

ANNUAL REPORT ON MIGRATION AND ASYLUM 2020: IRELAND

ANNE SHERIDAN, EMILY CUNNIFFE AND EVIE McCULLOUGH



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The aim of the European Migration Network (EMN) is to provide up-to-date, objective, reliable and comparable information on migration and asylum at Member State and EU levels with a view to supporting policymaking and informing the general public. The Irish National Contact Point of the European Migration Network, EMN Ireland, sits within the Economic and Social Research Institute (ESRI).

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ABOUT THIS REPORT

This EMN study, compiled according to commonly agreed specifications, provides a coherent overview of migration, asylum trends and policy developments for 2020. The report consists of information gathered primarily for the EU-level synthesis report of the EMN, *Annual report on migration and asylum 2020*. All reports are available at: https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-publications/emn-annual-reports_en.

This report has been accepted for publication by the Institute, which does not itself take institutional policy positions. The report has been peer reviewed prior to publication. The authors are solely responsible for the content and the views expressed do not represent the position of the Economic and Social Research Institute, the Department of Justice, or the European Commission, Directorate-General Migration and Home Affairs.

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ABBREVIATIONS AND IRISH TERMS

AIAs	Administrative Immigration Arrangements
AMIF	Asylum, Migration and Integration Fund
API	Advanced Passenger Information
AWS	Atypical Working Scheme
BIP	Beneficiary of international protection
BMU	Border Management Unit
CAT	United Nations Committee Against Torture
CJEU	Court of Justice of the European Union
CRA	Children’s Rights Alliance
CRC	United Nations Committee on the Rights of the Child
CSG	Community Sponsorship Group
CSO	Central Statistics Office
CSOL	Critical Skills Occupations List
CTA	Common Travel Area
Dáil	Irish parliament, lower house
DBEI	Department of Business, Enterprise and Innovation
DCEDIY	Department of Children, Equality, Disability, Integration and Youth
DETE	Department of Enterprise, Trade and Employment
DFA	Department of Foreign Affairs
DJE	Department of Justice and Equality
DPP	Director of Public Prosecutions
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EGFSN	Expert Group on Future Skills Needs
EMN	European Migration Network
EMPACT	European Multidisciplinary Platform Against Criminal Threats
EROC	Emergency Reception and Orientation Centre
EU	European Union

Garda Síochána	Irish national police force
GNI	Gross national income
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
GRETA	Group of Experts Against Trafficking in Human Beings
HSE	Health Service Executive
HTEPII	Human Trafficking and Exploitation Project in Ireland
HTICU	Human Trafficking Investigation and Co-ordination Unit
ICCPR	International Covenant on Civil and Political Rights
ICEL	Ineligible Categories of Employment List
ICI	Immigrant Council of Ireland
IEM	International Education Mark
IHAP	IRPP Humanitarian Assistance Programme
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme
ILEP	Interim List of Eligible Programmes
ILO	International Labour Organization
INIS	Irish Naturalisation and Immigration Service
IOL	Ineligible Occupations List
IOM	International Organization for Migration
IPAS	International Protection Accommodation Services
IPAT	International Protection Appeals Tribunal
IPIU	Irish Passenger Information Unit
IPO	International Protection Office
IPPS	International Protection Procurement Services
IRC	Irish Refugee Council
IRPP	Irish Refugee Protection Programme
ISD	Immigration Service Delivery
IVARRP	Irregular Voluntary Assisted Return and Reintegration Programme
JRS	Jesuit Refugee Service
LGBTI	Lesbian, gay, bisexual, transgender, intersex
LMNT	Labour Market Needs Test
LOIPR	List of Issues Prior to Reporting
MASI	Movement of Asylum Seekers in Ireland

MDU	Ministerial Decisions Unit
MRCI	Migrant Rights Centre Ireland
Nasc	Refugee and Migrant Rights Centre (Ireland)
NCP	National Contact Point
NGO	Non-governmental organisation
NREMs	National rapporteurs or equivalent mechanisms
NRM	National Referral Mechanism
OCO	Ombudsman for Children Office
ODA	Official Development Assistance
Oireachtas	Irish parliament, both houses
OPMI	Office for the Promotion of Migrant Integration
PPE	Personal protective equipment
PPSN	Personal Public Service Number
PUP	Pandemic Unemployment Payment
QQI	Quality and Qualifications Ireland
RDC	Refugee Documentation Centre
RIA	Reception and Integration Agency
RSA	Road Safety Authority
SCSIP	Separated Children Seeking International Protection
Seanad	Irish parliament, upper house
STEP	Start-up Entrepreneur Programme
SUSI	Student Universal Support Ireland
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TCN	Third-country national
TD	Teachta Dála (member of the Dáil)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
THB	Trafficking in human beings
TIP	<i>Trafficking in persons</i> (report)
Tusla	Child and Family Agency
UAM	Unaccompanied minor
UN	United Nations
UNCAT	United Nations Convention Against Torture

UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
VARRP	Voluntary Assisted Return and Reintegration Programme
VR	Voluntary return
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

STATISTICAL OVERVIEW

The COVID-19 pandemic had a significant impact on the statistical picture in Ireland in 2020, with significant decreases in net migration, first-residence permits granted, visas granted for travel to Ireland and the number of international protection applications received.

According to the Central Statistics Office (CSO), Ireland's population in April 2021 was estimated at 5.01 million, which was the first time it had risen above 5 million since the 1851 census.

According to Eurostat, a total of 155,317 residence permits were valid in Ireland as of 31 December 2020. This was a decrease of 7.7% from the total of 168,297 valid residence permits at the end of 2019. However, the amount of first-residence permits halved in 2020, with a total of 30,382 first-residence permits granted, dropping from the 59,278 residence permits granted in 2019. As in previous years, 'study' was the top category for residence permits in Ireland, with 33,831 valid permits at the end of 2020, and 14,730 first permits granted during the year.

Population and migration estimates released by the CSO in August 2021 reveal the impact of the COVID-19 pandemic. Net inward migration to Ireland in the 12 months to April 2021 decreased by 61.2%, to 11,200 from 28,900 in the year ending April 2020.

Similarly, the number of newly arrived immigrants significantly decreased year on year, to 65,200 at end April 2021 from 85,400 for the year ending April 2020. It should be noted that returning Irish nationals are included in these figures. This decrease is in contrast with the relatively stable levels of immigration from 2018 to April 2020, following a peak of 90,400 in the year ending April 2018.

In contrast to previous years, returning Irish nationals were the largest immigrant group in the year ending April 2021, although the total of returning Irish nationals only slightly increased by 4.5% to 30,200. Non-Irish nationals from outside the European Union (EU) had been the largest immigrant group since the year ending April 2017. In the year ending April 2021, immigration by non-EU nationals (not including UK nationals) decreased by 53.6% (14,100) from the previous year. However, these non-EU nationals still remained the largest immigrant group, other

than Irish nationals. Emigration by non-EU nationals (not including UK nationals) also increased by 35% (4,000) in the year ending April 2021.

There was a small decrease of 4.4% in overall emigration from Ireland in the year ending April 2021 over the year ending April 2020. The largest group of emigrants was still that of Irish nationals, in line with previous years. However, emigration by Irish nationals decreased by 19.4% from 28,300 in the year ending April 2020 to 22,800 in the year ending April 2021.

Due to the impact of the COVID-19 pandemic on travel, a total of 43,872 entry visa applications were received in 2020, a decrease of 71.8% from the 155,761 applications received in 2019. A total of 37,592 applications were approved.

Refusals of entry at Ireland's borders also decreased in 2020. According to rounded Eurostat figures, some 2,790 people were refused entry to Ireland in 2020. This was a decrease of 62.5% over 2019, when there were some 7,455 refusals of entry.

A total of 16,419 employment permits were issued during 2020, a slight increase over the 2019 total of 16,383. As in 2019, India was the top nationality, with 5,565 permits granted to this group.

In 2020, the Department of Justice prioritised applications from frontline medical staff under the Atypical Working Scheme (AWS). This provides for short-term employment contracts in the State for contracts between 15 and 90 days, which are not facilitated by the employment permit process. Over 2,000 medical applications were received in 2020, of which 1,800 were for nurses, with over 95% approved.

The Immigrant Investor Programme (IIP) remained open in 2020. A total of 267 applications were received under the IIP during the year, with the total value of approved investment coming to €185,600,000.

According to rounded Eurostat data, a total of 795 persons were ordered to leave in 2020, reduced from 2,535 in 2019. A total of 141 deportation orders were effected in 2020, down from 298 in 2019. There was a total of 196 voluntary returns in relation to third-country nationals in 2020, 100 of whom were assisted by the International Organization for Migration (IOM). Some 200 people were granted permission to remain under section 49 of the International Protection Act 2015 in 2020. A further 135 persons were granted permission to remain status at review stage.

The International Protection Office (IPO) received a total of 1,566 applications for international protection over 2020. This was a decrease of 67.2% on 2019, when 4,781 applications for international protection were submitted. The COVID-19 pandemic and the related public health measures impacted the number of applications lodged. Nonetheless, throughout 2020, the IPO continued to accept new international protection applications. The applications for international protection lodged in Ireland in 2020 accounted for 0.33% of all applications for international protection in EU27 Member States.

The International Protection Appeals Tribunal (IPAT) was similarly affected by the COVID-19 pandemic, with a decrease in the number of appeals received – 1,262 in 2020 compared to 2,064 in 2019. Of the 2020 appeals, 1,255 related to international protection and the Dublin III Regulation, and 7 concerned the *European Communities (Reception Conditions) Regulations 2018*. In 2020, IPAT issued decisions in 1,087 cases, a decrease of 44% on the previous year.

Unaccompanied minors made 29 applications for international protection to the IPO in 2020. A total of 49 applications had been made in 2019.

In 2020, a total of 80 referrals were made to the social work team for Separated Children Seeking International Protection (SCSIP) of Tusla, the Child and Family Agency. This was down from the 184 referrals made in 2019.

In 2020, the main countries of origin among international protection applicants were: Nigeria, Somalia, Pakistan, South Africa and Zimbabwe. For appeals received by IPAT, the top five countries of origin were Georgia, Zimbabwe, Albania, South Africa and Pakistan.

Over 2020, the IPO processed a total of 2,276 cases to completion. This included first-instance recommendations in respect of international protection and decisions on permission to remain. The COVID-19 pandemic and the related public health measures, however, impacted on case processing. The total number of cases processed in 2020 was 67% of those processed in 2019. The median processing time for a first-instance decision by the IPO in all cases in 2020 was 17.6 months. For prioritised cases, the median processing time was 12.7 months.

According to Eurostat (rounded) data, the total number of positive first-instance decisions issued in 2020 was 945. Of these positive decisions, 620 granted refugee status, 120 granted subsidiary protection and 200 granted humanitarian status.

In IPAT, the number of appeals scheduled for hearing in 2020 was 1,418, a decrease on that of 2019, when 2,633 hearings were scheduled. A total of 1,087 decisions

were issued, a decrease from the 1,944 decisions issued in 2019. The overall processing times in IPAT reduced in 2020 due to the impact of the COVID-19 pandemic. The median processing time for 2020 for appeals was 21 weeks, and the average processing time was 28 weeks.

In 2020, the Department of Justice received applications in respect of 1,048 family members under the International Protection Act 2015. Some 196 persons were approved; however, some of these may relate to applications made in previous years.

Resettlement and relocation continued in 2020, albeit at a reduced level. A selection mission took place to Beirut in March 2020. Some 195 Syrian refugees were resettled to Ireland during 2020, including 6 people under the Community Sponsorship Programme. In October 2020, the Minister for Justice announced that Ireland would resettle up to 50 people in family groups who had been displaced from the Moria camp in Greece. This was in addition to the commitment to resettle up to 2,900 people under the UNHCR resettlement programme between 2020 and 2023. As reported previously, Ireland committed to relocating 36 unaccompanied minors from Greece in 2018. In June 2020, 8 children arrived in Ireland from Greece. In September 2020, it was announced that 4 children would be relocated to Ireland from the Moria camp.

A total of 38 suspected victims of human trafficking was identified by An Garda Síochána during 2020. This compares with some 42 suspected victims identified by An Garda Síochána during 2019. These figures include EU nationals.

A total of 10,181 citizenship applications were made during 2020. The greatest number of applications came from UK nationals, followed by India and Poland. A total of 5,481 citizenship certificates were issued during the year. The top three nationalities (in order) were the UK, Poland and Romania.

LEGISLATION

Several legislative provisions of relevance to migration were introduced during 2020, including in relation to transfer of responsibilities between government departments, employment permits, visas, trafficking and Brexit. The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* (Act No. 23 of 2020) was signed into law on 10 December 2020.¹ This Act includes certain provisions regarding employment permits (part 5 of the Act) and aspects of immigration and international protection legislation (parts 17 and 18 of the Act). It introduced the concept of a safe third country into the *International*

1 See <https://www.oireachtas.ie/en/bills/bill/2020/48/>.

Protection Act 2015 and also introduced a return order in respect of persons whose application for international protection is deemed inadmissible.

A list of legislation is included in Chapter 2 and legislation is explained under the relevant thematic headings throughout the report.

BREXIT

On 23 December 2020, the Minister for Justice announced a new visa and preclearance scheme applicable to non-EEA national family members of UK nationals who move to Ireland after 31 December 2020. UK nationals who were resident in Ireland on or before 31 December 2020 and their eligible non-EEA family members benefit from the Withdrawal Agreement between the EU and the UK.

UK nationals continue to have the right to live in Ireland after 31 December 2020, in line with Common Travel Area (CTA) rights, but there is no automatic entitlement to have a non-EEA national family member reside with them. The scheme sets out how UK nationals who are resident in Ireland may sponsor an application from their specified non-EEA family member to reside with them in the State.

CASE LAW

There was a number of significant cases related to migration and asylum during 2020, including in the areas of international protection, EU Treaty rights and return. Case summaries are included under thematic headings throughout this report.

INSTITUTIONAL CHANGES

A new Government was formed in June 2020. This resulted in a restructuring and renaming of government departments as well as, in some cases, transfer of functions and responsibilities. Responsibility for certain immigration and protection-related matters previously under the remit of the Department of Justice moved to the Department of Children, Equality, Disability, Integration and Youth.² This department gained responsibility for International Protection Accommodation Services (IPAS), International Protection Procurement Services (IPPS), certain functions under the *Reception Conditions Regulations 2018*, the co-ordination of government policy in relation to integration into Irish society of ethnic minorities, migrants and persons of migrant origin, and the management of the resettlement

2 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, www.irishstatutebook.ie.

in the State of refugees admitted as part of the United Nations Resettlement Programme.

NEW PROGRAMME FOR GOVERNMENT

A new programme for Government was published in 2020. *Programme for Government: Our shared future* includes immigration-related commitments in relation to undocumented migrants, the international protection process and reform of the 'Direct Provision' system, integration, anti-racism policy, migrant smuggling and trafficking.

ADMINISTRATIVE CHANGES DUE TO IMPACT OF COVID-19 PANDEMIC

Many administrative changes were introduced during 2020 in order to keep the migration system functioning and to respond to particular needs during the pandemic. Valid residence permissions were extended from March 2020.

Developments related to processing included the temporary suspension of visa processing with the exception of priority/emergency categories; contingency arrangements for the employment permits system; and the introduction of an online system for registration renewals for residents of the Dublin area from 20 July 2020.

Temporary changes were made to the work concession for non-EEA national students from April 2020. Students who held Stamp 2 permissions and who attended colleges which had physically closed due to the COVID-19 pandemic were allowed to work 40 hours a week as a short-term and temporary measure. This was conditional on the student completing their course online if this service was provided by their college. The normal criteria for the student work concession were reinstated in September 2020.

It was also decided to temporarily suspend the Irish Short Stay Visa Waiver Programme in July 2020 because of a divergence in approach between Ireland and the UK in travel measures to combat the COVID-19 pandemic.

Other developments were more specifically public health related, such as measures introduced in congregated settings or the closure of public offices. These developments are more fully discussed under the relevant thematic headings throughout this report.

INTERNATIONAL DEVELOPMENTS

Relevant United Nations (UN) committees engaged with Ireland throughout 2020 in relation to the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Convention Against Torture (UNCAT) and the International Covenant of Civil and Political Rights (ICCPR).

The UN Committee Against Torture (CAT) published its *List of issues prior to submission of the third periodic report of Ireland* on 8 June 2020, and the United Nations Committee on the Rights of the Child (CRC) published its *List of issues prior to reporting (LOIPR) to Ireland in advance of Ireland's submission of its fifth and sixth periodic reports under the Convention* in November 2020. The UN Human Rights Committee distributed Ireland's fifth periodic report under the International Covenant on Civil and Political Rights (ICCPR) (which had been submitted by Ireland in September 2019) in January 2020.

The CAT and the CRC asked the Irish Government to provide information in relation to specific migration-related issues arising in relation to Ireland's implementation of the respective conventions.

The CAT asked the Government for further information in relation to: the detention of asylum seekers; access to legal aid and interpretation for asylum seekers; establishment of a formal system of early detection of indicators of vulnerability within a vulnerability-screening mechanism for torture victims and other persons with special needs; and the establishment of a statelessness determination procedure. It also asked for data on the number of refoulements, extraditions and expulsions carried out during the reporting period.

The CRC asked for specific information in relation to asylum-seeking, refugee and migrant children, particularly in relation to expert recommendations to replace the Direct Provision accommodation system and to ensure standards in accommodation centres. This Committee also asked for information on measures to ensure adoption of a comprehensive legal framework to address the needs of migrant children, guaranteeing their rights to legal residency and independent legal advice, and on the availability of vulnerability assessments to unaccompanied children within 30 days of arrival. Both the Irish Human Rights and Equality Commission (IHREC) and various nongovernmental organisations (NGOs) had made prior submissions to both these Committees, recommending issues to be raised with the State. The Ombudsman for Children's Office (OCO) made a submission to the CRC.

The fifth periodic report under the ICCPR allowed Ireland to update the Human Rights Committee on a range of issues since Ireland's fourth periodic report and

the Concluding Observations of the Committee in 2014. Most key legislative and policy developments in the asylum and migration area in Ireland since 2014 were covered in the report, including the *McMahon Report to Government on improvements to the protection process, including direct provision and supports to asylum seekers*, the *Migrant integration strategy 2017–2020*, the *Second national action plan to combat human trafficking*, the single application procedure under the *International Protection Act 2015* and the *Reception Conditions Regulations 2018*. IHREC made a submission to the Committee recommending issues to raise with Ireland during the Committee’s examination of Ireland on the fifth periodic report.

The Immigrant Council of Ireland (ICI) responded to a call for submissions in May 2020 by the UN special rapporteur on contemporary forms of racism, in preparation for a report to the UN General Assembly on race, borders and digital technologies. The ICI submission provided an overview of recent developments in relation to border control in Ireland, and proposed that more information regarding leave to land decisions is required. The submission also highlighted concerns about the identity verification requirements for the Public Services Card (PSC), which it argued discriminates against disadvantaged groups, including migrants.

On 18 December 2020, Irish Aid and the International Organization for Migration (IOM) launched the Global Migration Media Academy. This initiative brings together IOM and NUI Galway, as well as a number of institutions in the pilot countries of Mexico, Morocco, the Philippines and Serbia, to provide migration-related training to media professionals and students. The purpose of the training is to tackle misinformation in the media.

ECONOMIC MIGRATION

The required period of publication of an advertisement for a Labour Market Needs Test (LMNT) with the EURES employment services network was increased from 14 to 28 days from 1 January 2020. Increases in remuneration thresholds in relation to Critical Skills Employment Permits also came into effect from 1 January 2020. Both these changes had been provided for by Regulations in 2019.

Changes to address an anomaly to allow all third-country national nurses holding both nursing diplomas and degrees to be included on the Critical Skills Occupations List (CSOL) also came into effect from 1 January 2020. Previously, third-country national nurses with a nursing diploma rather than a nursing degree were restricted to General Employment Permits. A similar change regarding

radiographers was introduced by the *Employment Permits (Amendment) Regulations 2020*.³

In the context of the COVID-19 pandemic, employment permit applications from medical personnel were prioritised from March 2020. The Atypical Working Scheme (AWS) also prioritised applications from frontline medical personnel during 2020.

During 2020, the Oireachtas Special Committee on COVID-19 Response investigated working conditions related to COVID-19 in meat processing factories. This was an issue that affected all workers, but the Migrant Rights Centre of Ireland (MRCI), in its appearance before the Committee, stated that 58% of workers in the meat sector are migrant workers, including both EU national and non-EU national workers, and that migrant workers are over-represented on the factory floor in the lowest paid positions. The MRCI presented concerns about working conditions, which were based on interviews with a sample of workers from factories across the country. Lack of sick pay schemes emerged as a particular concern. Sick pay schemes were addressed in the recommendations of the final *Report of the Special Committee on COVID-19 Response*, which was published in October 2020.

INTERNATIONAL PROTECTION

The *Report of the Advisory Group on the Provision of Supports, including Accommodation to Persons in the International Protection Process* was published in October 2020. The Advisory Group, which was chaired by Dr Catherine Day, was established in December 2019.

The report found that the Direct Provision system is not fit for purpose and recommended that it be ended. It also recommended the implementation of a new, permanent international protection system starting immediately with implementation to be completed by mid-2023.

The more specific recommendations made in the report concerned shortening decision-making processes, with a recommendation that all first-instance recommendations be made within six months of a person lodging an international protection application. A similar timeframe was recommended for the EU Dublin Regulation. The Advisory Group further recommended that appeal cases in IPAT also be completed in a six-month timeframe.

3 *Employment Permits (Amendment) Regulations 2020*. S.I. No. 156 of 2020, <https://www.irishstatutebook.ie/eli/2020/si/156/made/en/print>.

One of the key areas of recommendations concern accommodation. The Advisory Group recommended the introduction of a new system by 2023, comprising three stages. The first phase would entail the provision of accommodation in one or more state-owned reception centres, with a vulnerability assessment completed within 30 days. After a period of three months, the second phase would entail the provision of ‘own-door’ accommodation to applicants, under the mandate of local authorities. The third phase is post-decision, and the report recommends that where a person is granted a residency permission, they should continue to receive support measures for up to 18 months, and where the application is refused and all appeal avenues have been exhausted, that applicants be given up to six months to organise their departure, during which time they should continue to receive the same housing and social assistance payments.

Other recommendations made in the report concerned information and communication technology. These included that the basic requirements of the international protection process be delivered as part of a comprehensive IT system within the wider strategy of the Department of Justice. More specifically, it recommended a person-centric IT case management system, to not only improve the applicant’s experience, but also to improve efficiency and to provide analysis of trends and emerging problems.

RECEPTION CONDITIONS

The reception of international protection applicants in 2020 was shaped by the COVID-19 pandemic. At the end of 2020, 6,997 persons were residing in accommodation of the International Protection Accommodation Services (IPAS), including emergency accommodation.

IPAS, in conjunction with the Health Service Executive (HSE), introduced measures in response to COVID-19 from March 2020 onwards. These measures included, among other things: increased capacity to support physical and social distancing; enhanced cleaning regimes and the provision of personal protective equipment (PPE); a free confidential support line for residents operated by the Jesuit Refugee Service; and the cocooning of all medically vulnerable and over-65 residents. Additional accommodation was secured for social distancing purposes, including four self-isolation centres. In September 2020, the HSE ran a serial COVID-19 testing programme and covered all accommodation centres. Testing was voluntary and free. Where a person tested positive, they were moved off-site for self-isolation purposes. The HSE subsequently reported that serial testing on a national scale was not warranted but could still take place at specific accommodation centres if necessary.

At the beginning of the pandemic, a coalition of NGOs started a campaign called ‘Move the vulnerable out’, which called on IPAS to move residents who were at risk out of IPAS accommodation. Concerns continued to be raised by NGOs and international protection applicants throughout 2020 about the risk of COVID-19 in shared accommodation, particularly when reports emerged of COVID-19 outbreaks in such centres.

In October 2020, the Oireachtas Special Committee on COVID-19 Response published its final report. The report made a number of recommendations, including the phasing out of support for facilities where residents do not have adequate self-isolation facilities, and referred a number of matters to the Joint Committee on Children, Disability, Equality and Integration.

Other developments in 2020, as regards reception conditions, concerned access to the labour market for international protection applicants. The Pandemic Unemployment Payment (PUP) was a social welfare measure introduced during the COVID-19 pandemic for persons who had lost their employment due to the pandemic. Initially, international protection applicants who lost their employment were not eligible for PUP if they resided in IPAS accommodation. Following advocacy by civil society groups, in August 2020 it was announced that residents of IPAS accommodation who had lost their employment would be eligible for PUP.

In October, it was announced that the waiting period to access the labour market would be reduced from nine months to six months from the date of first application, and the validity of the renewable permission would be extended from six months to 12 months. It was also agreed to remove the restriction on working for public health employers, subject to the necessary qualifications, and to expand access to include applicants who had received first-instance decisions prior to the coming into force of the Reception Conditions Regulations. These changes were subject to necessary amending legislation.

Relatedly, at the start of 2020, a case was brought to the Workplace Relations Commission (WRC) concerning access to driving licences for international protection applicants. While the WRC found that the Road Safety Authority had indirectly discriminated against an applicant for refusing to grant her a driving licence for not meeting the residency requirements, this was overturned on appeal in the Dublin Circuit Court.

UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

A pilot vulnerability assessment programme was introduced for protection applicants in December 2020. This followed a commitment in October 2020 from the Minister for Children, Equality, Disability, Integration and Youth to introduce

the assessments. The purpose of the vulnerability assessments is to determine if an applicant is deemed to have special reception needs and, if so, what those needs are and what actions are required to address them.

In July 2020, the Ombudsman for Children's Office (OCO) published a report based on a consultation they conducted with children living in Direct Provision accommodation in 2019. This report summarised the findings of the consultation, including the concerns and positive experiences recounted by the children. Concerns included lack of privacy in the centres and difficulties in participating in after-school activities, due to financial and transport constraints. However, children also reported positive experiences of support from school friends and teachers, which helped them feel included.

The July *Direct division* report was followed up in December 2020 with *Life in lockdown*, which concerned the experiences of a small number of children living in Direct Provision accommodation during the COVID-19 lockdown. While the sample size was small and not considered representative, this research echoed issues of concern raised in the first one: social exclusion; physical isolation from participants' communities; lack of facilities; and lack of space and privacy, all of which were exacerbated by lockdown. The OCO concluded that experiences of boredom and isolation among participants were magnified by their Direct Provision setting.

INTEGRATION AND NON-DISCRIMINATION

The new programme for Government, *Programme for Government: Our shared future*, includes a commitment to developing and implementing a new migrant integration strategy.

The Migrant Integration Policy Index (MIPEX) is produced every five years by the Barcelona Centre for International Affairs and the Migration Policy Group. In MIPEX 2020, which examined the position in 2019, Ireland ranks joint ninth out of 52 countries surveyed in relation to integration policies. Ireland scored highly on indicators of health, political participation and anti-discrimination, due to measures such as the second *National intercultural health strategy 2018–2023*, the *Education (Admissions to School) Act 2018* and inclusive voting rights.

Funding of €2.2 million under the National Integration Fund was announced in December 2020, and the Communities Integration Fund, for community-based integration projects, continued for the fourth year. A total of 113 successful community projects received funding of a total of almost €500,000 under the Communities Integration Fund 2020.

Programme for Government: Our shared future also includes a commitment to publish a new national action plan against racism. An anti-racism committee was appointed and commenced its work to prepare a draft action plan for Government during 2020. The 16-member committee includes people from business, education, local government, academic and advocacy sectors. Its terms of reference were established and it was tasked with reviewing the current experience of racism in Ireland, looking at international best practice in combating racism and holding stakeholder dialogues.

In December 2020, the Minister for Justice launched the findings of a public consultation on hate speech and hate crime, *Legislating for hate speech and hate crime in Ireland*. A public consultation on hate speech had been conducted by the Department of Justice between October 2019 and January 2020, as part of its review of the existing law in the area – the *Prohibition of Incitement to Hatred Act 1989*. The Minister also announced that new legislation to combat incitement to hatred and hate crime in Ireland would be brought forward in 2021.

Detail on integration research published during the year by the ESRI is provided in Section 7.1.6.

TRAFFICKING

Ireland maintained Tier 2 Watch List status for the second year, according to the United States State Department *Trafficking in persons* (TIP) report, 21st edition, which covers developments during 2020.⁴ Ireland had maintained Tier 2 status for the two previous years and had held Tier 1 status between 2011 and 2016. The TIP report measures the efforts of states to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. According to the Tier 2 Watch List rating:

The Government of Ireland does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included designating an independent human trafficking national rapporteur and establishing a formal national anti-trafficking forum composed of interagency and civil society stakeholders. In coordination with an international organization, the government launched a national anti-trafficking public awareness campaign. The government also increased funding for victim assistance, antitrafficking public awareness campaigns, and training. However, the government did not demonstrate overall increasing efforts compared to the previous

4 The scope of the 21st edition of the TIP report is 1 April 2020 to 31 March 2021.

reporting period, even considering the impact of the COVID-19 pandemic on its antitrafficking capacity.

Responding to the report, the Immigrant Council of Ireland (ICI) noted that although the Department of Justice had placed an increased impetus on this issue, the Government had made minimal progress in taking forward recommendations made in previous TIP reports.

In a statement responding to the report, the Department of Justice noted its disappointment that Ireland was kept on the Tier 2 Watch List and that the 'US Department of State did not acknowledge as sufficient the progress that has been made to upgrade Ireland's ranking'. The department noted its continuing commitment to combating human trafficking and supporting victims.

The Irish Human Rights and Equality Commission (IHREC) was designated as Ireland's independent national rapporteur on Trafficking in Human Beings during 2020. The *European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020* making this designation were signed by the Minister for Justice on 5 October 2020.

A review of Part 4 of the *Criminal Law (Sexual Offences) Act 2017* (which deals with the purchase of sexual services) was commenced in July 2020, with the appointment of an independent expert to conduct the review, the publication of terms of reference and the launch of a public consultation process by the Department of Justice.

Part 4 of the *Criminal Law (Sexual Offences) Act 2017* makes it an offence to pay for sexual activity with a prostitute or a trafficked person. Part 4 of the Act was commenced in March 2017 and a provision was included in the Act to review the operation of Part 4 of the Act three years after its commencement. Section 27 of the Act provides that this review would include information on arrests and convictions for these offences since the commencement of the Act and an assessment of the impact of the operation of that section on the safety and wellbeing of persons who engage in sexual activity for payment.

Prior to the review in January 2020, a high-level working group, chaired by Dr Geoffrey Shannon and made up of organisations working on the implementation of the *Criminal Law (Sexual Offences) Act 2017* with an emphasis on Part IV of the 2017 Act, published an interim report to inform the review of the legislation. The recommendations of this report and details of submissions made by several interested organisations including Amnesty International, the Immigrant Council of Ireland (ICI) and the National Women's Council (NWC), are discussed in Chapter 8 of this report.

The Department of Justice and the IOM in Ireland, with the support of other state agencies and non-state organisations, launched a trafficking awareness campaign in October 2020. The ‘#Anyone can be exploited’ campaign had two aims – to raise public awareness of human trafficking and its signs and indicators, and to raise awareness among victims of victim supports.

The campaign ran a social media campaign from 9 to 18 October 2020, in the run-up to EU Anti-trafficking Day 2020 (18 October) and a poster campaign at ports and transport hubs commenced from 19 October 2020.

CHAPTER 1

Introduction

The *Annual report on migration and asylum 2020: Ireland* is the 17th in a series of annual reports on migration and asylum related developments in Ireland. The series, which began in January 2003, is intended to provide a coherent overview of migration and asylum trends and policy developments in Ireland on an annual basis. Prior to 2016, the reports in this series were called annual policy reports and were focused on migration and asylum related policy developments in Ireland. From 2016 onwards, the name of the report series changed to reflect an increased focus on practice developments and operations in the migration and asylum area rather than exclusively on policy.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the European Migration Network (EMN), the EMN National Contact Points (NCPs) in each Member State are tasked with providing an annual report detailing the migration and asylum situation in their Member State, including policy developments and statistical data. Norway, which participates as an observer to the EMN, also provides an annual report.⁵ NCPs gather information according to commonly agreed specifications (a common template) that is developed to facilitate comparability across countries. A comparative EU-level EMN synthesis report is compiled, which brings together the main findings from the common templates and places them within an EU perspective. In 2020, the EU-level report was shortened and streamlined with a focus on legal and policy, rather than operational, developments. NCPs also publish national-level reports.

In addition to the EU-level synthesis reports, previous comparable annual reports on migration and asylum are available for other countries participating in the EMN. The purpose of the national-level reports is to provide an insight into the most significant political and legislative (including EU) developments at state level, practical developments (such as projects and operational changes) as well as public debates on the topics of migration and asylum. All current and prior reports for Ireland are available at www.emn.ie.⁶

The *EMN annual report on migration and asylum 2020: Ireland* covers the period 1 January 2020 to 31 December 2020.

5 Georgia and Moldova, who joined as observers to the EMN in 2020, may contribute to the annual reporting process.

6 National reports from other EMN NCPs can be found at https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-publications/emn-annual-reports_en.

1.1 METHODOLOGY

For the EU-level *Annual report on migration and asylum 2020*, NCPs completed a common questionnaire, in which they were asked to report on key legislative, policy and, to a limited extent, practice-based measures from 2020, across 10 thematic chapters.⁷ Legislative changes covered stages of legislative change from draft proposals to legislation in force. Policy measures could include guidance on how to implement the legal framework in force or statements of high-level intent or strategy. Practice measures were not collected routinely in 2020, except for thematic areas where initiatives are more likely to be of a practical nature (such as information or awareness-raising campaigns). NCPs were also asked to indicate the objective (what was this development intended to achieve?) and driver (what was the reason for this development?) for each reported measure, and to highlight the most significant developments; such examples might include a major strategic development, a fundamental policy change, an initiative with a high impact on applicants, or a new political priority.

For the national reports, NCPs are asked to report developments across the same thematic chapters, but with some flexibility, so as to allow NCPs to tailor the output to the national audience, and to include more relevant information, including activities undertaken by civil society and public debates.

In this report for Ireland, a significant development is defined as an event involving one or more of the following:

- legislative change;
- major institutional development;
- major debate in parliament and between social partners;
- being addressed in a government statement;
- debate in media and civil society;
- debate in parliament;
- items of scale discussed outside a particular sector and, as such, considered newsworthy while not being within the Dáil remit;
- academic research.

Sources and types of information used generally fall into several categories:

- published and adopted national legislation;
- government press releases, statements and reports;

7 The ten thematic chapters are: Overview of key developments and drivers across asylum and migration in 2020; Legal migration; International protection; Minors and other vulnerable groups; Integration; Citizenship and statelessness; Borders, visa and Schengen; Irregular migration including migrant smuggling; Trafficking in human beings; Return and readmission; Migration and development cooperation.

- published government schemes;
- media reporting;
- other publications (e.g. European Commission publications, annual reports, publications, information leaflets and press releases from intergovernmental organisations (IGOs) and NGOs); and
- case law reporting.

Statistics, where available, were taken from published first-source material such as government/other annual reports, and statistics from the Central Statistics Office (CSO) and Eurostat. Where noted, and where it was not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Where possible, verified data have been used; where provisional data have been included, this has been highlighted.

To provide a comprehensive and reflective overview of national legislative and other debates, a sample of core partners were contacted with regard to input on a draft report:

- Department of Enterprise, Trade and Employment (DET+E);
- Department of Justice;
- Department of Children, Equality, Disability, Integration and Youth (DCEDIY);
- Irish Human Rights and Equality Commission (IHREC);
- Tusla, Child and Family Agency;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM) Ireland;
- International Protection Office (IPO);
- International Protection Appeals Tribunal (IPAT);
- Migrant Rights Centre Ireland (MRCI);
- Nasc, Refugee and Migrant Rights Centre; and
- United Nations High Commissioner for Refugees (UNHCR) Ireland.

All definitions of technical terms or concepts used in the study are as per the *EMN migration and asylum glossary 7.0*.⁸

1.2 STRUCTURE OF MIGRATION AND ASYLUM POLICY

This section sets out the institutional structure on 31 December 2020.

8 Available at https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-asylum-and-migration-glossary_en.

Three government departments are primarily involved in migration management in Ireland (see Figure 1.1). A fourth government department, the Department of Foreign Affairs (DFA), plays a limited role in migration management, with some responsibilities for issuance of visas overseas. Other government departments may have limited input into specific aspects of migration management.

Figures 1.1 and 1.2 set out the departmental and institutional arrangements respectively, as of 31 December 2020, and incorporate the structural changes that occurred following the change of Government in June 2020.

FIGURE 1.1 MAIN GOVERNMENT DEPARTMENTS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND MIGRATION 2020

<p>Department of Business, Enterprise, and Innovation (DBEI) (Department of Enterprise, Trade and Employment (DET+E) from November 2020) Minister for Business, Enterprise, and Innovation/Minister for Enterprise, Trade and Employment</p> <p>Heather Humphreys TD/ Leo Varadkar TD (from June 2020)</p> <p>DET+E's Employment Permits Section administers the employment permit system, which allows Ireland to fill labour market needs by recruiting non-EU nationals. The Department's Economic Migration Policy Unit reviews its migration policy and legislative framework.</p>	<p>Department of Justice and Equality (DJE) (Department of Justice from November 2020) Minister for Justice and Equality/ Minister for Justice</p> <p>Charles Flanagan TD/ Helen McEntee TD (from June 2020)</p> <p>The Minister for Justice has responsibility for immigration matters in the State including residence permissions, international protection, visas, border control and repatriation/removal.</p>
<p>Department of Foreign Affairs and Trade (DFAT) (Department of Foreign Affairs (DFA) from September 2020)</p> <p>Minister of Foreign Affairs and Trade/Minister of Foreign Affairs Simon Coveney TD</p> <p>Network of diplomatic and consular missions overseas. Limited role in issuance of visas overseas.</p> <p>Minister of State for Diaspora and International Development/Minister of State for Overseas Development Aid and Diaspora (From July 2020) Ciarán Cannon TD/ Colm Brophy TD (from July 2020)</p> <p>Network of diplomatic and consular missions overseas. Limited role in issuance of visas overseas under guidance from Department of Justice.</p>	<p>Department of Children and Youth Affairs (DCYA) (From October 2020 Department of Children, Equality, Integration, Disability and Youth (DCEDIY))</p> <p>Minister for Children and Youth Affairs/ Minister for Children, Disability, Equality and Integration Katherine Zappone TD/ Roderic O'Gorman TD (from June 2020)</p> <p>Prior to the new government formation in July 2020, DCYA had policy responsibility for children, including unaccompanied minors arriving in the State who are in the care of Tusla, the Child and Family Agency. From October 2020, DCEDIY gained additional new functions. The Minister for Children, Disability, Equality and Integration has responsibility for integration, resettlement and the provision of accommodation and other supports to applicants for international protection.</p>

FIGURE 1.2 INSTITUTIONS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND MIGRATION AS AT 31 DECEMBER 2020

<p>International Protection Appeals Tribunal</p> <p>The Tribunal is an independent quasi-judicial body which decides appeals of those persons whose application for International Protection status has not been recommended by the IPO. It also has jurisdiction in relation to Dublin appeals and reception conditions appeals.</p>	<p>Department of Justice (DoJ) Immigration Service Delivery (ISD)</p> <p>ISD is the functional area of the Department of Justice which deals with international protection, immigration (including visas) and citizenship matters. It also provides permissions for atypical working outside the Employment Permit system.</p>	<p>Department of Children, Equality, Disability, Integration and Youth</p> <p>International Protection Accommodation Services (IPAS)</p> <p>IPAS is responsible for the provision of accommodation and related services to IP applicants who require them.</p>
<p>Legal Aid Board</p> <p>The Legal Aid Board provides legal aid to international protection applicants and advice in other immigration cases.</p>	<p>International Protection Office (IPO)</p> <p>The IPO is an office within the ISD function of the Department of Justice that hears first instance (Refugee Convention) asylum and subsidiary protection claims and assesses permission to remain as part of single procedure.</p>	<p>Tusla</p> <p>Tusla, the Child and Family Agency, is responsible for administration of the care for unaccompanied third-country national minors in the State.</p>
<p>An Garda Síochána</p> <p>Garda National Immigration Bureau (GNIB)</p> <p>The GNIB is responsible for all immigration-related police operations.</p> <p>Human Trafficking Investigation and Coordination Unit (HTICU)</p> <p>HTICU is a unit of the Garda National Protective Services Bureau (GNPSB) that operates to combat human trafficking.</p>	<p>The Irish Passenger Information Unit (IPIU)</p> <p>The IPIU is a unit of the ISD function which processes Passenger Name Record (PNR) data from extra-EU flights transmitted by carriers to the IPIU, and Advance Passenger Information (API) data from inbound flights from outside the European Union.</p>	<p>Department of Enterprise, Trade and Employment (DET+E)</p> <p>Workplace Relations Commission (WRC)</p> <p>The WRC is an independent statutory body which regulates employment rights and undertakes inspections in relation to employment rights and adherence to employment permits legislation.</p>
		<p>Irish Human Rights and Equality Commission (IHREC)</p> <p>IHREC is the national human rights and equality institution. It is an independent public body that also acts as the designated national rapporteur on Human Trafficking since October 2020.</p>

1.3 STRUCTURE OF THE IMMIGRATION SYSTEM

1.3.1 Restructuring of the responsibilities of government departments related to the immigration system

The account below describes the situation as of 31 December 2020.

A new Government was formed in June 2020. The new formation resulted in a restructuring of government departments as well as, in some cases, transfer of functions and responsibilities. It should also be noted that parts of the immigration system had already undergone restructuring during 2019, as part of the transformation process within the Department of Justice and Equality, which is described in the 2019 report of this series.⁹

Following the formation of the new Government, the Department of Justice and Equality changed title to the Department of Justice,¹⁰ the Department of Business, Enterprise and Innovation to the Department of Enterprise, Trade and Employment (DET+E)¹¹ and the Department of Children and Youth Affairs to the Department of Children, Equality, Disability, Integration and Youth (DCEDI+Y).¹² In addition, responsibility for certain immigration and protection-related matters previously under the remit of the Department of Justice moved to the Department of Children, Equality, Disability, Integration and Youth.¹³

Responsibility for the following were transferred to the Department of Children and Youth Affairs from 14 October 2020: International Protection Accommodation Services (IPAS), International Protection Procurement Services (IPPS), certain functions under the *Reception Conditions Regulations 2018*; the co-ordination of government policy in relation to integration into Irish society of ethnic minorities, migrants and persons of migrant origin; and the management of the resettlement in the State of refugees admitted as part of the United Nations Resettlement

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- 9 The Irish Naturalisation and Immigration Service (INIS) was restructured as the Immigration Service Delivery (ISD) function of the Department of Justice and Equality. The Reception and Integration Agency (RIA) was restructured into two units – International Protection Accommodation Services (IPAS) and International Protection Procurement Services (IPPS) under the ISD function. The Office for the Promotion of Migrant Integration (OPMI) was positioned under the civil justice pillar of the Department of Justice and Equality. For further information, see: Sheridan, A. (2019). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie.
 - 10 Justice and Equality (Alteration of Name of Department and Title of Minister) Order 2020, S.I. No. 452 of 2020, Dublin: Irish Statute Book, www.irishstatutebook.ie.
 - 11 Business, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2020, S.I. No. 519 of 2020, www.irishstatutebook.ie.
 - 12 Children and Youth Affairs (Alteration of Name of Department and Title of Minister) Order 2020, S.I. No. 437 of 2020, www.irishstatutebook.ie.
 - 13 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, www.irishstatutebook.ie.

Programme.¹⁴ The Department of Justice retained responsibility for the Irish Refugee Protection Programme Humanitarian Admission Programme (IHAP).

1.3.2 DEPARTMENT OF JUSTICE

The Department of Justice is responsible for immigration management. The Minister for Justice has ultimate decision-making powers in relation to immigration and asylum.

Immigration Service Delivery

The Immigration Service Delivery (ISD) function of the Department of Justice (formerly the Irish Naturalisation and Immigration Service, INIS) is responsible for administering the statutory and administrative functions of the Minister for Justice in relation to international protection, immigration (including visas), repatriation and citizenship matters. The registration function and issuing of Irish residence permits for non-EEA nationals who are resident in Dublin has been carried out by ISD at the Dublin Registration Office since 2016.

Since 31 December 2016, ISD has been responsible for investigating applications by beneficiaries of international protection to allow family members to enter and reside in the State and for providing a report to the Minister on such applications, under sections 56 and 57 of the *International Protection Act 2015*. ISD also provides permissions for atypical working that falls outside of the employment permit system.

Since 2015, the Border Management Unit of ISD of the Department of Justice has implemented a civilianisation project to take over frontline border control functions at Dublin Airport. Established in May 2018, the Irish Passenger Information Unit (IPIU) is a unit of the Department of Justice that collects and processes ‘passenger name record’ (PNR) data for the purpose of the prevention, detection, investigation and prosecution of terrorism and serious crime. It also collects and processes advance passenger information (API) data from inbound flights from outside the EU for immigration purposes.

Under the auspices of An Garda Síochána and, in turn, the Department of Justice, the Garda National Immigration Bureau (GNIB) is responsible for all immigration-related Garda operations in the State. GNIB carries out policing functions of immigration such as deportations, detentions at border control posts and investigations of immigration issues. It also provides border management functions at all ports of entry other than Dublin Airport and immigration registration of non-EEA nationals, who are required to register for residence

14 Ibid.

purposes, for all areas outside Dublin. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports, and at a border control unit attached to Dundalk Garda Station.

International protection

The International Protection Office (IPO) is an administrative unit within the ISD function of the Department of Justice that is responsible for processing applications for international protection under the International Protection Act 2015. It also considers, as part of a single procedure, whether applicants should be given permission to remain. International protection officers are independent in the performance of their international protection functions. International protection officers make recommendations in relation to international protection applications, but it is the function of the Minister for Justice to make the decision. The Minister for Justice also makes decisions in relation to permission to remain (see also Section 1.4.1).

The IPO also administers the Dublin III Regulation in the State, which is given further effect in Ireland via the *European Union (Dublin System) Regulations 2018*.¹⁵

The statutorily independent International Protection Appeals Tribunal (IPAT) (see subsection in Section 1.3.2) is a quasi-judicial body providing an effective remedy for appellants seeking to challenge international protection decisions, Dublin transfer decisions, and certain decisions under the European Communities (Reception Conditions) Regulations 2018.

Trafficking

The Department of Justice has responsibility for anti-human trafficking policy and legislation. Since October 2020, the Irish Human Rights and Equality Commission (IHREC) is the designated national rapporteur on trafficking of human beings.¹⁶ There are three dedicated units in the State dealing with this issue: the Human Trafficking Investigation and Co-ordination Unit (HTICU) in the Garda National Protective Services Bureau (GNPSB), the Anti-Human Trafficking Team (ATT) in the HSE and a specialised human trafficking legal team in the Legal Aid Board. In Ireland, it is the responsibility of An Garda Síochána to identify a victim

15 *European Union (Dublin System) Regulations 2018*, S.I. No. 62 of 2018, www.irishstatutebook.ie.

16 *European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020*, S.I. 432 of 2020, www.irishstatutebook.ie.

of human trafficking and refer them to the National Referral Mechanism (NRM), through which victims of trafficking can access supports.¹⁷

International Protection Appeals Tribunal

The International Protection Appeals Tribunal (IPAT) is a statutorily independent quasi-judicial body that exercises the performance of its functions under the *International Protection Act 2015*.¹⁸ Established in December 2016 in accordance with section 61 of the *International Protection Act 2015*, IPAT hears and determines appeals in relation to recommendations made by the IPO on applications for protection status in the State, and in relation to appeals of transfer decisions made by the IPO under the Dublin III Regulation. Since 30 June 2018, IPAT also determines appeals in relation to the *European Communities (Reception Conditions) Regulations 2018*. In that regard, the Tribunal fulfils the functions of a ‘court or tribunal’ under Article 267 TFEU.

Legal Aid Board

The Refugee Documentation Centre (RDC)¹⁹ is an independent library and research service with the Legal Aid Board²⁰ that provides a specialist query and research service in support of the work of the Legal Aid Board and the Department of Justice. The specialised Services for Asylum Seekers office within the the Legal Aid Board provides ‘confidential and independent legal services’ to persons applying for asylum in Ireland. Legal aid and advice are also provided in ‘appropriate cases’ on immigration and deportation matters.²¹ Additionally, the the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of An Garda Síochána as ‘potential victims’ of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

1.3.3 Department of Children, Equality, Disability, Integration and Youth

Following the transfer of functions in October 2020, the Department of Children, Disability, Equality, Integration and Youth (DCEDIY) has responsibility for the provision of accommodation and other supports to applicants for international protection, as well as for migrant integration and resettlement.²² The DCEDIY also has policy responsibility for children, including unaccompanied minors arriving in the State who are in the care of Tusla, the Child and Family Agency.

17 See Cuniffe E. and O. Ayodele (April 2022) *Detection, identification, and protection of third-country national victims of human trafficking in Ireland*, www.emn.ie and www.esri.ie.

18 Section 61(3)(b) of the *International Protection Act 2015*.

19 See www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.

20 See www.legalaidboard.ie.

21 Ibid.

22 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, www.irishstatutebook.ie.

In December 2019, the Reception and Integration Agency (RIA), which was responsible for arranging accommodation and working with statutory and non-statutory agencies to co-ordinate the delivery of other services for applicants for international protection, was divided into two units: International Protection Accommodation Services (IPAS) and International Protection Procurement Services (IPPS). IPAS is responsible for the overall administration of state-provided accommodation and ancillary services for applicants for international protection. IPPS has overall responsibility for procurement finance and contract management for accommodation for international protection applicants. Since 30 June 2018, the statutory basis for this work is provided by the *European Communities (Reception Conditions) Regulations 2018*,²³ which transpose the EU Reception Conditions Directive 2013/33/EU into Irish law. The *Reception Conditions Regulations 2018* also include functions for the Department of Social Protection in relation to the daily expenses allowance for applicants. In addition to this, IPAS provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

The DCEDIY has responsibility for leading and co-ordinating integration and equality policy across government departments, agencies and services. This involves the promotion of integration of immigrants into society, as well as the formulation of policy related to anti-racism.

Following the transition of functions in October 2020, responsibility for the Irish Refugee Protection Programme (IRPP), approved by Government in 2015, was transferred to the DCEDIY. In 2019, the Government launched Phase II of the IRPP, stating its intention for Ireland to welcome up to 2,900 refugees between 2020 and 2023 through a combination of resettlement and the new community sponsorship initiative.

Tusla, the Child and Family Agency, is responsible for administration of the care for unaccompanied third-country minors in the State. Since November 2020, it sits under the DCEDIY. Tusla is responsible for improving the wellbeing and outcomes of children, providing child protection, early intervention and family support services, and putting in place suitable arrangements for those arriving to the State under relevant IRPP programmes and other immigration schemes.

1.3.4 Department of Enterprise, Trade and Employment

The Department of Enterprise, Trade and Employment (DETE) administers the State's employment permit schemes. Specifically, the employment permit system is administered by the DETE's Employment Permits Section, which implements a

23 *European Union (Dublin System) Regulations 2018*, S.I. No. 62 of 2018, www.irishstatutebook.ie.

skills-oriented employment permits system to fill labour and skills gaps that cannot be filled through EEA supply. The Employment Permits Section processes applications for employment permits; issues guidelines, information, and procedures; and produces online statistics on applications and permits issued.

The Economic Migration Policy Unit is a unit within the DETE that works to support and review the operation of an employment permits system that maximises the benefits of economic migration and minimises the risk of disrupting Ireland's labour market. The employment of non-EEA nationals in the State is governed by the *Employment Permits Acts 2006* (as amended), which facilitates economic migration through nine different types of employment permits for different employment scenarios.²⁴

Set up in the late 1990s, the Expert Group on Future Skills Needs (EGFSN) is an independent body that advises Government on future skills needs of enterprises and associated labour market issues. The EGFSN carries out research and analysis in relation to emerging skills requirements, engages with relevant bodies to produce action plans to address identified skills needs and disseminates findings. The DETE provides administrative support to the EGFSN.²⁵

The Workplace Relations Commission (WRC) is an independent statutory body under the aegis of the DETE. It regulates employment rights and undertakes inspections in relation to employment rights and adherence to employment permits legislation.

1.3.5 DEPARTMENT OF FURTHER AND HIGHER EDUCATION, RESEARCH, INNOVATION AND SCIENCE

On behalf of the Department of Further and Higher Education, Research, Innovation and Science and under the Irish University Association (IUA), EURAXESS Ireland manages the operation of hosting agreements under the Third Country Researchers Directive (Council Directive 2005/71/EC). This Directive allows researchers to carry out research projects with a recognised research organisation in Ireland using a permit that can last up to five years.²⁶

24 See <https://enterprise.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Employment-Permit-Policy/>.

25 Expert Group on Future Skills Needs (2021). *The Expert Group on Future Skills Needs: Statement of activity 2020*, www.skillsireland.ie.

26 See <https://www.gov.ie/en/publication/d3465-third-country-researchers-directive/#management-of-fast-track-work-permits-for-researchers>.

1.3.6 DEPARTMENT OF FOREIGN AFFAIRS

The Department of Foreign Affairs (DFA) has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice does not have a dedicated visa office within the country concerned.²⁷ The DFA has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice.

Irish Aid is the Government's programme for overseas development assistance and is managed by the Development Cooperation Division of the DFA. In 2019, the Government launched a new policy for international development, *A Better World*, which outlined a renewed focus on gender equality, climate action, good governance and combating poverty.²⁸

1.4 STRUCTURE OF THE LEGAL SYSTEM

The Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice. In accordance with the Constitution, justice is administered in public, in courts established by law, with judges appointed by the President on the advice of the Government. Independence is guaranteed in the exercise of their functions. The Irish court system is hierarchical in nature and there are five types of courts in Ireland, which hear different types and levels of cases. In ascending hierarchical order, these are:

- the District Court;
- the Circuit Court;
- the High Court;
- the Court of Appeal; and
- the Supreme Court.

The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review.²⁹ Judicial review is a way for the High Court to supervise the lower courts, tribunals and other administrative bodies to ensure that they make proper decisions in accordance with the law. Judicial review focuses on assessing the determination process through which a decision is reached to ensure

27 For further discussion, see E. Quinn (2009). *The organisation of asylum and migration policies in Ireland: 2009*, www.emn.ie and www.esri.ie.

28 See <https://www.irishaid.ie/media/irishaid/aboutus/abetterworldirelandspolicyforinternationaldevelopment/A-Better-World-Irelands-Policy-for-International-Development.pdf>.

29 There is a statutory appeal to the Circuit Court against decisions to revoke refugee status and subsidiary protection under section 52 of the International Protection Act 2015.

that the decision maker reaches their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.³⁰

1.4.1 EU ACQUIS

Ireland does not take part in measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, under the terms of Protocol 21 of the Lisbon Treaty, unless it decides to participate in the measure pursuant to a motion of the Houses of the Oireachtas.³¹ Under Declaration number 56 to the TFEU, Ireland has declared its

*firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security, and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.*³²

Ireland participated in some of the first generation of instruments under the Common European Asylum System, such as the Qualification Directive 2004/83/EC and Procedures Directive 2005/85/EC. Ireland remains bound by these Directives.

Ireland does not participate in the ‘recast’ Qualification Directive (2011/95/EU) or the Procedures Directive (2013/32/EU). While Ireland does not participate in the original Reception Conditions Directive (2003/9/EC), Ireland has opted into the recast Reception Conditions Directive (2013/33/EU) and the *European Communities (Reception Conditions) Regulations 2018* came into operation on 30 June 2018.^{33,34}

Ireland is a signatory to the ‘Dublin Convention’ and is subject to the ‘Dublin III Regulation’, which determines the EU Member State responsible for processing asylum applications made in the EU. Regulation 604/2013³⁵ (‘the Dublin III Regulation’) came into force on 29 June 2013. The European Union (Dublin System)

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- 30 See https://www.citizensinformation.ie/en/government_in_ireland/national_government/standards_and_accountability/judicial_review_public_decisions.html.
- 31 Protocol (no 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F21>.
- 32 Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (TFEU). Ireland also ‘affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety’.
- 33 *European Communities (Reception Conditions) Regulations 2018*, S.I. No. 230 of 2018, www.irishstatutebook.ie.
- 34 The European Commission in July 2016 launched proposals to replace the Asylum Qualifications and Procedures Directives with Regulations and to further recast the Reception Conditions Directive.
- 35 *Regulation (EU) No. 604/2013* (Dublin III Regulation) lays down 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. See EMN Asylum and Migration Glossary 7.0, https://ec.europa.eu/home-affairs/networks/european-migration-network-emn/emn-asylum-and-migration-glossary_en.

Regulations 2014³⁶ were adopted for the purpose of giving further effect to *Regulation EU 604/2013 – the Dublin III Regulation*. These regulations were amended by the *European Union (Dublin System) (Amendment) Regulations 2016* in 2016.³⁷ The *European Union (Dublin System) Regulations 2018* came into effect on 6 March 2018.³⁸ The Regulations give further effect to the Dublin III Regulation in Ireland and revoke the 2014 and 2016 Regulations.

Ireland does not participate in the legal migration instruments under Title V except for the Researcher's Directive 2005/71/EC.³⁹

Ireland is not part of the Schengen Area. In accordance with Council Decision 2002/192/EC,⁴⁰ Ireland requested to participate in certain aspects of the Schengen acquis, mostly related to police cooperation. Ireland participates in certain Schengen building measures in relation to irregular migration, including Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data,⁴¹ and Council Directive 2002/90/EC on facilitation of unauthorised entry.⁴²

1.4.2 IRISH IMMIGRATION AND ASYLUM LEGISLATION

This section sets out the legislative framework as applicable on 31 December 2020.

Following a sharp rise in immigration flows from the mid-1990s,⁴³ several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

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- 36 *European Union (Dublin System) Regulations 2014*, S.I. No. 525 of 2014, <http://www.irishstatutebook.ie/eli/2014/si/525/>.
 - 37 *European Union (Dublin System) (Amendment) Regulations 2016*, S.I. No. 140 of 2016, <http://www.irishstatutebook.ie/eli/2016/si/140/made/en/print>.
 - 38 *European Union (Dublin System) Regulations 2018*, S.I. No. 62 of 2018, <http://www.irishstatutebook.ie/eli/2018/si/62/made/en/print>.
 - 39 Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:289:0015:0022:EN:PDF>.
 - 40 Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis.
 - 41 Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. This Directive was transposed into Irish law via the *European Communities (Communication of Passenger Data) Regulations 2011*, S.I. No. 597 of 2011, <http://www.irishstatutebook.ie/eli/2011/si/597/made/en/print?q=passenger+data&years=2011>.
 - 42 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. The General Scheme of the *Criminal Justice (Smuggling of Persons) Bill 2020*, approved by Government on 27 July 2020, proposed to implement this Directive into Irish law.
 - 43 Prior to the mid-1990s, immigration and asylum legislation in Ireland was covered by such instruments as the Hope Hanlon procedure and the Aliens Act 1935 (and Orders made under that Act), together with the relevant EU free movement Regulations and Directives, including Regulation (EEC) No. 1612/68 and repealing Directives: 64/221/EEC on freedom of movement for workers within the Community; 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families; 72/194/EEC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; 73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services; 75/34/EEC concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity; 90/364/EEC on the right of residence; 90/365/EEC on the right of residence for

The *Illegal Immigrants (Trafficking) Act 2000*⁴⁴ and the *Immigration Acts 1999, 2003 and 2004*, as amended, provide the basis for domestic immigration law in Ireland, in addition to pre-existing legislation such as the *Aliens Act 1935* (and Orders made under that Act). The *Employment Permits Acts 2003–2014* and secondary legislation made under them set out the legal framework for the different classes of employment permits. The *Employment Permits Regulations 2017* set down the requirements and qualifying criteria, application process, fees and review process with regard to decisions taken, and other matters in respect of such classes.⁴⁵ The *International Protection Act 2015* (as amended) sets out the domestic legal framework regarding applications for international protection and replaces the *Refugee Act 1996* (as amended)⁴⁶ and the *European Communities (Subsidiary Protection) Regulations 2013* (as amended). The *Irish Nationality and Citizenship Act 1956*, as amended, is the statute law governing Irish citizenship.⁴⁷

Since the commencement of the *International Protection Act 2015* on 31 December 2016, under the single procedure, an applicant makes only one application, and will have all grounds for seeking international protection (and to be permitted to remain in the State for other reasons) examined and determined in one process. The single procedure replaced the former multi-layered and sequential protection application system.

Under section 47(1) of the *International Protection Act 2015*, the Minister is bound to accept a positive recommendation of refugee status of the international protection officer or a decision to set aside a negative recommendation to refuse refugee status in relation to an appeal heard by IPAT. However, under section 47(3), they retain a discretion not to grant refugee status on grounds of danger to the security of the State or to the community of the State where the individual concerned has been convicted of a particularly serious crime.⁴⁸ The Minister shall refuse a refugee declaration where an international protection officer has recommended that the applicant be refused refugee status but be granted subsidiary protection status, and has not appealed the decision not to grant refugee status. The Minister is also bound by a recommendation or decision on appeal in relation to subsidiary protection status, under section 47(4) of the Act. The Minister shall refuse both refugee status and subsidiary protection status where the recommendation is that the applicant be refused both statuses and the applicant has not appealed the recommendation or when IPAT upholds the

employees and self-employed persons who have ceased their occupational activity; and 93/96/EEC on the right of residence for students.

44 Certain aspects of the *Illegal Immigrants (Trafficking) Act 2000* have been amended by the Criminal Justice (Smuggling of Persons) Act 2021.

45 *Employment Permits Regulations 2017*, S.I. No. 95 of 2017, www.irishstatutebook.ie.

46 The Refugee Act 1996 has now been repealed.

47 The 1956 Act has been amended by the Irish Nationality and Citizenship Acts 1986, 1994, 2001 and 2004.

48 Section 47(3), *International Protection Act 2015*.

recommendation not to grant either status. The Minister also refuses both refugee and subsidiary protection status, if the IPO recommendation reflects a refusal of both subsidiary protection and refugee status in the first instance, in circumstances where appeals are withdrawn or deemed to be withdrawn.

Under section 49 of the *International Protection Act 2015*, the Minister is bound to consider whether or not to grant permission to remain to an unsuccessful applicant for international protection. Information given by the applicant in the original application for international protection, including at interview, and any additional information that the applicant is invited to provide, is taken into account.

1.5 TRAFFICKING LEGISLATION

The *Criminal Law (Human Trafficking) Act 2008* creates offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalises the selling or purchasing of human beings. The Act gave effect to the EU Council Framework Decision 2002/629/JHA on combating trafficking in human beings. The Act criminalises the trafficking of children into, through or out of the State, and amends the *Child Trafficking and Pornography Act 1998* to bring the offence of trafficking into line with other new trafficking offences. It also criminalises trafficking in adults.

The *Criminal Law (Human Trafficking) (Amendment) Act 2013* was introduced to give effect to certain criminal law provisions of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, which replaced Council Framework Decision 2002/629/JHA on combating trafficking in human beings.

The 2013 Act introduces a number of changes in substantive criminal law and criminal procedure in relation to trafficking offences. The Act replaces and expands the original definition of exploitation in the 2008 Act to cover trafficking for the purposes of forced begging. It incorporates the definition of begging set out in the *Criminal Justice (Public Order) Act 2011*. The 2013 Act focuses on the phenomenon of begging as a form of forced labour. For this purpose, it incorporates the definition of forced labour in the International Labour Organization Convention No. 29 on Forced Labour into the definition of exploitation. This provides that “‘forced labour’ means a work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself or herself voluntarily’, excluding work or service of certain types such as that of normal civic obligations. Other exploitative activities are also covered, such as trafficking for the purposes of criminal activities. The Irish legislation sets out the concept of criminal activities in broad terms as including ‘an activity that constitutes an offence and

that is engaged in for financial gain or that by implication is engaged in for financial gain’.

The *Criminal Law (Sexual Offences) Act 2017* makes it an offence for a person to pay to engage in sexual activity with a prostitute or a trafficked person, regardless of nationality. The person providing the sexual service is not subject to an offence. Part 4 (section 27) of the Act contains a specific reporting requirement on the implementation of the Act within three years, including in respect of the number of arrests and convictions and an assessment of the impact of the legislation on the safety and wellbeing of persons who engage in sexual activity for payment.

The *Criminal Law (Sexual Offences) (Amendment) Act 2019* amends the *Criminal Law (Sexual Offences) (Amendment) Act 2017* in relation to sentencing for subsequent offences and in relation to the schedule of offences pursuant to section 58 of the *Criminal Law (Sexual Offences) Act 2017*. Section 4 of this Act inserts a new section (58) into the *Criminal Law (Sexual Offences) Act 2017* in relation to sentencing for repeat sexual offenders.

The *European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020* designate the Irish Human Rights and Equality Commission (IHREC) as Ireland’s independent national rapporteur on the trafficking of human beings.⁴⁹ As national rapporteur, the Commission monitors Ireland’s performance against the State’s international obligations under the EU’s Anti-Trafficking Directive, as well as the Council of Europe’s Convention on Action against Trafficking 2005 and the Palermo Protocol to the UN Convention against Organised Crime 2000.⁵⁰

1.5.1 Sexual and gender-based violence

The *Criminal Law (Extraterritorial Jurisdiction) Act 2019*⁵¹ gives effect to certain aspects of the Istanbul Convention on preventing and combating violence against women and domestic violence and extends the criminal law of the State to certain conduct engaged in outside the State. Sections 1 and 3 provide for extraterritorial jurisdiction over certain ‘relevant offences’, including murder, manslaughter, rape and sexual assault offences under section 3, 4, 5, 9 or 10 of the *Non-Fatal Offences Against the Person Act 1997*, in accordance with Article 44 of the Istanbul Convention. Section 4 amends the *Criminal Justice (Mutual Assistance) Act 2008* to

49 *European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020*, S.I. No. 432 of 2020, www.irishstatutebook.ie.

50 Irish Human Rights and Equality Commission (2021). *Annual report 2020*, www.ihrec.ie.

51 Act No. 6 of 2019, www.irishstatutebook.ie.

provide for the application of the provisions of that Act to the Istanbul Convention. Following this legislation, Ireland ratified the Istanbul Convention on 8 March 2019.

1.6 FREE MOVEMENT

The *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*⁵² were the principal regulations to transpose EU Directive 2004/38/EC⁵³ on free movement of persons.⁵⁴ These were subsequently amended by the *European Communities (Free Movement) (Amendment) Regulations 2008*,⁵⁵ following the Metock judgment of the European Court of Justice (ECJ).⁵⁶ The *European Community (Free Movement of Persons) Regulations 2015*,⁵⁷ which came into operation on 1 February 2016, give further effect to EU Directive 2004/38/EC and revoke the 2006 Regulations, subject to transitional provisions.

The *European Union (Withdrawal Agreement) (Citizens Rights) Regulations 2020* entered operation at 11:00 pm on 31 December 2020. These Regulations give effect to the provisions on residence and residence documents in Part Two (Citizens' Rights) of the Withdrawal Agreement between the United Kingdom and the European Union. The Regulations make provision for the application, as appropriate, of the *European Communities (Free Movement of Persons) Regulations 2015* (S.I. No. 548 of 2015) to UK nationals and their family members to whom Part Two of the Withdrawal Agreement applies. They also make provision for the issue of residence documents and permanent residence documents to such persons.⁵⁸

52 *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*, S.I. No. 656 of 2006, www.irishstatutebook.ie.

53 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

54 These Regulations replaced the *European Communities (Free Movement of Persons) Regulations 2006*, S.I. No. 226 of 2006, consequent upon the enlargement of the European Union on 1 January 2007.

55 *European Communities (Free Movement) (Amendment) Regulations 2008*, S.I. No. 310 of 2008, www.irishstatutebook.ie.

56 Case C-127/08 Metock and Ors vs Minister for Justice, Equality and Law Reform. For case summary, see https://emn.ie/case_law/case-c-127-08-metock-and-ors-v-minister-for-justice-equality-and-law-reform/.

57 *European Communities (Free Movement of Persons) Regulations 2015*, S.I. No. 548 of 2015, www.irishstatutebook.ie.

58 *European Union (Withdrawal Agreement) (Citizens' Rights) Regulations 2020*, S.I. No. 728 of 2020, www.irishstatutebook.ie.

CHAPTER 2

Overarching developments: Political, international and statistical context

This chapter looks at developments of contextual significance for 2020 or which impact on more than one of the thematic chapters. These include political and institutional developments and engagements with relevant United Nations (UN) or other international bodies on migration-related topics. A brief overview is given of legislative developments, developed in later chapters. A broad statistical context is given through an overview of the Central Statistics Office (CSO) population and migration estimates.

2.1 POLITICAL DEVELOPMENTS

Charles Flanagan TD remained as Minister for Justice and Equality and Helen Humphreys TD remained as Minister for Business, Enterprise, and Innovation until June 2020. Ciarán Cannon TD was Minister of State for Diaspora and International Development until July 2020. Katherine Zappone TD was Minister for Children and Youth Affairs until June 2020.

Following a general election in February 2020, a new Government was formed in June 2020. Leo Varadkar TD became Minister for Enterprise, Trade and Employment and Helen McEntee TD became Minister for Justice. Roderic O’Gorman TD became Minister for Children, Disability, Equality, Integration and Youth, when additional functions were transferred to that department, from October 2020.

2.1.1 *Programme for Government: Our shared future*

The new *Programme for Government: Our shared future*, was published following the formation of the new Government in June 2020.⁵⁹ It includes immigration-related commitments in relation to undocumented migrants, the international protection process and reform of the Direct Provision system, integration, anti-racism policy, migrant smuggling and trafficking.

Further detail on specific commitments is given under relevant thematic headings throughout this report. In brief, the programme contains commitments to:

- create pathways for undocumented migrants;
- reform the reception system for international protection applicants;
- make certain improvements to the international protection process;

59 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie.

- adopt a new national action plan against racism;
- adopt a new integration strategy;
- develop a new anti-human trafficking strategy; and
- develop legislation in relation to migrant smuggling.

2.1.2 Brexit

As reported in 2018, the EU–UK joint progress report on progress during the first phase of the negotiations under Article 50 of the Treaty on European Union recognised the impact of Brexit on the Common Travel Area (CTA) between Ireland and the UK. It stated:

[T]he United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (Common Travel Area), while fully respecting the rights of natural persons conferred by Union law. The United Kingdom confirms and accepts that the Common Travel Area and associated rights and privileges can continue to operate without affecting Ireland's obligations under Union law, in particular with respect to free movement for EU citizens.⁶⁰

The *European Union (Withdrawal Agreement) (Citizens Rights) Regulations 2020*⁶¹ give effect to the provisions on residence and residence documents in Part Two (Citizens' Rights) of the Withdrawal Agreement between the United Kingdom and the European Union. The Regulations make provision for the application, as appropriate, of the *European Communities (Free Movement of Persons) Regulations 2015* to UK nationals and their family members to whom Part Two of the Withdrawal Agreement applies and make provision for the issue of residence documents and permanent residence documents to such persons. These Regulations came into operation at 11:00 pm on 31 December 2020.

Arrangements for non-EEA national family members or dependents of UK nationals, who held a valid Irish Residence Permit on 31 December 2020, were published by the Department of Justice on 19 November 2020. Non-EEA national family members or dependents of a UK national hold the same residence rights to live, work or study in Ireland, after 31 December 2020, if they resided here at the end of the transition period and continue to do so. They were required however to replace their valid Irish Residence Permit (IRP) card with a new Withdrawal Agreement Beneficiaries card (Stamp 4 permission) by 31 December 2021. The

60 Joint report from the negotiators of the European Union and the UK government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union, 8 December 2017, paragraph 54, <https://ec.europa.eu>.

61 S.I. No. 728 of 2020, www.irishstatutebook.ie.

card replacement programme is administered by the Immigration Service Delivery (ISD) of the Department of Justice for all applicants nationwide through an online renewal system.⁶²

The *Immigration Act 2004 (Visas) (Amendment) (No. 2) Order 2020*⁶³ amends the *Immigration Act 2004 (Visas) Order 2014* to add non-EEA national family members of UK nationals who also hold a residence document under the terms of the Withdrawal Agreement between the EU and the UK to the list of non-nationals who are not required to hold a valid Irish visa on landing in the State. This regulation entered into operation at 11:00 pm on 31 December 2020.

A new preclearance and visa scheme for non-EEA national family members of UK nationals who move to Ireland after 31 December 2020 was announced on 23 December 2020.⁶⁴ This scheme is described further in Chapter 6.

The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*⁶⁵ was signed into law on 10 December 2020.⁶⁶ This Act includes certain provisions regarding employment permits (part 5 of the Act) and aspects of immigration and international protection legislation (parts 17 and 18 of the Act), which are discussed further in the relevant thematic chapters of this report.

2.2 INSTITUTIONAL DEVELOPMENTS

A new Government was formed in June 2020. This resulted in a restructuring and renaming of government departments as well as, in some cases, transfer of functions and responsibilities. Responsibility for certain immigration and protection-related matters previously under the remit of the Department of Justice moved to the Department of Children, Equality, Disability, Integration and Youth.⁶⁷ This government department gained responsibility for international protection accommodation services; international protection procurement services; certain functions under the *Reception Conditions Regulations 2018*; the co-ordination of government policy in relation to integration in Irish society of ethnic minorities, migrants and persons of migrant origin; and the management of the resettlement

62 Department of Justice (2020). 'UK withdrawal from the EU – Information for UK nationals and their non-EEA family members living in Ireland', 19 November, www.irishimmigration.ie.

63 S.I. No. 729 of 2020, www.irishstatutebook.ie.

64 Department of Justice (2020). 'Brexit – Important notice for non-EEA family members of UK nationals seeking to move to Ireland after 31 December 2020', 23 December, www.irishimmigration.ie.

65 Act No. 23 of 2020, www.irishstatutebook.ie.

66 See <https://www.oireachtas.ie/en/bills/bill/2020/48/>.

67 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, www.irishstatutebook.ie.

in the State of refugees admitted as part of the United Nations Resettlement Programme (see Section 1.3.1).

2.3 LEGAL DEVELOPMENTS

2.3.1 Legislation

The following pieces of legislation relevant to migration, international protection and trafficking in human beings were enacted during 2020. Further detail on the various legal instruments is provided under the relevant thematic headings throughout the report.

Cross-cutting legislation

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Act No. 23 of 2020).

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Part 5) Commencement Order 2020 (S.I. No. 680 of 2020).

Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Parts 17, 18, 19 and 20) Commencement Order 2020 (S.I. No. 693 of 2020).

Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Act No. 13 of 2020).

Departmental name changes/Transfer of responsibilities

Justice and Equality (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 452 of 2020).

Children and Youth Affairs (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 437 of 2020).

Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (S.I. No. 436 of 2020).

Business, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 519 of 2020).

Withdrawal Agreement between the EU and the UK

European Union (Withdrawal Agreement) (Citizens Rights) Regulations 2020 (S.I. No. 728 of 2020).

Employment permits

Employment Permits (Amendment) Regulations 2020 (S.I. No. 156 of 2020).

Employment Permits (Amendment) (No. 2) Regulations 2020 (S.I. No. 510 of 2020).

International protection

International Protection Act 2015 (Safe Third Country) Order 2020 (S.I. No. 725 of 2020).

International Protection Appeals Tribunal (Designation) Order 2020 (S.I. No. 714 of 2020).

Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (International protection Appeals Tribunal) (Designation) Order 2020 (S.I. No. 715 of 2020).

Visas

Immigration Act 2004 (Visas) (Amendment) Order 2020 (S.I. No. 262 of 2020).

Immigration Act 2004 (Visas)(Amendment) (No. 2) Order 2020 (S.I. No. 729 of 2020).

Border control/Public health

Health Act 1947 (Section 31A – Temporary Requirements) (Passenger Locator Form) Regulations 2020 (S.I. No. 181 of 2020).

Health Act 1947 (Section 31A – Temporary Requirements) (Passenger Locator Form) (Amendment) (No. 6) Regulations 2020 (S.I. No. 314 of 2020).

Return

International Protection Act 2015 (Section 51B) (Places of Detention) Regulations 2020 (S.I. No. 727 of 2020).

International Protection Act 2015 (Return Order) Regulations 2020 (S.I. No. 726 of 2020).

Trafficking

European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020 (S.I. No. 432 of 2020).

2.3.2 Courts – Judicial review

During 2020, 355 judicial review applications were submitted to the High Court on the asylum-related list, a small decrease from the 368 applications received in 2019.⁶⁸ This list covers asylum-related cases and also judicial reviews of ministerial decisions in other immigration-related matters; for example, visas, naturalisation, EU treaty rights and family reunification. A total of 179 judicial reviews on this list were resolved by the High Court in 2020, with 244 cases settled out of court.⁶⁹

The Court of Appeal received 3 asylum list appeals during the year, with 59 cases pending at the beginning of 2020.⁷⁰ Some 29 cases were determined, 7 were withdrawn in court during the year and 4 were withdrawn out of court. The Court of Appeal also had 2 ‘Article 64’⁷¹ appeals pending before it at the beginning of the year.⁷²

As reported in previous years, initiatives had been made by the Courts Service to improve waiting times in the High Court asylum list.⁷³ Waiting times had been eliminated at the pre-leave application stage in 2018, which was still the case in 2020, and they increased at post-leave application stage from two months to four months during 2020.⁷⁴

COVID-19 affected the operational environment of the Courts during 2020, including the use of technology and remote hearings.⁷⁵

As reported for 2019, High Court Practice Direction 81, which applied only to cases on the asylum, immigration and citizenship list, entered into force from 1 January 2019. A discussion of the requirements introduced in this practice direction is

68 Courts Service of Ireland (2021). *Courts Service annual report 2020*, p. 52, www.courts.ie.

69 Ibid.

70 Ibid, p. 97.

71 These cases had been initiated before the Supreme Court prior to the establishment of the Court of Appeal on 28 October 2014 but had not yet been fully or partly heard prior to the Court of Appeal establishment date and were transferred to the Court of Appeal for determination. These cases are known as Article 64 cases.

72 Courts Service of Ireland (2021). *Courts Service annual report 2020*, p. 98, www.courts.ie.

73 Sheridan, A. (2019). *Annual report on migration and asylum 2018: Ireland*, pp. 66-67, www.emn.ie and www.esri.ie.

74 Courts Service of Ireland (2021). *Courts Service annual report 2020*, p. 115, www.courts.ie.

75 Ibid.

provided in the 2019 report of this series.⁷⁶ The practice direction and its amending explanatory note remained operational during 2020.⁷⁷

2.4 UNITED NATIONS AND OTHER INTERNATIONAL DEVELOPMENTS

2.4.1 United Nations human rights monitoring

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

On 8 June 2020, the United Nations (UN) Committee Against Torture (CAT) published its list of issues prior to submission of the third periodic report of Ireland.⁷⁸ In light of Article 3 of the Convention Against Torture,⁷⁹ the Committee asked for further information from the Irish Government regarding the following.

- a) Detention of asylum seekers; opening of immigrant detention centre at Dublin Airport; changes to reception facilities following implementation of the Reception Conditions Directive (2013/33/EU); and establishment of more facilities to ensure asylum seekers are not held in prisons and police stations with convicted and remand prisoners.
- b) Access to legal aid and interpretation for asylum seekers, including those refused leave to land, regarding international protection; number and countries of origin of persons refused leave to land, and the point to which they were returned; discretionary power of immigration officers to deny leave to enter under section 4 (3) of the Immigration Act 2004.
- c) Establishment of a formal system of early detection of indicators of vulnerability within a vulnerability-screening mechanism for torture victims and other persons with special needs in order to ensure that such persons are able to receive appropriate care and avoid retraumatisation during international protection procedures.
- d) Funding to ensure applicants for international protection have timely access to medico-legal documentation of torture; provision of training

76 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, pp. 16-17.

77 Correspondence with Immigrant Council of Ireland, April 2022.

78 United Nations Committee Against Torture (2020). 'List of issues prior to submission of the third periodic report of Ireland CAT/C/IRL/QPR/3', www.ohchr.org.

79 Article 3 of the UN Convention Against Torture provides: 1. No State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, www.ohchr.org.

for personnel working with asylum seekers with special needs; and access to specialised rehabilitation services countrywide for all refugees who have been tortured.

- e) Establishment of a statelessness determination procedure.
- f) The number of refoulements, extraditions and expulsions carried out during the reporting period, including those carried out on the basis of the acceptance of diplomatic assurances or the equivalent thereof, as well as any instances in which the state party has offered such diplomatic assurances or guarantees.

The Committee also asked about ‘current prospects’ for the ratification of the Optional Protocol to the Convention; and about steps taken in implementation of the Istanbul Convention,⁸⁰ in particular Articles 60 and 61.⁸¹

The Irish Human Rights and Equality Commission (IHREC)⁸² and the Immigrant Council of Ireland (ICI)⁸³ made advance submissions to the CAT, making recommendations for inclusions in the list of questions. The questions posed by the Committee to Ireland broadly reflect the concerns raised in the two submissions. In addition, both submissions highlighted issues specific to victims of human trafficking, including in relation to suitable accommodation and access to specialised services and assistance; revision of the administrative immigration arrangements (AIAs) and the identification process for all victims of trafficking irrespective of nationality and immigration status; and legal representation and assistance.⁸⁴

Fifth periodic report by Ireland to the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR)

The United Nations Human Rights Committee distributed Ireland’s fifth periodic report under the International Covenant on Civil and Political Rights (ICCPR) in January 2020. Ireland’s submission had been received by the Committee in September 2019.⁸⁵ The report updated the Committee on a range of issues since

80 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

81 Articles 60 and 61 concern gender-based asylum claims and non-refoulement claims, respectively.

82 Irish Human Rights and Equality Commission (January 2020) ‘Submission to the UN Committee against Torture on the list of issues for the third examination of Ireland’, www.ihrec.ie.

83 Immigrant Council of Ireland (23 March 2020) ‘Submission to the UN Committee against Torture on the list of Issues for the third examination of Ireland’, www.immigrantcouncil.ie.

84 See IHREC submission, pp. 38-39 and ICI submission, pp. 5-7.

85 Human Rights Committee (2020). *Fifth periodic report submitted by Ireland under article 40 of the Covenant*, due in 2019* Doc: CCPR/C/IRL/5, www.dfa.ie.

Ireland's fourth periodic report and the Concluding Observations of the Committee in 2014.⁸⁶

Updates in the fifth periodic report relevant to asylum and migration were reported under the right to freedom from slavery (Article 8 of the Covenant), rights of aliens (Article 13 of the Covenant), prohibition of incitement to hatred (Article 20 of the Covenant), and right to take part in public affairs (Article 25 of the Covenant).

Most key legislative and policy developments in the asylum and migration area in Ireland since 2014 were covered in the report. These include:

- Second National Action Plan to combat human trafficking;⁸⁷
- *Criminal Law (Sexual Offences) Act 2017*;⁸⁸
- Ratification of ILO Forced Labour Protocol in 2019;⁸⁹
- Atypical Working Scheme (seafarers' strand);⁹⁰
- The final report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (the 'McMahon report');⁹¹
- Single application procedure under the *International Protection Act 2015*;⁹²
- Update on legal framework regarding deportation under the *Immigration Act 1999* and *International Protection Act 2015*, including statistics on deportation orders and voluntary returns between 2014-2018;⁹³
- *European Communities (Reception Conditions) Regulations 2018*;⁹⁴
- National standards for accommodation centres (Direct Provision);⁹⁵ and
- *Migrant integration strategy 2017–2020* (regarding prohibition to hatred⁹⁶ and right to take part in public life).⁹⁷

Further detail on these developments is available in previous reports of this series since 2015.

86 For further information on the fourth periodic review and issues relevant to migration and asylum, see Joyce, C. and S. Whelan (2014). *Annual policy report on migration and asylum 2014: Ireland*, pp. 13-15, www.emn.ie and www.esri.ie.

87 Human Rights Committee (2020). *Fifth periodic report submitted by Ireland under article 40 of the Covenant, due in 2019** Doc: CCPR/C/IRL/5, paragraph 101, 31 January, www.dfa.ie.

88 Ibid, paragraph 102.

89 Ibid, paragraph 102.

90 Ibid, paragraphs 129-131.

91 Ibid, paragraphs 191-192.

92 Ibid, paragraphs 193-196.

93 Ibid, paragraphs 197-207.

94 Ibid, paragraph 210.

95 Ibid, paragraph 211.

96 Ibid, paragraphs 263-264.

97 Ibid, paragraph 392.

In August 2020, the Irish Human Rights and Equality Commission (IHREC) made an advance submission to the UN Human Rights Committee on the list of issues prior to Ireland's examination on the fifth periodic report by the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR).⁹⁸ The submission made a number of recommendations regarding questions the Committee could pose to Ireland in relation to rights of migrants and asylum seekers. These covered issues including in relation to:

- processing timeframes for international protection first-instance decisions and appeals;
- rejection rate at first instance for international protection applications;
- ensuring the best interests of the child principle is upheld in the international protection process;
- access to supports, including legal advice for protection applicants;
- the reception system including progress on reform, use of emergency accommodation and access to driving licences for protection applicants;
- vulnerability assessments;
- regulation and oversight of reception centres;
- detention and leave to land; and
- limitations in the statutory framework on family reunification under the *International Protection Act 2015*, including limitation of definition of family member to spouses, civil partners and minor children.⁹⁹

The submission also raised issues regarding pathways to citizenship and residency, highlighting in particular the impact on children. It recommended that the Human Rights Committee question Ireland regarding: reform of the legislative framework on citizenship; progress on regularisation pathways for undocumented migrants; and processing delays regarding naturalisation applications and renewal/variation of residence permissions.¹⁰⁰

The submission also raised issues in relation to hate speech and hate crime, including progress on relevant legislation.¹⁰¹

98 Irish Human Rights and Equality Commission (2020). 'Submission to the United Nations Human Rights Committee on the list of issues for the fifth periodic examination of Ireland', www.ihrec.ie.

99 Ibid, pp. 26-32 (section 7).

100 Ibid, pp. 33-34 (section 7).

101 Ibid, pp. 23-25 (section 5).

UN Convention on the Rights of the Child

In November 2020, the United Nations Committee on the Rights of the Child (CRC) published its list of issues prior to reporting (LOIPR) to Ireland in advance of Ireland's submission of its fifth and sixth periodic reports under the Convention.¹⁰²

The Committee asked for specific information in relation to asylum-seeking, refugee and migrant children covering measures to:

- a) provide access to education, healthcare services, nutritious and culturally appropriate food, recreational areas and social protection, including child allowances;
- b) implement recommendations of the Expert Group on Direct Provision,¹⁰³ including the recommendation to replace Direct Provision;
- c) establish an independent monitoring mechanism to enforce the national standards for accommodation centres, including through independent inspections;
- d) adopt a comprehensive legal framework to address the needs of migrant children, including unaccompanied children and children with an irregular migration status, guarantee their rights to legal residency and independent legal advice and address all violations of those rights;
- e) ensure that a vulnerability assessment is conducted for all unaccompanied children within 30 days of their arrival in the State and that applications for legal residency are promptly processed.¹⁰⁴

The Committee asked for information on the impact of the Migrant Integration Strategy (among other national strategies) to combat discrimination.¹⁰⁵ Information was also requested in relation to statelessness – both on any measures taken to ensure that all stateless children born in Ireland, irrespective of residency status, have access to citizenship and any measures taken to adopt a statelessness determination procedure.¹⁰⁶

The Irish Human Rights and Equality Commission (IHREC) made an advance submission to the Commission in July 2020, making recommendations on issues for the Committee to raise with the Irish State.¹⁰⁷ The IHREC submission specifically

102 United Nations Committee on the Rights of the Child (18 November 2020) 'List of issues prior to submission of the combined fifth and sixth reports of Ireland Doc: CRC/C/IRL/QPR/5-6'.

103 This refers to the Expert Group chaired by Catherine Day.

104 Ibid, paragraph 29.

105 Ibid, paragraph 10.

106 Ibid, paragraph 14.

107 Irish Human Rights and Equality Commission (2020). 'Submission to the UN Committee on the Rights of the Child on the list of issues prior to reporting for the fourth periodic examination of Ireland', www.ihrec.ie.

raised: reform of the reception model for international protection applicants;¹⁰⁸ supporting the submission of international protection applications for unaccompanied minors;¹⁰⁹ and reform of the legislative framework around citizenship and residency, in light of barriers faced by children.¹¹⁰

The Children's Rights Alliance (CRA) made a coordinated submission to the Committee on behalf of NGOs,¹¹¹ and a submission was also made by the Ombudsman for Children Office (OCO).¹¹² In these, similar concerns were raised regarding the reception system,¹¹³ pathways to residency for undocumented children,¹¹⁴ and the immigration status of (unaccompanied) migrant children in care.¹¹⁵ The OCO submission also asked the Committee to ask the State to provide information in relation to vulnerability assessments.¹¹⁶

UN special rapporteur on contemporary forms of racism – Report on race, borders and digital technologies

The ICI responded to the call for submissions,¹¹⁷ made in May 2020, by the UN special rapporteur on contemporary forms of racism, in preparation for a report to the UN General Assembly on race, borders and digital technologies. The ICI noted that rather than exhaustive, their submission focused on a number of particular issues. The submission provided an overview of recent developments in relation to border control in Ireland, including the civilianisation of border control at Dublin Airport, the introduction of e-Gates for certain nationalities and the establishment of the Irish Passenger Information Unit. It proposed that more information regarding leave to land decisions is required and referenced media reporting from 2019 regarding checks conducted at point of exit of aircraft.¹¹⁸ The submission also highlighted concerns about the identity verification requirements for the Public Services Card (PSC), which it argued discriminates against disadvantaged groups, including migrants.¹¹⁹ In this regard, the submission referred to the letter to Ireland

108 Ibid, pp. 42-43.

109 Ibid, pp. 43-44.

110 Ibid, pp. 11-12.

111 Children's Rights Alliance (2020). 'NGO input on the list of issues prior to reporting (LOIPR) on the occasion of the fifth State reporting procedure on the implementation of the UN Convention on the Rights of the Child in Ireland', www.childrensrights.ie.

112 Ombudsman for Children Office (2020). 'Submission to the UN Committee on the Rights of the Child on the List of issues prior to reporting for the fourth periodic examination of Ireland', www.oco.ie, and Ombudsman for Children Office (2020). 'Ombudsman For Children's Office makes submission to UN Committee on the Rights of the Child', press release, www.oco.ie.

113 CRA submission, paragraph 59; OCO submission, section 26, p. 25.

114 CRA submission, paragraph 55.

115 CRA submission, paragraph 33; OCO submission, section 27, p. 26.

116 OCO submission, section 27, p. 26.

117 Special rapporteur on contemporary forms of racism, xenophobia and related intolerance (2020). 'Race, borders and digital technologies: Call for input', www.ohchr.org.

118 See Sheridan A. (2020). Annual report on migration and asylum 2019: Ireland, pp. 85-88, www.emn.ie and www.esri.ie.

119 Immigrant Council of Ireland (2020). 'Submission to the UN special rapporteur on contemporary forms of racism: Thematic report on race, borders, and digital technologies', www.immigrantcouncil.ie and www.ohchr.org.

of April 2020 from the UN special rapporteur on extreme poverty and human rights.¹²⁰

2.4.2 Global Migration Media Academy

On 18 December 2020, International Migrants Day, Irish Aid and the International Organization for Migration (IOM) launched the Global Migration Media Academy.¹²¹ This initiative brings together IOM and NUI Galway, as well as a number of institutions in the pilot countries of Mexico, Morocco, the Philippines and Serbia, to provide migration-related training to media professionals and students. The purpose of the training is to tackle misinformation in the media. According to IOM, 'One of the main objectives of the Global Migration and Media Academy will be to equip students of journalism and media worldwide with the online tools, contextual knowledge and ethical standards they will need to report fully on migration in this fast-evolving information age'.¹²² Funding of €400,000 was provided by Irish Aid to IOM for this initiative in 2020.¹²³

120 United Nations Office of the High Commissioner for Human Rights (2020). 'Ireland's Public Services Card discriminates against the marginalised, warns UN rights expert', press release, www.ohchr.org.

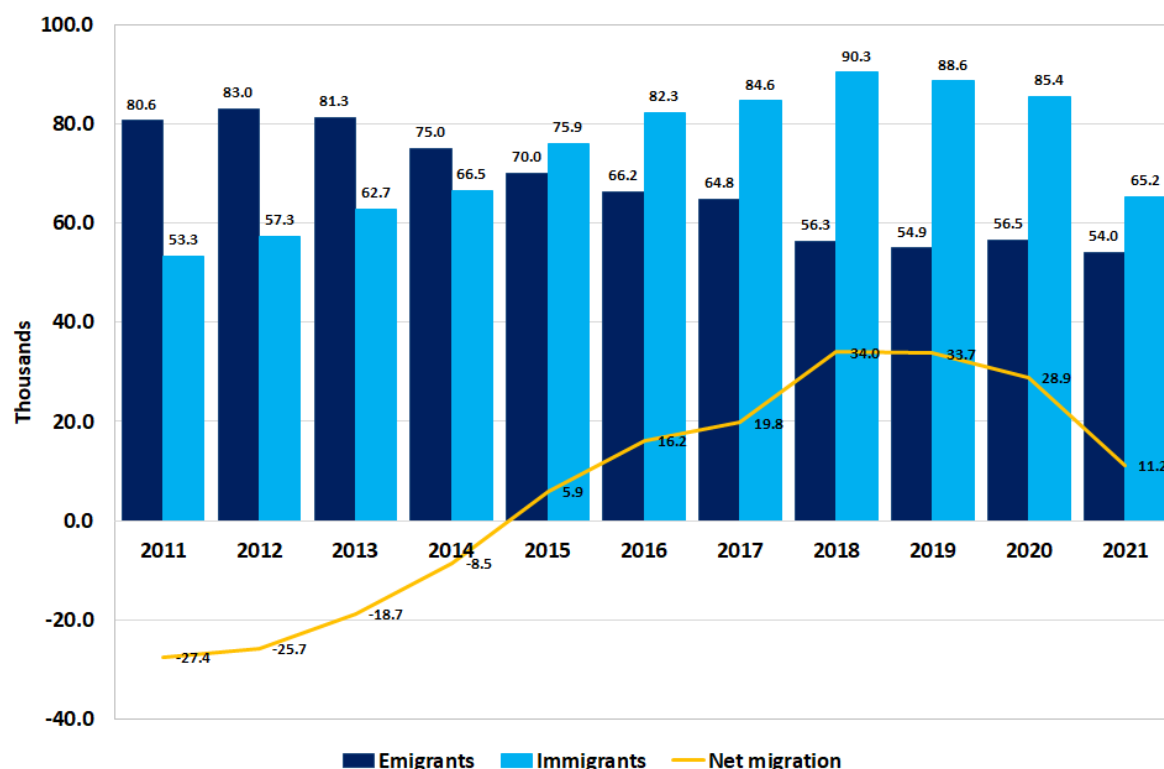
121 International Organization for Migration (2020). 'Irish Aid, IOM Launch Global Media Academy to tackle misinformation on migration', press release, <https://www.iom.int/news/irish-aid-iom-launch-global-media-academy-tackle-misinformation-migration>.

122 Ibid.

123 Government of Ireland (2021). *Official development assistance annual report 2020*, p. 41, www.irishaid.ie.

2.5 POPULATION AND MIGRATION ESTIMATES

FIGURE 2.1 GROSS AND NET MIGRATION, IRELAND: 2011–APRIL 2021

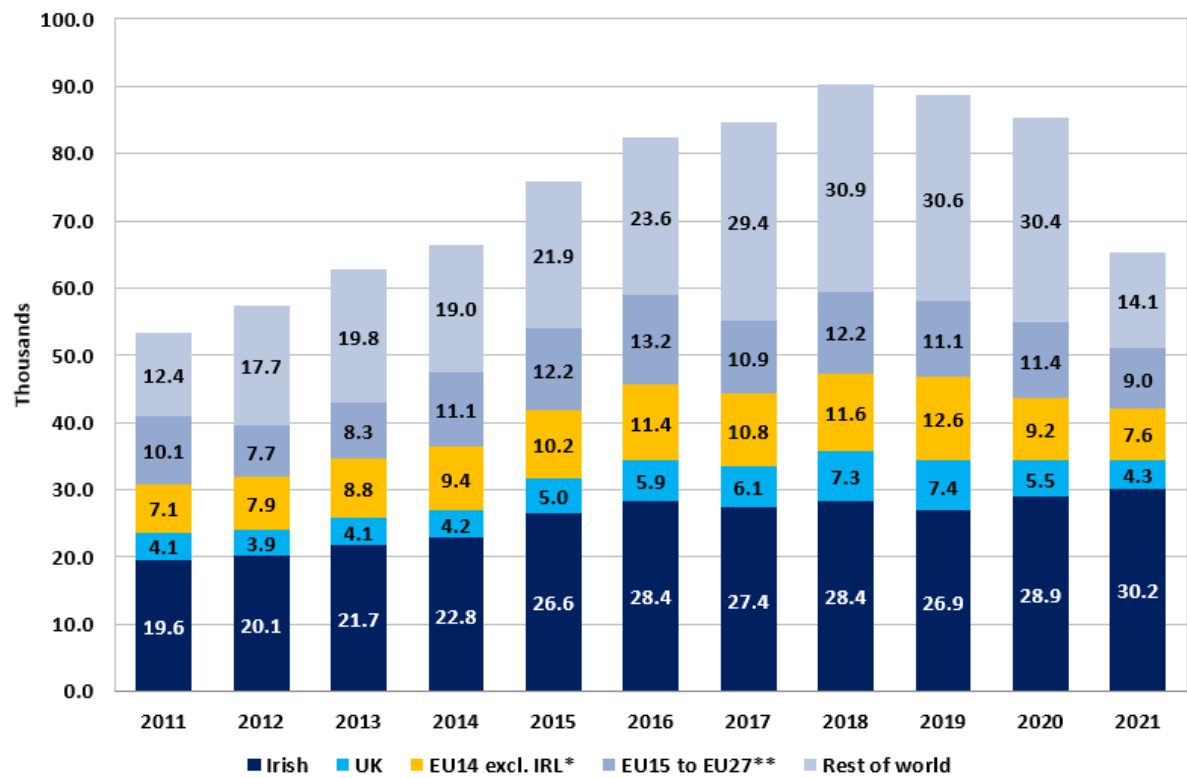


Source: 'Population and migration estimates', CSO.

Ireland's population in April 2021 was estimated at 5.01 million, which was the first time it had risen above five million since the 1851 census. The CSO commented that the results contained in the population and migration estimates release to April 2021 reflect some of the demographic and social impacts of COVID-19.¹²⁴ Total net inward migration decreased sharply, and there was also a significant decrease in immigration by non-EU nationals over the previous year.

Figure 2.1 shows gross and net migration for Ireland from 2011 to April 2021. Total net inward migration decreased by 61.2% to 11,200 from 28,900 in April 2020. Non-Irish/non-UK nationals from outside the EU continued to display strong migration flows, accounting for 14,100 (21.6%) of total immigrants (see Figure 2.2) and 15,400 (28.6%) of total emigrants (see Figure 2.3). This resulted in a total net inward migration figure for non-EU nationals of +1,300.

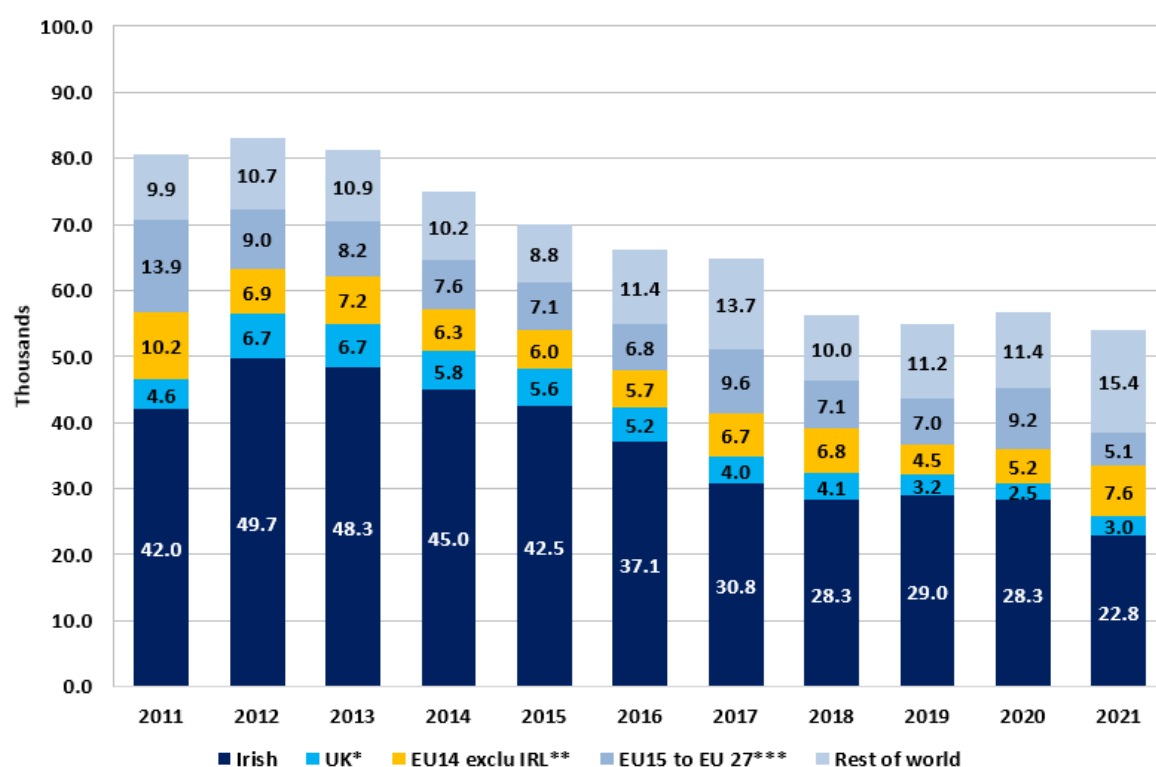
124 CSO (2021). 'Population and migration estimates', press release, www.cso.ie.

FIGURE 2.2 ESTIMATED IMMIGRATION TO IRELAND, 2011–APRIL 2021

Source: 'Population and migration estimates', CSO.

Notes: *In light of the UK leaving the EU with effect from 1 February 2020, EU labelling has been updated. **Rest of EU14 excluding Ireland: Countries before enlargement on 1 May 2004 (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain, Sweden, Portugal). ***EU15 to 27: 10 countries that joined the EU on 1 May 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia), along with Bulgaria and Romania, which joined on 1 January 2007, and Croatia, which joined on 1 July 2013.

As shown in Figure 2.2, the estimated total number of immigrants to Ireland decreased year-on-year to 65,200 in April 2021 from 85,400 in April 2020, a decrease of 23.7%. There was an increase of 4.5% in returning Irish nationals, from 28,900 in 2020 to 30,200 in the year ending April 2021. Immigration by UK nationals decreased by 21.8% in the year ending April 2021. Non-EU nationals, not including UK nationals, were the largest immigrant group, other than returning Irish nationals, in the year ending April 2021. However, there was a sharp year-on-year decrease of 53.6% in this group, from 30,400 in the year ending April 2020 to 14,100 in the year ending April 2021.

FIGURE 2.3 ESTIMATED EMIGRATION FROM IRELAND, 2011–APRIL 2021

Source: 'Population and migration estimates', CSO.

Notes: *In light of the UK leaving the EU with effect from 1 February 2020, EU labelling has been updated. **Rest of EU14 (excl. Ireland) countries before enlargement on 1 May 2004 (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain, Sweden and Portugal). ***EU15 to 27: 10 countries that joined the EU on 1 May 2004 (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), along with Bulgaria and Romania, which joined on 1 January 2007, and Croatia, which joined on 1 July 2013.

As Figure 2.3 shows, there was an overall decrease of 4.4% in the numbers emigrating from Ireland in the year ending April 2021, from 56,500 in 2020 to 54,000 at year end April 2021. While the largest group of emigrants were Irish nationals as in previous years, the number of Irish nationals emigrating decreased by 19.4% – from 28,300 in the year ending April 2020 to 22,800 in the year ending April 2021. Emigration by non-EU nationals increased, reaching 15,400 at year end April 2021.

2.6 IMPACT OF COVID-19

Figure 2.4 summarises key developments in relation to the impact of COVID-19 during 2020. These will be further developed in the thematic chapters of this report.

FIGURE 2.4 SUMMARY OF KEY DEVELOPMENTS IN RELATION TO IMPACT OF COVID-19 DURING 2020

- Valid residence permissions were automatically renewed from 20 March 2020. The initial notice was supplemented by five further notices. The sixth notice, issued in December 2020, extended current valid residence permissions due to expire from 21 January 2021 to 20 April 2021.
- An online registration renewal system available for use by Dublin-based non-EEA students was announced on 22 June 2020. From 20 July 2020, the online system was available to all Dublin-based non-EEA nationals seeking to renew their registration in the State.
- From 21 March 2020, new visa applications were not processed, with the exception of certain priority and emergency categories. Limited processing of long-stay visas resumed from 22 June 2020, with visa decisions for certain long-stay categories beginning to issue from 25 September 2020. Short-stay visas continued not to be processed and the Irish Short Stay Visa Waiver Programme was temporarily suspended from 10 July 2020.
- In order to ensure that the employment permits system could continue to operate, the Department of Business, Enterprise and Innovation published *COVID-19 employment permits system contingency arrangements* on 30 March 2020, which applied throughout 2020. One contingency measure was the issuing of employment permits in an electronic format on a temporary basis.
- Some temporary flexibility around existing rules was introduced to assist students, taking into account circumstances during the COVID-19 pandemic. In April 2020, a temporary change was introduced to standard criteria for the student work concession to allow students to work for 40 hours a week if their college was physically closed.
- The Immigration Service Delivery Registration Office at Burgh Quay closed for four months from 20 March 2020. In response to rising or falling COVID-19 cases, the Registration Office closed and re-opened on a number of different occasions throughout 2020.
- The International Protection Accommodation Service (IPAS) in conjunction with the Health Service Executive (HSE) introduced several measures in response to COVID-19 from March/April 2020, which continued throughout the year.
- In October 2020, the Minister for Justice requested officials to cease the practice of issuing letters notifying refusal of leave to remain or letters enclosing deportation orders during COVID-19 Level 5 restrictions.

CHAPTER 3

Legal migration

3.1 RESIDENCE PERMIT STATISTICS

According to Eurostat, a total of 155,317 residence permits were valid in Ireland as of 31 December 2020. This represented a decrease of 7.7% from a total of 168,297 at the end of 2019. The category breakdown is set out in Table 3.1.

TABLE 3.1 ALL VALID PERMITS BY REASON IN IRELAND AS OF 31 DECEMBER 2020

Category	All valid permits
Family	33,221
Study	33,831
Remunerated reasons	40,867
Refugee status	2,922
Subsidiary protection	896
Other	43,580
Total	155,317

Source: Eurostat migr_resvalid. Data extracted 10 March 2022.

According to Eurostat, a total of 30,382 first-residence permits were granted in Ireland in 2020, around half of the 59,278 first-residence permits granted in 2019. Table 3.2 shows the breakdown of reasons between work, study, family reasons and other, and Ireland's percentage share and ranking in relation to the total first permissions granted in these categories across the EU27.

TABLE 3.2 FIRST-RESIDENCE PERMITS GRANTED IN IRELAND AND EU27 MEMBER STATES IN 2020

Category	Ireland	EU-27	Ireland % of EU-total	Ireland ranking in EU-27 MS (from highest)
Remunerated reasons	7,131	903,398	0.78	19th
Study	14,730	247,650	5.95	4th
Family Reasons	1,835	621,121	0.29	24th
Other	6,686	475,193	1.4	12th
Total	30,382	2,247,362	1.35	14th

Source: Eurostat migr_resfirst. Data extracted 13 October 2021

3.2 ECONOMIC MIGRATION

3.2.1 Employment permit statistics

A total of 16,419 employment permits were issued during 2020, a slight increase over the 2019 total of 16,383 employment permits. As in 2019, the top nationality was India (with 5,565 permits).¹²⁵ The top three sectors were health and social work activities (5,197 permits issued), information and communication activities (4,725 permits issued), and agriculture, forestry and fishing (1,786 permits issued).¹²⁶

3.2.2 Legislation

Certain changes that were provided for via Regulation passed in 2019 came into effect from 1 January 2020. These included changes in relation to: the Labour Market Needs Test (LMNT); remuneration thresholds for critical skills employment permits; changes to the Critical Skills Occupations List (CSOL) and the Ineligible Occupations List (IOL); and addressing an anomaly to include all third-country national nurses, whether diploma or degree qualified, on the CSOL. A similar change was introduced for radiographers via Regulation in 2020. Other legislative developments during 2020 related to Brexit, COVID-19 and bilateral exchange agreements.

Changes to the Critical Skills Occupations List (CSOL) and Ineligible Occupations List (IOL)

The CSOL includes ‘employments in respect of which there is a shortage in respect of qualifications, experience or skills which are required for the proper functioning

125 Department of Enterprise, Trade and Employment (2021). Employment permits by nationality 2020, www.enterprise.gov.ie.

126 Department of Enterprise, Trade and Employment (2021). Employment permits by sector 2020, www.enterprise.gov.ie.

of the economy'. Occupations on the CSOL are in the main professional positions, in medicine, ICT, sciences, and finance and business, and are eligible for the Critical Skills Employment Permit. The IOL lists 'employments in respect of which an employment permit shall not be granted'. Occupations on the IOL are generally lower skilled and deemed ineligible for an employment permit as the evidence is that sufficient resources are available within Ireland and/or the European Economic Area (EEA).

The *Employment Permits (No. 3) (Amendment) Regulations 2019* added a number of professional occupations in the construction sector (e.g. civil engineers, architects, quantity surveyors, construction project managers) to the CSOL, effective from 1 January 2020.¹²⁷ The same regulations removed certain occupations in the construction sector from the IOL. These additions to the CSOL were made following a review of the lists of occupations, which was conducted in the second half of 2019, a summary of which was published in March 2020.¹²⁸ Following the additions, most professional grades in the construction sector are now included on the CSOL. This was to allow the industry to fill capacity and skills gaps in the short to medium term.

The *Employment Permits (Amendment) (No. 3) Regulations 2019* removed commis chefs (with two years' experience) from the IOL and removed quotas for other chef grades, effective from 1 January 2020. This means that all categories of chef became eligible for an employment permit, and the previously applied quotas were removed. The cap of two chef permits per establishment was also removed. These changes were introduced in response to the pressures on the sector.

Labour Market Needs Test

The advertising period for a Labour Market Needs Test (LMNT) was extended from 1 January 2020. This change had been provided for by the *Employment Permits (Amendment) (No. 2) Regulations 2019*.¹²⁹ These Regulations increased the period of publication where a LMNT is required to be placed with EURES employment services network from 14 to 28 days, effective from 1 January 2020. An LMNT is required before an employment permit application for a General Employment Permit or a Contract for Services Employment Permit can be submitted. This change was introduced due to a recommendation in the *Review of economic migration policy* (Government of Ireland, 2018). According to the review, the increase in the duration of the LMNT for the General Employment Permit and the Contract for Services Employment Permit, from two to four weeks, was to ensure

127 *Employment Permits (No. 3) (Amendment) Regulations 2019*. S.I. No. 633 of 2019, www.irishstatutebook.ie.

128 Department of Business, Enterprise and Innovation (2020). Summary report on the end year 2019 review of the occupations lists, www.enterprise.gov.ie.

129 *Employment Permits (Amendment) (No. 2) Regulations 2019*. S.I. No. 333 of 2019, www.irishstatutebook.ie.

that employers adequately test the EEA labour market before an application to employ a non-EEA citizen is submitted.¹³⁰

Increase in remuneration thresholds for Critical Skills Employment Permits

New remuneration thresholds in relation to Critical Skills Employment Permits came into effect from 1 January 2020. The *Employment Permits (Amendment) (No. 2) Regulations 2019* introduced changes to the remuneration thresholds, as follows.¹³¹

- Where an occupation is listed on the CSOL and the third-country national concerned holds a relevant third-level qualification, the minimum remuneration threshold is €32,000 (increased from €30,000).
- Where an occupation is on the CSOL or for occupations not listed on the IOL and the third-country national concerned does not hold a relevant third-level qualification but has relevant experience, the minimum remuneration threshold is €64,000 (increased from €60,000).

These increases in remuneration thresholds were made following a recommendation in the *Review of economic migration policy*, which was published in September 2018, to increase the thresholds, ‘as the first step towards closer alignment with average annual earnings for all employees’.¹³² This was the first change in the remuneration thresholds since the commencement of the *Employment Permits Act 2006*.

Inclusion of all third-country national nurses and radiographers on the CSOL

Changes to allow all third-country national nurses holding both nursing diplomas and degrees to be included on the CCSOL (thus addressing an anomaly in the system) came into effect from 1 January 2020. Previously, third-country national nurses with a nursing diploma rather than a nursing degree were restricted to a General Employment Permit. The change, provided for via the *Employment Permits (No. 3) (Amendment) Regulations 2019*, allows all suitably qualified and registered nurses to access the more favourable conditions of the Critical Skills Employment Permit – including immediate family reunification and broad access to the labour market for family members. According to the Minister for Business, Enterprise and Innovation:

This [is] an obvious anomaly where you can have two nurses working side by side in a ward, one of whom has their family here in Ireland

130 Government of Ireland (2018). Review of economic migration policy, www.gov.ie, p. 49.

131 Employment Permits (Amendment) (No.2) Regulations 2019. S.I. No. 333 of 2019, www.irishstatutebook.ie.

132 Government of Ireland (2018). Review of economic migration policy, www.enterprise.gov.ie, p. 8.

and another who has to wait a year. This isn't fair and the system needs to change.

In order to attract the best and brightest to come to work and live in Ireland as opposed to a competitor country, we need to offer an attractive range of benefits to both the highly-skilled workers and their families. The research shows that in a high percentage of cases where foreign nationals leave a country earlier than planned, it is because their spouses or partners could not find work.¹³³

A subsequent change effective from October 2020 further enhanced the eligibility for all nurses/midwives by simplifying the category as it appears on the CSOL.¹³⁴

A similar change regarding radiographers was introduced by the *Employment Permits (Amendment) Regulations 2020*,¹³⁵ which facilitated eligibility for a Critical Skills Employment Permit for all registered diploma-qualified radiographers, as well as those who hold degree qualifications.

Brexit

Section 13 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*¹³⁶ (Part 5 of the Act) amends section 10(2) of the *Employment Permit Acts 2006* to provide that UK citizens can continue to be included in the Ireland/EEA employee count for the 50/50 rule, which requires employers to ensure at least 50% of their workforce are from Ireland/EEA or the Swiss Confederation.¹³⁷ This amendment was necessary due to the withdrawal of the UK from the EU. UK citizens are not required to hold an employment permit in order to work or reside in Ireland. Part 5 of the Act was commenced with effect from 11:00 pm (23:00) on 31 December 2020 by the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Part 5) (Commencement) Order 2020*.¹³⁸

133 Department of Business, Enterprise and Innovation (2019). 'Minister Humphreys announces changes to the employment permits system for workers from outside the European Economic Area', press release, 18 December, www.enterprise.gov.ie.

134 Correspondence with Department of Enterprise, Trade and Employment, February 2021.

135 *Employment Permits (Amendment) Regulations 2020*. S.I. No. 156 of 2020, www.irishstatutebook.ie.

136 *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*, Act No. 23 of 2020, www.irishstatutebook.ie.

137 *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* Explanatory Memorandum, www.oireachtas.ie.

138 *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Part 5) (Commencement) Order 2020*, S.I. No. 680 of 2020, www.irishstatutebook.ie.

The COVID-19 pandemic

The *Employment Permits (Amendment) Regulations 2020* provide for the removal of the requirement for the signature page to be submitted in hard copy in ‘trusted partner registration’ applications and renewals (see also Section 3.2.4).¹³⁹

Bilateral exchange agreements

The *Employment Permits (Amendment) (No.2) Regulations 2020*¹⁴⁰ added the Vulcanus in Europe Programme (Ireland) to the list of exchange agreements for which an exchange agreement employment permit may be granted.

3.2.3 Atypical Working Scheme

The Atypical Working Scheme provides for short-term employment contracts in the State due to the short-term nature of the contract (between 15 and 90 days),¹⁴¹ as well as to the fact that such contracts are not facilitated by the employment permit process.¹⁴² Permissions granted are largely in the medical sector; in 2020, the Department of Justice prioritised applications from frontline medical staff. Over 2,000 medical applications were received in 2020 and 1,800 of these were for nurses with over 95% approved.¹⁴³ The scheme also supports other areas of the economy such as pharma or biomedical manufacturing.¹⁴⁴

On 4 September 2020, the Minister for Justice and Equality announced the opening of an online application process for the Atypical Working Scheme. This measure was part of the continued implementation of the Department of Justice Immigration Service Delivery’s *Service Improvement Plan 2018–2020*. The Minister commented that, ‘driving the digital agenda across the Justice sector is one of my main ministerial priorities’.¹⁴⁵

3.2.4 Impact of the COVID-19 pandemic

On 30 March 2020, the Department of Business, Enterprise and Innovation published its *Covid 19 Employment Permits System Contingency Arrangements*, a system that was to apply throughout that year.¹⁴⁶ The contingency arrangements

139 S.I. No. 156 of 2020, www.irishstatutebook.ie.

140 S.I. No. 510 of 2020, www.irishstatutebook.ie.

141 Some atypical permissions may be granted for periods greater than 90 days.

142 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, p. 33.

143 Ibid.

144 Department of Justice (2022). *Immigration in Ireland: Annual review 2020*, www.gov.ie, p. 15.

145 Department of Justice and Equality (2020). ‘Minister McEntee launches online application process for short term workers seeking permission to work in the State. Atypical Working Scheme processes immigration applications for frontline doctors and nurses and supports key sectors of the economy’, press release, 4 September, www.justice.ie.

146 Department of Business, Enterprise and Innovation (2020). ‘Covid 19 Employment Permits System contingency arrangements’, www.enterprise.gov.ie.

were implemented to ensure that the employment permit system would continue to operate in all scenarios.

As part of these arrangements, the Department of Business, Enterprise and Innovation agreed temporary arrangements with Immigration Service Delivery, Department of Justice and Equality, which allowed for an electronic version of an employment permit to issue by email to the relevant party (employer, employee or agent) as proof of an employment permit having been granted for the named employee. The electronic version of the employment permit was accompanied by a letter from the government department, either of which could be presented to immigration officials for verification purposes.

The *Employment Permits (Amendment) Regulations 2020* provided for the removal of the requirement for the signature page to be submitted in hard copy in ‘trusted partner registration’ applications and renewals (see also Section 3.2.2). This change was introduced as a COVID-19 related development but will remain in place after the pandemic crisis.

Employment permits for medical personnel were prioritised by the Department of Enterprise, Trade and Employment from March 2020.¹⁴⁷

The Department of Justice noted that, in the context of COVID-19, the Atypical Working Scheme supported processing applications from medical workers to work in Ireland, as well as supporting other key areas of the economy, including pharma and biomedical manufacturing.¹⁴⁸

Working conditions in the meat processing sector

On 10 July 2020, the Oireachtas Special Committee on COVID-19 Response met with representatives of the Migrant Rights Centre of Ireland (MRCI) and Meat Industry Ireland (MII), the IBEC trade association that represents the meat sector in Ireland, regarding working conditions related to COVID-19 in meat processing factories. The MRCI informed the Committee that 58% of workers in the meat sector are migrant workers, which includes both EU national and non-EU national workers. While Irish workers in meat factories are similarly affected by the issues raised, the MRCI stated that migrant workers are over-represented on the factory floor, in the lowest paid positions.¹⁴⁹ Their intervention to the Committee was based on interviews conducted with 68 workers in meat factories across the country, who were asked to provide details of their work history, work experience

147 Correspondence with Department of Enterprise, Trade and Employment, January 2021.

148 Department of Justice and Equality (2020). ‘Minister McEntee launches online application process for short term workers seeking permission to work in the State. Atypical Working Scheme processes immigration applications for frontline doctors and nurses and supports key sectors of the economy’, press release, 4 September, www.justice.ie.

149 Dáil Éireann (2020). ‘Special Committee on COVID-19 response session of 10 July 2020’, www.oireachtas.ie, p.42.

and their experience of the COVID-19 pandemic. Concerns raised included: low pay; lack of sick pay schemes (90% of those interviewed said their employer did not have a sick pay scheme); common workplace injuries; lack of awareness about health and safety protocols; and a lack of training. Regarding COVID-19 protocols, the interviews showed a mixed picture about when COVID-19 protocols were introduced by employers – ranging from an immediate response to up to five weeks or more after the start of lockdown. The MRCI also highlighted concerns about delays in relation to inspections by the Health and Safety Authority (HSA) and the development of sector-specific guidelines. Concerns about contact tracing procedures by the HSE, specifically in relation to data regarding positive COVID-19 test results being shared with employers before the workers themselves, were also raised. MRCI called for sectoral work permits to allow work permit holders better freedom of movement between employers.¹⁵⁰

MII addressed the Committee on the same day and on 13 August. The representative of MII acknowledged that COVID-19 had been challenging for the sector, but said that the situation had significantly improved by 10 July, although there were further outbreaks in August.¹⁵¹ The representative outlined the mitigation measures that MII members had undertaken in meat plants from the outset of the pandemic.

The final *Report of the Special Committee on COVID-19 Response* was published in October 2020.¹⁵² Among its specific recommendations, the Committee recommended:

*That the Government: 1. Make provision for a statutory sick pay scheme to cater for low paid workers such as those in nursing homes and meat plants, and 2. Make COVID-19 a notifiable disease under health and safety regulations. The Committee further recommends that regulations around general employment permits in the meat processing sector make provision for a sick scheme for workers by the employers concerned and that these regulations be made within six months of the date of this report.*¹⁵³

MRCI research

In November 2020, the MRCI published the research report, *Working to the bone: The experiences of migrant workers in the meat sector in Ireland*.¹⁵⁴ This research

150 Dáil Éireann (2020). 'Special Committee on Covid response Session of 10 July 2020', www.oireachtas.ie, pp. 32-35.

151 Houses of the Oireachtas (2020). *Special Committee on COVID-19 response: Final report*, www.oireachtas.ie, paragraph 100, p. 41.

152 Ibid.

153 Ibid, p. 16, Recommendation 5.

154 MRCI (2020). *Working to the bone: The experiences of migrant workers in the meat sector in Ireland*, www.mrci.ie.

was based on an anonymous survey of 151 workers from the meat processing sector, covering a wide range of roles and a wide geographic spread across the country. The survey included non-EEA national, EEA national and Irish national workers, and was translated into a number of languages – Brazilian, Latvian, Lithuanian, Polish, Portuguese, Romanian and Russian. The survey covered workers' experiences during the COVID-19 pandemic, with a primary focus on their current and historical working conditions. It highlighted general concerns about workplace safety and working conditions, as well as additional concerns directly related to COVID-19. The latter included workplace health and safety standards, lack of training, poor pay and working conditions in general, and the need for greater inspection and enforcement. Lack of sick pay schemes was a strong theme, which was highlighted further in the context of COVID-19. The report set out recommendations for the Department of Business, Enterprise, and Innovation, the Department of Agriculture, Food and the Marine and the Department of Health, including:

- the introduction of mobility for all employment permit holders similar to what is in place for critical skills permit holders;
- greater inspection and enforcement by the HSA and the Workplace Relations Commission (WRC);
- inclusion of the experiences of workers in the development of sick pay legislation;
- prioritisation of workers and workers' rights in Ireland's agri-food strategy to 2030 and inclusion of workers and community representatives on the strategy's stakeholder committee and the Beef Taskforce; and
- widening of the remit of the National Food Ombudsman to include workers' rights.

COVID-19-related recommendations included:

- mandatory closure of factories with live clusters for two weeks on full pay;
- provision of training in new protocols in a language workers can understand; and
- prioritisation of meat sector workers in the rollout of the COVID-19 vaccine.

Due to the intersecting responsibilities in this area falling mainly under two separate government departments, the report also recommended that political oversight of implementation of its recommendations, as well as the recommendations made in the *Final report of the Special Committee on COVID-19 Response*, be carried out by a joint sub-committee made up of members from the

Oireachtas Business Committee and the Committee on Agriculture and the Marine.¹⁵⁵

3.3 RESIDENCE PERMITS, REGISTRATION AND CUSTOMER SERVICE

Due to the COVID-19 pandemic, valid residence permissions were automatically extended from 20 March 2020. The initial notice applied to immigration and international protection permissions to reside in the State that were due to expire between 20 March 2020 and 20 May 2020, which were extended by a period of two months.

This initial notice was supplemented by five further notices, issued on 13 May 2020, 16 July 2020, 18 August 2020, 18 September 2020 and 22 December 2020 respectively. A sixth notice extended valid residence permissions due to expire, from 21 January 2021 to 20 April 2021.

The notices applied to all persons with a current valid permission, whether pursuant to domestic law or powers of the Minister, or Directive 2004/38/EC (Free Movement Directive). All extensions of permissions were made on the same basis as the existing permission with the same conditions attached. For existing permissions granted under the EU Free Movement Directive (2004/38/EC), the automatic renewal was subject to the requirement that the person was continuing to comply with the requirements of the Directive.^{156,157}

An online system for the renewal of registration permission and Irish residence permit cards for residents of the Dublin area was launched on 20 July 2020. Renewal applications could only be made from within the State. The launch of this system coincided with the re-opening of the Burgh Quay Registration Office in Dublin on an appointment basis for first-time registrations, after a period of closure from 20 March 2020 due to COVID-19 restrictions. Residents outside the Dublin area were still required to attend their local registration office.¹⁵⁸

From 2 December 2020, individuals renewing their registration permission no longer needed to submit their passport to be stamped with the immigration permission. This applied both to Dublin-based customers applying to renew their permission online, and customers outside Dublin applying to renew their permission in person in their local registration office. The Department of Justice

155 Ibid.

156 Department of Justice and Equality (2020). 'Updates and notices', www.irishimmigration.ie.

157 Department of Justice (2020). 'Minister Flanagan announces temporary extension of immigration permissions', press release, 20 March, www.justice.ie.

158 Department of Justice and Equality (2020). 'Minister McEntee announces expansion of online Registration Renewal System to include all Dublin-based non-nationals' press release, 7 July, www.gov.ie.

expected that this would ‘significantly improve the time taken to renew immigration permissions’. In 2020, Immigration Service Delivery and An Garda Síochána issued over 157,000 new or renewed registrations of permission to remain in the State, a reduction of 7% on pre-pandemic levels.¹⁵⁹

The Burgh Quay Registration Office was closed on a number of occasions during 2020, due to public health restrictions. It closed from 20 March to 20 July 2020, 18 to 24 August 2020, 21 October to 2 December 2020, and from 23 December 2020. At all other times, it was open for first-time registrations by appointment only.¹⁶⁰

The Department of Justice also published COVID-19 ‘frequently asked questions’ (FAQ) documents, which were updated in line with developments throughout 2020 on the Immigration Service Delivery website.

3.4 IMMIGRANT INVESTORS

The Immigrant Investor Programme (IIP) remained open in 2020. A total of 267 applications were received under the IIP during the year and the value of approved investment was €185.6 million.¹⁶¹

3.5 INTERNATIONAL STUDENTS

3.5.1 Temporary changes to work concession

In April 2020, temporary changes were made to the work concession for third-country national students as part of the response to the COVID-19 pandemic. Students who held Stamp 2 permissions and who attended colleges which had physically closed due to the COVID-19 pandemic were allowed to work 40 hours a week as a short-term and temporary measure. This was conditional on the student completing their course online if this service was provided by their college.

On 25 September 2020, the Department of Justice and Equality announced that the standard criteria for the student work concession would be immediately reinstated, under the following terms:

- Students holding a valid immigration Stamp 2 permission were permitted work 40 hours per week only during the months of June, July, August and September and from 15 December to 15 January inclusive.
- At all other times students holding a Stamp 2 immigration permission were limited to working 20 hours per week.

159 Department of Justice (2022). *Immigration in Ireland annual review 2020*, www.gov.ie, p. 19.

160 EMN-OECD Umbrella Inform, COVID-19 in the migration area, Table 1, www.emn.ie, p. 6.

161 Department of Justice (2022). *Immigration in Ireland: Annual review 2020*, www.gov.ie, p. 15.

Temporary measures for English language students

On 26 May 2020, the Department of Justice announced special temporary measures to assist English language students who had been impacted by the COVID-19 pandemic by allowing them additional time in Ireland.

- Students who left the State before completion of their studies due to COVID-19 could return and resume their studies and the duration of their absence would not count towards the two years maximum period of English language study allowed.
- Language students with a current and valid permission still in the State and who had completed the maximum two years permitted as a language student, but due to COVID-19 were unable to return home, could remain as students until the end of 2020, provided they re-enrolled in an online course of study for the remainder of the year.¹⁶²

In the second half of the year, following the introduction of the Government's *Living with COVID-19 plan*, at Level 4 restrictions, or higher, English language courses were required to move online during periods of restrictions. Prospective third-country national English language students were advised to defer their arrival in Ireland until in-person tuition resumed. Visa decisions for English language students also remained on hold in the light of Level 5 restrictions.¹⁶³

3.6 RESEARCH

In January 2020, EMN Ireland published *Migratory pathways to Ireland for start-ups and innovative entrepreneurs*.¹⁶⁴ This study examines policy and practice relating to non-EEA start-ups and innovative entrepreneurs in Ireland. The study is an in-depth examination of the Start-Up Entrepreneur Programme (STEP), through which start-up founders, innovative entrepreneurs and their families come to Ireland. The report briefly considers the Irish start-up landscape and how policy has developed in relation to the migration of non-EEA entrepreneurs, as well as planned future policy direction in this regard.

162 Department of Justice and Equality (2020). 'Minister Flanagan announces further temporary measures to assist international language students', press release, 26 May, www.justice.ie.

163 Department of Justice and Equality (2020). 'COVID-19 updates and announcements: English language students seeking to enter the State', 27 October, www.inis.gov.ie and correspondence with ILEP Unit, Immigration Service Delivery, February 2021.

164 McNamara F. and . Quinn (2020). *Migratory pathways to Ireland for start-ups and innovative entrepreneurs*, www.emn.ie and www.esri.ie.

CHAPTER 4

International protection

4.1 INTERNATIONAL PROTECTION STATISTICS

4.1.1 Protection applicants

In 2020, a total of 1,566 applications for international protection were submitted to the International Protection Office (IPO). This was a decrease of 67.2% on 2019, when 4,781 applications for international protection were submitted.¹⁶⁵

The COVID-19 pandemic and the related public health measures had an impact on the number of applications lodged in Ireland. Throughout 2020, the IPO continued to accept new international protection applications, with a facility to claim international protection deemed an essential service.¹⁶⁶

The main countries of origin of international protection applicants in 2020 were Nigeria (13.3%), Somalia (10.7%), Pakistan (5.6%), South Africa (5.4%) and Zimbabwe (5.2%). All other nationalities accounted for 59.9% of applications (see Figure 4.1).¹⁶⁷

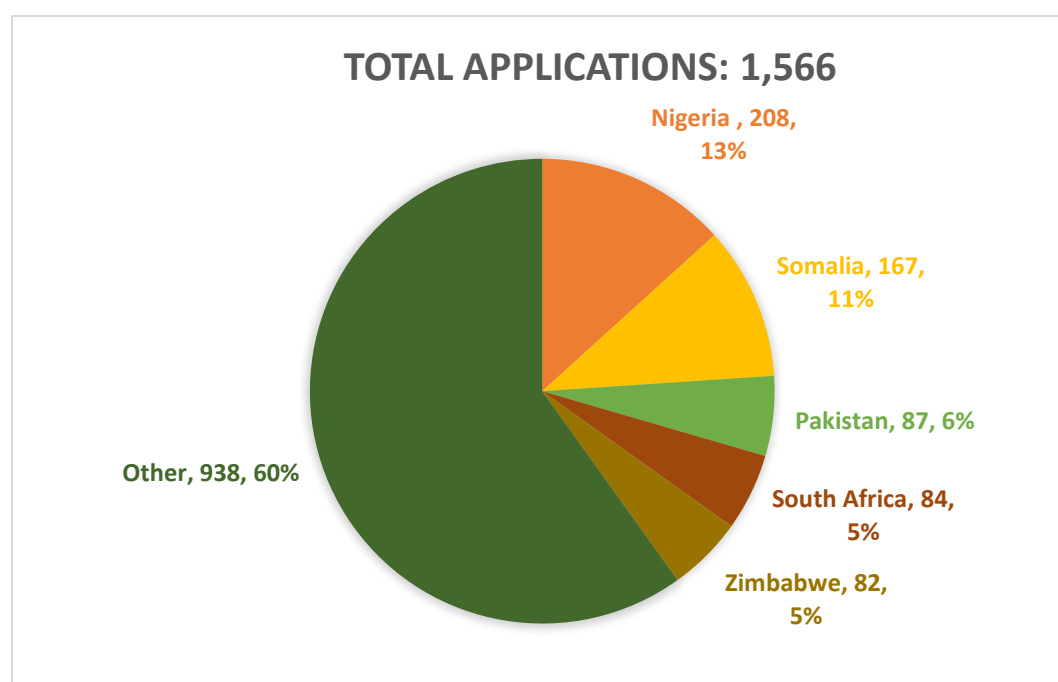
While in 2019, the top two countries of origin of international protection applicants were Georgia and Albania, in 2020 these two countries of origin were not in the top five countries. Nigeria, South Africa and Zimbabwe were among the top five countries of origin in 2019 and remained in the top five in 2020. The number of applications for each country of origin, however, decreased, in line with the broader trend of a decreased number of applications. In 2020, there were 208 applications by Nigerian nationals, as compared to 386 applications in 2019. For South African nationals, there were 84 applications in 2020 as compared to 322 in 2019. For Zimbabwean nationals, there were 82 applications in 2020 as compared to 443 applications in 2019.¹⁶⁸

165 Sheridan, A. (December 2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie.

166 Department of Justice (2021). 'Response to parliamentary questions 37800/21 and 37801/21', 13 July, www.justice.ie.

167 International Protection Office (2021). 'Monthly statistical report: December 2020', www.ipso.gov.ie.

168 International Protection Office (2021). 'Monthly statistical report: December 2020', www.ipso.gov.ie; Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie.

FIGURE 4.1 TOP NATIONALITIES FOR INTERNATIONAL PROTECTION APPLICATIONS, 2020

Source: IPO (2021). 'Monthly statistical report: December 2020', www.ipo.gov.ie.

The total number of applications for international protection in Ireland in 2020 accounted for 0.33% of all applications for international protection in EU Member States. In the EU, there was a total of 472,395 applications for international protection in 2020, a significant reduction on 2019 when there were 698,760 applications.¹⁶⁹ The applications from South African applicants in Ireland accounted for 48.8% of the total number of applications from South African nationals in the EU in 2020. Similarly, the number of applicants with Zimbabwe as a country of origin in Ireland accounted for 46.85% of the total number of applications from Zimbabwean nationals in the EU in 2020 (See Table 4.1).

¹⁶⁹ Eurostat. 'Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data (rounded)(migr_asyappctza)', data extracted 28 January 2022. Note that EU-27 figures used for both 2019 and 2020.

TABLE 4.1 SHARE OF TOTAL EU PROTECTION APPLICANTS IN IRELAND, 2020

Country	IE total (actual)	EU27 total (rounded)	IE % share
Nigeria	208	13,920	1.5
Somalia	167	11,505	1.45
Pakistan	87	18,520	0.46
South Africa	84	175	48.8
Zimbabwe	82	175	46.85
Total	1566	472,395	0.33

Source: IPO Statistics; Eurostat - migr_asyappctza, data extracted 10 January 2022.

Over 2020, the IPO processed a total of 2,276 applications for international protection to completion.¹⁷⁰ This included first-instance recommendations in respect of international protection and decisions on permission to remain.¹⁷¹ The COVID-19 pandemic and the related public health measures, however, impacted case processing. The total number of cases processed in 2020 was 67% of those processed in 2019.¹⁷²

4.1.2 Dublin III Regulation

Under the *Dublin III Regulation 604/2013*, which allocates Member State responsibility for international protection applications, a total of 976 transfer requests were sent by Ireland under the outgoing procedure to another EU Member State. Of the outgoing transfer requests to other EU Member States, 227 were take charge requests and 749 were take back requests.¹⁷³ Nine outgoing transfers took place in 2020, eight of which were to the UK and one was to another EU27 Member State.¹⁷⁴ The number of transfer requests in the outgoing procedure was lower than in 2019, when there were 1,763 such requests.

In 2020, the UK was still bound by the Dublin III Regulation. The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*, adopted at the end of 2020, and discussed in greater detail below, introduced new measures for transfers to the UK.

For the incoming procedure, Ireland received a total of 405 requests, of which 15 were take charge requests and 390 were take back requests. A total of 11 transfers to Ireland were carried out.¹⁷⁵

170 Department of Justice (2021). 'Response to parliamentary question 36374/21', 6 July, www.justice.ie.

171 Correspondence with International Protection Office, March 2022.

172 Department of Justice (6 July 2021). 'Response to parliamentary question 36374/21', 6 July, www.justice.ie.

173 Eurostat. Outgoing 'Dublin' requests by receiving country (PARTNER), type of request and legal provision (migr_dubro), data extracted 28 January 2022.

174 Department of Justice (2021). 'Response to parliamentary question 17098/21', 31 March, www.justice.ie.

175 Eurostat. Incoming 'Dublin' requests by submitting country (PARTNER), type of request and legal provision (migr_dubri), data extracted 28 January 2022.

Measures implemented during the COVID-19 pandemic in 2020 resulted in the temporary suspension of interviews under Article 5 of the Dublin III Regulation and operational constraints.¹⁷⁶

4.1.3 Decisions on protection applications

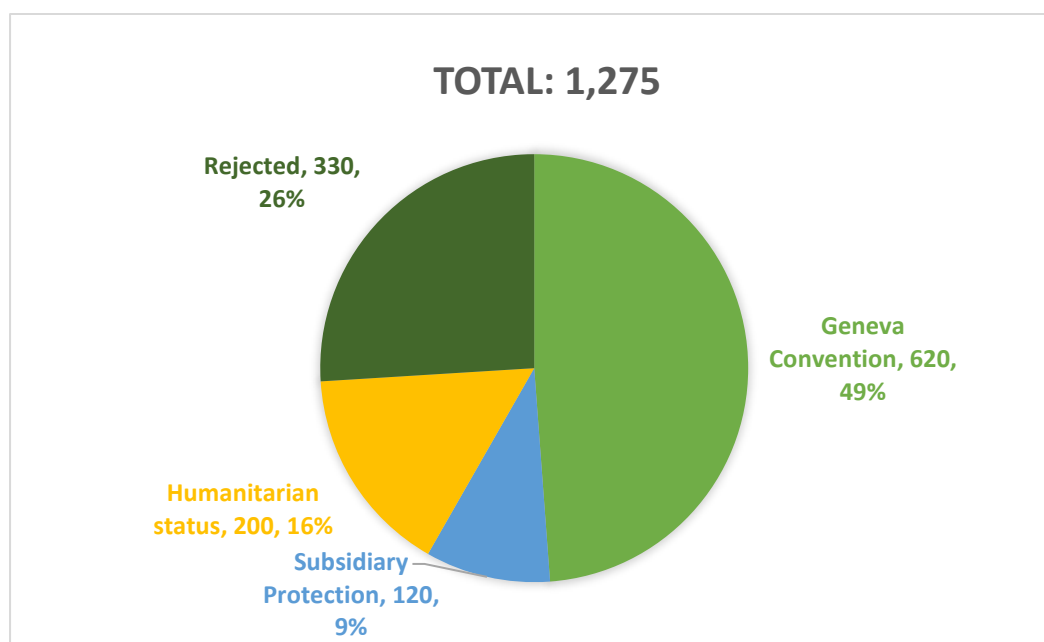
Statistics reported to Eurostat by Ireland on asylum decisions include both first-instance decisions made by the Minister for Justice, pursuant to recommendations by the IPO, and final decisions made by the Minister following appeal decisions made by the International Protection Appeals Tribunal (IPAT).¹⁷⁷ As such, a person who receives a negative first-instance decision may then appeal this decision; they would then receive a positive or negative final decision from the Minister.

According to Eurostat (rounded) data, the total number of positive first-instance decisions issued in 2020 was 945. Of these positive decisions, 620 decisions were grants of refugee status, 120 grants of subsidiary protection, while 200 positive decisions were grants of humanitarian status (Table 4.2). The number of positive decisions issued in 2020 was slightly lower than that of 2019, when 975 positive decisions were issued. There were 330 negative first-instance decisions issued in 2020.¹⁷⁸

176 Department of Justice (2020). 'Response to parliamentary questions 9222/20 and 9223/20', 3 June, www.oireachtas.ie/en/debates/question/2020-06-03/381/#pq_381.

177 Section 47 of the International Protection Act 2015 provides for declarations of refugee status or subsidiary protection status by the Minister for Justice and Equality pursuant to recommendations to grant either status at first instance under section 39 of the Act or pursuant to successful appeals of negative recommendations under section 46 of the Act.

178 Eurostat, 'First-instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded)' [migr_asydcfst], data extracted 17 January 2022, <https://ec.europa.eu/eurostat>.

FIGURE 4.2 FIRST-INSTANCE DECISIONS IN IRELAND (ROUNDED), 2020

Source: Eurostat migr_asydcftsa, data extracted 10 January 2022, rounded.

Note: Rounding means that totals are not exact.

Countries of citizenship among persons granted refugee status at first instance in Ireland in 2020 were: Zimbabwe (80), Syria (55), Venezuela (50), Democratic Republic of Congo (30), Somalia (30), Afghanistan (30), Palestine (30), Nigeria (20), Eritrea (15) and Sudan (15).¹⁷⁹ Whereas in previous years Syrians accounted for the largest proportion of persons granted refugee status, persons from Zimbabwe made up a higher proportion in 2020. Nonetheless, approximately the same number of refugee status grants at first instance were issued to Syrians in 2019 as in 2020 (55, Eurostat rounded data).¹⁸⁰

In 2019, the ten most common countries of citizenship of persons issued with refugee status at first instance were, in descending order, Syria, Zimbabwe, Libya, Brazil, Sudan, Pakistan, Afghanistan, Democratic Republic of Congo, Somalia and Eritrea.

179 Eurostat, 'First-instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded)' [migr_asydcfsta], data extracted 25 January 2022, www.ec.europa.eu/eurostat.

180 Eurostat, 'First-instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded)' [migr_asydcfsta], data extracted 25 January 2022, www.ec.europa.eu/eurostat.

TABLE 4.2 POSITIVE PROTECTION DECISIONS AT FIRST INSTANCE AND FINAL DECISIONS (ROUNDED) IRELAND 2020

	Geneva Convention	Subsidiary protection	Humanitarian status	Total
Positive first-instance decisions	620	120	200	945
Positive final decisions	410	45	135	585

Source: Eurostat migr_asydcftsa and migr_asydcfina, data extracted 10 and 17 January 2022.

With regard to final decisions issued by the Minister following appeals made in IPAT, a total of 585 positive decisions were issued in 2020. Of these, 410 were grants of refugee status, 45 were grants of subsidiary protection status, and 135 were decisions granting a humanitarian status.¹⁸¹ This was an increase in the total number of positive decisions as compared to 2019, when 575 positive decisions were issued. The total number of negative final decisions in 2020 was 405, a decrease from 600 in 2019.¹⁸²

4.1.4 Permission to remain

The Minister for Justice granted permission to remain under section 49 of the *International Protection Act 2015* to 200 people in 2020. In addition, a further 135 persons were granted permission to remain at review stage.¹⁸³

4.1.5 Appeals

In 2020, IPAT received a total of 1,262 appeals. Of these appeals, 1,255 were in relation to international protection and the Dublin III Regulation, including substantive international protection appeals, legacy international protection appeals, inadmissibility and subsequent appeals and appeals under the Dublin III Regulation.¹⁸⁴ The remaining 7 appeals concerned the *European Communities (Reception Conditions) Regulations 2018*. The total number of appeals in 2020 marked a 39% decrease from 2019, when 2,064 appeals were received by IPAT.¹⁸⁵

The number of appeals scheduled for hearing in 2020 was 1,418, a decrease on that of 2019 when 2,633 hearings were scheduled. IPAT stated that this ‘was

181 Eurostat, ‘Final decisions in appeal or review on applications by citizenship, age and sex – annual data (rounded)’ [migr_asydcfina], data extracted 25 January 2022, www.ec.europa.eu/eurostat.

182 Eurostat, ‘Final decisions in appeal or review on applications by citizenship, age and sex – annual data (rounded)’ [migr_asydcfina], data extracted 25 January 2022, www.ec.europa.eu/eurostat.

183 Eurostat, ‘First-instance decisions on applications by citizenship, age and sex – annual aggregated data (rounded)’ [migr_asydcftsa], data extracted 25 January 2022, www.ec.europa.eu/eurostat. Eurostat, ‘Final decisions in appeal or review on applications by citizenship, age and sex - annual data (rounded)’ [migr_asydcfina], data extracted 25 January 2022, www.ec.europa.eu/eurostat.

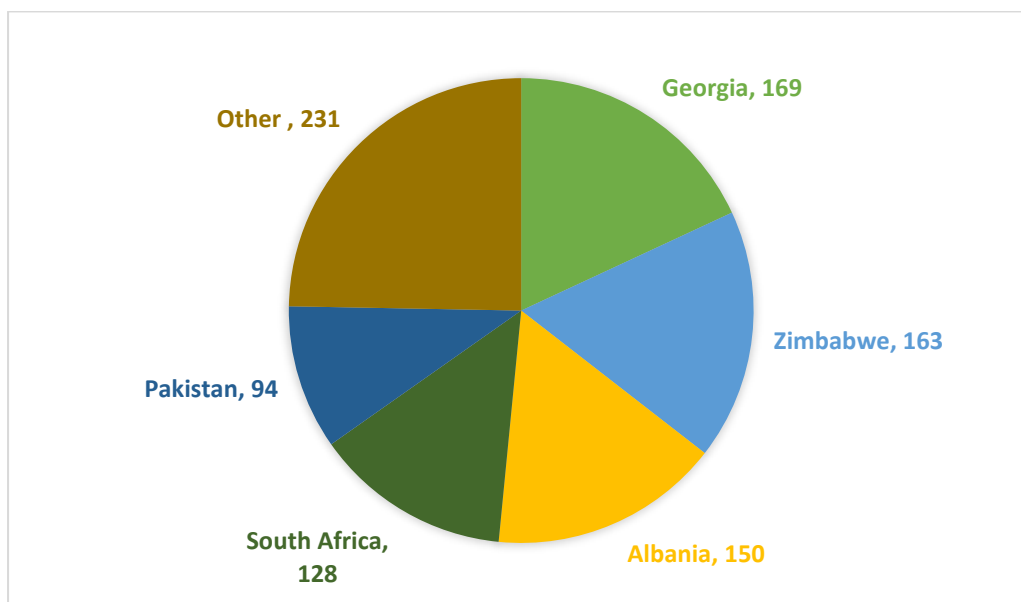
184 International Protection Appeals Tribunal (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie.

185 International Protection Appeals Tribunal (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie.

entirely due to the COVID-19 pandemic and necessary related public health measures'.¹⁸⁶

As shown in Figure 4.3, the top five countries of origin for substantive international protection appeals received by IPAT in 2020 were Georgia, Zimbabwe, Albania, South Africa and Pakistan. Whereas Bangladesh was in the top 10 countries of origin for substantive international protection appeals in 2019, in 2020 it was not one of the top 10 countries of origin. By contrast, Brazil was the sixth most common country of persons submitting appeals in 2020, yet was not among the top 19 in 2019.¹⁸⁷

FIGURE 4.3 TOTAL SUBSTANTIVE INTERNATIONAL PROTECTION APPEALS RECEIVED BY IPAT BY COUNTRY OF ORIGIN, 2020



Source: IPAT (2021). Annual report 2020, www.protectionappeals.ie.

A total of 1,087 decisions were issued by IPAT in 2020, with a total of 1,169 appeals completed, including those withdrawn or deemed withdrawn. This is a decrease from the 1,944 decisions issued in 2019, which was due to pandemic-related restrictions.¹⁸⁸ In total, 1,169 appeals were completed in 2020, with 1,655 appeals on hand at the end of the year.¹⁸⁹

Table 4.3 sets out the different types of appeal decisions issued by IPAT in 2020.

¹⁸⁶ Ibid, p. 4.

¹⁸⁷ Ibid, p. 48.

¹⁸⁸ Correspondence with International Protection Appeals Tribunal, March 2022.

¹⁸⁹ International Protection Appeals Tribunal (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie, p. 6.

TABLE 4.3 APPEAL DECISIONS ISSUED BY IPAT IN 2020

Type of appeal decision issued by IPAT	Total number
Substantive 'single procedure' international protection decisions	903
'Refugee status only' decisions issued under the transitional provisions of the <i>International Protection Act 2015</i> (section 70(7))	15
'Subsidiary protection only' decisions under the transitional provisions of the <i>International Protection Act 2015</i> (sections 70 (5) and 70 (8))	20
Dublin III Regulation decisions	102
Inadmissibility appeals decisions	19
Appeals against refusal to permit subsequent application decisions	24
Reception conditions appeals decisions	4
Total	1,087

Source: IPAT (2021). International Protection Appeals Tribunal annual report 2020.

IPAT affirmed the first-instance recommendation in 482 international protection single procedure appeals in 2020, i.e. 65% of a total of 740 decisions delivered.¹⁹⁰ The total number of set-asides – where the appellant's appeal was successful – were 240 for asylum cases (32%) and 18 for subsidiary protection (3%).¹⁹¹

Under the Dublin III Regulation, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, IPAT affirmed the original recommendation in 84 of a total of 102 decisions. This was an affirmation rate of 82% for 2020.

4.1.6 Family reunification

In 2020, the Family Reunification Unit received applications in respect of 1,048 family members under the *International Protection Act 2015*. Some 196 persons were approved; however, some of these may relate to applications made in previous years. The top five nationalities of subjects approved were: Afghanistan (37), Pakistan (20), Eritrea (18), Somalia (18) and Syria (15).¹⁹²

190 These figures do not include withdrawals or abandoned cases.

191 IPAT (March 2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie, p. 49.

192 Correspondence with Department of Justice, March 2022.

4.2 ADMINISTRATIVE DEVELOPMENTS

4.2.1 Processing times and the impact of COVID-19 on processing

International Protection Office (IPO)

During 2020, the processing of international protection applications was affected by the COVID-19 pandemic and the related public health measures. The median processing time for a first-instance decision by the IPO in all cases in 2020 was 17.6 months. For prioritised cases, the median processing time was 12.7 months.¹⁹³ In the first quarter of 2020, the median processing time was 14.7 months and 9.7 months for prioritised cases.¹⁹⁴ In 2019, the median processing time for all applications was 17.5 months. Prior to the pandemic, the IPO had a target to reduce the processing time for first-instance decisions to nine months.¹⁹⁵

The IPO continued to accept new international protection applications and conduct section 13(2) interviews and interviews as part of the section 15 application process throughout 2020. However, various adjustments were made to service provision in the IPO due to the COVID-19 pandemic. During the period of restrictions under Level 5 of the Government's *Living with COVID-19 plan*, the IPO was open from 10:00 to 14:00 Monday to Friday to receive new applications only. Newly arrived international protection applicants who had completed the initial preliminary interview under section 13(2) of the *International Protection Act 2015* at a port of entry were advised to quarantine for 14 days before presenting to the IPO to complete their preliminary interview process.¹⁹⁶

Personal interviews, under section 35 of the *International Protection Act 2015*, were initially suspended on 13 March 2020, in line with the public health measures implemented. They remained suspended until 20 July 2020, at which point they resumed until 21 October 2020. Interviews were suspended again between 21 October 2020 and 2 December 2020, re-started between 2 December 2020 and 18 December 2020, and were then suspended for the remainder of the year. Throughout 2020, just under 2,700 section 35 interviews were scheduled, and of them, 1,100 proceeded.¹⁹⁷ In 2019, by comparison, 4,500 interviews were scheduled, of which 3,200 proceeded.¹⁹⁸

193 Department of Justice (2021). 'Response to parliamentary question 22323/21', 28 April, www.justice.ie.

194 Department of Justice (2020). 'Response to parliamentary question 11310/20', 16 June, www.justice.ie.

195 Cuniffe, E. and A. Sheridan (2021). Data management in the international protection procedure in Ireland, www.emn.ie and www.esri.ie.

196 Ibid.

197 Department of Justice (2020). Response to parliamentary questions 1365 to 1371, inclusive, and 1492, 21 April, www.justice.ie.

198 Department of Justice (2020). Response to parliamentary questions 1365 to 1371, inclusive, and 1492, 21 April, www.justice.ie.

The Minister for Justice stated that the IPO was committed to ensuring all applicants have a fair opportunity to have their case heard, in line with the parameters of the public health restrictions in place, and that staff had worked both onsite and remotely during the parameters to ensure the continuance of case processing.¹⁹⁹

The length of processing times in 2020 was subject to criticism from NGOs. Nasc, the Migrant and Refugee Rights Centre, raised concerns about delays in case processing. It stated that there was a need to 'COVID-proof' the international protection system: 'The number of new applications for international protection fell significantly in 2020 and it should have been an opportunity to examine the cases of those who have spent years in the protection process'.²⁰⁰ The Irish Refugee Council raised similar concerns, stating:

*We are gravely concerned about increasing delays in the protection process. Lives are on hold, people are living in Direct Provision, which is particularly vulnerable to COVID-19 outbreaks, futures are uncertain and people are separated from family who may be living in danger in their home country. In our experience, this all causes immense anxiety, stress and among many, depression.*²⁰¹

The International Protection Appeals Tribunal

With regard to the length of the appeal process, IPAT's *Annual report 2020* details how overall the processing times reduced in 2020 as a result of 'the impact of the COVID-19 pandemic', which, according to its 2020 annual report, 'severely affected the Tribunal's operations and has prevented it from achieving its objective of increasing output and shortening processing times'.²⁰² The report describes how up until the start of the COVID-19 related public health measures in March 2020, the Tribunal had made 'further significant progress in reducing appeal processing times'.²⁰³ The median processing time for 2020 for appeals was 21 weeks, and the average processing time was 28 weeks.²⁰⁴

Throughout 2020, there were temporary postponements of oral hearings in IPAT. It remained open for appellants to withdraw from the oral hearing and have their case decided on the papers, provided that the tribunal member assigned to

199 Department of Justice (2020). Response to parliamentary questions 1365 to 1371, inclusive, and 1492, 21 April, www.justice.ie.

200 Nasc, the Migrant and Refugee Rights Centre (2021). 'Nasc concerns about delays in the international protection process', press release, 29 January, www.nascireland.org.

201 Irish Refugee Council (2021). 'Irish Refugee Council raise concerns about increasing delays in the Irish protection process', 29 January, www.irishrefugeecouncil.ie.

202 International Protection Appeals Tribunal (March 2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie, p. 46.

203 Ibid.

204 Ibid.

determine their appeal was of the opinion that it would not be contrary to fair procedures and natural justice to proceed in this manner.²⁰⁵ Among other measures implemented in the context of the COVID-19 pandemic were the fitting of Perspex screens in hearing rooms and a reduction in the number of persons attending the building.²⁰⁶

4.2.2 Use of video conferencing

As reported previously, the IPO started to use video conferencing technology in 2019 for substantive international protection interviews.²⁰⁷ The first interviews were held via video conference from Cork in November 2019. The IPO cooperated with the Courts Service and, in January 2020, interviews were held via video conference from Sligo Courthouse.²⁰⁸ The use of video conferencing technologies was also used for applications for international protection that were lodged from prisons.²⁰⁹

IPAT introduced audio-video hearings (A/V hearings) on a pilot basis in November 2020.²¹⁰ This was to allow hearings to be held remotely. Feedback was sought from legal practitioners prior to the introduction of A/V hearings and the tribunal established an internal working group to draft protocols and procedures for online hearings. With effect from 31 December 2020, the tribunal was designated as a body under the *Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Section 31) (International Protection Appeals Tribunal) (Designation) Order 2020*,²¹¹ enabling it to provide A/V hearings as the default position unless to do so would be unfair in the circumstances or otherwise contrary to justice.²¹²

4.3 FORMATION OF A NEW GOVERNMENT

Following the formation of a new Government in June 2020, responsibility for international protection accommodation services, international protection procurement services and certain functions under the Reception Conditions Regulations 2018 were transferred from the Department of Justice to the Department of Children, Disability, Equality, Integration and Youth from 14 October 2020.²¹³

205 IPAT (2020). 'COVID-19: Frequently asked questions', 4 August, www.protectionappeals.ie.

206 IPAT (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie.

207 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie, p. 49.

208 Ibid.

209 Cunniffe, E. and A. Sheridan (2021). *Data management in the international protection procedure*, www.esri.ie and www.emn.ie.

210 IPAT (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie.

211 S.I. No. 715 of 2020, www.irishstatutebook.ie.

212 IPAT (2021). *International Protection Appeals Tribunal annual report 2020*, www.protectionappeals.ie.

213 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, www.irishstatutebook.ie.

In October 2020, *Programme for Government: Our shared future* committed to ending the Direct Provision system of accommodation for international protection applicants and replacing it with a new international protection accommodation policy, centred on a not-for-profit approach. It also committed to publishing a white paper, informed by the recommendations of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the International Process, which will set out how this new system will be structured and the steps to achieving it.²¹⁴

4.4 REPORT OF THE ADVISORY GROUP

The Advisory Group on the Provision of Supports, including Accommodation to Persons in the International Process was established in December 2019 and was chaired by Dr Catherine Day. Its report was published in October 2020.²¹⁵ The report made the general recommendation that:

*The current system of Direct Provision is not fit for purpose and should be ended. There is a need for a new, permanent system to determine international protection applications within fixed time limits and which respects the guiding principles set out in this Report. The proposed permanent system should be equipped with the capacity to process and accommodate around 3,500 new applicants for international protection annually. The transition to the new system should begin immediately and be completed by no later than mid-2023.*²¹⁶

The report also recommended that the new system involve a whole-of-government approach and close coordination between government departments, state agencies and local authorities.²¹⁷ Another general recommendation was that Ireland should opt in to all of the current EU asylum legislation, subject to a review of implications for the Common Travel Area (CTA).²¹⁸

The more specific recommendations made in the report concerned changes to shorten decision-making processes.²¹⁹ The Advisory Group recommended that there should be an obligation to make all first-instance recommendations within

214 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie, p. 76.

215 Department of Children, Equality, Disability, Integration and Youth (2020). 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work', press release, 21 October, www.gov.ie. Government of Ireland (2020). Report of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the Protection Process, www.gov.ie.

216 Government of Ireland (2020). Report of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the Protection Process, www.gov.ie, p. 10.

217 Ibid, pp. 27-28.

218 Ibid, p. 28.

219 Ibid, pp. 56-57.

six months of a person lodging an international protection application. A similar timeframe should be applied to those in the 'Dublin procedure'. In order to achieve this aim, the report recommended, *inter alia*, that the IPO is given increased capacity and resources, and that the Ministerial Decision Unit (MDU) be located within the IPO from the start of 2021 and report to the IPO's Director of Operations. It further recommended: the introduction of an electronically available IPO questionnaire, shorter in length than the current version; the provision of IPO interview recordings to applicants within 10 working days of the interview; and a continued pursuit of the decentralisation of interviews.²²⁰

With regard to appeals in IPAT, the Advisory Group recommended that appeal cases also be completed in a six-month timeframe. In order to meet this, the Advisory Group recommended that the period of office of members of IPAT be increased to five years and that it should be renewable without a need to re-apply. It also recommended that the number of wholetime tribunal members be increased from three to ten, with an associated reduction in the number of part-time members. It further recommended that IPAT's administrative staff be increased and that IPAT should conduct remote video link hearings.²²¹ Other recommendations were made in the report to improve the resourcing and staffing of the Legal Aid Board, as well as the provision of interpretation.²²²

The Advisory Group made numerous recommendations on the use of information and communication technology. It established a sub-group to study the Department of Justice's information management and technology (IMT) strategy, with a specific focus on how it relates to the international protection process. In the IMT strategy, the Department of Justice describes key challenges, which include, *inter alia*, a reliance on paper-based processes and the fragmentation of data.²²³ Reviewing this strategy, the Advisory Group Report comments that, 'if sufficiently resourced and implemented, [it] will considerably improve service delivery, information analysis, trend forecasting and the user (external and internal) experience in all areas of the Department'.²²⁴ It recommended that the basic requirements of the international protection process be delivered as part of a comprehensive IT system within the wider strategy of the Department of Justice.²²⁵ More specifically, it recommended a person-centric IT case management system, not only to improve applicant experience, but also to improve efficiency and provide analysis of trends and emerging problems. In addition, it

220 Ibid., p. 56.

221 Ibid., pp. 56-57.

222 Ibid, p. 57.

223 Cuniffe, E. and A. Sheridan (2020). *Data management in the international protection procedure in Ireland*, www.emn.ie and www.esri.ie.

224 Government of Ireland (2020). *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, p. 51

225 Ibid, p 57.

recommended a review of all IPO, MDU and IPAT processes. It recommended that work on the new IT system be commenced immediately, with certainty of funding by early 2021.²²⁶

One of the main areas of recommendations concerned accommodation. The Advisory Group recommended the introduction of a new permanent system by 2023, comprising three stages.²²⁷ In the first stage, it recommended that all applicants for international protection should be provided accommodation, where they need it, in one or more state-owned reception centres. Onsite in these reception centres, there should be a 'multi-services multi-agency centre' to support applicants in accessing services and entitlements.²²⁸ A vulnerability assessment should be conducted within 30 days.²²⁹ After a period of three months in a reception centre, as part of the second stage, applicants should then be moved to 'own-door accommodation', which would be under the mandate of local authorities. It was recommended that the current weekly allowance paid to residents of reception centres be replaced by a housing allowance similar to that of the Homeless Housing Assistance Payment (HHAP) and that access to social assistance payments be granted, equivalent to the income supports available to Irish citizens. In the third, post-decision, in cases where a person is granted a residency permission, they should continue to receive support measures for up to 18 months. In cases where the application is refused and all appeal avenues have been exhausted, applicants should be given up to six months to organise their departure, during which time they should continue to receive the same housing and social assistance payments.²³⁰ Lastly, the Advisory Group recommended that the allowance paid to residents be increased from January 2021 and regularly reviewed.²³¹

A further set of recommendations from the Advisory Group concerned work and education. The Advisory Group recommended extending the right to work to anyone in the international protection process who has not received a final decision within three months of lodging an application, and that the permission to work should be granted for a period of one year and be renewable. It also recommended applicants be allowed to apply for a driving licence and that banks allow international protection applicants to open and hold accounts. In terms of education, it recommended that children should be educated in mainstream schools, with additional language supports provided where necessary, that teachers working with the children of applicants be provided with specialised

226 Ibid, p. 57.

227 Ibid, p. 74.

228 Ibid, p. 12.

229 Ibid, p. 74.

230 Ibid, p. 74.

231 Ibid, p. 74.

training, and that international protection applicants be allowed to attend third-level education on the same basis and for the same fees as Irish citizens.²³²

Programme for Government: Our shared future recognises that there is a need to act on interim recommendations of the Advisory Group in order to improve conditions for protection applicants currently living in the system.²³³ To this end, one of its recommendations – an end-to-end process review of the international protection system and related immigration systems – was initiated in 2020.²³⁴

Following the publication of the Advisory Group's report, UNHCR Ireland called on the Government to urgently implement key recommendations. It stated that if implemented, it 'would ensure a more efficient system for determining who is in need of international protection, as well as providing a community-based model of accommodation for asylum-seekers and a whole of government approach to the promotion of positive integration outcomes'. Rather than waiting for the white paper process, 'the government should move ahead now with key measures to cut waiting times and establish an independent inspectorate to monitor compliance with binding higher standards in existing accommodation centres'.²³⁵

4.5 RECEPTION

Key reception-related developments in 2020 concerned responses to COVID-19, a reduction in the waiting period to access the labour market, and the introduction of a pilot vulnerability assessment programme. As described above, with the change of Government in 2020, responsibility for IPAS was moved from the Department of Justice to the Department of Children, Equality, Disability, Integration and Youth.

At the end of 2020, 6,997 persons were living in accommodation of the International Protection Accommodation Services (IPAS).²³⁶ Figures for the end of November 2020 indicate that 5,810 persons were accommodated in IPAS reception centres, and 1,178 were in emergency accommodation.²³⁷ Of the 6,997 persons in

232 Ibid, p 80.

233 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie, p. 76.

234 Department of Justice (2022). *Immigration in Ireland annual review 2020*, www.gov.ie.

235 UNHCR (2020). 'UNHCR calls on Government to urgently implement key recommendations on Direct Provision', press release, 21 October, www.unhcr.org.

236 Houses of the Oireachtas (2021). Response to parliamentary question 60028/21, 7 December, www.oireachtas.ie.

237 Houses of the Oireachtas (2020). 'Committee of Public Accounts 2019 Report of the Comptroller and Auditor General and Appropriation Accounts Vote 24: Justice and equality briefing material December 2020', December, https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/committee_of_public_accounts/submissions/2021/2021-04-16_briefing-document-oonagh-mcphillips-secretary-general-department-of-justice-r0244-pac33_en.pdf.

IPAS accommodation at year-end, 1,010 had status or leave to remain and 358 persons held deportation orders.²³⁸

In 2020, five centres with 619 bed spaces were added to the accommodation centre portfolio. All of these centres provide for independent living, and residents can choose and prepare their own food. Two of the centres also provide 'own door' living in apartments in Limerick and Galway.²³⁹

4.5.1 COVID-19

Public health measures

IPAS, in conjunction with the HSE, introduced measures in response to COVID-19 in IPAS accommodation from March 2020, which continued throughout the year. These measures included:

- provision for self-isolation facilities in centres and offsite self-isolation;
- increased capacity to support physical and social distancing;
- enhanced cleaning regimes and provision of PPE;
- regular communications and information on public health advice to residents and centre managers;
- provision of a free confidential support line for residents operated by the Jesuit Refugee Service;
- cocooning of all medically vulnerable and over-65 residents;
- a temporary accommodation scheme for healthcare applicants;
- a comprehensive COVID-19 testing programme; and
- provision of quarantine facilities for IP applicants entering or re-entering accommodation centres.²⁴⁰

Additional accommodation was secured for social distancing purposes, including four self-isolation centres.²⁴¹ The IPAS *Living with COVID plan* was also published, which aligned IPAS COVID-19 arrangements with the Government's *Framework Plan for Living with COVID 2020–2021*. This document was issued to all accommodation centre managers.²⁴² The plan covered arrangements across the

238 Department of Children, Equality, Disability, Integration and Youth (2021). *A white paper to end Direct Provision and to establish a new international protection support service*, www.gov.ie.

239 Department of Children, Equality, Disability, Integration and Youth (2021). *Department of Children, Equality, Disability, Integration and Youth annual report 2020*, www.gov.ie.

240 Department of Children, Equality, Disability, Integration and Youth (2020). 'Response to parliamentary question 36290/20', 17 November, www.oireachtas.ie.

241 Department of Justice (2020). 'Ministers announce further COVID-19 supports for Direct Provision residents', press release, 9 April, www.justice.ie.

242 International Protection Accommodation Service. 'IPAS Living with COVID Plan'. Department of Children, Equality, Disability, Integration and Youth, www.accommodationcentres.ie.

five levels of the COVID plan in relation to issues such as visitors, overnight absences, transfers, work and school attendance and other practical matters.²⁴³

Between 12 and 15 September 2020, a serial COVID-19 testing programme was run by the HSE and covered all accommodation centres.²⁴⁴ Testing was voluntary and free. When a resident tested positive, they were moved off-site for self-isolation purposes, along with their close contacts, until it was safe for them to return to their accommodation.²⁴⁵ In the HSE's report to the National Public Health Emergency Team (NPHE) on the outcome of this testing, the HSE stated that serial testing on a national scale was not warranted. It nonetheless stated that serial testing at specific accommodation centres could still take place.²⁴⁶

Moving of residents

From March 2020, with the outbreak of the COVID-19 pandemic, IPAS made efforts to secure additional accommodation for IPAS residents to reduce the number of persons in existing accommodation facilities.²⁴⁷ At the start of the pandemic, within a timeframe of 2.5 weeks, approximately 600 residents were moved.²⁴⁸ The Ombudsman's 2020 report on Direct Provision details how, in early 2020, eight of the emergency accommodation locations used by IPAS, mostly commercial hotels, were not exclusively occupied by applicants. With the outbreak of COVID-19, the initial IPAS response was to move these protection applicants to facilities that would only be occupied by applicants.²⁴⁹ In a statement on 9 April 2020, the Department of Justice and Equality stated that an additional 850 beds had been added to the system in the two weeks previous to the statement to facilitate social distancing and isolation where required.²⁵⁰

At the beginning of the pandemic, a coalition of NGOs started a campaign entitled 'Move the vulnerable out', which called on IPAS to move at-risk residents out of IPAS accommodation.²⁵¹ Concerns continued to be raised by NGOs and international protection applicants throughout 2020 about the risk of COVID-19 in

243 Ibid.

244 Department of Justice (2022). *Immigration in Ireland annual report 2020*, www.gov.ie, p. 22.

245 Department of Children, Equality, Disability, Integration and Youth (2020). 'Response to parliamentary question 36290/20', 17 November, www.oireachtas.ie.

246 Department of Children, Equality, Disability, Integration and Youth (2020). 'Response to parliamentary question 36290/20', 17 November, www.oireachtas.ie.

247 Houses of the Oireachtas (2020). 'Special Committee on COVID-19 Response – Debate. Congregated settings: Direct Provision centres', 26 May, www.oireachtas.ie.

248 Houses of the Oireachtas (26 May 2020). 'Special Committee on COVID-19 Response – Debate. Congregated settings: Direct Provision centres', www.oireachtas.ie.

249 Office of the Ombudsman (2021). *The Ombudsman and Direct Provision: Update for 2020*, www.ombudsman.ie.

250 Department of Justice and Equality (2020). 'Ministers announce further COVID-19 supports for Direct Provision residents', press release, 9 April, www.justice.ie.

251 Irish Refugee Council (2020). 'Move most vulnerable out of Direct Provision centres now', 22 March, www.irishrefugeecouncil.ie; Nasc, the Refugee and Migrant Rights Centre (2020). 'Nasc calls on Minister for Justice and Equality to "Move the Vulnerable Out"', 24 March, www.nascireland.org.

shared accommodation, and particularly when reports emerged of COVID-19 outbreaks in accommodation centres.²⁵²

Beginning in March 2020, approximately 100 international protection applicants were moved from emergency accommodation in Dublin to the Skellig Star Hotel in Cahersiveen in County Kerry.²⁵³ An outbreak of COVID-19 was subsequently reported in the centre.²⁵⁴

In May 2020, a joint letter from the directors of the Irish Council for Civil Liberties, the Irish Refugee Council, the Immigrant Council of Ireland, Nasc, Doras and Amnesty International Ireland, and various academic and legal practitioners, was sent to the Minister for Justice and Equality, raising concerns about the extension of quarantine in the Skellig Star Hotel, and recommending the facility be closed.²⁵⁵ A further letter was sent to An Taoiseach Leo Varadkar in June by Nasc, the Irish Refugee Council, Doras and Graham Clifford, founder of the Sanctuary Runners.²⁵⁶

The events surrounding the move of applicants to Cahersiveen were the subject of discussion in an Oireachtas Special Committee on COVID-19 Response in May 2020. In this Committee, concern was also raised regarding the lack of timely Garda vetting of centre staff, which the Department of Justice and Equality stated was addressed as soon as the matter was brought to their attention.²⁵⁷

In July 2020, the Minister for Justice and Equality appeared before Seanad Éireann regarding events in the centre and the future of Direct Provision.²⁵⁸ The Minister outlined the reasons for which applicants were moved to the Skellig Star Hotel and also recognised the distress that it caused. The Minister detailed how officials had been sent to the accommodation centre in recent days, and that the rules on transfers had been relaxed, with a number of residents requesting to be

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- 252 Fletcher, L. (2020). 'Concern over virus clusters at Direct Provision centres', 2 August, www.rte.ie/news/ireland/2020/0802/1156959-direct-provision/; Irish Refugee Council (2020). 'Move most vulnerable out of Direct Provision centres now', 22 March, www.irishrefugeecouncil.ie. Nasc, the Refugee and Migrant Rights Centre (2020). 'Nasc calls on Minister for Justice and Equality to "Move the Vulnerable Out"', 24 March, www.nascireland.org.
- 253 Thomas, C. (2020), "'We've been firefighting": Inside the State's response to Covid-19 in Direct Provision', 10 May, *The Journal*, <https://www.thejournal.ie/weve-been-firefighting-inside-the-states-response-to-covid-19-in-direct-provision-5095029-May2020/>.
- 254 Houses of the Oireachtas (2020). 'Special Committee on COVID-19 response – Debate. Congregated settings: Direct Provision centres', 26 May, www.oireachtas.ie.
- 255 Irish Council for Civil Liberties et al. (2020). 'Letter to Minister Charlie Flanagan', 8 May, www.iccl.ie/wp-content/uploads/2020/05/Letter-closure-of-Skellig-Star-Hotel-8-May-2020.pdf.
- 256 Nasc, the Migrant and Refugee Rights Centre et al. (2020). 'Joint letter to An Taoiseach regarding the Skellig Star Direct Provision Centre', 3 June, www.nascireland.org/news/2020/joint-letter-taoiseach-regarding-skellig-star-direct-provision-centre.
- 257 Houses of the Oireachtas (2020). 'Special Committee on COVID-19 response – Debate. Congregated settings: Direct Provision centres', 26 May, www.oireachtas.ie.
- 258 Houses of the Oireachtas (2020). 'Seanad Éireann debate: Skellig Star Direct Provision Centre and the future of Direct Provision: Statements', 30 July, www.oireachtas.ie/en/debates/debate/seanad/2020-07-30/13/.

transferred out of the centre.²⁵⁹ Use of the Skellig Star Hotel for emergency accommodation stopped in September 2020.²⁶⁰

The Oireachtas Special Committee on the COVID-19 Response

In October 2020, the Oireachtas Special Committee on the COVID-19 Response published its final report.²⁶¹ With regard to Direct Provision as a congregated setting, the report was based on its hearings on international protection and Direct Provision in May 2020 and submissions from NGOs.

The report describes statements from the Department of Justice and Equality about how shared accommodation, not only in relation to international protection applicants, but also other areas such as homelessness services and student accommodation, posed specific challenges, and sets out the range of measures taken by the Department in response to the COVID-19 pandemic. The Special Committee's report also referenced the contribution of the Irish Refugee Council, which stated that the pandemic highlighted the need to end Direct Provision and raised concerns about the categorisation of non-family members as part of households and the sharing of accommodation in a pandemic. The Movement for Asylum Seekers Ireland (MASI) was also referenced; in particular, that they raised 'concerns about the "warehousing of asylum seekers... in inhumane conditions" with overcrowding in cramped conditions in for-profit Direct Provision centres'. MASI further submitted that it meant people had been 'stripped of their fundamental human right to privacy and the dignity that comes with it'.²⁶² The Oireachtas Special Committee paid particular attention to the events in the accommodation centre in Cahersiveen, County Kerry.

The report made a number of recommendations, including the phasing out of support for facilities where residents do not have adequate self-isolation facilities. The Committee also referred a number of matters to the Joint Committee on Children, Disability, Equality and Integration, including the need for the Department to review accommodation for international protection applicants in Direct Provision centres, hotels and B&Bs, to review the findings of the Report of the Advisory Group and seek biennial implementation updates, between inter-Departmental data sharing and the implementation of a protocol to ensure qualified staff are recruited and Garda vetted. It also referred to the matter of

259 Ibid.

260 RTE News (2020). 'Dept of Justice denies plan to reuse Skellig Star Hotel', 27 September, www.rte.ie/news/munster/2020/0927/1167816-skellig-star/.

261 Houses of the Oireachtas (2020). Final Report Special Committee on COVID-19 Response, www.oireachtas.ie.

262 Ibid.

ensuring that all residents in congregated settings are tested for COVID-19 routinely.²⁶³

Irish Refugee Council Report on Direct Provision and COVID-19

In August 2020, the Irish Refugee Council published a report entitled *'Powerless': Experiences of Direct Provision during the COVID-19 pandemic*.²⁶⁴ The report was based on a survey of 418 persons resident in IPAS accommodation during the COVID-19 pandemic across 63 different accommodation centres.

The report details that 55% of survey respondents felt unsafe during the pandemic, 50% were unable to socially distance themselves from other residents and that 42% shared a bedroom with a non-family member. Regarding income, 19% of those who were in employment had lost their jobs, while 85% stated that the weekly expenses allowance was insufficient. The report also reported that 85% felt that they had enough information on COVID-19 and that 78% had access to hand sanitizer.²⁶⁵

Pandemic Unemployment Payment

The Pandemic Unemployment Payment (PUP) was a social welfare measure introduced by the Department of Employment Affairs and Social Protection for persons who lost their employment during the COVID-19 pandemic. At the beginning of the pandemic in 2020, international protection applicants who lost their employment were not eligible for PUP if they resided in IPAS accommodation. Forty civil society groups wrote to the Department of Employment Affairs and Social Protection stating that international protection applicants should be eligible for the PUP payment, and that residents of IPAS accommodation should receive an additional €20 in their weekly benefit. This was initially refused for budgetary reasons.²⁶⁶

In August 2020, it was announced that residents of IPAS accommodation who had lost their employment would be eligible for PUP.²⁶⁷ An Taoiseach Micheál Martin stated:

263 Houses of the Oireachtas (2020). *Final report of the Special Committee on COVID-19 Response*, www.oireachtas.ie.

264 Irish Refugee Council (2020). *'Powerless': Experiences of Direct Provision during the COVID-19 pandemic*, 10 August, www.irishrefugeecouncil.ie.

265 Ibid.

266 Pollak, S. (2020). 'No temporary increase in weekly asylum payment during pandemic', 29 May, The Irish Times, www.irishtimes.com/news/social-affairs/no-temporary-increase-in-weekly-asylum-payment-during-pandemic-1.4265150/.

267 Department of Social Protection (2020). 'Access to COVID-19 Enhanced Illness Benefit and the Pandemic Unemployment Payment for people in Direct Provision', press release, 7 August, www.gov.ie.

Following reports that there was an issue with people in Direct Provision settings being reluctant to come forward for tests because of fear of losing income, we have decided that, lest there be any doubt, Direct Provision residents will be treated the same as any other citizen in terms of social protection supports when it comes to COVID-19.²⁶⁸

4.5.2 Labour market access

Amendments to labour market access rules

In October 2020, the Minister for Justice announced a reduction in the waiting period for an international protection applicant to access the labour market, from nine months to six months from the date of first application. The Minister also announced a number of other related changes, including:

- increasing the validity period of a permission to access the labour market from 6 months to 12 months, which is renewable;
- removing the restriction on working for public health employers subject to the necessary qualifications being held by applicants; and
- expanding access to the labour market to include those applicants who received a first-instance recommendation before the *European Communities (Reception Conditions) Regulations 2018* came into force.

These changes required some legislative adjustments prior to implementation.²⁶⁹ They arose from a review undertaken by the Department of Justice, in parallel with the work of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process, on labour market access provisions introduced under the *Reception Conditions Regulations 2018*.²⁷⁰ Speaking of the review, Minister for Justice Helen McEntee stated:

The review found that access to the labour market has had a very positive impact for applicants and employers. Since its introduction in June 2018, over 5,500 permissions to access the labour market have been issued, including over 4,200 permissions to Direct Provision residents. Following Cabinet discussions, a number of positive changes have now been agreed. ... These changes will bring us in line with the policy approach adopted in many other EU Member States.²⁷¹

268 Boland L. (2020). 'Direct Provision residents will now be eligible for Pandemic Unemployment Payment', *The Journal*, 6 August.

269 Department of Children, Equality, Disability, Integration and Youth (2020). 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work', press release, 21 October, www.gov.ie.

270 Ibid.

271 Ibid.

Driving licences

The inability of international protection applicants to obtain a driving licence in Ireland arose as an issue in the context of the right to work. In January 2020, the Workplace Relations Commission (WRC) published its ruling in *An Asylum Seeker v. A Statutory Agency*.²⁷² The case concerned an international protection applicant who held a Labour Market Access Permission and was employed as a domestic worker in Dublin. The applicant resided in a rural Direct Provision centre and required a driving licence in order to travel to her place of employment. The applicant completed the driver theory exam and eye test, but her application for a learner driving licence was subsequently refused on the ground that she did not meet the requirement of 'normal residence' in the State under the *Road Traffic (Licencing of Drivers) Regulations 2006*. The WRC Adjudication Officer held that this was indirect discrimination on account of race. This followed a similar ruling in the WRC in November 2019.²⁷³

On 30 July 2020, the Dublin Circuit Court published its ruling in the appeal of the January 2020 WRC ruling. The Circuit Court overturned the WRC ruling and found that the National Driving Licence Service (NDLS), which is run by the Road Safety Authority (RSA), had not discriminated against the applicant on the ground of race.²⁷⁴

The Irish Human Rights and Equality Commission (IHREC), who represented the applicant, stated that the Dublin Circuit Court ruling was 'one which immediately and negatively impacts on all asylum seekers who want to improve their employment prospects by being able to drive'.²⁷⁵

Sinead Gibney, Chief Commissioner of IHREC, stated:

Today's ruling sets out that the manner in which the RSA applies the Driving Licence Regulations blocks absolutely all asylum seekers from accessing any form of driving licence. The Commission considers that this undermines the Supreme Court's recognition that asylum seekers have the right to work, and that being able to access work is fundamental to a person's dignity.

It is now time for the Government to finally and emphatically address the issue of asylum seekers' access to driving licenses. We all recognise that being able to drive is a significant enabler for accessing and

272 Workplace Relations Commission (2020). 'An Asylum Seeker v. A Statutory Agency, ADJ-00020743', 28 January.

273 Workplace Relations Commission (2019). 'An Asylum Seeker v. A Government Agency, ADJ-00017832', 20 November.

274 Giblin R. and R. Managh (2020). 'Ban on learner driver permits for asylum seekers not discrimination, court rules', *The Journal*, 30 July, <https://www.thejournal.ie/direct-provision-court-dublin-license-5164241-Jul2020/>.

275 Irish Human Rights and Equality Commission (IHREC) (2020). 'Court rules that RSA regulations block all asylum seekers from getting driving licence', press release, 30 July, www.ihrec.ie.

securing employment, and the dignity that being able to work and earn a living affords. Barriers such as this one tie people's hands in the competition to secure work, especially in rural areas where frequently people in Direct Provision are placed. In response to today's ruling, the Commission is calling for the Government to take action to remove this barrier to people seeking to exercise their right to work for their own dignity, and in many cases their family's livelihood.

The report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process recommended that international protection applicants be allowed to apply for driving licences from the date their application for international protection is lodged.²⁷⁶

4.5.3 Student Support Scheme 2020

International protection applicants who are currently in the protection system and who are resident in Ireland for three years are facilitated in accessing third-level education under the Student Support Scheme run by the Department of Further and Higher Education, Research, Innovation and Science. This provides a similar level of financial support for international protection applicants as is provided for Irish students who are eligible for support under the student grant scheme, Student Universal Support Ireland (SUSI).

Following a review in 2020, the Minister approved changes to the scheme to widen access for those in the international protection system. The requirement for prospective applications to have attended three academic years in the Irish school system and to have obtained the Leaving Certificate in the State was removed, as this had been considered too restrictive. The requirement for prospective applicants to have been in the protection or leave to remain process for three years was retained.²⁷⁷

A total of 108 applications were received under the Student Support Scheme in 2020, with 40 applicants qualifying for support. According to the Department of Further and Higher Education, Research, Innovation and Science, this was a fivefold increase in the number of applications, when compared to 2019. The successful applicants in 2020 were engaged in a wide range of studies, including:

- nursing and healthcare (29%);
- science (13%);
- IT (13%);

276 Government of Ireland (2020). *Report of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the Protection Process*, www.gov.ie.

277 Department of Further and Higher Education, Research, Innovation and Science (2020). 'Minister Harris announces changes to the Student Support Scheme for people living in Direct Provision', press release, 10 August, www.gov.ie.

- engineering (10%); and
- business (8%).²⁷⁸

4.5.4 Pilot vulnerability assessment procedure

In December 2020, the government introduced a pilot vulnerability assessment procedure. This followed a commitment in October 2020 from the Minister for Children, Equality, Disability, Integration and Youth to introduce the assessments.²⁷⁹

The purpose of the vulnerability assessment is to determine if a person, by virtue of their category of vulnerability, has special reception needs, and to determine the actions required to meet those needs.²⁸⁰ The assessment is for all international protection applicants who make an application to the IPO. It is a voluntary assessment. If an application for international protection includes children, the vulnerability assessment can also be conducted where the parent consents.

The assessment entails an initial interview after the applicant first applies for international protection. The interview assessor uses a standard list of assessment questions, which are based on the categories of vulnerability set out in the recast Reception Conditions Directive 2013/33/EU and the transposed Regulations. The interview is ‘carried out in a sensitive, conversational manner with gender appropriate officers and interpretation as required’.²⁸¹ If this interview indicates that the applicant is a vulnerable person as defined in the Directive, further assessments can be carried out in IPAS accommodation or beyond this, where the person is in long-term accommodation.

These assessments are used to determine if the person has special reception needs arising from identified vulnerabilities. IPAS policy is to take any identified vulnerabilities into account in allocating accommodation, within the overall constraints of the accommodation available, either through its own

278 Department of Further and Higher Education, Research, Innovation and Science (2021). ‘Continuation and expansion of Student Support Scheme for asylum seekers in the international protection system announced by Minister Harris’, press release, 27 August, www.gov.ie.

279 Department of Children, Equality, Disability, Integration and Youth (2020). ‘Minister O’Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work’, press release, 21 October, www.gov.ie.

280 Department of Children, Equality, Disability, Integration and Youth (2021). ‘Response to parliamentary question 37193/21’, 13 July, www.oireachtas.ie.

281 Department of Children, Equality, Disability, Integration and Youth (2021). ‘Response to parliamentary question 36292/21’, 6 July, www.oireachtas.ie.

accommodation and ancillary services,²⁸² or where necessary, with other service providers such as the HSE.²⁸³

The Minister for Children, Equality, Disability, Integration and Youth stated:

*It is intended that the assessment questions, the interview environment, and outcomes of assessments already conducted will be kept under review during the pilot phase. This ongoing review will inform any further development of the assessment process to assist IPAS and other State actors in their efforts to meet the special reception needs of vulnerable protection applicants.*²⁸⁴

4.5.5 Report of the Ombudsman

The Ombudsman report for 2020 on Direct Provision described how COVID-19 had impacted on its operations. In 2020, the Office of the Ombudsman was unable to carry out as many outreach activities as in previous years; the team undertook 1 visit in 2020 and offered the option to meet remotely in 10 accommodation centres. However, of the 10 remote meetings, only 7 residents booked appointments.²⁸⁵

The report highlighted the commitment of the Department of Justice and the efforts of IPAS over the course of 2020 to move away from multi-occupancy accommodation and to have no more than three unrelated people share a room. This was a recommendation in previous reports of the Ombudsman, which called for a move towards own-door accommodation. The Ombudsman welcomed the confirmation from IPAS that work is ongoing on an agreement with the Health Information and Quality Authority (HIQA) to monitor and inspect the implementation of national standards in accommodation centres. IPAS has also confirmed that work is ongoing on an agreement being put in place with HIQA for it to monitor and inspect implementation of the national standards.²⁸⁶

The Ombudsman detailed how their inability to carry out outreach visits resulted in an overall reduction in complaints received. In 2020, the Ombudsman received 61 complaints, down from 168 in 2019.²⁸⁷

The report highlights how complaints were made about measures taken by IPAS in the context of the COVID-19 pandemic. Four complaints related to actions taken

282 Correspondence with Department of Children, Equality, Disability, Integration and Youth, March 2022.

283 Department of Children, Equality, Disability, Integration and Youth (2021). 'Response to parliamentary question 36292/21', 6 July, www.oireachtas.ie.

284 Ibid.

285 Office of the Ombudsman (2021). *The Ombudsman and Direct Provision: Update for 2020*, www.ombudsman.ie.

286 Ibid.

287 Ibid.

by IPAS in response to COVID-19, and a further three related to COVID-19 related measures in particular accommodation centres. The Ombudsman found that it was not possible to come to a conclusion on complaints regarding the movement of IPAS residents at the start of the pandemic due to differing accounts and not being in a position to independently verify the accounts. With regard to complaints about the movement of residents to an isolation facility in Citywest, the Ombudsman found that IPAS's actions were reasonable. It was unable to assess complaints about non-compliance with public health guidelines at centres but stated that there is an 'onus on management to ensure appropriate steps are taken to safeguard residents and staff to the greatest extent practicable, and an equal onus on residents and staff to follow those steps'.²⁸⁸ With regard to complaints about refusals of requests to transfer, the Ombudsman stated that transfers should continue to be considered on a case-by-case basis.

Other complaints received by the Ombudsman concerned the refusal of applications for a driving licence, difficulties in setting up a bank account, involuntary removal from an accommodation centre, third-party complaints about the living conditions in centres, and complaints about the Labour Market Access Unit. There were also complaints about mental health access and accommodation within the Irish Refugee Protection Programme (IRPP), which were addressed by the relevant units.

The Ombudsman ended the report by stating:

*The COVID-19 pandemic meant my staff were unable to undertake the same level of Outreach visits as has been the case since we initiated the programme in 2017. The near 64% decline in complaint numbers from Direct Provision residents between 2019 and 2020 in my view demonstrates how important our site visits are for connecting with residents. For this reason we intend to recommence our Outreach visits later in 2021.*²⁸⁹

4.5.6 Inspections of accommodation centres

As reported in the previous annual report, the National Quality Standards for Accommodation Centres were published in 2019. These standards were drafted with an intention to meet the criteria set out in European Asylum Support Office (EASO) Guidance on Operational Standards and Indicators and the Reception

288 Ibid., p. 15.

289 Ibid., p. 21.

Conditions Directive (2013/33/EU). The standards were due to be legally binding in January 2021.²⁹⁰

In October 2020, the Minister for Children, Equality, Disability Integration and Youth stated that HIQA had been engaged to undertake independent inspections of current accommodation.²⁹¹

The Minister stated that the inspection programme that was in place in 2020 was severely compromised by the COVID-19 pandemic, with all inspections suspended in the initial phase of restrictions. From 14 September 2020, the inspections recommenced and all new centres, with the exception of the Dominick Street centre in Galway, was inspected at least once by IPAS officials and 21 centres were inspected twice by IPAS officials. QTS, an independent inspection company, also carried out 27 inspections.²⁹²

4.5.7 Mental health research by Doras

In November 2020, Doras, an NGO in Limerick, published a report entitled *Mental health and Direct Provision: Recommendations for addressing urgent concerns*.²⁹³

The report identifies five key issues affecting the mental health of those in IPAS accommodation: unsuitable accommodation, delays in case processing, substance misuse and addiction, a lack of support services and COVID-19. The report makes a number of recommendations:

- staff and management of centres should be aware of appropriate responses to urgent mental health needs;
- single rooms should be made available to persons who are particularly vulnerable and at risk;
- the recommendations of general practitioners, psychiatric services and other qualified health professionals should be followed in all individual cases;
- mainstream support services, including mental health and addiction services, should be resourced appropriately;
- early and ongoing vulnerability assessments should be implemented;
- the recommendations of the Advisory Group, led by Catherine Day, should be implemented;

290 Department of Justice and Equality (2019). 'Ministers Flanagan and Stanton welcome publication of the spending review on Direct Provision', press release, 15 August, www.justice.ie.

291 Department of Children, Equality, Disability, Integration and Youth (2020). 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work', press release, 21 October, www.gov.ie.

292 Department of Children, Equality, Disability, Integration and Youth (2021). 'Response to parliamentary questions 3280/21 and 3281/21', 21 January, www.oireachtas.ie.

293 Doras (2020). *Mental health and Direct Provision: Recommendations for addressing urgent concerns*, www.doras.org.

- the national standards developed for accommodation centres should be implemented;
- mental health needs should be effectively addressed in the development of a new reception system; and
- recommendations made by the College of Psychiatrists of Ireland since 2009 and other mental health professionals should be followed up, particularly the recommendation to establish a national strategy and programme of mental healthcare for refugee and international protection applicants.²⁹⁴

4.6 LEGAL DEVELOPMENTS

4.6.1 Safe third country and the introduction of return orders

The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* introduced the concept of a safe third country into the *International Protection Act 2015*. It also introduced a return order in respect of persons whose application for international protection is deemed inadmissible (for further detail see Chapter 6, Section 6.4.2).

It introduced amendments to the *International Protection Act 2015* in relation to inadmissible applications under section 21 of the *International Protection Act 2015*. These new provisions do not apply to determinations of inadmissibility made before they came into operation. Section 21(2) of the *International Protection Act 2015* was amended to add arrival from a safe third country that is safe for the person to the list of circumstances that make an application inadmissible.²⁹⁵

A new section (72A) is inserted into the *International Protection Act 2015*²⁹⁶ to provide that the Minister for Justice may designate by Order a country as a safe third country. In making this designation, the Minister must have regard to certain safeguards, including ensuring that the principle of *non-refoulement* is respected and that it is possible to make a refugee claim in the third country. Section 72A also provides that the Minister should have regard to certain sources of information; for example, from other EU Member States or international organisations such as UNHCR, in coming to a decision to designate a safe third country. The designation is also to be kept under regular review.

The UK was designated as a safe third country from 11:00 pm on 31 December 2020 via the *International Protection Act 2015 (Safe Third Country) Order 2020*.²⁹⁷

294 Ibid.

295 Via section 119 of the *Withdrawal of the United Kingdom from the EU (Consequential Provisions) Act 2020*.

296 Via section 122 of the *Withdrawal of the United Kingdom from the EU (Consequential Provisions) Act 2020*.

297 S.I. 725 of 2020, www.irishstatutebook.ie.

4.6.2 Inadmissibility ruling in the CJEU

On 10 December 2020, the Court of Justice of the European Union published its ruling in the case of *M.S, M.W. and G.S. v the Minister for Justice and Equality* (C-616/19) concerning the inadmissibility procedure in Ireland. The three applicants were subsidiary protection status holders in Italy and had subsequently applied for international protection in Ireland. Their international protection applications were deemed inadmissible pursuant to section 21 of the *International Protection Act 2015*. The High Court stayed proceedings and submitted three questions to the Court of Justice of the European Union (CJEU) by way of its preliminary reference procedure concerning the inadmissibility provisions of the Asylum Procedures Directive 2005/85/EC, in light of the *Dublin III Regulation 604/2013*. This was in the context of Ireland not being a participant in the recast of the Asylum Procedures Directive 2013/32/EU, to which the Dublin III Regulation corresponds.

The CJEU held that Article 25(2) of the Asylum Procedures Directive 2005/85/EC, on which Article 21 of the *International Protection Act 2015* is based, must be interpreted as not precluding legislation of a Member State subject to the Dublin III Regulation but not bound by the corresponding recast Asylum Procedures Directive from considering an application for international protection inadmissible where the applicant already benefits from subsidiary protection status in another Member State.²⁹⁸

4.7 RESETTLEMENT AND RELOCATION

As reported in previous years, in September 2015, the Irish Government established the Irish Refugee Protection Programme (IRPP). Under this programme, Ireland agreed to accept up to 4,000 asylum seekers and refugees overall into Ireland through a combination of relocation and resettlement programmes.²⁹⁹

Following the formation of a new Government in June 2020, responsibility for the resettlement programme was transferred from the Department of Justice to the Department of Children, Equality, Disability, Integration and Youth in October 2020.

4.7.1 Irish Refugee Protection Programme

As reported in 2019, Ireland pledged to resettle up to 2,900 refugees under a new phase of the IRPP through a combination of resettlement and community sponsorship between 2020 and 2023 at the Global Refugee Forum held by UNHCR

²⁹⁸ CJEU (2020). *M.S, M.W. and G.S. v the Minister for Justice and Equality* (C-616/19), www.curia.europa.eu.

²⁹⁹ Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, p. 52, www.emn.ie and www.esri.ie.

in Geneva on 18 December 2019. It was announced that a new phase of the IRPP would see 650 resettlements in 2020, 700 in 2021, 750 in 2022 and 800 in 2023.³⁰⁰

COVID-19 impacted on the resettlement programme during 2020. A selection mission to Beirut took place in March 2020. Some 195 Syrian refugees (41 families, comprising 177 persons from Lebanon and 18 from Jordan) were resettled in Ireland during 2020. Of those, 165 persons were from the Beirut 2020 selection mission. The remainder were from Beirut and Amman missions in 2019.³⁰¹

In October 2020, the Minister for Justice announced that Ireland would resettle up to 50 people in family groups who had been displaced from the Moria camp on the island of Lesbos, Greece. This was in addition to the commitment to resettle up to 2,900 people under the UNHCR resettlement programme between 2020 and 2023.

As reported in previous years, Ireland opted into the two EU decisions on relocation – Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015. The relocation strand of the IRPP, in which Ireland relocated a total of 1,022 persons from Greece, was concluded in March 2018.³⁰²

4.7.2 Community sponsorship

Community Sponsorship Ireland (CSI) began on a pilot basis in December 2018. The pilot saw a Syrian family welcomed to Dunshaughlin, Co. Meath, with the support of Nasc and local community organisers. It was launched as a national programme in November 2019.³⁰³

The community sponsorship model is an alternative resettlement stream to the state-centred model. Local communities can come together to form community sponsorship groups (CSGs), fundraise to sponsor a refugee family, and provide supports upon arrival, including housing supports. Between 2020 and 2023, it is expected that 100 persons will be housed annually through community sponsorship.³⁰⁴

In 2020, 6 people arrived under community sponsorship. These 6 people are included in the figure of 195 Syrians in respect of all resettlements during 2020.³⁰⁵

300 Ibid, p. 52.

301 Department of Children, Equality, Disability, Integration and Youth (2021). *Annual report 2020*, www.gov.ie, p. 48.

302 Sheridan, A. (2019). *Annual report on migration and asylum 2018: Ireland*, www.emn.ie and www.esri.ie, pp. 86–87.

303 Ibid.

304 Government of Ireland (2021). 'Irish Refugee Protection Programme', 29 January, www.gov.ie/en/publication/ede36-irish-refugee-protection-programme/#community-sponsorship-ireland.

305 Correspondence with Department of Children, Equality, Disability, Integration and Youth, March 2021.

4.7.3 IRPP Humanitarian Admission Programme

The IRPP Humanitarian Admission Programme (IHAP) allowed international protection status holders in Ireland and Irish citizens to make a proposal to bring their family members who are nationals of one of the top ten major source countries of refugees to Ireland. Proposals for inclusion in the programme can be made within defined periods or ‘windows for submissions’.

The first window for accepting proposals ran from 14 May 2018 to 30 June 2018. The processing of proposals from this first window was completed in 2018. A second window for the submission of proposals ran from 20 December 2018 until 8 February 2019. The first IHAP round granted permission to 165 beneficiaries. A further 592 permissions were granted in the second round up to 21 January 2021.³⁰⁶

Beneficiaries make their own travel arrangements when travelling to Ireland. This means that the number of arrivals under the IHAP programme are recorded only when the beneficiaries themselves notify the department of their arrival in the State. This is an ongoing process that can result in the numbers of arrivals in any given year changing retrospectively over time.

4.7.4 Emergency Reception and Orientation Centres (EROCs)

As part of the measures implemented with the IRPP was the establishment of Emergency Reception and Orientation Centres (EROCs). These centres accommodate persons who have been resettled or relocated to Ireland through the IRPP. Those concerned stay in the accommodation pending the procurement of more long-term housing. In October 2020, the Minister for Children, Equality, Disability, Integration and Youth confirmed that two EROCs are in operation, one in Ballaghaderreen, Co. Roscommon, and the other in Dungarvan, Co. Waterford. There are also 200 EROC places in the Mosney Accommodation Centre, of which 117 were in use at that time.³⁰⁷

Two complaints received by the Ombudsman in 2020 related to accommodation concerns of persons leaving EROCs.³⁰⁸ One complaint was received from a man who was concerned that other people were being offered accommodation outside of EROC before him. Upon engagement with IRPP, it was clarified to the Ombudsman’s Office that this allegation was true and was due to the fact that there was more social housing available for families than for single people. IRPP confirmed that no other individual or couple without children had been housed

306 Department of Justice (21 January 2021) ‘Response to parliamentary question 3108/21’, www.justice.ie.

307 Department of Children, Equality, Disability, Integration and Youth (2020). ‘Response to parliamentary question 31015/20’, 20 October, www.oireachtas.ie.

308 Office of the Ombudsman (2021). *The Ombudsman & Direct Provision: Update for 2020*, www.ombudsman.ie.

ahead of the complainant. A solution had been found following escalation of the case. The second IRPP complaint was from a couple at the same centre who requested housing beside people they knew. Before the intervention of the Ombudsman team, the IRPP was able to offer housing to the couple close to their friends.³⁰⁹

4.8 RESEARCH

In December 2020, EMN Ireland published *National statuses granted for protection reasons in Ireland* in the ESRI Research Series. The study was based on a common template submitted to the EMN to develop an EU-wide study on national statuses granted for protection reasons.³¹⁰

The study provided an overview of the national protection statuses provided in Irish law and policy. The study covered: programme refugee status; permission to remain pursuant to section 49 of the *International Protection Act 2015*; leave to remain following a decision not to make a deportation order pursuant to section 3 of the *Immigration Act 1999*; permission to remain pursuant to section 4 of the *Immigration Act 2004*; and permission to remain under the Syrian Humanitarian Admission Programme (SHAP).

In July 2020, Nasc published *Invisible people: The integration support needs of refugee families reunified in Ireland*.³¹¹ This project was funded by the Irish Human Rights and Equality Commission (IHREC). The research was primarily focused on family reunification under the statutory framework for refugees under sections 56 and 57 of the *International Protection Act 2015*. The research used semi-structured interviews and focus groups with refugee sponsors, reunified family members and stakeholders working professionally in support roles. Findings were structured under a number of headings:

- family reunification process;
- reception and integration supports;
- housing and homelessness;
- economic circumstances and access to income supports for reunified families;
- education and English language acquisition;
- health; and
- family relationships, culture and social connection.

309 Ibid.

310 Groarke, S and P. Brazil (2020). *National statuses granted for protection reasons in Ireland*, www.emn.ie and www.esri.ie.

311 Smith K, M. Ní Raghallaigh, D. Johnson and A. Izzeddin (July 2020) *Invisible people: The integration support needs of refugee families reunified in Ireland*, www.nascireland.org.

Participants were critical of the definition of family member under section 56 of the *International Protection Act 2015* and the 12-month time limit for beneficiaries of international protection to make family reunification applications. Greater need for legal, information and advocacy supports were identified. Legal representatives noted in particular the need for legal support for applicants who had come to Ireland as unaccompanied minors (UAMs).

Participants also identified challenges with meeting the requirement to arrive in Ireland within the timeframe specified by the Minister, including issues with travel documents. However, the provision of temporary travel documents by the Irish Government was identified as positive.

Issues were raised about challenges on arrival in Ireland; for example, waiting times and provision of interpretation for registration appointments and allocation of a PPSN, access to housing assistance, and welfare benefits. Applications for social welfare benefit, housing assistance and the medical card are made after a family member arrives in Ireland. In relation to healthcare, mental healthcare was identified as a particular need.

The report contained 36 recommendations, including amendments to the family reunification provisions in the *International Protection Act 2015* and in relation to the availability of integration support workers/intercultural workers to support beneficiaries of family reunification immediately after arrival with access to services.

4.9 CASE LAW³¹²

4.9.1 Challenge to constitutionality of section 56(8) and 56(9)(a) of the *International Protection Act 2015* dismissed

In *A, S and I v Minister for Justice* [2020] IESC 70, the Supreme Court rejected challenges to the constitutionality of section 56(9)(a) of the 2015 Act (limiting the right of family reunification to spouses where the marriage took place prior to the application for international protection) and section 56(8) (which imposes an absolute time limit of 12 months for the making of applications for family reunification).

In *A and S v Minister for Justice* [2019] IEHC 547, the High Court (Barrett J) had granted a declaration that section 56(9)(a) of the 2015 Act was unconstitutional. In so doing, Barrett J declined to follow the decision of Humphreys J in *RC (Afghanistan) v Minister for Justice* [2019] IEHC 65, instead preferring to apply the

312 Case analysis by EMN legal consultant.

decision of the European Court of Human Rights in *Hode and Abdi v United Kingdom* [2009] ECHR 945. The Supreme Court held that Barrett J erred in so doing and allowed the Minister's appeal. Dunne J held that the difference in treatment between persons who were married prior to submitting their application for international protection, and those who married after submitting such applications, was 'legitimate and ... proportionate having regard to the need to provide for family reunification on the one hand and the need to have regard to immigration control on the other hand'. Dunne J also distinguished *Hode and Abdi*, in part on the basis that the applicants in *A and S* could submit applications for visas under general ministerial discretion (although the Supreme Court did not address the arguments made regarding the inappropriateness of this route for recognised refugees, including delays in processing and the inappropriateness of applying financial thresholds to such applications).

In relation to the *I* case, the Supreme Court upheld the judgment of Humphreys J ([2019] IEHC 729) rejecting the challenge to the constitutionality of the 12-month time limit in section 56(8) of the 2015 Act. Dunne J held that there was no unlawful discrimination on the basis that the 12-month time limit applied to all beneficiaries of international protection, commenting that 'the fact that the legislation may be viewed as harsh when viewed through the prism of its application to minors, it is at the end of the day a matter of policy for the legislature and is not an issue for the courts'. The Supreme Court also rejected the challenge to the ECHR compatibility of section 56(8), on the basis that the appellant's complaint did not fall within the 'other status' ground in Article 14 of the Convention.

4.9.2 Article 17 of the Dublin III Regulation

In *NVU v Refugee Appeals Tribunal* [2020] IESC 46, the Supreme Court held that the Article 17 discretion had not been devolved onto the statutory bodies with responsibility for examining refugee applications and appeals, but rather was exercisable only by the Minister for Justice. The Supreme Court noted that the purpose of Dublin III is to find and to transfer responsibility to the country responsible for deciding an application for international protection, in a process that is designed to be transparent, swift and based on mutual trust, and one with which applicants for international protection are required to cooperate. It was held that, in general, it is not necessary for there to be a specific consideration of potential or possible rights. Charleton J stated that if rights-based arguments are raised in the context of a proposed Dublin transfer, and there is a factual basis which engages such rights, consideration should be given to those rights, but commented that this would be a rare exception.

4.9.3 Panel member system upheld

In *IX v Chief International Protection Officer* [2020] IESC 44, the Supreme Court rejected a challenge to the legality of the system of using panel members appointed by way of contract to assist in the processing of applications for refugee status under the *Refugee Act 1996* and applications for refugee status and subsidiary protection under the *International Protection Act 2015*. Effectively, the appellants complained that the investigation of their applications for refugee status and subsidiary protection, and the preparation of a report in respect of those applications, was not carried out by an authorised officer of the Refugee Applications Commissioner/International Protection Officer, as required by the legislation, because in fact those functions were being carried out by independently appointed panel members. O'Donnell J was satisfied, having regard to the extensive affidavits and exhibits put before the court by the respondents, that the investigation of the application for international protection and preparation of first-instance reports was done in accordance with the statutory scheme and there was therefore no illegality in the manner in which panel members were employed as part of the process.

4.9.4 Family reunification for naturalised refugees

In *MAM and KN v. the Minister for Justice* [2020] IESC 32, the issue raised in these proceedings was effectively whether a refugee who subsequently acquired Irish citizenship by naturalisation lost the right to family reunification pursuant to section 18 of the *Refugee Act 1996*. The evidence before the court was that between 2010 and 2017 the Minister for Justice accepted applications for family reunification from refugees who had acquired Irish citizenship by naturalisation, but on foot of legal advice in 2017 the Minister reverted to the pre-2010 position that such persons lost their right to refugee family reunification upon naturalisation. The applicants challenged this position in judicial review proceedings. The High Court ([2018] IEHC 113) and the Court of Appeal ([2019] IECA 116) dismissed the applicants' challenge, and the applicants appealed.

The Supreme Court held that as a matter of statutory interpretation, a refugee who subsequently acquired Irish citizenship by naturalisation did not lose the right to family reunification under section 18 of the *Refugee Act 1996*. The interpretation urged by the Minister would create substantial legislative uncertainty when the purpose of the 1996 Act was to create certainty. The legislative aim of the Oireachtas was to identify a definitive mark of recognition to persons who were entitled to refugee status in the State, by the granting of a declaration of refugee status under section 17 of the 1996 Act. The fact that refugees who received declarations of refugee status were to be entitled to many of the same rights as citizens could not mean that the Act suggested, by virtue of becoming citizens, the declarations which they had received automatically ceased to be in force. Not only

would this have required express words, but it would also have run counter to the legislative intent and purpose of the statute.³¹³

313 This case summary is available at https://emn.ie/case_law/mam-and-kn-v-minister-for-justice-2/.

CHAPTER 5

Unaccompanied minors and other vulnerable groups

5.1 UNACCOMPANIED MINORS

As reported in previous reports in this series, Tusla, the Child and Family Agency, was established under the *Child and Family Agency Act 2013* as an independent legal entity. The Agency, which is overseen by the Department of Children, Equality, Disability, Integration and Youth (DCEDIY), brings together key services relevant to children and families, including child protection and welfare services previously operated by the Health Service Executive (HSE), the Family Support Agency and the National Educational Welfare Board. The Social Work Team for Separated Children Seeking International Protection (SCSIP) is a dedicated and bespoke service within Tusla. It provides care, family reunification and aftercare support to separated children seeking asylum with an 'equity of care' principle applied to all unaccompanied minors (UAMs) who are in receipt of the services.³¹⁴

5.1.1 Statistics

A total of 80 referrals of UAMs were made to the SCSIP in 2020. Some 51 UAMs were placed in care, and a further 18 were reunited with their families. Over 100 young people engaged with and were supported by the aftercare service.³¹⁵

Applications for international protection

A total of 29 unaccompanied minors made applications for international protection in 2020,³¹⁶ as compared to 49 applications in 2019.³¹⁷ Of the 2020 applicants, some 16 were male and 13 were female.³¹⁸

Providing care for UAMs is also the responsibility of the SCSIP. Tusla may decide that an application for international protection should be made on behalf of a UAM. Where Tusla decides that it is in the best interests of the child that an application for international protection is made on their behalf, specific arrangements will be made by the International Protection Office (IPO) in conjunction with Tusla for the processing of the application. Tusla will support the minor throughout the process, including attending their interview.

314 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie, p. 79.

315 Tusla (2021). *Tusla annual report 2020*, www.tusla.ie, p. 19.

316 Department of Justice (2021). 'Response to parliamentary questions 60031/21 to 60034/21', 7 December, www.justice.ie.

317 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie, p. 79.

318 Correspondence with International Protection Office, March 2022.

Unaccompanied minors from Greece

Ireland takes part in the European Union (EU) relief projects for relocation of UAMs from the Moria camps and other refugee camps in Europe.³¹⁹ As reported for 2018, Ireland committed to accepting 36 UAMs from Greece on a bilateral basis in December 2018. In June 2020, 8 children arrived in Ireland from Greece. In late 2020, an additional 14 minors were identified, nominated to be matched with Ireland, and accepted for the relocation to Ireland programme.³²⁰

5.2 OTHER VULNERABLE GROUPS

5.2.1 Vulnerability assessments

In December 2020, the International Protection Accommodation Service (IPAS) introduced vulnerability assessments on a pilot basis. The purpose of the vulnerability assessments is to determine if an applicant is deemed to have special reception needs, what those needs are and what actions are required to address those needs. See Chapter 4, Section 4.5.5, for further detail.

5.2.2 Migrant children

See Chapter 2, Section 2.4.1.3, for information on periodic reporting in relation to the UN Convention on the Rights of the Child.

Ombudsman for Children Office consultation with children living in Direct Provision

As reported for 2019, the Ombudsman for Children Office (OCO) conducted a consultation with children living in Direct Provision between July and October 2019. The report of the consultation, *Direct division*, was published in July 2020.³²¹

The report summarised the findings of the consultation and presented direct written comments made by the children during the consultations. Concerns expressed by the children included lack of privacy in the centres, difficulty in participating in activities outside school due to financial and transport constraints, experiences of racism or discrimination at school or in the community, and reluctance to admitting they lived in Direct Provision. However, children also reported positive experiences in relation to support they experienced from teachers and schoolfriends to help them feel included, including respect for

319 Correspondence with the Department of Children, Equality, Disability, Integration and Youth, February 2021.

320 Tusla (2020). *Tusla annual report 2020*, www.tusla.ie, p. 19.

321 Office of the Ombudsman for Children (2020). *Direct division: Children's views and experiences of living in Direct Provision A report by the Ombudsman for Children's Office 2020*, www.oco.ie.

different traditions; for example, being allowed to wear the hijab or prayer rooms being made available in the school.³²²

Direct division was followed up in December 2020 with the report, *Life in lockdown*, on the experiences of a small number of children living in Direct Provision accommodation during COVID-19 lockdown in 2020.³²³ As the sample was small, it was not considered representative. However, the OCO considered that experiences reported in the *Direct division* report – ‘social exclusion, physical isolation from their communities, lack of facilities and lack of space and privacy’ – were exacerbated by the lockdown, and that experiences of boredom and isolation among the community in general were magnified in the Direct Provision setting. In particular, keeping up with school was difficult, due to ‘a lack of support services, digital poverty and language barriers’.³²⁴

5.2.3 Vulnerable residents in international protection accommodation centres

As described in Chapter 4, the Special Committee on COVID-19 response considered international protection accommodation centres in the context of congregated settings on 26 May 2020.

A representative of the Department of Justice and Equality described the measures taken to prevent the spread of COVID-19 in centres. The representative described how the first priority was to ‘cocoon’ vulnerable residents, including persons over the age of 65 and persons identified as medically vulnerable applicants by the Health Service Executive (HSE). Approximately 70 persons over the age of 65 and 36 highly vulnerable persons were identified. These persons were given solutions that allowed them to isolate. In addition, requests such as to remain with a family unit were considered.

Between mid-March and early April, 600 people resident in centres were moved to other accommodation facilities in order to facilitate social and physical distancing in centres and enable cocooning measures to be implemented for the most vulnerable.³²⁵

322 Ibid, pp. 35-71.

323 Office of the Ombudsman for Children (2020). *Direct division – Life in lockdown: Children’s views and experiences of living in Direct Provision during the COVID-19 pandemic. A report by the Ombudsman for Children’s Office 2020*, www.oco.ie.

324 Ibid.

325 Houses of the Oireachtas (2020). ‘Special Committee on COVID-19 Response’, 26 May, https://www.oireachtas.ie/en/debates/debate/special_committee_on_covid_19_response/2020-05-26/5/.

5.3 CASE LAW³²⁶

5.3.1 X v Minister for Justice [2020] IESC 30

The issue at the heart of this appeal was the extent or breadth of the definition of ‘child’ for the purpose of refugee family reunification and whether that definition could include a minor who is not a biological or adopted child of the applicant. The High Court ([2019] IEHC 284) held that the term ‘child’ in section 56(9) of the *International Protection Act 2015* could include a non-biological child in light of the wide diversity of family structures.

The Supreme Court held that the term ‘child’ in section 56(9) of the *International Protection Act 2015* can only be a reference to a biological or adopted child of the sponsor, as this was the literal and ordinary meaning of the term. This was reinforced by an examination of the historical background to the legislation, which made it clear that rather than introducing a broader meaning of the word ‘child’ in the section, the overall effect of the section was restrictive in terms of those to whom family reunification could apply. This was a case in which a serious doubt arose as to the paternity of the two children in respect of whom the applicant sought family reunification. That serious doubt was created by the applicant himself in correspondence with the Minister. In those circumstances it was appropriate to seek DNA testing to establish the relationship between the applicant and the children concerned. In circumstances where he refused to undergo such testing, the Minister was entitled to draw an inference from that fact and to refuse the application.

The appeal was allowed.³²⁷

³²⁶ Case analysis by EMN legal consultant.

³²⁷ This case summary is available at: https://emn.ie/case_law/x-v-minister-for-justice/.

CHAPTER 6

Borders, visas, irregular migration and return

6.1 BORDERS

6.1.1 Refusals of leave to land

According to rounded Eurostat data, some 2,790 people were refused entry to Ireland in 2020. This was a marked decrease of 62.5% over 2019, when there were some 7,455 refusals of entry.³²⁸

Table 6.1 shows refusals of entry for the top five nationalities, compared with total refusals of entry for these nationalities in the EU27. Brazil and South Africa were also in the top five nationalities in 2019. Refusals for the other three countries in the top five in 2019 – Albania, Bolivia and Georgia – fell sharply in 2020.³²⁹

TABLE 6.1 REFUSALS OF ENTRY AT EXTERNAL BORDER IN IRELAND 2020

Country	Refusals of entry 2020	EU27 total 2020	Ireland ranking in EU27, 2020 (from highest)
Brazil	335	2775	2nd
Eritrea	180	230	1st
South Africa	180	230	1st
Syria	150	765	1st
United States	140	1665	5th

Source: Eurostat: Third-country nationals refused entry at the external borders – annual data (rounded)[migr_eirfs], data extracted 10 March 2022.

6.1.2 Border management

As part of measures to combat the COVID-19 pandemic, Ireland introduced a mandatory requirement for travellers (with certain exceptions) to complete a public health ‘passenger locator form’ before arriving in the State, via the *Health Act 1947 (Section 31A – Temporary Requirements) (COVID-19 Passenger Locator*

328 Eurostat (2022). ‘Third country nationals refused entry at the external borders – Annual data (rounded) [migr_eirfs], data extracted 10 March, <https://ec.europa.eu/eurostat>.

329 Albania fell from 1,730 to 105 refusals, Bolivia from 275 to 65 refusals and Georgia from 275 to 10 refusals – rounded figures. Eurostat (2022). ‘Third country nationals refused entry at the external borders – annual data (rounded) [migr_eirfs]’, data extracted 10 March, <https://ec.europa.eu/eurostat>.

Form) *Regulations 2020*, from 28 May 2020.³³⁰ An online version of this form became available from 26 August 2020.^{331,332}

The Border Management Unit (BMU) of the Department of Justice has responsibility for securing Ireland's border at Dublin Airport in accordance with the provisions of the Immigration Acts and Orders as they relate to entry and refusal of entry to the State. From 28 April 2020, the BMU was also involved in collecting and checking public health 'passenger locator forms' at Dublin Airport and undertaking follow-up phone calls on arrivals into Dublin Airport and all other ports of entry nationwide on behalf of the health authorities. The online form was introduced on 26 August 2020 and responsibility for follow-up work thereafter was transferred to the Department of Health.³³³

The BMU published a customer service feedback policy in June 2020.³³⁴

The policy sets out the procedures of the BMU in addressing customer service issues related to operations at the immigration border at Dublin Airport. The policy states that the BMU 'aims to ensure consistency, fairness and transparency in its response to customer service feedback and will facilitate improvements in the provision of service where this is deemed to be necessary'.³³⁵

The customer service feedback procedure does not cover decisions regarding immigration service delivery at the border, such as the type of permission granted or reasons for refusal of entry to the State.³³⁶

6.2 VISAS

6.2.1 Visa statistics

Due to the impact of the COVID-19 pandemic on travel, a total of 43,872 entry visa applications were received in 2020, a sharp decrease of 71.8% from the 155,761 applications received in 2019. A total of 37,592 applications were approved.³³⁷

330 S.I. No. 181 of 2020. The period of application of the form was updated via subsequent statutory instruments.

331 Department of Justice and Equality (2020). 'Response to parliamentary question 16649/20', 10 September, www.kildarestreet.com.

332 Health Act 1947 (Section 31A – Temporary Requirements) (COVID-19 Passenger Locator Form) (Amendment) (No. 6) Regulations 2020, S.I. No. 314 of 2020, www.irishstatutebook.ie.

333 Department of Justice and Equality (2020). 'Response to parliamentary question 23913/20', 15 September, www.kildarestreet.com.

334 Department of Justice and Equality (2020). 'Border Management Unit Dublin Airport – Immigration Service Delivery customer service feedback procedure', www.irishimmigration.ie.

335 Ibid, p. 2.

336 Ibid, p. 3.

337 Department of Justice (2022). *Immigration in Ireland annual review 2020*, p. 13.

6.2.2 Post-Brexit visa and preclearance scheme

On 23 December 2020, the Minister for Justice announced a new visa and preclearance scheme applicable to non-EEA national family members of UK nationals who move to Ireland after 31 December 2020. UK nationals who were already resident in Ireland on or before 31 December 2020 and their eligible non-EEA family members benefit from the Withdrawal Agreement between the EU and the United Kingdom.³³⁸

UK nationals continue to have the right to live in Ireland after 31 December 2020, in line with Common Travel Area (CTA) rights, but there is no automatic entitlement to have a non-EEA national family member reside with them. The scheme sets out how UK nationals who are resident in Ireland may sponsor an application from their specified non-EEA family member to reside with them in the State.³³⁹

The scheme is established pursuant to the executive power of the Minister for Justice. Family reunification for non-EEA nationals, other than those in the international protection process or pursuant to EU free movement law, is solely a matter of Irish national policy and subject to the jurisdiction of the Irish courts. The policy for family reunification for these categories is set out in the *Policy document on non-EEA family reunification* from 2016. This new scheme supersedes that policy document as far as UK nationals are concerned.³⁴⁰

The scheme came into operation from 1 January 2021 and applies to family members who wish to come to Ireland for longer than 90 days. The application must be made from outside the State.

The categories of family members who may apply under the Scheme are:

- a spouse, civil partner or *de facto* partner of the sponsor;
- a dependent child of the sponsor, spouse, civil partner or *de facto* partner of the sponsor; and
- dependent parents (aged 66 or over) of the sponsor, spouse, civil partner or *de facto* partner.³⁴¹

338 Department of Justice (2020). 'Important notice for non-EEA family members of UK nationals seeking to move to Ireland after 31 December 2020', 23 December, www.irishimmigration.ie.

339 Department of Justice (2020). *Policy document on the scheme in relation to non-EEA family members of UK citizens intending to reside in the State*, paragraph 2.4, www.irishimmigration.ie.

340 Ibid., paragraph 2.1-2.2, www.irishimmigration.ie.

341 Ibid., paragraph 1.2. See also sections 6-8 for detailed eligibility criteria.

6.2.3 Temporary suspension of the Irish Short Stay Visa Waiver Programme

The Irish Short Stay Visa Waiver Programme was temporarily suspended from 10 July 2020. This programme allows third-country nationals from certain countries³⁴² visiting the UK on short stay visas to travel to Ireland without the requirement for a separate Irish visa and was originally due to continue until 31 October 2021. The programme is not a reciprocal arrangement. Under it, the visa holders had to leave Ireland before their permission to stay in the UK ended. The suspension of the programme was implemented because of a divergence in approach between Ireland and the UK in travel measures to combat the COVID-19 pandemic.³⁴³

This change was implemented via the *Immigration Act 2004 (Visa) (Amendment) Order 2020*.³⁴⁴

6.2.4 Visa processing arrangements due to COVID-19

Restrictions on visa processing took place during 2020 due to the COVID-19 pandemic.

It was decided to temporarily cease accepting visa applications from close of business 20 March 2020, except for certain priority/emergency categories, including: healthcare professionals; transport personnel; immediate family members of Irish citizens; and persons legally resident in the State.³⁴⁵

Limited processing of visas resumed from 22 June 2020. This included resumption of processing of long-stay visas and continued processing of emergency/priority category visas. Issuing of decisions for certain long-stay visa categories, including study, employment and to join family, recommenced from 25 September 2020.³⁴⁶

Applications for short-stay visas continued not to be accepted throughout the year except for those in the emergency/priority categories. The emergency/priority category list was expanded to include those specific categories of travellers

342 At the time of the suspension of the scheme, these were: Bahrain, Belarus, Bosnia and Herzegovina, India, Kazakhstan, Kuwait, Montenegro, Oman, People's Republic of China, Qatar, Russian Federation, Saudi Arabia, Serbia, Thailand, Turkey, Ukraine and Uzbekistan.

343 Department of Justice and Equality (2020). 'Temporary suspension of Irish Short Stay Visa Waiver Programme as part of COVID-19 measures to restrict travel and protect public health', press release, 10 July, www.justice.ie.

344 S.I. No. 262 of 2020, www.irishstatutebook.ie.

345 Department of Justice and Equality (2020). 'COVID-19 visa arrangements', 21 March, www.inis.gov.ie.

346 European Migration Network (2020). 'New migration and asylum measures introduced in response to COVID-19', News, www.emn.ie.

identified as having an essential function or need in the EU Council Recommendation (EU) 2020/912 of 30 June 2020.³⁴⁷

Full processing of re-entry visa applications recommenced from 20 July 2020.³⁴⁸

6.3 IRREGULAR MIGRATION

6.3.1 Government commitment regarding regularisation of undocumented migrants

Programme for Government: Our shared future, published in 2020, contains a commitment to:

*Create new pathways for long-term undocumented people and their dependents, meeting specified criteria to regularise their status within 18 months of the formation of the Government, bearing in mind EU and Common Travel Area commitments.*³⁴⁹

Work was undertaken by the Department of Justice on developing the scheme, which was to be informed by an assessment of international best practice and with regard to Ireland's EU and CTA commitments. It was intended to consult with relevant government departments, civil society and other interested parties, before finalising the scheme.³⁵⁰

The Minister for Justice also referred to the proposals for the scheme during her address to the Seanad on the *Deportation Moratorium (COVID-19) Bill 2020* in December 2020. The scheme was welcomed by Seanad members during the debate.³⁵¹

6.3.2 Migrant smuggling

Our Shared Future includes a commitment to:

*Enact legislation that encompasses relevant EU measures and the UN Protocol against the smuggling and trafficking of migrants.*³⁵²

347 Ibid.

348 Ibid.

349 Government of Ireland (2020). *Programme for Government: Our Shared Future*, www.gov.ie, p. 76.

350 Department of Justice (2020). 'Response to parliamentary question 43619/20', 16 December, www.kildarestreet.com.

351 Seanad Éireann (2020). 'Deportation Moratorium (COVID-19) Bill 2020 Second Stage', 9 December, www.oireachtas.ie.

352 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie, p. 76.

On 27 July 2020, the Government approved the *General Scheme of the Criminal Justice (Smuggling of Persons) Bill 2020* and its submission for pre-legislative scrutiny.

This Bill was intended to implement three international legal instruments in the area of people smuggling:

- EU Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence;
- EU Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; and
- UN Protocol against the smuggling of migrants by land, sea and air, supplementing the UN Convention against Transnational Organized Crime, adopted in November 2000.³⁵³

6.4 RETURN

6.4.1 Return statistics

According to rounded Eurostat data, a total of 795 persons were ordered to leave in 2020, reduced from 2,535 in 2019.³⁵⁴ A total of 141 deportation orders were effected in 2020,³⁵⁵ down from 298 in 2019.³⁵⁶

In addition, there were 7 outgoing transfers under the Dublin III Regulation in 2020.³⁵⁷ A total of 32 EU nationals were also returned to their home countries on foot of EU removal orders in 2020.³⁵⁸

There was a total of 196 voluntary returns in relation to third-country nationals in 2020, 100 of whom were assisted by the International Organization for Migration (IOM).³⁵⁹

6.4.2 Legislative changes

The *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* introduces a return order in respect of persons whose

353 Department of Justice and Equality (2020). 'Scheme of the Criminal Justice (Smuggling of Persons) Bill 2020', www.justice.ie.

354 Eurostat, 'Third country nationals ordered to leave, annual data (rounded)', [migr_eiord]. Data extracted 10 March 2022, <https://ec.europa.eu/eurostat>.

355 Correspondence with Department of Justice, Repatriation Division, February 2021.

356 Sheridan, A. (2020). *Annual report on migration and asylum 2019: Ireland*, www.emn.ie and www.esri.ie, p. 93.

357 Correspondence with Repatriation Division, Department of Justice, April 2022.

358 Ibid.

359 Ibid.

application for international protection is deemed inadmissible.³⁶⁰ It introduces amendments to the *International Protection Act 2015* in relation to persons whose protection applications are deemed inadmissible under section 21(11) of the *International Protection Act 2015*. These new provisions do not apply to determinations of inadmissibility made before they came into operation. They provide for a return order to be made in respect of persons whose applications are deemed inadmissible, subject to the prohibition on *refoulement*, and for return to: a) the Member State that has granted refugee status or subsidiary protection to the person, b) the country of first asylum for the person, or c) a safe third country that is safe for the person. The UK has been designated as a safe third country since 31 December 2020.

Section 121 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* inserts a new section, 51A, to the *International Protection Act 2015*, which provides that a return order shall be made in respect of a person whose application is deemed inadmissible under section 21(11) of the *International Protection Act 2015*, requiring that person to leave the State.

The making of the return order is subject to the prohibition on *refoulement* set out in a new section, 50A, of the *International Protection Act 2015*, inserted by section 120 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*. If the protection against *refoulement* applies to the subject of the return order, they are deemed to be a protection applicant under the provisions of section 15 of the *International Protection Act 2015* and are invited to complete the prescribed form under section 15(5), notwithstanding that their application was deemed inadmissible.

Section 51B is inserted to the *International Protection Act 2015*;³⁶¹ it sets out the arrangements which may apply in order to facilitate the return of the person who is the subject of the return order. This includes reporting requirements, requirements to reside in a particular place pending return, surrender of passport/travel documents pending return, and arrest and detention for a maximum period of seven days if a member of An Garda Síochána (national police) deems there to be a significant risk of absconding. Detention does not apply to minors.

A new section, 51C, is inserted to the *International Protection Act 2015*,³⁶² setting out timeframes for validity of a return order. A return order is valid for six months

360 Act No. 23 of 2020, www.irishstatutebook.ie.

361 Via section 121 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*.

362 Via section 121 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*.

from the date of notification to the person subject to the order/their representative. Where the person absconds during this six-month period, the return order is valid for 12 months from the date of notification of the making of the return order. Where the subject of the return order makes an application for judicial review of the return order, under Order 84 of the Rules of the Superior Courts, and the Court orders suspension of the return order pending determination of the application, the return order remains in effect for six months after the date of the final determination. If the period of validity of the return order expires and the person has not been returned, the person shall be deemed to have made an application for protection under section 15 of the *International Protection Act 2015*, shall be notified of this in writing, and shall be invited to complete the form prescribed under section 15(5) of the *International Protection Act 2015*.

Section 5(1) of the *Illegal Immigrants (Trafficking) Act 2000* is also amended,³⁶³ in this case to add a return order made under section 51A of the *International Protection Act 2015* to the list of decisions/determinations/orders etc. made under various statutes in the area of immigration and refugee law, in respect of which an application for judicial review under Order 84 of the Rules of the Superior Courts can be made.

Part 18 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020* was commenced via the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (Parts 17, 18, 19 and 20) (Commencement) Order 2020* at 11:00 pm on 31 December 2020.

Related secondary legislation also came into effect from 31 December 2020.

The *International Protection Act 2015 (Return Order) Regulations 2020*³⁶⁴ prescribe the return order to be issued under section 51A of the *International Protection Act 2015*.

The *International Protection Act 2015 (Section 51B)(Places of Detention) Regulations 2020*³⁶⁵ set out the places of detention for the purposes of section 51B of the *International Protection Act 2015* (all Garda Síochána stations and Cloverhill Prison, Dublin).

363 Via section 123 of the *Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020*.

364 S.I. No. 726 of 2020, www.irishstatutebook.ie.

365 S.I. No. 727 of 2020, www.irishstatutebook.ie.

6.4.3 COVID-19

For the duration of COVID-19 Level 5 restrictions, the Minister for Justice requested officials to cease the practice of issuing letters notifying refusal of leave to remain or letters enclosing deportation orders.³⁶⁶

Members of Seanad Éireann tabled a Private Members' Bill, the *Deportation Moratorium (COVID-19) Bill 2020*, in December 2020.³⁶⁷ The Bill proposed to place a moratorium on the issuing of deportation or return orders, or the legal effect of such orders, during the period when powers granted to the Minister for Health under section 31A of the *Health Act 1947*, in relation to COVID-19, were in effect.³⁶⁸ The Minister for Justice outlined the 'compassionate and pragmatic' approach being taken by the department to deportations during the pandemic, but pointed out that the Minister for Justice and An Garda Síochána must retain discretion to remove persons who pose a threat to national security or on serious policy grounds, although this discretion is only used in rare circumstances.³⁶⁹

The Minister for Justice also stated that voluntary return is actively encouraged prior to issue of a deportation order, noting that, 'The time taken for relevant voluntary return arrangements to be made will also take into account all factors, including COVID-19 restrictions and limitations to travel this has created'.³⁷⁰

6.4.4 Voluntary return

Under section 48(3) of the *International Protection Act 2015*, a protection applicant who is not granted refugee status or subsidiary protection status and neither is granted leave to remain on non-protection grounds, is required to confirm within five days if they will avail of the option of voluntary return.

The Advisory Group on the Provision of Supports, including Accommodation, to Persons in the International Protection Process, the report of which was published in October 2020, recommended that the five-day period for deciding whether to accept voluntary return should be extended to 30 days and that children and students be allowed to finish the school year before departure.³⁷¹ This recommendation was being examined by the Department of Justice.

366 Department of Justice (2020). 'Speech by Minister for Justice, Helen McEntee TD, Deportation Moratorium (COVID—19) Bill 2020 Seanad Éireann – Committee Stage', 9 December, www.justice.ie.

367 Seanad Éireann (2020). *Deportation Moratorium (COVID-19) Bill 2020*, 3 December, www.oireachtas.ie.

368 Seanad Éireann (2020). *Deportation Moratorium (COVID-19) Bill 2020, Second Stage debate*, 9 December www.oireachtas.ie.

369 Department of Justice (2020). 'Speech by Minister for Justice, Helen McEntee TD, Deportation Moratorium (COVID-19) Bill 2020 Seanad Éireann – Committee Stage', 9 December, www.merriestreet.ie.

370 Ibid.

371 Government of Ireland (2020). *Report of the Advisory Group on the Provision of Supports, including Accommodation, to Persons in the International Protection Process*, www.gov.ie, p. 74.

There was a total of 196 voluntary return cases in relation to third-country nationals in 2020, 100 of which were assisted by the IOM.³⁷²

The top countries of citizenship for total voluntary return in 2020 were Brazil, South Africa, Malaysia, Pakistan and Georgia.³⁷³

TABLE 6.2 TOP NATIONALITIES FOR TOTAL VOLUNTARY RETURN, 2020

Country of citizenship	Number
Brazil	65
South Africa	30
Malaysia	14
Pakistan	12
Georgia	11

Source: Eurostat, 'Third-country nationals who have left the territory by type of return and citizenship [migr_eirt_vol]', data extracted 10 March 2022; Repatriation Division, Department of Justice, April 2022.

The IOM, funded by the Department of Justice and Equality, offers voluntary assisted return and reintegration programmes for asylum seekers, rejected asylum seekers and other illegally present migrants in vulnerable situations.

Asylum seekers, or asylum seekers who have failed in their claim and who have not had a deportation order made against them, unaccompanied minor children (where return has been deemed to be in their best interests by relevant social work teams) and suspected victims of trafficking (identified within the national referral mechanism identification system) who wish to return home, are assisted with return under the VARRP. Other illegally present migrants are assisted with return under the IVARRP, which is co-funded by the EU on a 75/25 basis.

Under these programmes, all travel arrangements including flights for such persons are arranged and paid for and, where required, the IOM will assist in securing travel documents, arranging fitness to travel medical assessments and providing medical escorts where required, and will give assistance at the airport at departure, transit and arrival. Persons availing of these programmes can apply for reintegration assistance to allow them to start up a business or enter further education or training when they are back in their country of origin. This takes the form of an 'in-kind' grant rather than a cash payment.

372 Correspondence with Department of Justice, Repatriation Division, April 2022.

373 Ibid.

6.5 CASE LAW³⁷⁴

6.5.1 Article 41 of the Constitution/Article 8 ECHR and the rights of the family

In *Gorry v Minister for Justice* [2020] IESC 55, a majority of the Supreme Court held that there was no *prima facie* constitutionally protected right to cohabit in the State for marital couples in which one member is a non-Irish national. However, it was held that in making a decision on an application to revoke a deportation order in such circumstances, the Minister was required to have regard to (a) the right of an Irish citizen to reside in Ireland; (b) the right of an Irish citizen to marry and found a family; (c) the obligation on the State to guard with special care the institution of marriage; and (d) the fact that cohabitation is a natural incident of marriage and the family and that deportation will prevent cohabitation in Ireland and may make it difficult, burdensome, or even impossible anywhere else for so long as the deportation order remains in place. The Supreme Court also clarified that the test under Article 8 of the ECHR should not be applied in the consideration of issues arising under the Constitution, because while the Constitution and the ECHR together provide extensive overlapping protection for families and marriage, it is necessary to recognise the different contexts.

6.5.2 Whether marriage of convenience is a nullity in law

In *MKFS v Minister for Justice* [2020] IESC 48, the Supreme Court allowed an appeal from the judgment of the High Court ([2018] IEHC 103) where Humphreys J had found that a marriage of convenience was a nullity in law and therefore no rights whatsoever could flow from such a marriage. It was held that the Minister's decision (made in the context of an application for a residence card under the *Free Movement of Persons Regulations, 2015*) that a particular marriage is one of convenience may be relied upon subsequently by the Minister as part of the deportation decision-making process. However, McKechnie J held that such a decision under the 2015 Regulations does not have the effect of rendering that marriage a nullity at law; rather, such determination is limited to the immigration/deportation context. The sole consequence thereof is that it entitles the Minister to 'disregard' the marriage in that specific context. Although McKechnie J noted that the law of nullity had been judicially developed in the past, immigration judicial review proceedings were not an appropriate vehicle for the court to pronounce on the wider question of whether a marriage of convenience is a legal nullity for all purposes. Such a question would more appropriately be determined in the context of an application for an annulment before a court with jurisdiction in relation to matters of family status, including the power to make an underlying factual determination concerning the marriage. Finally, McKechnie J

374 Case analysis by EMN legal consultant.

held that, although the Minister is entitled to import the earlier decision into the deportation process, he must nonetheless have regard, in operating that process, to the Article 8 rights of the appellants as founded on the underlying relationship between the parties.

6.5.3 Whether the Minister is obliged to revoke a deportation order in respect of a person granted permission to make a subsequent application for international protection

In *Seredych v Minister for Justice* [2020] IESC 62, the Supreme Court considered the question of whether a person who has left the State on foot of a validly made deportation order, but is subsequently granted permission to make a fresh application for international protection pursuant to section 22 of the *International Protection Act 2015*, is entitled to return to the State for the purpose of pursuing that application. The High Court (Humphreys J.) ([2019] IEHC 730) had granted an order of *certiorari* quashing the Minister's refusal to revoke the deportation order made in respect of the applicant. The Supreme Court held that the High Court had erred in finding that, by reason of the decision of International Protection Appeals Tribunal and the giving by the Minister of consent to make a subsequent application, the applicant had an implicit right to enter and remain in the State to pursue his application for international protection, and that the failure of the Minister to revoke the deportation order amounted to an unlawful frustration of the statutory purpose. Baker J, giving the unanimous judgment of the Supreme Court, noted that it was a fundamental difficulty for the applicant that a person may only seek international protection when he or she is in, or at the frontier of, the State. This limitation appeared not only in the *International Protection Act 2015*, but also European and international law, and was held to be 'consistent with the Refugee Convention and the general requirement found in international law that a refugee is a person who is outside the place of his or her nationality, and who cannot for reason of a well-founded fear of being persecuted avail himself of the protection of his own place of nationality'. It was held that the giving of consent to make a subsequent application for international protection pursuant to section 22 of the 2015 Act did not commence the application for international protection, but merely entitled the making of such application. Baker J also noted that while the Procedures Directive does identify, in article 39.3, that an applicant has a right to remain to process an application, there is no express right to enter the State for the purposes of making an application, save where the person is at its frontiers. The court also rejected the applicant's complaint that the refusal to revoke the deportation order was in breach of the right to an effective remedy, and similarly rejected the complaints that the Minister had acted arbitrarily or in frustration of the statute.

CHAPTER 7

Integration

7.1 INTEGRATION

7.1.1 Migrant Integration Strategy

Programme for Government: Our shared future, includes a commitment to developing and implementing a new migrant integration strategy.³⁷⁵

The *Migrant integration strategy – A blueprint for the future* for the period 2017–2020 contains 76 actions which are delivered by government departments, local authorities, local communities, the business sector, sporting and arts organisations and NGOs across a number of policy areas relevant to the integration of migrants, including employment, education and social inclusion. It also addresses racism and xenophobia, representing a whole-of-government approach.

Migrant Integration Policy Index (MIPEX)

Ireland ranked joint ninth out of 52 countries surveyed in relation to integration policies in the Migrant Integration Policy (MIPEX) index for 2020, which examined the position in 2019. The MIPEX index is produced every five years by the Barcelona Centre for International Affairs and the Migration Policy Group. According to MIPEX for Ireland, ‘Over the past decade, immigrants to Ireland have seen more improvements to Irish integration policies than immigrants have in most MIPEX countries’. Ireland had improved +5 points on the MIPEX scale, since the introduction of the Migrant Integration Strategy in 2017, as compared to an average +2 increase internationally from 2014 to 2019. Ireland scored highly on the indicators of health, political participation and anti-discrimination, due to measures such as the second *National Intercultural Health Strategy 2018–2023*, the *Education (Admissions to School) Act 2018* and inclusive voting rights. Citizenship ceremonies were also highlighted as ‘a model other countries can learn from’. However, labour market mobility was Ireland’s lowest score, with the report stating that Ireland ‘offers much less support than any other EU country to secure equal opportunities on the labour market’. Supports for recognition of professional qualifications and professional and language training were also considered insufficient. In addition, the MIPEX report criticised Ireland in relation to long-term residency and family reunification policies, which it considered to be more ‘discretionary and insecure’ than those found in most other EU countries.³⁷⁶

375 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie, p. 76.

376 Migration Policy Index (2020). *Key findings Ireland 2019*, <https://www.mipex.eu/ireland>.

The ranking was welcomed by the Immigrant Council of Ireland (ICI), who, however, considered there was still room for improvement. Some of the issues highlighted by the ICI included ‘administrative discretion, bureaucracy and uncertainty about [migrants’] permits and legal status in Ireland’. The ICI considered that these types of problems had disimproved during COVID-19 and that Ireland could have piloted temporary arrangements that could become more permanent solutions based in legislation.³⁷⁷

7.1.2 Labour market integration

The Minister for Children, Equality, Disability, Integration and Youth marked International Migrants Day in December 2020 with the announcement of €2.2 million in integration funding under the National Integration Fund, for 18 projects over three years.

According to the Department of Children, Equality, Disability, Integration and Youth:

*The funding is provided to projects which take an inclusive approach, aiming to bring migrants and host communities together and encompassing a range of themes, including increasing mutual understanding between local communities and migrants; combatting racism and xenophobia; promoting the integration into Irish society of vulnerable or socially-excluded immigrants and promoting the involvement of immigrants in sport, volunteering and cultural activities.*³⁷⁸

7.1.3 Community engagement

As reported in previous years, in 2017 the Communities Integration Fund was launched by the Minister of State at the Department of Justice and Equality alongside the *Migrant Integration Strategy*.

In October 2020, the Minister for Children, Equality, Disability, Integration and Youth announced the 2020 Communities Integration Fund, under which 113 successful community projects received funding of a total of almost €500,000. The year 2020 was the fourth year of the Communities Integration Fund.

The Communities Integration Fund provides funding of between €1,000 and €5,000 to small community-based organisations carrying out projects covering the following themes: intercultural awareness; combating racism and xenophobia;

377 Immigrant Council of Ireland (2020). ‘Immigrant Council welcomes top 10 ranking for Ireland in global migrant integration index, but warns progress is needed on immigration rights, employment and anti-discrimination measures’, press release, 9 December, www.immigrantcouncil.ie.

378 Department of Children, Equality, Disability, Integration and Youth (2020). ‘Minister O’Gorman marks International Migrants Day with €2.2m funding for integration projects’, press release, 17 December, www.gov.ie.

sport and community games; arts; other community events; capacity building; employment; integration research; food/cuisine; education; and transportation.³⁷⁹

7.1.4 Civic participation

The ICI published *Strength in diversity* in May 2020.³⁸⁰ This report examines the experience of migrants who ran in the local elections in May 2019. The *Strength in diversity* report was based on surveys and interviews with candidates with a migrant background who stood for the 2019 local elections. A total of 56 candidates with a migrant background ran for election, from a total of 1,900 local election candidates. Of the 949 councillors elected, 9 were from a migrant background. All of these 9 candidates were party affiliated. The ICI sent a survey to all 56 candidates, and received a 46% response rate; in addition, they conducted in-depth interviews with 6 candidates. According to the results of the research, migrant candidates were primarily motivated by the wish to improve their local communities in general, followed by the need to promote the rights of minority groups and the integration of immigrant groups in the community. In general, the migrant candidates interviewed found their campaign experience to have been a positive one, in particular in terms of the knowledge gained about politics and campaigning. Some candidates also noted that many in migrant communities were not aware that migrants can vote in and run for local elections in Ireland, and they succeeded in getting more people registered to vote. The positive impact of the ICI internship programme, where migrants interested in politics were paired with existing councillors on a four-month placement, was noted. This experience inspired one successful candidate. However, the report found that migrant participation in Irish politics remains very low, despite Ireland's inclusive electoral system. It recommended that political parties expand their recruitment networks and offer more supports to migrant candidates.³⁸¹

7.1.5 Engagement of diaspora communities

Africa Day 2020

Africa Day celebrations moved online in 2020 due to COVID-19 restrictions. Irish Aid continued its support for the celebrations in Ireland, by teaming up with local authorities and community groups across the country to share content across

379 Department of Children, Equality, Disability, Integration and Youth (2020). 'Minister O'Gorman announces €500,000 Community Integration Fund 2020', press release, 28 October, www.gov.ie.

380 Immigrant Council of Ireland (2020) 'New research reveals scale of barriers faced by migrant political candidates', press release, 6 May, www.immigrantcouncil.ie.

381 Ibid.; Immigrant Council of Ireland (2020). *Strength in diversity – The experience of migrant candidates in the 2019 local election*, www.immigrantcouncil.ie.

social media platforms. This included music, cookery demonstrations and the spoken word, as well as ‘throwbacks’ to previous years’ events.³⁸²

7.1.6 Non-discrimination

Anti-racism

Programme for Government: Our shared future includes a commitment to publish a new national action plan against racism.³⁸³

An anti-racism committee was established at the end of 2019 and appointed during 2020.³⁸⁴ The committee commenced its work during 2020 to prepare a draft action plan for Government.³⁸⁵ The 16-member committee includes people from the business, education, local government, academic and advocacy sectors. The terms of reference were also established and the Committee was tasked with reviewing the current experience of racism in Ireland, looking at international best practice in combating racism and holding stakeholder dialogues to gain from the views of civil society, members of the public, members of the Oireachtas, the business sector, media and other relevant parties in relation to its work.³⁸⁶

Transport for Ireland (TFI), the ICI, Dublin City Council (DCC) and transport operators launched the annual public transport anti-racism campaign on 19 October 2020. The campaign, ‘We’re united against racism’, ran for two weeks on social media, on board public transport vehicles and at stops and stations.

On 21 March 2020, to coincide with International Day for the Elimination of Racial Discrimination, the ICI relaunched its racist incident support and referral service as well as a four-step guide for the public on ‘how to be an ally against racism’, which addressed what to do if someone is being racially abused in a public space.³⁸⁷

Consultation on hate speech and hate crime

The Minister for Justice launched the findings of the public consultation on hate speech and hate crime, *Legislating for hate speech and hate crime in Ireland* in December 2020. The Minister also announced that new legislation to combat

382 Irish Aid (2020). ‘Marking Africa Day 2020 online’, 22 May, www.africaday.ie

383 Government of Ireland (2020). *Programme for Government: Our shared future*, www.gov.ie, p. 76.

384 Department of Justice (2019). ‘Minister Stanton delivers Ireland’s National Statement to CERD in Geneva’, press release, 2 December, www.justice.ie.

385 Department of Justice (19 June 2020) ‘Plan Against Racism for Ireland to be drawn up by new independent Anti-Racism Committee’, press release, www.justice.ie.

386 Ibid.

387 Immigrant Council of Ireland (2020). ‘How to defeat #EverydayRacism – together & as allies’, press release, 20 March, www.immigrantcouncil.ie.

incitement to hatred and hate crime in Ireland would be brought forward in 2021.³⁸⁸

A public consultation on hate speech was conducted by the Department of Justice between October 2019 and January 2020, as part of its review of the existing law in the area – the *Prohibition of Incitement to Hatred Act 1989*. The consultation comprised: an online survey via the Department of Justice website; a detailed question and discussion paper distributed to stakeholder groups, and also made publicly available on the Department website; a series of seven independently facilitated discussion workshops around the country; and a series of meetings with interested groups, organisations, academics, law enforcement, professionals and other experts.³⁸⁹ According to the Department of Justice, ‘the purpose of the consultation was to ensure the Department could identify how Ireland’s law in this area could be improved, based on a clear understanding of the experiences of those impacted by hate speech and hate crime’.³⁹⁰ The report also commented that, ‘The strong community engagement with the consultation will help us develop better policy and improve the decisions we make, by building our understanding of the lived experiences of the people who will be most impacted by our legislative changes’.³⁹¹ The report sets out the findings of the consultation, draws conclusions and sets out the next steps towards drafting new hate crime legislation.

Programme for Government: Our shared future also included commitments in relation to the introduction of hate crime legislation and to updating the *Prohibition of Incitement to Hatred Act 1989*, taking into account the public consultation conducted in 2019.³⁹²

Garda Síochána Diversity and Integration Strategy 2019–2021

As reported for 2019, the *An Garda Síochána Diversity and Integration Strategy 2019–2021* was published in 2019 with the aim of improving communication, developing community partnerships and combating racism and hate crime. An implementation plan for the strategy was developed during 2020. This included a Garda National Diversity Forum, which was established during 2020 and the introduction of training for Gardaí to engage effectively with people from diverse backgrounds. The Garda National Diversity Forum was established to engage with representatives of communities and key stakeholders to review the

388 Department of Justice (2020). ‘Minister McEntee launches findings of public consultation on hate speech and hate crime and commits to drafting new legislation’ press release, 17 December, www.justice.ie.

389 Department of Justice (2020). *Legislating for hate speech and hate crime in Ireland*, www.justice.ie, p. 9.

390 Department of Justice (2020). ‘Minister McEntee launches findings of public consultation on hate speech and hate crime and commits to drafting new legislation’, press release, 17 December, www.justice.ie

391 Department of Justice (2020). *Legislating for hate speech and hate crime in Ireland*, www.justice.ie, p. 8.

392 Government of Ireland (2020). *Programme for Government: Our Shared Future*, www.gov.ie, p. 86.

implementation of the strategy and includes members from a number of NGOs and faith groups. The DCU Centre of Excellence for Diversity and Inclusion and the Irish Centre for Diversity will conduct an independent survey of community stakeholders on feedback on the strategy, due for completion in 2021.³⁹³

7.1.6 Research

On 15 December 2020, the ESRI and the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) published the *Monitoring report on integration 2020*,³⁹⁴ as well as the related and separate study, *COVID-19 and non-Irish nationals in Ireland*.³⁹⁵ This was done to supplement the monitoring report with additional information on the impact of the pandemic on non-nationals in Ireland. The research was funded by the DCEDIY under the ESRI Equality and Integration Research Programme.

The *Monitoring report on integration 2020* was the latest in a series of reports measuring how non-Irish nationals fare compared to Irish nationals, in terms of key life domains: employment; education; social inclusion; and active citizenship. The report found that, in 2019, just prior to the COVID-19 pandemic, labour market participation rates were slightly higher for non-Irish nationals and the unemployment rate of just over 5% was similar among Irish and non-Irish populations. The exception to this is the much higher unemployment rate of 12% among African nationals, continuing a trend over the previous decade. In 2018–2019, 60% of non-Irish nationals aged 25–34 had third-level qualifications, as opposed to 53% of Irish nationals. The report also found that a higher percentage of non-Irish nationals (15%) were living below the poverty line than Irish nationals (12%).³⁹⁶ The report estimated that in 2019, naturalised non-EU nationals represented up to 37% of the resident population of non-EU origin, and that naturalisation was rapidly rising among the EEA national population, with Polish and UK nationals the top nationalities receiving Irish citizenship (see also Section 7.1 for naturalisation statistics in 2020).

The report *COVID-19 and non-Irish nationals in Ireland* found that not all groups in Ireland were equally affected by the COVID-19 pandemic, specifically in relation to the labour market impact, non-nationals as key workers and exposure to COVID-19 infection.³⁹⁷ An assessment of early labour market impact found that non-Irish nationals were over-represented in sectors most heavily impacted by COVID-19, such as accommodation and food. East European nationals experienced a sharper

393 An Garda Síochána (2022). *Annual report 2020*, www.garda.ie, p. 42.

394 McGinnity F, S. Enright, E. Quinn, B. Maître, I. Privalko, M. Darmody and M. Polakowski (2020). *Monitoring report on integration*, www.esri.ie.

395 McGinnity F, H. Russell, I. Privalko and S. Enright (2020). *COVID-19 and non-Irish nationals in Ireland*, www.esri.ie.

396 Drawn at 60% of median household income.

397 McGinnity F, H. Russell, I. Privalko and S. Enright (2020). *COVID-19 and non-Irish nationals in Ireland*, www.esri.ie.

fall in unemployment than Irish nationals in the first two quarters of 2020, but patterns between west European nationals and Irish nationals were largely the same. Irish nationals were more likely to be employed as key workers than non-Irish nationals, but rates among African and Asian nationals were higher among the non-Irish national groups. Assessment of the specific dataset used for the report found that persons of Asian ethnicity, Black ethnicity and Irish Travellers were more likely to contract COVID-19 than the White Irish population. However, all ethnic minority groups and non-Irish nationals were underrepresented in deaths from COVID-19, which was considered to be likely linked to their younger age profile.

In June 2020, the ESRI published *Origin and integration: A study of migrants in the 2016 Irish census*.³⁹⁸ This research was funded by the Department of Justice and Equality in line with the *Migrant integration strategy 2017–2020*. It analyses data on first-generation migrants – those born abroad – in relation to educational qualifications, English-language skills, unemployment and job quality. It used data from the 2016 Irish census to assess differences between first-generation migrants and people born in Ireland in these areas, as well as differences within migrant groups. Broadly, the research found that first-generation migrants from many migrant groups were more highly educated but had higher unemployment levels than people born in Ireland. In terms of education, the research also found differences within migrant groups; for example, among Asian migrants, those from Taiwan, South Korea and India are most likely to hold a third-level degree, while those from Afghanistan, Thailand and Vietnam are least likely to hold one. The research found that migrants from countries with a large number of asylum applications to Ireland tended to have worse labour market outcomes, while migrants born in EU countries have higher rates of employment than other migrants. Among non-EU migrants, the research found that having Irish citizenship is associated with lower unemployment rates.

398 McGinnity F, I. Privalko, E. Fahey, D. O'Brien NS S. Enright (2020). *Origin and Integration: A study of migrants in the 2016 Irish census*, www.esri.ie.

7.2 CITIZENSHIP

7.2.1 Citizenship statistics

A total of 10,181 citizenship applications were made during 2020. The greatest number of applications came from UK nationals, followed by India and Poland. A total of 5,481 citizenship certificates were issued during the year. The top three nationalities were the UK, Poland and Romania.³⁹⁹

7.2.2 Citizenship ceremonies

Citizenship ceremonies were held on 2 and 3 March 2020, and on 10 July 2020. Some 5,000 individuals received their certificates of naturalisation on 2 and 3 March 2020. A virtual citizenship ceremony was held on 10 July 2020, at which 21 persons received their certificates of naturalisation. While the virtual ceremony was a success, a review found that progressing virtual ceremonies to the required scale would require diverting resources from case processing and that to temporarily replace ceremonies with signed affidavits would be more efficient.

In October 2020, the Minister for Justice announced that citizenship ceremonies would be replaced, on a temporary basis, by applicants signing an affidavit of loyalty to the State and being issued with their certificate of naturalisation. This measure was introduced as it was not possible to conduct in-person ceremonies during the COVID-19 pandemic.⁴⁰⁰

This temporary measure was planned to prevent applicants having to wait until in-person ceremonies could be run again. According to the Department of Justice, in October 2020:

*There are currently in excess of 21,000 citizenship applications on hand including approximately 3,000 that are ceremony ready. Waiting until large in-person citizenship ceremonies could take place again is not an option as many applicants would have their opportunity to be made Irish citizens postponed for an indefinite period of time through no fault of their own.*⁴⁰¹

7.2.2 Digital reform

In October 2020, the Minister for Justice announced plans to introduce e-vetting and e-tax clearance for citizenship applicants. These plans were part of the digital reform agenda to modernise the justice sector. The Minister for Justice

399 Department of Justice (February 2022) *Immigration in Ireland – Annual review 2020*, pp. 19-20, www.gov.ie.

400 Ibid, pp. 17-18.

401 Department of Justice (2020). 'Citizenship applicants to sign affidavit of loyalty under temporary COVID-19 measures announced by Minister McEntee', press release, 22 October, www.justice.ie.

commented that driving the digital reform agenda to modernise the justice sector was one of her main priorities as Minister.⁴⁰²

The citizenship website was revamped during 2020, and a citizenship chatbot ‘Tara’ was introduced in December to provide instant responses to frequently asked questions. There were over 8,000 interactions on the chatbot before the end of December.⁴⁰³

7.2.3 Naturalisation of minors

The Private Members’ *Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018* was discussed at Committee Stage in the Seanad in December 2020. The Bill was initiated by Labour party members Ivana Bacik, Aodhán Ó Ríordáin, Ged Nash and Kevin Humphreys in Seanad Éireann in November 2018. The Bill proposed to amend the law in relation to applications for a certificate of naturalisation by minors born on the island of Ireland.⁴⁰⁴

The Bill arose due to concerns about the negative impact of naturalisation rules, introduced after the 2004 Constitutional referendum on citizenship, on pathways to Irish citizenship for children of non-EEA national parents born in Ireland. Some children might have lived in Ireland for a long time and been educated here and yet find themselves in a ‘limbo’ situation with the threat of removal if their family does not meet conditions to remain. While it was acknowledged that the Minister for Justice had exercised discretion to grant leave to remain for humanitarian reasons in certain cases, it was considered that a more definitive legal framework was needed. The proposers stressed that the terms of the constitutional amendment gave the Oireachtas the power to legislate, as it allows for the entitlement to Irish citizenship of persons who do not have an Irish parent to be regulated by law.

The Bill sought to amend the naturalisation rules in three ways:

- to reduce the residency requirement for children from five years (in total) to three years (one year prior lawful residence plus two years);
- to remove eligibility criteria for the parent or guardian, so that the child’s status would be the determinant to qualify for citizenship; and
- to change rules regarding reckonable residence in respect of an Irish-born child – periods of time out of permission or permissions for a temporary purpose would not be disregarded for calculating reckonable residence.

402 Ibid.

403 Department of Justice (2022). *Immigration in Ireland annual review 2020*, p. 18, www.gov.ie.

404 See <https://www.oireachtas.ie/en/bills/bill/2018/124/?tab=debates>.

The Minister for Justice supported the objective of the Bill to address the situation of children, already integrated into Irish society, who face the threat of removal. She outlined a number of developments aimed at helping the situation of children in families seeking international protection, or who may have had no immigration permission. In particular, she referred to the scheme from October 2018 to regularise the status of persons who had previously held lawful permission as non-EEA national students for a minimum of two years, and to the commitment in *Programme for Government: Our shared future* to introduce pathways to regularisation for long-term undocumented migrants. She also emphasised the role of ministerial discretion in granting leave to remain for humanitarian reasons, which had frequently benefitted children, and that this discretion would continue to be used. However, the Minister had some concerns about the Bill. She noted that giving residence rights to children without residency would inevitably have the effect of extending residency rights to the people who would have to be allowed to remain to care for the children, and who could apply for citizenship in due course. She pointed out that this was not just a matter for national law, as it is EU citizenship as well as Irish citizenship that would be granted. In addition, the impact of changing immigration rules on provision of state services – housing, education, healthcare and social welfare – would have to be carefully assessed. However, the Minister agreed that the legislation was well-intentioned and that she wanted to work with Senator Bacik and the House to address the issues.⁴⁰⁵

7.2.4 Research

EMN Ireland published *Pathways to Citizenship through naturalisation in Ireland* in December 2020.⁴⁰⁶ Naturalisation refers to the acquisition of citizenship after birth on the basis of residence in a country. This report examines the acquisition of citizenship through naturalisation in Ireland. It focuses on the conditions for naturalisation set out in Irish citizenship law, the application procedure and the decision-making process. In general, the research found that Ireland has more favourable conditions for acquiring citizenship by naturalisation than many EU Member States, but processing delays and lack of clarity on some eligibility conditions have been highlighted by NGOs and in parliamentary debate. The report was based on Ireland's contribution for the EU-wide EMN study, *Pathways to citizenship for third-country nationals in the EU*.

The Office of the Ombudsman for Children (OCO) published *Pathways to Irish citizenship: Separated, stateless, asylum seeking and undocumented children* in

405 Seanad Éireann (2020). Irish Nationality and Citizenship (Naturalisation of Minors Born in Ireland) Bill 2018: Committee Stage debate, www.oireachtas.ie.

406 Groarke S. and R. Dunbar (2020). *Pathways to citizenship through naturalisation in Ireland*, www.emn.ie and www.esri.ie.

June 2020.⁴⁰⁷ This report outlines the citizenship process in Ireland for separated, stateless, asylum seeking and undocumented children. The research was commissioned by the OCO after its remit was extended in 2017 to include children living in Direct Provision, which increased the OCO's contact with children who were not Irish citizens. The research was commissioned in an effort to understand the current position regarding pathways to citizenship for non-EEA national children and their needs. In the context of this particular research, the OCO was interested in focusing on access to citizenship, and to rights linked to citizenship, in Ireland for non-EEA children in the following situations: whose parents are seeking international protection; whose parents are undocumented; who are separated from their families and in the care of the State (that is, separated children); and who are stateless.⁴⁰⁸

The report points out that, other than for citizenship by birth or association, access to a citizenship pathway requires a person to have an immigration permission. According to the report, children are at an increased risk of delays in securing access to citizenship because they:

- cannot apply for international protection independently;
- cannot register with INIS before they turn 16;
- are not always registered/aware that they need to register once they do turn 16; and
- ordinarily derive their status from their parents/guardians.⁴⁰⁹

The report made some recommendations for separated children seeking asylum, stateless children, children seeking international protection and undocumented children. The report also recommended better access to legal aid and said that efforts need to be made to ensure that children are registered in a timely manner with a reckonable residence permission to facilitate them getting on the pathway to naturalisation. The situation of the child should be regularised at the earliest point to ensure eligibility for citizenship at an earlier age.⁴¹⁰

In September 2020, the ESRI and the Department of Justice and Equality published *Supporting integration? International practices on civics and language requirements linked to naturalisation: Policy implications for Ireland*.⁴¹¹ This research was funded by the Department of Justice and Equality as part of the Equality and Integration Research Programme. (The Migrant Integration Strategy

407 Arnold S. (2020). *Pathways to Irish citizenship: Separated, stateless, asylum seeking and undocumented children*, Ombudsman for Children's Office, www.oco.ie.

408 Ibid., p. 6.

409 Ibid., p. 22.

410 Ibid., pp. 23-25.

411 Groarke S, M. Polakowski, E. Quinn and F. McGinnity (2020). *Supporting integration? International practices on civics and language requirements linked to naturalisation: Policy implications for Ireland*, www.esri.ie.

2017–2020 provides that language and civics tests will be examined in relation to citizenship applications in Ireland.⁴¹²) The study maps requirements linked to naturalisation across 27 EU Member States and the UK and includes case studies on the situation in Belgium, Finland, Portugal and the UK, as well as a case study on three English-speaking countries outside Europe – Australia, Canada and the US. The research found that 24 EU Member States and the UK required applicants to show language proficiency, while 18 EU Member States and the UK had requirements in relation to civic knowledge or proof of integration. There was a broad diversity in the practices applied by Member States and the level of competence required. The practices were also found to vary significantly in Australia, Canada and the US. In considering the policy implications for Ireland, the study found that introducing civic and language requirements would amount to a significant change of direction, with considerable potential costs, and that the approach taken by each country studied should be seen in the wider citizenship and migration policy context. The introduction of a language proficiency or civic knowledge requirement would require an assessment of the availability of English language course, and opportunities to gain civic knowledge already available. The possibility to test Irish or Irish sign language was also recommended. The study also advised that great attention must be paid to ensure that testing methods were not discriminatory and would take into account the needs of people with special requirements, in order to avoid testing leading to certain categories of people being excluded from citizenship.

412 Action 12 of the Strategy states that the introduction of both civics and language tests for those seeking citizenship will be examined.

CHAPTER 8

Trafficking in human beings

8.1 STATISTICS

As described in previous years, the reporting of trafficking statistics in Ireland was re-aligned at the beginning of 2017. Statistics from 2017 no longer include victims of crimes prosecuted under section 3(2) of the *Child Trafficking and Pornography Act 1998*, as amended by the *Criminal Law (Human Trafficking) Act 2008*.⁴¹³

A total of 38 suspected victims of human trafficking was identified by An Garda Síochána during 2020. This compares with some 42 suspected victims identified by An Garda Síochána during 2019. These figures include EU nationals. Victims from Nigeria were the largest discernible group. Most of the victims (26) were in relation to sexual exploitation.⁴¹⁴

TABLE 8.1 SUSPECTED VICTIMS OF TRAFFICKING IDENTIFIED IN 2020

Gender	33 were female and 5 were male.
Regions of origin	11 were from Nigeria. The remainder came from countries including Romania, Zimbabwe, Albania, Brazil, Ghana, Sierra Leone and Gambia.
Type of exploitation	26 were victims of sexual exploitation; 10 of labour exploitation; and 2 of forced criminality.

Source: Department of Justice (2021). *Trafficking in human beings in Ireland, annual report 2020*.

The Department of Justice noted a slight decrease in the proportion of female victims from 2019 to 2020, with female victims accounting for 94% and 87% of victims respectively.⁴¹⁵

As in 2019, there were no convictions in respect of human trafficking in 2020.⁴¹⁶ According to the *Trafficking in persons* report (21st edition), An Garda Síochána's Human Trafficking Investigation and Co-ordination Unit reported 22 investigations in 2020 (15 for sex trafficking and 7 for labour trafficking). Despite the closure of the courts for 16 weeks due to the COVID-19 pandemic, the Government initiated prosecutions against 3 sex trafficking suspects. No prosecutions for labour trafficking were initiated in 2020.⁴¹⁷

413 For more information, see Sheridan, A. (2018) *Annual report on migration and asylum 2017: Ireland*, www.emn.ie and www.esri.ie, p. 159.

414 Department of Justice (2021) *Trafficking in human beings annual report 2020*, www.blueblindfold.ie, pp. 8-10.

415 Ibid, p. 10.

416 Ibid, p. 19

417 US State Department (2021). *Trafficking in persons report*, <https://state.gov>, p. 303.

8.2 TRAFFICKING IN PERSONS REPORT

Ireland stayed on the Tier 2 watchlist for the second consecutive year, according to the United States State Department *Trafficking in Persons* (TIP) report, 21st edition, which covers developments during 2020.⁴¹⁸ The TIP report measures the efforts of states to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. According to the Tier 2 watchlist rating:

*The Government of Ireland does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included designating an independent human trafficking national rapporteur and establishing a formal national anti-trafficking forum composed of interagency and civil society stakeholders. In coordination with an international organization, the government launched a national anti-trafficking public awareness campaign. The government also increased funding for victim assistance, antitrafficking public awareness campaigns, and training. However, the government did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the COVID-19 pandemic on its antitrafficking capacity.*⁴¹⁹

The report continued to highlight that although the courts convicted one trafficker under false imprisonment charges, the Government has not obtained a trafficking conviction under the anti-trafficking law since it was amended in 2013, referring again to ‘systemic deficiencies in victim identification, referral, and assistance’.⁴²⁰

As in previous years, the report referred to concerns by commentators regarding the victim identification mechanism and limiting identification of victims solely to police, including that ‘the formal identification scheme excluded EEA-nationals, including Irish nationals, and asylum-seekers with pending applications’, with consequent implications for formal identification of people as victims of trafficking and subsequent implications regarding access to services. The Department of Justice did not accept this assertion, while also noting that in 2020 it had undertaken to revise the national referral mechanism (NRM) to make it easier for victims of human trafficking to come forward, be identified and facilitate their access to advice, accommodation and support, which was approved by Government the following year.⁴²¹

The TIP report noted that, ‘while the government reported that domestic and foreign victims had equal access to all state services, commentators (GRETA and NGOs) asserted that EEA-national victims could be excluded from accessing general

418 The scope of the 21st edition of the TIP report is 1 April 2020 to 31 March 2021.

419 US State Department (2021). *Trafficking in persons report*, <https://state.gov>, p.302.

420 Ibid.

421 Correspondence with Department of Justice, March 2022.

social welfare, housing support payments, and other state support until they satisfied or were granted an exemption from the Habitual Residence Condition, which some victims may not have been able to satisfy because of an inability to prove a documented work history'.⁴²²

According to the report, while the Government provided funding (€453,000) to NGOs for victim assistance, because of the pandemic, 'the caseworkers for trafficking victims within the Health Services Executive (HSE), were seconded to COVID-19 contact tracing roles; subsequently, case management of trafficking victims and referral to services may have been diminished'.⁴²³ While it said that the Irish Government had decreased law enforcement and victim protection efforts in the reporting period, it found that prevention efforts had been increased. This included continued coordination of inter-agency cooperation, the establishment of an anti-trafficking forum, the appointment of the Irish Human Rights and Equality Commission as the independent national rapporteur, the launch of a national human trafficking public awareness campaign, and the provision of funding for public awareness campaigns and the development of training material for frontline officials.⁴²⁴

Responding to the report, the Immigrant Council of Ireland (ICI) noted that although the Department of Justice had placed an increased impetus on this issue, the Government had made minimal progress in taking forward recommendations made in previous TIP reports. In particular, the ICI noted the continued responsibility of An Garda Síochána for identification (in contrast to international best practice) and the continued placement of victims of trafficking in mixed-gender Direct Provision centres.⁴²⁵

In a statement responding to the report, the Department of Justice noted its disappointment that Ireland was kept on the Tier 2 watchlist and that the 'US Department of State did not acknowledge as sufficient the progress that has been made to upgrade Ireland's ranking'.⁴²⁶ The Department noted its continuing commitment to combating human trafficking and supporting victims.

8.3 INTERNATIONAL DEVELOPMENTS

The European Commission published the third report on the progress made in the fight against trafficking in human beings (2020), as required under Article 20 of

422 US State Department (2021). *Trafficking in persons report*, p. 303, <https://state.gov>.

423 Ibid., p. 304.

424 Ibid., p. 305.

425 Immigrant Council of Ireland (2021). 'Ireland not doing enough to combat human trafficking, says US Government', press release, 2 July, www.immigrantcouncil.ie.

426 Department of Justice (2021). 'Department of Justice disappointed Ireland's ranking not upgraded in latest 'Trafficking in Persons' report', press release, 1 July, www.justice.ie.

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in October 2020.⁴²⁷ The report noted that Ireland was one of five Member States that either adopted new or amended existing legislation to reduce demand or criminalise the use of services of trafficking victims, and that it was one of 23 countries that participated in a campaign run by the European Crime Prevention Network and Europol on the rights of victims of human trafficking in 2019.⁴²⁸ In its submission under Article 20 of the Directive,⁴²⁹ the ICI noted recurrent concerns, including the need for improved identification of victims, gender-specific accommodation, funding for legal representation for victims and compensation for victims. The submission noted that the adoption of the *Criminal Law (Sexual Offences) Act 2017* was a major step forward in criminalising the demand for commercial sex.⁴³⁰

The ICI also contributed to the targeted consultation for the new EU strategy towards the eradication of trafficking in human beings. In its submission, the ICI made a number of recommendations, notably that assistance to victims of trafficking must be gender sensitive and that resources must be planned for bearing in mind the long-term support required for women and girls who are victims of trafficking for the purposes of sexual exploitation. Preventative actions should be gender, exploitation, and context specific, and awareness-raising measures must be combined with legal measures to suppress demand. The role of the internet, in promoting the demand and proliferation of trafficking for sexual exploitation, was identified as a key challenge. Identification of victims should be core in any future strategy. ICI also noted that ‘the EU Anti-Trafficking Coordinator and the EU Anti-trafficking Civil Society Platform must remain essential actors in the implementation of any new strategy in its aspects pertaining to the assistance of victims’.⁴³¹

427 European Commission (2020). *Report from the Commission to the European Parliament and the Council: Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*, <https://data.consilium.europa.eu/doc/document/ST-12280-2020-INIT/en/pdf>.

428 Ibid.

429 Immigrant Council of Ireland (2020). ‘Submission under Article 20 of Directive 2011/36/EU’, 20 May.

430 Ibid.

431 Immigrant Council of Ireland (2020). ‘Targeted consultations for a new EU strategy towards the eradication of trafficking in human beings: Submission of the Immigrant Council of Ireland’, 30 July, <https://www.immigrantcouncil.ie/sites/default/files/2020-08/2020-Submission-Immigrant-Council-new-EU-Strategy-on-Trafficking.pdf>.

8.4 NATIONAL DEVELOPMENTS

8.4.1 IHREC designated as independent national rapporteur on Trafficking and Human Beings

The Irish Human Rights and Equality Commission (IHREC) was designated as Ireland's independent national rapporteur on trafficking in human beings during 2020. The *European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020* making this designation were signed by the Minister for Justice on 5 October 2020. This fulfils the requirement under Article 19 of the EU Anti-Trafficking Directive 2011/36/EU for Member States to establish national rapporteurs or equivalent mechanisms whose tasks include the gathering of information to fulfil reporting obligations under Article 20 of the Directive. According to IHREC:

As National Rapporteur, the Commission will prepare and publish monitoring reports and thematic reports evaluating Ireland's overall performance against the State's international obligations such as the EU's Anti-Trafficking Directive, the Council of Europe's Convention on Action against Trafficking (2005) and the Palermo Protocol to the UN Convention against Organised Crime (2000).

Independent Reports of State action will be prepared by the Commission to align with international monitoring in this area. It is expected that reporting by the Commission will provide a strong and credible baseline for external evaluations. The National Rapporteur will also contribute [to] the development of the research and evidence base required to underpin effective monitoring and policy development.⁴³²

8.4.2 Labour exploitation in the Irish fishing industry

As reported in previous years, new rules regarding the employment of non-EEA fishermen in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by a number of relevant government departments and agencies, including changes to the Atypical Worker Permission Scheme to provide permission for non-EEA workers to work in the Irish fishing fleet, and a memorandum of understanding on enforcement agreed between bodies having oversight in the industry.

The Workplace Relations Commission (WRC) has been involved in the enforcement of employment rights and employment permits legislation in the whitefish sector since February 2016. WRC inspections of the whitefish fleet continued in 2020.

432 Irish Human Rights and Equality Commission (2020). 'Commission takes on new role as Ireland's National Rapporteur on the Trafficking of Human Beings', 22 October, <https://www.ihrec.ie/commission-takes-on-new-role-as-irelands-national-rapporteur-on-the-trafficking-of-human-beings/>.

Some 450 fisheries inspections have now been undertaken by WRC inspectors since the introduction of the Atypical Worker Permission Scheme.

In 2020, some 36 contraventions of employment rights or employment permits legislation were detected, relating to 19 vessel owners. In 2020, 64 fisheries investigations, covering 71 vessels coming within the scope of the Atypical Scheme, were completed by WRC inspectors. Contraventions were detected in 25 of those cases, in 22 of which compliance was achieved following engagement with the vessel owners, with prosecutions initiated in the other three cases. Five referrals were made by the WRC to the Marine Survey Office of the Department of Tourism, Transport and Sport in 2020, bringing to 35 the total number of such referrals made by the WRC since an agreement was reached between the WRC and the Marine Survey Office in April 2019 regarding liaison on working time issues.⁴³³

8.4.3 Policy developments at the national level

Review of the operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017

A review of Part 4 of the *Criminal Law (Sexual Offences) Act 2017*, which deals with the purchase of sexual services, was commenced in July 2020, with the appointment of an independent expert to conduct the review, the publication of terms of reference⁴³⁴ and the launch of a public consultation process by the Department of Justice.⁴³⁵

Part 4 of the *Criminal Law (Sexual Offences) Act 2017* makes it an offence to pay for sexual activity with a prostitute or a trafficked person. Part 4 of the Act was commenced in March 2017 and a provision was included in the Act to review the operation of Part 4 of the Act three years after its commencement. Section 27 of the Act provides that this review would include information on arrests and convictions for these offences since the commencement of the Act and an assessment of the impact of the operation of that section on the safety and wellbeing of persons who engage in sexual activity for payment.

Prior to the review, in January 2020, the High-level Working Group on the Implementation of the *Criminal Law (Sexual Offences) Act 2017* published an

433 Correspondence with Department of Enterprise, Trade and Employment and Workplace Relations Commission, February 2021.

434 Department of Justice and Equality (2020). 'Minister McEntee publishes terms of reference for the review of Part 4 of the Criminal Law (Sexual Offences) Act 2017' press release, 9 July, www.gov.ie.

435 Department of Justice and Equality (2020). *Review of the operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017*, www.justice.ie.

interim report to inform the mid-way review of the legislation.⁴³⁶ The Working Group was made up of organisations⁴³⁷ working on the implementation of the *Criminal Law (Sexual Offences) Act 2017*, with an emphasis on Part IV of the 2017 Act, and was chaired by Dr Geoffrey Shannon. The interim review made a number of recommendations, including that:

- the provision of supports and exit routes for those in prostitution must be enshrined into policy in Ireland;
- police training should continue to be resourced and conducted in cooperation with specialist services to ensure a gender-specific, victim-centred and human rights approach;
- further resources need to be made available to conduct empirical research and gather data in critical areas to monitor and evaluate implementation of the legislation; and
- a national rapporteur of gender-based violence and exploitation should be appointed in Ireland.⁴³⁸

The national consultation launched by the Department of Justice gave members of the public the opportunity to comment on their knowledge of the following themes: legislation that aims to protect those offering sexual services and that criminalises the purchase of sexual services; how the Act has been enforced; the impact of such enforcement on those offering those services and on the purchaser of those service; any other public policy interventions associated with the offering and purchase of sexual services; relevant social changes regarding the offering and purchase of sexual services; the impact of such policy interventions and social changes; any perceived barriers to the protection of those offering sexual services and the criminalisation of the purchase of sexual services; how the safety and wellbeing of persons who engage in sexual activity for payment may be impacted by criminalising the purchase of sexual services; and any perceived unintended risks to vulnerable people, for example victims of human trafficking and others arising from the operation of the Act.⁴³⁹

Commenting as part of the consultation, the ICI said that it endorses the recommendations of the interim report of the High-level Working Group on the

436 High Level Working Group on the Implementation of the Criminal Law (Sexual Offences) Act 2017 (2020). *The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An interim review*, www.immigrantcouncil.ie.

437 An Garda Síochána; Health Service Executive, SERP (Sexual Exploitation Research Programme, UCD), the Department of Justice and Equality (as observers), Ruhama, Men's Development Network, Survivor activist – Mía De Faoite, the Immigrant Council of Ireland, the Dublin Rape Crisis Centre, Doras Lumní, the Children's Rights Alliance and Dr Geoffrey Shannon as Chair. *Ibid.*, p. 5.

438 High Level Working Group on the Implementation of the Criminal Law (Sexual Offences) Act 2017 (2020). *The Implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An interim review*, www.immigrantcouncil.ie.

439 Department of Justice and Equality (2020). Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017, www.justice.ie.

Implementation of the *Criminal Law (Sexual Offences) Act 2017*,⁴⁴⁰ as well as the findings of the Sexual Exploitation Research Programme UCD report, *Shifting the burden of criminality: An analysis of the Irish sex trade in the context of prostitution law reform*.⁴⁴¹ In endorsing the report, ICI noted that:

The law under review represents a timely, progressive and necessary approach to prostitution that underpins equality between women and men, responds to pertinent economic and social imbalances and contributes to the reduction of extreme and lasting harm and violence against vulnerable people, primarily women.

The law positions the State as one recognising prostitution and trafficking for sexual exploitation as a form of violence against women, which is in line with the direction taken in modern international and regional treaties such as the Istanbul Convention and the Victim's Right Directive (2012/29/EU).

*The law increases the safety of the seller of sexual services in that it decriminalises their activities and sends important messages of assurance regarding the victim-centred position of the State.*⁴⁴²

The National Women's Council of Ireland (NWCi) also participated in the consultation process, noting that the review of Part IV is significant to the NWCi membership, especially those who represent and advocate for victims-survivors of the exploitative sex trade. Among other things, the NWC submission recommended the full implementation of the recommendations made in the interim review (2020).⁴⁴³ Amnesty International Ireland outlined in their submission that although the law's intended aim was to protect sex workers, it may in fact be putting them at risk, noting that:

*While the law may be intended to shift police focus, and therefore blame, from the sex worker to the client, in practice Amnesty International has found from research in other countries that such laws can lead to sex workers having to take risks to protect their clients from detection by law enforcement, such as visiting locations determined only by their clients.*⁴⁴⁴

440 High Level Working Group on the Implementation of the Criminal Law (Sexual Offences) Act 2017 (2020). *The implementation of the Criminal Law (Sexual Offences) Act 2017, Part IV – An interim review*, <https://www.immigrantcouncil.ie/sites/default/files/2020-01/2020HLWGInterimReportSOA2017ByGeoffreyShannon.pdf>.

441 Immigrant Council of Ireland (2020). 'Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017: Submission of the Immigrant Council of Ireland', 10 September, www.immigrantcouncil.ie.

442 Ibid.

443 National Women's Council (2020). 'Submission to the Review of Part IV of the Criminal Law (Sexual Offences) Act 2017', 16 September, www.nwci.ie.

444 Amnesty International Ireland (2020) Submission to the Department of Justice and Equality public consultation on Review of the Operation of Part 4 of the Criminal Law (Sexual Offences) Act 2017', 18 September, www.amnesty.ie.

Amnesty International considers it vital that the review not only cover the new offences in the 2017 Act, but also the offences of brothel keeping and living on the earnings of prostitution in the *Criminal Law (Sexual Offences) Act 1993*.⁴⁴⁵

Victim identification process – National referral mechanism

Throughout 2020, the Department of Justice led a cross-departmental and NGO collaborative effort to examine how best to introduce a more integrated and victim-centred national referral mechanism.^{446,447}

National stakeholder forum on trafficking

The Department of Justice and Equality established a stakeholder forum on trafficking, which had its first meeting on 10 July 2020. The forum is made up of state agency and civil society organisations and will examine the need to update Ireland's National Action Plan to Prevent and Combat Human Trafficking, including responding to the commitment in *Programme for Government: Our shared future* for a comprehensive strategy to combat trafficking of women and girls, and contributing to a review of the national referral mechanism in Ireland, learning from best practice models in other EU Member States.⁴⁴⁸ In addition, a number of sub-groups with expert members were established to examine subjects such as the national referral mechanism, specialised accommodation, a review of the current national action plan and other priority issues.⁴⁴⁹

Accommodation for victims of trafficking

The Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process was published in October 2020. The report recommended that special care should be given to providing appropriate accommodation to vulnerable international protection applicants, particularly victims of human trafficking or sexual and gender-based violence. Specifically, the report recommended that:

Case appropriate accommodation, with additional supports and services, be provided for those identified as victims of trafficking and sexual abuse, both in the reception centres and thereafter. Dedicated staff in the reception centres should receive training in dealing with victims of trafficking. In the interim, priority should be given to designating private,

445 Ibid.

446 Department of Justice (2021) *Trafficking in human beings in Ireland: Annual report 2020*, www.blueblindfold.ie, p. 25.

447 Government approval of plans for the revised national referral mechanism was announced by the Department of Justice in May 2021.

448 Department of Justice and Equality (2020). 'Response to parliamentary question 30723/20', 15 October, www.kildarestreet.com.

449 Department of Justice (2020). *Trafficking in human beings in Ireland: Annual report 2020*, www.blueblindfold.ie, p. 25.

*non-shared rooms to trafficked people and those who have been abused.*⁴⁵⁰

8.5 FUNDING

In 2020, a total of €687,254 was provided by the Department of Justice to NGOs who are active in the field of human trafficking. This marked an increase of 51% over the funding allocation for 2019. A total of €465,050 was made available to Ruhama, an NGO that represents the interests of women who work in the sex industry and associated organised prostitution in Ireland, and €84,500 was allocated to the Migrant Rights Centre Ireland (MRCI).⁴⁵¹

8.6 INTERAGENCY AND INTERNATIONAL COOPERATION

8.6.1 EMPACT Joint Action Days

Ireland participated in two Joint Action Days as part of the Europol EMPACT network in 2020. The first Action Day, involving both An Garda Síochána and the Police Service of Northern Ireland (PSNI), focused on the carwash industry, which is of concern from the perspective of labour exploitation. The second Action Day focused on trafficking for sexual exploitation. There was also cooperation between An Garda Síochána and the PSNI in a number of investigations into human trafficking and organised prostitution.

8.6.2 #Anyonetrafficked2022

The Department of Justice and IOM Ireland, with the support of other state agencies and non-state organisations, launched a trafficking awareness campaign in October 2020. The ‘#Anyone can be exploited’ campaign had two aims – to raise public awareness of human trafficking and its signs and indicators, and to raise awareness among victims of supports available to them.

The campaign ran a social media campaign from 9 to 18 October 2020, in the run-up to EU Anti-trafficking Day. A poster campaign at ports and transport hubs commenced from 19 October 2020.

A dedicated website – www.anyonetrafficked.com – was launched with the campaign. Information on trafficking and services available to victims of trafficking

450 Government of Ireland (2020). *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*, www.gov.ie.

451 Department of Justice (2020). *Trafficking in human beings in Ireland: Annual report 2020*, www.blueblindfold.ie.

are also available on the government website www.blueblindfold.ie, which was updated during 2020.

8.6.3 Ruhama awareness-raising campaign into the criminalisation of the purchase of sex

In 2019, the Department of Justice funded the sum of €96,050 to Ruhama to carry out an awareness-raising campaign into the criminalisation of the purchase of sex. Ruhama is an NGO that works with women affected by prostitution and other forms of commercial sexual exploitation, including victims of sex trafficking and those who have an experience of prostitution/sex trafficking.⁴⁵² The campaign ran until 23 June 2020.

8.7 RESEARCH

8.7.1 International research

On EU Anti-Trafficking Day (18 October), the European Commission published the report of a study on the economic, social and human cost of human trafficking,⁴⁵³ which measured the cost of trafficking in human beings in the EU, and a review of the functioning of Member States' national and transnational referral mechanisms.⁴⁵⁴ The latter provides an overview of the functioning of formal or informal national referral mechanisms (NRMs) and transnational referral mechanisms (TRMs) and also aims to identify a variety of good practices and examples concerning different aspects of the functioning of formal or informal NRMs and TRMs.⁴⁵⁵

8.7.2 National research

Research on assisting trafficked women: Best practice principles of gender-specific legal assistance and integration supports to third-country national female victims of trafficking for sexual exploitation

Funded by the EU's Asylum, Migration and Integration Fund, the ASSIST project responds to Priority 5 of the EU's AMIF Action Grant (AMIF-2017-AG-INTE) concerning the integration of victims of trafficking in human beings. The ICI is the lead partner of the ASSIST project. This report presents the ASSIST project's best

452 Department of Justice (2020). *Trafficking in human beings in Ireland: Annual report 2020*, <https://www.blueblindfold.ie/wp-content/uploads/2021/10/Human-Trafficking-Annual-Report-2020.pdf>.

453 European Commission (2020). *Study on the economic, social and human costs of trafficking in human beings within the EU*, https://ec.europa.eu/anti-trafficking/system/files/2020-10/study_on_the_economic_social_and_human_costs_of_trafficking_in_human_beings_within_the_eu.pdf.

454 Ibid.

455 European Commission (2020). *Study on reviewing the functioning of Member States' national and transnational referral mechanisms*, <https://op.europa.eu/en/publication-detail/-/publication/d5542e9c-0e92-11eb-bc07-01aa75ed71a1/language-en>.

practice approaches regarding gender-specific legal assistance and integration support to female third-country national victims of trafficking for sexual exploitation in five countries: Ireland, Germany, Italy, Scotland/UK and Catalonia/Spain. The paper showcases the best practices emanating from the ASSIST project's work. The paper identifies some key issues, including: formal access to and duration of services provided; the importance of gender-specific legal assistance for trafficked migrant women; the incorporation of motherhood and children considerations into assistance; the provision of safe and appropriate accommodation; access to early and ongoing psychological assistance; the provision of access to medical care that is gender specific; the provision of training and education plans; borrowing the existing relevant support infrastructure for violence against women to cater for victims of human trafficking; the use of feminist independent services; the participation of trafficked victims—survivors in the process of assistance; and the provision of peer-to-peer support.⁴⁵⁶

The Sexual Exploitation Research Programme

Research undertaken by the School of Social Policy, Social Work and Social Justice, University College Dublin, under the Sexual Exploitation Research Programme (SERP) was published in November 2020. The project provided empirical data on the experience of women in the commercial sex trade and the response of the criminal justice system in the context of the new law. The agreement for this project was signed in June 2019 and ran for a year. This project drew significantly on information held by the HSE Anti-Human Trafficking Team and work already done under an earlier joint HSE/Department of Justice research project during 2018.⁴⁵⁷

456 ICI (2020). *ASSIST: Gender specific legal assistance and integration support for third country national female victims of trafficking for sexual exploitation (EC AMIF: 821581) (2020). Best practice principles of gender-specific legal assistance and integration supports to third country national female victims of trafficking for sexual exploitation*, <https://www.immigrantcouncil.ie/sites/default/files/2020-11/Assisting-Trafficked-Women-Best-practice-principles-of-gender-specific-assistance-IE.pdf>.

457 Department of Justice (2020). *Trafficking in human beings in Ireland: Annual report 2020*, www.blueblindfold.ie.

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- Department of Children, Equality, Disability, Integration and Youth (2020). 'Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work', press release, 21 October, www.gov.ie.

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