUSLA representative with responsibility for separated children which did not take place, therefore information on any national-level

strategy development regarding unaccompanied minors was not available at time of writing.

Information included from social work teams relates to that received from teams in the Dublin, Cork and Limerick areas. These teams were selected because they are believed to deal with the majority of presenting unaccompanied minors in Ireland, primarily as all house major ports of entry. In the initial stages of our research, the social work team in the Waterford/Wexford areas was included in the study. Unfortunately key details remained unconfirmed at time of publication therefore information from this team could not be included in the final draft of the study.

1.4.2 Data on Unaccompanied Minors

National-level statistics on unaccompanied minors referred to or placed in care are not yet available and very little is known about unaccompanied minors located outside greater Dublin. This issue was also reported in Joyce and Quinn (2009). Detailed national-level data on unaccompanied minors who seek asylum were supplied by ORAC and can be found in Section 4 of this report; however not all unaccompanied minors seek asylum.

The most complete data on unaccompanied minors in Ireland relate to those children referred to the SWTSCSA (Dublin). Monthly data reports were provided by the SWTSCSA for the period January 2009-August 2014 and were collated into annual figures in order to provide demographic breakdowns of unaccompanied minors placed in care. SWTSCSA data comprise unaccompanied minors that present at Dublin port, Dublin airport, ORAC and elsewhere within the geographical area of Dublin South East/Wicklow, as well as minors that are referred to the SWTSCSA by another social work team in the State. Unaccompanied minors who present outside of the greater Dublin area are generally excluded from this source. Age and nationality breakdowns are available of SWTSCSA placements, as supplied in Section 5. Data are not held on the proportion of unaccompanied minors referred to SWTSCSA that seek asylum, the number taken into care under the different sections of the *Child Care Act 1991*, or from where referrals originate. Data are also not held on the number of 'aged-out' unaccompanied minors who enter the direct provision system.

Although the SWTSCSA is widely accepted to be receiving the majority of unaccompanied minor referrals in the State²⁹ the fact that national-level statistics on unaccompanied minors remain unavailable is a concern. Very little is known about unaccompanied minors located outside greater Dublin. (TUSLA estimate that in recent years 4-5 cases of unaccompanied minors have presented per year

²⁹ GNIB, SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014. TUSLA Information, Data Protection and Research Office also estimates that the SWTSCSA receives over 90 per cent of referrals.

outside Dublin.³⁰) This issue was also reported in Joyce and Quinn (2009). The Information, Data Protection and Research Office of TUSLA reports some progress in this regard: all social work teams in the State must now collect data on unaccompanied minors referred to SWTSCSA (Dublin) and submit the data by way of a standard template to TUSLA. The Information, Data Protection and Research Office of TUSLA indicated that the data returns are of variable quality and that a full year of reliable national data does not yet exist.³¹

All non-EEA nationals aged 16 and over, are required to register with the Garda National Immigration Bureau (GNIB), but non-EEA nationals aged under 16 years are not currently required to register, meaning that little is known about this group of children. This information gap raises challenges, for example regarding research and public service planning, as well as child protection concerns. The *Employment Permits (Amendment) Act 2014* removed the legislative obstacle to the registration of non-EEA children and INIS has indicated that logistical issues are currently being worked out with a view to introducing a registration requirement for children.³² Unaccompanied minors aged under 16, asylum-seeking unaccompanied minors, and those who have not been issued with a residence permit do not appear in GNIB data.

1.4.3 Definitions and Scope

In Ireland the term ‘unaccompanied minor’ is typically used by the immigration services while the Child and Family Agency (TUSLA) and NGOs tend to use the term ‘separated child.’³³ In accordance with the specifications for the EMN study the definition of an ‘unaccompanied minor’ for the purpose of this study derives from the *Temporary Protection Directive*:³⁴

...a third country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of the

³⁰ Communication with the TUSLA Information, Data Protection and Research Office, November 2014.

³¹ The Information, Data Protection and Research Unit stated that data are improving, noting that returns for Q1 and Q2 2014 are consistent with the expected proportions of unaccompanied minors presenting: 90 per cent in Dublin, 10 per cent elsewhere. However the template local teams are asked to complete, consulted for the current research, requests data on referrals made to SWTSCSA, rather than cases also held locally. The TUSLA Data Protection and Research Office indicated this error would be corrected going forward (Communication with TUSLA Information, Data Protection and Research Unit, September 2014).

³² Presentation by Principal Officer of Immigration Policy. Kings Inns, Dublin, 12 November, 2014.

³³ The EMN Glossary (available at www.emn.ie) defines a ‘separated child’ as a child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Some may be totally alone while others may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. This definition covers both Third-Country National and EU National children, while unaccompanied minors can refer only to Third-Country Nationals.

³⁴ *Council Directive 2001/55/EC* of 20 July 2001 regarding the giving of temporary protection by Member States in the event of a mass influx of displaced persons.

Member States. Note that not all those who claim to be an unaccompanied minor will be confirmed as such by the relevant authorities (EMN Glossary 2.0).

The information contained within the current report is based on that gathered according to commonly agreed EMN study specifications. The European Migration Network is tasked with sourcing objective and comparable information on non-EU migration and information is not included in the current report on EU-national unaccompanied minors. Study specifications requested comparable information on asylum seeking and non-asylum seeking unaccompanied minors arriving at a land/sea border or airport, and at an internal authority (e.g. police, child protection service, etc.). In the Irish context however, there is usually no distinction between policies and practice towards asylum seeking and non-asylum seeking unaccompanied minors, so unless relevant this distinction has been removed from the discussion. As with all EMN studies a similar report will be produced by the other EMN National Contact Points, and an EU-wide synthesis report will subsequently be compiled.³⁵

³⁵ The synthesis report will be made available at www.emn.ie.

Section 2

Motivations and Circumstances of Unaccompanied Minors Seeking Entry to Ireland

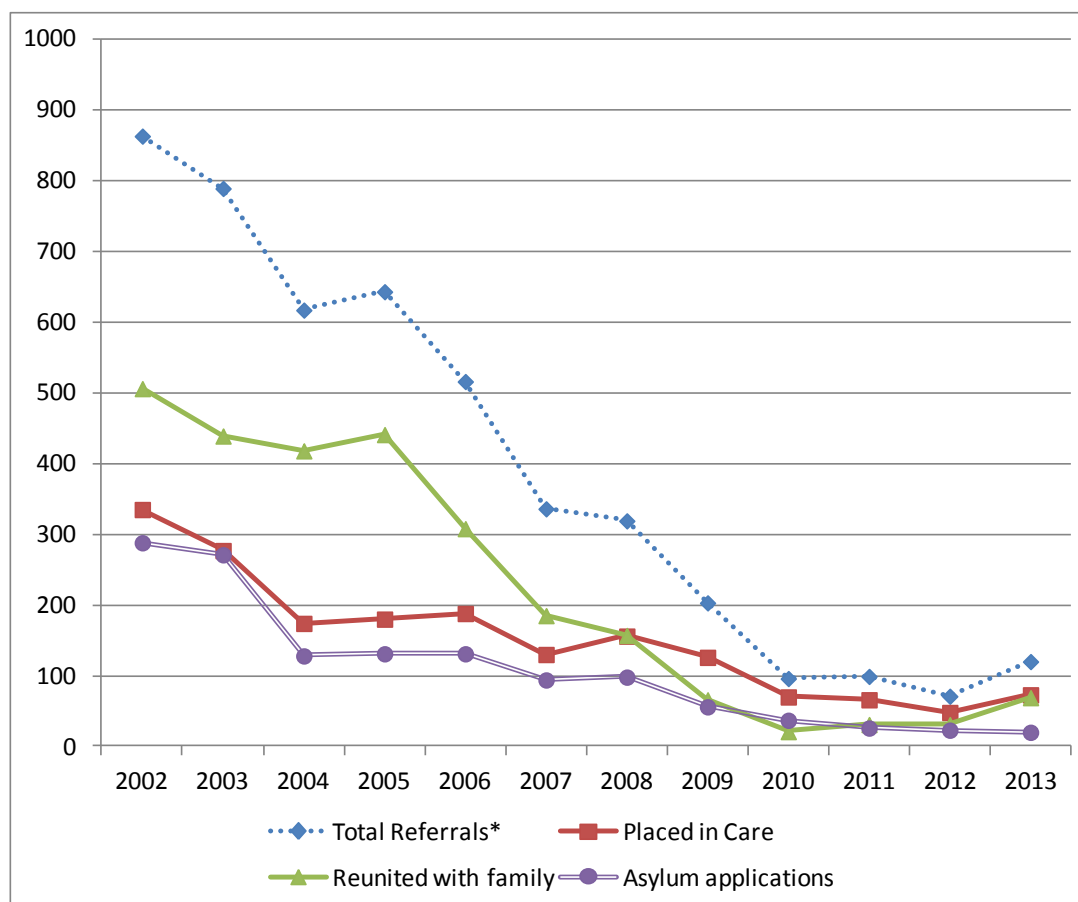
In the context of an overall steep decline in the number of unaccompanied minors presenting in Ireland, there are indications that motivations behind the migration of such children may have changed over the past decade. Section 2 presents what we know of the motivations and circumstances of unaccompanied minors seeking entry to Ireland, while acknowledging that each individual case is different and generalisations are problematic.

2.1 MOTIVATIONS AND CIRCUMSTANCES OF UNACCOMPANIED MINORS SEEKING ENTRY TO IRELAND

The number of unaccompanied minors referred to the SWTSCSA (Dublin) declined steeply over the past decade, from 789 in 2003 to 120 in 2013³⁶ (see Table 5.1). Figure 2.1 shows downward trends in the number of unaccompanied minors placed in care, and the number of unaccompanied minors reunited with family. Figure 2.1 also shows the declining number of unaccompanied minors who have claimed asylum in Ireland in the period 2002-2013, a trend which is in line with overall declining numbers of asylum applications in the period.

³⁶ SWTSCSA (Dublin).

Figure 2.1 Referrals to SWTSCSA (Dublin) and Number of Asylum Applications Made by Unaccompanied Minors, 2002-2013



Sources: Data on referrals and care placement/family reunifications from SWTSCSA (Dublin), collation of monthly data reports; asylum data from the Office of the Refugee Applications Commissioner.

* The total disaggregated data is higher than 'Total referrals' data presented above. This suggests that double counting exists between categories. Category of 'Other' omitted. Detailed data are included in Tables 5.1 and 4.1.

International experience indicates that separated children migrate for diverse reasons that vary according to the individual circumstances of each child, the situation in their country of origin, including experience of armed conflict or severe poverty, and the perceived benefits of moving to Europe (Ayotte, 2000). Most children in this situation cannot be said to have chosen to leave their country of origin as children generally migrate due to decisions made by others (Bhabha, 2006). Ayotte (2000) indicates that, while some separated children travel alone, many are assisted by a relative, family friend, religious figure, aid worker etc. The majority of the children entered host countries irregularly while some travelled with tourist visas and used their own identity documents. As discussed by Horgan et al. (2012), the United Nations Committee on the Rights of the Child (UNCRC, 2005) noted that there is often a link between separated children and trafficking.

Many Irish stakeholders observe that the situation of unaccompanied minors arriving in Ireland has shifted in recent years. The TUSLA *Review of Adequacy*³⁷ indicates that the economic downturn experienced in Ireland since approximately 2007 has contributed to the overall decline in unaccompanied minors coming to Ireland (TUSLA, 2014). The GNIB and SWTSCSA also note that there has been a reduction in the number of unaccompanied minors travelling, or being sent to Ireland to seek work.³⁸

TUSLA (2012) argues that recent improvements in the model of care provided to unaccompanied minors have also had an impact and that the development of a 'more intensive and holistic child protection risk assessment with a focus on age' has acted as a deterrent to adults wishing to circumvent the immigration process, and has therefore contributed to the overall decrease in numbers. Social workers also indicated that (sometimes affluent) Third-Country National parents/guardians may send children to Ireland unaccompanied in order for them to gain a better education.³⁹

A social worker stated that in terms of the personal motivations of the children concerned, most want only to be reunited with family members.⁴⁰ Research shows that separated children are a vulnerable group with varied circumstances and needs (Abunimah and Blower, 2010; Arnold and Sarsfield Collins, 2011). Abunimah and Blower (2010) reviewed the case files of 100 separated children seeking asylum in the years 2003 and 2004 and found that the children had experienced a wide diversity of events and circumstances prior to their eventual arrival in Ireland. Ní Raghallaigh (2013) found that unaccompanied asylum-seeking minors may not feel able to reveal the true reasons for leaving their countries of origin, due to general mistrust of people around them, both friends and professionals, and the fear of possible negative consequences of telling the truth, such as deportation or retaliation against their families in their countries of origin.

The SWTSCSA (Dublin) indicated that a significant proportion of minors presenting to the service in recent years arrive in Ireland to seek reunification with family members located in Ireland or the UK.⁴¹ The family members concerned hold various immigration statuses in the UK, ranging from asylum applicant to full UK citizen. On occasion, Third-Country Nationals who are located in the UK, often of South African or Zimbabwean nationality, have sought to

³⁷ Note that this report was published by TUSLA regarding services provided by the HSE in 2012 prior to establishment of TUSLA in 2014.

³⁸ GNIB, SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

³⁹ Interview with SWTSCSA (Dublin) Social worker, August 2014; Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014.

⁴⁰ Interview with SWTSCSA (Dublin) Social worker, August 2014.

⁴¹ See also Ní Raghallaigh, 2013.

transit their children through Ireland to join them in the UK.⁴² Such flows may arise in part as a result of differences in the immigration regimes: South African nationals for example do not require a visa to travel to Ireland while a visa must be secured in order to enter the UK.⁴³ This type of informal⁴⁴ family reunification may not be the ultimate motivation behind such minors travelling to Ireland, for example some may proceed to claim asylum after reunification.

Due to the lack of complete, national-level data on the number of unaccompanied minors arriving in Ireland it is not possible to say what percentage of the overall number claim asylum. ORAC noted that separated children in Ireland claim asylum for many reasons: some have fled from their country of origin displaced by war or in fear of persecution, or to escape from abuse or extreme poverty. ORAC officials observed that unaccompanied minors may have become separated from their family during the journey to Ireland. The children may also have been trafficked to Ireland for sexual or labour exploitation. ORAC also observed that some of the children do not know the reasons they have been sent to Europe to claim asylum.⁴⁵ The issue of motivation behind migration is complicated by the fact that in Ireland unaccompanied minors do not have a clear immigration status unless they apply for protection, or are granted refugee status, subsidiary protection, leave to remain or an immigration permission for persons suspected of being a victim of trafficking.

⁴² Interview with SWTSCSA (Dublin) Social worker, August 2014. In order to bring a child into the country through the regular channels a naturalised UK-citizen parent would be required to pay almost €1,000 for a visa (£885 Sterling, source: <https://www.gov.uk/join-family-in-uk>).

⁴³ Interview with SWTSCSA (Dublin) Social worker, August 2014.

⁴⁴ Not proceeding via a formal family reunification application to the Department of Justice and Equality.

⁴⁵ Communication received from the Office of the Refugee Applications Commissioner, September 2014.

Section 3

Entry and Assessment Procedures Including Border Controls

Section 3 outlines the law, policy and practices at play at the border regarding unaccompanied minors, including referral to TUSLA. While unaccompanied non-EEA minors are subject to immigration legislation and can be refused permission to land, it is official policy not to return or remove an unaccompanied minor from the State. In practice such minors are permitted entry and are referred to TUSLA; the Agency then assumes responsibility for the child. The GNIB indicated that the benefit of the doubt is applied in order that TUSLA social workers may assess age. The GNIB stated that the identification and referral of children arriving in the company of an adult with whom they do not have a genuine connection, is currently a greater challenge than minors presenting alone. If a child presents within the greater Dublin area outside of normal office hours the GNIB contact the Out-of-Hours Social Work Team which is part of the Crisis Intervention Service (CIS). Outside the greater Dublin area an out-of-hours social work service is not available.

3.1 LEGISLATIVE FRAMEWORK

GNIB indicated that all persons are subject to immigration legislation, except those referred to in Section 2 of the *Immigration Act 2004*. If a person including an unaccompanied minor does not meet the required criteria they may be refused permission to land in accordance with Section 4(3) of the 2004 Act. However in practice if it is accepted by the Immigration Officer at the border that the person concerned is potentially a minor, he or she will not be returned or removed from the State, irrespective of what documents are held or if an asylum application has been requested; the best interests of the child should always take precedence.⁴⁶

The *Immigration Act 2003* Section 5 (2) (b) and (c) state that provisions in that Act for the arrest and detention of persons refused leave to land shall not apply to persons under 18 years of age for as long as the Immigration Officer concerned believes that the person is a minor.

The *Refugee Act 1996* states that in cases where it appears that a minor presenting at the border or within the state is 'not in the custody of any person', the Immigration Officer or other authorised office (e.g. ORAC official) must

⁴⁶ Correspondence with GNIB, November 2014.

contact TUSLA, and thereafter the provisions of the *Child Care Act 1991* apply (*Refugee Act 1996* Section 8 (5)(a)):

Where it appears to an Immigration Officer or an authorised officer that a child under the age of 18 years, who has either arrived at the frontiers of the State or has entered the State, is not in the custody of any person, the officer shall, as soon as practicable, so inform the health board in whose functional area the child is and thereupon the provisions of the Child Care Act 1991, shall apply in relation to the child (Refugee Act 1996, Section 8 (5)(a)).

In practice the GNIB refers children who present as alone, or in the company of an adult with whom the Immigration Officer or other authorised office (e.g. ORAC official) is not satisfied has a genuine relationship with the child.⁴⁷ Note that regarding the threshold necessary to invoke the Act, it must only ‘appear’ to an officer that a minor is under 18 years and travelling alone.

The statement that the ‘provisions of the *Child Care Act 1991*, shall apply’ means that TUSLA assumes responsibility for that child. GNIB officials stated that the provisions of Section 8(5) result in a large number of referrals of unaccompanied minors to TUSLA,⁴⁸ relative to other EU Member States. Gardaí may invoke an Emergency Care Order under Section 12 of the *Child Care Act 1991* if there is an immediate and serious risk to the health or welfare of a child and it is deemed not practical to await the making of an application for an emergency care order by TUSLA under Section 13.

Table 3.1 shows the referrals made by GNIB from Dublin air and sea borders to TUSLA/HSE under Sections 8(5) of the *Refugee Act 1996* and Section 12 of the *Child Care Act 1991* (Emergency Care Orders) over the period 2005-2013. GNIB officials and social workers stated that such referrals include some that are later deemed to be inappropriate, for example in the case of tourists aged under 18 and travelling without an accompanying adult.⁴⁹ (Referrals to TUSLA also take place from ORAC and from local Garda offices outside of Dublin).

Table 3.1 Referrals of Unaccompanied Minors to HSE/TUSLA by GNIB within the Dublin Area, 2005-2013

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total GNIB referrals	49	45	75	92	97	56	59	58	60

Source: Communication with GNIB, November 2014. Includes referrals from Dublin airport; Burgh Quay Office, Dublin; Dun Laoghaire Port. Includes minors later reassessed to be adults.

National-level data were not available on the total number of referrals of unaccompanied minors by An Garda Síochána to TUSLA, due to potentially

⁴⁷ GNIB, Roundtable meeting, Economic and Social Research Institute, September 2014.

⁴⁸ Under Section 12 of the *Child Care Act 1991*.

⁴⁹ GNIB, SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

inconsistent data gathering practices outside of Dublin, where Immigration Officers are outside the operational management of the GNIB.⁵⁰

3.2 BORDER CONTROLS

The main points of entry to Ireland are the airports at Dublin, Shannon, Cork and Knock and sea ports at Dublin, Cork, Foynes and Rosslare. Each of these air and sea ports is staffed by Immigration Officers. The land border with Northern Ireland is not subject to fixed controls. The majority of referrals of unaccompanied minors are from ports of entry within the Dublin area (particularly from Dublin Airport and Dublin Port).

In September 2014 the Minister for Justice and Equality announced that border controls at Dublin Airport, at present largely carried out by An Garda Síochána, will increasingly be undertaken by officials of the Irish Naturalisation and Immigration Service (INIS). Responsibility for the front line service will be fully handed over to INIS by the end of 2015 and will include identification of unaccompanied minors. Procedures for the identification and management of unaccompanied minors are currently a core part of INIS officer training and civilian staff deployed as immigration officers at Dublin Airport carry out this function at present. The Garda National Immigration Bureau will continue to follow up and investigate any offences detected by INIS.⁵¹

Fingerprinting of minors is not standard practice at the border. All unaccompanied minors are photographed throughout the State, and photocopies are taken of passports, if available, at all ports of entry.⁵²

3.2.1 *Assessment of Age and Family Relationships at Port of Entry*

The GNIB outlined the procedure followed when a person who claims to be a minor, or whom the Immigration Officer suspects to be a minor, seeks to enter the State unaccompanied. At first point of contact usually only the Immigration Officer, the potential minor and any accompanying adult(s) are present. Basic information on name, addresses, documents etc. is requested by the Immigration Officer. In cases where the age of the person presenting is in doubt, the GNIB indicated that questions are asked on topics such as school, the reason for travel, age of siblings etc., while the Immigration Officer takes account of the maturity of the person. GNIB indicated that an interpreter is always made available if required, either in person or over the phone.

Joyce and Quinn (2009) note the concerns of the NGO, the Irish Refugee Council, whose representative argued that on occasion unaccompanied minors are turned

⁵⁰ Communication with GNIB, November 2014. For example due to the lack of an out-of-hours service outside of Dublin local Gardaí may have to make an emergency care order; these may or may not be recorded as referrals to TUSLA.

⁵¹ Comments received from Border Management Unit, INIS, October 2014.

⁵² Communication with GNIB, November 2014.

away at the border despite age disputes. The GNIB argued that Immigration Officers exercise caution in this regard and give the benefit of the doubt, where doubt exists, in order that an age assessment may subsequently be undertaken by TUSLA, who were stated to have greater expertise in this regard.⁵³ The GNIB confirmed that a decision to refuse leave to land is not solely taken by an individual Immigration Officer but is checked by a supervisor. This practice will also be followed by new civilian Immigration Officers.⁵⁴

If the GNIB decides the person may be a minor, TUSLA is contacted to conduct a further interview and/or to take charge of the child. A social worker is present at any such future interviews at the border and interpretation is provided if needed. The GNIB stated that unless criminality has been identified as likely in the particular case, GNIB participation in any future interview is non-obligatory.⁵⁵ If at the border the Immigration Officer decides the person is not a minor he or she must be informed of the decision in simple terms and he or she may be refused leave to land. If the person has not been removed from the State the decision is open to reassessment by an Immigration Officer at a later stage in conjunction with TUSLA. If TUSLA later reassesses a person referred to them as a minor to be an adult, GNIB accepts that assessment and applies the law accordingly.⁵⁶

The GNIB stated that the identification and referral of children arriving in the company of an adult with whom they do not have a genuine connection, is currently a greater challenge than minors presenting alone.⁵⁷ In cases where an Immigration Officer believes that a minor may have been brought into Ireland, or have been met by an adult who is not a genuine carer, the Immigration Officer will use the initial contact with the adult and child to try to ascertain whether a genuine relationship exists. At such interviews an interpreter is present or at least available by phone. Immigration Officers pose questions on the minor's birthday or on other family members for example, which can reveal that the minor is in fact an unaccompanied minor, not accompanied by a guardian or customary caregiver. Joyce and Quinn (2009) noted the concerns of NGOs including the Irish Refugee Council that such questioning may, at times, not take cultural nuances into account such as the lack of importance placed on birth dates etc. GNIB and social workers consulted stated that if there are concerns regarding the relationship of an adult with the child in their company TUSLA is contacted and a social worker attends subsequent interviews.

⁵³ GNIB, Roundtable meeting, Economic and Social Research Institute, September 2014. Communication with GNIB, November 2014.

⁵⁴ Communication with GNIB, November 2014.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ GNIB, Roundtable meeting, Economic and Social Research Institute, September 2014.

3.3 REFERRAL TO TUSLA

Section 8(5) of the *Refugee Act 1996* states that when an Immigration Officer or other authorised officer encounters a minor who is not in the custody of any person, that child must be referred to TUSLA as soon as is practicable.⁵⁸ Referrals may also be made by ORAC both in the case of children presenting to claim asylum alone, or in the company of an adult ORAC believes may not have a genuine connection with the child. See Section 4.1.

GNIB and the SWTSCSA confirmed that it is not standard practice for a social worker to be present at the border, but when a social worker collects a child from the airport he or she may engage in cooperative interviewing with the GNIB.⁵⁹

An unaccompanied minor must be referred to the TUSLA social work team operational in the geographical area in which the child presents.⁶⁰ However determining which social work team is responsible for taking an unaccompanied minor can be complicated: GNIB indicated that on occasion there is uncertainty at the border as to which social work team should take charge of a minor. A draft Memorandum of Understanding between GNIB and TUSLA is in preparation which aims to clarify this and related issues.⁶¹

GNIB, social workers consulted⁶² and the Information, Data Protection and Research Unit of the Child and Family Agency (TUSLA) stated that over 90 per cent of unaccompanied minors that present do so in the Dublin area, and are therefore under the care of the SWTSCSA (Dublin). It is estimated by TUSLA that in recent years 4-5 cases of unaccompanied minors have presented per year outside Dublin.⁶³ However, as previously noted, reliable national-level data on the number of unaccompanied minors presenting are not yet available.⁶⁴

3.3.1 Garda Emergency Care Order

If it is suspected that the minor has been smuggled or trafficked into Ireland or other types of criminality have been exposed, the Gardaí may invoke an Emergency Care Order under Section 12 of the *Child Care Act 1991*. Such Orders are invoked if a Garda has reasonable grounds for believing that there is an immediate and serious risk to the health or welfare of a child, and that the situation is too urgent to risk waiting for a TUSLA worker to make an application

⁵⁸ The GNIB completes an unaccompanied minor referral form for each Third-Country National under 18 years referred to TUSLA, or if the child is the subject of an Emergency Care Order a separate form is completed.

⁵⁹ Comments received from SWTSCSA social worker, October 2014. Communication with GNIB, November 2014.

⁶⁰ Communication with the Information, Data Protection and Research Unit, TUSLA, 2014.

⁶¹ Communication with GNIB, November 2014.

⁶² GNIB, SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

⁶³ Communication with the TUSLA Information, Data Protection and Research Office, November 2014.

⁶⁴ As noted in the Introduction, TUSLA Information, Data Protection and Research Office has stated that data are improving, with all social work teams now required to send data on unaccompanied minors to the TUSLA Information, Data Protection and Research Office. A full year of reliable data is not yet available however, with the TUSLA Data Protection and Research Office reporting variability in the quality of regional returns as well as errors in the template used. Communication with TUSLA Information Data Protection and Research Office, September 2014.

for an emergency care order under Section 13 of the Act. The Garda may then ‘remove the child to a place of safety’ and ‘the child shall as soon as possible be delivered up to the custody of the health board [TUSLA] for the area in which the child is for the time being’ (*Child Care Act 1991*, Section 12). Outside Dublin if a child presents out of office hours there is no social work service available and local Gardaí may have no option but to invoke a Section 12 order.⁶⁵

3.3.2 Referrals to TUSLA Outside Office Hours

If a child presents within the greater Dublin area outside of normal office hours the GNIB contacts the Out-of-Hours Social Work Team which is part of the Crisis Intervention Service (CIS). The Out-of-Hours Team provides a service between 6.00 pm. to 7.00 am, 365 nights of the year, and from 9.00 am to 5.00 pm each Saturday, Sunday and Bank Holiday. Usually three or four social workers are on duty each night. Table 3.2 shows that a total of 52 separated children were referred to TUSLA via the out-of-hours service between 2011 and up to October 2014.⁶⁶

Table 3.2 Separated children referred to TUSLA via the CIS out of hours service

Year	Referrals of UAM aged under 12	Referrals of UAM aged 12-17	Total UAM placed in Out-Of-Hours placements
2011	NA	NA	13
2012	NA	16	7
2013	NA	11	9
2014*	9	16	7

Source: Crisis Intervention Service. *Up to October 2014. NA: data were not collected.

The CIS Out-of-Hours team meet with the child or young person, and any accompanying adult, in order to get details of their situation. If it is necessary an interpreter is used where possible. Children aged under 12 years of age may then be placed in CIS emergency foster care and will remain there until the next working day when the SWTSCSA opens. If a child is over 12 years of age CIS will place the child/young person in one of the SWTSCSA designated residential units, which are open 24 hours. Assessment and case management of the child/young person concerned automatically reverts to the SWTSCSA. CIS social workers do not photograph children at the border but ask the GNIB for a photocopy of the child’s passport/photo ID where available and retain a copy for file and for forwarding onto SWTSCSA.⁶⁷

Outside the greater Dublin area an out-of-hours social work service is not available. Instead an ‘Emergency Place of Safety’ (EPSS) operates whereby Gardaí can invoke an Emergency Care Order under Section 12 of the 1991 Act and access an emergency placement for children at risk outside of normal

⁶⁵ Communication with GNIB, November 2014.

⁶⁶ Communication received from CIS, October 2014.

⁶⁷ *Ibid.*

working hours working with a private social work resource provided on a contract basis.⁶⁸ In Cork, unaccompanied children who are deemed not to be at high risk are likely to be placed in a foster placement until an initial interview takes place.⁶⁹ The Limerick Youth Homelessness and Aftercare Team stated that they had had no recent experience of out-of-hours referrals.⁷⁰

Joyce and Quinn (2009) reported the concerns of the Anti-Human Trafficking Unit, among others, that traffickers or smugglers may deliberately bring children in at times when social work supports are low. The SWTSCSA stated that the trend of traffickers and smugglers targeting hostels out of office hours is no longer relevant under the new improved care model.⁷¹

3.4 TRAINING OF BORDER GUARDS AND POLICE AUTHORITIES ON UNACCOMPANIED MINORS INCLUDING VICTIMS OF TRAFFICKING IN HUMAN BEINGS/SMUGGLING

GNIB indicated that a continuous professional development training course entitled 'Tackling Trafficking in Human Beings: Prevention, Protection and Prosecution' is now led by the Bureau, with input from the International Organisation for Migration (IOM). The course aims to alert operational personnel to the existence of trafficking and to enable them to identify potential or suspected victims. These courses involve input from TUSLA on separated children and unaccompanied minors. In the period 2006-October 2014 a total of 931 persons had undertaken this training.⁷²

As part of their training, new Gardaí attend a module on the identification of potential/suspected victims of trafficking; between 2008 and 2011 a total of 3,196 probationary Gardaí undertook this training.⁷³ An Garda Síochána also participates in courses related to human trafficking organised by CEPOL (the European Police College) by the International Organisation for Migration and by EU Member State governments in cooperation with the European Commission. Awareness training has also been provided by the IOM in conjunction with TUSLA and the GNIB and with input from NGOs, to officials and persons from a range of other groups who may encounter trafficking victims in the course of their work, ranging from ethnic liaison officers, to welfare officers to hotel staff. As of October 2014 some 5,671 people had undertaken this training.⁷⁴

⁶⁸ http://www.dcy.gov.ie/docs/Out_of_Hours_Services/1904.htm

⁶⁹ Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014.

⁷⁰ Interview with Youth Homeless and Aftercare Team (Cork, TUSLA) Social worker, September 2014.

⁷¹ Interview with SWTSCSA (Dublin) Social worker, October 2014.

⁷² Communication with GNIB, November 2014.

⁷³ Recruitment to An Garda Síochána resumed in 2013 following the lifting of a recruitment freeze in place since 2011.

⁷⁴ Communication with GNIB, November 2014.

Section 4

Applying for Protection, Age Assessment Practices and Guardianship

Section 4 outlines the organisation of asylum procedures for unaccompanied minors in Ireland and provides available data in this regard. Data are not available on the percentage of unaccompanied minors taken into care by TUSLA who subsequently apply for asylum. The duration of protection and leave to remain procedures for unaccompanied minors is considered. Despite the fact that ORAC and RAT prioritise applications from unaccompanied minors, the current research found that unaccompanied minors generally do not receive a final decision on an 'application for leave to remain' until after he or she reaches 18 years of age. This practice was welcomed by the SWTSCSA social worker consulted, while another social worker expressed concerns about delays. INIS stated that no policy or practice is in place to delay decisions according to age, and that the same legal provisions apply to unaccompanied minors as apply to accompanied minors and to adults.

Age assessment practices are also outlined: TUSLA, the Office of the Refugee Applications Commissioner and the Garda National Immigration Bureau may all form some opinion on the age of a person who claims and/or appears to be an unaccompanied minor. In practice in Ireland, interviews and age assessment tools are used to assess age and no statutory or standardised age assessment procedures appear to be in existence. Both TUSLA and ORAC attested to a large degree of consensus between the two bodies on age assessment in the case of unaccompanied minors. ORAC and GNIB further stated that officers are generally guided by TUSLA'S clinical assessment of the child's age.

Guardianship of unaccompanied minors is considered and the practice of appointing *guardians ad litem* discussed. Finally the immigration status of unaccompanied minors is analysed. In Ireland there is no specific legal status for unaccompanied minors and an unaccompanied minor who is not a protection applicant, holder of refugee or subsidiary protection status, or a victim of trafficking, has no specific immigration permission to be in the State and remains at the discretion of the Minister for Justice and Equality.

4.1 UNACCOMPANIED MINORS SEEKING ASYLUM

The Office of the Refugee Applications Commissioner (ORAC) cannot statutorily accept an asylum application directly from an unaccompanied minor. ORAC must

refer any person who presents as unaccompanied, and who appears to be under 18 years old, to TUSLA. ORAC is located in Dublin and in practice referrals are made to the SWTSCSA, also in Dublin. Upon referral to TUSLA each unaccompanied minor is allocated a social worker. It is the social worker responsible who takes the decision as to whether or not it is in the best interests of the child to make an application for asylum, taking account of the wishes of the child.⁷⁵

The SWTSCSA indicated that a TUSLA social worker may delay making an asylum application if it is considered not to be in the best interests of the child, or if the child is not ready for the asylum process. ORAC stated that no negative inferences are drawn in the refugee status determination process from any delay in making an asylum application. (This is an ORAC policy as opposed to a requirement set out in law and contrasts to the position of adults who are expected to make an asylum claim immediately upon arrival where possible.)⁷⁶ Horgan et al. (2012) report several reasons social workers may delay making an asylum application on behalf of an unaccompanied minor: children are sometimes kept out of the process until they are old enough to understand more about the asylum process and represent their case more competently; some do not wish to apply for asylum; in a small number of cases the social work team may decide that the child does not have a credible case for asylum and would be placed under unnecessary pressure by pursuing such an application.

Table 4.1 provides information on the number of asylum applications made by unaccompanied minors in Ireland between 2009 and 2014. The percentage of total asylum applications that are made on behalf of unaccompanied minors has remained fairly stable in the period at two per cent.

Table 4.1 Asylum Applications made by Unaccompanied Minors 2009-2013

	2009	2010	2011	2012	2013	2014*
Asylum Applications Made by UAMs	56	37	26	23	20	17
Total Asylum Applications	2,689	1,939	1,290	956	946	854
UAMs as % of total asylum applications	2.1	1.9	2.0	2.4	2.1	2.0

Source: ORAC Annual Report 2013 (2009-2013) and Reporting Analysis Unit and ORAC Monthly statistical report August 2014 (2014).

* Up to end of August.

Data are not available on the percentage of unaccompanied minors taken into care by TUSLA who subsequently apply for asylum. Due to the serious constraints on data availability discussed earlier, and the fact that there is no time limit on lodging an asylum application on behalf of an unaccompanied minor, this is a difficult proportion to estimate. Over the period 2009-2013 inclusive, 383 unaccompanied minors were taken into care by the SWTSCSA (Dublin). In the

⁷⁵ *Child Care Act 1991* Section 3 (1): 'It shall be a function of every health board to promote the welfare of children in its area who are not receiving adequate care and protection. (2) In the performance of this function, a health board shall - ... (b) having regard to the rights and duties of parents, whether under the Constitution or otherwise -... (ii) in so far as is practicable, give due consideration, having regard to his age and understanding, to the wishes of the child.'

⁷⁶ Communication with ORAC, November 2014.

same period 162 asylum applications were lodged on behalf of unaccompanied minors nationally. It is not known what proportion of unaccompanied minors taken into care were subsequently reunited with family members and what proportion made an asylum application in later years, or indeed as an adult. The SWSCSA noted that if a minor is still in care when approaching 18 years of age, the team will usually make an asylum application on his or her behalf.⁷⁷

Table 4.2 provides the percentage of positive asylum decisions granted at first instance between 2009 and 2014. There has been a significant increase in the percentage of unaccompanied minors who were granted refugee status at first instance: in 2009 approximately five per cent were granted refugee status while in 2013 some 27 per cent of minors were issued with a positive asylum decision. Overall the number of positive first instance decisions issued as a proportion of total decisions has increased in the period, from 2.5 per cent in 2009, to 14.6 per cent in 2013 (Office of the Refugee Applications Commissioner, 2010, 2014). Note that the number of unaccompanied minors applying for asylum (see Table 4.1) has decreased every year since 2009.

Table 4.2 Percentage of UAMs who were Granted Refugee Status at First Instance

	2009	2010	2011	2012	2013	2014*
Total Number of asylum decisions made in respect of UAMs	62	34	28	22	22	13
% of positive asylum decisions	4.8	8.8	10.7	13.6	27.3	38.5

Source: Reporting Analysis Unit

* Up to end of August.

** Figures under 10 cannot be disclosed for data protection reasons.

4.1.1 The Organisation of Asylum Procedures for Unaccompanied minors

If an asylum application is lodged on behalf of an unaccompanied minor a TULSA worker will attend all interviews, appeal hearings and any court appearances related to asylum or legal status in the State. The SWTCSA indicated that this level of support continues after the minor reaches 18 years and, if requested, even if a young adult has been discharged from TUSLA care.⁷⁸ ORAC confirmed that when appropriate, social workers may make representations on the child's behalf to support their application for protection or permission to remain in the country.⁷⁹

General child-specific procedures are in place within the Office of the Refugee Applications Commissioner (ORAC). The procedures for dealing with unaccompanied minors at Reception in ORAC were revised in 2011. Specific procedures for caseworkers are in place and take into account any factors and circumstances relevant to vulnerable applicants. ORAC has stated that these procedures were developed in line with international best practice, including the UNHCR's *Separated Children in Europe Programme - A Statement of Good*

⁷⁷ Interview with SWTSCSA (Dublin) Social worker, November 2014.

⁷⁸ Interview with SWTSCSA (Dublin) Social worker, October 2014.

⁷⁹ Communication received from ORAC, September 2014.

Practice (2009) and the *EU Children First Programme*. ORAC has stated that their procedures and training needs in relation to dealing with vulnerable groups such as minors and separated children, are monitored on an ongoing basis and revised as necessary (Joyce and Quinn, 2014a).

An unaccompanied minor seeking asylum is entitled to legal representation through the Refugee Legal Service (RLS) of the Legal Aid Board (see Section 5.5). ORAC indicated that as a general rule, once an asylum application has been made in respect of a separated child an early interview is scheduled where possible. ORAC stated that if required, the timeframe for completion of the questionnaire in the case of applications from unaccompanied minors may be extended in order to facilitate consultation between the RLS and TUSLA. ORAC stated that regular meetings are held between ORAC, TUSLA and the RLS in order to discuss issues related to unaccompanied minors. At the substantive interview⁸⁰ the TUSLA representative may take notes and may make representations or comments at the beginning/end of the interview, and during regular breaks.

ORAC indicated that they will arrange for an interpreter to attend the interview if one is required, and advise applicants at the beginning of the interview to alert the interviewer as soon as possible of any problems with the interpretation provided. The minor applicant's TUSLA social worker and legal representative (if present) may also voice any concerns regarding interpretation difficulties and ORAC stated that they will try to make alternative arrangements if there are legitimate reasons to do so.⁸¹

ORAC indicated that a group of experienced interviewers received additional specialised training, facilitated by the UNHCR, to assist them in working on cases involving unaccompanied minors. This training involves presentations from a number of child care experts, with a focus on issues such as psychological needs, child-specific aspects of the refugee process, the role of the social worker and other issues particular to refugee status determination for unaccompanied minors. In addition, all ORAC caseworkers have received training in how to deal with gender specific issues and specialised training has been delivered to ORAC staff on issues including victims of trafficking, victims of sexual violence/gender issues, racism/interculturalism awareness and LGBTI.⁸²

Concerns reported in Joyce and Quinn (2009) regarding the appropriateness of the asylum system for unaccompanied minors and children in general, and the potential for children to be 're-traumatised' by the experience of making an application for asylum are now reduced, according to a key NGO in the field.⁸³ On foot of the *Children First Guidelines* issued by the Department of Children and

⁸⁰ In order to investigate an asylum application, the applicant is invited to an interview in accordance with Section 11 of the *Refugee Act, 1996*. This substantive interview is carried out by an ORAC caseworker, with the assistance of an interpreter where required. An applicant is also entitled to have a legal representative present during the interview. See www.orac.ie.

⁸¹ Communication received from ORAC, September 2014.

⁸² *Ibid.*

⁸³ Interview with Irish Refugee Council. September 2014.

Youth Affairs (2011), ORAC implemented Children First procedures, which outlined best practice in relation to the recording and reporting to the relevant statutory authorities of cases of potential or actual child abuse or neglect. ORAC stated that while the Guidelines were not part of the refugee status determination process, they were produced

*as part of ORAC's commitment to the fact that child protection, in relation to the applicants we deal with in our daily business, is placed at the core of our organisation's responsibilities.*⁸⁴

The Refugee Appeals Tribunal has stated that a guidance note is currently being developed by the Tribunal entitled 'Appeals from Child Refugee Applicants'. The draft note is currently being reviewed by the UNHCR.⁸⁵

4.1.2 Demographic Profile of Asylum-Seeking Unaccompanied Minors

Table 4.3 supplies the top nationalities of unaccompanied minors who applied for asylum in the period 2009-August 2014. Nigerian nationals accounted for 22 per cent of total asylum applications made on behalf of unaccompanied minors in the period, followed by nationals of DRC (12 per cent) and Afghanistan (9 per cent).

Table 4.3 Top Nationalities of Unaccompanied Minors who Applied for Asylum 2009-2014

Country	Total
Nigeria	39
DRC	21
Afghanistan	16
Zimbabwe	15
Somalia	10
Albania	<10
China	<10
Cameroon	<10
Ghana	<10
Pakistan	<10
Total	179

Source: Reporting Analysis Unit.

* Up to end of August..

** Figures under 10 cannot be disclosed for data protection reasons.

*** Albania and China; and Ghana and Pakistan had the same number of UAMs applying for asylum and are listed in an alphabetical order.

Table 4.4 shows the gender and age breakdown of unaccompanied minors who applied for asylum between 2009 and August 2014. Between 2010 and 2011, unaccompanied minors seeking asylum were predominantly female (on average 67 per cent). The balance shifted in 2012 with males accounting for the larger

⁸⁴ Communication received from ORAC, September 2014.

⁸⁵ Communication with the Refugee Appeals Tribunal, October 2014.

share of the unaccompanied minors seeking asylum. The gender breakdown across 2013 and 2014 is fairly even.

The age breakdown supplied in Table 4.4 shows that the majority of minors claiming asylum tend to be older (16-17 years old): this age group accounts for 65-89 per cent of applicants between 2009 and 2014. In the last two years there has been an increase in the proportion of young children (0-13 years old) seeking asylum: ten per cent in 2013, up from four per cent in 2012 (note these percentages are calculated on low bases.)

Table 4.4 Gender and Age Percentage Breakdown of Unaccompanied Minors who applied for Asylum 2009-2014

	% Gender		% Age			Total
	Female	Male	0-13	14-15	16-17	
2009	50.0	50.0	3.6	25.0	71.4	56
2010	67.6	32.4	2.7	8.1	89.2	37
2011	65.4	34.6	11.5	11.5	76.9	26
2012	30.4	69.6	4.3	13.0	82.6	23
2013	50.0	50.0	10.0	25.0	65.0	20
2014*	47.1	52.9	11.8	23.5	64.7	17

Source: Reporting Analysis Unit

* Up to end of August..

** Figures under 10 cannot be disclosed for data protection reasons.

4.2 AVERAGE DURATION OF A PROTECTION AND LEAVE TO REMAIN PROCEDURE FOR AN UNACCOMPANIED MINOR

ORAC prioritises applications from unaccompanied minors. Median processing times for such cases was 24.9 weeks in 2013. A longer timeframe exists for the return of completed questionnaires in the case of unaccompanied minors, as agreed with their legal representatives.⁸⁶ The Refugee Appeals Tribunal also stated that unaccompanied minors' cases are treated as deserving of priority: median processing time for appeals made on behalf of unaccompanied minors (excluding aged-out minors) in 2013 was 31 weeks. The median processing time for appeals in respect of all who entered the asylum process as unaccompanied minors (minors and aged-out minors) in 2013 was also 31 weeks.⁸⁷

INIS has stated that in practice, on receipt of the recommendation from the Offices of the Refugee Applications Commissioner (ORAC), or the Refugee Appeals Tribunal (RAT), to grant or refuse refugee status, the Ministerial Decision Unit (MDU), will proceed to issue the final decision on the application for refugee status to the applicant.⁸⁸ If the decision is positive, the minor generally has the same rights and privileges as Irish citizens. The minor has entitlement to family

⁸⁶ Communication received from ORAC, October 2014. Note average processing time in 2013 was reported to be 24 weeks.

⁸⁷ Communication with the Refugee Appeals Tribunal, October 2014.

⁸⁸ In line with the Carltona Principle.

reunification under the *Refugee Act 1996* and he or she may apply to naturalise within three as opposed to the standard five years. If the decision is negative, the applicant will be made aware of their entitlement to apply for subsidiary protection, within a period of 15 working days.⁸⁹ If a person, regardless of age, applies for subsidiary protection, then he or she will have a formal permission to remain in the State until that application has been determined.⁹⁰ If a subsidiary protection application is refused,⁹¹ a further letter will issue from the MDU to advise the applicant of that fact, that their permission to reside in the State has expired, and that the provisions of Section 3 of the *Immigration Act 1999* will now apply to their case.

This letter, which has become known as a 'three options letter', includes the following options: to submit written representations against the making of a Deportation Order (known as 'applying for leave to remain' under Section 3 of the *Immigration Act 1999*); to seek voluntary return to the applicant's country of origin or to another State where the applicant holds a right of residency; or to consent to the making of a Deportation Order. INIS has noted that such a notification will be issued, according to the relevant legal provisions, regardless of an applicant's age.

When the 'three options letter' is issued from the MDU, the case file is then passed to the Repatriation Division of the INIS where, in due course, a decision is taken to issue a Deportation Order or to grant leave to remain in the State. There is no time limit on the Repatriation Division making such decisions. While awaiting such a decision the relevant applicant remains in the State entirely at the Minister's discretion.

In the course of the current research social workers observed that unaccompanied minors generally do not receive a final decision on an 'application for leave to remain' until after he or she reaches 18 years of age.⁹² This practice was welcomed by the SWTSCSA social worker consulted.⁹³ Ní Raghallaigh (2013) commented that unaccompanied minors that applied for asylum or subsidiary protection lacked a sense of security due to associated uncertainty and the length of time it took for a decision to be made.

The Irish Naturalisation and Immigration Service (INIS) has remarked however that there is no policy or practice in place to delay decisions according to age, and that the same legal provisions apply to unaccompanied minors as apply to accompanied minors and to adults, at asylum, subsidiary protection, and 'Section

⁸⁹ Prior to 14 November 2013 the MDU issued one letter, known as the 15-day letter which included: notification that the asylum application is refused; notification that entitlement to remain in the State has expired; the options to apply for subsidiary protection, make representations to the Minister, seek voluntary return or consent to a deportation order.

⁹⁰ The permission document, which takes the form of a letter with security features, will then be issued to applicants by ORAC.

⁹¹ Including refused following substantive consideration, 'refused withdrawn' where the applicant formally withdraws from the process or is 'refused deemed withdrawn' where the applicant fails to engage in the process,

⁹² SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014. Also confirmed by social workers from Youth Homeless and Aftercare Team, Limerick and Liberty House Social Work Team, Cork (TUSLA) and SWTSCSA (Dublin).

⁹³ Interview with SWTSCSA (Dublin) Social worker, October 2014.

3'/Leave to Remain stages. It further remarked that a Deportation Order could be issued to an unaccompanied minor in the same way as to an adult applicant, and that there would be no legal impediment to doing so. INIS has noted that each case is examined on its own merits, having regard to all relevant factors, including the applicant's age. INIS observed that their consideration of individual cases takes account of what would be in the best interests of the unaccompanied minor and that all relevant representations are taken into account. INIS stated that additionally, before arriving at a decision in any case involving an accompanied minor, it seeks to ascertain that all efforts to reunite him or her with his or her birth family, in the applicant's country of origin or place of former habitual residence, were exhausted.

INIS has noted that if an unaccompanied minor reaches adulthood while awaiting a final decision in his or her case, while the case file is dealt with as that of an adult, regard would be given to ongoing education, in order that preparation for a significant examination, for example the Leaving Certificate, was not interrupted by a negative decision. There would be no such concerns in the context of favourable leave to remain decisions.⁹⁴

4.3 AGE ASSESSMENT PROCEDURES FOR UNACCOMPANIED MINORS

TUSLA, the Office of the Refugee Applications Commissioner (ORAC) and the Garda National Immigration Bureau (GNIB) may all form some opinion on the age of a person who claims and/or appears to be an unaccompanied minor.

In practice in Ireland, interviews and age assessment tools are used to assess age and no statutory or standardised age assessment procedures appear to be in existence. The Separated Children in Europe Programme (2012) recommends that age assessment procedures should be undertaken only where there are grounds for serious doubt, and where other approaches such as attempts to gather documentary evidence have failed to establish the individual's age. It is recommended that independent professionals with appropriate expertise conduct the assessment, and that their role is not in potential or actual conflict with the interests of the child.

Under existing legislation some ambiguity exists as to who has the statutory responsibility for determining age. ORAC indicated that it forms an opinion as to the age in accordance with the existing legislation.⁹⁵ TUSLA and ORAC stated that a large degree of consensus exists between the two bodies on age assessment in the case of minors referred to TUSLA care.⁹⁶ ORAC and GNIB stated officers will generally be guided by TUSLA'S clinical assessment of the child's age.⁹⁷ The procedures followed for assessing age within ORAC and TUSLA are outlined

⁹⁴ Communication with the Repatriation Division of INIS, October 2014.

⁹⁵ Communication received from ORAC, November 2014.

⁹⁶ ORAC, Roundtable, ESRI, September 2014.

⁹⁷ Communication received from ORAC, September 2014. Communication with GNIB, November 2014.

below. GNIB procedures for pre-referral age assessment are discussed in Section 3.2.

4.3.1 Procedures for Assessing Age in ORAC

Prior to any referral to TUSLA, ORAC indicated that an opinion is formed on the age of the person presenting. ORAC stated that where an unaccompanied child is clearly aged under 18, TUSLA is contacted immediately to take charge of the child. If verifiable documentation is received, for example a national ID card or passport, ORAC will refer the child to TUSLA. If there is concern that the documentation presented is not adequate proof of age or identity an assessment interview will follow, at which the documentation will be taken into account.⁹⁸ ORAC officials stated that medical assessments are not carried out to determine age/minor status.⁹⁹

If a person claims to be aged under 18 but appears to ORAC to be older, an experienced staff member (with the assistance of an interpreter if required) will conduct an informal interview to try to form a reasonable opinion as to whether the person is a minor and in need of referral to TUSLA. The interview includes questions on details of early childhood, education and the ages of other family members. ORAC indicated that if there is any uncertainty following the interview, the benefit of the doubt is given in favour of the applicant and the referral to TUSLA takes place.

If it appears to the ORAC official that the person is aged 18 years or more following this interview they are dealt with by ORAC as an adult. In cases where the stated age of the applicant is disputed, the applicant or their legal representative may request a review by a more senior officer in ORAC. Such a request for review must be made within ten working days, by writing to ORAC and by submitting further documentary proof, which may include: a passport; any document containing biometric data capable of authentication or medical evidence to confirm minor status; or any other evidence to support the claim of being under 18 years of age. ORAC stated that a lack of verifiable documents is a problem among asylum applicants generally. If an applicant is deemed by ORAC to be over 18, and subsequently produces a valid passport or other verifiable identity document, ORAC will refer the person to TUSLA.

Applicants who claim to be aged under 18, but are deemed by ORAC to be older, are also advised of their rights in relation to legal representation and in relation to contacting UNHCR. ORAC stated that no negative inferences are drawn in the refugee status determination process from the fact that an applicant's claim to be under 18 years has not been accepted.¹⁰⁰ Instances of minors claiming to be adults when presenting at ORAC are reportedly infrequent, but ORAC advised

⁹⁸ Current ORAC procedures draw on the principles enunciated by the High Court in *Moke v. Refugee Applications Commissioner*, 6 October 2005 No. 374JR. Communication received from ORAC, September 2014.

⁹⁹ Communication received from ORAC, September 2014.

¹⁰⁰ *Ibid.*

that if one of their officials has reason to believe that a person is a child he or she will be referred to TUSLA.

Officials of the Office of the Refugee Applications Commissioner (ORAC) have been involved with EASO on developing EU best practice on age assessment for unaccompanied minors, organised within the framework of the *European Commission Action Plan on Unaccompanied Minors (2010-2014)* and the EASO 2012 work programme (Joyce, 2014).

4.3.2 Procedures for Assessing Age in TUSLA Care

Social workers conduct a general child protection risk assessment, which explores age as one part of this risk assessment.¹⁰¹ TUSLA has attributed the development of a 'more intensive and holistic child protection risk assessment with a focus on age' to an overall decrease in numbers presenting in recent years, with adults deterred from circumventing the immigration process (TUSLA, 2014).

Following referral to TUSLA, the SWTSCSA (Dublin) indicated that the date of birth/age supplied by the unaccompanied minor is accepted and registered on the child's file, unless or until such time as doubts arise regarding the authenticity of the given age.¹⁰² This approach takes account of the fact that unaccompanied minors may not be able to provide satisfactory official proof of age as they may come from countries where the date of birth is not systematically recorded or there may not even be a central authority to record births (O'Dwyer, 2014). It may also not be possible to carry documents during the migratory process. If the child does not know their age or date of birth, TUSLA will supply one having assessed the child's development.¹⁰³

If TUSLA or other agencies have concerns that the person is older or younger than the initially-stated age, TUSLA will reassess the registered age. For example, in reception centres it may become apparent that a young person is over 18 years of age through their interaction with other residents and staff.¹⁰⁴ A SWTSCSA (Dublin) social worker has indicated that a professional opinion on age is often formed after a robust child protection risk assessment which includes interviews and observations (by social workers, child care workers, foster carers, residential workers and teachers), usually over a brief period of time. Bone testing is not used to assess age at this time.¹⁰⁵

TUSLA may refer applicants who were deemed to be minors back to ORAC if, arising from their experience and interaction with the individual while in their care, concerns arise that the applicant is not in fact under 18. All parties noted

¹⁰¹ SWTSCSA (Dublin), October 2014.

¹⁰² SWTSCSA (Dublin), TUSLA, August 2014.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ Presentation made by SWTSCSA (Dublin) Social worker: 'Social Work Team for Separated Children Seeking Asylum in Ireland' 18 December 2013.

that priority is given to ensuring that adults are not accommodated alongside children while in TUSLA care.

4.4 GUARDIANSHIP

There are multiple interpretations of the term guardian in the context of unaccompanied minors (NIDOS,¹⁰⁶ 2011; ECRE, 2014; and Fundamental Rights Agency, 2014). A guardian may refer to a legal representative or a person supporting and assisting a child in a more general way (ECRE, 2014). International bodies indicate that guardians should be independent and any agency, organisation or individual whose interests may be in conflict with the interests of the child concerned should not be eligible for guardianship¹⁰⁷ (NIDOS, 2011; Fundamental Rights Agency, 2014). In the Irish context a *guardian ad litem* is a purely legal advocate who represents a child in Court proceedings, whereas a minor's TUSLA social worker currently fills the role of a guardian in the broader sense, as a person supporting and assisting a child in a more general way as well as acting *in loco parentis* (in place of parents).

4.4.1 Guardian ad litem

While Section 26 of the *Child Care Act 1991* makes provision for the appointment of a *guardian ad litem* under certain circumstances, research suggests that in practice *guardians ad litem* are only appointed in exceptional cases (Arnold and Collins, 2011; Martin et al., 2011). In Ireland a *guardian ad litem* is an independent representative appointed by the court to both ensure that the views of the child are heard by the court and to advise the court on the best interests of the child.

Currently guardians may be appointed by judges for the purposes of appeals or court order applications. Case law on the issue of guardianship has introduced principles of the Convention on the Rights of the Child into Irish law in the area. In *FN v. CO*¹⁰⁸ the High Court held that, in exercising its discretion to make an order appointing a guardian or guardians, it should have regard to the welfare of the child and, as appropriate and practicable having regard to the age and understanding of the child, take into account the child's wishes in the matter.¹⁰⁹

There is no regulation of legal guardians in Ireland in terms of who may fill the role, what qualifications must be held or what fees are acceptable. Social workers interviewed expressed concern about the costs incurred by the State in this regard.¹¹⁰ McWilliams and Hamilton (2010) note that while *guardians ad litem* may be seen as independent representatives, they are dependent on the HSE for

¹⁰⁶ See www.nidos.nl/.

¹⁰⁷ Fundamental Rights Agency (2014) notes that guardians should not have any financial or institutional links with authorities/agencies responsible for international protection, migration or day-to-day care or accommodation of unaccompanied minors.

¹⁰⁸ *FN v. CO* [2004] 4 IR 311.

¹⁰⁹ Input received from EMN legal consultant.

¹¹⁰ SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

the reimbursement of costs and fees. While NGOs have advocated for the routine appointment of *guardians ad litem* to unaccompanied minors in the care of TUSLA, the then Department of Justice, Equality and Law Reform (2009) has stated that the fact that under the *Child Care Act 1991* the HSE project and/or social worker involved must regard the ‘welfare of the child as the first and paramount consideration’ mitigates the need for a *guardian ad litem*.

ECRE (2014) note that due to inherent vulnerability of unaccompanied minors, guardians require additional assistance in navigating asylum and migration procedures.¹¹¹ While guardians play a key role in this regard, especially in relation to legal assistance, the qualifications and extent of responsibilities of guardians vary greatly across EU States. Research carried out by the Fundamental Rights Agency (2014) notes that guardians should not only be qualified for their role but their qualifications should be defined in national law or official documents. In addition written policies on procedures and standards in relation to recruitment, training, monitoring and evaluation of appointed guardians should be in place (Fundamental Rights Agency, 2014). In Europe very few countries offer systematic training for guardians; when it is offered it rarely mandatory (Fundamental Rights Agency, forthcoming).

4.4.2 Guardianship as exercised by TUSLA

When a child is referred to TUSLA under the Section 8(5) (a) of the *Refugee Act 1996* (as amended) the provisions of the *Child Care Act 1991* are immediately invoked. In an improvement to service provision since 2009, each unaccompanied minor referred to the SWTSCSA is now allocated a social worker. TUSLA indicated that it was likely the same practice applied outside Dublin given the high level of need among these children.¹¹² In practice TUSLA acts as the child’s guardian and must instruct the relevant authorities (schools, doctors, asylum/immigration authorities etc.) as required. The SWTSCSA indicated that introduction of care-placements as standard has supported social workers in fulfilling this role.¹¹³

On referral, TUSLA decides under which section of the 1991 Act an unaccompanied minor will be taken into care, a decision that may have implications for legal guardianship of the child. Arnold and Kelly (2012) and Arnold (2014) argue that it is only when a full care order is sought under Sections 13 (emergency care), 17 (interim care) and 18 (care order) of the *Child Care Act 1991*, as amended, that TUSLA may act as legal guardian.

The *Child Care (Amendment) Act 2011* defined legal guardianship for the first time in Irish law outside of the *Guardianship of Infants Act 1964*. The 2011 Act states that a guardian of a child is a person who is either a ‘guardian of the child

¹¹¹ It is worthwhile noting that in some EU countries only a small proportion of children apply for asylum and instead go through different immigration procedures, for example apply for a residence permit, hence it is important that a guardian is able to navigate the child through different procedures. See ECRE, 2014 for more information.

¹¹² Correspondence with the TUSLA Information, Data Protection and Research Office, November 2014.

¹¹³ Interview with SWTSCSA (Dublin) Social worker, October 2014.

pursuant to *Guardianship of Infants Act 1964* or 'is appointed to be the guardian of a child by deed or will or order of a court of the State'. Only Sections 13, 17 and 18 require TUSLA to present in court to take a child into care. Arnold (2014) argues that 'the social worker acting *loco parentis* in respect of Sections 4 and 5 could be viewed as non-compliant in the context of the Act as amended' because legally the parents of the child retain guardianship, despite the fact that in the case of unaccompanied minors, they may not be in the State or contactable in any way.

In practice social workers caring for children under Sections 4 and 5 must go to court in order to obtain permission to give consent *in loco parentis* for procedures such as medical procedures, a time consuming and costly approach.¹¹⁴ In a significant change to practice of the SWTSCSA since 2008, if it appears that long-term care arrangements will be needed for a minor, the SWTSCSA will now seek a care order.¹¹⁵

In the Irish context the Irish Refugee Council recommends the appointment of independent guardians, separate to *guardians ad litem* that would have a role beyond the courts; the NGO has identified ten core standards intended to inform the work of such guardians (Arnold, 2014). The Children's Rights Alliance argues that there is a need to acknowledge the crucial role of guardians for separated and trafficked children and to support the development of this role; it is argued that there is tension between child protection and immigration models (Horgan et al. 2012). Arnold (2011) states that in Ireland the social worker's role is problematic as he or she is faced with: 'a disconnect between the legal procedures concerning immigration and asylum and Irish child care law. The social worker's obligations under the *Child Care Act 1991*, as amended, in respect of welfare may cloud the social worker's judgment in considering if or when to seek international protection on the part of the child' (Arnold, 2014). The Separated Children in Europe Programme¹¹⁶ has called for the appointment of an independent guardian to any person who claims to be or is identified as a separated child immediately, regardless of whether or not an age assessment has taken place (Separated Children in Europe Programme, 2009).

A SWTSCSA social worker consulted for the current study stressed the professional skills of social workers as child development and child protection specialists trained to make best interest decisions for children in their care.¹¹⁷ The SWTSCSA representative consulted also expressed the view that, in Ireland,

¹¹⁴ Roundtable meeting, Economic and Social Research Institute, September 2014.

¹¹⁵ Interview with SWTSCSA (Dublin) Social worker, October 2014.

¹¹⁶ The Separated Children in Europe Programme (SCEP) is a European NGO-Network of 33 organizations from 28 European countries. All the work of SCEP is based on the *UN Convention on the Rights of the Child* and the SCEP Statement of Good Practice.

¹¹⁷ Interview with SWTSCSA (Dublin) Social worker, August 2014.

compared to other jurisdictions,¹¹⁸ social workers provide a high level of support with the result that a separate guardian is not necessary.¹¹⁹

4.5 IMMIGRATION STATUS OF UNACCOMPANIED MINORS

In Ireland there is no specific legal status for unaccompanied minors in existence. An unaccompanied minor who is not a protection applicant, holder of refugee or subsidiary protection status, or a victim of trafficking,¹²⁰ has no specific immigration permission to be in the State and remains at the discretion of the Minister for Justice and Equality. Ireland is not unique in this regard: the 2010 EMN study commented that in many Member States applying for asylum was the main route by which unaccompanied minors could access a legal migration status. More recently ECRE (2014) found that in four of the seven States studied, the vast majority of unaccompanied children go through an asylum procedure; these four are Austria, Bulgaria, Denmark and the United Kingdom. Arnold and Sarsfield Collins (2011) argue that the majority of unaccompanied minors in Ireland eventually lodge applications for asylum in order to normalise their legal status in the country, especially in the case of children approaching the age of 18.

In Ireland an unaccompanied minor, whose claim for asylum is successful, is granted refugee status and has (depending on age) full access to the labour market. He or she may also be granted a Stamp 4 residence permission.

In practice, at the border, an unaccompanied minor may not be refused entry to Ireland, although by law he or she may be refused an official 'permission to land'. If a non-EEA unaccompanied minor is referred to TUSLA at the border without being issued with 'permission to land' he or she may or may not subsequently come to the attention of INIS. If any criminality is disclosed or suspected with regard to the minor's entry into the state or any other criminality is disclosed whilst the child is in the care of TUSLA then the matter is referred to Gardaí.¹²¹

INIS indicated that if TUSLA had reason to bring an unaccompanied minor in its care (aged 16-18 years because it is not possible to register children aged under 16 years old), to the attention of INIS because he/she is in need of a residence permit, he/she would generally be given a Stamp 4 permission,¹²² which is among

¹¹⁸ ECRE (2014) note that in Rome for example a guardian is generally responsible for 80 to 100 children; including Italian nationals.

¹¹⁹ Roundtable meeting, Economic and Social Research Institute, September 2014.

¹²⁰ A permission to remain in the State lasting 60 days may be given to persons suspected of being victims of human trafficking for the purpose of recovery and reflection. Temporary residence permission of six months may also be given, which is capable of being removed. The Administrative Arrangements provide that where a person below the age of 18 years is identified as a suspected victim of human trafficking, a recovery and reflection period longer than 60 days may be granted, having regard to the arrangements in place for the care and welfare of the child. In considering the duration of such a period, the Minister will have regard to whether the child is in the care of the Child and Family Agency or in the care of a parent or legal guardian who is taking responsibility for him or her and the status of his or her parent or legal guardian in the State. Comments received from EMN Legal Consultant.

¹²¹ Communication with GNIB, November 2014.

¹²² On registration non-EEA nationals are allocated several documents which together comprise a residence permit: one of several Stamps is placed on the passport; a Certificate of Registration; and if the residence permission has been granted by INIS, a letter containing more detailed conditions attached to the holder's permission to remain in Ireland.

the most favourable immigration statuses available. However INIS stated that this is not common practice and no specific procedure exists in this regard. The SWTSCSA welcomed the information and noted limited experience to date with this procedure.¹²³ INIS noted that if a young person remained in the care of the State beyond age 18 years, TUSLA may still submit an application for residence on their behalf, but if the application fails, that young person may become subject to a notification of intention to deport and ultimately a deportation order.¹²⁴

A separated child (aged 16 and over) who has been issued with a Stamp 4 residence permit may begin to accrue the minimum legal residence necessary in order to apply for naturalisation (usually five years). The residence of unaccompanied minors who do not hold a Stamp 4 permit, including asylum seeking unaccompanied minors, is not usually allowable for this purpose.¹²⁵ An unaccompanied minor under the care of the State has no entitlement to seek employment or to access social welfare payments.¹²⁶ The SWTSCSA has indicated that they are satisfied that a child's status is secure while they are under the care of the State, by way of the *Child Care Act 1991*.¹²⁷

The SWTSCSA acknowledged that the Care Plan (including a Leaving and After Care Plan), of each unaccompanied minor in TUSLA care, must take account of the fact that in Ireland unaccompanied minors do not have a clear immigration status unless they apply for or are granted refugee status, subsidiary protection, leave to remain or an immigration permission for persons suspected of being a victim of trafficking.¹²⁸ The issue of unaccompanied minors reaching the age of majority is discussed further in Section 7. Practical obstacles accompanying the lack of an immigration permission for unaccompanied minors, including problems securing Personal Public Service Numbers and relating to travel outside the State, will be discussed in Section 5.¹²⁹

¹²³ Communication with SWTSCSA (Dublin) Social worker, November 2014.

¹²⁴ INIS representative, Roundtable meeting, Economic and Social Research Institute, September 2014 and communication received from Residence Division, INIS, October 2014.

¹²⁵ INIS representative, Roundtable meeting, Economic and Social Research Institute, September 2014.

¹²⁶ Interview with representative of SWTSCSA (Dublin), TUSLA, August 2014.

¹²⁷ Roundtable meeting, Economic and Social Research Institute, September 2014.

¹²⁸ Interview with representative of SWTSCSA (Dublin), TUSLA, October 2014.

¹²⁹ *Ibid.*

Section 5

Reception Arrangements, Including Integration Measures for Unaccompanied Minors

In Section 5 the legislative framework for the reception of unaccompanied minors is set out. It is noted that the three social work teams interviewed for the current study apply the main legislative instrument relevant to the care of unaccompanied minors in Ireland, the *Child Care Act 1991*, in different ways. A recent move towards establishing a clear legal basis for having children in TUSLA care is identified: social work teams consulted reported a move away from the application of Sections 4 and 5 of the *Child Care Act 1991* and towards the use of care orders. Available data on unaccompanied minors placed in TUSLA care are provided. Significant changes which have taken place to the service provision for unaccompanied minors since the introduction of a principle of ‘equity of care’ (meaning that unaccompanied minors should be treated on a par with other children in the care system) are discussed and the nature of social care and foster placements set out. While the majority of unaccompanied minors present within the Dublin area where an expert social work team is operational, there remains a lack of a national strategy or guidance to social work teams caring for non-EU unaccompanied minors who present outside Dublin (see Section 5.2.1). The procedures in place for family reunification are discussed and access by unaccompanied minors to a range of services including: legal advice, education and healthcare is considered. The section concludes with a discussion of durable solutions for unaccompanied minors.

5.1 LEGISLATIVE FRAMEWORK FOR THE RECEPTION OF UNACCOMPANIED MINORS

No specific legislative instrument deals with unaccompanied minors in Ireland, including with regard to their reception and care. The main legislative instrument relevant to the care of unaccompanied minors in Ireland is the *Child Care Act 1991*. This piece of primary legislation governs the care and protection of all children in Ireland, including unaccompanied minors.¹³⁰ As noted earlier, the Act places a responsibility for the welfare of all children in Ireland under 18 years of age, and who are not receiving adequate care and protection, onto the Health Service Executive, now TUSLA. Section 24 of the 1991 Act, as amended, states that the ‘welfare’ of the child is ‘paramount’ in all dealings with any child. The Act

¹³⁰ The Act is wide-ranging and makes no specific reference to unaccompanied minors.

places an obligation on TUSLA to have regard to the principle that it is generally in the child's best interests to be with his or her own family. The Child and Family Agency is responsible under the *Child and Family Act 2013* for a wide range of services. In particular it has specific duties under the *Child Care Act 1991* for children considered to be 'at risk'. Services are provided mainly on a local basis through 17 Local Areas each of which has a social work team in operation.

Several different sections of the Act may be used to take unaccompanied minors into TUSLA care and are invoked in different child protection contexts. The responsibility for deciding upon which part of the 1991 Act to apply rests with TUSLA.¹³¹ Historically, a decision on which part of the Act to apply in each region came from the then Health Service Executive (HSE) Administrative Areas determining which application of the 1991 Act best suited their local situation, based on legal advice, current practice, and available resources especially available child placements (Joyce and Quinn, 2009). The decision on which section of the Act should be applied continues to be made locally, taking account of the principle of 'equity of care' and any national-level guidance issued by TUSLA.

Section 4 provides that TUSLA may take into 'voluntary care' a child that requires care or protection that he or she is unlikely to receive otherwise. Section 5 of the Act makes provisions for homeless children to be taken into the care of TUSLA. 'Full' care orders may also be secured by TUSLA by way of court proceedings under Sections 13 (emergency care); 17 (interim care order); and 18 (care order). Section 13 places a child under the care of TUSLA for a maximum of eight days. It allows for a judge of the District Court to grant an emergency care order if there is an 'immediate and serious risk to the health or welfare of a child' which requires their placement in the care of TUSLA, or there is likely to be so. An interim care order is determined by a judge of the District Court following an application submitted by TUSLA under Section 17, issued for a maximum period of eight days or longer where TUSLA and the parent having custody of the child, or person acting in *loco parentis* [in the place of a parent] consent. Section 18 refers to a full care order and is issued in cases where a child requires protection or care which they are 'unlikely' to receive unless such an order is made. Also of relevance is Section 12 of the 1991 Act, which sets out the power of An Garda Síochána to take a child to safety, if there is an immediate and serious risk to the health or welfare of the child, and it is deemed not practical to await the making of an application for an emergency care order by TUSLA under Section 13.

The three social work teams interviewed¹³² for the current study apply the *Child Care Act 1991* in different ways, however the nature of care provision remains the same. The SWTSCSA (Dublin) continues to operate Ireland's only dedicated social work team for separated children and has been in operation since 2002. As

¹³¹ Section 3(1) of the Act.

¹³² Social Work Teams in the Dublin, Cork and Limerick areas were selected because they are believed to deal with the majority of presenting unaccompanied minors in Ireland, primarily as all house major ports of entry.

reported in Joyce and Quinn (2009) this team continues to invoke Section 4 of the *Child Care Act 1991* and takes unaccompanied minors into care primarily on a voluntary basis. In cases where there may be an element of exceptional vulnerability, the team may apply for an interim care order under Section 17 of the Act. A significant change to practice of the SWTSCSA since 2008 relates to long term care arrangements for unaccompanied minors in care for longer than a year. In cases where it appears that long-term care arrangements will be needed, and where the options of family reunification and a return to the young person's country of origin have been raised and discussed with the child, the SWTSCSA will initiate an application for a care order.¹³³

In Cork, the Liberty Street Social Work Team which provides services to out-of-home minors over the age of 16 years, continues to mainly apply Section 5 of the *Child Care Act 1991* and provides services to unaccompanied minors on a par with out-of-home Irish minors. Historically, this approach, and Section of the Act, was deemed most suitable locally due to the generally low number of unaccompanied minors presenting at that time (Joyce and Quinn, 2009).¹³⁴ In cases where an unaccompanied minor is under 16 years, they are referred to standard child protection services under Section 18 of the Act.

In Limerick, until recent months the Youth Homeless and Aftercare Team has invoked Section 5 of the *Child Care Act 1991*. The team has recently moved towards taking young people into care under Sections 4 or 18 of the Act.

A *National Policy and Procedure on the use of Section 5 of the Child Care Act 1991* was published in 2012, which recommends caution in the application of Section 5 for all vulnerable children, not specifically addressing unaccompanied minors (HSE, 2012). The Protocol can be seen as part of a general move to establish a clear legal basis for having children in TUSLA care. Social work teams reported a move away from the application of Sections 4 and 5 of the *Child Care Act 1991* and towards care orders in wider social work practice across the country, not just related to care provision for unaccompanied minors.¹³⁵ It was noted that while all children in care enjoy the protection of the State, additional security applies to children under care orders, in particular in relation to the ability of TUSLA to act in *loco parentis* rather than as legal custodian (as discussed in Section 4.2). This is particularly relevant in cases where consent is needed for medical treatment; otherwise an application via Section 47 of the Act by TUSLA is required. Additional rights can also apply in the case of aftercare upon turning 18 years if the child is fully in care.¹³⁶

¹³³ Interview with SWTSCSA (Dublin) Social worker, August 2014.

¹³⁴ When a decision was taken to invoke Section 5 of the Act in cases of unaccompanied minors, it was felt that for those over 16 years the homeless services already in existence was the best developed service and would allow the social work team an element of flexibility regarding this group. See Joyce and Quinn, 2009.

¹³⁵ Interviews with SWTSCSA and Social Work Teams in Cork and Limerick September, October 2014.

¹³⁶ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social worker, September 2014. Interview with Irish Refugee Council, September 2014.

5.2 UNACCOMPANIED MINORS PLACED IN TUSLA CARE

As discussed in Section 1.4.2 one of the primary presenting issues regarding unaccompanied minors in Ireland relates to difficulties in accessing complete and verifiable national data. The presented data regarding reception relate to referrals to the specialist TUSLA Social Work Team for Separated Children Seeking Asylum (SWTSCSA) in Dublin.

Between 2000 and 2008 some 5,688 unaccompanied minors were referred to the team. Between 2009 and October 2014, 661 referrals took place. Family reunification comprises a significant proportion of all unaccompanied minor cases in Ireland, but due to possible double counting between children placed in care and reunited it is not possible to know the exact proportion of minors reunited with family members.

Table 5.1 Referrals to SWTSCSA (Dublin), TUSLA 2000-2014

Year	Total Referrals	Placed in Care	Reunited**	Other
2000	520	406	107	7
2001	1085	846	231	8
2002	863	335	506	22
2003	789	277	439	73
2004	617	174	418	25
2005	643	180	441	22
2006	516	188	308	22
2007	336	130	185	29
2008	319	156	157	26
2009	203	126	66	11
2010	96	70	21	5
2011	99	66	31	7
2012	71	48	31	12
2013	120	73	69	10
2014*	72	55		

Source: SWTSCSA (Dublin), TUSLA.

* Up to 16 October 2014.

** Note that there may be double counting of minors 'placed in care' and 'reunited', for example some minors may have been placed in care before they were reunited with family member and counted in both columns. Note 'Other' includes: age reassessed, child arrived accompanied by family member, child arrived on valid visa, child placed in care and subsequently reunited, child arrived from EU Member State, Dublin II Convention.

Between 2002 and 2008, the majority of separated children in the care of the SWTSCSA (Dublin) were Nigerian nationals (Joyce and Quinn, 2009). Table 5.2 shows the percentage breakdown of nationality of UAMs placed in care by the SWTSCSA between 2009 and August 2014. Data for the last few years indicate that the trend reported in the 2009 study has diversified, with no one nationality accounting for the majority of unaccompanied minors. Nigeria, Zimbabwe, South Africa and the DRC feature prominently among top nationalities in recent years.

Table 5.2 Nationality Percentage Breakdown of UAMs placed in care by the SWTSCSA 2009-2014

2009		2010		2011	
China	29.9%	Nigeria	19.7%	Afghanistan	17.1%
Nigeria	20.1%	Congo	11.3%	Zimbabwe	12.9%
Somalia	6.3%	DRC	7.0%	DRC	7.1%
DRC	4.2%	Other	62.0%	South Africa	7.1%
USA	4.2%			Other	55.7%
Other	35.4%				
Total **	144	Total**	71	Total**	70

2012		2013		2014*	
Congo	16.3%	Nigeria	21.3%	Zimbabwe	23.7%
Nigeria	12.2%	Zimbabwe	19.7%	South Africa	21.1%
Other	71.4%	DRC	11.5%	Albania	13.2%
		Other	47.5%	Other	42.1%
Total**	49	Total**	61	Total**	38

Source: SWTSCSA (Dublin), TUSLA Monthly Reports.

* Up to end of August.

Other refers to all countries that had less than five UAMs.

** Note that total here refers to total disaggregated data. Disaggregated data were collated from monthly data reports from SWTSCSA (Dublin), TUSLA for the purpose of providing nationality breakdown. Note total disaggregated data are different to total referrals reported in Table 5.1. Total referrals indicate the number of minors referred to the service.

Table 5.3 shows the gender and age breakdown of unaccompanied minors placed in care by the SWTSCSA between 2009 and August 2014. The gender breakdown varied slightly during this period.

Between 2009 and 2010 the gender breakdown was fairly even throughout the period, while between 2011 and 2012 minors placed in care were predominantly male. Between 2013 and 2014 the gender balance was even throughout the period. The age profile of unaccompanied minors remained fairly constant throughout the period. The majority of minors placed in care by the SWTSCSA were aged 16-17 years. In recent years there has been an increase in the proportion of minors aged 13 years and under placed in care.

Table 5.3 Gender and Age Percentage Breakdown of UAMs placed in care by the SWTSCSA 2009-2014

Year	% Gender			% Age				Total ***
	Female	Male	Unknown**	0-13	14-15	16-17	Unknown**	
2009	52.8	47.2		14.6	21.5	63.9		144
2010	50.7	46.5	2.8	21.1	19.7	56.3	2.8	71
2011	27.1	72.9		25.7	21.4	52.9		70
2012	32.7	65.3	2.0	24.5	12.2	61.2	2.0	49
2013	49.2	49.2	1.6	31.1	18.0	41.0	9.8	61
2014*	44.7	44.7	10.5	23.7	15.8	50.0	10.5	38

Source: SWTSCSA (Dublin), TUSLA.

* Up to end of August.

** Unknown refers to gender/age not recorded.

*** Note that total here refers to total disaggregated data. Disaggregated data were collated from monthly data reports from SWTSCSA (Dublin), TUSLA for the purpose of providing gender and age breakdown. Note total disaggregated data are different to total referrals reported in Table 5.1. Total referrals indicate the number of minors referred to the service.

5.2.1 'Equity of Care'

Service provision for unaccompanied minors in Ireland has entered into a new phase in recent years, showing a definite move away from a service operating in a 'reactionary manner' in the late 1990s (Ní Raghallaigh, 2013). The previous system of hostel accommodation for unaccompanied minors was widely criticised (Barnardos, 2011; Ní Raghallaigh and Sirriyeh, 2014). Social workers and project workers advocated for an improvement of the system as most felt they could not perform their professional duties as social workers in that setting (Arnold and Sarsfield Collins, 2011). A 2009 report by the Ombudsman for Children's Office highlighted that the HSE-run residential hostels for unaccompanied minors operated to lower standards than those stipulated in various legislations for national childcare residential centres (Charles, 2009).

Significant improvements to the care and reception of unaccompanied minors took place in 2010 and have been broadly welcomed, notably following implementation of the HSE *Equity of Care Policy 2008* and the *Implementation Plan from the Report of the Commission to Inquire into Child Abuse, 2009*.¹³⁷ The 'equity of care' principle contained within the Implementation Plan sought to end the use of separate hostels for unaccompanied minors and to accommodate them 'on a par with other children in the care system by December 2010'. A phased closure plan was put in place and the last hostel for unaccompanied

¹³⁷ In the *Implementation Plan of the Report of the Commission to Inquire into Child Abuse, 2009* the Irish government announced a 99-point plan to strengthen the child protection system including the cessation of separately run hostels for unaccompanied minors. The Plan noted that at the time, the majority of older children seeking asylum were placed in hostel-type accommodation within the Dublin region. It highlighted the discrepancies that unlike 'other hostels run by the voluntary or private sector, these hostels are not registered and inspected by the HSE.' See also Children's Rights Alliance, 2014. However Ní Raghallaigh (2013) notes that HSE documents show that the process of closing hostel accommodation for unaccompanied minors was in place but 'fast-tracked' after the Report. A commitment to accommodating children in mainstream care, on a par with other children in the care system, was also made in the Report.

minors was closed in December 2010. The practice of placing newly-arrived unaccompanied minors in hostel accommodation in Ireland ended in February 2010 (TUSLA, 2014). All unaccompanied minors are now placed in supported lodgings, foster care or residential placements provided by TUSLA from their own profile of carers or secured by private agencies. All national, long-term foster placements for unaccompanied minors are provided through the TUSLA Dublin Mid-Leinster Region, sourced through private agencies. Residential care and supported lodgings are provided to separated children on a local basis.¹³⁸

As mentioned above an unaccompanied minor must be referred to the TUSLA social work team operational in the geographical area in which the child presents.¹³⁹ While the majority of unaccompanied minors present within the greater Dublin area where an expert social work team is operational, and the Service Director has responsibility for placements of unaccompanied minors seeking asylum nationally,¹⁴⁰ there remains a lack of a national strategy or national-level guidance to social work teams caring for non-EU unaccompanied minors who present outside Dublin. Instead there is an 'equity of care' guiding principle, meaning that care provision for unaccompanied minors and Irish children in State care must be on a par.

Differing practice regarding the use of residential child care placements for unaccompanied minors has been remarked upon: a last resort for the general population of children in care, it is standard practice for unaccompanied minors over 12 years when arriving in Ireland. In addition, the shift from Dublin-based accommodation to a system of foster placements throughout the country has been challenging for unaccompanied minors (Ní Raghallaigh, 2013).

A key issue raised in 2008 related to a lack of oversight of the privately-run hostels by the Health Information and Quality Authority (HIQA)¹⁴¹ which were inspected by the HSE only. All care placements (fostering and residential) are now inspected by HIQA. Policy guidelines for foster and residential care are provided by, amongst others, the National Standards for Children's Residential Care and several 1995 Regulations on foster care including the *Child Care (Placement of Children in Foster Care) Regulations 1995*, the *Child Care (Placement of Children with Relatives) Regulations 1995* and the *Child Care (Placement of Children in Residential Care) Regulations 1995* (Ní Raghallaigh, 2013).

5.2.2 Social Care Placements

All unaccompanied minors in Ireland in TUSLA care are provided with foster care, supported lodgings or residential placements. Foster placements are provided to children under 18 years, with supported lodgings available to young people aged between 15-16 and 18 years where more independent living is felt to be more

¹³⁸ Communication with the Information, Data Protection and Research Unit, TUSLA, November 2014

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ Then the Irish Social Services Inspectorate.

appropriate.¹⁴² No distinction in the nature or level of care provided to unaccompanied minors is made on the basis of whether they are seeking asylum or have been granted international protection.¹⁴³

The specialist social work team for separated children seeking asylum, based in Dublin, is principally an intake and assessment unit and provides advice on a national basis. This includes operation of a daily phone service for other social work teams as well as teachers, psychologists etc. Horgan et al. (2012) called for the Dublin-based service to develop written policy and procedures on the care of separated and trafficked children, based on the expertise of the team, and shared systematically on a national basis.

The Dublin-based service incorporates three shorter-term residential units (18 beds) where all newly arrived minors over 12 years remain for a period of three to six months after referral, pre-placement or pre-reunification. During this time, matching with foster families (on a national basis) takes place. A preliminary assessment of the minor and their needs is carried out by a social worker in conjunction with qualified residential social care staff, with input from a psychologist if required. All unaccompanied minors are allocated a social worker on arrival, with an initial care plan developed in conjunction with social/care staff. Input regarding an educational plan is provided by the Department of Education and Science. Medical assessments also take place, with a referral to specialist services if necessary. In line with the 2010 national policy, as from January 2010 all newly arriving children under 12 years were placed on arrival in a foster care placement. One medium-to-longer term residential unit for cases of special need (6 beds) is also available. A national policy regarding transfers of unaccompanied minors is in place and since early 2011 'quality matching' with foster families on a national basis has taken place. When a placement is found outside the Dublin area, ideally a full case transfer will take place when a minor moves to a foster placement in a different geographical area (see Section 5.2.3).

All other social work teams outside of Dublin deal with unaccompanied minors as part of their general social work child protection service. Full file transfers from local social work teams to the dedicated Dublin SWTSCSA are in evidence in order to facilitate specialist assistance for specific cases.¹⁴⁴ Care is provided within the Limerick area for those over 16 years in supported lodgings with a family. A total of nine unaccompanied minors were referred to the Limerick service between 2009 and October 2014. Specialist supports are available to minors, with most in education.¹⁴⁵ In Cork City, social service provision continues to be mainstreamed with unaccompanied minors in receipt of the same services as homeless out-of-home Irish children. Numbers have decreased in recent years, with 2-3 referrals each year over the past few years. Upon referral to the service, minors over 15 years old are first housed in hostels for homeless children. There are two hostels:

¹⁴² Interview with SWTSCSA (Dublin) Social worker, October 2014.

¹⁴³ *Ibid.*

¹⁴⁴ Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014.

¹⁴⁵ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social worker, September 2014.

a five-bed hostel for males and a six-bed hostel for females. This hostel accommodation has fully trained childcare workers on site 24 hours a day. There is a three-month maximum stay in these hostels, with minors transferred to supported lodging placements similar to foster placements when an appropriate placement becomes available. In certain cases, independent living places can be available for minors over 17 years old.

Intake units in Dublin are staffed with care staff. The SWTSCSA (Dublin) comprises one principal social worker, two social work team leaders, five social workers and four aftercare workers, with 13-14 children per social worker. Unlike many other social work teams in the State there is no waiting list and each child is allocated a social worker. The SWTSCSA noted that in general, each social worker dealing with unaccompanied minors will typically have approximately ten clients plus duty social work responsibility.¹⁴⁶

Social workers have highlighted difficulties in accessing Personal Public Service Numbers (PPSNs) for non-asylum seeking unaccompanied minors as they are not registered with INIS. PPSNs are used to access all public services including health care and education.¹⁴⁷ The full extent of the practical obstacles accompanying the lack of an immigration permission for unaccompanied minors remains unclear.

A call has been made for unaccompanied minors to be issued with emergency travel documents in order to allow them to easily travel outside Ireland on school trips and with their foster families (Barnardos, 2011). In the case of young people who live near the border with Northern Ireland, restrictions on travel has had implications on their day-to-day activities, for example they were not able to travel across to shop, for school trips or sports events (Ní Raghallaigh, 2013).

5.2.3 Foster Placements (including Supported Lodgings)

When the 'equity of care' principle was implemented, money from the separated children's hostel system was reallocated to secure fostering and supported lodging placements in the SWTSCSA Dublin service. Recruitment began both internally and in the private fostering agencies that were engaged to meet the demand.¹⁴⁸

When an unaccompanied minor first arrives in Ireland, if under 12 years, they must be placed with a foster placement immediately; if over 12 years, they are likely to be placed in a pre-placement intake unit (in the case of the Dublin SWTSCSA). Provisions are available to place very vulnerable unaccompanied minors (for example pregnant minors and suspected victims of trafficking) with a foster family.¹⁴⁹ Approximately 40 supported lodging/foster placements are used by the SWTSCSA Dublin. For those over 12 years and under the care of this team,

¹⁴⁶ Interview with SWTSCSA (Dublin) Social worker, October 2014.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014; Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social worker, September 2014.

they are usually placed in a subsequent foster placement within 3-6 months of arrival. During the initial social work assessment period, a needs assessment is conducted to facilitate quality matching of child and carer: looking at the child's needs with what the carer has to offer and identifying the best match. A transition plan will begin for the child's move into a foster placement. If a long-term placement is envisioned, any match must be approved by a local fostering panel. Each foster carer has their own social worker to provide support and guidance.¹⁵⁰

As a result of these recent changes in policy and practice, social workers have indicated a corresponding change in the type of work they are engaging in with separated children: in particular, a move away from 'pastoral care' which is now generally provided by the foster family.¹⁵¹

The SWTSCSA Dublin funds the foster placement for the duration of the young person's time in care and undertakes additional monitoring of placements to ensure the placement is still viable. Ideally, a full case transfer will take place when a minor moves to a foster placement in a different geographical area (Joyce and Gusciute, forthcoming). This depends on individual care planning and needs.¹⁵² The SWTSCSA (Dublin) often works with local social work teams to carry out the transfer from intake units in Dublin to local placements: a child's social worker may remain within the SWTSCSA team or be based within the local social work team. In incidences where private foster agencies are used, they locate and train foster carers, providing placements and social workers for the carers.¹⁵³ The Irish Refugee Council has highlighted geographical challenges regarding follow-up of minors moved from one placement to another; minors may be eventually located a long distance from the assigned social worker (Arnold, 2014).

The issue of adequate training and support for foster carers has attracted considerable commentary. Concerns have been raised regarding increased supports for foster carers, and of the need for extensive matching of foster placements with children in order to avoid subsequent breakdowns, including the ability to access language supports (Barnardos, 2011). Within the SWTSCSA Dublin service, foster carers for unaccompanied minors receive guidance on the experiences of separated children as well as dietary needs, cultural norms. Most are specially designated for separated children.¹⁵⁴ A social worker from the Youth Homeless and Aftercare Team (TUSLA, Limerick) reported that foster carers and carers offering supported lodgings receive general foster care training, including in *Children First* principles (Department of Children and Youth Affairs, 2011), child development, and challenging behaviours such as alcohol and drug use. Specific training on the needs of separated children is not provided by TUSLA as standard. Seeing a need for more targeted training the Youth Homeless and Aftercare

¹⁵⁰ Interview with SWTSCSA (Dublin) Social worker, October 2014.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

Team, Limerick has approached an NGO, Doras Luimní,¹⁵⁵ to provide carers with training on the needs of migrant children.¹⁵⁶

Research suggests that transition from initial residential care to foster care is difficult and complex. For the young people it can be difficult to adjust to a different environment (moving from living with their peers to a family home) and the change in geographical location makes it difficult to maintain relationships already established (Ní Raghallaigh, 2013). The author also notes that while most minors settled well into their new environment there was also evidence of placement breakdown. Ní Raghallaigh and Sirriyeh, (2014) examined the significance of culture, especially focusing on communication and food, in foster care placements for separated refugee and asylum seeking young people in Ireland.¹⁵⁷ They found that young people regarded it as important to maintain continuity in relation to their culture of origin, but that ‘matching’ according to country of origin and/or religion was not the only means for achieving this. The authors suggested that practitioners need to adopt an individualised approach in determining whether a ‘matched’ or a ‘cross-cultural’ placement best meets the needs of separated young people, including their identity development needs (Ní Raghallaigh and Sirriyeh, 2014).

5.2.4 Family Reunification

As seen earlier, family reunification continues to comprise a significant proportion of all unaccompanied minor cases in Ireland.¹⁵⁸

The SWTSCSA (Dublin) indicated that a significant proportion of minors presenting to the service in recent years arrive in Ireland to seek reunification with family members located in Ireland or the UK.¹⁵⁹ The Dublin-based team operates a family reunification service for unaccompanied minors. The complexities of each specific case have been highlighted: an initial referral may initially present itself as a reunification case and result in a minor being placed into care or vice versa.¹⁶⁰ In the case of family reunification cases, a social work assessment will take place and parentage, guardianship and overall child risk needs are assessed (TUSLA, 2014). The SWTSCSA indicated that DNA testing is in operation where warranted and as one possible element of a robust family reunification assessment.¹⁶¹ The Dublin Team’s role in providing this ‘reunification service’ is seen as providing both a ‘critical screening function’ for children from non-EEA countries arriving in Ireland and acting as a ‘preventative

¹⁵⁵ See www.dorasluimni.org/.

¹⁵⁶ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social worker, September 2014.

¹⁵⁷ The article draws on findings from two studies on the experiences of separated refugee and asylum seeking young people in foster care, one in England and one in the Republic of Ireland (henceforth Ireland), but for the purpose of this report the focus is on findings relevant to Ireland.

¹⁵⁸ Interview with SWTSCSA (Dublin) Social worker, October 2014. It must be noted that Ireland does not participate in *Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification*.

¹⁵⁹ See also Ní Raghallaigh, 2013.

¹⁶⁰ Interview with SWTSCSA (Dublin), August 2014.

¹⁶¹ *Ibid.*

service' in relation to identifying potential victims of child victim of trafficking or risk (Department of Justice and Equality, 2012).

Relevant local social work teams are notified when a reunification takes place, however a lack of resources may hamper the follow-up and monitoring of children reunited with family members and/or guardians. The potential for substantial relationship difficulties presents due to the history of separation between the unaccompanied minor and their family members/guardians, and the change of country (Joyce and Quinn, 2009). Horgan et al. (2012) remarked that the lack of follow up after family reunification can place children at risk of trafficking and exploitation. If families are reunified and residing in direct provision accommodation, the Dublin SWTSCSA will liaise with RIA and the relevant local social work team regarding the appropriateness of the accommodation for the entire family.¹⁶²

Family reunification is provided for in primary legislation only under Section 18 of the *Refugee Act 1996* in respect of unaccompanied minors who have been granted declarations of refugee status in Ireland. In the context of the importance of family reunification in facilitating a transition to adulthood for a minor, UNHCR/Council of Europe (2014) have advocated for the completion of the reunification process in cases where a minor reaches the age of majority during the process.

5.3 WITHDRAWAL OF RECEPTION SUPPORTS

The withdrawal of reception and integration support by TUSLA for unaccompanied minors deemed to require care under the *Child Care Act 1991* is not provided for in terms of policy or legislation. Section 3 of the Act requires TUSLA to identify and provide support to all children who are not receiving adequate care and protection. However, incidences do arise when a child is removed from care and supports are no longer needed e.g. if parents choose to remove a child from a voluntary care placement and there are no child protection concerns.¹⁶³ In cases where a minor's age may be in doubt, services will continue to be provided until such time as an age reassessment is confirmed.

5.4 COMPLAINTS

All residential units have complaints procedures in place, with additional mechanisms for minors to submit complaints about care placements in operation within their social work team.¹⁶⁴ Barnardos (2013) recommends that separated young people are made aware of procedures for making a complaint against service providers, including carers. Ní Raghallaigh (2013) notes that the creation of a formal complaint mechanism has been recommended from several quarters.

¹⁶² Interview with SWTSCSA (Dublin) Social worker, August 2014.

¹⁶³ *Ibid.*

¹⁶⁴ Interview with SWTSCSA (Dublin) Social worker, October 2014.

The Irish Refugee Council has commented upon the limited potential for oversight via judicial review of a minor's care plan. It has also noted the differing legal requirements to prepare and implement a care plan for a minor under different sections of the 1991 Act, and that court oversight of care plans is also limited to certain care orders (Interim Care Orders, Care Orders and Emergency Care Orders).¹⁶⁵

5.5 LEGAL ASSISTANCE

Legal advice for unaccompanied minors is available via the Legal Aid Board (incorporating the Refugee Legal Service), through its specialised Separated Children's Unit. Independent law centres run by non-governmental organisations¹⁶⁶ can also provide a minor with advice as can private solicitors.

The Legal Aid Board (LAB) offers legal advice to all unaccompanied minors who register with its service. A pre-questionnaire consultation is provided to all unaccompanied minors, with a pre-interview consultation and early legal advice submissions to the Office of the Refugee Applications Commissioner (ORAC) made in all cases involving unaccompanied minors. Legal advice and legal aid¹⁶⁷ are provided if an unaccompanied minor is unsuccessful in their asylum application and wishes to appeal the recommendation of ORAC to the Refugee Appeals Tribunal (RAT); representation here is also provided. Legal advice and representation is provided also in cases where an applicant wishes to apply for subsidiary protection, including in cases where the minor has been unsuccessful and wishes to appeal. Legal advice is not provided to unaccompanied minors after they have been granted international protection and they have been registered as such by immigration authorities. Advice is also provided where a minor wishes to apply for leave to remain under Section 3 of the *Immigration Act 1999*, as amended, including in cases where they have not previously applied for asylum.¹⁶⁸

In the event of a deportation order being issued against an unaccompanied minor, legal advice and also in certain circumstances legal aid, would be provided. The LAB provides assistance related to judicial reviews and deportation, and provides representation if an applicant is detained in the District Court under Section 9(8) of the *Refugee Act 1996*.¹⁶⁹ In respect of child victims of trafficking,

¹⁶⁵ Interview with Irish Refugee Council, September 2014.

¹⁶⁶ E.g. The Irish Refugee Council Independent Law Centre.

¹⁶⁷ In general terms, legal advice is any oral or written advices given by a solicitor or a barrister in civil matters. It can include writing letters on the person's behalf and acting for the person concerned in negotiations with other persons. Legal advice is provided by solicitors in the Board's law centre network. Legal aid means representation by a solicitor or barrister in civil proceedings in the District, Circuit, High and Supreme Courts. Legal aid is available also for representation before the Refugee Appeals Tribunal. See the Legal Aid Board website for further information www.legalaidboard.ie.

¹⁶⁸ Correspondence with Legal Aid Board, October 2014.

¹⁶⁹ Section 9(8) does not apply to an applicant under the age of 18 years (Section 9(12)(a) of the 1996 Act). However, Section 9(8) applies for as long as the immigration officer / Garda has reasonable grounds for believing the applicant not to be under 18. If a minor asylum applicant is age assessed as over 18 years and is detained under Section 9(8), the

the LAB provides free legal services through its specialised Human Trafficking Unit to potential or suspected unaccompanied minor victims of trafficking referred to it by the GNIB. The LAB has noted that requests for assistance are prioritised in order to ensure that victims have access to legal services within a ‘reasonable timeframe’. Advice on criminal matters related to the trafficking offence is also provided.¹⁷⁰

Section 3.1 of the *Child Care Act 1991* provides that the Child and Family Agency must promote the welfare of children who are not receiving adequate care and protection. The section also obliges it to provide child care. Arnold (2014) determines that the allocated social worker has responsibility for instructing all authorities in relation to the care and needs of a minor, including legal procedures.¹⁷¹ It remains unclear as to whether legal advice is consistently available to each social work team prior to a decision being taken on whether to make an application for asylum or leave to remain. The SWTSCSA (Dublin) has indicated that, should a social worker request it, such legal advice would be provided.¹⁷² In practice, social workers from outside this team register their clients with the LAB once they have submitted an application for asylum.¹⁷³

It remains unclear whether a ‘best practice’ methodology regarding placing a child in the asylum procedures is in place. The importance of available training and information for social workers in assisting their work in supporting unaccompanied minors in making such decisions has been highlighted (Arnold and Sarsfield Collins, 2011). The Separated Children in Europe Programme advocates for the determination of a best interest determination procedure for all children including their protection needs, and that legal assistance and a legal representative should be available to a child to assist them to make their protection claim and in all subsequent proceedings. They should be trained in migration law, gender- and child-specific forms of persecution as well as instruments to protect victims of trafficking (Separated Children in Europe Programme, 2009). In a comparative study, ECRE (2014) highlights the presence of a number of obstacles to the ‘effective access’ of legal assistance by unaccompanied minors, namely an unawareness of their right to such assistance, help in accessing it and funding for organisations to provide it. The crucial role of NGOs in providing this role was highlighted, as was the need for legal assistance in age disputed cases in order to ensure full access to a legal remedy for unaccompanied minors.

Barnardos (2011) have called for independent (legal) supports for children and their foster families while they are transitioning through the asylum process, particularly via the Refugee Legal Service and the provision of *guardians ad litem*.

Legal Aid Board will provide representation before the District Court. Correspondence with Legal Aid Board, October 2014.

¹⁷⁰ Correspondence with Legal Aid Board, September 2014.

¹⁷¹ E.g. Section 8(5)(b) specifies that an application for asylum must be made on behalf of the child by an employee of TUSLA.

¹⁷² Interview with SWTSCSA (Dublin), October 2014.

¹⁷³ Correspondence with Legal Aid Board, November 2014.

Particular reference is made to enabling foster parents to support minors in preparing and presenting their asylum claim. Many commentators have stressed the importance of an independent guardian in assisting an unaccompanied minor in both deciding upon submitting an application for asylum or permission to remain, and in navigating legal services. Martin et al. (2011)¹⁷⁴ emphasised the need for an independent guardian with legal expertise.

Arnold and Sarsfield Collins (2011) noted that none of the children that were interviewed for the purpose of their research knew where to complain to if they had a problem with their Refugee Legal Service (RLS) solicitor. Some children were concerned that making complaints might affect their applications in the future and those that wished to make a complaint went to non-governmental organisations rather than TUSLA.

5.6 ACCESS TO EDUCATION

The provisions in the *Constitution of Ireland* and the *Education and Welfare Act 2000* apply to all resident children, regardless of their legal status in the State. The Act provides that the earliest point at which a young person may leave education is at age 16, or on completion of three years of post-primary education, whichever is the later. Effectively this means that the education of children including unaccompanied minors, between the ages 16-18 is not legislated for. The Irish Constitution views the parent as ultimately responsible for children's education. In the case of unaccompanied minors the assigned TUSLA social worker is the closest equivalent and he or she will make decisions in this regard.¹⁷⁵

When an unaccompanied minor is referred to the SWTSCSA a clinical intake assessment takes place, in English or with interpretation depending on the child's needs. The team will usually refer the child/young person for an English language assessment to the City of Dublin Education and Training Board's (CDETb) Refugee Access Programme (RAP) run by the Separated Children's Service. The Refugee Access Programme is a transition programme that aims to equip the young people with the skills and tools necessary to access and engage with the Irish mainstream curriculum and to engage more fully in Irish society. The RAP operates an ongoing enrolment system from September to July, so that unaccompanied minors can join at any time. The course focuses on three core subjects; English as a Second Language, Maths and Life Skills. Literacy support is also available. Additional modules and after-school activities are offered in other subject areas such as P.E, Art, Outdoor Education, Cooking and Nutrition.

The length of time a child/young person spends with the CDETb RAP is flexible and can range from three to 30 weeks, depending on various factors including the

¹⁷⁴ The study is based on 16 qualitative interviews undertaken between September 2009 and June 2010 with service providers and child protection agencies in Ireland.

¹⁷⁵ The functions of the National Educational Welfare Board were transferred to the Child and Family Agency under the *Child and Family Agency Act 2013*.

child/young person's level of English and their educational background. When he or she is ready, the transition to mainstream second level education, at the location of their foster placement, takes place. On completion of the RAP a report and recommendation is provided to the SWTSCSA, which feeds into the child/young person's overall care plan.

The RAP is one of several education and youth support services offered by the CDETB Separated Children's Service. Other services include: English language and literacy assessments; advice and referrals on school placements and courses; the Study Buddy homework club, and a youth support service which provides support and advice to individuals in relation to education, social welfare, accommodation, health and where appropriate will refer to more specialist services; information and support for schools with Separated Children; advocacy and promotion of best practice.¹⁷⁶ It aims to support Separated Children Seeking Asylum, aged-out minors, and other young people from migrant backgrounds by facilitating their access to social, personal and educational opportunities and supports.¹⁷⁷

The CDETB Separated Children Service discussed above is a highly regarded initiative which drew positive comment from state service providers and an NGO consulted.¹⁷⁸ The Service is offered in the Dublin area only. While the CDETB Separated Children Education Service offers targeted supports, unaccompanied minors in mainstream schools have access to general vocational guidance supports and any language and learning supports that are available in the school. In Cork an unaccompanied child or young person will be placed directly into mainstream education.¹⁷⁹ The Reception and Integration Agency indicated that all aged-out unaccompanied minors are placed in age-appropriate classes unless English language difficulties are such that he or she would not be able to follow the curriculum.¹⁸⁰

Research by Abunimah and Blower (2010) suggests that after arrival, most children are enrolled in secondary school but delays of weeks or even months are common leaving the children with few organised activities in the meantime. (Note that this research deals with separated children seeking asylum in the years 2003 and 2004, when the model of care was hostel-based and very different, as discussed in Section 5.2.) The SWTSCSA indicated that a 'hierarchy of needs' is implemented meaning that placement of an unaccompanied child in a supportive and appropriate foster placement is prioritised, and this can lead to delays in entering school.¹⁸¹

Pregnant girls were a subgroup of young people identified by Abunimah and Blower (2010) that either never enrolled or dropped out of school after the baby

¹⁷⁶ See www.cdetb.ie/Targeted-Programmes/Seperated-Children.aspx.

¹⁷⁷ Communication received from Separated Children's Service, CDETB, October 2014.

¹⁷⁸ Roundtable meeting and interviews conducted for the purpose of this research (September 2014). Comments from representatives of SWTSCSA, RIA, CIS and IRC.

¹⁷⁹ Interview with Liberty House Social Work Team (Cork, TUSLA).

¹⁸⁰ Comments received from the Reception and Integration Agency, October 2014.

¹⁸¹ SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

was born, or attended school sporadically thereafter due to lack of childcare. The authors suggest that subsidised childcare might allow young mothers to continue their education. The research also showed that some unaccompanied children were highly motivated and were making good progress. The Ombudsman for Children's Office also noted that childcare costs have prevented young mothers from returning and/or continuing their education (Charles, 2009).

Access by unaccompanied minors to third-level education is discussed in Section 7.4.

5.7 ACCESS TO EMPLOYMENT

Under Section 9(4)(b) of the *Refugee Act 1996*¹⁸² a person seeking asylum cannot access employment. Under Regulation 4(7)(b) of the *EU (Subsidiary Protection) Regulations 2013*, the same applies to an applicant seeking subsidiary protection. Therefore, unaccompanied minors seeking asylum or subsidiary protection cannot access employment. Unaccompanied minors who are not seeking asylum are in the care of the State and not entitled to access employment.¹⁸³

Under Section 3(2) of the 1996 Act, an unaccompanied minor granted refugee status is entitled to seek and enter employment and to carry on any business, trade or profession, and is also entitled to receive the same social welfare benefits as those to which Irish citizens are entitled. Regulation 22 of the *EU (Subsidiary Protection) Regulations 2013* provides the same entitlements to unaccompanied minors granted subsidiary protection in the State. Unaccompanied minors granted a temporary residence permission under the *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking* would be on Stamp 4 permission and therefore would have a right to work.¹⁸⁴ The *Protection of Young Persons (Employment) Act 1996* governs the rights of young workers in Ireland.

Unaccompanied minors that do not have a refugee status, subsidiary protection or temporary leave to remain, or are not victims of human trafficking, cannot take up employment. Ní Raghallaigh (2013) argues that while the peers of unaccompanied minors may try to get short-term employment, for example during summer holidays, many unaccompanied minors were not able to do so and felt that this set them apart from their peers.

5.8 HEALTHCARE

All unaccompanied minors who are referred to the SWTSCSA (Dublin) undergo a full needs assessment, including a medical examination. A general screening/General Practitioner (GP) appointment is organised for unaccompanied minors

¹⁸² An applicant shall not seek or enter employment or carry any business, trade or profession during the period before the final determination of his or her application for a declaration. See Section 9(4)(b) of the *Refugee Act 1996*.

¹⁸³ Interview with SWTSCSA (Dublin) Social worker, August 2014.

¹⁸⁴ Comments received from Residence Division, INIS, October 2014.

upon arrival. A medical card is issued by the Health Service Executive (HSE) and allows unaccompanied minors to access certain health services free of charge. A social worker from the SWTSCSA (Dublin) interviewed for the purpose of this study indicated that, in practice, it can be challenging to cover medical expenses not covered by the medical card.¹⁸⁵

5.9 WIDER INTEGRATION MEASURES

The aim of the *Independent Advocacy Programme*,¹⁸⁶ a project set up by the Irish Refugee Council (IRC) for separated children, is to promote a child's integration into Irish society and to assist him or her through the immigration and asylum system in Ireland (Irish Refugee Council, 2014). The evaluation of this programme showed that the young people who took part in this programme felt more integrated into Irish society by taking part in various recreational activities with their advocates.¹⁸⁷ The young people were more aware of their rights and which services they were entitled to but while they had a better 'immigration experience' though they didn't necessarily gain a thorough understanding of the procedures involved (Smith, 2014).

5.10 DETENTION

Unaccompanied minors should not be detained in Ireland unless related to a criminal matter. Various pieces of national legislation on the detention of non-Irish nationals precludes the detention of vulnerable categories of persons including those under the age of 18 for non-criminal matters, including Section 5(4)(a) of the *Immigration Act 1999* concerning the arrest, detention and removal of non-Irish nationals. During interviews for the purpose of this study, the issue of detention of unaccompanied minors came to notice, notably related to age determination when an unaccompanied minor subsequently claimed to be under 18 years whilst in detention and was quickly released, or was subject to an age assessment.¹⁸⁸ A further case of detention of an alleged unaccompanied minor concerned prosecution related to a criminal activity.¹⁸⁹ These cases are, however, infrequent.

5.11 UNACCOMPANIED MINOR VICTIMS OF TRAFFICKING

Ireland has implemented several legislative and practical measures around the issue of trafficking in recent years, however additional supports for child victims remain asked for. The US State Department *Trafficking in Persons Report 2013* notes that Ireland 'fully complies with the minimum standards for the elimination

¹⁸⁵ Interview with SWTSCSA (Dublin) Social worker, August 2014.

¹⁸⁶ www.irishrefugeecouncil.ie/children-and-young-people/independent-advocacy-programme.

¹⁸⁷ The advocates are volunteers who are trained, checked and screened by the IRC.

¹⁸⁸ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social worker, September 2014; Interview with Irish Refugee Council, September 2014.

¹⁸⁹ Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014.

of trafficking'. It is a destination, source and transit country for women, men and child victims of trafficking from Nigeria, Cameroon, the Philippines, Poland, Brazil, Pakistan, South Africa, Lithuania, the Democratic Republic of the Congo, Zimbabwe, Kuwait, as well as other countries in Asia, and Eastern Europe. The Report calls on Ireland to enhance training for social workers responsible for trafficked children, including to meet the needs of unaccompanied migrant or asylum-seeking children who are victims. The ongoing operation of the joint protocol on missing children between TUSLA and the GNIB is noted as resulting in a decrease reported missing children (discussed further in Chapter 6).

Additional care supports are in place for unaccompanied minor victims of trafficking, with specific protocols in place. Specialised accommodation facilities are available for child victims.¹⁹⁰ TUSLA acts *in loco parentis* for all child trafficked victims in relation to their status within the State and also in relation to their claim as trafficked victims (Department of Justice and Equality, 2012). It has clear responsibility, under the *Child Care Act*, to 'make all necessary provisions for any unaccompanied children identified as potential or suspected victims of trafficking' (Anti-Human Trafficking Unit, Department of Justice and Equality, March 2013). All children are to be immediately referred to the Dublin SWTSCA when identified as a child victim of trafficking. The Dublin Team's role in providing a 'reunification service' for establishing parental/guardian relationships is seen as providing a 'critical screening function' for acting as a 'preventative service' in relation to potential victims; DNA screening is also in use. If a child victim of trafficking is deemed to have specific ongoing vulnerabilities, they may remain in TUSLA care if deemed vulnerable by a professionally qualified social worker in child care services (Department of Justice and Equality, 2012).

Initially a minor will be provided with a placement that ensures their immediate safety and needs are addressed, including counselling and debriefing, and support services to assist their accessing of other services. Medical screening is provided, with specialist onward referral if necessary. A 'multidisciplinary' assessment of the child's needs is to be conducted on an individualised basis over time and a Care Plan then generated. A social worker shall be allocated to oversee the implementation of this Care Plan, with an accommodation placement option considered in light of all protection needs. An assessment of needs related to the minor's immigration status is to take place and to include linkage to the asylum system and advice regarding all available options (Department of Justice and Equality, 2012)

The Council of Europe GRETA (2013) report on Ireland welcomed developments related to unaccompanied minors which have 'limited to an important extent their disappearance'.¹⁹¹ While there is no specific identification system in Ireland for child victims of trafficking, social workers engaged with unaccompanied minors do use certain indicators, with care staff also trained to be aware of signs

¹⁹⁰ Interview with SWTSCA (Dublin) Social worker, October 2014.

¹⁹¹ As outlined in paragraph 132 of the GRETA report on Ireland.

of abuse. Special consideration will be given to minors in the care of TUSLA when considering the granting of an immigration permission related to identification as a victim of trafficking (Joyce and Quinn, 2014a).

Horgan et al. (2012) makes a number of recommendations as to service and policy provisions for child victims of trafficking in Ireland, in particular the need for a child-centred approach to trafficking and to acknowledge the 'crucial role of guardians for separated and trafficked children'. Calls are made for clearer indicators and guidance for those working with child victims.

5.12 DURABLE SOLUTIONS

No clear definition or policy guideline exists on what may be considered to be a durable solution for an unaccompanied minor in Ireland. There is some conflation between determining what is a durable solution and what may be considered to be in the best interests of the child, as discussed below.

UNHCR and UNICEF (2014) *Safe and Sound* report¹⁹² defines a durable solution as a sustainable one, ensuring that a separated child or unaccompanied minor can develop into adulthood in an environment which 'will meet his or her needs and fulfil his or her rights as defined by the CRC (*UN Convention on the Rights of the Child*) and will not put the child at risk of persecution or serious harm'. It should allow a child to acquire or re-acquire the full protection of a state. In line with international best practice, a durable solution assessment is an important part of determining not only the possibility of a return and reintegration to the child's country of origin but also whether it is in their best interests to submit an application for international or trafficking protection, or to stay on immigration, human rights or children's rights grounds.¹⁹³

In general terms, the three general areas where durable solutions may operate include a return and/or reunification to a child's country of origin; reunification or relocation to a third country; and integration in the host country (based on Arnold and O'Keeffe, forthcoming). Promotion of a voluntary return and reunification with family in the country of origin (or elsewhere, as outlined by may be considered, with local integration support if this is available. The possibility of inter-country adoption may also be considered (UNCRC, 2005). The Separated Children in Europe Programme (SCEP) Statement of Good Practice (2009) calls for a detailed best interests determination process for each child. This would in turn serve as a 'primary consideration' in both identifying the protection needs of each child as well as the impact of remaining in the country of destination or being reunited with family or carers in their country of origin or another country. The importance of the child's own view when identifying such a

¹⁹² Available at www.refworld.org/docid/5423da264.html.

¹⁹³ See Irish Refugee Council led European Commission DG Home Affairs project on *Durable Solutions for Separated Children in Europe*. It is noted that such a process should incorporate a determination of the child's best interests in line with the *UN Convention on the Rights of the Child*, Committee on the Rights of the Child Comment No. 6 and Council Directives within the context of the European asylum *acquis*.

durable solution has been highlighted by the Committee on the Rights of the Child and the European Union Agency for Fundamental Rights (Arnold and O’Keeffe, forthcoming).

Family reunification is paramount when considering the best interests of the child and in considering a durable solution (UNCRC, 2005). Section 3(1) and 3(2) of the *Child Care Act 1991* places the responsibility for the promotion of the welfare of children up to 18 years of age who are not receiving adequate care and protection onto TUSLA, and has regard to the principle that it is generally in the best interest of a child to be brought up in his/her own family (Durville, 2009). Section 4 of the 1991 Act notes that where a child is taken into TUSLA care

because it appears that he is lost or that a parent having custody of him is missing or that he has been deserted or abandoned, [TUSLA] shall endeavour to reunite him with that parent where this appears to the board to be in his best interests.

Aftercare planning with a young person generally begins once a minor turns 16 years old; social workers typically work with an unaccompanied minor on a plan six months before they age out of care. A range of options are generally considered and planned for, including where a legal status may be granted and where a refusal takes place.¹⁹⁴ From social workers’ perspective, objectives such as enrolling a child into school or a successful family reunification may be considered as progress towards a durable solution for a separated child. Additionally, the protection offered by the *Child Care Act 1991* and the existence of a specialised social work team for separated children has been deemed to have made a significant contribution towards providing an overarching framework for identifying durable solutions for unaccompanied minors in Ireland.¹⁹⁵

¹⁹⁴ Correspondence with the Irish Refugee Council, October 2014.

¹⁹⁵ Interview with SWTSCSA (Dublin), August and September 2014.

Section 6

Unaccompanied Minors Missing from State Care

Section 6 provides available data on unaccompanied minors who have gone missing from State care, including on their demographic characteristics. There has been a marked decrease in the number of children going missing from State care in recent years, a development likely to be related to the closure of hostels that were used to accommodate most separated children prior to 2010. In the period January 2009 - August 2014 the majority of unaccompanied minors that went missing from State care were Chinese nationals, a result which is driven by a high incidence of this nationality group in the year 2009. In more recent years no defined patterns have emerged in this regard. The procedures relating to unaccompanied minors going missing from State care are discussed. In 2009 the Health Service Executive and An Garda Síochána signed a *Joint Protocol on Missing Children* which sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors, although it has been noted that there is little specific reference to separated children.

6.1 UNACCOMPANIED MINORS MISSING FROM STATE CARE

There has been a decrease in the number of children going missing from State care since the publication of the 2009 study, based on SWTSCSA data. In 2008, 22 children were missing from SWTSCSA (Dublin) care, of which five were found (Joyce and Quinn, 2009). In comparison in 2013, four unaccompanied minors went missing from SWTSCSA (Dublin) care and two were found.

TUSLA now collects national data on unaccompanied minors going missing from care. The Information, Data Protection and Research Office indicated that all social work teams in the State must now submit quarterly data on missing unaccompanied children by way of a standard template to TUSLA. TUSLA indicated that two unaccompanied minors went missing from State care nationally during 2013, which is the first available year of such national returns.¹⁹⁶

An Garda Síochána data do not separately identify unaccompanied minors among missing children.¹⁹⁷

¹⁹⁶ Information, Data Protection and Research Office of TUSLA.

¹⁹⁷ Communication with GNIB, November 2013.

Table 6.1 shows the number of unaccompanied minors going missing from SWTSCSA (Dublin) care in the period 2009-2014. However these data are limited to the geographical area of Dublin. While the social work team from Cork indicated that they had had no unaccompanied minors who went missing in recent times, due to low numbers of referrals,¹⁹⁸ the Youth Homeless and Aftercare Team from Limerick noted two minors had been reported as missing in the last few months.¹⁹⁹

Table 6.1 Number of Unaccompanied Minors Who Have Gone Missing From SWTSCSA (Dublin) Care 2009 – 2014

	2009	2010	2011	2012	2013	2014*
Missing child significant notifications made to Gardai	48	10	8	5	4	3
Missing children found or accounted for	10	7	2	3	2	2
Still Missing at year-end	38	3	6	2	2	1
% of UAMs missing from SWTSCSA (Dublin) Care based on total referrals**	23.6	10.4	8.1	7	3.3	4

Source: SWTSCSA (Dublin).

* January to October.

** Note that proportion of UAMs missing is based on total referrals to SWTSCSA (Dublin). See Table 5.1 for total referrals.

A particular challenge related to unaccompanied minors going missing from care relates to the number still unaccounted for: between 2009 and October 2014, 78 unaccompanied minors went missing and 52 of them are still unaccounted for. Research studies and evaluation reports indicate that the closure of hostels that were used to accommodate separated children and the introduction of ‘equity of care’ policy have attributed in a significant decrease in the number of unaccompanied minors missing since 2010 (Barnardos, 2011; Council of Europe, 2013; Ní Raghallaigh, 2013; Arnold, 2014 and TUSLA, 2014). This has been echoed by a number of actors interviewed for the purpose of this study.²⁰⁰

In a 2014 news report, a social worker from the SWTSCSA (Dublin) noted that prior to the closure of the hostels and implementation of the equity of care principle, it was clear that they were being used as a ‘new route’ for people attempting to enter the State. At that time, many young persons referred to the service were not minors and many disappeared before a social worker had any contact with the person concerned.²⁰¹ Horgan et al. (2012) note that missing unaccompanied minors are particularly vulnerable to being trafficked. The need for early identification of victims of trafficking, including training of first responders, has been highlighted (Barnardos, 2011).

¹⁹⁸ Interview with Liberty House Social Work Team (Cork, TUSLA) Social worker, September 2014.

¹⁹⁹ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014.

²⁰⁰ Interview with SWTSCSA (Dublin) Social worker, August 2014; Interview with Irish Refugee Council, September 2014.

²⁰¹ The Journal (30 June 2014). ‘Why did all these Chinese ‘teens’ go missing in Ireland?’. Available at www.thejournal.ie/.

6.1.1 Profile of Unaccompanied Minors Missing From SWTSCSA (Dublin) Care 2009-2014

Nationality, gender and age breakdowns presented here refer to data collated from monthly data reports from SWTSCSA (Dublin), between January 2009 and August 2014.²⁰²

Data indicate that in the period January 2009 - August 2014 the majority of unaccompanied minors that went missing from State care were Chinese nationals (just under 55 per cent) and 12 per cent were Nigerian nationals. The high percentage of Chinese unaccompanied minors going missing is driven by a high incidence of this nationality group in 2009; the GNIB stated that there is clear evidence that many such persons engaged in employment at that time.²⁰³ In recent years just one Chinese national was referred to SWTSCSA (Dublin).²⁰⁴ Since 2009 no certain patterns have emerged in relation to nationality of children going missing from care.

In the same period approximately 58 per cent of missing children were male and just under 37 per cent of children missing were female. Research indicates that males are more likely to go missing than females (Abunimah and Blower, 2010).²⁰⁵

Available data indicate that the majority of minors that go missing are usually older; predominantly in the 16-17 age bracket (73 per cent), followed by the 14-15 age bracket (15 per cent). A very small proportion of young children (0-13 age bracket) went missing in this period; approximately three per cent. Research indicates that minors may go missing due to a negative asylum determination or fear of deportation (Abunimah and Bower, 2010; and Ní Raghallaigh, 2013).

6.2 PROCEDURES RELATING TO UNACCOMPANIED MINORS GOING MISSING FROM STATE CARE

There is a compulsion to react in the case of any child missing from care on behalf of TUSLA and of the Garda Síochána (police).

In 2009 the Health Service Executive and An Garda Síochána signed a *Joint Protocol on Missing Children* which sets out the roles and responsibilities of both agencies in relation to children missing from State care, including unaccompanied minors. The Joint Protocol notes that each child in care has an Absence Management Plan. The Plan is a risk assessment tool and offers guidelines for carers to follow should a child go missing from their care. The Absence

²⁰² Note that figures presented here do not add to 100 per cent as some information was either not available or not recorded.

²⁰³ GNIB, Roundtable meeting, Economic and Social Research Institute, September 2014.

²⁰⁴ SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

²⁰⁵ The authors found that 32 per cent of males (15 out of 47) went missing in comparison to 13 per cent of females.

Management Plan allows social workers and care staff to exercise an element of discretion in determining whether a child is missing; it states that

If Care Staff determine that the child is Missing – i.e. he/she is absent without permission, his/her whereabouts are not known, he/she has passed his/her Curfew Testing Limit and/or Care Staff have knowledge that gives them cause to be concerned for the child's immediate safety, Care Staff should contact the local Garda station for assistance without delay.

In addition the Joint Protocol states that:

Time missing cannot be used to determine whether a child qualifies as missing: rather it is a combination of the time period with all other circumstances of the case that must be considered.

According to the Joint Protocol a 'Missing Child from Care Report' is to be completed for all referrals to the police, and should be treated by An Garda Síochána as a high risk missing person incident.

Separated children seeking asylum are specifically considered under the introduction to the Joint Protocol, however Horgan et al. (2012) have remarked that there is little specific reference to this group overall. Included elsewhere in the Protocol is the establishment of a Garda liaison role with the HSE care which includes a mechanism to identify children in care who are frequently reported missing (Joyce, 2010) Commentary on operation of the Protocol has centred on its applicability to the 'specific' issues of unaccompanied minors who go missing. In addition, there has been 'significant inconsistency' in terms of publicising missing children on the website of An Garda Síochána (police) missing persons website with a consequence that there is not much publicity about the children going missing (Barnardos, February 2011).

Current practice in cases whereby an unaccompanied minor goes missing from State care involve immediate notification to the GNIB and local police station in the area where the child is residing. A missing persons report and a photograph of the child (if one exists) is distributed to the local Child Care Manager who in turn will distribute these to all other Child Care Managers on a national scale.²⁰⁶ The child's social work team may also decide to approve placement of the child's name and picture on the missing children's website,²⁰⁷ provided that it is deemed to be in the minor's best interests.²⁰⁸

²⁰⁶ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014.

²⁰⁷ www.missingchildren.ie.

²⁰⁸ SWTSCSA (Dublin), November 2014.

6.2.1 Arrival at the Airport/Port

A protocol between An Garda Síochána and TUSLA is in place for unaccompanied minors arriving at Dublin Airport including combined police/social worker interviews, identification, accommodation and age assessment. This protocol and the *Joint Protocol on Missing Children*, have contributed to a reduction in the number of unaccompanied minors going missing from TUSLA care.²⁰⁹

Enhanced screening at ports and the development of more intensive and comprehensive child protection risk assessment with a focus on age assessment have been put into operation. TUSLA have attributed these measures in declining number of unaccompanied minors going missing and hence prevention. (TUSLA, 2014)

It can be considered best practice for each child in care to be photographed, and often the social work teams in Cork, Limerick²¹⁰ and Dublin photograph children on arrival (Arnold and Sarsfield Collins, 2011). This takes place as soon as possible after arrival in the case of Limerick and within 48 hours in the case of the Dublin SWTSCSA.²¹¹ However, this does not always take place, for example it may not be possible in the case of minors arriving to an out-of-hours service. A photocopy of any travel document is taken if available, with a picture available of any arrival through an airport. Fingerprints can be taken where it is considered to be in the best interests of the child, with a decision to be taken by a Garda Superintendent and senior management in TUSLA and destroyed within a certain timeframe.²¹²

²⁰⁹ Correspondence with AHTU, September 2014.

²¹⁰ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014.

²¹¹ SWTSCSA (Dublin), Roundtable meeting, Economic and Social Research Institute, September 2014.

²¹² GNIB, Roundtable meeting, Economic and Social Research Institute, September 2014.

Section 7

Arrangements in Ireland for Unaccompanied Minors when turning 18 Years of Age

Section 7 investigates the circumstances of unaccompanied minors who turn 18 years of age, and finds the transition of an unaccompanied minor to adulthood has potentially far-reaching consequences for that young person's legal status, accommodation and care provisions. Within Ireland there is potentially much variation in the experience of aged-out unaccompanied minors, depending on whether or not an asylum application has been made, which section of the *Child Care Act 1991* has been applied, and local aftercare policy, resources and practice. The majority of unaccompanied minors lodge applications for asylum if they remain in care approaching the age of 18. Research indicates that carers, young people and practitioners have concerns regarding the practice of moving asylum seeking aged-out minors to RIA accommodation upon turning 18 years.

7.1 AFTERCARE AND ACCOMMODATION POST-18 YEARS OF AGE

In Ireland the transition of an unaccompanied minor to adulthood has potentially far-reaching consequences for that young person's legal status, accommodation and care provisions. Ireland is not alone in this regard; research by the Fundamental Rights Agency (2010) shows that unaccompanied minors across Europe face similar problems and that young people are often unprepared for the full implications of the transition.

Within Ireland there is potentially much variation in the experience of aged-out unaccompanied minors in Ireland, depending on whether or not an asylum application has been made, which section of the *Child Care Act 1991* has been applied, and local aftercare policy and practice. Barnardos (2013) notes that, regardless of where an aged-out minor is accommodated, there is often a lack of resources available to social workers to track or follow-up on individual aged-out minors.

The SWTSCSA indicated that an unaccompanied minor in their care must have a statutory care plan, which includes an After Care and Leaving Plan. An Aftercare worker should begin to work on the Plan with an unaccompanied minor when the young person reaches the age of 16. If an unaccompanied minor is referred to the

Service at age 16 or older, work on the After Care and Leaving Plan begins after an appropriate settling-in period has passed.²¹³

In general, once an unaccompanied minor reaches 18 years of age (or if relevant completes the academic year after reaching 18) he or she will:

- Enter the direct provision system of accommodation operated by the Reception and Integration Agency (RIA) as an asylum applicant;
- Move into the community or into aftercare as a holder of a protection status and/or a residence permit;²¹⁴
- Continue in TUSLA aftercare, in a family placement, as a young person with exceptional needs, up to the age of 21 years, or older in some cases (see Section 7.2 below).

Aftercare, defined as ‘a process of preparation for leaving care, follow up and support in moving towards independence’ (Health Service Executive, 2011), is not available to all young people in care in Ireland upon reaching 18 years of age. Rather under Section 45 of the *Child Care Act 1991*, access depends on discretionary assessment by TUSLA of individual need.²¹⁵

Research indicates that the use of discretion regarding access to aftercare creates uncertainty and a lack of transparency: practitioners argued that threshold of vulnerability has been set at too high a level by the HSE (now TUSLA), with the result that only extremely vulnerable young people are being allowed to remain in family care placements (Ní Raghallaigh, 2013). In March 2014 the Government approved the Heads of the *Aftercare Bill 2014*. The Scheme of the Bill proposes the amendment of Section 45 of the *Child Care Act 1991* to impose a statutory duty on the Child and Family Agency to undertake advance planning in respect of the needs of children who are due to leave its care on reaching the age of 18 years. The Minister for Children and Youth Affairs has stated that the proposals will

*...formalise good practice and ensure the continuation of improved arrangements for aftercare which have been introduced under the Child and Family Agency’s National Aftercare Policy and Procedures.*²¹⁶

The Irish Refugee Council argues that access to aftercare by aged-out minors with residence/status is on par with Irish youth. However the Irish Refugee Council argues that aged-out unaccompanied minors without residence permit and/or status are treated unequally compared to Irish young people in terms of aftercare (specifically regarding support in finding independent accommodation, education support and extensions to foster care); this is problematic given the fact that

²¹³ SWTSCSA, Roundtable meeting, Economic and Social Research Institute, September 2014.

²¹⁴ Typically a Stamp 4 residence permit which allows full access to the labour market and/or social welfare supports.

²¹⁵ Ní Raghallaigh (2013) notes that in the UK, ‘aged-out’ minors are ‘looked after’ by local authorities and are entitled to access the provisions of the *Children (Leaving Care) Act 2000* at least until all asylum appeals have been exhausted.

²¹⁶ Speech by Minister for Children, Children’s Rights Alliance AGM, 27 May 2014.

Section 45 (above) refers to an evaluation of the child's vulnerability, not whether or not they have residence/status.²¹⁷

7.2 REMAINING IN TUSLA AFTERCARE

If a young person is retained in TUSLA aftercare he or she continues to have an assigned social worker as well as access to a medical card. His or her carers are reimbursed for the placement provided.

Although a *Leaving and Aftercare Services, National Policy and Procedure Document* (Health Service Executive, 2011) has been published, it has not been rolled out nationally and aftercare service provision is highly variable and often determined by available local resources.²¹⁸ The NGO, Children's Rights Alliance, argue that children who are in care under Section 5 of the *Child Care Act*, are not formally in the care of the State and therefore do not have a right to TUSLA aftercare (Children's Rights Alliance, 2014). In Limerick the Youth Homeless and Aftercare Team is tasked with providing care for unaccompanied minors presenting in the locality and aftercare is a priority; within other local teams this may not be the case.²¹⁹

The SWTSCSA indicated that a significant proportion of their workload currently involves providing young people with aftercare. At time of writing 85 young people, accommodated in direct provision centres, private rented accommodation, supported lodging and foster placements at various locations around the State, were in aftercare provided by SWTSCSA.²²⁰ Four SWTSCSA project workers travel widely to provide extensive aftercare supports to these young people who comprise both protection applicants and status/residence holders. SWTSCSA aftercare workers will also make contact with aged-out unaccompanied minors who were once in their care to offer support, for example when new processing procedures for subsidiary protection applications were introduced in 2013, the SWTSCSA offered to support aged-out and discharged unaccompanied minors throughout the process. The SWTSCSA noted that if a minor's foster/supported lodgings placement is in an area with insufficient aftercare supports the SWTSCSA may decide to retain the social work case file, or indeed if the minor is nearly 18 years old, opt not to take up the placement at all.²²¹

The Limerick Youth Homeless and Aftercare Team noted that follow-up aftercare can become problematic if an aged-out unaccompanied minor is moved from one placement to another in a different region with a different aftercare policy in

²¹⁷ Comments received from Irish Refugee Council, September 2014.

²¹⁸ Interview with SWTSCSA (Dublin) Social Worker, Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker and The Irish Refugee Council, September and October, 2014.

²¹⁹ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014

²²⁰ Interview with representative of the SWTSCSA, TUSLA, October 2014.

²²¹ *Ibid.*

place. In these situations it can be difficult to track who is responsible for providing aftercare.²²² Ní Raghallaigh (2013) pointed to challenges to providing adequate aftercare support in light of the large caseload of some social workers and the fact that aftercare workers may be located in Dublin while the young people are residing in various locations throughout the country.

In some cases the young person may remain in TUSLA aftercare up to 23 years of age, if he or she is in full-time education. Like Irish young people, aged-out unaccompanied minors in full-time education may not receive social welfare.²²³ Social workers consulted identified ambiguities in and challenges to the implementation of the *Leaving and Aftercare Services, National Policy and Procedure Document*. In particular these concerned the maximum age at discharge from aftercare, and minimum periods of time spent in care. The Policy indicates that a young person cannot access aftercare unless he or she has been in care for 12 months prior to their 16th birthday (Health Service Executive, 2011), however most unaccompanied minors arrive at 16 or 17 years.²²⁴

Ní Raghallaigh (2013) notes that while a young person may not be moved to RIA accommodation if he or she is deemed to be very vulnerable, this usually requires strong advocacy from the young person's social worker or foster carer. This experience was confirmed by the Limerick team consulted for the current research, who reported that if aftercare is not available, some foster carers have offered to accommodate the young person without payment, in order to avoid the young person moving to a reception centre. However, if a young person declines to move to a reception centre he or she loses all financial supports, including medical card.²²⁵ Barnardos (2013) recommends that foster parents who wish to continue to support a minor past 18 years should receive State support.

7.3 TRANSITIONING INTO THE RIA RECEPTION SYSTEM

The Care Plan (including Leaving and After Care Plan), of each unaccompanied minor in TUSLA care must take account of the fact that in Ireland non-asylum seeking unaccompanied minors who do not have status do not generally have a clear immigration status and usually in the State entirely at the Minister's discretion. The majority of unaccompanied minors lodge applications for asylum if they remain in care approaching the age of 18.²²⁶

Those aged-out unaccompanied minors who remain in TUSLA aftercare retain the status of being 'in the care of the State' until they are discharged. The decision on when to discharge an unaccompanied minor from care is made by TUSLA. The SWTSCSA noted however that because a minor has turned 18 the full protection

²²² Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014

²²³ Interview with representative of the SWTSCSA, TUSLA, October 2014.

²²⁴ *Ibid.*

²²⁵ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014.

²²⁶ Interview with representative of the SWTSCSA, TUSLA, October 2014. Communication November 2014.

of the *Child Care Act 1991* no longer applies.²²⁷ Arnold and Sarsfield Collins (2011) argue that the majority of unaccompanied minors eventually lodge applications for asylum in order to normalise their legal status in the country, especially in the case of children approaching the age of 18.²²⁸ An aged-out unaccompanied minor who has claimed asylum in the State may enter the direct provision system of accommodation operated by the Reception and Integration Agency (RIA). The direct provision system is a system of mainly full board accommodation centres in locations dispersed throughout Ireland. The centres are run by external agencies under contract to RIA. There has been sustained public debate in recent years regarding the impact of long-term residence in the direct provision system, in particular on children and families. Concerns centre on the quality of reception facilities, health impacts on residents and on residents' lack of autonomy and financial exclusion (see for example: Thornton, 2007; FLAC, 2009; Arnold, 2012; O'Reilly, 2013; and Joyce and Quinn, 2014b).

The SWTSCSA (Dublin) indicated that ahead of a minor's transition to the reception system, regular meetings are held with the Reception and Integration Agency in order to find the most appropriate centre for the young person to move to, taking account of the young person's preferences. A joint RIA-TUSLA inter-departmental policy now exists to identify family centres that have local aftercare supports already in place, or that could be developed to meet the needs of unaccompanied minors transferring into the local area. The towns of Cork, Sligo, Galway, Limerick and Waterford have been identified as being able to best meet the needs of the unaccompanied minors with active aftercare and advocacy social networks.²²⁹ In deciding where an aged-out minor will be accommodated consideration is also given by RIA to education access and to any medical and/or welfare needs as identified by TUSLA (Reception and Integration Agency, 2011).

Recently arrived unaccompanied minors who are nearing 18 years of age are accommodated by TUSLA in residential care settings in Dublin. Following discharge from TUSLA care, RIA may be asked to accommodate such young people in one of the Dublin centres, perhaps to facilitate access to educational facilities or to other services. RIA indicated the opinion that in recent years a majority of aged-out minors entering the direct provision system are accommodated in Hatch Hall in Dublin, however reliable data on aged-out minors entering the direct provision system do not exist.²³⁰ RIA observed that the Agency

²²⁷ Interview with representative of the SWTSCSA, TUSLA, October 2014.

²²⁸ Child victims of trafficking who turn 18 years of age may apply for a residence permit under the Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking (see Joyce and Quinn, 2014a).

²²⁹ In the past the practice was to move unaccompanied minors that turned 18 years old into single men hostels (generally in Dublin) or single women hostels (in Galway on the west coast of Ireland). Such transfers often took place in the middle of school year. The situation has improved with the development of a joint inter-departmental policy to identify family centres within the adult accommodation system that have local aftercare supports already in place or that could be developed to meet the needs of unaccompanied minors transferring into the local area. Presentation supplied by representative of SWTSCSA (Dublin), TUSLA, August 2014.

²³⁰ Comments received from the Reception and Integration Agency, October and November 2014. The SWTSCSA also confirmed that these data are not captured.

has not received many requests from TUSLA to accommodate aged-out minors being discharged from foster placements outside of Dublin, and the full effect of the equity of care principle has yet to have an impact on accommodation requests by TUSLA.²³¹

An aged-out asylum-seeking unaccompanied minor no longer has an assigned social worker unless he or she is retained in aftercare. Reception centre managers are made aware that the young person is an aged-out unaccompanied minor.²³² If that young person is later moved to another RIA accommodation centre the centre manager may be informed that he/she is an aged-out unaccompanied minor depending on the age and maturity of the individual.²³³ The Limerick Youth Homeless and Aftercare Team indicated a strong preference to keep aged-out unaccompanied minors in supported lodgings and out of reception centres where possible. The social worker consulted also noted that the practice of issuing final decisions and resulting deportation orders to young people who have recently reached 18 years, means that many will have no social work supports in place at that time.²³⁴

Research indicates that carers, young people and practitioners have concerns regarding the practice of moving aged-out minors to RIA accommodation upon turning 18 years. The young people may have to move a distance from their former TUSLA care placement and the social contacts built up there. The move from a family environment to an adult community, within which the young person may have to share a room with one or more adults, was believed to impact very negatively on the emotional well-being and psychological health of the young people concerned (Ní Raghallaigh, 2013). Barnardos has called for additional support for unaccompanied minors upon turning 18 years and highlighted the difficulties experienced by unaccompanied minors regarding policy of dispersal, loss of support from voluntary organisations and adjustment to the culture of living in direct provision (Barnardos, 2010, 2013). It is recommended that the use of direct provision centres for aged-out minors is abandoned in the medium-term and the 'care leaver' status of such minors is prioritised over their 'asylum seeker' status (Barnardos, 2013).

As noted above, the introduction of the inter-departmental policy in 2011 attempts to mitigate some of these concerns. RIA stated that it will give feedback to TUSLA on issues of concern regarding aged-out minors recently discharged from care, adding that some aged-out minors prefer not to engage with their social worker/aftercare worker.²³⁵

²³¹ Comments received from the Reception and Integration Agency, October and November 2014.

²³² SWTSCSA, Roundtable meeting, Economic and Social Research Institute, September 2014.

²³³ Comments received from the Reception and Integration Agency, October 2014.

²³⁴ Interview with Youth Homeless and Aftercare Team (Limerick, TUSLA) Social Worker, September 2014.

²³⁵ Comments received from the Reception and Integration Agency, October 2014.

7.4 AGED-OUT MINORS AND EDUCATION

Asylum applicants, including aged-out unaccompanied minors, are not entitled to free third-level (university or college) education. Access is provided to adult literacy and English language classes.²³⁶ Most aged-out unaccompanied face restrictions in pursuing education to Third Level and are faced with high non-EU fees. RIA has stated that in instances where charitable organisations (notably the One Foundation) will fund a third-level course for an aged-out unaccompanied minor living in one of RIA's centres, RIA will try to place the young person in a centre that will facilitate their attendance.²³⁷

The introduction of a HSE/RIA policy on *Accommodation of Aged Out Minors in RIA Accommodation Centres* (Reception and Integration Agency, 2011) now helps to ensure that aged-out unaccompanied minors are not discharged from care within an academic year.²³⁸ Minors in foster care who turn 18 may remain with the foster family until the end of the academic year.²³⁹

Arnold and Sarsfield Collins (2011) note that the move of unaccompanied minors to direct provision accommodation, often in another part of the country, can have a negative effect on the young person's ability to continue their secondary education. RIA stated that aged-out minors who have not yet completed their second-level education are linked to schools in their new location upon their transfer to RIA accommodation. If the young person in question is located in Dublin, he or she is often accommodated in Hatch Hall in Dublin City until completion of secondary education.²⁴⁰

²³⁶ Unaccompanied minors that have been granted refugee status or humanitarian leave to remain may be eligible for the Free Fees initiative provided other qualifying conditions are satisfied.

²³⁷ Comments received from the Reception and Integration Agency, October 2014.

²³⁸ Interview with SWTSCSAS (Dublin) Social worker, August 2014.

²³⁹ SWTSCSA, Roundtable meeting, Economic and Social Research Institute, September 2014.

²⁴⁰ Comments received from the Reception and Integration Agency, October 2014.

Section 8

Return Practices, Including Reintegration of Unaccompanied Minors

Section 8 details the return practices including reintegration of unaccompanied minors. The voluntary return of Third-Country unaccompanied minors living in Ireland takes place primarily in conjunction with the International Organization for Migration (IOM) office in Ireland. While no legislative prohibition exists on deportation (in the sense of forcible removal) of unaccompanied minors aged under 18 years, in practice no such deportations have taken place. Transfers of unaccompanied minors under the Dublin Regulation do take place, and are in evidence since May 2007. The return of an unaccompanied minor can be seen in the context of identifying a durable solution (as discussed in Section 5.12). In general terms, the three spaces where durable solutions may operate are: a return and/or reunification to a child's country of origin; reunification or relocation to a third country; and integration in the host country.²⁴¹

No specific legislative provisions regarding the return of unaccompanied minors are in place in Irish legislation, and all decisions regarding return are taken by TUSLA in conjunction with the unaccompanied minor. Department of Justice and Equality (2012) guide for service providers dealing with children who are victims of human trafficking states that any return of a child to their country of origin must be taken with due regard for their rights, safety and dignity in accordance with the Irish statute law, the *Constitution of Ireland* and the *European Convention on Human Rights*. In order for any return to proceed, both the governments in the country of origin and in Ireland must ensure that the protection of private and family life, freedom from degrading or inhuman treatment and the protection of the child's identity. Repatriation should not take place if there is reason to believe this may be detrimental to the child's safety and best interests (Department of Justice and Equality, 2012). If there are grounds to believe that a child is a victim of trafficking, return should not take place. Voluntary return or transfers under the Dublin III Regulation may only take place when TUSLA is satisfied that the 'conditions for doing so were appropriate and that the best interests of the unaccompanied minor are safeguarded' (Department of Justice and Equality, 2012).

²⁴¹ Based on Arnold and O'Keeffe (forthcoming). See also for a wider discussion on the literature on this topic.

8.1 DUBLIN REGULATION

Transfers of unaccompanied minors from Ireland under the *Dublin Regulation*²⁴² have been in evidence since May 2007 when enhanced operational procedures between the HSE and GNIB under the Regulation were agreed. Between 2009 and 2013, 16 unaccompanied minors were transferred under the Regulation; as of 30 September two minors were transferred during 2014.

Table 8.1 Unaccompanied Minors Transferred under the Dublin Regulation 2009-2014

	2009	2010	2011	2012	2013	2014*
Number of unaccompanied minors transferred under the Dublin Regulation	5	2	4	5	0	2*

Source: Office of the Refugee Applications Commissioner.

* As of 30 September 2014.

A transfer is initiated by ORAC under the Regulations only at the request of TUSLA, for the purposes of reunifying a child with their family or parents in another contracting state, and when TUSLA has deemed that it is in the best interest of the child for such a reunification to take place.²⁴³ Given the difficulties in conducting family social work assessments in separate countries, DNA testing of alleged family is often used in such cases. ORAC liaises with the ‘Dublin Unit’ in the other EU Members State regarding any prospective transfer. The relevant Unit there is responsible for securing a social work assessment.²⁴⁴ As with the practice of transfer under the *Dublin Regulation* for adult asylum applicants, the Office of the Refugee Applications Commissioner (ORAC) processes the taking of fingerprints and cross-matching under the EURODAC system. The taking of fingerprints of unaccompanied minors in Ireland is primarily limited to those seeking asylum, as non-asylum seeking unaccompanied minors are not routinely fingerprinted unless the minor is considered to be at risk e.g. in suspected trafficking cases.

Joint procedures are in place regarding the processing of UAM transfers between TUSLA and INIS, with at least two weeks’ notice of the prospective transfer provided to TUSLA in order to facilitate their contact with the responsible agency in the country of transfer. This includes the transfer of a social work assessment file to the body. In certain cases, additional time to effect the transfer is also provided so that TUSLA may coordinate the file transfer.²⁴⁵ Unaccompanied minor transfers under the Regulation will not take place in cases where the social

²⁴² Regulation No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a Third-Country National or a stateless person (recast). The 2013 recast Regulation (Recital 13) notes that the best interests of the child should be a ‘primary consideration of the Member States’ when applying the Regulation in accordance with the 1989 *United Nations Convention on the Rights of the Child* and with the *Charter of Fundamental Rights of the European Union*, and that ‘specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability.’ At the time of publication Ireland had not yet enacted the 2013 recast Regulation.

²⁴³ Correspondence with ORAC, October 2014.

²⁴⁴ Interview with SWTSCSA, October 2014.

²⁴⁵ Interview with SWTSCSA, November 2014

work team is either unable to establish contact with the referring body in the country of transfer or the standard of care in the receiving country is not deemed to be of an adequate standard.

The transfer process is enacted by the INIS, principally by the Repatriation Division. A member of TUSLA may accompany the unaccompanied minor, but this has not happened in practice yet.

The SWTSCSA (Dublin) has indicated that the possibility of transfers under the Dublin Regulation has proved a useful mechanism on occasion for children who need to engage in family reunifications in other EU Member States. As referenced earlier, a new phenomenon in the last 12 months for the SWTSCSA has seen family members arriving from other EU Member States to remove their children from care when there would be no child protection concerns.²⁴⁶

8.2 DEPORTATION

While no legislative prohibition exists on deportation (in the sense of forcible removal) of unaccompanied minors aged under 18 years, in practice no such deportations have taken place in recent years.²⁴⁷ In the case of aged-out minors, any return is considered and dealt with on a 'case-by-case basis' by INIS.²⁴⁸

8.3 RETURN AND REINTEGRATION

There are no readmission agreements specific to the return of unaccompanied minors, and current readmission agreements (on both an EU and bilateral national level) which are in effect and to which Ireland is a party do not contain specific provision in relation to the return of unaccompanied minors.²⁴⁹

Fonseca et al. (2013) describe a major challenge for legal guardians to be when they are determining whether return is in the best interests of the child, in particular where there is a lack of information on country of origin. They also found that issues associated with timing and communication about return with minors by their (in this case, legal) guardians is linked to the minor's trust of their guardian, and their perception of the closeness of the guardian's association with

²⁴⁶ Interview with SWTSCSA, October 2014.

²⁴⁷ Correspondence with Irish Naturalisation and Immigration Service, October 2014.

²⁴⁸ Irish Naturalisation and Immigration Service, Roundtable meeting (September 2014).

²⁴⁹ Ireland has exercised its option to opt-in to the Agreement concerning Hong Kong which entered into force on 1 March 2004. In addition, a draft *National Readmission Agreement* with Nigeria was concluded in 2001. This Agreement has not yet been fully ratified by Nigeria but it is reported that immigration authorities in both countries are acting 'in the spirit' of the agreement which has since been 'reviewed and agreed to be working well.' See Dáil Éireann Parliamentary Question No. 289, 31 March 2009. During 2013 Ireland completed the necessary parliamentary procedures to opt-into 11 EU readmission agreements (Sri Lanka, Russia, Pakistan, Macao, Albania, Bosnia, Macedonia, Montenegro, Moldova, Serbia and Georgia) in accordance with Article 4 of the *Protocol to the TFEU*. The Council and Commission were notified accordingly and Commission procedures must be completed before the opt-in becomes fully binding on Ireland. Ireland has not opted-in to the *Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying Third-Country Nationals* and as such does not currently participate in return practices under this piece of the EU *acquis*.

the host state. Practitioners felt a deficiency of guidance in the area. A key challenge was a lack of solid infrastructure in which to conduct family assessments in countries of origin and to offering reintegration support after return. Gaps or missing links between legal guardians in the country of return and destination is also difficult in the context of a best interests determination for the child. Further development is recommended regarding communication between actors in the field of reception, integration and return, and legal guardians and unaccompanied minors. The extension of supports, as currently provided to minors during the return and reintegration process, should take place to include their immediate family environments. In order to improve potential interest determinations, further training and access of legal guardians to information on countries in origin should also take place.

8.3.1 Voluntary Return

To date, assisted voluntary return of unaccompanied minors in Ireland under the care of the Health Service Executive (HSE) has primarily taken place in conjunction with the IOM Mission in Ireland; however since 2008, some change can be seen in terms of direct social work liaison with families in countries of origin including return.²⁵⁰

The wishes of the minor are taken into account regarding return, particularly in cases where the unaccompanied minors may be of an older age. All decisions regarding return are taken by social worker (and judge when relevant and according to the nature of the care order which the minor may be under the care of) and according to the principles of the best interests of the child. Specific TUSLA return procedures vary according to the relevant care team and particular case, but generally include extensive family assessment in the country of origin and agreement regarding monitoring of the unaccompanied minor post-return.

To date, the majority of unaccompanied minors have returned to a family environment. In particularly vulnerable cases assisted by IOM Ireland, a small number of returns have been to specialist, non-State care accommodation centres. In general, the Irish government does not currently operate a policy of returning unaccompanied minors to alternative care facilities. In cases where a suitable care arrangement within an extended family and/or guardian situation is not available, a decision has been taken for the minor to remain in care in Ireland. In cases of victims of trafficking, specialised counter-trafficking facilities have been utilised to provide best practice accommodation upon return.

Between 2009 and 2013, eight unaccompanied minors were returned as part of the assisted (voluntary) return through IOM Ireland (See Table 8.2). Note that due to low numbers of return and possibility of identification of returnees from this information, nationality breakdown is not provided.

²⁵⁰ Various interviews with social work teams, September 2014.

Table 8.2 Unaccompanied minors returned through IOM Ireland 2009-2013

	2009	2010	2011	2012	2013
Number of unaccompanied minors returned through IOM	3	4	1	0	0

Source: IOM Ireland, September 2014.

In practice, unaccompanied minors are either referred from a social work team, referred from another organisation or self-referral to IOM Ireland. In the case of self-referral or referral from another organisation, IOM Ireland links the unaccompanied minors in with the relevant social work team in the country of return. Return is considered as part of a range of options by the child in conjunction with his or her social team. If a referral is made to IOM, a family assessment must be undertaken in the country of origin. Following the review of the findings of this assessment, the child, in conjunction with their social work team, takes a decision on return. The best interests of the child are paramount throughout.²⁵¹ Upon receipt of a referred case from a minor's social worker, in most instances contact with family members in the country of origin is begun by the relevant IOM office.

The assessment is tailor-made to each child, with issues specific to the child addressed. Local government agencies with a remit for social care are consulted if possible. Resulting information received from the IOM office in the country of origin is then passed on to the IOM Ireland office, and, in turn, to the referring TUSLA social worker. The assessment is used to inform the best interests of the child and assist in the decision as to whether or not return is the best option (Anti-Human Trafficking Unit, Department of Justice and Equality, 2012). In many cases, more than one family assessment in the country of origin is conducted.

Transit and arrival assistance is provided. Funding is also provided for a returnee escort, and during travel at least one social worker will accompany the minor. In most cases the accompanying social worker will be known to the minor. Upon return the accompanying social worker may travel to the family's home to oversee the child's reunification with their family, and further follow-up visits may be arranged for the days after arrival. Upon return to Ireland the social worker can then provide a detailed post-monitoring request to IOM Ireland.²⁵²

8.3.2 Reintegration and Monitoring Post-Return

Reintegration assistance is largely provided to unaccompanied minors in Ireland under the IOM Ireland Voluntary Assisted Return and Reintegration Programme (VARRP), which contains a number of vulnerable categories each with their own

²⁵¹ Correspondence with IOM Ireland, September 2014.

²⁵² *Ibid.*

specific procedures.²⁵³ Incidences of direct social work team arrangements for the return and liaison of unaccompanied minors to their country of origin are also in evidence, both within the EU and in third countries. In these cases, direct family contact and/or assessments in the country of origin take place, as does liaison with the relevant embassy and immigration officials. It has been noted that this direct contact and organisation results in pressure on social work services back in Ireland.²⁵⁴

Reintegration needs post-return are often first addressed in the initial assessments undertaken in the country of origin (Joyce and Quinn, 2009). The local IOM office in the country of return will be aware of any specific services/supports that might be available to the child on return and will endeavour to link the child and the child's family in with these services/supports (Anti-Human Trafficking Unit, Department of Justice and Equality, 2012). A return and reintegration plan is completed as far in advance as possible to examine what is available to the minor on return and is carried out with the cooperation of the IOM office in the country of return. It is also, at times, carried out with partner agencies working on the ground with IOM in countries of return.²⁵⁵ A non-cash grant of €600 is available for each unaccompanied minor returning via the IOM Ireland office; this is also available to aged-out minors and in cases when the minor's age is doubtful. The grant is administered post-return, for educational purposes for the child concerned or income generation for immediate family, through liaison with the IOM office or partner organisation office in the country of return.²⁵⁶ Reintegration assistance can be given either to a unaccompanied minor or their relatives if it is deemed to be the best option for assisting the minor's overall living conditions. Reintegration assistance can include school fees of a standard educational level²⁵⁷ or assistance in starting a small business.

In terms of monitoring post-return, it is client-driven and takes place in the context of an aftercare plan. If a minor or their family request ongoing contact, it may be provided; similarly, if a social worker has specific concerns, they may choose to provide follow up. This would have been outlined with the unaccompanied minor in their individualised leaving and aftercare plan.²⁵⁸ In the case of an assisted return via the IOM Ireland programme, monitoring occurs approximately six months after provision of the grant to allow for sufficient time to pass for the immediate and slightly longer term impact to be assessed.²⁵⁹ A comprehensive monitoring form, developed by IOM Ireland, is completed by family members of the minor who returned in conjunction with IOM staff in the

²⁵³ In limited cases, family tracing and/or social work assessments are also conducted via International Social Services (ISS). Correspondence with IOM Ireland, September 2014.

²⁵⁴ Interview with Social Work Team (Waterford, TUSLA) Social worker, September 2014

²⁵⁵ Correspondence with IOM Ireland, September 2014.

²⁵⁶ *Ibid.*

²⁵⁷ Of a non-fee paying nature, unless that is the only available education standard in the country of return.

²⁵⁸ Interview with SWTSCSA, October 2014.

²⁵⁹ Correspondence with IOM Ireland, September 2014.

country of return. Information is then returned to IOM Ireland and shared with the relevant social work team.²⁶⁰

Overall monitoring of the unaccompanied minor after return to their country of origin is conducted usually by either a local social work agency or IOM mission office in the country of return. Post-return overall monitoring of the minor may be in the form of weekly or monthly telephone conversations with the minor and their family over a specified period of time, with a possibility of home visits to the family etc. Monitoring is however, dependent on the capacity of the IOM local office and local care teams to carry out these activities. It has been noted that all cases are different, and that logistical issues, local resources etc. can all impact on the depth and frequency of feasible monitoring. IOM refers all information regarding the minor's return and reintegration back to the unaccompanied minor's social worker in Ireland at regular intervals: immediate arrangements (one to four weeks after return), a medium-term plan (five to eight weeks) and a long-term plan (6-12 months). No specific safeguards regarding resolutions of family disputes post-return are in place, although post-return monitoring does provide a potential for observation of reunified family relationships. IOM has stated that in the case of no local IOM office in the country of return, they endeavour to identify a local agency to assist in implementation of the return and reintegration plan.²⁶¹

²⁶⁰ Correspondence with IOM Ireland, September 2014.

²⁶¹ *Ibid.*

Section 9

Concluding Remarks

Significant improvements have been made to the model of care provided to unaccompanied minors in Ireland since the publication of the previous EMN Ireland report on this subject (Joyce and Quinn, 2009). Since 2010 there has been a transition from emergency hostel-based care, to a model of care-placements dispersed nationally, based on a principle of equity of treatment among children in care. Overall the declining numbers of unaccompanied minors presenting in recent years may also have impacted positively on service provision by easing pressure on resources. The decline in unaccompanied minors going missing from State care represents significant progress, although the issue remains a priority concern among those consulted as part of this research. Improvements have been made to the asylum procedure which is now widely viewed as being more child-friendly than in the past.

The practice of referring unaccompanied minors to the TUSLA social work team operational in the geographical area in which the child presents remains the same as in 2009. The majority of unaccompanied minors continue to present within the greater Dublin area, where an expert social work team has been operational since 2002. In addition, all national longer-term foster placements for unaccompanied minors are provided through a contract managed through the TUSLA Dublin Mid-Leinster Region. However there is no targeted national strategy or guidance issued to social work teams caring for non-EU unaccompanied minors who present outside Dublin, and there is limited national oversight of care provision to the group at a national level. Instead, there is an 'equity of care' guiding principle, which extends to the application of national policies by local social work teams to Irish minors and unaccompanied non-EEA minors alike. For example policies on the use of Section 5 of the *Child Care Act*, and on Leaving and Aftercare services (HSE, 2011, 2012).

The study identified a recent move to establish a stronger legal basis for having children in TUSLA care, especially for those in longer-term care placements. However Section 5 of the *Child Care Act 1991* is still used by social work teams consulted in Limerick and Cork to provide care to unaccompanied minors, albeit in the context of low numbers of referrals; the SWTSCSA continues to use Section 4. The application of the Act may have implications for the model of care provided, in particular regarding legal guardianship and aftercare. This variability in care provision to unaccompanied minors indicates a need for national strategy

and oversight. The particular vulnerabilities of the group may also mean that additional supports may be needed on, for example, follow up of family reunification. The potential for variation in the experience of aged-out unaccompanied minors in Ireland, depending on (i) whether or not an asylum application has been made, (ii) which section of the *Child Care Act 1991* has been applied, and (iii) what constitutes local aftercare policy and practice, may also warrant attention.

Joyce and Quinn (2009) noted the lack of national data and national level information-sharing on unaccompanied minors, issues which still persist to a large extent. The SWTSCSA is now available to advise and support social work teams, teachers, psychologists etc. who are working with unaccompanied minors throughout the country. The SWTSCSA also has the capacity to take referrals from other social work teams. However national-level statistics on unaccompanied minors remain unavailable and little is known at a national level about unaccompanied minors in the care of local social work teams outside Dublin. Key national-level data, for example on the proportion of unaccompanied minors who seek asylum or who enter the direct provision system, are unavailable. Progress on gathering national-level statistics on unaccompanied minors is in evidence in the form of monthly data returns from local social work teams to TUSLA. The continued absence of a national out-of-hours social work service also results in regional variation of care, including for unaccompanied minors.

Under existing legal provisions, an unaccompanied minor in Ireland is both a child and a migrant. There can be an inherent tension between immigration concerns and the principle of the best interest of the child taking precedence at all times. In an improvement to service provision since 2009, each unaccompanied minor in SWTSCSA care is now allocated a social worker. The SWTSCSA note that that a high level of individual support is provided by social workers to unaccompanied minors in Ireland. In practice TUSLA acts as the child's guardian and must instruct the relevant authorities as required, including making an asylum application on a minor's behalf, taking account of his or her wishes. It is not clear whether legal advice is systematically available and sought by social workers prior to submitting an application for protection on behalf of a child.

A consequence of having no dedicated legislative instrument for unaccompanied minors is the lack of an independent legal residence status. Unless an unaccompanied minor is a protection applicant, declared to have such a status, or has leave to remain in the State, he or she does not have an official legal status beyond that of a child in the care of the State. Social workers have reported practical difficulties for children who are not registered in the immigration or protection systems, for example in accessing a Personal Public Service Number (PPSN). The issue of a lack of legal immigration status becomes particularly critical for unaccompanied minors approaching the age of majority. The SWTSCSA noted that with regard to children, in practice (though not in law) *the Child Care Act*

supersedes the *Refugee Act*. However once the unaccompanied minor turns 18 years of age, and despite the fact that he or she may be care-leavers, the *Refugee Act* takes precedence.²⁶²

INIS indicated that if TUSLA had reason to bring an unaccompanied minor aged 16-18 years in its care to the attention of INIS because he/she is in need of a residence permit, then he/she would generally be given a Stamp 4 residence permission. However INIS stated that this is not common practice and no specific procedure exists in this regard. Residence on a Stamp 4 is eligible to accrue towards the minimum residence required for a naturalisation application. As under 16 year olds may not register, this option is not available to them.

Understanding of what constitutes a durable solution continues to evolve in Ireland. While no legislative prohibition to deportation of unaccompanied minors under 18 years exists, in practice no such deportations have taken place in recent years.

²⁶² Correspondence with SWTSCSA Social worker, October 2014.

Annex I

Table A1 Age Breakdown of Unaccompanied Minors on Applications for Asylum 2009-2014

	2009	2010	2011	2012	2013	2014*
0-13	<10	<10	<10	<10	<10	<10
14-15	14	<10	<10	<10	<10	<10
16-17	40	33	20	19	13	11
Total	56	37	26	23	20	17

Source: Reporting Analysis Unit.

* Up to end of August..

** Figures under 10 cannot be disclosed for data protection reasons.

Table A2 Gender Breakdown of Unaccompanied Minors on Applications for Asylum 2009-2014

	2009	2010	2011	2012	2013	2014*
Female	28	25	<10	<10	10	<10
Male	28	12	17	16	10	<10
Total	56	37	26	23	20	17

Source: Reporting Analysis Unit.

* Up to end of August..

** Figures under 10 cannot be disclosed for data protection reasons.

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