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ANNUAL REPORT ON MIGRATION AND ASYLUM 2021: IRELAND

KEIRE MURPHY AND ANNE SHERIDAN



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EMN
European Migration Network



ECONOMIC & SOCIAL
RESEARCH INSTITUTE

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ABOUT THIS REPORT

This EMN study, compiled according to commonly agreed specifications, provides an overview of migration, asylum trends and policy developments for 2021. The report consists of information gathered primarily for the EU-level synthesis report of the EMN, *Annual report on migration and asylum 2021*. 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

An Garda Síochána	Irish national police force
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
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
DPP	Director of Public Prosecutions
EEA	European Economic Area
EMN	European Migration Network
EROC	Emergency Reception and Orientation Centre
EU	European Union
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
GRETA	Group of Experts Against Trafficking in Human Beings
HSE	Health Service Executive
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
IHAP	IRPP Humanitarian Assistance Programme
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme

ILEP	Interim List of Eligible Programmes
IOL	Ineligible Occupations List
IOM	International Organization for Migration
IPAS	International Protection Accommodation Services
IPAT	International Protection Appeals Tribunal
IPO	International Protection Office
IRPP	Irish Refugee Protection Programme
ISD	Immigration Service Delivery
IVARRP	Irregular Voluntary Assisted Return and Reintegration Programme
JRS	Jesuit Refugee Service
Justice	Department of Justice
LGBTI	Lesbian, gay, bisexual, transgender, intersex
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
NRM	National Referral Mechanism
OCO	Ombudsman for Children Office
ODA	Official Development Assistance
Oireachtas	Irish parliament, both houses
PPSN	Personal public service number
PUP	Pandemic Unemployment Payment
RSA	Road Safety Authority
SCSIP	Separated Children Seeking International Protection
Seanad	Irish parliament, upper house
SUSI	Student Universal Support Ireland
Tánaiste	Deputy prime minister
Taoiseach	Prime minister
TCN	Third-country national
TD	Teachta Dála (member of the Dáil)
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
VR	Voluntary return
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

MIGRATION OVERVIEW AND OVERARCHING DEVELOPMENTS

According to the 2022 Census, the population of Ireland is now 5.123 million, a 7.6% increase since 2016. Over half of this increase is a result of net inward migration. Immigration to Ireland significantly increased in the year to April 2022 compared with previous years, with an estimated 120,700 immigrants, an 85% increase from the year to April 2021. This was largely a result of an increase in immigration from nationals in the 'rest of the world' category (i.e. not from Ireland, the UK, or the EU). Emigration remained more stable, with 59,600 emigrants, a 10.6% increase in the year to April 2022 compared with the previous year. This translates to a net immigration of 61,100, the highest since 2008.

Overarching developments included the publication of the Department of Justice Statement of Strategy 2021-2023, which includes goals towards significant reforms of the immigration system, including a fully digital immigration service, the elimination of processing backlogs, strategic policy and legislative proposals to improve the fairness and efficiency of the system, restructuring immigration services and ensuring effective border controls. A youth justice strategy was published, which includes actions related to migrant youth. A digital strategy for immigration was also published and a new immigration website launched.

The beginning of 2021 was marked by the entry into force of the *European Union (Withdrawal Agreement) (Citizens Rights) Regulations 2020* (from 11 pm on 31 December 2020), regulating residence for UK nationals and their family members following the withdrawal of the UK from the EU. The Protocol on Ireland and Northern Ireland, contained within the Withdrawal Agreement between the EU and the UK, came into effect on 1 January 2021; it recognises the Common Travel Area between Ireland the UK and the rights it grants to Irish and British citizens and contains agreements related to customs and the movement of goods.

In December 2021, the Government issued the ninth temporary extension to immigration permissions since March 2020, in response to pandemic-related restrictions. These permissions were due to expire in May 2022. To enable people to travel over Christmas despite challenges renewing residence cards, people who were entitled to a new residence card were allowed to travel on expired Irish residence permit cards for Christmas.

LEGISLATION

Several legislative provisions relevant to migration were introduced during 2021, relating to smuggling of persons and updating occupations lists for employment permits, among others. A list of legislation is included in Chapter 2 and relevant legislation is discussed under thematic headings throughout the report.

INTERNATIONAL DEVELOPMENTS

Ireland engaged with multiple UN committees and processes throughout 2021, in line with reporting commitments. Ireland underwent its third cycle of the Universal Periodic Review, for which Ireland held a public consultation and a consultation with children and young people prior to submitting its report in August 2021. Migration-related concerns raised in submissions from civil society were similar to those raised in the previous review in 2016, and included the Direct Provision system, delays in the international protection system, discrimination in the housing market, access to work for international protection applicants, the need for improved anti-racism legislation and strategies, the detention of immigration detainees with remand and convicted prisoners, and a lack of legal framework for safeguarding against statelessness. The report of the Working Group on the Universal Periodic Review (UPR) commended Ireland on significant improvements across multiple fronts since the last review in 2016. Those most relevant to migration included the establishment of the independent national Anti-Racism Committee (ARC, see Section 7.2.3), the proposed reform of the Direct Provision system (see Section 4.2.1), the digitisation of the immigration system (see Section 2.2.4), and the regularisation scheme for long-term undocumented migrants (see Section 9.2.1), many of which progressed during 2021 and are covered in this report. In total, 260 recommendations were made by Member States, of which Ireland accepted 221, including improved protection against racial discrimination, improved access to housing and health for immigrants and members of minority groups, improving social inclusion and integration policies, ensuring accommodation of asylum seekers in appropriate facilities, and improving responses to victims of human trafficking. Recommendations that were noted but not supported included the signature of the International Convention on the Rights of All Migrant Workers and Their Families, the prohibition of racial profiling and creating protections against racial profiling in policing, and the expansion of the mandate of the Irish Human Rights and Equality Commission (IHREC) to cover the prevention and prohibition of racial discrimination.

The International Covenant on Civil and Political Rights (ICCPR) also published a list of issues in relation to Ireland's fifth periodic report following receipt of the fifth periodic report in 2019 and submissions from stakeholders in 2020. The list of issues asked for further details on a variety of issues. Ireland was expected to submit a response prior to the June–July 2022 session.

Ireland submitted its fourth periodic report under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides updates and comments relevant to the Covenant since Ireland's last report and subsequent observations. Relevant migration-related updates included granting access to the labour market for international protection applicants, a policy document on non-EEA family reunification providing detail on the application of ministerial discretion and the *International Protection Act 2015*. The Committee was due to adopt a list of issues related to the fourth report in March 2022 ahead of its review of Ireland.

LEGAL MIGRATION

In 2021, there was a small increase in first-residence permits issued compared with 2020, with 34,935 first-residence permits, still significantly below 2019. Of these, 42% were issued for education, 23% for employment and 7% for family reasons. In 2021, 16,275 employment permits were issued, similar to 2020. India was the most common country of origin, representing 40% of employment permits, followed by Brazil and Pakistan. Health and social work was the largest sector granted employment permits (36%), followed by information and communication (28%). In the same year, 77 new permits and 157 renewals for fishers under the Atypical Working Scheme (AWS) were approved. Under the AWS, 3,898 permits were approved for other sectors, with 85% of all AWS permits issued for nurses.

In 2021, 14,611 first-time permits were issued for education reasons, similar to 2020, which saw a significant drop from previous years.

A total of 258 immigrant investor applications were received in 2021, and 265 were approved, for a total investment of €186.1 million. This represents a continued drop in applications from previous years, but a similar number of approvals and investments. A majority – 97% – of immigrant investors availing of the programme were Chinese, similar to previous years.

There were several major developments relating to legal migration in 2021. This included pre-legislative scrutiny of the *General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019* by the Joint Committee on Trade and Enterprise. Among other findings, the Committee did not see sufficient evidence to support the proposed introduction of a seasonal employment permit, nor the proposed waiver to the 50:50 rule, and believed that the proposal to make the labour market needs test and other operational details amendable by Regulations would lead to a lack of transparency and make scrutiny more difficult. The Committee also recommended that workers with general employment permits are provided the same rights as those employed with critical skills permits and expressed concern about the difficulty that arises from work permits being linked to a particular employer.

The occupation lists through which employment permits are managed in Ireland were updated in 2021 following review. Social workers, occupational therapists, physiotherapists, speech and language therapists, healthcare assistants, dispensing opticians and a wide range of occupations in the construction sector were removed from the Ineligible Occupations List (IOL), and dieticians and social workers were added to the Critical Skills Occupations List (CSOL). A common validated framework of minimum standards and qualifications, as well as a minimum remuneration threshold for healthcare assistants, was also adopted. Changes were made to quotas on the occupations list for several occupations. Changes were also made to facilitate employment permits for contracts of non-consultant hospital doctors, with a possibility to issue general employment permits on a two-year multisite basis.

As reported in previous years, new rules regarding the employment of non-EEA fishers in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by relevant government departments and agencies, including changes to the AWS to provide permission for non-EEA workers to work in the Irish fishing fleet. However, criticism re-emerged in 2021 following publication of the US Department of State's *Trafficking in person report* and research by National University of Ireland (NUI) Maynooth into the experience of non-EEA workers in the Irish fishing industry published in October 2021. The findings of the report received significant media coverage, and were also discussed in the Oireachtas in a Joint Committee on Trade, Enterprise and Employment discussion about resourcing at the Workplace Relations Commission. The Department of Justice and An Garda Síochána do not agree with many of the claims made in relation to exploitation within the industry. Responsible government departments committed to a review of the scheme in 2022. The review was aimed at assessing whether the AWS should continue in its present or amended form, or if there is a more suitable mechanism for the employment of non-EEA workers in the fishing industry.

Legal migration was significantly impacted by the public health response to COVID-19. Relevant measures relating to migration included temporary arrangements to allow students studying with Irish universities from abroad due to travel restrictions to apply for the Third Level Graduate Programme, a 12-month extension of the immigration permission under the Third Level Graduate Programme for those who were unable to obtain work due to the pandemic, and the extension of immigration permissions for language students without requiring them to enrol in a further English language course.

Research was conducted on the academic satisfaction of international students in Irish higher education, and the impact of the COVID-19 pandemic on the international student experience. As noted above, research was also conducted by Maynooth University on the experience of non-EEA workers in the Irish fishing industry.

Several cases relevant to legal migration were decided in 2021. In *Hosain v The Minister for Business, Enterprise and Innovation*, the High Court found that an interpretation of law by the Minister that led to the applicant being refused an employment permit because he already held Stamp 4 permission was incorrect, and that the law did not prevent the Minister from issuing an employment permit solely on the basis that the applicant already had permission to work. In *P v the Minister for Business, Enterprise and Innovation*, the High Court found that the proposition that the application for an employment permit could not be processed because the appellant did not have an immigration permission was legally incorrect. A similar finding was made in *Yeasin v Minister for Business, Enterprise and Innovation*.

INTERNATIONAL PROTECTION

A total of 2,649 applications for international protection were made in Ireland in 2021, an increase from 2020, which had seen a large drop from 2019. Figures for 2021 were still only approximately half 2019 levels. Applications for international protection in Ireland accounted for 0.42% of the EU total. The top three countries of origin of applicants were Nigeria, Georgia and Somalia. In 2021, 1,545 first-instance decisions were made, of which 95% were positive. This represented both an increase in first-instance decisions made from 2020 and the highest rate of positive decisions in recent years. The high percentage of positive decisions can be partially explained by a decision by the Department of Justice (Justice) to pause the issuance of negative decisions due to the travel restrictions resulting from the COVID-19 pandemic and the increase in identification of cases that could proceed without interview due to their particular circumstances. Of positive first-instance decisions, 55% of people were awarded Geneva Convention status, 40% humanitarian status and 5% subsidiary protection status. In 2021, 768 decisions were appealed to International Protection Appeals Tribunal (IPAT), and 36% of international protection recommendations were set aside on appeal. The median processing time for all cases processed to completion in the International Protection Office (IPO) in 2021 was 23 months and 18 months for prioritised cases. The median processing time in IPAT was 13.5 months. In that year, 1,199 applications for family reunification were made under the *International Protection Act 2015*. This represents a continued gradual increase in applications since 2019. A total of 484 applications were granted, a 147% increase on the total number of applications granted in 2020.

In 2021, 468 persons were resettled, an increase from 2020 but still significantly lower than 2019. The majority of those resettled were from Afghanistan. In addition, 50 beneficiaries of international protection were relocated from Greece in 2021 and 28 unaccompanied minors were relocated from Greece by Tusla.

Capacity of the accommodation system for international protection applicants remained a key issue in 2021. As of December 2021, there were 45 International

Protection Accommodation Services (IPAS) accommodation centres located around the country. Of these, 38 were commercial and 7 were owned by the State. There were a further 24 emergency accommodation locations such as in hotels and guesthouses. As of 26 December 2021, 7,198 people were living in IPAS accommodation centres and emergency accommodation. As of November 2021, approximately 1,640 people with status remained in IPAS accommodation, principally due to difficulties finding accommodation in communities.

Significant developments in international protection policy occurred in 2021, notably the *White Paper to End Direct Provision and to Establish a New International Protection Support Service*, published in February 2021. This White Paper sets out a new model to provide accommodation and other supports to persons in the international protection system. It proposes a model based on the principles of respect for human rights, integration from day one and community engagement, among others. The accommodation model proposed by the White Paper is a two-stage approach. Under the model, all new applicants would be accommodated in state-run Reception and Integration Centres (RICs) for four months in Phase One, followed by transition to accommodation options fostering an independent life within the community in Phase Two. Phase One would focus on identifying needs, defining pathways and linking applicants to appropriate services. It is proposed that RICs will be own-door for families, and own-room for single people. An intensive orientation and English language and integration programme would be provided and vulnerability assessments carried out. The paper foresees a phased implementation of the model between February 2021 and December 2024. The White Paper was largely welcomed by civil society and relevant stakeholders.

Several aspects of the White Paper were implemented in 2021. This includes the establishment of a staff team in the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) to lead the transition to a new model, as well as the appointment of a programme board and an independent monitoring board. Vulnerability assessments were also extended to all international protection applicants in February 2021 and the waiting period for access to the labour market for international protection applicants was reduced from nine months to six months from the date they apply for international protection. Labour market access was also made available under the same conditions to applicants notified of a transfer decision under the Dublin Regulation following a Court of Justice at the European Union (CJEU) decision. A High Court decision in November 2021 also made international protection applicants eligible to apply for a driving licence, and the five major banks in the State also confirmed in May 2021 that international protection applicants' identity documentation could be used to open a bank account. International protection applicants with permission to work are also no longer required to pay the international student fee to access Post-Leaving Certificate education courses.

An end-to-end review of the international protection process – conducted to identify how the goal of reducing processing times of both first-instance decisions and appeals to six months each could be achieved – was published in 2021. The review gathered perspectives from staff from all agencies involved in the process as well as service users. Problems found included: significant understaffing compared with the approved staffing levels for the IPO; a lack of targets for IPO staff; gaps in internal communication and duplication in both IPO and IPAT; inadequate interpretation services; heavily paper-based processes; as well as an information management and technology system that does not support the end-to-end process. The review examined wait times at various stages of the process (using 2020 as the reference point) and identified four critical junctures where blockages and inefficiencies occurred. Recommendations focused on these critical junctures and the key recommendation was to focus on the waiting time for an interview date as a priority. The IPO implemented several measures to reflect the recommendations of the review in 2021, including: more frequent use of the measure enabling trained international protection officers to dispense with an interview if they are of the opinion that the applicant is a person that should be granted a refugee declaration; restructuring teams; training additional staff to conduct interviews; and revision of the international protection questionnaire.

The Irish Government also responded to the situation in Afghanistan following the withdrawal of US troops and the takeover by the Taliban. The response included: additional scope for Afghan nationals to obtain international protection in Ireland; examining the applications of Afghans who had been subject to a transfer decision to another EU country under the *Dublin III Regulation*; an emergency resettlement of Afghan nationals under the Irish Refugee Protection Programme (IRPP); and the launching of the Afghan Admission Programme to provide expanded family reunification for Afghan nationals and residents who have close family members in Ireland. Civil society organisations raised several points of concern about the Afghan Admission Programme, in particular related to the restrictive eligibility criteria, financial requirements and documentation requirements that do not account for the reality on the ground in Afghanistan.

National Standards on Direct Provision came into effect from 1 January 2021, and DCEDIY proposed that the Health Information and Quality Authority (HIQA) undertake the role of monitoring these standards in accommodation centres, with a formal relationship between DCEDIY and HIQA due to take effect from 1 November 2021. From September 2021, persons subject to an inadmissibility procedure were defined as ‘applicants’ within the meaning of the *International Protection Act 2015*, making them eligible for reception conditions under the *European Communities (Reception Conditions) Regulations 2018*. These individuals will now be eligible for these benefits until the Minister declares their application to be inadmissible.

The Ministerial Decisions Unit (MDU) suspended the issuing of negative decisions in 2021, because a negative decision from the MDU triggers a follow-on process under the *International Protection Act 2015*, with a letter issued inviting the person to confirm within five days whether they will voluntarily return to their country of origin, after which the legislation provides that a deportation order shall be made. Due to restrictions on international travel, which inhibited people from returning voluntarily or removals by the state, the Minister decided to suspend the issuing of negative decisions except in the case of significant criminality. However, these decisions were made and were ready to be issued. Justice has indicated that they will not release all these decisions at once, however.

On 3 December 2021, the Minister for Justice announced a scheme to regularise long-term undocumented migrants. A parallel process is included within the scheme to allow protection applicants who have an outstanding application for international protection and have been in the asylum process for a minimum of two years to apply.

Research published in 2021 relevant to international protection included: an Irish Refugee Council study on the impact of delays in the international protection process; a report by the non-governmental organisation (NGO) Doras on barriers to realising a right to decent work for international protection applicants and recipients; Irish Refugee Council research exploring alternatives to direct provision; an ESRI study on data management in the international protection process; research by the International Organization for Migration (IOM) on the integration of resettled refugees; and research by the United Nations High Commissioner for Refugees (UNHCR) on barriers to family reunification for international protection recipients.

Judicial review proceedings were brought challenging the operation of section 49 of the *International Protection Act 2015*, wherein decisions are made by the Minister for Justice, although in practice they are made on behalf of the Minister by an international protection officer. This means of exercising decision-making power was upheld by the High Court in *ASA v the Minister for Justice*.

UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

A total of 152 unaccompanied minors were referred to Tusla in 2021, with 98 placed in care. In the same year, 54 applicants for international protection were classified as unaccompanied minors, the highest number in the last 10 years. This can largely be explained by an increase in applicants from Afghanistan. A total of 665 children applied for international protection in 2021, 80% of whom were under 14. This was an increase from 2020 but not as high as 2019, tracking overall international protection applications. Twenty children were returned to their country following an order to leave in 2021.

Vulnerability assessments for international protection applicants were extended to all applicants in 2021. By 31 December 2021, 686 assessments had been undertaken, 64% of which showed some form of vulnerability; many assessments related to applicants who were minors (30%), persons who had been subjected to torture, rape or other forms of serious psychological, physical or sexual violence (31%), or who had a serious illness (12%). Significant supports for a variety of vulnerable groups are envisioned in the White Paper. This includes supported accommodation for vulnerable people, including families. The White Paper makes specific provisions for women's health, trans-specific healthcare and victims of domestic, sexual and gender-based violence, including victims of female genital mutilation, torture and human trafficking.

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021* proposes to change the reckonable residence required for minors born in Ireland seeking to be naturalised from five to three years.

In April 2021, the Ombudsman for Children's Office published the results of an investigation on the safety and welfare of children in Direct Provision, initiated in 2018. Key findings include that the Direct Provision model does not have the best interests of children, or the protection of the human rights of child refugees, at its core and that IPAS has failed to meet multiple commitments, and has failed to put in place the necessary safeguards to ensure that children are safe from harm. They also found that Tusla: did not recognise the inherent vulnerability of minors in the international protection process; failed to make reasonable adjustments and/or to coordinate services to meet the needs of children in Direct Provision; and, along with that IPAS and Tusla, have failed to establish effective interagency protocols to ensure that all decisions concerning children have the children's best interests as their primary consideration.

DCEDIY consulted with civil society stakeholders, children and young people in June 2021 on Ireland's combined *Fifth and sixth state reports to the Committee on the Rights of the Child*. DCEDIY then prepared the draft report and opened a public consultation on the draft report in October 2021, receiving a total of 138 submissions. The draft report outlines the actions that Ireland has taken since its last review in 2016 to address the issues raised and responds to 112 issues raised by the United Nations Convention on the Rights of the Child (UNCRC) in a 2020 document.

The Immigrant Council of Ireland reported a 12% increase in domestic violence cases reported by migrant women to November 2021 compared with 2020, attributing the increase to the economic and social stresses brought about by the COVID-19 pandemic.

CITIZENSHIP AND STATELESSNESS

There were 11,970 applications for Irish citizenship in 2021. In 2021, 9,783 citizenship certificates were issued and 695 applications were refused. This indicates a significantly

higher number of total decisions made compared with previous years, with a 91% increase from 2020. Processing times increased significantly in 2021, with an average processing time of 30 months and a median processing time of 24 months, compared with 14 and 12 months respectively in 2020. The main nationality of those acquiring citizenship was British (see Figure 6.2), whose prominence in the naturalisation statistics in Ireland has been increasing since 2016. Other top nationalities were Poland, India, Nigeria and Romania, similar to previous years.

In December 2021, the Government announced a new approach for establishing identity and residency for naturalisation applications, which applied from January 2022. The change was made following a review by Justice, which found that significant resources were diverted from general processing by incorrectly submitted applications, which led to an overall longer processing time. The new approach uses a 'scorecard' approach, which gives predetermined points to different proofs of residency and identity.

The Single Person Committee of Inquiry was established in 2021 to review requests for disclosure of the information relied upon in refusals of naturalisation on the grounds of national security concerns. The Single Person Committee can advise the Minister for Justice as to whether and to what extent it is possible to make disclosure of the security information to the applicant.

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021* proposes to amend the 'continuous residency' requirement to allow for a total absence of up to 70 days from the State in the year preceding an application for citizenship, with a further 30 days available where necessitated by exceptional circumstances. The move to define 'continuous residency' comes in the wake of confusion and case law surrounding this condition.

In *Damache v Minister for Justice*, the procedure for revoking the nationality of naturalised citizens was challenged. The applicant complained that the fact that the Minister initiated the revocation process, appointed the committee charged with conducting the inquiry and then reached the final decision was in breach of the constitutional right to fair procedures. The Supreme Court concluded that the process as provided for in section 19 of the *Irish Nationality and Citizenship Act 1956* did not provide the procedural safeguards required to meet the high standards of natural justice applicable to a person facing such severe consequences by reason of the absence of an impartial and independent decision maker. The Supreme Court declared that sections 19(2) and 19(3) of the *Irish Nationality and Citizenship Act 1956* were invalid having regard to the Constitution. Given that there was a statutory scheme in place, it would be appropriate for the Oireachtas to determine the basis of any proposed scheme to replace that which has been found wanting.

INTEGRATION AND INCLUSION

The Irish Human Rights and Equality Commission (IHREC) conducted a survey in 2021 that covered attitudes towards multiculturalism in Ireland. Key findings included that: 32% of survey respondents said that they either witnessed or experienced racism in the last 12 months; 54% of respondents agreed that ‘Irish people welcome diversity and interculturalism in society’, an increase on 2020; 80% of respondents agreed that ‘Ireland benefits as a whole from being a more inclusive and diverse society’; and 48% of respondents indicated that efforts to fight discrimination were effective.

Ipsos’ Global Trends survey included Ireland for the first time in 2021. The survey examines public attitudes and values, and the 2021 survey was conducted in 25 countries around the world. Four-fifths (81%) of respondents said that their local area is a place where people from different backgrounds get on well together, placing Ireland close to the middle of the 25 countries surveyed, while 46% agreed that people from different backgrounds and ethnic minorities are treated fairly, also placing Ireland around the middle of the surveyed countries. Respondents in Ireland were the least likely among the 25 surveyed countries to feel that there were too many immigrants in the country or to hold the belief that there is more and more conflict between people who don’t share the same values.

The Migrant Integration Strategy, originally foreseen to run 2017-2020, was extended until the end of 2021, in light of ‘the impact of the COVID-19 pandemic on the Strategy’s implementation’. DCEDIY commissioned an independent evaluation of the strategy to inform the development of subsequent equality strategies. The consultation process to develop a new migrant integration strategy was due to begin in early 2022. Several counties adopted integration strategies in 2021, including Kildare, Kilkenny and Waterford. Both Tipperary and Dublin City also began the process of developing a migrant integration strategy in 2021.

In April 2021, the Anti-Racism Committee (ARC), established in 2019, published an interim report and launched a public consultation as part of the process to develop a new national action plan against racism in Ireland. The three recommendations for immediate action contained in the report were: to remove Ireland’s reservation to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (which states that Ireland would undertake its obligations under Article 4 with due regard to the principles embodied in the Universal Declaration of Human Rights and Article 5 of CERD); to take steps to put in place ethnic equality monitoring across all public services; and to remove all barriers to accessing support for migrant women experiencing gender-based violence. The public consultation ran from April to July 2021. Over 100 written submissions were made by a diverse range of organisations. The original timeline for sending the new national action plan to the

Minister for Children, Equality, Disability, Integration, and Youth was August 2021; however, by the end of 2021 the Minister had still not received the plan.

The *General Scheme of the Criminal Justice (Hate Crime) Bill 2021* was published on 16 April 2021. It was referred for pre-legislative scrutiny to the Oireachtas Joint Committee on Justice in April 2021. The Bill follows on from a public consultation on hate speech, the results of which were published in December 2020. The Bill is split into two parts, covering incitement to hatred and hate crime. Incitement to hatred would be a new offence in Ireland, and covers inciting hatred against a person or persons because they are associated with a protected characteristic and disseminating or distributing material inciting hatred. The threshold for criminal incitement is intent or recklessness. The other offences in the Bill are crimes aggravated by their motivation which involves prejudice against protected characteristics. The Bill carries provisions for an ordinary verdict, where the 'hate' element of the offence has not been proven. Under the Bill, where a specific, hate-aggravated form of the offence has not been created, but the court finds that the crime was motivated by prejudice, this must be considered an aggravated factor at sentencing and placed on the formal record. The proposed legislation has generally been welcomed.

Integration-relevant research conducted in 2021 included: research on use of healthcare services among children with a migrant background; an ESRI report reviewing measures to combat racial discrimination and promote diversity in the labour market; a report by the National Economic and Social Council (NESC) on the impact of COVID-19 on ethnic minority and migrant groups; research on gaps in settlement service provision and immigrant integration outcomes; a joint report by IHREC and the ESRI on monitoring adequate housing in Ireland, which examines group differences in outcomes; and research by University College Cork (UCC) on the psychosocial wellbeing of refugee and migrant children.

TRAFFICKING IN HUMAN BEINGS

Thirty-four non-EEA citizens were identified as victims of human trafficking in Ireland in 2021. A further 10 EEA nationals were identified as victims of human trafficking. Of the total, 57% related to sexual exploitation, and the remainder to labour exploitation. Nigeria was the most common country of origin for victims (39%), and most non-EEA victims (29 of 34) were African.

In April 2021, the Minister for Justice announced an initiative to expunge previous convictions for 'sale of sex' or prostitution offences. While it has not been an offence to sell sex in Ireland since 2017, it was considered that previous convictions can be a significant obstacle for persons exiting prostitution. This new development was designed to further support vulnerable persons including victims of trafficking who had been convicted of prostitution offences under previous legislation. The proposal

required legislative change and 607 offences contrary to sections 7 and 8 of the *Criminal Law (Sexual Offences) Act 1993* (soliciting/importuning or loitering for the purpose of prostitution) were identified for expungement. Offences relating to brothel keeping will not be expunged as this remains a criminal offence. Sex Workers Alliance Ireland welcomed the move but said that it does not go far enough.

In May 2021, the Irish Government approved plans for a revised National Referral Mechanism (NRM) for the identification of victims of human trafficking. The revised proposal acknowledges that in addition to the police, other state bodies and NGOs can play a role in identifying and referring victims of human trafficking to the NRM. Work is underway to operationalise the revised NRM, including drafting legislation to place the new NRM on a statutory footing.

In 2021, the Department of Justice established a subgroup of the Human Trafficking Forum to examine the current National Action Plan for Trafficking and to analyse the value of developing an updated action plan. The subgroup agreed that a new national action plan should be developed, instead of revising the current one. In particular, the new national action plan will include a greater recognition of the gendered nature of trafficking and the need for gendered responses, and a greater focus on the integration of identified victims.

The first convictions for human trafficking occurred in 2021, when two women were sentenced to over five years in prison each in Mullingar Circuit Court. In 2021, the Organised Prostitution Investigation Unit was set up within the Garda National Protective Services Bureau, to police organised criminality within the sex trade and to enforce legislation criminalising the purchase of sexual services. According to the Department of Justice, the unit will tackle criminal gangs involved in organised prostitution, target the demand for prostitution and safeguard persons trafficked for sexual exploitation.

Ireland's third round of evaluation by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) happened in 2021. Each round of monitoring of the Council of Europe Convention on Action Against Trafficking in Human Beings focuses on a specific provision, with the third round focusing on trafficking victims' access to justice and effective remedies. As part of this, the Government replied to a questionnaire, IHREC submitted a report and GRETA carried out an evaluation visit in December 2021. The IHREC report indicated that concerns raised in previous reports remained largely relevant to the current policy, legal and regulatory environment on human trafficking in Ireland.

The *Trafficking in persons report 2022*, covering developments in 2021, was published by the US State Department in July 2022. This report outlines efforts of countries to

combat human trafficking and categorises these efforts into four tiers. In the 2022 report, Ireland moved from 'Tier 2 watchlist' to 'Tier 2', due to 'overall increasing efforts compared with the previous reporting period'. This included the first convictions under the anti-trafficking law since at least 2013, the increased identification of trafficking victims, the expunging of previous convictions, increased funding and the awareness campaign. The report also indicated that Ireland still did not meet minimum standards, citing a range of areas.

The Department of Justice and the International Organization for Migration (IOM) in Ireland launched a trafficking awareness campaign for the second year in October 2021, to coincide with EU Anti-Trafficking Day. The Department of Justice also worked on a cultural mediation project with IOM during 2021, which aims to build the capacity of state professionals who work directly with and for vulnerable migrants.

Relevant research conducted in 2021 included research by Mary Immaculate College assessing the scale of human trafficking in Ireland and a report by the Immigrant Council of Ireland on the integration needs of victims of trafficking.

IRREGULAR MIGRATION, VISAS, BORDERS AND RETURN

After a significant decrease in refusals of leave to land in 2020 as a result of COVID-19-related travel restrictions (to 2,790), there was a slight increase in 2021 to 3,725 people, according to rounded Eurostat data. However, 2021 figures were still only around half 2019 figures (when 7,455 people were refused leave to land). The top nationalities refused leave to land in 2021 were Eritrean, Syrian and Somali.

According to Eurostat data, 160 persons were ordered to leave in 2021, compared with 795 in 2020 and 2,535 in 2019. This reflects the impact of travel restrictions and the Minister of Justice's decision to only deport persons in very restricted circumstances in the context of the pandemic. According to rounded Eurostat data, 40 people were subject to forced returns, and 125 returned voluntarily, 82 of whom were assisted by IOM. This represents a decrease from all previous years, in particular in forced returns. Deportations were enforced against 5 people in 2021. This too represents a significant reduction on previous years, including 2020 when 159 people were subject to enforced deportations. In 2021, 36 EU removals were effected.

In December 2021, the Department of Justice announced a scheme to regularise long-term undocumented migrants and their families living in Ireland. The scheme was developed following a consultation process with stakeholders, including NGOs and government departments and agencies. Applicants had to have lived undocumented for four years in the State, or three years for those with children. Successful applicants will be granted immigration permission reckonable towards citizenship applications and unrestricted access to the labour market. Justice announced that a parallel process

would implement the recommendation in the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (the Catherine Day report) to allow those who have an outstanding international protection application and have been in the asylum process for a minimum of two years to apply for regularisation. The scheme was largely welcomed by stakeholders and NGOs who had been campaigning for a similar scheme, although some noted gaps within the scheme.

The *Criminal Justice (Smuggling of Persons) Act 2021* was signed into law in December. The legislation replaces most aspects of the *Illegal Immigrants (Trafficking) Act 2000*. The law covers a broad range of scenarios including intentionally assisting entry, transit or presence where the person knows or has reasonable cause to believe that it is in breach of specified immigration law provisions. The previous law criminalised organising and facilitating entry only. The maximum penalty laid down in the Act is ten years imprisonment upon conviction or indictment. The Act contains a defence (to be proved on the balance of probabilities) that the actions were to provide assistance to a person seeking international protection in the course of work for a bona fide organisation that gives assistance without charge to people seeking protection, or for the purpose of providing humanitarian assistance and not for obtaining financial or material benefit directly or indirectly.

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill*, which was published in June 2021, proposes to extend the period of time that people are given to confirm that they will return voluntarily upon receipt of a negative decision in an international protection application. Under the *International Protection Act 2015*, rejected applicants have 5 days to confirm that they will voluntarily return. The Bill proposes extending this to 30 days.

The COVID-19 pandemic had significant impacts on visas, borders and return. The Department of Justice stopped processing voluntary return applications but continued to record interest in voluntary returns. Deportations were also severely affected by the pandemic, with the Minister for Justice only deporting persons in very restricted circumstances. The Irish government sought to assure migrants in an irregular situation that accessing COVID-19 related care would not lead to deportation. Due to public health restrictions associated with the COVID-19 pandemic, certain countries were added and removed from the lists of those who require a visa to enter the country and of those who need a visa to transit the country throughout the year. Visa and preclearance processing ceased for most of the first half of the year due to public health restrictions, except for emergency or priority categories.

EMN Ireland published a report in 2021 on the policies and practice around how detention is used for immigration-related reasons.

In *Sobhy v the Chief Appeals Officer, Minister for Employment Affairs and Social Protection and the Attorney General*, the Supreme Court held that the phrase ‘contract of service’ in the *Social Welfare Contributions Act 2005* excludes the employment contracts of persons who were required to hold a work permit and did not hold one. It was therefore held that the applicant was not entitled to maternity benefit under the 2005 Act based on her PRSI contributions, which were to be refunded. In *H & anor v The Minister for Justice and Equality*, the Supreme Court held that a delay in issuing a deportation order may not give rise to rights, but that the interrelationships that may arise as a result of the passage of time may do so.

CHAPTER 1

Introduction

The *Annual report on migration and asylum 2021: Ireland* is the 18th in a series of annual reports on developments in the fields of migration and asylum in Ireland. The series is intended to provide an 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.

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. 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. NCPs also publish national-level reports. All of these are available on the EMN website.

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 developments at State level, practical developments as well as public debates in migration and asylum.

The *EMN annual report on migration and asylum 2021: Ireland* covers the period 1 January 2021 to 31 December 2021.

1.1 METHODOLOGY

As in previous years, NCPs filled in a common questionnaire to inform the EU-level *Annual report on migration and asylum 2021*. NCPs were asked to report on key developments (legislative policy and, to a limited extent, practice) during 2021. NCPs then adapt these questionnaires to develop more detailed national-level reports. The Irish NCP therefore developed on the original submission with an expanded definition of developments. In this report, we include:

- all legislative developments;
- major institutional developments;
- major debates in parliament and between social partners;
- government statements;

- media and civil society debates;
- the debate engaged with in parliament;
- items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit; and
- academic research.

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

The report is based on extensive desk research. 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 (DETE);
- Department of Justice (Justice);
- Department of Children, Equality, Disability, Integration and Youth (DCEDIY);
- Department of Further and Higher Education, Research, Innovation and Science (DFHERIS);
- Irish Human Rights and Equality Commission (IHREC);
- Child and Family Agency, Tusla;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM) Ireland;
- Irish Refugee Council;
- International Protection Office (IPO);
- International Protection Appeals Tribunal (IPAT);
- Migrant Rights Centre Ireland (MRCI);
- Nasc, Refugee and Migrant Rights Centre (Nasc); 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 7.0.¹

1 Available at www.emn.ie and https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en.

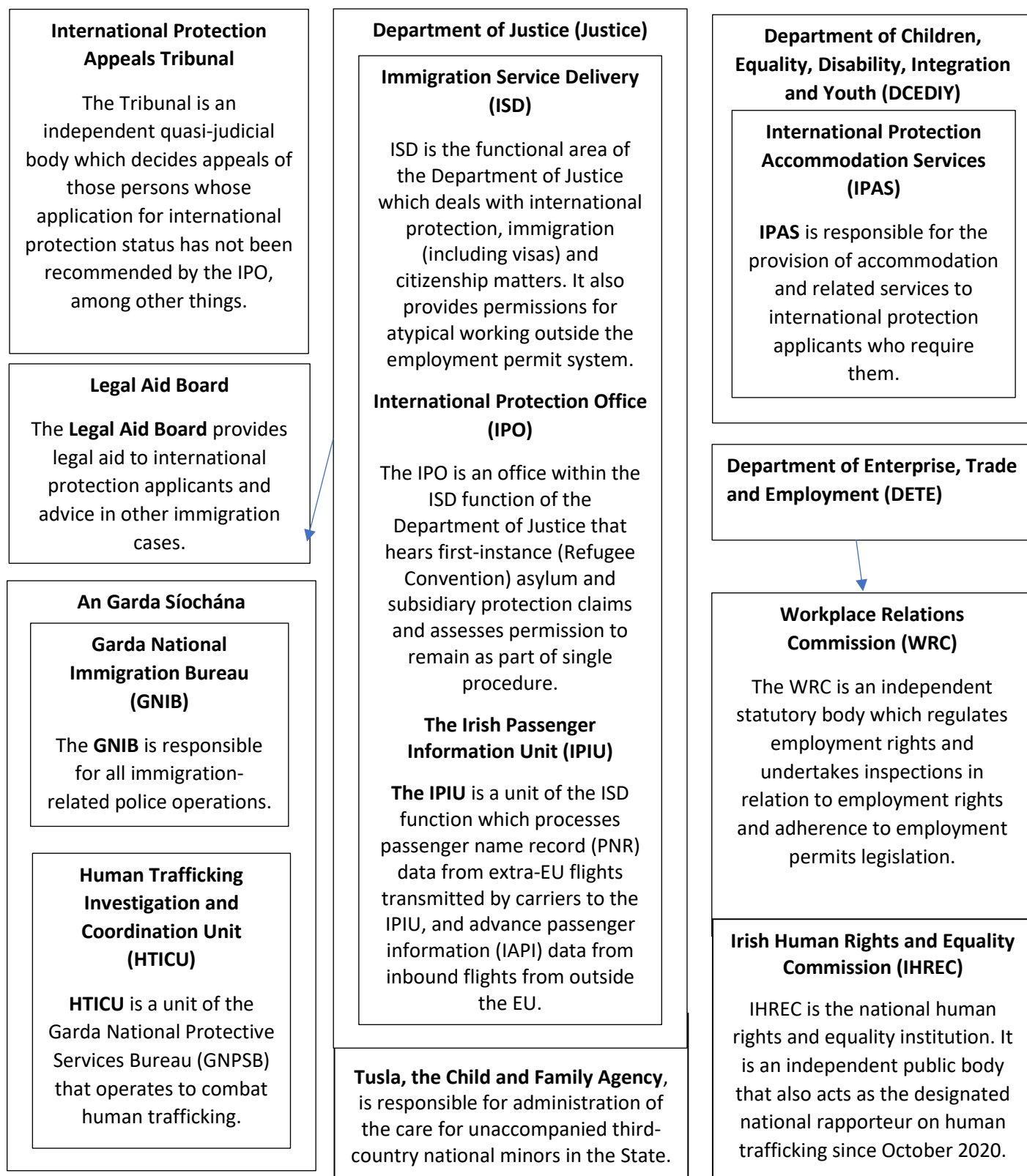
1.2 STRUCTURE OF MIGRATION AND ASYLUM POLICY

Figures 1.1 and 1.2 provide an outline of the governance structure for migration and asylum policy as of 31 December 2021. For more information on the respective roles within migration and asylum policy in Ireland and the legislative framework, see Annex A.

FIGURE 1.1 GOVERNMENT DEPARTMENTS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND MIGRATION 2021

<p>Department of Enterprise, Trade and Employment (DETE)</p> <p>Minister for Enterprise, Trade and Employment</p> <p>Tánaiste Leo Varadkar TD</p> <p>DETE’s Economic Migration Policy Unit and Employment Permits Section administer and deliver on the employment permit system, which allows Ireland to fill labour market needs by recruiting non-EU nationals.</p>	<p>Department of Justice (Justice)</p> <p>Minister for Justice</p> <p>Helen McEntee TD</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 (DFA)</p> <p>Minister of Foreign Affairs</p> <p>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 Overseas Development Aid and Diaspora</p> <p>Colm Brophy TD</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, Equality, Integration, Disability and Youth (DCEDIY)</p> <p>Minister for Children, Disability, Equality, and Integration</p> <p>Roderic O’Gorman TD</p> <p>DCEDIY has policy responsibility for children, including unaccompanied minors arriving in the State who are in the care of Tusla, the Child and Family Agency. The Minister for Children, Disability, Equality and Integration also 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 AT 31 DECEMBER 2021

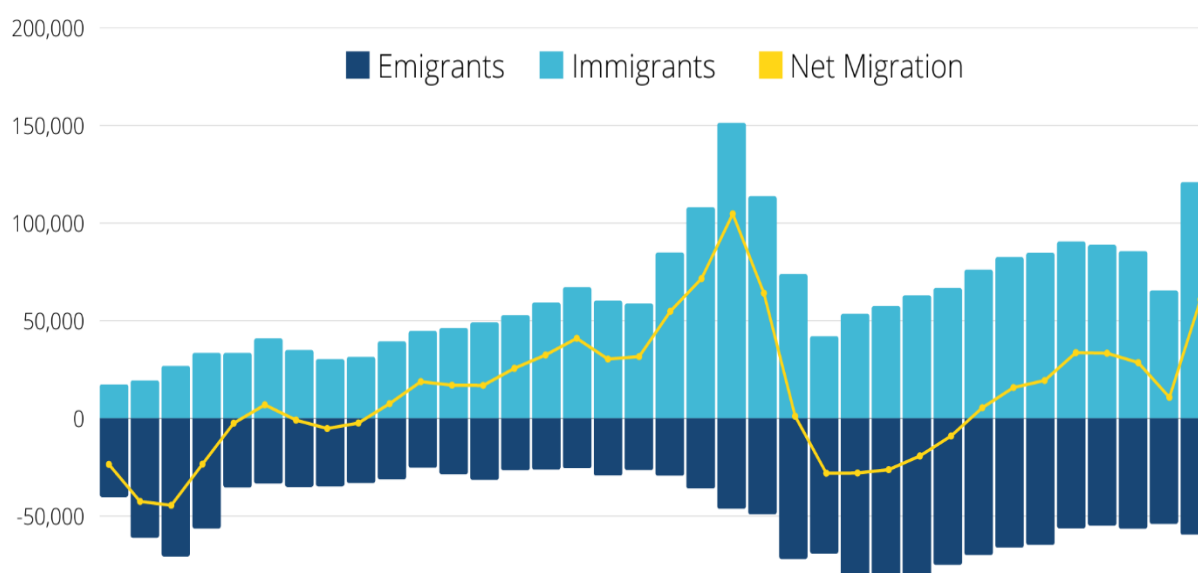


CHAPTER 2

Migration overview

2.1 STATISTICAL OVERVIEW

FIGURE 2.1 GROSS AND NET MIGRATION, IRELAND: 1987-APRIL 2022



Source: CSO, Population and Migration Estimates.

A census of the population was conducted in April 2022, the first since 2016. According to Census 2022, the population is now 5.123 million, a 7.6% increase since Census 2016.² This is the highest population on record since 1841.³ Over half of this increase is a result of net inward migration.⁴ As is evident from Figure 2.1, while emigration remained largely stable up to April 2022 compared with previous years, immigration significantly increased, with an estimated 120,700 new immigrants.⁵ This translates to net immigration of 61,100 between April 2021 and April 2022, the highest since 2008.⁶

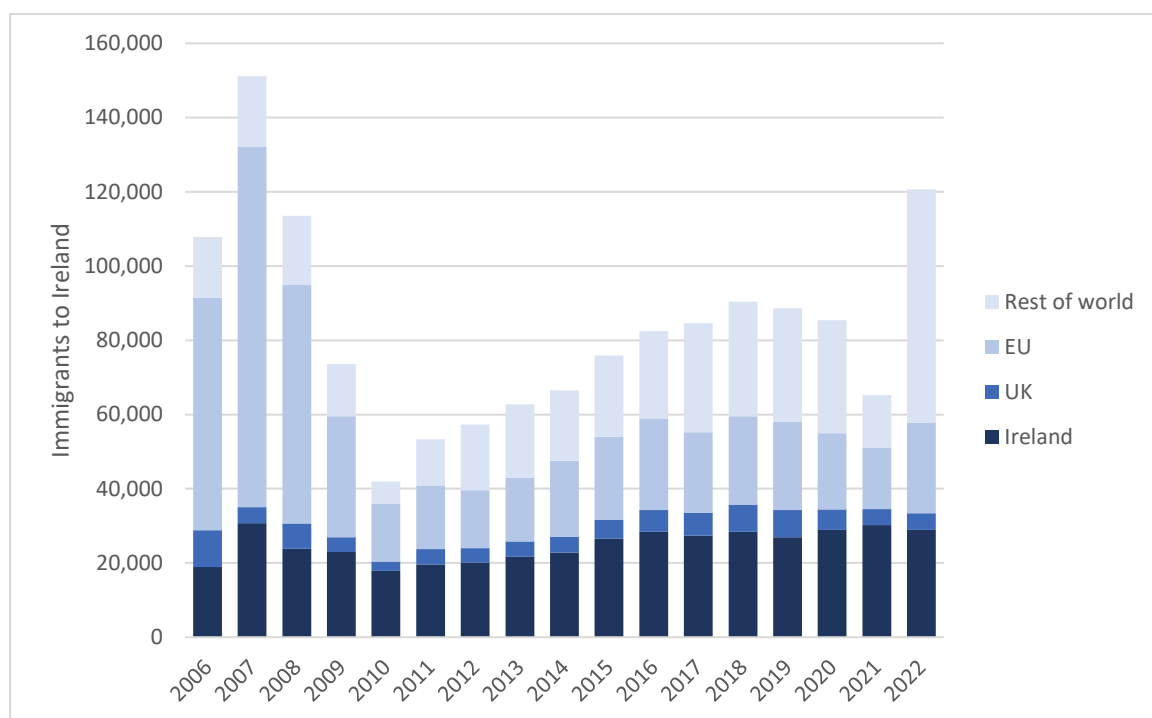
2 CSO (2022). 'Census of population 2022 – Preliminary results', 23 June, www.cso.ie.

3 Ibid.

4 CSO (2022). 'Census of population 2022 – Preliminary results – Components of population change', 23 June, www.cso.ie.

5 CSO, 'Population and migration estimates, April 2022', www.cso.ie.

6 Ibid.

FIGURE 2.2 ESTIMATED IMMIGRATION TO IRELAND, 2006-2022

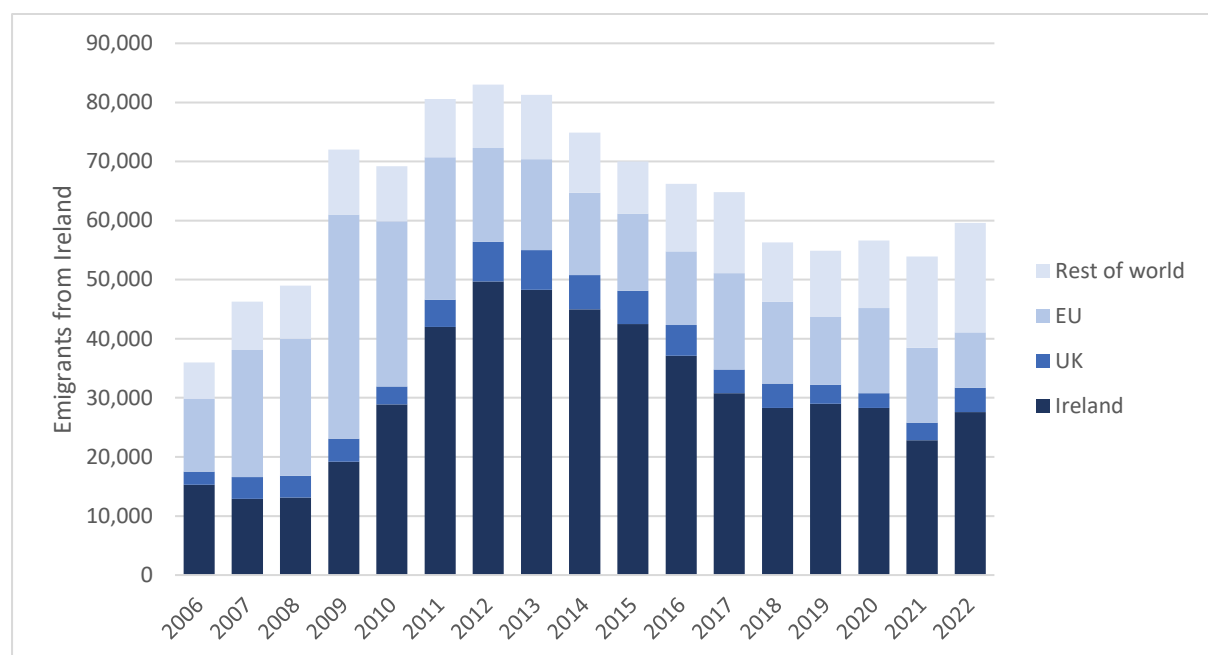
Source: CSO's 'Population and migration estimates'.

Notes: Estimations run to mid-April every year. The estimation for 2022 therefore represents April 2021–April 2022. Estimations are based on Quarterly National Household Surveys as well as reference to other migration indicators such as personal public service numbers allocated to non-Irish nationals, number of visas issued to Irish nationals to destinations such as Australia, US, and Canada, and national insurance numbers issued to Irish nationals in the UK.⁷

As shown in Figure 2.2, immigration to Ireland increased significantly in the year to April 2022 compared with the year to 2021 (85% increase), but that year also represented a significant increase from pre-pandemic levels (36% increase from 2019). The increase was largely a result of a significant jump in immigration from nationals from the 'rest of the world' category, which increased by 347% from 2021 and 105% from 2019. This was the largest immigration from this category at least since 1996.⁸ Immigration of EU citizens also increased significantly from 2021 (46% increase) but this largely represented a return to pre-pandemic levels. Immigration from the UK and Irish nationals remained relatively stable.

⁷ CSO (n.d.). 'Population and migration estimates: Background notes', www.cso.ie.

⁸ CSO, 'Population and migration estimates', www.cso.ie.

FIGURE 2.3 ESTIMATED EMIGRATION FROM IRELAND, 2006–APRIL 2022

Source: CSO's 'Population and migration estimates'.

As shown in Figure 2.2, emigration increased by 10.6% from 2021 levels to 59,600 in 2022, the highest total since 2017. This was largely a result of a significant increase in Irish emigration (21% increase compared with 2021), as well as an increase in UK emigration (37% increase) and emigration from citizens from the rest of the world (20% increase). In contrast, emigration of EU citizens decreased compared with previous years, with a 26% decrease from 2021.

2.2 OVERARCHING DEVELOPMENTS

This section presents developments that are not directly migration-related but that impact migration, or that are migration-related but have overarching impacts with relevance beyond a single category of migration.

Helen McEntee remained Minister for Justice and James Browne remained Minister of State at the Department of Justice with responsibility for law reform, both having been appointed in 2020. Roderic O'Gorman remained Minister for Children, Equality, Disability, Integration and Youth, to which several migration and asylum-related responsibilities were transferred in 2020; he was also appointed in 2020. Leo Varadkar remained Minister for Enterprise, Trade and Employment.

2.2.1 Department of Justice Statement of Strategy 2021–2023

The Department of Justice (Justice) published its Statement of Strategy for 2021–2023 along with a justice plan for 2021 in February 2021, following a consultation process

including public submissions in 2020.⁹ Goal 4 of the Statement of Strategy is to ‘deliver a fair immigration system for a digital age.’¹⁰ Other goals in the strategy are also likely to affect migrant and minority populations indirectly, including the improvement of access to justice, combatting gender-based violence, and the acceleration of digital transformation across the justice sector.

The objectives for achieving Goal 4, as set out in the Statement of Strategy, are to:

1. develop a fully digital, customer-centric immigration service;
2. protect the fairness and enhance the efficiency of our immigration system through new strategic policies and legislative proposals;
3. communicate effectively with our service users, recognising and understanding their diversity and supporting them to engage effectively with Justice;
4. restructure our immigration services to better serve our customers and our country;
5. ensure that effective controls are exercised at Irish borders in line with our international obligations and to maintain our national security; and
6. eliminate processing backlogs across all immigration application types.¹¹

The strategy also outlines aims that include creating a roadmap to transition all immigration services online, developing a long-term migration strategy, clearing the backlog of citizenship applications and resuming citizenship ceremonies (which were temporarily suspended due to COVID-19 restrictions), and improving the system for international protection applicants, including their access to the labour market.¹²

Justice Plan 2021 contained the objectives and actions for 2021 towards achieving the overall strategic goals.¹³ Examples of these actions included: developing the regularisation of long-term undocumented migrants scheme; rolling out a new customer-focused immigration website and developing a digitisation strategy for immigration; completing an end-to-end process review of international protection processes; and reviewing and expanding the list of countries whose nationals can benefit from the Short Stay Visa Waiver Programme.¹⁴

The Strategy Statement was welcomed by the Immigrant Council of Ireland (ICI), who called it ‘a comprehensive roadmap to address many of the longstanding deficiencies in the Irish immigration system’.¹⁵ They encouraged Justice to go further, and to conduct a review of all immigration legislation ‘with a view to determining whether it is fit for

9 Department of Justice (2021). *Statement of strategy 2021–2023*, p. 9, www.gov.ie.

10 *Ibid.*, p. 5.

11 *Ibid.*, pp. 18-19.

12 *Ibid.*, pp. 18-19.

13 Department of Justice (2021). *Justice plan 2021*, www.gov.ie.

14 *Ibid.*, p. 40.

15 Immigrant Council of Ireland (2021). ‘Immigrant Council of Ireland reaction to Department of Justice Strategy Statement 2021-2023’, <https://www.immigrantcouncil.ie/news/immigrant-council-ireland-reaction-department-justice-strategy-statement-2021-2023>, 23 February.

purpose'. They encouraged the adoption of measures that would increase the legal rights of migrants and the reduction of reliance on ministerial discretion. They also called for the strengthening of appeals processes within the system, highlighting that many areas currently lack any appeal process (e.g. applications for Irish citizenship), other than judicial review. The ICI commended Justice on commitments in the strategy on the promotion of diversity and inclusion, increasing accessibility of the legal system, fighting human trafficking and fighting hate crime.

Justice published a mid-year progress report to monitor progress.¹⁶ By the end of 2021, progress included: the creation of the website (see Section 2.2.4); the regularisation scheme for long-term undocumented migrants (see Section 9.2.1); an end-to-end review of the international protection process (see Section 4.2.2); and improved access to the labour market for international protection applicants (see Section 4.2.1.3 (iii)). Key commitments that were not achieved in the first half of the year included the publication of a roadmap for the transition of all immigration services to online application processes, as well as other digital-related goals such as accepting online payments and creating an online scheduling system for appointments.¹⁷ However, Immigration Service Delivery (ISD) introduced a freephone service in January 2021 to allow customers book a registration appointment by phone.¹⁸

2.2.2 Publication of the Youth Justice Strategy 2021–2027

The Department of Justice published a Youth Justice Strategy for 2021–2027 in April 2021. The strategy includes actions related to migrant youth, including strengthening the capacity of front-line staff to interact effectively with young people from diverse backgrounds,¹⁹ and ensuring that key programmes reach minority and hard-to-reach groups.²⁰ Belonging to 'ethnic communities' was explicitly noted as a potential disadvantage for children and young people within the criminal justice system,²¹ but issues related to immigration status were not explicitly discussed.

2.2.3 Brexit

The beginning of 2021 was marked by the entry into force of the *European Union (Withdrawal Agreement) (Citizens Rights) Regulations 2020* (from 11 pm on 31 December 2020)²² (see 2020 report in this series for further details).²³ Non-EEA family members of UK nationals resident prior to 31 December 2020 are required to replace their current valid Irish residence permit (IRP) card with a new withdrawal agreement

16 Department of Justice (2021). *Justice Plan 2021 mid-year progress report*, www.gov.ie.

17 *Ibid.* pp. 32-33.

18 Correspondence with Department of Justice, October 2022.

19 Department of Justice (2021). *Youth Justice Strategy 2021–2027*, p. 17, www.gov.ie.

20 *Ibid.*, p. 26.

21 *Ibid.*, p. 6.

22 S.I. No. 728 of 2020.

23 Sheridan, A. (2022). Annual report on asylum and migration 2020, p. 19.

beneficiaries card (Stamp 4 permission). It is estimated that 6,000 non-EEA nationals resident in Ireland will apply for residence documents under the programme.²⁴ In December 2021, the deadline for doing so was extended to 30 June 2022.²⁵

The Protocol on Ireland and Northern Ireland, contained within the Withdrawal Agreement between the EU and the UK,²⁶ came into effect on 1 January 2021. It recognises the Common Travel Area between Ireland the UK and the rights granted to Irish and British citizens, and contains agreements related to customs and the movement of goods.²⁷

Following the withdrawal of the UK from the EU, all non-EEA (including non-visa required nationals) family members of UK nationals who come to live in Ireland after 31 December 2020 must apply for preclearance from outside the State, and applicants must remain outside the State while the application is processed.²⁸

Regulations were brought in to provide that persons who hold a residence document issued in accordance with Article 18(4) of the Withdrawal Agreement²⁹ are exempt from paying a fee for obtaining the residence document.³⁰

2.2.4 Digital strategy for immigration and new website

A digital strategy for immigration was published in September 2021.³¹ Part of Justice's Digital First policy, it was designed to be consistent with the ICT strategies of Government and Justice.³² It marks the beginning of a transition away from paper-based processes.³³

24 Department of Justice (2021). 'Response to parliamentary questions 54140/21 and 54141/21', <https://www.oireachtas.ie/en/debates/question/2021-11-09/526/>, 9 November, www.oireachtas.ie.

25 Department of Justice (2020). 'UK Withdrawal from the EU – Information for UK nationals and their non-EEA family members living in Ireland', www.irishimmigration.ie, 19 November; Department of Justice (2021). 'Extension for non-EEA family members of UK nationals residing in Ireland before 31 December 2020 to apply for a residence document under the Withdrawal Agreement', www.irishimmigration.ie, 22 December.

26 'Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community', 12 November 2019, *Official Journal of the European Union 2019/ C384 I/01*.

27 Citizens Information 'Brexit and Ireland', www.citizensinformation.ie.

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

29 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

30 The Immigration Act 2004 (Registration Certificate Fee) (Amendment) Regulations 2021 (S.I. No. 403 of 2021). These regulations amend the Immigration Act 2004 (Registration Certificate Fee) Regulations 2012 (S.I. No. 444 of 2012). They also clarify that the registration fee is waived in respect of persons who hold a residence card issued under Regulation 7(5)(a) of the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015), or a permanent residence card issued under Regulation 15(3) of the 2015 Regulations.

31 Department of Justice (2021). 'Publication of the digitisation strategy for Irish Immigration Services', 16 September, www.irishimmigration.ie.

32 Ibid.

33 Ibid.

The digital strategy for immigration is based around three pillars and will be implemented on a phased basis. The three pillars are: customers, staff and operating models.

Customers

- A consistent self-service that is ‘Digital First’
- Multiple channels ensuring easier interaction
- Sharing of important information.

Staff

- Technology enabling staff to work efficiently
- Well defined mobility and career trajectory
- Motivated staff continuously developing.

Operating model

- Optimised technology infrastructure
- Technology enabling better information use
- Structure which reflects efficient processes.³⁴

An additional €5 million was also secured by the Minister for Justice for ICT in 2021, which will enable digital reform of immigration systems.³⁵ A new plain English customer-focused website for Immigration Service Delivery of the Department of Justice went live at the end of July (at www.irishimmigration.ie). According to the Chief International Protection Officer, a chatbot function was also piloted for citizenship queries and there are plans to roll this out for international protection queries and to provide the service in multiple languages.³⁶ He also indicated that that it would eventually be possible for applicants to find out the status of their claim through this function.³⁷

2.2.5 Temporary extensions to immigration permissions

In response to pandemic-related restrictions, the Government continued to extend immigration permissions. In December 2021, it issued the ninth temporary extension of immigration permissions since March 2020. This applied to permissions due to expire between 15 January 2022 and 31 May 2022 and included permissions that had already been extended by the previous eight temporary extensions. These permissions were due to expire on 31 May 2022. The suspension of re-entry visa requirements for minors

34 Department of Justice (2021). ‘Publication of the digitisation strategy for Irish Immigration Services’, 16 September, www.irishimmigration.ie.

35 Department of Justice (2021) ‘Minister for Justice, Helen McEntee TD – Budget 2021 Dáil Speech’, www.gov.ie.

36 Chief International Protection Officer at Houses of the Oireachtas (2021). ‘Committee on Public Petitions debate: Direct Provision Policy and Related Matters: discussion’, 25 November, www.oireachtas.ie.

37 Ibid.

already residing in Ireland and travelling with a legally resident parent or guardian was also extended.³⁸

To enable people to travel over Christmas despite challenges renewing residence cards, people who were entitled to a new residence card were allowed to travel on expired Irish residence permit cards for Christmas until 15 January 2022.³⁹

2.3 LEGISLATION

Several relevant pieces of legislation were introduced or amended in 2021, which will be discussed in detail in the relevant sections. These are:

- The Criminal Justice (Smuggling of Persons) Act 2021
- *The Criminal Justice (Smuggling of Persons Act 2021 (Commencement) Order 2021, S.I. No. 772/2021*
- *Employment Permits (Amendment) Regulations 2021, S.I. 286/2021*
- *Employment Permits (Amendment) (No. 2) Regulations 2021, S.I. 559/2021*
- *European Communities (Reception Conditions) (Amendment) Regulations 2021. S.I. No. 52 of 2021*
- *European Communities (Reception Conditions) (Amendment) (No. 2) Regulations 2021. S.I. No. 178 of 2021*
- *Immigration Act 2004 (Visas)(Amendment) Order 2021. S.I. No. 23 of 2021*
- *Immigration Act 2004 (Visas) (Amendment) (No. 2) Order 2021. S.I. No. 287 of 2021*
- *Immigration Act 2004 (Visas) (Amendment) (No. 3) Order 2021. S.I. No. 538 of 2021*
- *Immigration Act 2004 (Visas) (Amendment) (No. 4) Order 2021. S.I. No. 640 of 2021*
- *Immigration Act 2004 (Visas) (Amendment) (No. 5) Order 2021 S.I. 643 of 2021*
- *Immigration Act 2004 (Visas) (Amendment) (No. 6) Order 2021. S.I. No. 746 of 2021*
- *Student Support (Amendment) Regulations 2021 Order 2021. S.I. No. 6 of 2021*
- *The Immigration Act 2004 (Registration Certificate Fee) (Amendment) Regulations 2021 S.I. No. 403 of 2021*
- *European Communities (Free Movement of Persons) (Amendment) Regulations 2021 (S.I. No. 445 of 2021.*

2.4 COURTS: JUDICIAL REVIEW

Three hundred applications for judicial review were made on the ‘asylum’ list in 2021. This list covers asylum-related cases and also judicial reviews of ministerial decisions in

38 Department of Justice (2021). ‘Minister McEntee announces further temporary extension of immigration permissions’, 17 December, www.gov.ie.

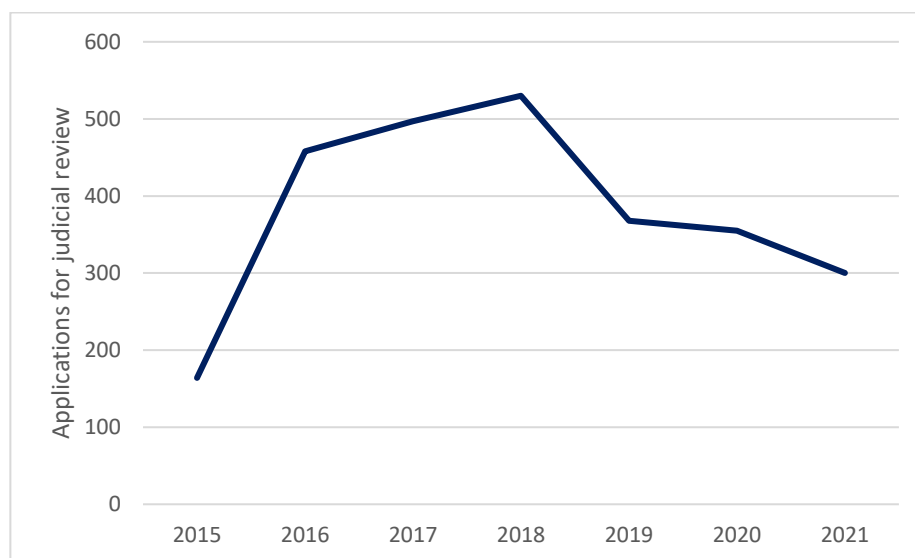
39 Department of Justice (2021). ‘New immigration changes announced’, 15 November, www.irishimmigration.ie.

other immigration-related matters; for example visas, naturalisation, EU treaty rights and family reunification.

As shown in Figure 2.4, the 2021 figure is slightly lower than 2020 (355 applications) and represents a continued drop from the peak in 2018. In 2021, 377 cases were resolved by the court, a significant increase on previous years (179 in 2020 and 262 in 2019) and 251 were resolved out of court, including those that were withdrawn.

The Court of Appeal received 16 asylum list appeals during the year and resolved 23 cases in court, leaving 15 pending cases at the end of the year.

FIGURE 2.4 INCOMING APPLICATIONS TO THE HIGH COURT FOR JUDICIAL REVIEW ON THE ASYLUM LIST, 2015–2021



Source: Court Service (2022). *Annual report 2021*, ARM 2015–2019.

As reported in previous years, initiatives had been made by the Courts Service to improve waiting times in the High Court asylum list. Waiting times had been eliminated at the pre-leave application stage in 2018, but increased in 2021 to one to two weeks, and they reduced at post-leave application stage from four months to two months during 2021.⁴⁰

Practice Direction 81, which was introduced in 2019, continued to apply. An alteration was made from October 2021, so that *ex parte* hearings for judicial review of asylum list matters are now heard by the same judge who hears general *ex parte* judicial review matters (but still in different lists).

40 Courts Service (2022). *Annual report 2021*.

2.5 UNITED NATIONS AND OTHER INTERNATIONAL DEVELOPMENTS

2.5.1 Third cycle of the Universal Periodic Review

In 2021, Ireland underwent its third review as part of the United Nations Universal Periodic Review (UPR) process, through which the human rights record of countries is reviewed by the UPR working group, other Member States and civil society organisations. In advance of the review, the Government submitted a report in August 2021, building on the prior voluntary interim report submitted in July 2020. It also held a public consultation both online and via written submission in May 2021.⁴¹ A separate consultation process was held with children and young people. Civil society and state agencies also made submissions for the working group to consider.⁴²

Migration-related concerns raised in submissions from civil society were similar to those raised in the previous review in 2016,⁴³ and related to: the Direct Provision system; delays in the international protection system; discrimination in the housing market; access to work for international protection applicants; the need for improved anti-racism legislation and strategies; the detention of immigration detainees with remand and convicted prisoners; and a lack of legal framework for safeguarding against statelessness.⁴⁴

The report of the working group commended Ireland on significant improvements across multiple fronts since the last review in 2016. Those most relevant to migration included the establishment of the independent national Anti-Racism Committee (ARC, see Section 7.2.3), the proposed reform of the Direct Provision system (see Section 4.2.1), the digitisation of the immigration system (see Section 2.2.4), and the regularisation scheme (see Section 9.2.1),⁴⁵ many of which happened in 2021 and will be covered in this report.

A total of 260 recommendations were made by Member States,⁴⁶ in addition to those submitted by UN bodies,⁴⁷ many of which related to the rights of migrants and/or ethnic minorities. Ireland accepted 221 recommendations.⁴⁸ Accepted migration-related recommendations included the following.

41 Human Rights Council (2021). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Ireland*, A/HRC/WG.6/39/IRL/1, 13 August, www.ohchr.org.

42 All submissions can be found at www.ohchr.org.

43 See Sheridan, A. (2017). *Annual report on migration and asylum 2016*, Economic and Social Research Institute, Dublin, pp. 13-14.

44 Human Rights Council (2021). 'Summary of stakeholder submissions on Ireland', A/HRC/WG.6/39/IRL/3, www.ohchr.org, 12 August.

45 Human Rights Council (2021). *Report of the Working Group on the Universal Periodic Review: Ireland*, A/HRC/49/18, 14 December, www.ohchr.org.

46 Ibid.

47 Human Rights Council (2021). *Compilation on Ireland*, A/HRC/WG.6/39/IRL/2', 16 August, www.ohchr.org.

48 See Human Rights Council (2022). *Report of the Working Group on the Universal Periodic Review: Ireland addendum*, A/HRC/49/18/Add.1 for full list, 4 January, www.ohchr.org.

- Improving protection against racial discrimination, including through: the incorporation of the International Convention on the Elimination of All Forms of Racial Discrimination into domestic law; the development of a new action plan against racism and legislative provisions to combat the incitement to hatred online; the improved availability of effective remedies against any form of discrimination, hate speech, and hate crimes; and enhanced awareness-raising measures against racism and xenophobia.
- Improving access to housing and health for immigrants and members of minority groups, including through the development of a national housing strategy.
- Improving national programmes for social inclusion and integration policies for minorities, migrant workers and other vulnerable groups, including: the development of specific programmes that address the vulnerabilities of the Roma minority; ensuring that vulnerable communities have full access to and are actively informed about their rights; and taking steps towards inclusive healthcare, with the needs of communities from diverse backgrounds considered.
- Broadening legal and financial aid to enable vulnerable people, migrants and asylum seekers to fully access justice.
- Improving responses and protections to victims of human trafficking, including through: early and systematic evaluation; investigation of cases and the prosecution of perpetrators, as well as legal protection and assistance to victims; the development of a national action plan; and the reinstatement of a dedicated anti-trafficking unit.
- Ensuring accommodation of unadmitted foreigners and asylum seekers in appropriate facilities, including by abolishing Direct Provision by 2024.
- Adopting measures to improve the protection of refugees, migrants and asylum seekers by fully incorporating into domestic law the 1951 Convention relating to the Status of Refugees.⁴⁹

Several migration-related recommendations were noted by Government, but not supported or accepted. These included the following.

- The signature of the International Convention on the Rights of All Migrant Workers and Their Families. Ireland's response noted that there are no plans to sign the Convention, as 'Ireland does not become a party to treaties until it is first in a position to comply with the obligations contained in the treaty in question, including by amending domestic law as necessary'.⁵⁰
- Recommendations related to the prohibition of racial profiling and creating protections against racial profiling in policing. Ireland responded that An Garda Síochána already prohibits racial profiling and 'unjustifiable use of diversity or

49 Human Rights Council (2022). *Report of the Working Group on the Universal Periodic Review: Ireland addendum*, A/HRC/49/18/Add.1, pp. 2-3, 4 January, www.ohchr.org.

50 *Ibid.*, p. 3.

minority grounds to inform policing policy or activity’.⁵¹ They noted that breaches of this prohibition would be subject to discipline investigation under existing mechanisms, including the Garda Síochána Ombudsman Commission. The Irish response also noted that while An Garda Síochána does not currently keep records of the ethnicity of those they stop and search, the proposed *General Scheme of the Garda Powers Bill*, prepared following the Report of the Commission on the Future of Policing, codifies the powers of search, arrest and detention, and it is intended that this will include ethnicity, which will allow for audits of Gardaí use of stop and search powers.

- The expansion of the mandate of the Irish Human Rights and Equality Commission to include the prevention and prohibition of racial discrimination. The Irish response noted that this would require a formal expansion of the Commission’s powers through legislation, which will be considered.⁵²

Work was underway in relevant government departments to address several of these issues in 2021, notably the provision of appropriate accommodation to asylum seekers (see Section 4.2.1) and the development of a national strategy against racism (see Section 7.2.3).

2.5.2 International Covenant on Civil and Political Rights List of Issues in relation to the fifth periodic report

A list of issues in relation to Ireland’s fifth periodic report on the International Covenant on Civil and Political Rights (ICCPR) was published in 2021 following adoption by the Human Rights Committee in 2020.⁵³ This followed the receipt of the fifth periodic report in 2019, and submissions from stakeholders in 2020. The List of Issues asked for further details on a variety of issues, with those relevant to migration including:

- the constitutional and legal framework within which the Covenant is implemented, including the functioning of the Irish Human Rights and Equality Commission (IHREC);
- compliance of the Government’s COVID-19 response with obligations under the Covenant;
- responses to discrimination, including hate speech and hate crime, and the outcomes of the Migrant Integration Strategy 2017–2020, among others;
- progress towards achieving gender equality;
- measures to tackle gender-based violence, including domestic violence;

51 Human Rights Council (2022). *Report of the Working Group on the Universal Periodic Review: Ireland addendum*, A/HRC/49/18/Add.1, p. 4, 4 January, www.ohchr.org.

52 *Ibid.*, pp. 4-6.

53 United Nations (2021). ‘List of issues in relation to the fifth periodic report of Ireland’, Human Rights Committee, /C/IRL/Q/5, 14 January, www.ohchr.org.

- the implementation of abortion access legislation, including the disproportionate impact of continued barriers to abortion services on migrant women and asylum seekers, among others;
- deaths in institutional care settings and detention;
- responses to human trafficking;
- measures taken to improve conditions in detention;
- the system in place to promote and protect the rights of refugees and asylum seekers, in particular the implementation of the *International Protection Act 2015*, the work of the Refugee Appeals Tribunal,⁵⁴ work undertaken to improve the situation in Direct Provision, and measures taken to protect refugees and asylum seekers during the COVID-19 pandemic; and
- measures taken to ensure the right to freedom of conscience and religious belief.⁵⁵

In line with normal reporting procedures, Ireland was expected to submit a reply to the list of issues prior to the interactive dialogue scheduled to take place at the 135th session in June–July 2022.⁵⁶

2.5.3 International Covenant on Economic, Social and Cultural Rights fourth periodic report

Ireland submitted its fourth periodic report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in February 2021,⁵⁷ which provides updates and comments relevant to the Covenant since Ireland's last report and subsequent observations. Relevant migration-related updates included:

- granting access to the labour market for international protection applicants;
- the Immigration Service policy document on non-EEA family reunification, which provides detail on how the Minister for Justice and Equality intended to apply ministerial discretion to family reunification;
- the *International Protection Act 2015* and the single application procedure for international protection;
- standards for Direct Provision developed following the McMahon report;
- increases in allowances to those residing in Direct Provision;
- the relocation of unaccompanied minors from other EU countries; and
- the Migrant Integration Strategy 2017–2020.⁵⁸

54 Now the International Protection Appeals Tribunal.

55 United Nations (2021), 'List of issues in relation to the fifth periodic report of Ireland', Human Rights Committee, CCPR/C/IRL/Q/5, 14 January, www.ohchr.org.

56 OHCHR. 'CCPR – International Covenant on Civil and Political Rights: 135 Session', Treaty Body Database, www.ohchr.org.

57 Committee on Economic, Social and Cultural Rights (2021). *Fourth periodic report submitted by Ireland under articles 16 and 17 of the Covenant, due in 2020*, E/C.12/IRL/4, 25 August, www.ohchr.org.

58 *Ibid.*, pp. 8-16.

The Committee was due to adopt a list of issues related to the fourth report in March 2022 ahead of its review of Ireland.⁵⁹ IHREC also submitted a report to the Committee to inform this process.⁶⁰

59 IHREC (2021). 'Ireland and International Covenant on Economic, Social and Cultural Rights: Submission to the Committee on Economic, Social and Cultural Rights for the List of Issues on Ireland's Fourth Periodic Report', p. 1, www.ihrec.ie.

60 Ibid.

CHAPTER 3

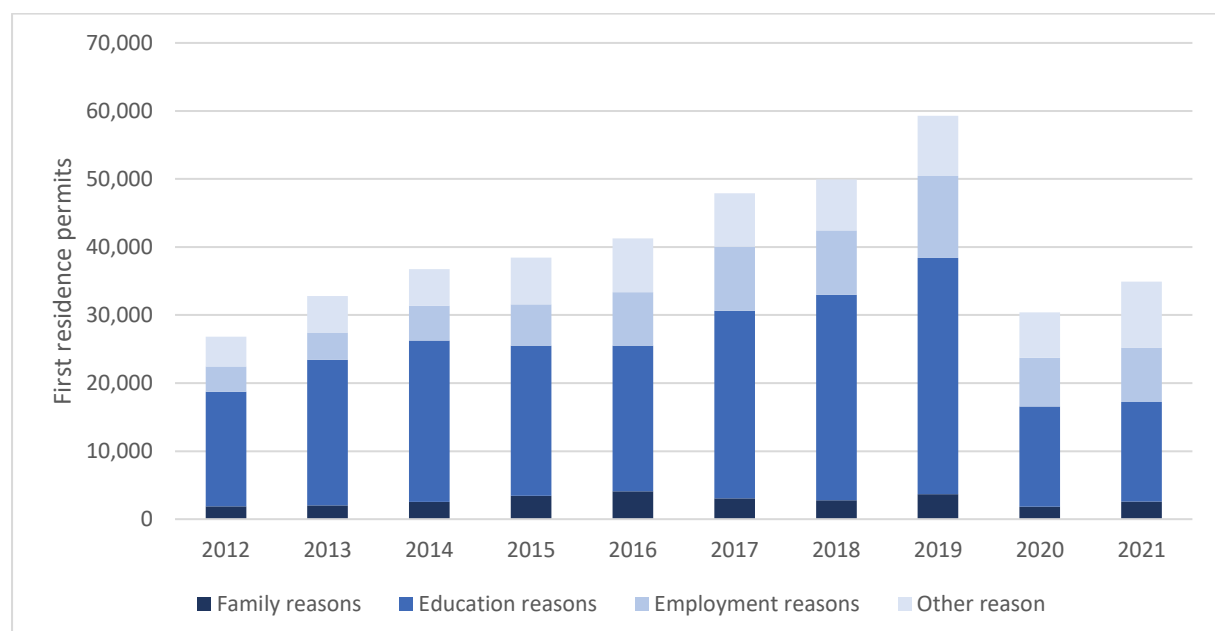
Legal migration

3.1 STATISTICS

3.1.1 Residence

Figure 3.1 shows first-residence permits issued for all reasons 2012–2021. A total of 34,935 first permits were issued in Ireland in 2021, a small increase on 2020 figures but still significantly below 2019. As shown in Figure 3.1, the proportion of permits was similar to other years, with education the single largest group (14,611 permits), followed by other reasons (9,706), employment (8,009) and family reasons (2,609).⁶¹

FIGURE 3.1 FIRST-RESIDENCE PERMITS IN IRELAND BY REASON 2012–2021



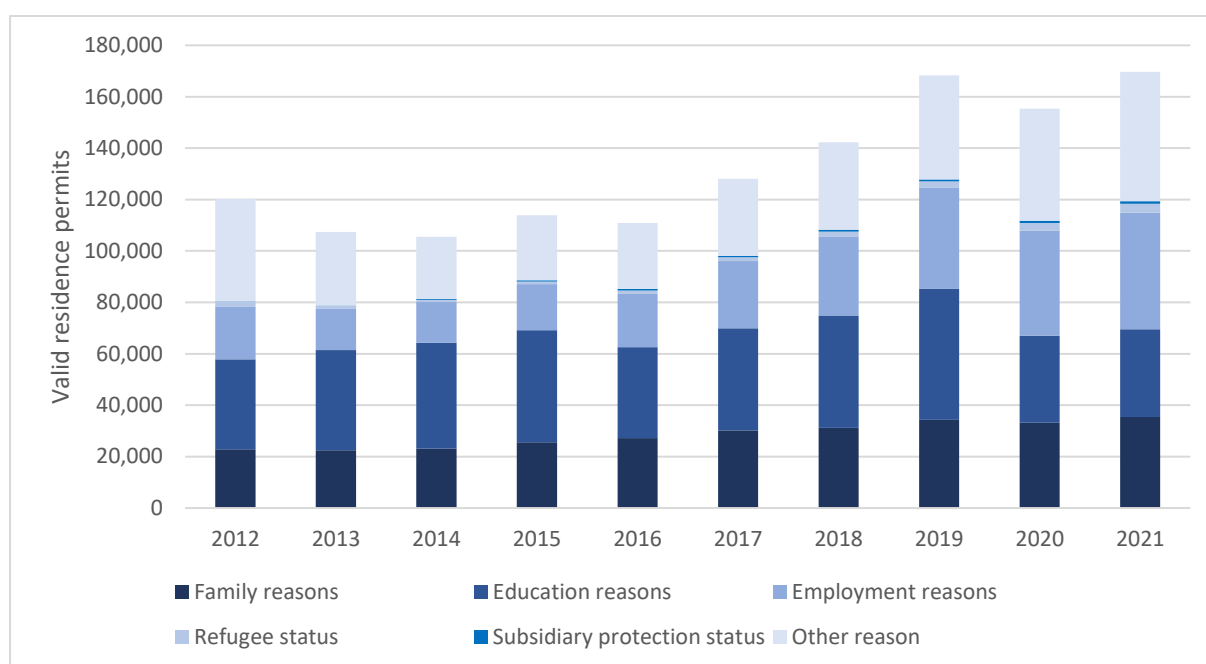
Source: Eurostat, 'First permits by reason, length of validity and citizenship', extracted 29 September 2022.

Across the EU, 2.952 million first-residence permits were granted,⁶² with first permits in Ireland therefore representing 1.18% of the EU total. This proportion rises to 4.13% of the EU total for study reasons, and reduces to 0.37% of the EU total for family reasons.⁶³

61 Eurostat, 'First permits by reason, length of validity and citizenship', extracted 29 September 2022, www.ec.europa.eu.

62 Ibid.

63 Ibid.

FIGURE 3.2 ALL VALID RESIDENCE PERMITS IN IRELAND AS OF 31 DECEMBER, BY REASON

Source: Eurostat, 'All valid permits by reason, length of validity and citizenship on 31 December of each year [migr_resvalid]', extracted 11 November 2022.

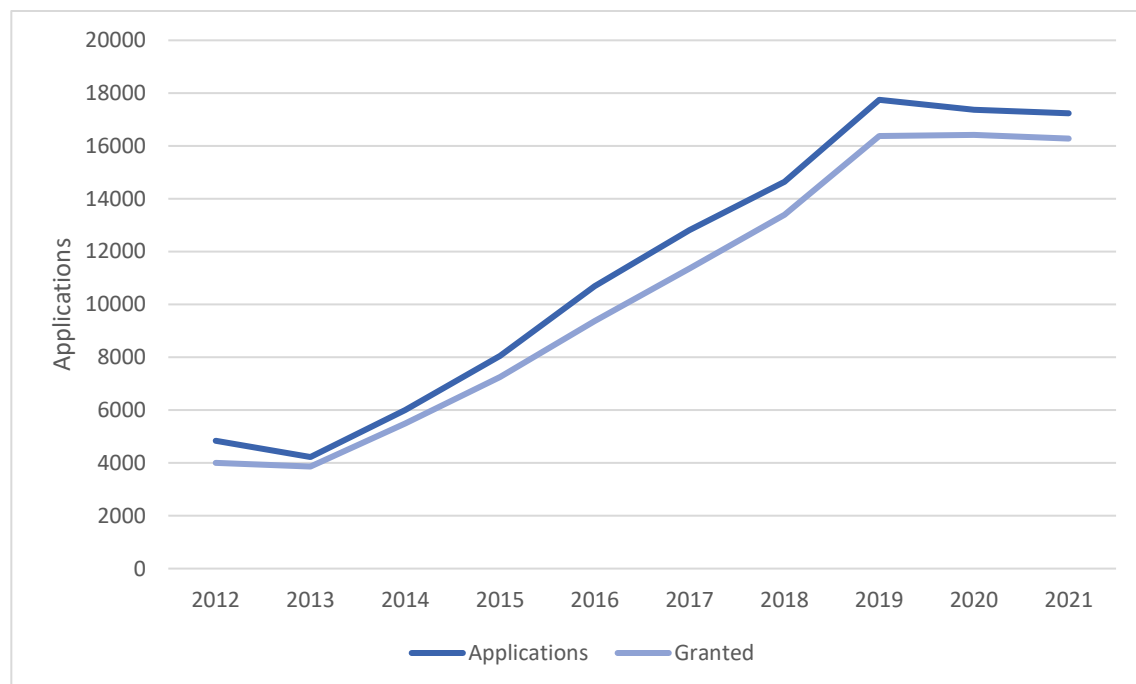
Figure 3.2 shows all valid residence permits in Ireland on 31 December of each year. It shows that in spite of fluctuations with first-residence permits over the last two years, the number of valid residence permits has remained relatively stable. On 31 December 2021, 169,687 residence permits were valid in Ireland. Of these, around 27% were for employment reasons (45,409), 21% were for family reasons (35,440), and 20% were for education reasons (34,055), according to Eurostat data. These proportions are largely similar to previous years.

3.1.2 Employment permits

A total of 16,275 employment permits were issued in 2021.⁶⁴ This total is similar to 2020, when the gradual increase observed in the last decade flattened out (see Figure 3.3).⁶⁵ There was an approval rate of 94%, similar to previous years.

64 Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021', www.enterprise.gov.ie.

65 Ibid.

FIGURE 3.3 EMPLOYMENT PERMIT APPLICATIONS AND GRANTS, 2012–2021

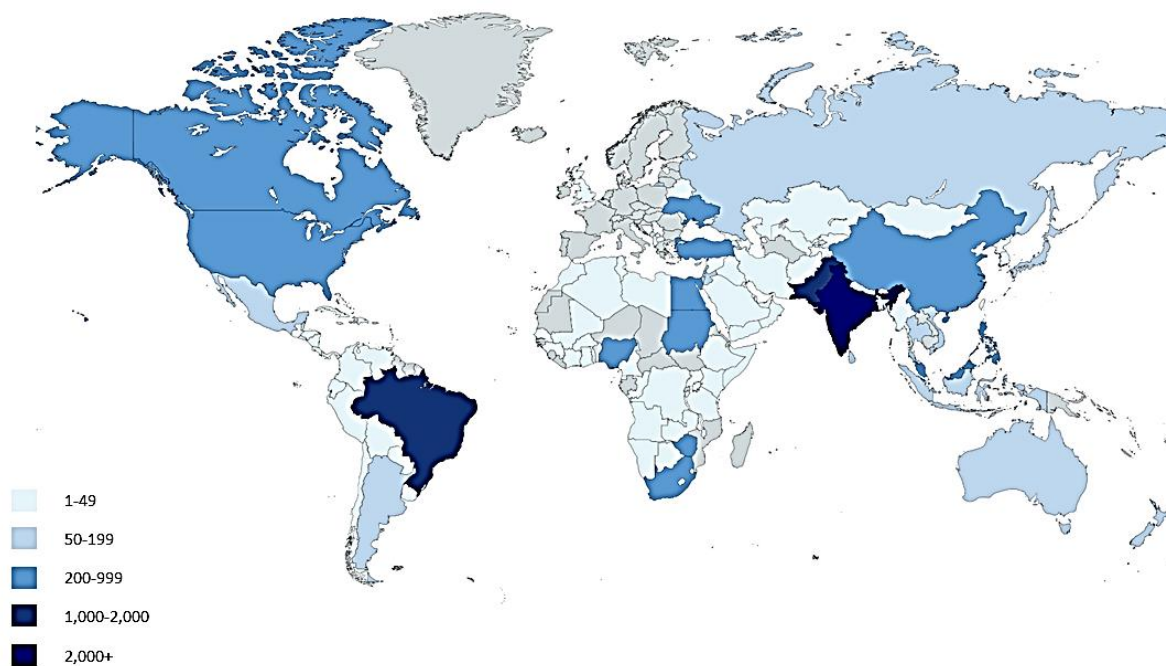
Source: Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021'.

Note: Applications exclude those that were withdrawn within the year.

As can be seen from Figure 3.4, those issued employment permits in Ireland in 2021 come from all over the world, with India representing the largest single country of origin (6,445 permits), similar to previous years. The next most common countries of origin are Brazil (1,098), Pakistan (1,026), the Philippines (734), the US (693) and Sudan (652).⁶⁶

66 Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021: Permits by nationality 2021', www.enterprise.gov.ie.

FIGURE 3.4 COUNTRIES OF ORIGIN FOR THOSE ISSUED EMPLOYMENT PERMITS IN 2021

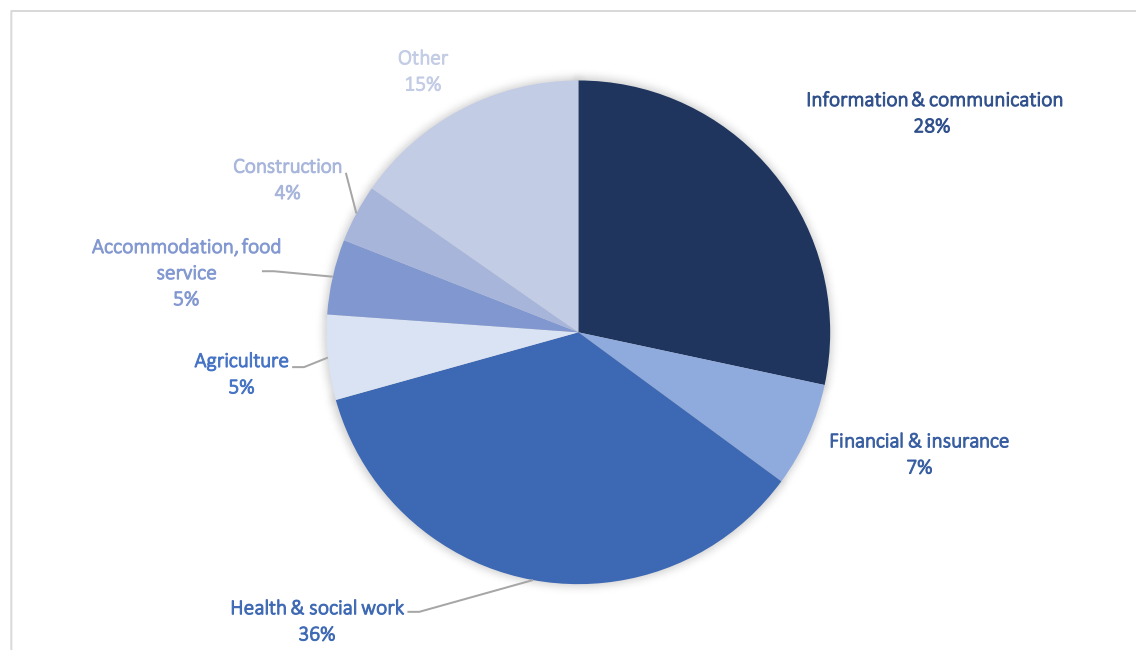


Source: Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021: Permits by nationality 2021'.

The sectors to which the employment permits were granted are shown in Figure 3.5.⁶⁷ As in 2020, health and social work was the largest sector, with 5,793 permits granted in 2021. These permits were mostly granted to hospitals.⁶⁸

67 Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021: Permits by sector 2021', www.enterprise.gov.ie.

68 Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021: Permits issued to companies 2021', www.enterprise.gov.ie.

FIGURE 3.5 SECTORS TO WHICH WORK PERMITS WERE ISSUED IN 2021

Source: Department of Enterprise, Trade and Employment (2022). 'Employment permit statistics 2021: Permits by sector 2021'.

3.1.3 Atypical Working Scheme

Under the Atypical Working Scheme (AWS), 4,132 permits were approved in 2021, and 220 were refused. Of all applications, approximately 85% were for nurses, 5% for fishers, 3% for doctors and 3% for those working in entertainment.⁶⁹

As of 31 December 2021, there were 337 seafishers with permission under the AWS. All seafishers that held an AWS permit on 20 March 2020 had their permission extended throughout the COVID-19 pandemic.⁷⁰ In 2021, 77 new applications by fishers were approved, as were 157 renewals of permissions, of which 18 involved change of employer.⁷¹

3.1.4 International students

In 2021, 14,611 first-time permits were issued for education reasons.⁷² Figure 3.6 shows how this compares with previous years, showing a significant drop in 2020 following the COVID-19 pandemic and a similar level in 2021. This likely has a significant impact on the sector, as the majority of international students in public universities, for example, are non-EU students (see Figure 3.6).

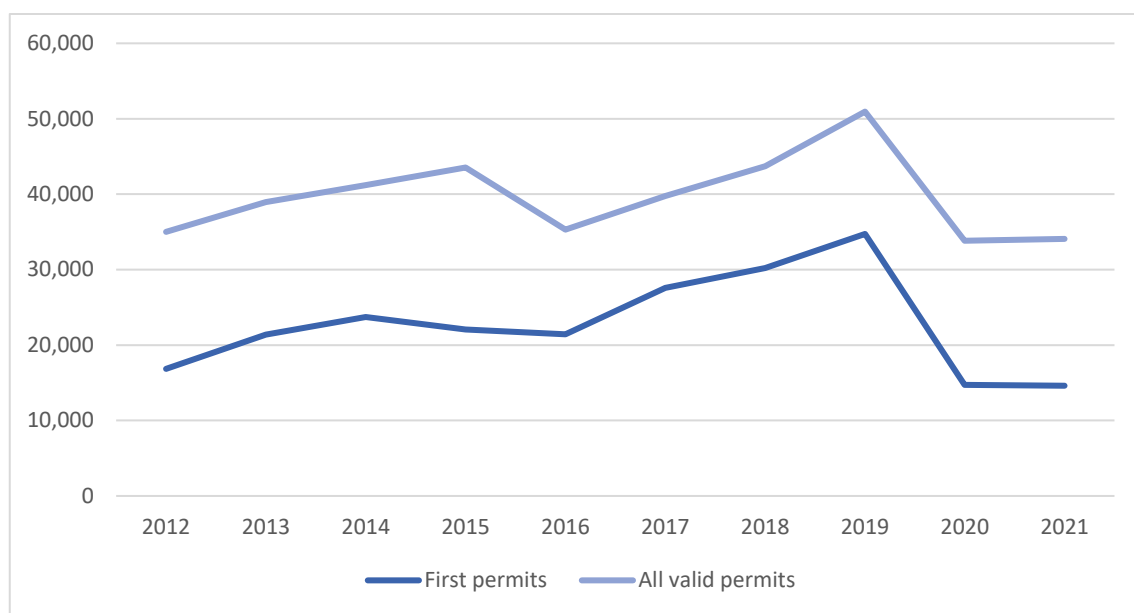
69 Correspondence with Immigration Service Delivery, October 2022.

70 Department of Justice (2022) 'Response to parliamentary question 3443/22', 25 January, www.oireachtas.ie.

71 Correspondence with Immigration Service Delivery, October 2022.

72 Eurostat, 'First permits by reason, length of validity and citizenship', extracted 29 September 2022, www.ec.europa.eu.

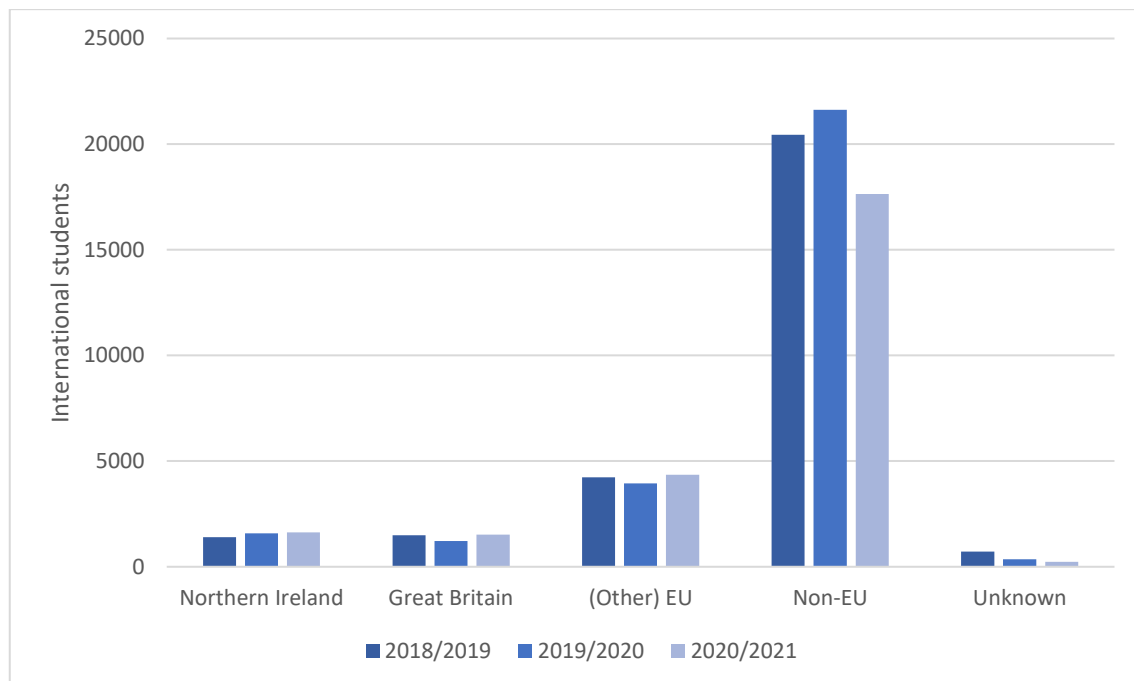
FIGURE 3.6 FIRST PERMITS AND ALL VALID PERMITS ON 31 DECEMBER FOR EDUCATION REASONS, 2012–2021



Source: Eurostat, ‘First permits by reason, length of validity and citizenship’, extracted 29 September 2022; Eurostat, ‘All valid permits by reason, length of validity and citizenship on 31 December of each year’, extracted 11 November 2022.

As noted above, there were 34,055 total valid residence permits for education reasons on 31 December 2021, similar to 2020 but representing a 33% decrease from 2019.

FIGURE 3.7 INTERNATIONAL STUDENTS IN HEA FUNDED INSTITUTIONS BY REGION OF ORIGIN, 2018–2021



Source: HEA (n.d.). ‘Access our data – Students’.

Note: HEA = Higher Education Authority.

Figure 3.7 shows the number of international students in Higher Education Authority (HEA) funded institutions by region of origin for the last three academic years.⁷³ It shows an increase in students from Northern Ireland, the UK, and the EU for the 2020/2021 academic year, but a drop in non-EU students for the same year. There were 25,142 total international students for the 2020/2021 academic year (including those from Northern Ireland) in HEA-funded institutions.⁷⁴ Of these, 43% were postgraduate students and 9% were studying part-time.⁷⁵

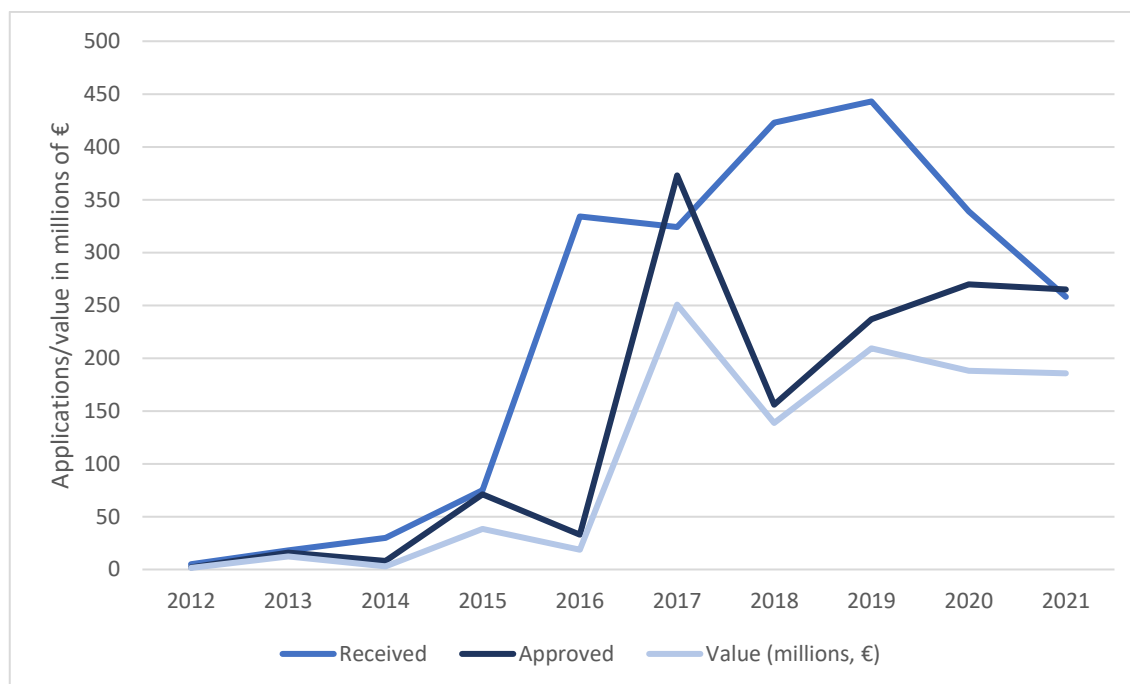
The Ireland Fellows Programme, run by the Department of Foreign Affairs, saw 158 participating students in 2021. This programme sponsors students from official development assistance (ODA) eligible partner countries to study for a master's qualification at an Irish university or institute of technology. The 2021 fellows were from African partner countries, the occupied Palestinian territory, Vietnam, Laos and Small Island Developing States in the Caribbean, Pacific, Africa and Asia.⁷⁶

An estimated 10,000 English language education students were estimated to be residing in the country in July 2021, a significant reduction on pre-pandemic levels, when the sector could facilitate up to 200,000 learners per year.⁷⁷ Throughout the pandemic, course providers could provide classes online, and the requirement remained for third-country national students to attend at least 85% of their classes.^{78,79} Restrictions remained for much of the year on the recruitment of new international students who may seek to travel.⁸⁰

-
- 73 The HEA is a statutory body tasked with overseeing the effective governance and regulation of the higher education system. For a list of institutions funded by HEA, see HEA (n.d.). 'Higher education institutions', www.hea.ie. These statistics exclude privately run third level education.
- 74 HEA (n.d.). 'Access our data – Students', www.hea.ie.
- 75 Ibid.
- 76 Department of Foreign Affairs and Trade (2021). 'Response to parliamentary question 56487/21', 18 November, www.oireachtas.ie.
- 77 Department of Further and Higher Education, Research, Innovation and Science (2021). 'Response to parliamentary question 34108/21', 24 June, www.oireachtas.ie.
- 78 On Stamp 2 immigration permission.
- 79 Department of Further and Higher Education, Research, Innovation and Science (2021). 'Response to parliamentary question 41316/21', 27 July, www.oireachtas.ie.
- 80 Department of Further and Higher Education, Research, Innovation and Science (2021). 'Response to parliamentary question 38824/21' 15 July, www.oireachtas.ie.

3.1.5 Immigrant investors

FIGURE 3.8 IMMIGRANT INVESTOR APPLICATIONS, 2012–2021



Source: Department of Justice (2022). 'Response to parliamentary question 51556/22', 18 October.

Note: Data supplied in relation to applications and decisions in respect of any given year may change retrospectively due to the withdrawal of applications and/or approved applicants not proceeding with their investment.⁸¹

A total of 258 immigrant investor applications were received in 2021. In the same year, 265 were approved, for a total investment of €185.7 million.⁸² This represents a continued drop in applications from previous years, but a similar number of approvals and investments (see Figure 3.8).⁸³ Almost all (97%) of immigrant investors availing of the programme were Chinese, similar to previous years.⁸⁴

3.2 DEVELOPMENTS

3.2.1 Pre-legislative scrutiny of the General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019

The Joint Committee on Enterprise, Trade and Employment published their report on the pre-legislative scrutiny of the *General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019* (the General Scheme) in November 2021,⁸⁵ having held three meetings on the General Scheme, one with officials from the

⁸¹ Correspondence with Immigration Service Delivery, October 2022.

⁸² Department of Justice (2022). 'Response to parliamentary question 51556/22', 18 October, www.oireachtas.ie.

⁸³ Source for all: Department of Justice (2022). 'Response to parliamentary question 51556/22', 18 October, www.oireachtas.ie.

⁸⁴ Department of Justice (2022). 'Response to parliamentary question 16002/22', 29 March, www.oireachtas.ie.

⁸⁵ Joint Committee on Enterprise, Trade and Employment (2021). Report on the pre-legislative scrutiny of the General scheme of the Employment Permits (Consolidation and Amendment) Bill 2019.

Department of Enterprise, Trade and Employment (DETE), another with officials from the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU), and a third with officials from Meat Industry Ireland and the MRCI.⁸⁶

The General Scheme was based on recommendations of the *Review of economic migration policy* published in 2018, which indicated that, while robust, the employee permits systems lacked flexibility and proposed that new legislation be enacted to increase its agility and responsiveness.⁸⁷

One of the key propositions of the General Scheme was around moving operational detail from primary legislation and setting such detail out in Regulations. Other propositions were:

- the introduction of a seasonal employment permit for short-stay and recurrent employment situations;
- changes to the labour market needs test to remove the need for advertising in specified media and to move operational features into regulations;
- a change to allow the 50:50 rule (which specifies that 50% of an employer's staff be EEA nationals before an employment permit is granted) to be waived where the permit holder would be the sole employee;
- adjustments to allow for persons undertaking duties in the State on the basis of international free trade agreements to which the State, as a member of the EU, is party (intra-company transfers or contract for services of foreign companies);
- allowing the refund of fees where the employment permit cannot be taken up in prescribed circumstances;
- simplification of the definition of remuneration and related requirements;
- allowing for conditionality to be prescribed in Regulations (for example, commitments for provision of training or specified supports);
- allowing for the revocation of an employment permit where the permit holder does not take up the employment within a prescribed period;
- allowing for additional refusal reasons; and
- repeal and replacement of previous employment permits legislation.⁸⁸

The committee examined these issues and, in its comments, generally emphasised the need to ensure protection of workers. They made a number of comments and recommendations, including the following.

86 Ibid., p. 13.

87 Government of Ireland (2018). *Review of economic migration policy: Report of the Inter-Departmental Group*, www.gov.ie; *Employment Permits (Consolidation and Amendment) Bill 2019*, p. 14, www.oireachtas.ie.

88 Joint Committee on Enterprise, Trade and Employment (2021). *Report on the pre-legislative scrutiny of the General Scheme of the Employment Permits (Consolidation and Amendment) Bill 2019*, pp. 14-16.

- The Committee did not see sufficient evidence to support the proposed introduction of a **seasonal employment permit** and was concerned by the lack of detail in the proposal. The Committee recommended instead adapting the scope and terms of the general employment permit to meet the need for seasonal employment, without diminishing the protections and provisions under the existing general employment permit scheme or undermining workers' rights.
- The Committee did not see sufficient evidence to support the proposed introduction of a waiver to the **50:50 rule**, and recommended that if a waiver was introduced, it should be applied only with certain protections.
- The Committee believed that the proposal to make the labour market needs test and other operational details amendable by Regulations would lead to a lack of transparency and make scrutiny by the Committee and others more difficult. The Committee recommended that the scope of such Regulations be restricted by primary legislation, that a draft of any proposed Regulations be presented to the Houses of the Oireachtas for scrutiny, and that it should not lead to any diminution in the rights of workers.
- The Committee recommended that workers who hold a general employment permit be provided the same rights as those who hold a critical skills permit, including improved rights in relation to family reunion and labour market access for family members. They also recommended that general employment permit holders gain access to the labour market after two years (instead of the current five), which would make it easier for them to challenge exploitation and substandard conditions.
- The Committee expressed concern about the difficulty that arises from work permits being linked to a particular employer. They suggested resolving this by giving earlier access to the labour market or the right to move employer within the term of the permit.
- The Committee wanted to see the concept of conditionality in the work permit system developed so that sectors repeatedly using them would develop strong human resource policies to develop local talents and strong opportunities for professional development.
- The protection and enhancement of the position of employees should be at the centre of proposals to amend the employment permit system.⁸⁹

The Department of Enterprise, Trade and Employment continued the work of drafting the Employment Permits Bill including addressing some of the issues raised by the Committee in its November 2021 report, and the Bill was republished in 2022.⁹⁰

3.2.2 Update to occupations lists

Ireland manages employment permits through the operation of two lists: one outlines critical skills needed in the labour market – the Critical Skills Occupation List (CSOL) –

89 Ibid., pp. 24-41.

90 *Employment Permits Bill 2022* (Bill 91 of 2022), www.oireachtas.ie.

and the other outlines occupations ineligible for employment permits – the Ineligible Occupations List (IOL). These lists are subject to regular reviews based on evidence and consultations. As part of the review process, submissions are invited from stakeholders and research on topics such as future skills needs and labour market needs are taken into account.⁹¹

The CSOL was amended twice during 2021. Dieticians⁹² and social workers⁹³ were added to the list in June and October 2021 respectively, following review.

Several occupations were also removed from the IOL based on these reviews. Social workers, occupational therapists, physiotherapists, speech and language therapists and healthcare assistants were removed in June 2021.⁹⁴ This was done to reflect findings that there are shortages across the EU in certain healthcare roles, and in light of Health Service Executive (HSE) plans to expand recruitment significantly.⁹⁵ A particular need was identified for healthcare assistants, due largely to an ageing population and the impact of COVID-19. Dispensing opticians and a wide range of occupations in the construction sector⁹⁶ were removed from the IOL in October 2021.⁹⁷ This made most occupations in the construction sector eligible for an employment permit.

A common validated framework of minimum standards and qualifications for healthcare assistants was also adopted.⁹⁸ This was considered important due to the mix of public, private and voluntary providers in the sector. Therefore, the framework included a requirement that healthcare assistants should attain a relevant Level 5 qualification after two years' employment.⁹⁹ Finally, a minimum remuneration threshold of €27,000 was set for healthcare assistants.¹⁰⁰ This framework will be subject to a review to ensure these changes continue to meet the needs of the sector.¹⁰¹

Through the same process of regular review, the following changes were made to quotas on the occupations list for several occupations in October 2021:

-
- 91 Department of Enterprise, Trade and Employment (2021). 'Minister Damien English announces changes to the employment permit system', 14 June, www.enterprise.gov.ie.
- 92 Employment Permits (Amendment) Regulations 2021 from 14 June 2021.
- 93 Employment Permits (Amendment) (No. 2) Regulations from 27 October 2021.
- 94 Employment Permits (Amendment) Regulations 2021.
- 95 Department of Enterprise, Trade and Employment (2020). *Review of the occupations lists end of year 2020*, www.enterprise.gov.ie.
- 96 Electricians, masons, roofers, roof tilers and slaters, plumbers and heating and ventilating engineers, carpenters and joiners, floorers and wall tilers, painters and decorators, and construction and building trades supervisors. See Explanatory Note S.I. 559/2021.
- 97 Employment Permits (Amendment) (No. 2) Regulations 2021.
- 98 Employment Permits (Amendment) Regulations 2021.
- 99 Employment Permits (Amendment) Regulations 2021 S.I. No. 286/2021 s.3(c).
- 100 Employment Permits (Amendment) Regulations 2021 S.I. No. 286/2021 s.5(f).
- 101 Department of Enterprise, Trade and Employment (2021). 'Minister Damien English announces changes to the employment permit system', 14 June, www.enterprise.gov.ie.

- new general employment permit quotas for 1,000 horticulture operatives, 500 meat deboners, 1,500 meat processing operatives and 100 dairy farm assistants;
- new general employment permit quota for 100 equine work riders;
- 350 general employment permits for hospitality managers with a relevant qualification in hospitality management plus five years' experience in the sector; and
- quota restriction removed for heavy goods vehicle driver employment permits.¹⁰²

These quotas were introduced following the identification of labour challenges in these sectors. Concerns were raised by the poultry sector and pig farm operators at being left out of the permit scheme.¹⁰³

3.2.3 Non-consultant hospital doctors

In December 2021, changes were made to facilitate employment permits for contracts of non-consultant hospital doctors, who previously had to apply for a new permit with each change of contract.¹⁰⁴ The changes mean that general employment permits can now be made on a two-year multisite basis, regardless of the length of the contract (except for 12-month internships). The employment permits therefore do not have to be renewed every time the applicant changes hospitals and/or contract in the public system (usually every six months). Once the two-year multisite general employment permit is granted, the applicant must register for immigration permission with the Department of Justice. This is expected to be for 12 months initially, after which the applicant must apply for renewal.¹⁰⁵

The Tánaiste also announced plans to allow for faster access to Stamp 4 immigration permission (which allows for access to the labour market without an employment permit) for non-consultant hospital doctors on general employment permits. This would be reduced from five to two years to bring it in line with the conditions in place for holders of critical skills employment permits.¹⁰⁶

102 Employment Permits (Amendment) (No 2) Regulations 2021.

103 Houses of the Oireachtas (2021). 'Seanad Éireann debate: Thursday 4 November 2021: Commencement matters', Vol. 279, No. 12, www.oireachtas.ie.

104 Department of Enterprise, Trade and Employment (2021). 'Procedure for employment permits for non-consultant hospital doctors (NCHDs) in public hospitals and public health facilities: Two-year multi-site general employment permit (GEP)', 6 December, www.enterprise.gov.ie.

105 Employment permits and registration of immigration permission (granting of the residence permit) are separate in Ireland. Employment permits are granted by Department of Enterprise Trade and Employment. Immigration permission is granted by the Department of Justice. All third-country nationals must register for immigration permission if remaining in the country for longer than 90 days.

106 Dáil Éireann (2021). 'Questions on promised legislation', 16 December, www.oireachtas.ie; correspondence with Department of Enterprise, Trade and Employment, February 2022.

3.2.4 Criticism of the Atypical Working Scheme relating to the fishing industry

The Atypical Working Scheme (AWS) was adopted in 2015 and provides atypical worker permissions for specialised, highly-skilled employment where contracts are between 15 to 90 days, or more than 90 days for specific sectors. These sectors are: crew members in the Irish fishing fleet (12 month maximum); a doctor providing locum services in the hospital sector (6 month maximum); a nurse seeking registration with the Nursing and Midwifery Board of Ireland (NMBI) on the basis of an overseas qualification (6 months maximum); and paid internships where they are required for studies in an accredited institution (12 months maximum).¹⁰⁷ Other situations need to be cleared with DETE.

As reported in previous years, new rules regarding the employment of non-EEA fishers in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by relevant government departments and agencies, including changes to the AWS to provide permission for non-EEA workers to work in the Irish fishing fleet, and a memorandum of understanding on enforcement was agreed between bodies with oversight in the industry. However, criticism re-emerged in 2021 following the US Department of State's *Trafficking in persons report* (see 2020 report in this series) and research by NUI Maynooth into the experiences of non-EEA workers in the Irish fishing industry (see Section 8.3.2), published in October 2021.¹⁰⁸

The findings of the report received significant media coverage,¹⁰⁹ and were also discussed in the Oireachtas in a Joint Committee on Trade, Enterprise and Employment discussion about resourcing at the Workplace Relations Commission (WRC).¹¹⁰ At the debate, a representative of the International Transport Workers Federation raised the difficulty for fishers under the AWS to access effective remedies, in part due to the fact that their visa is tied to their employer.¹¹¹ Other issues raised included use of interpreters and multilingual informational materials,¹¹² the cognisable period, the small number of WRC inspectors dedicated to the industry,¹¹³ and the lack of a clear path to more secure residence permits. It was also discussed that WRC does not notify

107 For full criteria see Department of Justice (2022). 'Atypical Working Scheme', www.irishimmigration.ie.

108 Murphy C., D. Doyle and S. Thompson (2021). *Experiences of non-EEA workers in the Irish fishing industry*, Maynooth University.

109 McSweeney, E. (2021). 'Unsafe conditions and low pay for migrants on Irish fishing boats exposed', *The Guardian*, 20 October; *The Fishing Daily* (2021). 'New research confirms AWS needs urgent overhaul to protect fishers', 21 October; S. Pollak (2021). 'Migrant fishermen report ongoing racial abuse, low pay and poor treatment', *The Irish Times*, 17 October.

110 Houses of the Oireachtas (2021). 'Joint Committee on Enterprise, Trade and Employment debate: Resourcing and capacity of the Workplace Relations Commission discussion', 20 October, www.oireachtas.ie.

111 Ibid.

112 A number of information and awareness measures have been introduced by the WRC since 2016 to enhance employment rights awareness and compliance in the fishing industry. In order to enhance these measures, the WRC consulted in December 2021 with 16 relevant stakeholders who were requested to make written submissions in relation to, among other matters, possible additional outreach measures for fishing vessel owners and migrant fishers; Correspondence with DETE, October 2022.

113 During the period from the schemes launch in February 2016 to October 2022, the WRC has carried out 530 inspections, with 392 contraventions detected, 253 investigations completed, and 22 prosecutions completed; Correspondence with DETE, October 2022.

the Department of Justice of prosecutions of employers, which was linked in discussions to the fact that the provision to bar repeat offending employers from the scheme has never been used.¹¹⁴

Justice and An Garda Síochána do not agree with these claims.¹¹⁵ According to Justice:

An Garda Síochána has confirmed that all accusations of human trafficking in the fishing industry are investigated thoroughly: all accusations made by the International Transport Federation are fully investigated and files referred to the Director of Public Prosecutions (DPP). The Garda investigations have found no evidence to support the specific allegations that have been made. [...] The WRC also rigorously monitors compliance in the industry with employment rights legislation and has equally found no evidence to support the ITF's allegations. The inclusion of the WRC in the new National Referral Mechanism will ensure a direct link between its inspectorate role and the NRM and any accusations of human trafficking in the fishing – or any other – industry will continue to be fully investigated and files referred to the DPP.¹¹⁶

Responsible government departments committed to a review of the scheme in 2022.¹¹⁷ The review was aimed at assessing whether the AWS should continue in its present or amended form or if there is a more suitable mechanism for the employment of non-EEA workers in the fishing industry.¹¹⁸ The review group is made up of Justice, DETE, and the Department of Agriculture, Food and Marine.¹¹⁹

3.2.5 International students

€2 million of the €105 million fund to re-open the third level sector was earmarked for a promotional campaign to maximise enrolments by international students for 2021/2022,¹²⁰ in an attempt to revive a sector that brought in an estimated €2.5 billion prior to the COVID-19 pandemic.¹²¹ The Minister for FHERIS indicated that Brexit may provide an opportunity for Irish universities to benefit from increased international student (EU and non-EU) enrolment, and that an increase had already been observed, which is potentially linked to students choosing to come to Ireland who would otherwise

114 On 20 October 2021, the WRC wrote to Justice regarding putting arrangements in place to notify that Department on an ongoing basis of prosecutions taken against fishing vessel owners under employment rights, where convictions are secured; Correspondence with DETE, October 2022.

115 Correspondence with Department of Justice, October 2022.

116 Correspondence with Department of Justice, October 2022.

117 Departments involved in the review are: the Department of Agriculture, Food and the Marine; the Department of Justice; and the Department of Enterprise, Trade and Employment. Department of Justice (2021). 'Response to parliamentary question 57952/21', 25 November, www.oireachtas.ie; Department of Justice (2022) *Trafficking in human beings in Ireland: Annual report 2021*, p. 25.

118 Department of Justice (2022). *Trafficking in human beings in Ireland: Annual report 2021*, p. 27.

119 Ibid.

120 DFHERIS (2021). 'Response to parliamentary question 60610/21', 8 December, www.oireachtas.ie.

121 McGee, H. and C. O'Brien (2021). 'Government to seek revival of €2.5bn international student sector', *The Irish Times*, 8 March.

have attended UK universities, according to the Minister for Further and Higher Education.¹²²

On 14 July, a memorandum of understanding was signed by representatives of the Irish and UK governments confirming that UK higher education students in Ireland would be treated the same as Irish students for the purposes of fees, and that they would be eligible to apply for SUSI grants. This was legislated for by the *Student Support (Amendment) Regulations 2021*.¹²³

3.2.6 Backlogs and abuse of online booking system

The Burgh Quay registration office was closed for first-time registration for significant periods during the COVID-19 pandemic. This resulted in high demand for appointments once the office reopened, with difficulties accessing appointments to register immigration permissions reported throughout 2021.¹²⁴ Immigration Service Delivery extended opening hours for public appointments and offered a phone service to customers wishing to make an appointment.¹²⁵ As has been the case for several years, there have been reports of abuse by unregulated third parties of the online booking system for residence permission registration appointments. These third parties often use automatic software to book significant numbers of appointments, then offer these appointments for a fee. The person looking for the appointment must also provide sensitive personal data. ISD advises all customers not to pay unregulated parties or hand over personal data to third parties in this manner.¹²⁶

3.2.7 COVID-19

Legal migration was significantly impacted by the public health response to COVID-19. Relevant measures relating to migration are outlined below.

3.2.7.1 Language students

Usually, the maximum immigration permission available to English language students is two years – three permissions of eight months each. During this period students must undertake three 25-week English language courses. English language students may work in accordance with the conditions of their Stamp 2 immigration permission.

Due to the extensions of permissions summarised in Section 2.2.5 above, English language students who had completed three language courses as of September 2021

122 Ibid.

123 DFHERIS (2021). 'Response to parliamentary question 40367/21', www.oireachtas.ie; S.I. No 6 of *Student Support (Amendment) Regulations 2021*, 27 July.

124 Department of Justice (2021). 'Response to parliamentary question 60650/21', 8 December, www.oireachtas.ie; Pollak, P. (2022). 'Visa renewals: Clogged-up system cause of "stress and frustration" for immigrants', *The Irish Times*, 4 January.

125 Correspondence with Justice, October 2022.

126 Correspondence with Department of Justice, October 2022.

were entitled to remain and to continue to work up to May 2022 without enrolling in a further English language course.¹²⁷ This followed the extension of these permits throughout the pandemic, including in May 2021, when students were given exceptional permission to enrol in a fourth course, which they had to do following the expiration of their third permission in order to avail of the further extensions.¹²⁸

3.2.7.2 Third-level graduates

The Third Level Graduate Programme enables non-EEA third-level students who studied a Level 8 or 9 qualification in Ireland to remain in Ireland for 12 months after their studies.¹²⁹ While students usually need to study in-person in Ireland to qualify for the programme, temporary arrangements were announced in March 2021 to allow students studying remotely outside of Ireland due to travel and health restrictions to apply. All other criteria for the programme still applied. Students needed to provide documentation showing that they were a student for the 2020/2021 academic year, that the course was taught 100% remotely and that they were not required to attend in person, and that they achieved the award for which they were enrolled. One-year masters students who were unable to travel to Ireland to register their permission as a student for the 2020/2021 academic year were required to travel to Ireland prior to the issuance of their final results in order to register their permission and qualify for the Third Level Graduate Programme.¹³⁰

It was also announced in September 2021 that third-level graduates who held an immigration permission under the Third Level Graduate Programme and who were unable to obtain work due to the pandemic could apply for a 12-month extension of that permission.

3.2.7.3 Employment permit processing

DETE continued to process employment permits, issuing them online. Processing of applications for employment permits from non-visa required countries continued, but applicants were advised that persons who could not provide evidence of an essential purpose to travel to Ireland should not travel. DETE also facilitated access to employment permits for key sectors most hit during the pandemic, such as health, hospitality and agri-food.¹³¹

127 Department of Justice (2021). 'Minister McEntee announces further temporary extension of immigration permissions', 17 December, www.gov.ie.

128 Department of Justice (2021). 'Response to parliamentary question 23730/21', 11 May, www.oireachtas.ie.

129 Department of Justice (2022). 'Third level graduate programme', www.irishimmigration.ie.

130 Ibid.

131 Correspondence with DETE, October 2022.

3.3 RESEARCH

3.3.1 Experience of non-EEA workers in the Irish fishing industry

The National University of Ireland, Maynooth, published a research study on the experience of non-EEA workers in the Irish fishing industry, many of whom are employed through the Atypical Working Scheme (AWS).¹³² Qualitative data were collected through interviews with 24 male migrant workers, over half of whom had lived in Ireland for 10 years or more. One of the key findings was that extremely long working hours with few breaks, low wages, and racial and verbal abuse were common practices for the majority of those interviewed. An additional challenge identified by interviewees was uncertainty around their immigration status and a lack of freedom to change their employer or sector. Interviewees also indicated that the AWS permission, which contracts a worker to an individual employer, as well as its annual renewal requirement, can be used by employers as a means to threaten and exploit workers. Key obstacles faced by these workers in relation to engaging with employers or inspectors to seek better working conditions identified included fear of losing their job and work permit, and language barriers.

General recommendations from the report included granting undocumented fishers access to Justice's regularisation scheme (see Section 9.2.1), allowing applications for Stamp 4 permission, improved and increased inspections, an expanded role for NGOs in supporting workers, the investigation of the issue of under-crewing of vessels, and the removal of legal barriers to claiming employment rights for undocumented workers. Recommendations were made for the AWS to grant permits for the sector rather than a specific employer and for there to be a review of the model contract used in the scheme. This report led to significant public discussion of the AWS (see Section 3.2.4).

3.3.2 Academic satisfaction of international students at Irish higher education institutions

Finn et al. (2021) published an article in the *Journal of Studies in International Education* on the academic satisfaction of international students at higher education institutions.¹³³ The research analysed in particular the role that region of origin and cultural distance played in the level of academic satisfaction. The research found differences between Irish and international students in academic satisfaction, as well as between different regions of origin within international students. The research also found that cultural differences had a statistically significant impact on academic satisfaction. Overall, the research found that students were broadly satisfied with their

132 Murphy, C., D. Doyle and S. Thompson (2021). *Experiences of non-EEA migrant workers in the Irish fishing industry*, Maynooth University.

133 Finn M., G. Mihut, M. Darmody (2021) 'Academic satisfaction of international students at Irish higher education institutions: The role of region of origin and cultural distance in the context of marketization', *Journal of Studies in International Education*.

study experience in Ireland. The strongest predictor of academic satisfaction found in the research was whether students saw themselves as ‘detached customers’ or ‘partners’ in education.

3.3.3 International student report 2021: Impact of the COVID-19 pandemic and the overall international student experience in Ireland

The Irish Council of International Students (ICOS) published research on the impact of COVID-19 on international students.¹³⁴ The report was based on an online survey that gathered quantitative and qualitative data from 754 international students from 75 countries as well as focus groups with 13 students. The research included English language students and students in all levels of higher education. Key findings from the report included the following.

- High numbers (80%) of respondents experienced worsening mental health through the pandemic, citing loneliness, isolation, depression, and anxiety.
- Two-fifths (40%) of students reported experiencing racism.
- Difficulties were faced regarding accommodation, with 63% of English language students sharing a room with at least one other person, and issues including high rent, overcrowding, poor conditions, and difficulty finding accommodation.
- Only 32% of participants agreed that online learning was meeting their expectations, with many citing issues including insufficient academic support and poor planning.
- Many English language students reported that their English language skills had not developed.
- The cost of health insurance and its effectiveness was cited as a challenge, with many policies not covering basic healthcare.
- Barriers to employment during and after the completion of studies were cited as a significant challenge. Over half (51%) of students who responded to questions about their work were in frontline services as cleaners, carers or healthcare workers.

3.4 CASE LAW

3.4.1 Issuance of employment permits to those who already have a right to work: *Hossain v The Minister for Business, Enterprise and Innovation* [2021] IEHC 152

The applicant, a national of Bangladesh, was initially in Ireland as the spouse of an EU citizen. He held a Stamp 4 permission on this basis. The marriage subsequently broke down. Prior to the expiry of the applicant’s Stamp 4 permission, he applied for an

134 Hearne, B. and P.L. Rodrigues (2022). International student report 2021: Impact of the COVID-19 and the overall international student experience in Ireland, Irish Council for International Students.

employment permit. This application was refused on the ground that at the time of application, he already had a valid Stamp 4 permission.

Central to the case was section 2 of the *Employment Permits Act 2003* (as amended), which provides that a foreign national shall not enter the service of an employer except in accordance with an employment permit granted by the Minister under section 8 of the *Employment Permits Act 2006*. Section 2(10)(d) provides that the section does not apply to a foreign national who is permitted to remain in the State by the Minister for Justice and who is in employment in the State pursuant to a condition of that permission.

It was held that the interpretation of section 2(10)(d) by the Minister was incorrect. Recalling the ordinary and natural meaning of the provision, Barr J held that the subsection does not exclude or prevent the Minister from issuing a work permit to an applicant solely on the basis that they already have a permission to work by virtue of the immigration permission held. This reading was found to be supported by section 8 of the *Employment Permits Act 2006* (as amended), which provides wide discretion for the Minister to issue employment permits, subject to certain provisions. It was accepted that none of the provisions refers to excluding a person who may already hold an immigration permission that entitles them to work. Similarly, section 12 sets out the grounds on which a permit may be refused and the fact that the applicant already holds an immigration permission is not one of them.

The High Court found that there is nothing in the relevant legislation that explicitly prohibits the Minister from issuing an employment permit to a foreign national who already has a right to work by virtue of their immigration permission.

3.4.2 Issuance of employment permits to those without residence permission: P v the Minister for Business, Enterprise and Innovation [2021] IEHC 609

The appellant initially applied to remain in Ireland as a permitted family member of an EU citizen. This application was refused, and the appellant was in the process of seeking a review of this decision. As a result, the applicant did not have permission to remain in the State. He applied for a general employment permit to take up a job as a head chef. This application was refused on the basis that he did not have a current immigration permission from the Minister for Justice and that it was therefore not possible to issue an employment permit, pursuant to section 12 of the *Employment Permits Act 2006*.

The appellant appealed this decision, submitting that the Minister for Business, Enterprise, and Innovation, under section 12(1)(i) of the *Employment Permits Act 2006*, as amended, could exercise discretion to issue an employment permit notwithstanding

the fact that the applicant did not have an immigration permission. This appeal was refused, and the applicant pursued judicial review proceedings in the High Court.

In the High Court, with reference to the decision in *Ling and Yip Ltd v. The Minister for Business, Enterprise and Innovation* [2018] IEHC 546, Barrett J held that the proposition that the application for an employment permit could not be processed because the appellant did not have an immigration permission was legally incorrect. The respondent submitted that the decision taken was a matter of policy by the Minister. However, Barrett J held that such a policy was not invoked or relied upon in the original decision or referred to in any of the pre-application documentation. It was suggested at hearing that something exceptional would have to present before a permit would be granted. However, Barrett J held that save for the mention of this at hearing, this policy was not referenced in the evidence and material before court. Barrett J dismissed several other criticisms and submissions made by the respondent because they were not raised or engaged with prior to the hearing.

The court held that the reasoning given in the decision was flawed, lacking in substance and inadequate, to the extent that the Court could not determine whether there had been a fettering of discretion. The decision was quashed and remitted for fresh consideration.

3.4.3 Issuance of employment permits to those without residence permission: *Yeasin v Minister for Business, Enterprise and Innovation* [2021] IEHC 821

The applicant, a national of Bangladesh, entered the State on a student permission. This permission remained valid until the applicant was granted a residence card as a qualifying family member of his EU citizen spouse. The marriage subsequently broke down and the spouse returned to their EU country of origin. His residence permission was revoked on grounds that included that it was based on a marriage of convenience. However, at the same time that this revocation order was issued, the applicant had applied for a critical skills employment permit to take up employment as an accountant. On becoming aware of the revocation decision, the applicant requested the Minister exercise discretion to grant the application for an employment permit notwithstanding that he did not have a current immigration permission to be in the State. The Minister refused the application on the basis that the applicant did not have a current immigration permission. The applicant challenged this decision by way of judicial review.

Meenan J held that the Minister's decision was incorrect in stating 'it was not possible' to issue an employment permit to the applicant because he did not have a valid immigration permission. It was held that the Minister has discretion to issue an employment permit to someone in the State without an immigration permission. The

fact that the circumstances in the instant case were different to those in *Ling and Yip Ltd v the Minister for Business, Enterprise and Innovation* [2018] IEHC 546 where the applicant's immigration permission had expired due to the failure of a third party was found not to alter this. The decision of the Minister was quashed and remitted for reconsideration by a different officer of the Minister.

CHAPTER 4

International protection

4.1 STATISTICS

4.1.1 Applications

A total of 2,649 applications for international protection were made in 2021.¹³⁵ Of all applicants, 35.6% were female, 25% were children (669) and 2% were classified as unaccompanied minors (54).¹³⁶ Figure 4.1 shows the number of total applications for 2012–2021. In 2021, there was a significant increase from 2020, which had seen a notable drop compared with recent years due to the COVID-19 pandemic and subsequent travel restrictions. In addition, from September 2021, the International Protection Office (IPO) allowed persons who were under inadmissible consideration to complete an application under section 15 of the *International Protection Act 2015* and, therefore, their applications were counted in the total number of applications the IPO received since September 2021.¹³⁷ Despite this increase, applications for 2021 were approximately half of the pre-pandemic levels, indicating that travel restrictions throughout 2021 continued to impact application figures.

Applications for international protection in Ireland accounted for 0.42% of the EU total of 632,315.¹³⁸ In 2021, EU applications increased from 2020 figures, and have almost recovered to 2019 levels.¹³⁹

135 CSO, 'Monthly statistical report – December 2021', www.cso.ie.

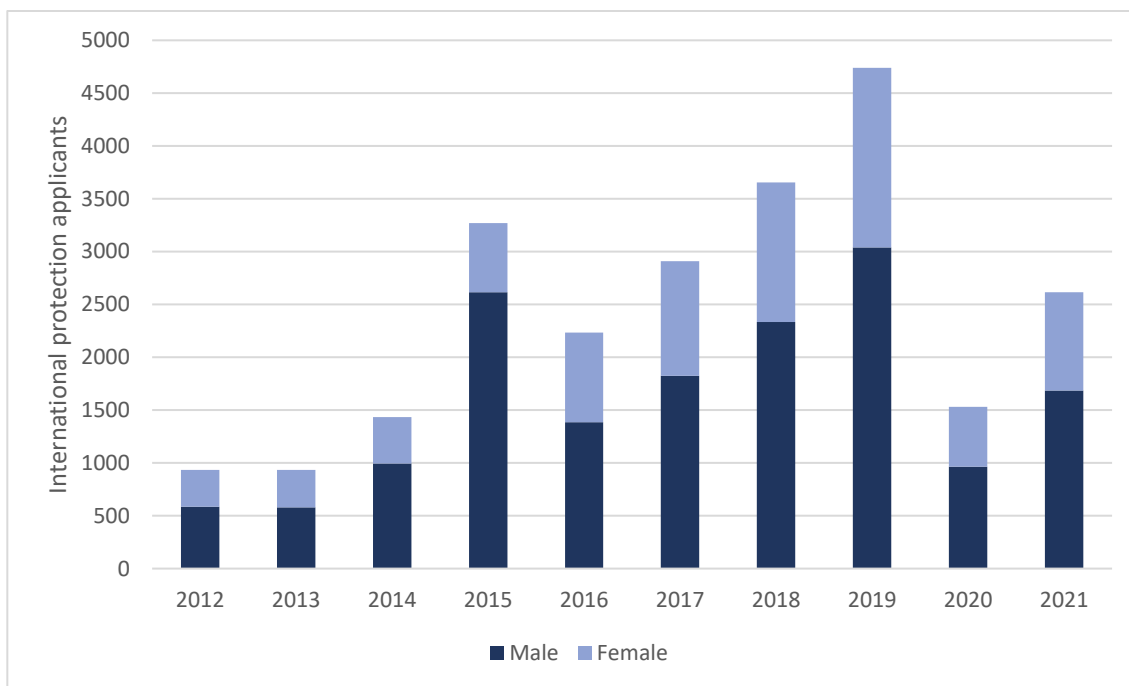
136 Correspondence with IPO, November 2022.

137 Correspondence with IPO, November 2022.

138 Eurostat, 'Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data (rounded)', extracted 28 September 2022, www.ec.europa.eu.

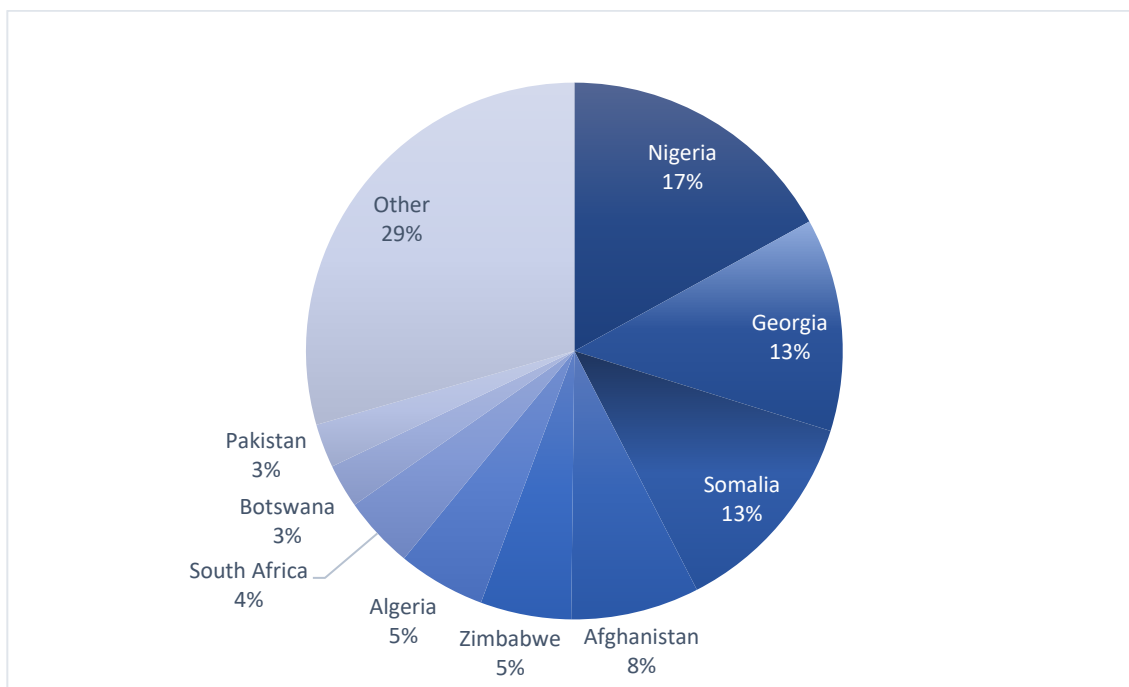
139 Ibid.

FIGURE 4.1 TOTAL INTERNATIONAL PROTECTION APPLICANTS BY GENDER IN IRELAND, 2012–2021



Source: Eurostat. ‘Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data’, (rounded), extracted 28 September 2022.

FIGURE 4.2 NATIONALITY OF INTERNATIONAL PROTECTION APPLICANTS TO IRELAND, 2021



Source: Eurostat. ‘Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data (rounded)’, extracted 28 September 2022.

Figure 4.2 shows the main countries of origin of applicants, with Nigeria, Georgia and Somalia representing the top three countries of origin for 2021. Nigeria, Somalia and

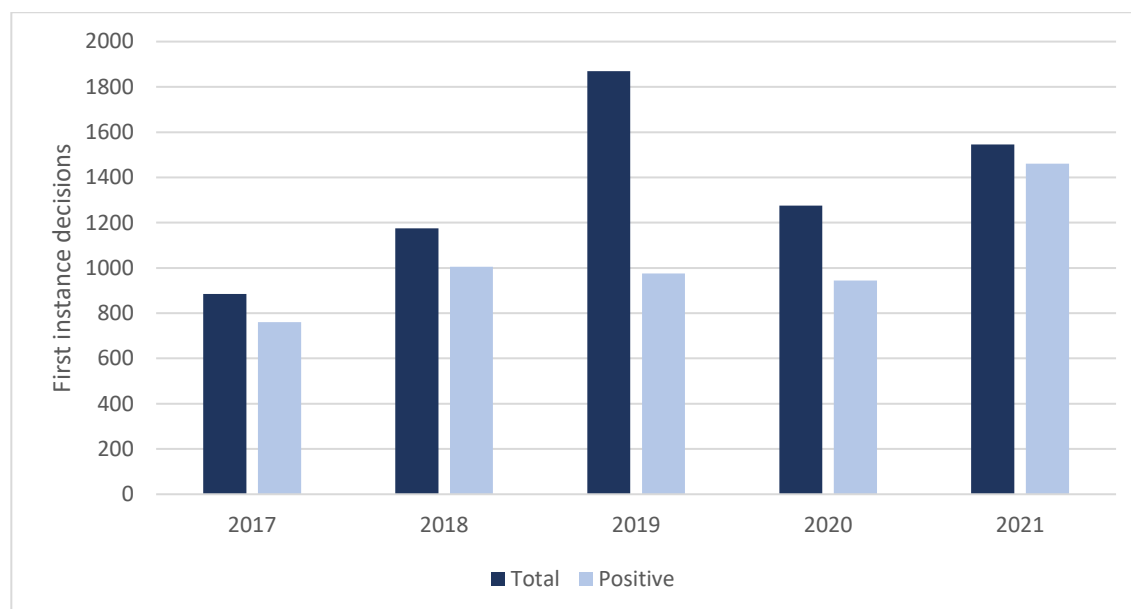
Zimbabwe were also among the top five nationalities in 2020, but Afghanistan and Georgia were not.¹⁴⁰

4.1.2 Decisions

According to Eurostat, a total of 1,545 first-instance decisions were made in 2021, of which 95% were positive. This represented both an increase in first-instance decisions made from 2020 and the highest rate of positive decisions in recent years (see Figure 4.3). The high percentage of positive decisions can be largely explained by a decision by the Department of Justice (Justice) to pause the issuance of negative decisions due to the travel restrictions resulting from the COVID-19 pandemic (see Section 4.2.5.1) and, towards the end of 2021, partially by the increase in identification of cases that could proceed without interview due to their particular circumstances (see Section 4.2.2.2). Decisions referred to here represent ministerial decisions, rather than IPO recommendations. Cases appealed to the International Protection Appeals Tribunal (IPAT) are not included, as a ministerial decision will only issue after the appeals process has concluded and a formal IPAT recommendation has been made.

A total of 1,214 personal interviews were conducted in 2021, an increase from 2020, when 1,116 personal interviews were conducted.¹⁴¹

FIGURE 4.3 TOTAL FIRST-INSTANCE DECISIONS AND POSITIVE FIRST-INSTANCE DECISIONS ON INTERNATIONAL PROTECTION APPLICATIONS, 2017–2021



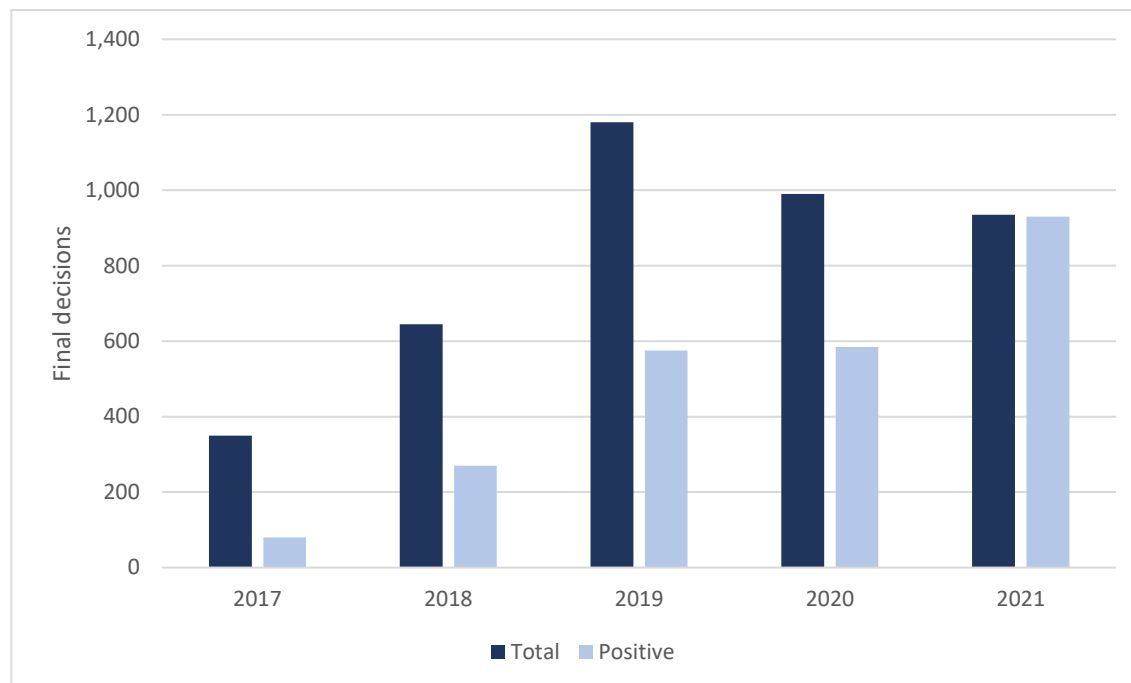
Source: Eurostat. 'First instance decisions on applications by citizenship, age and sex – Annual aggregated data (rounded)', extracted 28 September 2022.

140 A. Sheridan (2022). *Annual report on migration and asylum 2020*, ESRI Survey and Statistical Report Series No 114, Economic and Social Research Institute, Dublin.

141 AIDA (2022). *Country report: Ireland – 2021 update*, p. 35; Correspondence with IPO, November 2022.

In 2021, 935 final decisions were made, according to rounded Eurostat data.¹⁴² Of these, 99% were positive (see Figure 4.4), again a reflection of the decision not to issue negative decisions due to travel restrictions (see Section 4.2.5.3).

FIGURE 4.4 TOTAL FINAL DECISIONS AND POSITIVE FINAL DECISIONS ISSUED IN 2021



Source: Eurostat. 'Final decisions in appeal or review on applications by citizenship, age and sex – Annual data (rounded)', extracted 28 September 2022.

4.1.3 Statuses awarded

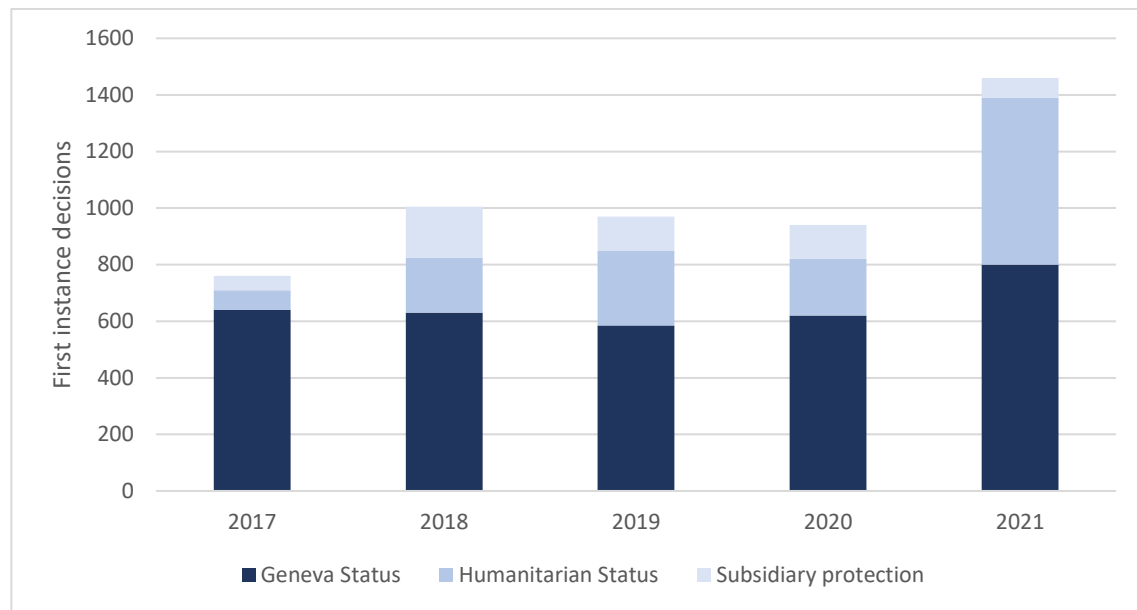
Figure 4.5 shows that Geneva Convention status¹⁴³ was the most common status awarded at first instance in 2021 (55% of positive decisions), followed by humanitarian status (40%),¹⁴⁴ and then subsidiary protection status (5%).¹⁴⁵ Figure 4.5 shows that more international protection and humanitarian statuses were granted in 2021 than in previous years, with Geneva Convention status awarded to 800 people, and humanitarian status to 590 people.

142 Eurostat, 'Final decisions in appeal or review on applications by citizenship, age and sex – Annual data (rounded)', extracted 28 September 2022, www.ec.europa.eu.

143 Based on the Convention relating to the Status of Refugees, Geneva 28 July 1951, and the *Protocol relating to the Status of Refugees*, New York 31 January 1967, and based on section 47 of the *International Protection Act 2015* in Ireland.

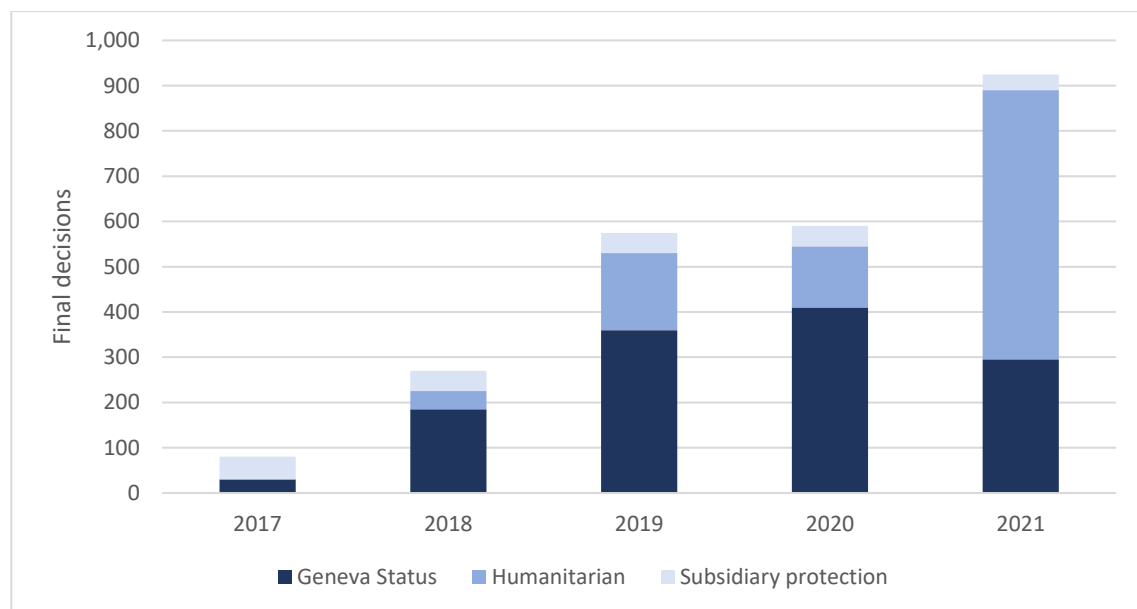
144 Also known as permission to remain, granted at the discretion of the Minister under section 49 of the *International Protection Act 2015*.

145 Based on section 47 of the *International Protection Act 2015*, where somebody does not qualify as a refugee but 'in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country'. Section 2(1) *International Protection Act 2015*.

FIGURE 4.5 STATUSES AWARDED AT FIRST INSTANCE, 2017–2021

Source: Eurostat. 'First-instance decisions on applications by citizenship, age and sex – Annual aggregated data (rounded)', extracted 28 September 2022.

Figure 4.6 shows the statuses awarded from positive final decisions in the period 2017–2021. Unusually, compared with previous years (see Figure 4.5), humanitarian protection was the largest category in 2021, representing 64% of positive decisions.

FIGURE 4.6 STATUSES AWARDED IN FINAL DECISION, 2017–2021

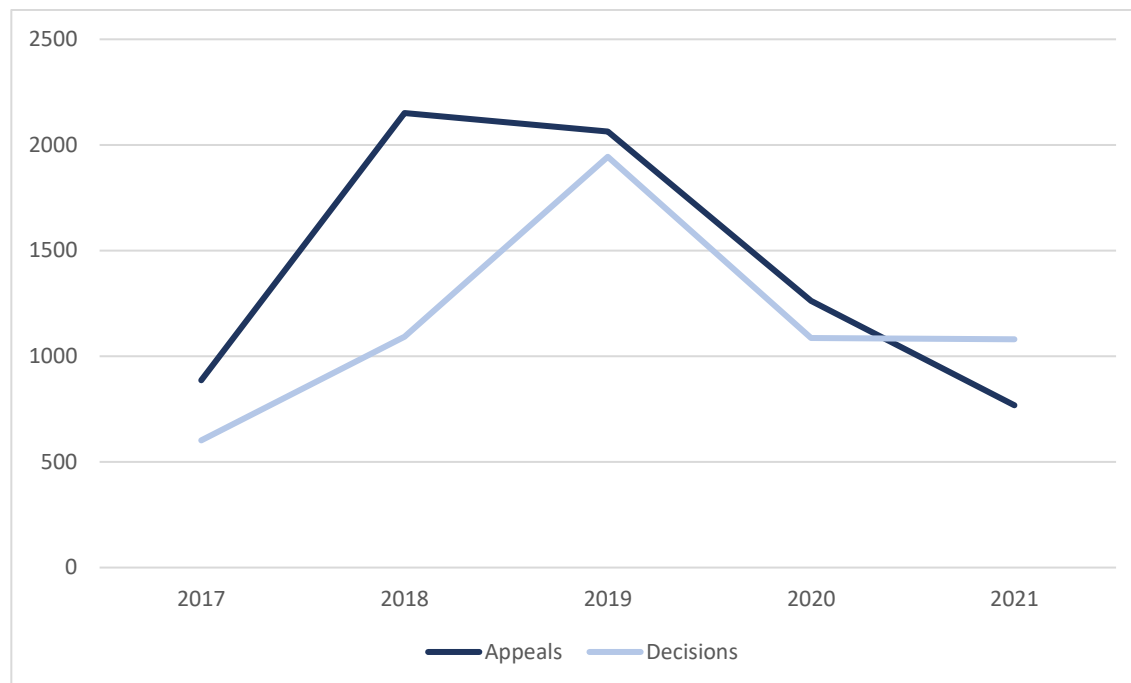
Source: Eurostat. 'Final decisions in appeal or review on applications by citizenship, age and sex – Annual data (rounded)', extracted 28 September 2022.

4.1.4 Appeals

A total of 768 appeals were made to IPAT in 2021 (see Figure 4.7). IPAT decisions remained at similar levels to 2020, with 1,080 decisions made in 2021, in addition to the

148 applications deemed withdrawn. The majority of hearings (676) were conducted remotely via video link.¹⁴⁶ At the end of 2021, 1,180 appeals were pending before the Tribunal.¹⁴⁷

FIGURE 4.7 APPEALS MADE TO IPAT AND DECISIONS MADE BY IPAT, 2017–2021



Source: IPAT annual reports 2017–2021.

In 2021, 36% of recommendations (single procedure appeals) were set aside on appeal.¹⁴⁸ Of Dublin III Regulation decisions, 31% were set aside on appeal,¹⁴⁹ as were 38% of inadmissibility recommendations and 46% of recommendations not to grant consent to make subsequent applications.¹⁵⁰ There was significant variance in the rate of decisions set aside by country of origin, as shown in Figure 4.8.

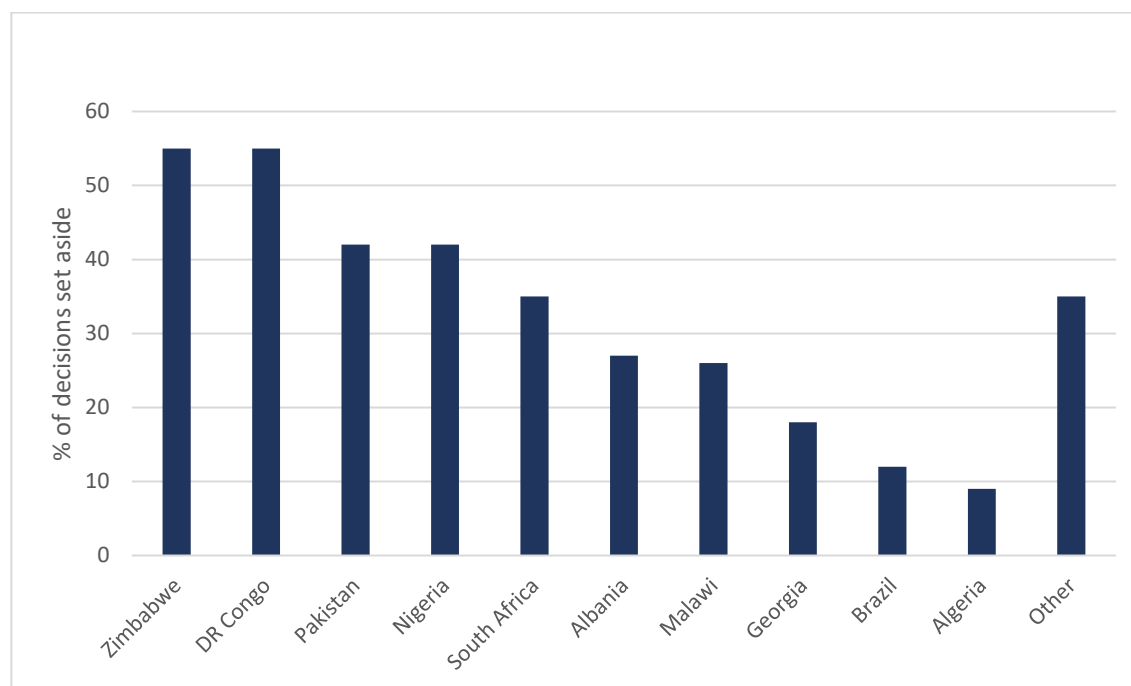
146 IPAT (2022). *Annual report 2021*, p. 5.

147 *Ibid.*, p. 26.

148 *Ibid.*, p. 35.

149 Five of 16 appeals; IPAT (2022). *Annual report 2021*, p. 35.

150 Inadmissibility: 6 of 16 set aside; subsequent appeal: 17 of 37 set aside; IPAT (2022). *Annual report 2021*, p. 36.

FIGURE 4.8 PERCENTAGE OF INTERNATIONAL PROTECTION DECISIONS SET ASIDE BY IPAT IN 2021, BY NATIONALITY

Source: IPAT (2022). *Annual report 2021*, p. 35.

4.1.5 Processing times

The median processing time for all cases processed to completion in the IPO in 2021 was 23 months and 18 months for prioritised cases.¹⁵¹ All substantive protection interviews at the IPO were postponed between December 2020 and May 2021, when interviews recommenced remotely.¹⁵² At IPAT, no on-site hearings took place between December 2020 and October 2021. The median processing time in IPAT was 13.5 months, although there was significant variance depending on the type of appeal.¹⁵³

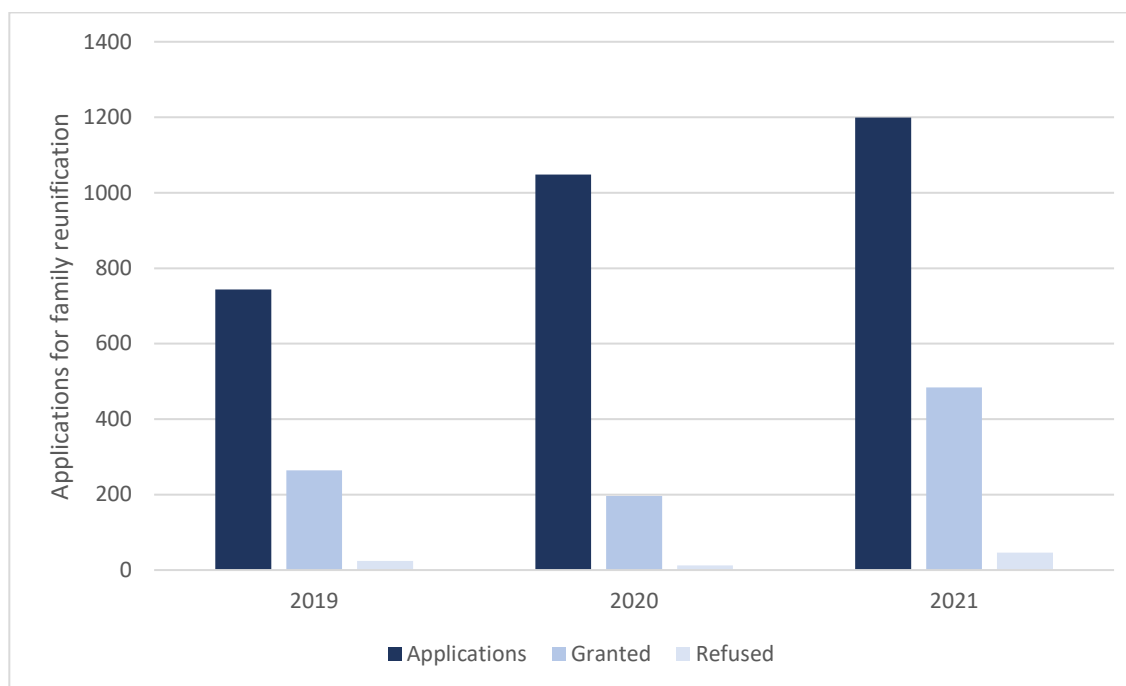
151 Correspondence with IPO, March 2022.

152 AIDA (2022). Country report: Ireland – 2021 update, p. 12.

153 IPAT (2022). *Annual report 2021*, p. 31.

4.1.6 Family reunification

FIGURE 4.9 APPLICATIONS FOR FAMILY REUNIFICATION UNDER THE *INTERNATIONAL PROTECTION ACT 2015* MADE, GRANTED AND REFUSED, 2019–2021



Source: Department of Justice (2022). 'Response to parliamentary question 8259/22', 15 February.

Note: Decisions on applications may not relate to applications made in the same year.

In 2021, 1,199 applications for family reunification were made under the *International Protection Act 2015*.¹⁵⁴ This represents a continued gradual increase in applications since 2019. A total of 484 applications were granted, a 147% increase on the total number of applications granted in 2020. These decisions may not be related to the applications made in 2021.

4.1.7 Dublin transfers

In 2021, 1,339 requests were made under the outgoing procedure,¹⁵⁵ with 3 effective transfers to another EU Member State.¹⁵⁶ In total, 47 requests were received through the incoming procedure,¹⁵⁷ with 12 effective transfers into Ireland.¹⁵⁸ Transfers were slowed by the travel restrictions in place.

154 Department of Justice (2022). 'Response to parliamentary question 8259/22', 15 February, www.oireachtas.ie.

155 Correspondence with IPO, November 2022.

156 Eurostat, 'Outgoing "Dublin" transfers by receiving country (PARTNER), legal provision, duration of transfer, sex and type of applicant [migr_dubto]', extracted 11 November 2022, www.ec.europa.eu.

157 Eurostat, 'Incoming "Dublin" requests by submitting country (PARTNER), type of request, legal provision, sex and type of applicant [migr_dubri]', extracted 11 November 2022, www.ec.europa.eu.

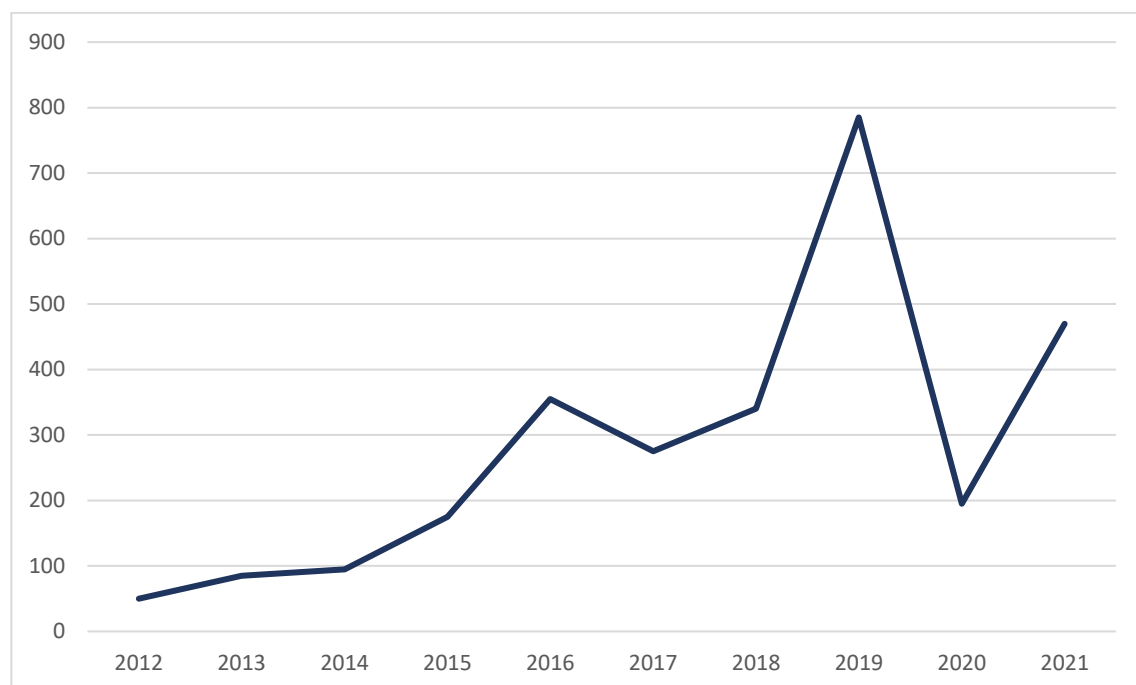
158 Eurostat 'Incoming "Dublin" transfers by submitting country (PARTNER), legal provision, duration of transfer, sex and type of applicant [migr_dubti]', extracted 11 November, www.ec.europa.eu.

4.1.8 Resettlement and relocation

In 2021, 468 persons were resettled,¹⁵⁹ an increase on 2020 but still significantly lower than 2019 (see Figure 4.6). Of these, 36% were under 18 years old and approximately 47% were female.¹⁶⁰ The majority of those resettled (86%) were from Afghanistan and most of the remainder (12%) were from Syria.¹⁶¹ Most of these admissions (404) were achieved through visa waivers for Afghan nationals (see Section 4.2.3.1).¹⁶²

In addition, 50 beneficiaries of international protection were relocated from Greece in 2021, as pledged in 2020,¹⁶³ and 28 unaccompanied minors were relocated by Tusla as part of Ireland's commitment to relocate unaccompanied minors from Greece in 2018.¹⁶⁴

FIGURE 4.10 PERSONS RESETTLED TO IRELAND, 2012–2021



Source: Eurostat. 'Resettled persons – Annual data', extracted 19 September 2022.

Since the inception of the Community Sponsorship Ireland Programme in 2018, 31 families (116 people in total) have been resettled through community sponsorship groups throughout Ireland.¹⁶⁵ Eleven families, representing 49 people, were resettled

159 Including humanitarian admissions; Correspondence with DCEDIY, October 2022; Correspondence with UNHCR, November 2022.

160 Eurostat, 'Resettled persons by age sex and citizenship – Annual data (rounded)', extracted 19 September 2022, www.ec.europa.eu.

161 Ibid.

162 Correspondence with UNHCR, November 2022; Correspondence with DCEDIY, December 2022.

163 EMN (2022). *Annual report on migration and asylum 2020: Synthesis report*, pp. 26-27; Correspondence with DCEDIY, December 2022.

164 Correspondence with Tusla, April 2022 and November 2022.

165 Correspondence with DCEDIY, October 2022.

through Community Sponsorship groups in 2021.¹⁶⁶ In addition, 34 community sponsorship groups were being developed across Ireland as of December 2021.¹⁶⁷

4.1.9 Accommodation

Capacity of the accommodation system for international protection applicants remained a key issue in 2021. As of December 2021, there were 45 IPAS accommodation centres located around the country. Of these, 38 centres were commercial and 7 were state-owned. Counties with the largest numbers of centres were Cork (6), Kerry (6) and Waterford (4).¹⁶⁸ There were a further 24 emergency accommodation locations, such as in hotels and guesthouses.¹⁶⁹

As of 26 December 2021, 7,198 people were living in IPAS accommodation centres and emergency accommodation.¹⁷⁰ Of these, 1,046 were in emergency accommodation, 5,691 in IPAS accommodation centres and 461 in the National Reception Centre in Baleskin.¹⁷¹ As of November, approximately 1,640 people with residence permission remained in IPAS accommodation, principally due to difficulties finding accommodation in communities.¹⁷² The average amount of time spent in IPAS accommodation as of 7 September 2021 is presented in Table 4.1.

TABLE 4.1 AVERAGE TIME SPENT IN IPAS ACCOMMODATION AS OF 7 SEPTEMBER 2021

Time	Adult	Child	Total
0-5 months	408	114	522
6-12 months	496	110	606
1-2 years	1,240	428	1668
2-3 years	1,180	454	1634
3-4 years	591	294	885
4-5 years	311	127	438
5-6 years	309	108	417
6-7 years	157	28	185
7+ years	94	29	123

Source: DCEDIY (2021). 'Response to parliamentary questions 42347/21 and 42533/21', 9 September.

COVID-19 exacerbated the reception capacity challenge, as IPAS tried to reduce overcrowding to ensure that residents could socially distance and that self-isolation could be facilitated for those who contracted COVID-19. As such, although the total

166 Correspondence with UNHCR, November 2022; Correspondence with DCEDIY, December 2022.

167 DCEDIY (2021). 'Response to parliamentary question 59332/21', 3 December, www.oireachtas.ie.

168 IPAS (n.d.). 'IPAS centres by contractor by county 2021', <https://www.gov.ie/en/collection/03396-reports-and-statistics/>.

169 AIDA (2022). *Country report: Ireland – 2021 update*, p. 86; DCEDIY (2022). 'Response to parliamentary question 2211/22', 19 January.

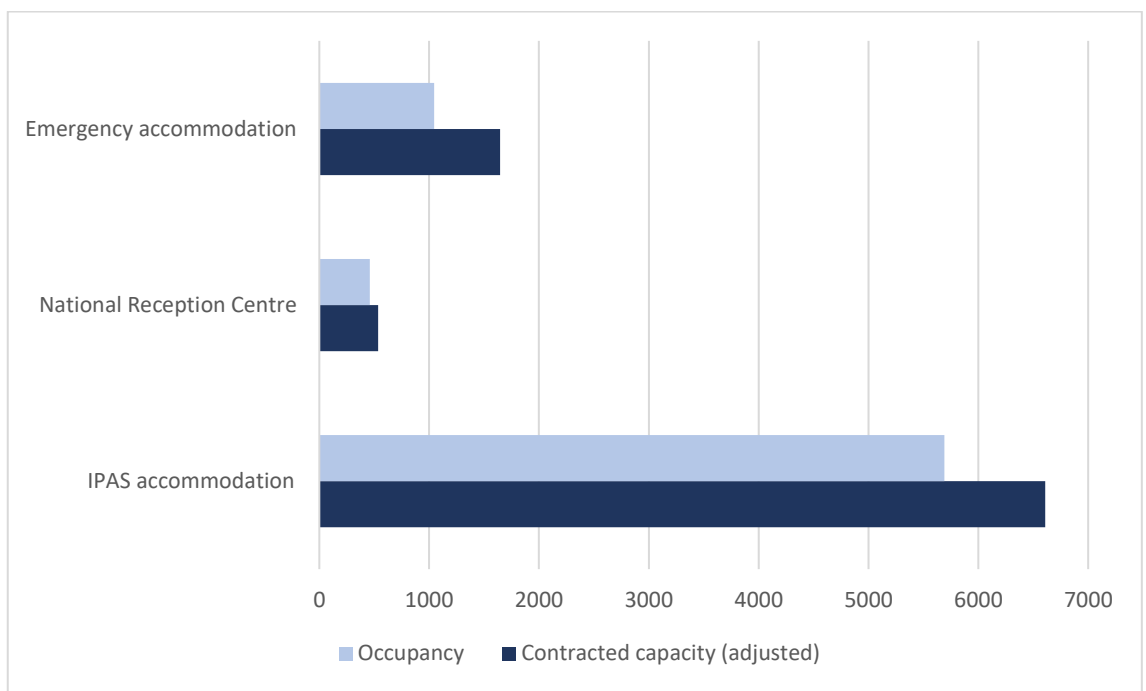
170 DCEDIY (2022). 'Response to parliamentary question 2211/22', 19 January, www.oireachtas.ie.

171 Ibid.

172 DCEDIY (2021). 'Response to parliamentary question 61671/21', 14 December, www.oireachtas.ie.

capacity of IPAS accommodation centres in 2021 was 6,608, IPAS reported that occupancy was 5,691 as of 26 December 2021, although individuals were still housed in emergency accommodation (see Figure 4.11).¹⁷³

FIGURE 4.11 CONTRACTED CAPACITY AND OCCUPANCY OF ASYLUM SEEKERS AS OF DECEMBER 2021, BY TYPE OF ACCOMMODATION



Source: Correspondence with DCEDIY, October 2022.

Note: The capacity figures are adjusted to account for COVID-19 restrictions, where a maximum of three non-related people per room was allowed, and unavailable beds due to other illness.

4.1.10 Labour market applications

Between 30 June 2018 and 31 December 2021, a total of 9,875 applications for access to the labour market were received by Justice. Of these applications, 75% (7,407) were granted and approximately 22% (2,188) refused.¹⁷⁴ Of the applications granted permission by October 2021 (7,248), 61% (4,422) of the individuals concerned had found employment by October 2021.¹⁷⁵

173 AIDA (2022). *Country report: Ireland – 2021 update*, p. 8; AIDA (2022). *Country report: Ireland – 2021 update*, p.87 and Correspondence with DCEDIY, October 2022.

174 Correspondence with Labour Market Access Unit, October 2022 and November 2022.

175 Based on those who returned their Labour Market Access Declaration Form (LMA5, which must be returned upon commencement of employment) to the Department of Justice; Department of Justice (2021). 'Response to parliamentary question 54192/21', 9 November, www.oireachtas.ie.

4.2 DEVELOPMENTS

4.2.1 White Paper to end Direct Provision

4.2.1.1 Key proposals

The Irish government published *A White Paper to End Direct Provision and to Establish a New International Protection Support Service* (the White Paper) on 26 February 2021. The White Paper sets out a new model to provide accommodation and other supports to persons in the international protection system, to be implemented by the end of 2024.¹⁷⁶ It fulfils one of the commitments in the 2020 Programme for Government and was informed by the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (the Catherine Day report).¹⁷⁷

The White Paper proposes a model based on the principles of respect for human rights, integration from day one and community engagement, among others.¹⁷⁸ The accommodation model proposed by the White Paper involves a two-stage approach. All new applicants would be accommodated in state-run reception and integration centres (RICs) for four months in Phase One, followed by transition to accommodation options fostering an independent life within the community in Phase Two. In total, the White Paper plans for the centres to have capacity to accommodate 2,000 people, across the country, at any one time, and would be managed by the new International Protection Support Service.¹⁷⁹

The paper proposes that Phase One – in which applicants are housed in RICs – will focus on identifying needs, defining pathways and linking applicants to appropriate services. RICs will be own-door for families and own-room for single people. An intensive orientation and English language and integration programme will be provided and vulnerability assessments carried out. Space in the centres will be provided for on-site services, cooking facilities and play areas for children. Residents will be able to open bank accounts and apply for Irish driving licences during this phase.¹⁸⁰ Under this system, all applicants would be required to enter the RICs to be eligible for the accommodation options in Phase Two. This is to ensure that they participate in the English language and orientation programmes. It is proposed that applicants will be accommodated in the RICs for a maximum of four months. Thereafter, those who had

176 Government of Ireland (2021). *White Paper to End Direct Provision and to Establish a New International Protection Support Service*, 26 February.

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

178 Government of Ireland (2021) *White Paper to end Direct Provision and to establish a new international protection support service*, 26 February, p. 41.

179 *Ibid.*, p. 42 – see sections 3.4.1 and 3.4.2; Section 4.6.

180 *Ibid.*, p. 29.

not received a positive decision on their first-instance application or were still in an appeals process would transition to Phase Two accommodation.

Phase Two accommodation is proposed to be own-door and self-contained for families and either own-door or own-room for single people. Vulnerability is to be taken into account in deciding on accommodation options for Phase Two; for example, the need for accessible accommodation or extra supports for vulnerabilities.¹⁸¹ The model also recognises the particular needs of LGBTIQ+ people, and the vulnerability assessment will take into account needs such as accessibility of established LGBTIQ+ communities.¹⁸² Applicants would have access to a caseworker to link them with services, and the level of caseworker support would depend on vulnerabilities identified.

The White Paper proposes that accommodation would primarily be sourced through the building and/or acquiring of houses or apartments, via approved housing bodies, and the repurposing of buildings through urban renewal initiatives.¹⁸³ Additional accommodation would be sourced through rent-a-room schemes (for single people) or private tenancies (for families), as needed.¹⁸⁴ Accommodation would be located in all counties, with the number of applicants per county to be determined by local authorities in cooperation with the the Department of Children, Equality, Disability, Integration and Youth (DCEDIY). Relevant deciding factors would include applicant needs, population density, housing need and availability of relevant public services in the county.¹⁸⁵ It is proposed that the Housing Agency will support DCEDIY in the development of an accommodation model, as well as in the delivery and management of the housing involved.

The White Paper proposes that the provision of support should depend on accommodation type and an assessment of vulnerability of applicants, and that it would be provided either by contracted NGOs or directly by the DCEDIY through integration support workers. Applicants would have the right to access mainstream health and education services, intensive English language supports and employment activation supports. It indicates that there will be an emphasis on child welfare and protection and the provision of parenting supports and child development services, as well as childcare to enable parents to attend English classes. Living allowances would be provided to applicants; in Phase One, full room and board would be provided and an expenses allowance would be paid similar to the current Direct Provision Allowance,¹⁸⁶ which is to be reviewed annually. During Phase Two, a means-tested International Protection

181 Ibid., Sections 3.4.1 and 3.4.2.

182 Ibid., Section 4.6, p. 61.

183 Ibid., p. 29.

184 Ibid., p. 29.

185 Ibid., p. 29.

186 The current allowance is €38.80 per adult and €29.80 per child per week; Citizens Information, 'Direct provision system', www.citizensinformation.ie.

Payment, aligned with the Supplementary Welfare Allowance,¹⁸⁷ would be provided, with an additional monthly payment per child (aligned with Child Benefit).

The White Paper indicates that a new healthcare model will be introduced, characterised by multidisciplinary community healthcare teams, health screening and assessment at reception stage, and national-level coordination.¹⁸⁸ It proposes that teams include GP services, nursing services, interpretation and NGO supports, and that referrals should be made, where relevant, to mental health services, dentistry and psychology. Specific emphasis is placed on culturally sensitive healthcare supports for women and those requiring mental health supports. Treatment requirements will be factored into the type and location of accommodation. An initial vulnerability assessment will be key to the provision of these supports, and will also inform the provision of accommodation.¹⁸⁹ Integration supports are also foreseen and, crucially for community acceptance, the White Paper outlines a consultation process with communities when locating an RIC.¹⁹⁰

The model proposed by the White Paper would accommodate 3,500 applicants annually and would be led by DCEDIY.¹⁹¹ The paper foresees a phased implementation of the model between February 2021 and December 2024, with oversight to be provided by a programme board chaired by DCEDIY and including representatives of relevant government departments and agencies, NGOs, at least one person who has been through the Direct Provision system and relevant experts. Monitoring will be conducted by an external advisory group of three independent people appointed by the Minister for CEDYI. The advisory group will publish reports periodically on the progress of the reforms. The possible establishment of a new agency is left open for consideration.¹⁹²

The new model and planned capacity are based on the achievement of shorter wait times in the system,¹⁹³ as well as increased enforcement of removals when applications fail and exhaust their appeal options. Plans to achieve shorter processing times are outlined in Section 4.2.2 below. In November 2021, the IPO noted in a Public Petitions Committee discussion that they had reached the rate of decision-making required for this model to work.¹⁹⁴ Additional resources for the Legal Aid Board are also pledged in the White Paper, and the Legal Aid Board was requested to bring forward proposals to

187 Currently ranging from €117.70-206 per week for a single person, with increases for children and dependent adults; Citizens Information, 'Supplementary Welfare Allowance', www.citizensinformation.ie.

188 This area of work is informed by the HSE National Intercultural Health Strategy 2018–2023.

189 Government of Ireland (2021). White Paper to end Direct Provision and to Establish a New International Protection Support Service, 26 February, p. 29.

190 *Ibid.*, p. 32.

191 *Ibid.*, p. 33.

192 *Ibid.*, p. 33.

193 *Ibid.*, p. 50.

194 Chief International Protection Officer at Houses of the Oireachtas (2021). 'Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion', 25 November, www.oireachtas.ie.

Justice on what would be required to enable it to support 3,500 new applicants per year.¹⁹⁵

The White Paper also commits to additional training for all staff working with international protection applicants, including training on cultural sensitivity, equality and human rights, engaging with people who have experienced trauma or torture, and child protection.¹⁹⁶

4.2.1.2 Reactions and discussions

The White Paper was largely welcomed by civil society, with many noting that the paper broadly reflects the Catherine Day report recommendations,¹⁹⁷ commenting that the proposal would ‘radically transform the reception process’¹⁹⁸ and ‘transform the integration outcomes of refugees’.¹⁹⁹ NGOs particularly welcomed the centrality of vulnerability assessments,²⁰⁰ independent oversight that includes those who lived in the system,²⁰¹ the emphasis on early integration supports,²⁰² the four-month limit on the stay in reception centres and the multi-agency approach.²⁰³ However, multiple NGOs raised concerns about the feasibility of the transition without a process to deal with the backlog of cases, and pointed out that the paper did not adopt the Catherine Day report’s recommendation to grant permission to remain to those who had been in the

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- 195 Government of Ireland (2021). White Paper to End Direct Provision and to Establish a New International Protection Support Service, 26 February, p. 54.
- 196 Government of Ireland (2021). White Paper to End Direct Provision and to Establish a New International Protection Support Service, 26 February, p. 54.
- 197 Nasc (2021). ‘Nasc welcomes the publication of the White Paper on Ending Direct Provision’, www.nascireland.org; 26 February; Doras (2021). ‘Doras welcomes government White Paper on Ending Direct Provision’, 26 February, www.doras.org; UNHCR (2021). ‘UNHCR welcomes ambitious plans to support integration of refugees’, 26 February, www.unhcr.org; Cultúr Migrant Centre (n.d.) ‘Cultúr Migrant Centre Navan welcomes the Government White Paper: Next task monitoring the implementation of the proposals’, www.cultur.ie; Children’s Rights Alliance (n.d.) ‘A White Paper to End Direct Provision and to Establish a New International Protection Support Service’, www.childrensrights.ie; Amnesty International Ireland (2021). ‘White paper a real chance at ending Direct Provision after 21 years’, 26 February, www.amnesty.ie.
- 198 Nasc (2021). ‘Nasc welcomes the publication of the White Paper on Ending Direct Provision’, 26 February, www.nascireland.org.
- 199 UNHCR (2021). ‘UNHCR welcomes ambitious plans to support integration of refugees’, 26 February, www.unhcr.org.
- 200 Irish Refugee Council (2021). ‘Press release: Irish Refugee Council welcome White Paper, focus now on implementation’, 26 February, www.irishrefugeecouncil.ie; Immigrant Council of Ireland (2021). ‘Immigrant Council of Ireland reaction to Government White Paper on dismantling Direct Provision’, 26 February, www.immigrantcouncil.ie.
- 201 Irish Refugee Council (2021) ‘Press release: Irish Refugee Council welcome White Paper, focus now on implementation’, 26 February, www.irishrefugeecouncil.ie; Cultúr Migrant Centre (n.d.) ‘Cultúr Migrant Centre Navan Welcomes the Government White Paper: Next Task Monitoring the implementation of the Proposals’, www.cultur.ie.
- 202 UNHCR (2021). ‘UNHCR welcomes ambitious plans to support integration of refugees’, 26 February, www.unhcr.org; Cultúr Migrant Centre (n.d.) ‘Cultúr Migrant Centre Navan Welcomes the Government White Paper: Next Task Monitoring the implementation of the Proposals’, www.cultur.ie.
- 203 Irish Refugee Council (2021). ‘Press release: Irish Refugee Council welcome White Paper, focus now on implementation’, 26 February, www.irishrefugeecouncil.ie; Immigrant Council of Ireland (2021) ‘Immigrant Council of Ireland reaction to Government White Paper on dismantling Direct Provision’, 26 February, www.immigrantcouncil.ie; Cultúr Migrant Centre (n.d.) ‘Cultúr Migrant Centre Navan Welcomes the Government White Paper: Next Task Monitoring the implementation of the Proposals’, www.cultur.ie.

process for over two years through a separate process.²⁰⁴ Concerns were also raised about the delay in implementing the reforms, which were not intended to begin until 2022.²⁰⁵ An asylum seeker advocacy group expressed concern about: the decision to not provide supports for asylum seekers to live independently unless they have first lived in the RIC for four months; the fact that none of the changes is implemented through legislation and that time limits will therefore be difficult to impose; the continued shared living spaces of single people; and restriction for the first six months on the right to work.²⁰⁶

The Irish Refugee Council commissioned research to compare the proposals in the White Paper to the original recommendations of the Catherine Day report, which found that 30% of the recommendations were fully adopted, 32% adopted in part and 9% were delayed,²⁰⁷ while 30% were not adopted (this includes those under consideration).²⁰⁸ These recommendations were not adopted: the inclusion of accommodation for applicants in national and local housing development plans; regional spatial strategies and the mandate of the Land Development Agency; the provision of a five-year capital funding allocation for protection accommodation; a new approach for people who cannot be returned; the continuation of supports for six months following a negative decision; an increased emphasis on and increased support for those who choose voluntary return; and opting into all EU legislation. It should be noted that some of the recommendations listed as not adopted in the Irish Refugee Council report were covered by the end-to-end review of the protection process (see Section 4.2.2),²⁰⁹ and recommendations regarding Legal Aid are being considered separately, with the Legal Aid board requested to bring forward a proposal to the Department of Justice.

The White Paper and its implementation were discussed multiple times in the Committee on Public Petitions, with a variety of stakeholders reviewing the implementation of the White Paper. NGO stakeholders before the committee brought attention to the immediate crisis in the system, and the need for independent human-

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- 204 Immigrant Council of Ireland (2021). 'Immigrant Council of Ireland reaction to Government White Paper on dismantling Direct Provision', 26 February, www.immigrantcouncil.ie; Irish Refugee Council (2021). 'Press release: Irish Refugee Council welcome White Paper, focus now on implementation', 26 February, www.irishrefugeecouncil.ie; Nasc (2021). 'Nasc welcomes the publication of the White Paper on Ending Direct Provision', 26 February, www.nascireland.org; Doras (2021). 'Doras welcomes government White Paper on Ending Direct Provision', 26 February, www.doras.org; Cultúr Migrant Centre (n.d.). 'Cultúr Migrant Centre Navan Welcomes the Government White Paper: Next Task Monitoring the implementation of the Proposals', www.cultur.ie; MASI (2021). 'Statement on White Paper to end Direct Provision', 26 February, www.masi.ie.
- 205 Cultúr Migrant Centre (n.d.). 'Cultúr Migrant Centre Navan Welcomes the Government White Paper: Next Task Monitoring the implementation of the Proposals', www.cultur.ie; Irish Refugee Council (2021). 'Press release: Irish Refugee Council welcome White Paper, focus now on implementation', 26 February, www.irishrefugeecouncil.ie.
- 206 MASI (2021). 'Statement on White Paper to end Direct Provision', 26 February, www.masi.ie.
- 207 This figure counts all of the Legal Aid Board recommendations (Section 4) as one, as they are being dealt with simultaneously in the Legal Aid board proposal.
- 208 Irish Refugee Council (2021). 'Implementing Alternatives to Direct Provision: Report Number 2: Advisory Group and White Paper recommendations compared'.
- 209 In particular, recommendations regarding the IPO and IPAT (sections 2 and 3).

rights based monitoring.²¹⁰ Stakeholders also drew attention to the inadequacy of mental health supports, lack of staff training, the need for urgency in implementing the White Paper,²¹¹ and clarity for housing bodies on what funding would be provided for them to implement the White Paper.²¹²

Following the displacement of Ukrainians following the Russian invasion of Ukraine in 2022, which has put significant stress on Irish reception systems, there is now doubt relating to the timelines for the implementation of the White Paper.²¹³ More detail will be provided in the next report in this series.

4.2.1.3 Implementation

i. Governance

Following the publication of the White Paper, a staff team was established in DCEDIY to lead the transition to the new model.²¹⁴ DCEDIY also appointed a programme board as envisaged in the White Paper, with representatives from relevant agencies and ministries and independent members from NGOs to oversee the transition.²¹⁵ The Minister for CEDiy reported that the acquisition of properties for use during Phase Two (accommodation in the community) began in 2021.²¹⁶ An independent monitoring group was also established to monitor the transition, comprised of Catherine Day, David Donoghue (former Ambassador to the United Nations) and Lorcan Sirr (housing policy expert).²¹⁷

ii. Vulnerability assessments

Vulnerability assessments were extended to all international protection applicants in February 2021. Vulnerability assessments are an obligation under the *Reception Conditions Directive*²¹⁸ and are also a commitment of the White Paper. See Section 5.2.1 for further details.

210 Chief Executive Officer (CEO) of Doras at Committee on Public Petitions (2021). 'Direct Provision and related matters: Discussion', 8 July, www.oireachtas.ie.

211 Chief Commissioner of IHREC at Committee on Public Petitions (2021). 'Direct Provision and related matters: Discussion', 16 September; CEO of Irish Refugee Council Committee on Public Petitions (2021). 'Direct Provision and related matters: Discussion', 8 July, www.oireachtas.ie.

212 CEO of Irish Refugee Council Committee on Public Petitions (2021). 'Direct Provision and related matters: Discussion', 8 July, www.oireachtas.ie.

213 DCEDIY (2022). 'Response to parliamentary question 50589/22', 13 October, www.oireachtas.ie.

214 DCEDIY (2021). 'Response to parliamentary question 48698/21', 7 October, www.oireachtas.ie.

215 DCEDIY (2021). 'Response to parliamentary questions 49476/21, 59328/21, 59204/21, 58559/21 and 59447/21', 3 December, www.oireachtas.ie.

216 DCEDIY (2021). 'Response to parliamentary questions 49476/21, 59328/21, 59204/21, 58559/21 and 59447/21', 3 December, www.oireachtas.ie.

217 DCEDIY (2021). 'Minister O'Gorman appoints independent group to track progress on ending Direct Provision' press release, 23 September, www.gov.ie.

218 Article 22, Directive 2013/33/EU of the European Parliament and of the Council of 29 June 2013 laying down standards for the reception of applicants for international protection (recast).

iii. Labour market access

The waiting period for access to the labour market for international protection applicants was reduced from 9 to 6 months from the date they apply in February 2021.²¹⁹ The Regulations also extended the duration of the permission from 6 to 12 months. These changes arose from a review of the labour market access provisions introduced under the 2018 Regulations, conducted by the Department of Justice, and recommendations from the Catherine Day report.²²⁰ For applicants whose first-instance decision is negative, this right continues during the appeal phase only where they were first granted access to the labour market prior to receiving their first-instance decision.²²¹

A second regulatory amendment²²² made labour market access available under the same conditions to applicants notified of a transfer decision under the Dublin Regulation.²²³ The extension to this category of applicants followed *K.S. and Ors v The International Protection Appeals Tribunal and Ors* and *RAT and DS v Minister for Justice and Equality (Joined Cases C-322/19 and C-385/19)*. The cases had been referred to the Court of Justice of the European Union (CJEU), which found that those notified of a transfer decision under the Dublin Regulation were covered by the Reception Conditions Directive²²⁴ and that access to the labour market should only cease when the applicant is transferred.

iv. Access to driving licences and bank accounts

Following the Catherine Day report, the Government committed to giving international protection applicants access to driving licences, which they planned to implement through legislation.²²⁵ However, the High Court ruled in the case *Landsberg and Breetzke v the Road Safety Authority and others* on 5 November 2021 that international protection applicants meet the normal residence requirement of the *Road Traffic (Licensing of Drivers) Regulations 2006* and are therefore eligible to apply for a driving licence.²²⁶ International protection applicants may now use their temporary residence certificate as proof of normal residence in Ireland when applying for a driving licence or

219 European Communities (Reception Conditions) (Amendment) Regulations 2021 S.I. No. 52 of 2021.

220 DCEDIY (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.

221 Doras (2021). 'Getting right to work', p. 13; correspondence with Labour Market Access Unit and UNHCR, October 2022.

222 European Communities (Reception Conditions) (Amendment) (No 2) S.I. No. 178 of 2021.

223 604/2013.

224 2013/33/EUS.

225 Government of Ireland (2020). Programme for Government: Our Shared Future, p. 76.

226 See case summary at EMN Ireland, 'Landsberg and Breetzke v Road Safety Authority, the Minister for Transport, Tourism and Sport, and the Attorney General Ireland', www.emn.ie.

learner permit.²²⁷ This case followed an unsuccessful case in the High Court in March 2021 (see Section 4.4.2).²²⁸

Following engagement by Justice and IHREC, the five major banks in the State – Allied Irish Bank, Bank of Ireland, Permanent TSB, KBC and Ulster Bank – confirmed in May 2021 that international protection applicants’ state-issued identity documentation or alternative documentation could be used to open a bank account, enabling asylum seekers to open bank accounts.²²⁹ A guide to opening bank accounts for international protection applicants was also published by the Banking and Payments Federation Ireland.²³⁰

v. Access to education

International protection applicants are eligible to access further education and training programmes on the same basis as Irish nationals. In March 2021, the Department of Further and Higher Education, Research, Innovation and Science (DFHERIS) and DCEDIY announced that international protection applicants with permission to work would no longer be required to pay the international student fee of €3,600 to access Post Leaving Certificate (PLC) education courses,²³¹ which provide NFQ Level 5 or 6 qualifications as well as an alternative route to higher education. The Minister for CEDIY indicated that this was part of the commitment to a model of international protection that prioritised integration from day one.²³²

The Student Support Scheme for eligible students in the international protection system to access third-level education was continued in 2021 and amended to include postgraduate courses for the first time. The Student Support Scheme provides grants, in line with the current Student Grant Scheme (SUSI), to eligible school leavers who are in the international protection system (except those at the deportation order stage) and who are either asylum applicants, subsidiary protection applicants or leave to remain applicants. Applicants must have part of an application for protection or leave to remain for a combined period of three years on 31 August 2021.²³³

227 Department of Transport (2021). ‘Asylum seekers can now apply for driving licences’, 17 December, www.gov.ie.

228 *AB v Road Safety Authority [2021] IEHC 217*, see EMN Ireland ‘AB v Road Safety Authority’, www.emn.ie.

229 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021). ‘Committee on Public Petitions debate: Direct Provision Policy and Related Matters: Discussion’, 25 November, www.oireachtas.ie.

230 EMN Ireland (2021). ‘Guide to opening bank accounts for international protection applicants and people with status published’, 17 May, www.emn.ie.

231 Department of Further and Higher Education, Research, Innovation and Science (2021). ‘Ministers Harris and O’Gorman announce further changes for students living in Direct Provision’, 11 March, www.gov.ie.

232 Ibid.

233 Government of Ireland (2021). ‘Minister Harris announces continuation and expansion of Student Support Scheme for those in the international protection system’, 27 August, www.merriestreet.ie.

Forty students were awarded grant support in 2020/2021, at a cost of €253,038. A further 35 students were awarded grant support in 2021/2022 and estimated spend for this cohort is around €220,000.

4.2.2 End-to-end review of the international protection process

4.2.2.1 Summary of review

In October 2020, the Catherine Day report²³⁴ was published (see the 2020 report in this series for further details). This report focused on two key concerns: the length of time people spend waiting for a decision on their case, and the type of accommodation and support they receive while waiting (see Section 4.2.1 for the response to the accommodation aspect). One of the recommendations of this report was an end-to-end process review of the international protection system to identify how the goal of reducing processing times of both first-instance decisions and appeals to six months each could be achieved. This review began in November 2020 and was published in May 2021.

The review covered the process ‘from the time an International Protection applicant applies to complete an interview under section 13 (preliminary interview) of the *International Protection Act 2015* at the International Protection Office to the Minister’s decision under section 49 (permission to remain) of the *International Protection Act 2015*.’²³⁵ The review gathered perspectives from staff from all agencies involved in the process as well as service users, and covered overall organisation, people, processes and information and technology. Notably, the Irish Refugee Protection Programme process and the Dublin III process were outside the remit of the review.

Principal findings of the report included significant understaffing compared with the approved staffing levels for the IPO,²³⁶ as well as blockages that were grouped under the categories of key performance indicators/metrics, communication, process, resourcing and infrastructure.²³⁷ Problems identified included a lack of targets for IPO staff, gaps in internal communication and duplication in both IPO and IPAT, inadequate interpretation services, heavily paper-based processes, as well as an information management and technology system that does not support the end-to-end process.²³⁸

234 Government of Ireland (2020). Report of the Advisory Group on the Provision of Support, including accommodation, to persons in the international protection process, Recommendation 3.18. The commitment was also made in the White Paper to end Direct Provision and to establish a new international protection support service, p. 50.

235 Department of Justice (2021). An end-to-end review of the international protection process: Final report on findings and recommendations, p. 15.

236 The IPO had a shortfall of 22% (37.9 FTE) on the 174.9 FTE approved staffing complement; Department of Justice (2021). *An end-to-end review of the international protection process: Final report on findings and recommendations*, pp. 23-24.

237 Department of Justice (2021). An end-to-end review of the international protection process: Final report on findings and recommendations, p. 41.

238 *Ibid.*, pp. 42.

Feedback from applicants highlighted the uncertainty they experience, during the process, about timelines and how to access support, the mental strain on them and potential for re-traumatisation, and their heavy reliance on NGOs, friends, centre staff and legal representatives to inform them of supports, with some sources providing inaccurate information. Additional issues flagged included the difficulty for those based outside of Dublin to travel to the centre on their small allowance, and information or guidance being provided in legalistic and confusing language.²³⁹

The review examined wait times at various stages of the process (using 2020 as the reference point), and identified four critical junctures where blockages and inefficiencies occurred:

1. the period between the submission of an applicant's questionnaire and the provision of an interview date (the longest point in the process, taking an average of 8.1 months in 2020);
2. the signing off of a report following an interview (an average of 7.2 months in 2020);
3. transfer of documents to IPAT in the case of an appeal (an average of 12 days pre-COVID-19, and 35 days during COVID-19); and
4. the review of permission to remain and the issuance of the final ministerial decision (on average 2.5 months in 2020).²⁴⁰

Recommendations focused on these critical junctures and a key recommendation was to focus on the waiting time for an interview date as a priority. Other key recommendations for the process included re-considering the organisation structure and resource levels, rethinking the reliance on contracted resources, the introduction of thematic and geographic grouping of case assignments to enable specialisation of staff and reduce research time, and the use of quotas and measurable deliverables within the organisation.²⁴¹ A phased approach to digitisation of the system was proposed, which would begin with IPAT, whose status as an independent body makes it easier to reform immediately as it is not connected with other databases; this would be followed by the IPO, then ISD more broadly. Key recommendations within this theme include the use of scanned files rather than paper files and automating the appeal submission process.²⁴²

In addition to the summary report, multiple additional reports were produced, which summarise insights from consultations with staff and users.²⁴³

239 Department of Justice (2021). An end-to-end review of the international protection process: Final report on findings and recommendations, pp. 48-50.

240 Ibid., pp. 43-48.

241 Ibid., pp. 51-67.

242 Ibid., pp. 71-73.

243 Ibid., Appendix 8.

4.2.2.2 Implementation of the review

Following the review, the IPO implemented measures to reflect its recommendations. These include the following.

- The careful identification of applications that may proceed without the need for an interview: While applicants for international protection are generally interviewed, section 35(8) of the *International Protection Act 2015* allows a trained international protection officer to dispense with the interview if they are of the opinion that, based on the available evidence, the applicant is a person that should be granted a refugee declaration.²⁴⁴ This measure was used more frequently in 2021 and significant numbers were drawn from the scheduling queue and processed for decision.²⁴⁵
- Teams were restructured to allow for more efficient workflow, identification and streamlining of processes and efficient distribution of staff.²⁴⁶
- Additional staff have been trained to conduct interviews, with IPO staff now able to directly process less challenging files without the need for the input of a lawyer.²⁴⁷
- Revision of the international protection questionnaire, in coordination with the National Adult Literacy Agency (NALA) to make the document easier to read and understand.²⁴⁸ The design, language, font and spacing make the updated questionnaire easier to read, while providing scope for applicants to include all the reasons they are applying for international protection.²⁴⁹
- In October 2021, the questionnaire was made available in multiple languages online, and it became possible to submit it by email.

In a committee debate, a representative of Justice indicated that additional resources would be allocated to the IPO in 2022, and that they will review by the end of 2022 whether additional measures are required to ensure the new system can come into operation without a significant number of legacy cases remaining, which would likely slow down the transition.²⁵⁰ The Government has committed to a review by October 2022; in regard to this Justice has indicated that its likely outcome will be that people who have been in the system for a long time will be given permission to remain.²⁵¹ The international protection strand of the regularisation scheme for undocumented people (see Section 9.2.1) covered many of these people.

244 Department of Justice (2022). 'Response to parliamentary question 2214/22', 19 January, www.oireachtas.ie.

245 Correspondence with IPO, November 2022.

246 Department of Justice (2022). 'Response to parliamentary question 2214/22', 19 January, www.oireachtas.ie.

247 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021) 'Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion', 25 November, www.oireachtas.ie.

248 Department of Justice (2022) 'Response to parliamentary question 2214/22', 19 January, www.oireachtas.ie.

249 International Protection Office, 'What's new: June 2021', www.ipa.gov.ie.

250 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021). 'Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion', 25 November, www.oireachtas.ie.

251 Ibid.

4.2.3 Response to Afghanistan crisis

In response to the situation in Afghanistan, following the withdrawal of US troops and the takeover by the Taliban, the Government provided additional scope for Afghan nationals to obtain international protection in Ireland. Afghan nationals who had been subject to a transfer decision to another EU country under the Dublin III Regulation had their applications for international protection examined in Ireland on compassionate grounds.²⁵² Applications for family reunification by Afghan nationals under the *International Protection Act 2015* and applications for international protection by Afghan nationals were also expedited.²⁵³

4.2.3.1 Emergency resettlement of Afghan nationals

The Irish Refugee Protection Programme (IRPP) is the primary programme for resettling refugees from around the world in Ireland. Following the American withdrawal from Afghanistan and the subsequent takeover by the Taliban, over 500 places were made available under the IRPP for Afghan nationals,²⁵⁴ of which 404 were admitted in 2021.²⁵⁵ The IRPP indicated that selection was based on humanitarian need, with vulnerable population groups including ‘women, front-line defenders, judges, journalists, people targeted by the Taliban for the work they did, for their gender or their sexual orientation.’²⁵⁶ These admissions were largely achieved through visa waivers.²⁵⁷

4.2.3.2 Afghan Admission Programme

In response to the humanitarian crisis that followed the withdrawal of American troops from Afghanistan and calls from NGOs,²⁵⁸ the Irish Government created the Afghan Admission Programme, which opened for applications in December 2021. The Afghan Admission Programme provides for expanded family reunification for Afghan nationals and residents who have close family members in Ireland, and whose freedom or safety is deemed to be at risk. Five hundred places were made available under the programme. Afghans in Ireland may apply for up to four family members to join them in Ireland under the scheme. Those eligible to sponsor family members are:

- originally from Afghanistan and legally resident in Ireland on 1 September 2021, holding an immigration permission with a minimum duration of 12 months and/or that is renewable at the time of application; or

252 Department of Justice (2021). ‘Immigration notice on the humanitarian situation in Afghanistan’, 19 August, www.irishimmigration.ie.

253 Department of Justice (2021). ‘Immigration notice on the humanitarian situation in Afghanistan’, 19 August, www.irishimmigration.ie.

254 DCEDIY (2021). ‘Response to parliamentary question 60383/21’, 7 December, www.oireachtas.ie; Department of Justice (2021). ‘Government approves Afghan Admission Programme’, 28 September, www.gov.ie.

255 Correspondence with UNHCR, November 2022; Correspondence with DCEDIY, December 2022.

256 RTÉ (2021). ‘394 Afghan refugees have arrived in Ireland since Taliban took control’, 8 December; ; Correspondence with DCEDIY, December 2022.

257 RTÉ (2021). ‘394 Afghan refugees have arrived in Ireland since Taliban took control’, 8 December; Department of Justice (2022). ‘Response to parliamentary question 52238/22’, 19 October, www.oireachtas.ie.

258 Nasc (2021). ‘Joint letter: Humanitarian crisis in Afghanistan’, 27 August, www.nascireland.org.

- a naturalised Irish citizen previously from Afghanistan.²⁵⁹

Proposed beneficiaries must either be a national of Afghanistan who is currently living in Afghanistan or who fled to Iran, Pakistan, Turkmenistan, Uzbekistan or Tajikistan since 1 August 2021. They should not be eligible for family reunification under the *International Protection Act 2015*, as such individuals can apply under that Act. Eligible beneficiaries are: spouses/de facto spouses/civil partners; unmarried adult children, minor children, or related minor children without parents for whom the proposer has parental responsibility; and parents, grandparents, or vulnerable adults who are close family members and do not have a close relative to support them.²⁶⁰

If applications for more than 500 people were received, it was foreseen to prioritise applications based on risk. The assessment had regard to the vulnerability of older persons, children, single female parents, single women and girls, individuals with disabilities, and people whose previous employment exposes them to risk (for example, UN and EU staff).²⁶¹

Successful beneficiaries will be granted a temporary two-year immigration permission with immediate access to the labour market, or to operating a business. There will be no automatic renewal of the permission granted, although it will be open to beneficiaries to apply for renewal or another permission. Unlike others resettled under the IRPP, applicants under the scheme will not have access to social welfare, housing supports or Child Benefit.²⁶² Proposers must be able to pay for their family's travel to Ireland and to financially support the beneficiaries until they are able to support themselves.²⁶³ Beneficiaries will have access to primary and secondary education for children and emergency treatment in the public healthcare system.²⁶⁴

Civil society organisations welcomed the programme but also raised several points of concern, including the limited number of places available and the restrictive eligibility criteria.²⁶⁵ The Irish Refugee Council pointed out that the financial requirements would likely preclude those who were recently granted international protection and have therefore not yet had the opportunity to fully establish themselves.²⁶⁶ These concerns have been confirmed by organisations who support Afghans applying for the scheme, many of whom have said that the document requirements are too stringent and that

259 Department of Justice (2021). 'Afghan Admission Programme: Guidance for submission of an application', p. 3, www.irishimmigration.ie.

260 Department of Justice (2021). 'Afghan Admission Programme: Guidance for submission of an application', p. 3, www.irishimmigration.ie.

261 Ibid., p. 20.

262 Ibid., p. 6.

263 Ibid., p. 11.

264 Ibid., p. 6.

265 Immigrant Council of Ireland (2021). 'Immigrant Council welcomes announcement of Afghanistan Humanitarian Assistance Programme', 14 December, www.immigrantcouncil.ie.

266 Irish Refugee Council (n.d.). 'Irish Refugee Council welcome Afghanistan admission programme but flag key requirements', www.irishrefugeecouncil.ie.

the process does not take account of the current reality on the ground in Afghanistan. The requirements for documents such as passports and proof that there is accommodation ready for family members have posed a barrier to many applicants, to the extent that '[it is] almost impossible for the majority to apply', according to Nasc.²⁶⁷

4.2.4 Reception conditions

4.2.4.1 Monitoring and national standards

The National Standards on Direct Provision came into effect from 1 January 2021 (see the 2020 report in this series).²⁶⁸ DCEDIY are proposing that the Health Information and Quality Authority (HIQA) will undertake the role of monitoring these standards in current accommodation centres. DCEDIY worked with HIQA and the Department of Health to put this proposition into effect, with a formal relationship between DCEDIY and HIQA due to take effect from 1 November 2021.²⁶⁹ The *Health (Inspection of Emergency Homeless Accommodation and Asylum Seekers Accommodation) Bill 2021*, a private members Bill introduced by Eoin Ó Broin in November 2021, proposes to put this role on a statutory footing.²⁷⁰

4.2.4.2 Persons subject to inadmissibility procedures

From September 2021, following Irish Refugee Council engagement with the IPO, IPAS and the HSE, persons subject to an inadmissibility procedure were defined as 'applicants' within the meaning of the *International Protection Act 2015* and allowed to complete an application under section 15 of the Act, making them eligible for reception conditions under the Reception Conditions Regulation.²⁷¹ Prior to this decision, IPO did not classify individuals who received an inadmissibility recommendation as applicants and they were therefore not entitled to accommodation, the daily allowance or to a medical card. These individuals will now be eligible for these benefits until the Minister declares their application to be inadmissible.²⁷²

4.2.4.3 International protection accommodation service initiatives

Several IPAS initiatives commenced in 2021 in response to complaints raised by residents, according to the Office of the Ombudsman. One of these is the development of a training programme on managing utility services and other household management skills, which IPAS plans to give to residents following a positive decision and before they move out of their accommodation centre. The initiative was the result of identifying issues experienced by those residing in IPAS accommodation centres, which IPAS

267 RTÉ (2022). "Cruel" Afghan admission scheme "a missed opportunity", 21 February, www.rte.ie.

268 AIDA (2022). Country report: Ireland 2021 update, p. 16.

269 DCEDIY (2021). 'Response to parliamentary question 48557/21', 7 October, www.oireachtas.ie.

270 Houses of the Oireachtas 'Health (Inspection of Emergency Homeless Accommodation and Asylum Seekers Accommodation) Bill 2021, (Bill 138 of 2021)', www.oireachtas.ie.

271 Correspondence with IPO, November 2022.

272 AIDA (2022). Country report: Ireland 2021 update, p. 16.

thought might lead to problems when residents moved into the community and had to manage their own utilities.²⁷³

Another was a dispute resolution initiative to help with the resolution of inter-personal conflicts within IPAS accommodation centres. Following a positive initial trial that involved a multilateral consultation and dispute resolution process in one centre, conducted with the Jesuit Refugee Service, IPAS aim to conduct further trials in early 2022. They plan to produce a framework on how this initiative can be implemented along with the formal IPAS complaint and dispute resolution procedures.²⁷⁴

4.2.4.4 Ombudsman complaints

The Ombudsman received a total of 99 complaints from residents in IPAS accommodation in 2021. This compares with a total of 61 complaints in 2020. The Ombudsman attributes the increased complaints to the recommencement of outreach visits to 17 centres.²⁷⁵ Similar to previous years, the biggest source of complaints concerned refusals to requests for transfers from one centre to another, with 19 such complaints taken in 2021. The remaining complaints included those regarding accommodation, staff, complaint handling and readmission to IPAS accommodation.²⁷⁶

Following complaints and investigation by the Ombudsman by international protection applicants who were refused medical cards on grounds that they did not meet the residency requirements as they were not living in IPAS accommodation centres, the HSE's Medical Cards Unit amended their policy to ensure that this category of applicant was eligible for the medical card scheme.²⁷⁷

The Ombudsman dealt with three complaints of inter-resident conflict in 2021. In the first complaint dealt with by the Ombudsman's Office, where social isolation was the core issue, IPAS granted a transfer request for a resident to be closer to friends.²⁷⁸

4.2.5 Other developments

4.2.5.1 Pause on issuing negative decisions

In 2021, the Ministerial Decision Unit (MDU) suspended the issuing of negative decisions.²⁷⁹ This is because a negative decision from the MDU triggers a follow-on process under the *International Protection Act 2015*, with a letter issued inviting the

273 Office of the Ombudsman (2022). *The Ombudsman and Direct Provision: Update for 2021*.

274 Office of the Ombudsman (2022). *The Ombudsman and Direct Provision: Update for 2021*.

275 *Ibid.*, p. 11.

276 *Ibid.*

277 AIDA (2022). *Country report: Ireland 2021 update*, p. 16; Correspondence with IPO, November 2022.

278 Office of the Ombudsman (2022). *The Ombudsman and Direct Provision: Update for 2021*.

279 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021). *Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion*, 25 November, www.oireachtas.ie.

person to confirm within five days whether they will voluntarily return to their country of origin. If they do not make this declaration within five days, the legislation provides that a deportation order shall be made, subject to a refoulement consideration under section 50 of the same Act.²⁸⁰ Due to restrictions on international travel, which inhibited people from returning voluntarily or removals by the State, the Minister decided to suspend the issuing of negative decisions except in cases associated with significant criminality, to avoid the triggering of the deportation order process. At an Oireachtas Committee, Justice indicated that this decision was also affected by the decreased ability of applicants to consult with lawyers during the pandemic, which meant that it may not be fair to issue them with decision letters.²⁸¹ However, these decisions were prepared and ready to be issued once the process was recommenced. Justice has indicated that they would not release all these decisions at once, however.²⁸²

4.2.5.2 International Protection Appeals Tribunal strategy statement

In October 2021, the International Protection Appeals Tribunal (IPAT), responsible for hearing appeals from applicants for international protection, among other things (see Annex A, Section A.1.2), published its strategy statement for 2021–2023. The strategic priorities identified in the strategy are to: ensure quality and consistency of decision making; optimise the efficiency of appeal processing; deliver a user-focused service; communicate effectively with service users and stakeholders; and engage and strengthen synergies across the international protection ecosystem.²⁸³

Specific actions identified in the strategy include: improving training to staff; the development of resources and tools for IPAT; the implementation of recommendations from the end-to-end review (see Section 4.2.2); the simplification of processes and provision of information in accessible language; the engagement with applicants and stakeholders to understand their needs; and improving the sharing of information and best practices.

4.2.5.3 Updated International Protection Office prioritisation

The prioritisation of applicants for international protection under section 73 of the *International Protection Act 2015* was updated in June 2021, to amend the list of countries of origin/habitual residence of applicants in relation to which applications may be considered likely to be well-founded. The countries on the updated list are:

- Afghanistan
- Eritrea

280 Department of Justice (2021). 'Response to parliamentary question 42528/20', 10 December, www.oireachtas.ie; Correspondence with Department of Justice, November 2022.

281 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021). *Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion*, 25 November, www.oireachtas.ie.

282 Ibid.

283 IPAT (2021). Strategy statement 2021–2023, p. 20.

- Libya
- Somalia
- Sudan
- Syria
- Yemen.

This procedure was first put in place by the IPO, with the advice and support of UNHCR in 2017. Prioritisation refers to scheduling of interviews only.²⁸⁴

4.2.5.4 Regularisation scheme

On 3 December 2021, the Minister for Justice announced a scheme to regularise long-term undocumented migrants. A parallel process is included within the scheme to allow protection applicants who have an outstanding application for international protection and have been in the asylum process for a minimum of two years to apply. This parallel process was included to consider the recommendation of the Catherine Day report regarding people in the protection process for two years or more. The Minister for Justice said that this was also aimed at addressing legacy asylum cases to enable the reforms committed to in the *White Paper to End Direct Provision and to Establish a New International Protection Support Service* to take place effectively, and to reduce processing times.²⁸⁵ This scheme addresses some of the criticisms made by NGOs of the White Paper (see Section 4.2.1.2).

4.2.5.5 Authorisation of International Protection Appeal Tribunal remote hearings

In order to facilitate hearings during COVID-19 restrictions, IPAT was designated as a body authorised to conduct remote hearings – those in which one or more of the participants participate by means of electronic communications technology (A/V hearings); see 2020 report in this series, p. 61, for further details.²⁸⁶ This enabled IPAT to continue to conduct hearings through lockdowns that prohibited in-person meetings. Facilities were also made available to appellants on IPAT premises in cases where they could not access A/V hearings from remote locations; for example, where there were technical or privacy issues.²⁸⁷ A/V hearings became the default in 2021; however, some in-person hearings were also held where IPAT, of its own volition or following the making of representations by an appellant, was of the opinion that the holding of an A/V hearing would be unfair to the person, or would otherwise be contrary to the

284 International Protection Office (June 2021). 'Prioritisation of applications for international protection under the International Protection Act 2015 (Amended)', www.ipo.gov.ie.

285 Department of Justice (2021). 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants', 3 December, www.gov.ie.

286 IPAT (2022). *Annual report 2021*, p. 22. IPAT was designated as a body under s.31 of the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 on 31 December 2020, 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.

287 Correspondence with IPAT, February 2022.

interests of justice. In order to ensure fair access to these procedures, all video links are supported by IPAS staff in the reception centres.²⁸⁸

4.2.5.6 International Protection (Family Reunification) (Amendment) Bill 2017

Following criticism of the reduction in the scope of family reunification rights and the removal of ministerial discretion in family reunification applications (formerly provided for in the *Refugee Act 1996*) from the *International Protection Act 2015*,²⁸⁹ a group of senators presented the *International Protection Act (Family Reunification Amendment) Bill 2017* to the Government to widen the scope of eligible family members in the *International Protection Act 2015*. After lapsing with the last dissolution of the Dáil, the Bill was restored for further debate before the Dáil in December 2020. By the end of 2021, the Bill was in its Third Stage before the Dáil, where it goes through detailed section-by-section examination.²⁹⁰ It was referred to the Select Committee on Justice on 8 December 2021.²⁹¹

4.2.5.7 Resettlement

At the start of 2021, the Irish Refugee Protection Programme (IRPP) commissioned four regional support organisations, which are tasked with overseeing the recruitment, support, coordination and training of community sponsorship groups across seven regions throughout Ireland and promoting community sponsorship at a local level.²⁹²

4.3 RESEARCH

4.3.1 Impact of delays in the international protection process

The Irish Refugee Council published a report on the impacts of delays in the international protection process in June 2021, highlighting the impact of the length of time international protection applicants remain in the status determination process and Direct Provision. The report highlighted long delays in the process, in particular due to the backlog following the *International Protection Act 2015* and the switch to a single procedure, as well as the impact of COVID-19, during which Ireland was one of the strictest countries with regards pausing interviews and decisions.²⁹³

288 Deputy Secretary General of Department of Justice at Houses of the Oireachtas (2021). 'Committee on Public Petitions debate: Direct Provision policy and related matters: Discussion', 25 November, www.oireachtas.ie.

289 Arnold, S. and E. Quinn (2017). *Family reunification of non-nationals in Ireland*, Research Series No. 62, p. 32; IHREC (2018). 'The right to family reunification for beneficiaries of international protection'; Irish Times (2021). 'Family reunification law "undermines" rights of refugees', 25 March, www.irishtimes.com.

290 International Protection (Family Reunification) (Amendment) Bill 2017 (Bill 101 of 2017).

291 Houses of the Oireachtas (2021). 'International Protection (Family Reunification) (Amendment) Bill 2017 [Seanad]: Referral to Select Committee', 8 December, www.oireachtas.ie.

292 DCEDIY (2022). 'Response to parliamentary question 5284/22', 3 February, www.oireachtas.ie.

293 Irish Refugee Council (2021). 'Hanging on a thread': Delays in the Irish protection process, p. 4.

The report investigated the human impact of these delays through a survey conducted in March–April 2021, with 88 respondents. Negative impacts on mental health, hindering the ability of applicants to integrate, and the disruption of family relationships were the principal impacts highlighted in the report. Recommendations for Justice included adopting measures to address backlogs (in particular through the granting of permission to remain to those who had been in the system over two years, as per the Catherine Day report recommendation – see Section 9.2.1 on implementation through the regularisation scheme), and increased resources to the IPO and IPAT. Recommendations for the IPO included increased use of the power to dispense with personal interviews when evidence indicates that the person is a refugee,²⁹⁴ the resumption of in-person interviews and increased use of remote interviews, the introduction of an online portal for applicants, and provision of information on estimated timeframes to applicants. Regarding family reunification, the report recommended the use of DNA testing – the suspension of which caused significant delays in family reunification applications – only in exceptional circumstances, as per UNHCR and Council of Europe Commissioner for Human Rights recommendations. The report also recommends making the family reunification questionnaire available online so that it could be submitted with the initial request, and increased recognition early in the process of the difficulties involved with obtaining identity documents in certain contexts.

4.3.2 Barriers to realising the right to decent work for international protection applicants and recipients

Doras published a report that documented the barriers faced by international protection applicants and recipients in realising the right to decent work in Ireland.²⁹⁵ The research consisted of a literature review, online survey, focus groups and interviews with NGOs and support services. Participants identified the following obstacles: a lack of networks and knowledge of the system; discrimination; social and economic disadvantage linked to the location of Direct Provision centres; lack of access to childcare; lack of recognition of qualifications and experience; work permit restrictions; loss of skills due to the length of procedures; language barriers; lack of employer awareness of work permits; and trauma. Difficulty in opening a bank account and obtaining a driving licence were also highlighted (recent changes to which are discussed here, in Section 4.2.1.3(iv)). The report also highlights the key role of NGOs in facilitating labour market access, which is undermined by temporary and short-term funding streams and the need for trauma-informed support, which requires appropriate training for support workers. Recommendations included: the removal of administrative barriers for work; government provision of dedicated employment supports and training; the introduction of measures to ensure that international protection applicants and recipients are not forced into undignified work; increased monitoring by employer

294 As per s.35(8) of the International Protection Act 2015.

295 Doras (2021). Getting right to work.

associations and efforts by employers and civil society provision of employment services.²⁹⁶

One of the needs identified in the report was increased guidance to employers on hiring asylum seekers and recipients of international protection. In response to this need, UNHCR published updated toolkits aimed at businesses in general,²⁹⁷ and HR departments in particular,²⁹⁸ to hire refugees and asylum seekers. IHREC also published a guide to employing international protection applicants in 2021.²⁹⁹

4.3.3 Alternatives to Direct Provision

Following the Government's commitment to transition to a new system of accommodation for international protection applicants in the 2020 Programme for Government, the Irish Refugee Council conducted research exploring how this could be done, the report of which was published in January 2021. The research involved extensive analysis and recommendations about models for housing, funding, governance and transitioning to enable the end of Direct Provision and the adoption of a new model. Recommendations, among others, included:

- responsibility initially resting with DCEDIY but moving to the Department of Housing, Local Government, and Heritage in the long-term;
- the inclusion of international protection accommodation in national and local housing development plans, regional spatial strategies, and in the mandate of the Land Development Agency;
- adopting the three-stage process recommended in the Catherine Day report;
- using a blend of accommodation models for the provision of accommodation, but using 'new' accommodation supply as much as possible;
- leveraging existing urban and town regeneration and renewal policies;
- long-term implementation of the non-profit approach, but swift implementation of independent inspections and national standards to mitigate risks of the current for-profit approach;
- the involvement of local authorities but acknowledging that they may not always be best placed to manage the delivery of accommodation for vulnerable people;
- the setting up of regional 'accommodation committees', which would bring together several stakeholders, including local authorities;
- sufficient capital and current financial resources allocated from 2021, and a five-year capital funding allocation;
- adopting a clear strategy for ending Direct Provision; and

296 Ibid.

297 UNHCR (2021). Tapping potential: A toolkit to help businesses employ refugees and asylum seekers.

298 UNHCR (2021). Tapping potential: Hiring refugees and asylum seekers: A reference guide for HR departments.

299 IHREC (2021). Employing international protection applicants: Employer guide.

- addressing backlogs to ensure that the new system does not start with many people in the system.

The report highlighted that new models needed to be brought on-stream by mid-2021.

4.3.4 Data management in the international protection process

In August 2021, EMN Ireland/ESRI published a study on how data collected and used in the international protection process.³⁰⁰ The report provides a detailed review of the type of data collected, the methods used, authorities involved, and how data are shared and cross-checked. The report also summarises data protection safeguards, quality checks and ongoing challenges in data management. Challenges identified by stakeholders such as the IPO and UNHCR include the interoperability of case management systems, difficulty correcting data that is collected in the registration phase, and the fact that data are not stored in a searchable format, which would allow for filtering and triage. The report was based on information collected for an EMN study, which compares data management in international protection in EU Member States and Norway.³⁰¹

4.3.5 Integration of resettled Syrian refugees

IOM conducted a study on the integration of Syrians resettled under the Irish Refugee Protection Programme, interviewing 153 Syrians who arrived in Ireland between 2015 and 2019.³⁰² The study found that interviewees have a strong foundation for integration, with positive results relating to security of immigration status, feeling of safety, sense of belonging, security of housing tenure and children's experiences in education.³⁰³ The research found that security of housing had a significant impact on other domains, enabling refugees to invest in their new neighbourhoods and increasing the feeling of confidence amongst refugees regarding their coming safety in Ireland as well as the value of social connections in their new neighbourhoods. It also found that social welfare provisions have provided the security needed to settle families and support them in employment and education endeavours. The research found evidence that both refugees and local communities are making efforts to integrate with one another, and that Syrian groups have formed, which provide important sources of mutual aid, increasing the resilience of the Syrian population.³⁰⁴ They found a strong commitment among the interviewees to living in Ireland, increasing independence and fully engaged citizenship; almost all of them consider Ireland to be their home now.

300 Cunniffe, E. and A. Sheridan (2021). *Data management in the international protection procedure in Ireland*, ESRI Research Series Number 125.

301 EMN (2021). Accurate, timely, interoperable? Data management in the asylum procedure.

302 IOM (2021). *Voices of Syrians: Resettled refugees in Ireland*.

303 *Ibid.*, p. 41.

304 *Ibid.*, p. 41.

The research also raised some concerns. The most significant concern raised in the report was around language acquisition, which has significantly impacted the uptake of labour market entry supports, work and higher education.³⁰⁵ For example, workers with a specialisation on trade or crafts struggle to get employment because English fluency is a prerequisite. However, the authors emphasised that encouraging refugees into work without the English language is an insufficient response, as this reduces the incentive to learn the language in the long-term and can lead to marginalisation and partial integration.³⁰⁶ They also found strong narratives of social isolation, aggravated by low levels of English. Access to healthcare was also severely constrained by limitations in language skills and access to interpreters, while at the same time mental health has been marked as a challenge; many Syrian refugees are coping with trauma, separation from family members and seclusion, as well as physical health problems. The report highlighted poor digital skills and low literacy, even in Arabic, which presents challenges for addressing this barrier while it affects access to information and employment.³⁰⁷

4.3.6 Barriers to family reunification for international protection recipients

In March 2021, UNHCR published a report reviewing the right to family reunification for recipients of international protection in Ireland and the barriers that remain in accessing it.³⁰⁸ The report was based on research that focused on successful applicants for family reunification and involved a desk review, interviews with key stakeholders and interviews with six families. Positive elements of the family reunification regime identified by the report included equal entitlement to family reunification for subsidiary protection beneficiaries and refugees, and the practice of issuing Irish travel documents on behalf of family members for travel purposes. Obstacles identified included the costs of arranging travel, significant delays, the need for family members to travel to Irish embassies (sometimes in other countries), and family members remaining in dangerous situations while awaiting reunification. Recommendations included the establishment of a low-interest loan scheme for applicants to pay costs, waiving or reducing administrative fees for family members, and an interdepartmental review about the experience of unaccompanied minors and their families upon reunification.

4.4 CASE LAW

4.4.1 Timing of decisions in the context of de facto family unit: *T.P. v Minister for Justice and Equality [2021] IECA 50*

The appellant, a Nigerian national, arrived in Ireland in February 2013. He applied for international protection, but this application was unsuccessful. In October 2016, the appellant applied for leave to remain, pursuant to section 3 of the *Immigration Act 1999*,

305 Ibid., p. 41.

306 IOM (2021). Voices of Syrians: Resettled refugees in Ireland, p. 7.

307 Ibid., p. 41.

308 UNHCR (2021). Realising family reunification.

as amended. He had been in a relationship with his partner, a Zimbabwean national, since 2013. His partner's application for international protection had also been unsuccessful. In the 'examination of file' of his application for leave to remain, it was noted that the appellant had been in the State for over five years, living with his partner in a religious marriage and acting *in loco parentis* for his partner's child. It was also noted that the appellant's partner was awaiting the outcome of her and her child's applications for leave to remain and there was a possibility she would be granted this permission in line with the recommendations of the Working Group on Improvements to the Protection Process.

In February 2017, the Minister refused the appellant's application for leave to remain and he was issued with a deportation order. Nine months later, the appellant's partner and her child were granted leave to remain. The High Court refused to grant leave to seek judicial review. The appellant appealed this refusal in the Court of Appeal.

Leave was granted for judicial review on two reformulated grounds. The first was that, when presented with the appellant's de facto family unit and the possibility that the appellant's partner and her child might be granted leave to remain, the Minister failed, as a matter of fairness and good administration, to first determine the appellant's partner's application. In the context of the requisite weighing exercise, this thereby deprived the appellant of the benefit of his partner's favourable outcome. The second ground was that when the Minister engaged with the hypothesis that the appellant's partner and her child would be granted leave to remain, it was done in a manner that deprived the appellant of a lawful consideration of the benefit of that favourable factor. As such, the Minister failed to consider the impact of his deportation on their family life in the requisite weighing exercise. This ground also included the Minister's consideration of the favourable outcome for the appellant's partner's application solely through the prism of a future family reunification application, whereas the appellant was instead seeking permission to remain in the State in the context, *inter alia*, of being part of a de facto family unit.

4.4.2 Access to driving licences for international protection applicants and racial discrimination: *AB v Road Safety Authority [2021] IEHC 217*

The appellant, AB, applied for international protection in Ireland in 2015. AB lived in Munster and worked in County Dublin. She was unable to move to Dublin due to a lack of Direct Provision accommodation in that area. AB held a temporary residence certificate (TRC) under section 16(1) of the *International Protection Act 2015*, which allowed her to remain in the State pending the determination of her application for international protection. AB applied for a learner driving permit on 31 October 2018, but this application was not accepted due to a lack of valid evidence of AB's residency entitlement. AB had submitted a copy of her TRC in support of her application. AB filed a complaint to the Workplace Relations Commission, stating that the refusal amounted

to discrimination on grounds of race contrary to the *Equal Status Acts 2000–2015*. On 28 January 2020, the Workplace Relations Commission found in favour of AB. This decision was appealed by the respondent to the Circuit Court, which allowed the appeal on the 30 July 2020. AB then appealed to the High Court.

The High Court found that the Circuit Court did not err in law in its interpretation of the *Road Traffic (Licensing of Drivers) Regulations 2006*, as amended, and in particular that the Circuit Court did not err in law in concluding that the said Regulations imposed a requirement to provide evidence of residency entitlement in Ireland. The High Court also held that the Circuit Court did not err in law in its interpretation of the concept of residence for the purposes of the Regulations including by adapting expressly or by implication an interpretation of the concept of ‘normal residence’ that was contrary to its plain meaning and contrary to EU law. Finally, the High Court held that the Circuit Court did not err in law in its interpretation of the *Equal Status Acts 2000–2015* in its conclusion that the respondent did not discriminate against AB on grounds of race. The High Court held that the actions of the respondent as they related to AB were required by legislative enactment and could not be the subject of an adverse finding pursuant to the *Equal Status Acts*, as what was at issue was the meaning and effect of the statutory enactments and not the individual treatment of AB by the respondent.

4.4.3 Access to the labour market for applicants issued with Dublin transfer decisions: *KS and MHK v International Protection Appeals Tribunal, the Minister for Justice and Equality and the Advocate General and RAT and DS v Minister for Justice and Equality (Joined Cases C-322/19 and C-385/19)*

KS, MHK, RAT and DS applied for international protection in Ireland between 2015 and 2018. They were subsequently issued with transfer decisions to other Member States pursuant to the Dublin III Regulation 604/2013, which they appealed. In the interim, all four applicants had been refused permission to access the labour market due to the exclusion of persons in Dublin proceedings from the eligible categories of applicants in Ireland’s transposition of the recast *Reception Conditions Directive 2013/33/EU*. The applicants challenged these refusals. The High Court and IPAT, on hearing the challenges, respectively stayed proceedings and submitted preliminary references to the CJEU.

The questions posed centred on the interpretation of ‘applicant’ under the recast Reception Conditions Directive and the circumstances in which a delay in examining an application for international protection can be attributable to the applicant for the purposes of Article 15 of the Directive. The High Court also posed a question in relation to the interpretation of EU law where Ireland has not opted into related legislation.

The CJEU first addressed the question of whether Irish courts can take into account the provisions of legislation to which Ireland has not opted in — in particular, the recast *Asylum Procedures Directive 2013/32/EU*. The CJEU held that, due to the requirement of a uniform application of EU law and the principle of equal treatment, along with the fact that the recast Reception Conditions Directive and the recast Asylum Procedures Directive form part of the same body of law, the Common European Asylum System, account should be taken of the recast Asylum Procedures Directive when interpreting the recast Reception Conditions Directive.

Secondly, the CJEU held that Article 15 of the recast Reception Conditions Directive must be interpreted as not excluding applicants for international protection from accessing the labour market on the sole ground that they have been issued with a Dublin transfer decision. The Court recognised that while access to the labour market is not *stricto sensu* a material reception condition, it is still a reception condition and, as such, is included in the rights and benefits of applicants. Furthermore, the CJEU recalled that the recast Reception Conditions Directive seeks to promote self-sufficiency and states that a simplification of labour market access procedures can help prevent isolation and social exclusion. Preventing access to the labour market can conversely place additional costs on the Member State in the form of the payment of additional social benefits.

Thirdly, the CJEU addressed the question on the interpretation of the phrase, ‘a delay attributable to the applicant’ under Article 15(1) of the recast Reception Conditions Directive. With reference to Articles 13 and 31(3) of the recast Asylum Procedures Directive, the CJEU held that a delay attributable to the applicant occurs where an applicant has failed to cooperate with the competent authorities. Recalling that there is no provision in the Dublin III Regulation that requires an individual to lodge an international protection application in the Member State of first entry, the CJEU held that it cannot be used as a ground for attributing delay to the applicant. Moreover, the fact that the applicant has appealed the transfer decision also does not constitute a delay attributable to the applicant. Indeed, Article 27(3) of the Dublin III Regulation requires Member States to establish an appeals mechanism in national law, and the right to an effective remedy is a fundamental right under Article 47 of the *Charter of Fundamental Rights of the EU*.

4.4.4 International protection officers making section 49 decisions: *ASA v the Minister for Justice [2021] IEHC 275*

The applicant, a Nigerian national, applied for international protection in Ireland in 2018. It was recommended that he not be granted refugee status or subsidiary protection status, and also not be granted permission to remain in the State under section 49 of the *International Protection Act 2015*. The applicant brought judicial review proceedings challenging the manner in which section 49 was operated on a general basis by the Minister for Justice. The *International Protection Act 2015*

differentiates responsibility with respect to the decision made on refugee status and subsidiary protection, which is made by an international protection officer, and the section 49 decision, which is made by the Minister for Justice. However, in practice, the section 49 decision is taken on behalf of the Minister for Justice by an officer appointed as an international protection officer.

With reference to the *Carltona* principle, Burns J recognised that a suitably experienced official can make decisions within the power of a Minister without power being expressly delegated to them. This applies unless there is either an express statutory derogation from the *Carltona* principle or derogation arises by necessary implication from the terms of the statute. In examining whether the 2015 Act prohibits the derogation of the Minister for Justice's section 49 powers, Burns J recalled that the 2015 Act does not expressly state that a permission to remain decision can only be taken by the Minister and does not expressly prohibit international protection officers from making such a decision.

With regard to whether the 2015 Act by necessary implication prohibits an international protection officer from taking a section 49 decision, Burns J held that, in light of the fact that the 2015 Act introduces the single procedure, the Court would have expected the Oireachtas to have been explicit in restricting the decision-making power of the Minister to officers who were not international protection officers. This was not done by the Oireachtas. The 2015 Act was held to not raise any necessary implicit limitation on an international protection officer making section 49 decisions. Burns J recalled that the section 49 decision is not an appeal decision and, in terms of *non-refoulement*, it was recognised that the section 49 decision maker can have regard to the earlier decision and any additional refoulement concerns would be properly and appropriately considered afresh. It was held that the role of an international protection officer under section 49 does not conflict with their duties and functions as an independent international protection officer.

CHAPTER 5

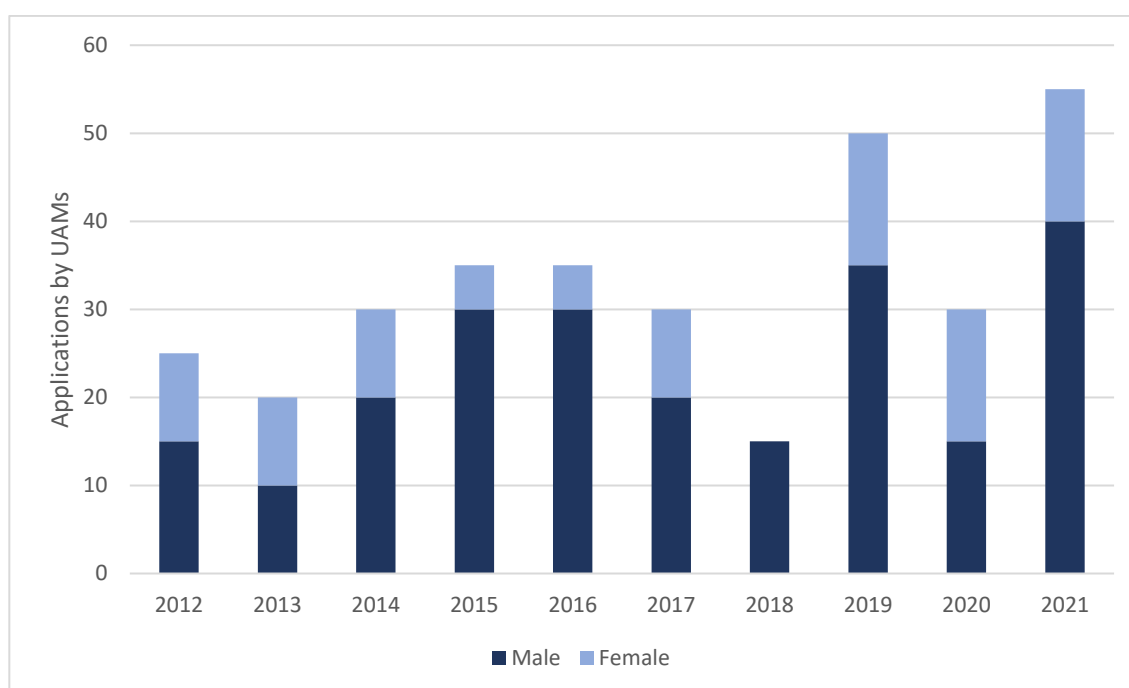
Unaccompanied minors and other vulnerable groups

5.1 STATISTICS

5.1.1 Unaccompanied minors

A total of 152 referrals of unaccompanied minors (UAMs) were made to Tusla in 2021.³⁰⁹ In the same year, 98 UAMs were placed in care and a further 21 were reunited with their families.³¹⁰ Approximately 150 young people engaged with and were supported by the aftercare service in 2021.³¹¹

FIGURE 5.1 APPLICATIONS BY UAMS FOR INTERNATIONAL PROTECTION, 2012–2021



Source: Eurostat data, rounded, 'Unaccompanied minors – Applicants for international protection', extracted 26 September 2022.

In 2021, 54 applicants for international protection were classified as unaccompanied minors,³¹² the highest number in the last 10 years. This was dissimilar to the trend in international protection applications and migration overall, which were severely impacted by travel restrictions resulting from the COVID-19 pandemic. This can largely be explained by applicants from Afghanistan, of whom there were 25 in 2021 (Eurostat data), compared with 0–10 annually between 2012 and 2020. As shown in Figure 5.1,

309 Correspondence with Tusla, November 2022.

310 Correspondence with Tusla, November 2022.

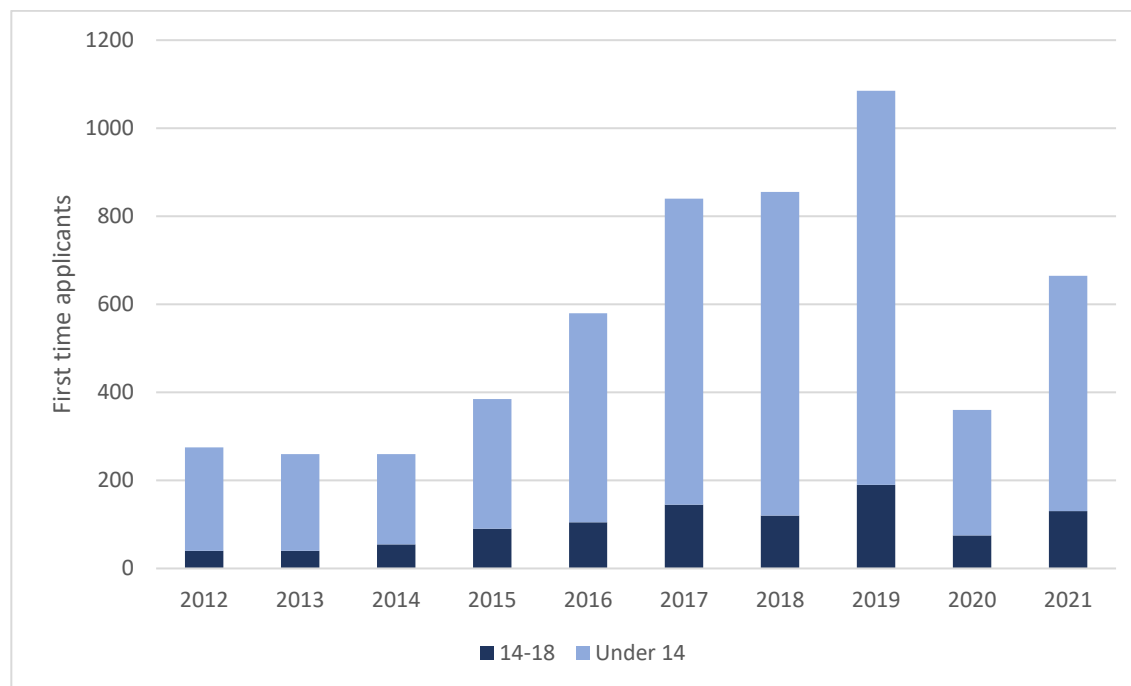
311 Correspondence with Tusla, November 2022.

312 Correspondence with IPO, November 2022.

the majority of applicants were male, as in previous years. According to Eurostat data, around 40 unaccompanied minors had pending asylum applications in December 2021.³¹³ Twenty-eight separated children were relocated to Ireland through the Irish Refugee Protection Programme (IRPP), as part of Ireland’s commitment to relocate unaccompanied minors from Greece.³¹⁴

5.1.2 Children in the international protection process

FIGURE 5.2 FIRST-TIME APPLICANTS FOR INTERNATIONAL PROTECTION UNDER 18, 2012–2021



Source: Eurostat, ‘Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data (rounded)’, extracted 22 September 2022.

According to Eurostat, 665 children applied for international protection in 2021 in Ireland.³¹⁵ As shown in Figure 5.2, the vast majority (80%) of children applying for international protection are under 14, as was the case in previous years. According to Eurostat, approximately 1,490 children (83% under 14) had international protection applications pending at the end of December 2021.³¹⁶ According to rounded data from Eurostat, around 20 children were returned to their country following an order to leave in 2021.³¹⁷

313 Eurostat, ‘Unaccompanied minors subject of asylum applications pending at the end of the month by citizenship, age and sex – Monthly data (rounded)’, extracted 26 September 2022, www.ec.europa.eu.

314 Tusla (2022). Annual report and financial statements 2021, p. 12.

315 Eurostat, ‘Asylum applicants by type of applicant, citizenship, age and sex – Annual aggregated data (rounded)’, extracted 22 September 2022, www.ec.europa.eu.

316 Eurostat, ‘Persons subject of asylum applications pending at the end of the month by citizenship, age and sex – Monthly data (rounded)’, extracted 26 September 2022, www.ec.europa.eu.

317 Eurostat, ‘Third country nationals returned following an order to leave – Annual data (rounded)’, extracted 22 September 2022, www.ec.europa.eu.

5.2 DEVELOPMENTS

5.2.1 Vulnerability assessments

Under the *Reception Conditions Regulations 2018*, which transpose the EU Reception Conditions Regulation into Irish law,³¹⁸ vulnerability assessments must be conducted within 30 days of an applicant wishing to make an application for international protection. As a central part of the new reception model, a pilot vulnerability assessment procedure for protection applicants commenced in December 2020 and was extended to all protection applicants in February 2021. Vulnerability assessments are undertaken by the reception authority and are conducted to determine if applicants have specific reception needs. Assessment questions are based on the various categories of vulnerability identified within the *EU Reception Conditions Directive 2013/33/EU* and have been adapted to the Irish context. A multi-disciplinary resident welfare team has been established in International Protection Accommodation Services (IPAS) with staff seconded from the Health Service Executive (HSE), the Department of Education and Tusla, with a focus on case managing residents who have been identified as particularly vulnerable.³¹⁹

At a Public Petitions Committee discussion in September 2021, the Chief Commissioner of the Irish Human Rights and Equality Commission (IHREC) pointed out that the implementation of these assessments was slow compared with the number of applications.³²⁰ By 31 December 2021, 686 assessments had been undertaken, in comparison with 2,649 applications for international protection that year, a rate of 26%.³²¹ It should be noted that, while vulnerability assessments are offered to applicants, not all applicants necessarily consent to participate or attend scheduled appointments, which may affect the rate. Among applicants who undertook a vulnerability assessment, 64% (438 of 686) were identified as having some form of vulnerability:³²²

- 30% were minors;
- 31% had been subjected to torture, rape or other forms of serious psychological, physical or sexual violence;
- 12% had a serious illness;
- 9% were single parents with minor children;
- 8% were persons with mental health concerns;
- 3% were pregnant;

318 S.I. No. 230/2018 – European Communities (Reception Conditions) Regulations 2018.

319 EMN (2021). Detection of vulnerabilities in the international protection procedure, October, Luxembourg.

320 Chief Commissioner of IHREC at Committee on Public Petitions (2021). 'Direct Provision and related matters: Discussion', 16 September.

321 It should be noted that application statistics also include January 2021, while vulnerability assessments were extended to all applicants on 1 February 2021.

322 AIDA (2022). *Country report: Ireland 2021 update*, p. 14; DCEDIY (2022) 'Response to parliamentary questions 5184/22 and 5136/22', 3 February www.oireachtas.ie.

- 3% were victims of human trafficking;
- 2% were LGBTQI+;
- 2% had a disability; and
- 0.3% were unaccompanied minors.³²³

While welcoming the introduction of vulnerability assessments, civil society organisations have raised concerns about key categories that are not covered in the assessment, such as people at risk of suicide or violence, people with addiction issues, individuals at risk of gender-based violence, and carers.³²⁴ Nasc has also called for a continuous assessment, rather than a ‘once and done’ process.³²⁵

5.2.2 White Paper protections for children and vulnerable people

Significant supports for a variety of vulnerable groups are envisioned in the White Paper (see Section 4.2.1). This includes supported accommodation for vulnerable people, including families.³²⁶ Under the proposal, families would be accommodated in an own-door accommodation unit within a reception centre in Phase One and would have own-door accommodation in self-contained houses or apartments within the community in Phase Two. It also envisions community health care teams who will provide information and primary healthcare.³²⁷ The White Paper makes specific provisions for women’s health, trans-specific healthcare and victims of domestic, sexual and gender-based violence, including victims of female genital mutilation, torture and human trafficking.³²⁸ Specific mention is made of the need for culturally sensitive mental health supports for international protection applicants. The White Paper also plans to ensure that all Children and Young People’s Service Committees³²⁹ have a specific focus on the needs of children, young people and their families in international protection accommodation, including the development of a clear action plan for the coordination and provision of services.³³⁰

The White Paper also foresees prioritisation of applications by unaccompanied minors, and the provision of housing supports in accordance with the new accommodation model when young people are in aftercare.³³¹ In addition, it foresees the expansion of access to legal advice and case management, including for family reunification

323 DCEDIY (2022). ‘Response to parliamentary questions 5184/22 and 5136/22’, 3 February, www.oireachtas.ie.

324 Fagan, M. (2021). ‘Nasc: State’s pilot project on vulnerability of asylum applicants is too limited’ *Irish Examiner*, 11 February, www.irishexaminer.com.

325 Ibid.

326 DCEDIY (2021). A White Paper to end Direct Provision and to establish a new international protection support service, p. 47.

327 Ibid., p. 55.

328 Ibid., pp. 58-59.

329 Committees that comprise all key statutory and voluntary sector agencies; DCEDIY (2021). A White Paper to end Direct Provision and to establish a new international protection support service, p. 60.

330 DCEDIY (2021). A White Paper to end Direct Provision and to establish a new international protection support service, pp. 60-61.

331 Ibid., p. 61.

applications, to keep pace with demand.³³² The White Paper envisages taking into account the needs of LGBTIQ+ people, older people and people with disabilities.³³³ These vulnerabilities will be identified through the vulnerability assessments mentioned above. The White Paper's approach and protections for children were welcomed by the Children's Rights Alliance, in particular the move towards own-door, family-appropriate accommodation and the extension of the Child Benefit payment to children in the international protection process.³³⁴

5.2.3 Proposed changes to naturalisation for children

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021* (see also Section 9.2.3) proposes amendments to the conditions for granting naturalisation to children born in Ireland. The Bill proposes to change the reckonable residence required for minors born in Ireland seeking to be naturalised from five to three years.³³⁵ The Bill also imposes a reckonable residence requirement on those who make an application on a minor's behalf (three years total, one year continuous residence in the year prior to the application).³³⁶

The Law Society, in their submission on the Bill, stated that the proposed change does not go far enough as it does not broaden the categories of children who are entitled to citizenship and will only apply to children of parents who are legally resident in the State and who had reckonable residency prior to their birth.³³⁷ They also said that the question of who has the authority to make an application on behalf of a child who is subject to an interim care order or wardship should be expressly addressed.³³⁸

5.2.4 Ombudsman report on children in Direct Provision

In April 2021, the Ombudsman for Children's Office published the results of an investigation on the safety and welfare of children in Direct Provision, initiated in 2018.³³⁹ The report presents findings related to IPAS and Tusla individually, and in relation to interagency cooperation. Findings relating to IPAS included the following.

- The Direct Provision model does not have the best interests of children, or the protection of the human rights of child refugees, at its core.

332 DCEDIY (2021). A White Paper to end Direct Provision and to establish a new international protection support service, p. 61.

333 Ibid., pp. 61-62.

334 Children's Rights Alliance (2021). 'Children and young people sector urge Government to act now to deliver life-changing White Paper', www.childrensrightrights.ie.

335 General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021, Head 44.

336 Ibid.

337 Law Society of Ireland (2021). 'Submission on the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021', p. 6.

338 Ibid.

339 Ombudsman for Children (2021). Safety and welfare of children in Direct Provision.

- IPAS has failed to establish an independent inspectorate and the current inspection regime does not take into account the supports needed to meet children’s physical, mental, spiritual, moral and social development.
- Prior to COVID-19, IPAS failed to meet its own benchmark of three inspections per centre per year and did not inspect emergency accommodation centres housing children at all.
- IPAS has not appointed an independent designated officer to handle complaints and there is no evidence of a review of the complaints procedure for its accessibility to children and young people or efforts to build an open culture and confidence in the process.
- Prior to COVID-19, IPAS failed to meet its own benchmark of two in-house clinics per centre per year and failed to provide consistent, or in many cases, any interpretation services.
- IPAS has not delivered on its commitment to undertake a multi-disciplinary vulnerability assessment of all protection applicants within 30 days of the application being lodged.
- IPAS has failed to follow its own child and welfare policy, with no evidence that they record and monitor child protection and welfare files for any patterns or concerns emerging or attends case conferences and review meetings arising from child protection referrals.
- IPAS has failed to put in place the necessary safeguards to ensure that children are safe from harm, and there is no evidence that all accommodation centres comply with the *Children First Act 2015*.³⁴⁰

Findings relating to Tusla included the following.

- Tusla did not recognise the inherent vulnerability of minors in the international protection process and failed to make reasonable adjustments and or to coordinate services to meet the needs of children in Direct Provision.
- Tusla has no effective mechanism for gathering data which might identify risks and inform planning at a strategic level.
- Tusla has failed to identify a named social worker for Direct Provision centres or to provide cultural diversity training and interpretation services for staff working with residents in Direct Provision.³⁴¹

The following findings relate to both agencies.

- IPAS and Tusla have failed to establish effective interagency protocols to ensure that all decisions concerning children have the children’s best interests as their primary consideration.

340 Ombudsman for Children (2021). Safety and welfare of children in Direct Provision, pp. 4-5.

341 Ibid., p. 5.

- Tusla, HSE and IPAS have failed to collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services.³⁴²

The report received significant media attention,³⁴³ and was welcomed by NGOs working in the area.³⁴⁴ The report was also discussed in the Committee of Public Petitions in June 2021.³⁴⁵ According to the Ombudsman for Children in this discussion, IPAS, Tusla and the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) accepted the recommendations from the report and made commitments to implement them. The Ombudsman for Children Office also indicated that it will follow up on the recommendations with the relevant departments in 6 and 12 months. They expressed the opinion that the White Paper will resolve many of the issues but that it should not prevent improvements to failures within the existing system, as the accommodation capacity needed for the White Paper will take at least three years to source. Committee members emphasised concerns about, for example, the non-vetting of some people working in Direct Provision centres, and the lack of independent and unannounced inspections. Many committee members also asked questions about why certain recommendations of the 2015 McMahon report had not been implemented.

The report was also raised in the Dáil in July, when the Minister for Children was asked about steps that were being taken to address the recommendations in the report.³⁴⁶ In response, the Minister indicated that a series of actions were planned for the short and medium terms to address the recommendations. He indicated that the priority was to move all remaining children and families still residing in congregated hotel-style living to own-door or independent accommodation, and that a full public procurement would take place in 2021 to secure the additional spaces to end the use of emergency accommodation by IPAS. He also said that a new resident welfare team was established within IPAS to manage cases of individual families and residents having special reception needs. The Minister stated that IPAS was committed to working with Tusla in 2021 to develop interagency protocols. He also indicated that all existing and new centres will be required to develop a child safeguarding statement and that IPAS will work with Tusla to ensure that compliance with child safeguarding statements and Children First legislation³⁴⁷ is audited in 2021 and that child safeguarding statements would be

342 Ombudsman for Children (2021). Safety and welfare of children in Direct Provision, p. 5.

343 See for example Power, J. (2021). 'Child protection failings in direct provision criticised', *The Irish Times*, 27 April; Colgan, L. (2021). 'Children living in Direct Provision being failed by Government, says Ombudsman for Children' *Irish Mirror*, 28 April; E. Moloney (2021). 'Government failing to implement changes to safeguard children in Direct Provision, Ombudsman finds', *Irish Independent*, 27 April.

344 Ogunsanya, L. (2021). 'Dáil Response to Ombudsman for Children's Report on Direct Provision System', *Dáil*, 30 April, www.didean.ie; Barnardos (2021). 'Barnardos calls for immediate action to enhance measures of protection for children living in Direct Provision in light of Ombudsman report', 27 April, www.barnardos.ie.

345 Houses of the Oireachtas (2021). Committee on Public Petitions debate: Safety and Welfare of Children in Direct Provision Report: Discussion, 22 June, www.oireachtas.ie.

346 DCEDIY (2021). 'Response to parliamentary question 36448/21', 6 July, www.oireachtas.ie.

347 See Children First Act 2015.

translated into ‘all relevant languages across all centres’. He said that additional child safety training would be rolled out to all centre managers in 2021, as soon as COVID-19 restrictions were lifted. He indicated that he would engage with the Department of Justice (Justice) about delays in processing times. In response to concerns raised about the non-implementation of the McMahon report, the Minister said that many McMahon report recommendations had been implemented or were in progress.³⁴⁸

5.2.5 Public consultation on Ireland’s report to the UN Committee on the Rights of the Child

Under the United Nations Convention on the Rights of the Child (CRC), all state parties to the Convention are obligated to submit regular reports to the United Nations Committee on the Rights of the Child (UNCRC) on how the CRC is being implemented. Ireland is due to submit its combined fifth and sixth state report to the Committee in February 2022. It will then attend a public examination in Switzerland, following which the UNCRC will make observations and recommendations to Ireland on the implementation of the CRC.³⁴⁹

DCEDIY consulted with civil society stakeholders, children and young people in June 2021.³⁵⁰ The majority of the submissions from the stakeholders consultation on the report focused on: violence against children; education, leisure and cultural activities; general measures of implementation; and basic health and welfare.³⁵¹ One of the breakout groups at the civil society consultation (June 2021) specifically addressed migrants and ethnic minorities.³⁵² This group noted that accommodation for children in Direct Provision and sites for Traveller and Roma communities are not fit for purpose, that reduced timetables and healthcare issues had greater negative impacts on migrant children and children in Direct Provision, that parents’ qualifications were not being recognised, and that racism was a persistent issue. They recommended the implementation of existing plans and strategies, the need for more and better data collection, and the inclusion of targets and monitoring in the design of plans from the beginning.³⁵³

DCEDIY then prepared the draft report,³⁵⁴ and opened a public consultation on the draft report in October 2021. It received a total of 138 submissions.³⁵⁵ The draft report outlines the actions that Ireland has taken since its last review in 2016 to address these

348 DCEDIY (2021). ‘Response to parliamentary question 36448/21’, 6 July, www.oireachtas.ie.

349 DCEDIY (2021). Draft combined fifth and sixth state report of Ireland to the UN Committee on the Rights of the Child.

350 DCEDIY (2021). Civil society stakeholders’ consultation on Ireland’s combined fifth and sixth periodic reports under the UN Convention on the Rights of the Child: Report, 2 June.

351 Ibid.

352 Ibid.

353 Ibid.

354 DCEDIY (2021). Draft combined fifth and sixth state report of Ireland to the UN Committee on the Rights of the Child.

355 DCEDIY (2021). Report of public consultation on Ireland’s combined fifth and sixth report to the UN Committee on the Rights of the Child, November.

issues and responds to 112 issues raised by UNCRC in a 2020 document,³⁵⁶ 80 of which received comments during the public consultation.³⁵⁷ The following issues addressed in the draft report are relevant to migration.

- Progress updating hate crime legislation and developing a national action plan against racism, including the participation of children;
- Simplify documentation required for birth registration, particularly for children belonging to minority groups and for asylum-seeking, refugee and migrant children;
- Ensure that all stateless children born in the State party, irrespective of residency status, have access to citizenship;
- Adopt a statelessness determination procedure in accordance with international standards;
- Ensure access to free, high-quality primary health services and personnel, including through the issuance of medical cards, for asylum-seeking, refugee and migrant children (among others);
- Ensure the effective implementation of the *Roadmap for Social Inclusion 2020-2025* to reduce poverty among children in vulnerable situations such as refugee children (among others);
- Ensure access to quality education, including by eliminating hidden costs and ensuring equitable access to the online environment, for children in disadvantaged or vulnerable situations, including asylum-seeking, refugee and migrant children (among others);
- Assess the impact of the *Education (Admission to Schools) Act 2018* in ensuring children's right to education without discrimination, including in cases where admission can be denied on religious grounds; and
- Provide children, in particular asylum-seeking, refugee and migrant children (among others) with accessible and inclusive sporting, recreational, leisure, cultural and artistic activities.

Specific articles related to asylum-seeking, refugee and migrant children include the following:

- Provide asylum-seeking, refugee and migrant children with access to education, health services, nutritious and culturally appropriate food, recreational areas, and social protection including child allowance;
- Implement the recommendations of the Expert Group on Direct Provision, including to replace Direct Provision;
- Establish an independent monitoring mechanism to enforce the national standards for accommodation centres, including through independent inspections;
- Adopt a comprehensive legal framework to address the needs of migrant children, including unaccompanied children and children with an irregular migration status,

356 List of Issues Prior to Reporting – Appendix 1 of the report.

357 DCEDIY (2021). Report of public consultation on Ireland's combined fifth and sixth report to the Committee on the Rights of the Child, November.

and guarantee their rights to legal residency, and independent legal advice, and address all violations of those rights; and

- Ensure that a vulnerability assessment is conducted for all unaccompanied children within 30 days of their arrival in the State party, and that applications for legal residency are promptly processed.

The final report was due to be submitted in February 2022.³⁵⁸

5.2.6 Domestic violence

The Immigrant Council of Ireland reported a 12% increase in domestic violence cases reported to them by migrant women, in 2021 (to 25 November 2021), compared with 2020. They attributed this to the economic and social stresses brought about by the COVID-19 pandemic.³⁵⁹ In 2021, they launched a ‘community navigator’ project, in which they trained migrant women to support migrant victims of domestic abuse.³⁶⁰

Nasc also engaged with the issue of domestic violence, writing submissions to both the European Commission consultation on ‘Preventing and combatting gender-based violence against women and domestic violence’ and writing a specific submission about domestic violence leave for the Migrant Integration Strategy Monitoring and Coordination Committee. In their submission to the European Commission, they highlighted issues such as the risk to domestic violence victims of becoming undocumented where immigration permissions are linked to their partner, a lack of access to information, a lack of legal aid for some processes, inconsistency in provision and quality of interpreters, the lack of an immigration firewall for victims of domestic violence, and a lack of access to refuge spaces depending on immigration status.³⁶¹ They also highlighted the problem of Stamp 3 residence permits, which are often granted to spouses and partners of employment permit holders and which do not allow access to the labour market, social welfare payments, or housing supports and often leave people entirely financially dependent on their partners.³⁶²

In its submission on paid domestic violence leave, Nasc also urged the Government to review its *Victims of domestic violence immigration guidelines* and to consider granting migrants with permits based on a family relationship an independent immigration permission after two years in the State.³⁶³ They advocate for making the domestic violence leave administration as simple as possible for the employee, ensuring that

358 DCEDIY (2021). Report of public consultation on Ireland’s combined fifth and sixth report to the UN Committee on the Rights of the Child.

359 Immigrant Council of Ireland (2021). ‘12% increase in number of domestic violence cases experienced by migrant women compared to 2020’, 25 November, www.immigrantcouncil.ie.

360 Immigrant Council of Ireland (2021). ‘Immigrant Council launch new initiative to help migrant victims of domestic abuse access supports’, 16 September, www.immigrantcouncil.ie.

361 Nasc (2021). ‘Submission by Nasc, Migrant and Refugee Rights Centre to the European Commission consultation on “Preventing and combatting gender-based violence against women and domestic violence”’.

362 Ibid.

363 Nasc (2021). ‘Domestic violence leave submission: Migrant Integration Strategy Monitoring and Coordination Committee’.

information is widely available. They also advocate for ensuring flexibility in evidence provision and additional unpaid leave.

5.3 RESEARCH

5.3.1 Review of Ireland's response to gender-based violence against migrant women

Niamh Reilly, Nina Sahraoui and Orla McGarry published a critical review of Ireland's policy response to gender-based violence that affects migrant women in the journal *Frontiers in Human Dynamics*.³⁶⁴ The paper reviewed policy, law, and NGO documents, and traced the development and interpretation in the Irish context of ideas that can shape policy. The authors identified four areas of policy response, which the authors claim reveal a pattern of policy failure by the State. These are:

- assessment of vulnerability of applicants for international protection;
- addressing gender-based violence in the context of Direct Provision accommodation;
- identification and referral of trafficking victims; and
- response to domestic violence linked to dependent migration status.

The authors link the failures with a narrowing and individualising framing of vulnerability, a lack of application of an intersectional gender perspective, the diminished influence of human rights norms, and declining resource allocation to addressing gender-based violence and integration.

364 Reilly, N., N. Sahraoui and O. McGarry (2021). 'Exclusion, minimization, inaction: A critical review of Ireland's policy response to gender-based violence as it affects migrant women', *Frontiers in Human Dynamics*, 17 June.

CHAPTER 6

Citizenship and statelessness

6.1 STATISTICS

6.1.1 Citizenship acquisition

There were 11,970 applications for Irish citizenship in 2021.³⁶⁵ In that same year, 9,783 citizenship certificates were issued and 695 applications were refused. This indicates a significantly higher number of total decisions made compared with previous years, with a 91% increase from 2020 (see Figure 6.1). This was also a significant increase in the number of refusals, in particular compared with the prior two years (49 refusals in 2019 and 6 in 2020).³⁶⁶ Over one-fifth (22.8%) of certificates issued were on the grounds of marriage to an Irish national.³⁶⁷ Processing times increased significantly in 2021, with an average processing time of 30 months and a median processing time of 24 months, compared with 14 and 12 months respectively in 2020.³⁶⁸ This was in spite of steps by the Department of Justice (Justice) to speed up the processing of applications such as new digitisation measures, including online tax clearance, online vetting and online payments.³⁶⁹ A temporary statutory declaration process, replacing citizenship ceremonies, also enabled the continued issuing of certificates of naturalisation during the COVID-19 pandemic.³⁷⁰

365 Department of Justice (2022). 'Response to parliamentary question 5229/22', 2 February, www.oireachtas.ie.

366 McGinnity, F. et al. (forthcoming). *Monitoring report on integration 2022*.

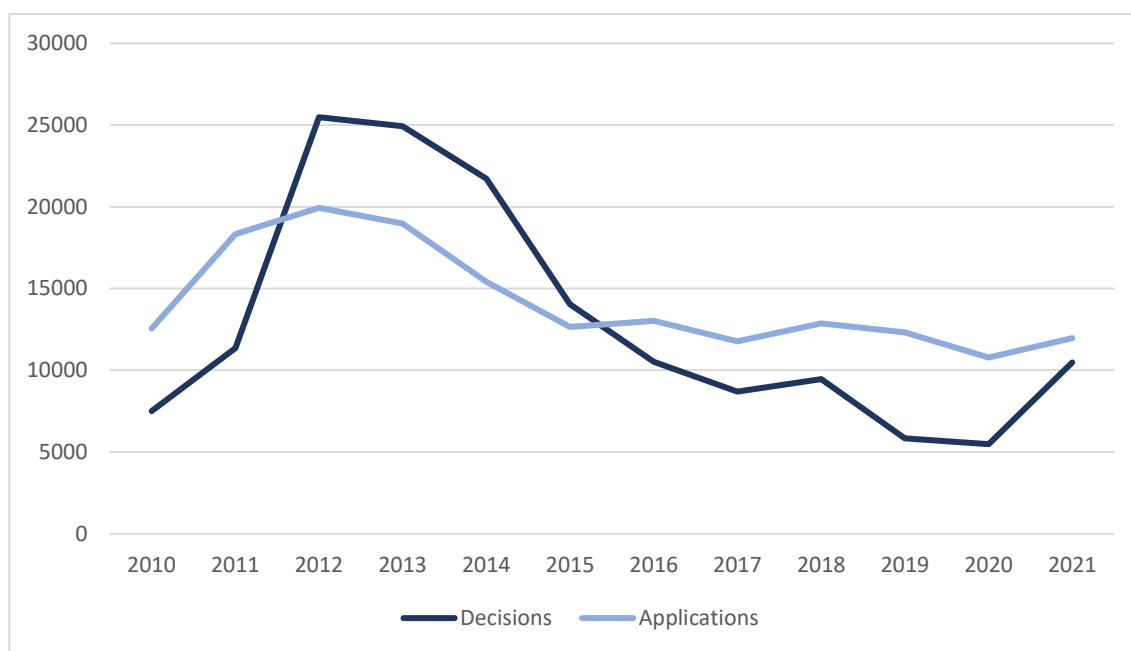
367 Ibid.

368 Ibid.

369 Department of Justice (2022). 'Response to parliamentary question 5229/22', 2 February, www.oireachtas.ie.

370 Department of Justice (2021). 'Response to parliamentary question 57782/21', 25 November, www.oireachtas.ie.

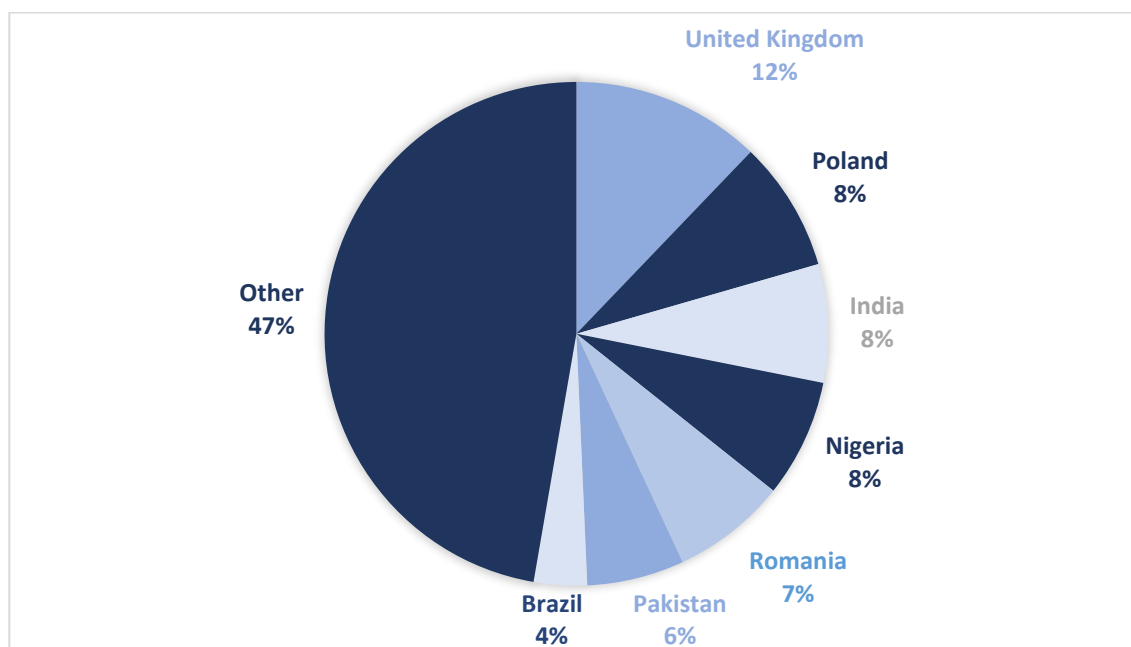
FIGURE 6.1 CITIZENSHIP: APPLICATIONS AND DECISIONS 2010–2021



Source: McGinnity, F. et al. (forthcoming). *Monitoring report on integration 2022*.

In 2021, the main nationality of those acquiring citizenship was British (see Figure 6.2), whose prominence in the naturalisation statistics in Ireland has been increasing since 2016.³⁷¹ Other top nationalities in 2021 are shown in Figure 6.2 and are largely similar to previous years.

FIGURE 6.2 MAIN NATIONALITIES OF NATURALISED CITIZENS IN 2021



Source: McGinnity, F. et al. (forthcoming). *Monitoring report on integration 2022*.

371 McGinnity, F. et al. (forthcoming). *Monitoring report on integration 2022*.

6.2 DEVELOPMENTS

6.2.1 Introduction of scorecard approach and new passport process

In December 2021, the Government announced a new approach for establishing identity and residency for naturalisation applications, which applied from January 2022.³⁷² The change was made following a review by Justice that found that significant resources were being diverted from general processing by incorrectly submitted applications, which led to an overall longer processing time.³⁷³ The new approach uses a ‘scorecard’ approach, which gives predetermined points to different proofs of residency and identity. Applicants are required to reach 150 points for proof of residency documents in each of the years proof is required and 150 points for establishing identity. Where an applicant cannot reach 150 points for establishing their identity, they are required to communicate in a covering letter (with documentary evidence) the steps they have taken to obtain the needed documents.³⁷⁴ The introduction of this scorecard approach was broadly welcomed in providing further clarification for applicants.³⁷⁵

The Government also announced that, from January 2022, new applicants for citizenship are not required to submit their original passport with their initial application. Instead, applicants can now provide a full colour copy of each page of their passport and all previous passports containing stamps which contribute towards the period of reckonable residency claimed. The colour copy must be certified by a solicitor, commissioner for oaths or notary public and submitted along with the application form.³⁷⁶

6.2.2 Single Person Committee of Inquiry

The Single Person Committee of Inquiry was established in 2021 to review requests for disclosure of the information relied upon in refusals of naturalisation on the grounds of national security concerns.³⁷⁷ The review will only cover decisions made after 30 September 2020 and will be conducted by retired Judge John Hedigan. Applicants can request a review within three months of the decision, and the Single Person Committee can advise the Minister for Justice as to whether and to what extent it is possible to make disclosure of the security information to the applicant.³⁷⁸

372 Department of Justice (2021). ‘Scorecard approach being introduced for Citizenship Applications from January 2022’, 31 December, www.irishimmigration.ie; Department of Justice (2022). ‘Proofs of residence’, 20 May, www.irishimmigration.ie.
 373 Department of Justice (2022). ‘Response to parliamentary question 11765/22’, 1 March, www.oireachtas.ie.
 374 Department of Justice (2021). ‘Scorecard approach being introduced for Citizenship Applications from January 2022’, 31 December; Department of Justice (2022). ‘Proofs of residence’, 20 May, www.irishimmigration.ie.
 375 AIDA (2022). Country report: Ireland 2021 update, p. 123.
 376 Department of Justice (2021). ‘New immigration changes announced’, 15 November, www.irishimmigration.ie.
 377 Department of Justice (2021). ‘Single Person Committee of Inquiry set up to review refusals of Irish Citizenship where National Security concerns arise’, 22 July, www.irishimmigration.ie.
 378 Ibid.

6.2.3 Proposed changes to naturalisation period and residency requirements

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021*, which was published in June 2021, proposes a number of legislative changes across different areas. One of these is the reduction of the residency requirement for the naturalisation of children born in the State (see Section 5.2.3). It also proposes to amend the ‘continuous residency’ requirement to allow for a total absence of up to 70 days from the State in the year preceding an application for citizenship, with a further 30 days available where necessitated by exceptional circumstances.³⁷⁹ These exceptional circumstances include family or personal circumstances, health requirements, requirements in the course of employment, requirements in a course of study, voluntary service, humanitarian considerations, or other circumstances where the Minister considers them to be outside the applicant’s control.³⁸⁰ The move to define ‘continuous residency’ comes in the wake of confusion and case law surrounding this condition.³⁸¹

The changes in relation to the continuous residency requirement were welcomed by the Law Society of Ireland in its submission on the Bill, but it recommended that there is no upper limit placed on the exceptional circumstances clause.³⁸²

6.2.4 Universal Periodic Review submission on statelessness

As part of the consultation process for the Universal Periodic Review (UPR, see Section 2.6.1), the Immigrant Council of Ireland, the European Network on Statelessness and the Institute on Statelessness and Inclusion made a joint submission on statelessness and the right to nationality in Ireland. The submission highlights challenges in accessing the right to nationality in Ireland. It notes that while there are limited data available in Ireland, the Immigrant Council of Ireland had found in its work that groups most at risk of statelessness were people from former USSR states, Rohingya, and members of minorities such as Roma and Bidoon.³⁸³

In stakeholder submissions, UNHCR and the CERD committee both expressed concern over the lack of a statelessness determination procedure and recommended that Ireland establish such a procedure.³⁸⁴ This recommendation was not made in the UN working group report, however.

379 EMN Ireland (2021). ‘Shorter residence requirement for naturalisation and longer period for voluntary return among changes planned in new Bill’, 9 June, www.emn.ie.

380 General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021, Head 45.

381 Sinnott Solicitors (2021). ‘Changes to Irish citizenship laws’, 11 June, www.sinnott.ie.

382 Law Society of Ireland (2021). ‘Submission on the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021’, p. 6.

383 Immigrant Council of Ireland, European Network on Statelessness and Institute on Statelessness and Inclusion (2021). ‘Joint Submission to the Human Rights Council at the 39th Session of the Universal Periodic Review: Ireland’, p. 4.

384 Human Rights Council (2021). ‘Summary of stakeholder submissions on Ireland’ A/HRC/WG.6/39/IRL/3, 12 August.

6.3 RESEARCH

6.3.1 Statelessness Index

An update to the Statelessness Index – a European Network on Statelessness tool which assesses how countries in Europe protect stateless people and what they are doing to prevent and reduce statelessness – for Ireland was concluded during 2021. The Statelessness Index assesses countries across multiple categories, rating the country's framework along a five-point scale. Ireland received one positive point, four somewhat positive, ten positive and negative, and ten somewhat negative points.³⁸⁵ In a comparative assessment of European countries' statelessness determination procedure, the European Network on Statelessness placed Ireland in the 'somewhat negative' category.³⁸⁶

A summary of the assessment is provided below.³⁸⁷

- International and regional instruments
 - While Ireland has acceded to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, neither of these has been fully incorporated into domestic law.
 - Ireland maintains a reservation to Article 29(1) of the 1954 Convention, that Ireland does not accord stateless people more favourable treatment than for other non-nationals relating to stamp duties and income tax. Ireland's declaration accompanying the 1961 Convention also declares that Ireland retains the right to deprive naturalised Irish nationals of their nationality in accordance with domestic law.
 - Ireland is not state party to the Council of Europe's European Convention on Nationality,³⁸⁸ nor the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession,³⁸⁹ and does not participate in the EU Return Directive.
- Stateless population data
 - Other than Census data every four years, there are no data available on statelessness in Ireland. No data are usually published on the number of stateless people applying for international protection, and no data are published on nationalities in immigration detention.
- Stateless determination and status
 - No definition of a 'stateless person' is provided in Irish law.
 - IPO staff receive training on nationality and statelessness, but there is no mandatory training on the subject for judges or lawyers.

385 Stateless Index 'Ireland'; see <https://index.statelessness.eu/country/ireland>. The Index was developed and is maintained by the civil society alliance, the European Network on Statelessness (ENS).

386 Stateless Index (2021), Thematic briefing: Statelessness determination and protection in Europe: good practice, challenges, and risks, p. 7.

387 Stateless Index 'Ireland', www.index.statelessness.eu.

388 Council of Europe, European Convention on Nationality, European Treaty Series No. 166.

389 Council of Europe, Convention on the Avoidance of Statelessness in Relation to State Succession European Treaty Series No. 200.

- There is no specific statelessness procedure leading to a stateless status in Ireland, but statelessness may be examined in the context of other immigration or asylum-related procedures, where it is examined on an ad hoc basis.
 - There is no specific obligation in law on the authorities to consider a claim of statelessness.
 - There is no clear policy on the burden of proof when determining or identifying statelessness. In practice, applicants must effectively prove (repeatedly) that they are unable to obtain nationality or identity documents from a national authority.
 - In theory, legal aid is available. However, in practice, civil legal aid is only available in international protection applications.
 - In practice, while workarounds may be found such as waiving the need for identity documents, these decisions are often not made in writing and decisions often do not explicitly recognise statelessness.
 - Stateless people applying for residence outside the international protection process are usually provided with terms and conditions by the Minister for Justice on an administrative basis and rights are not set out in law.
- Detention
 - Immigration-related detention in Ireland is the exception rather than the norm and stateless people are not routinely detained, but there is no requirement for a country of removal to be identified in the deportation order and statelessness is not proactively considered in the decision to detain.
- Reduction and prevention
 - While refugees and stateless people benefit from a reduced period of residence to apply for naturalisation (three years rather than five), granting of nationality is discretionary and it may be refused on the basis of the stateless person being unable to prove their statelessness (which is often not possible in Ireland).
 - The Minister for Justice has granted Irish nationality to some individuals who have asserted they are stateless and the immigration services have waived the requirement to provide evidence of identity during the application process.
 - There is a partial safeguard in Irish nationality law entitling any child born in Ireland to nationality from birth if they are ‘not entitled to citizenship of any other country’. However, this leaves a gap for children who may be entitled but cannot acquire in practice the nationality of one of their parents.
 - There is a safeguard in law for foundlings to acquire Irish nationality automatically at birth, but there is no published guidance on how this is implemented in practice.
 - Adopted children do not lose their Irish nationality. A child adopted by at least one Irish national becomes Irish upon the adoption being recognised by the State.
 - Children born to Irish parents benefit from unconditional *ius sanguinis*.
 - There are provisions in law permitting deprivation of nationality for naturalised Irish nationals in certain circumstances and there is no specific safeguard against statelessness. However, there are no provisions on deprivation of nationality for national security purposes. The provisions on deprivation of nationality affect only naturalised Irish nationals, not Irish nationals by birth, so are considered discriminatory.³⁹⁰

390 Statelessness Index (2021). *Country briefing: Ireland*, www.index.statelessness.eu.

6.4 CASE LAW

6.4.1 Constitutionality of procedure for revoking naturalisation: *Damache v Minister for Justice [2021] IESC 6*

The applicant was an Algerian national who had been granted a certificate of naturalisation but subsequently pleaded guilty in the US to a charge of materially assisting in an Islamist terrorist conspiracy. The Minister subsequently issued a proposal to revoke the applicant's naturalisation on the basis that he had failed in his duty of loyalty and fidelity to the State.

The applicant instituted judicial review proceedings challenging the procedure by which revocation of naturalisation is determined under the *Irish Nationality and Citizenship Act 1956*. The applicant complained *inter alia* that the fact that the Minister initiated the revocation process, appointed the committee charged with conducting the inquiry and then reached the final decision was in breach of the constitutional right to fair procedures. In a judgment of 14 October 2020 ([2020] IESC 63), the Supreme Court stated that given the importance of citizenship to the status of an individual, the process by which citizenship may be lost must be robust and at the very least must observe minimum procedural standards in order to comply with the State's human rights obligations. There was nothing to suggest that the members of the committee charged with conducting the inquiry were anything other than independent in the exercise of their function and there was no breach of natural justice on that basis. However, the Minister had made it clear that the findings of the committee were not binding on him. It was the Minister who initiated the process, whose representatives make the case for revocation before the committee, and it was them who ultimately make the decision to revoke. The Supreme Court concluded that the process as provided for in section 19 of the *Irish Nationality and Citizenship Act 1956* did not provide the procedural safeguards required to meet the high standards of natural justice applicable to a person facing such severe consequences by reason of the absence of an impartial and independent decision maker. The Supreme Court subsequently heard further argument on the scope of the final orders which should be made, and in particular whether section 19 of the 1956 Act should be struck down in its entirety or only certain subsections.

The Supreme Court declared that sections 19(2) and 19(3) of the *Irish Nationality and Citizenship Act 1956* were invalid having regard to the Constitution. This case was about the procedural safeguards contained in section 19 of the 1956 Act before a certificate of naturalisation could be revoked. It was never suggested that a power to revoke could not be provided for; neither was it suggested that the grounds for revocation were inappropriate or suspect in any way. Sections 19(2) and 19(3) must be struck down in their entirety as they were part of the process involved in the revocation of a certificate of naturalisation. Section 19(1) was not part of the process for revoking a certificate of naturalisation and therefore would not be struck down, but before any revocation could

take place it would be necessary to introduce a new process which meets the requirements of natural justice. Given that there was a statutory scheme in place, it would be appropriate for the Oireachtas to determine the basis of any proposed scheme to replace that which has been found wanting, whether the process should be dealt with by way of statutory amendment or, alternatively, by way of statute empowering the Minister to create an administrative scheme. It followed therefore that the Minister may not establish an administrative scheme to exercise the powers under the surviving parts of the section without statutory authority. Sections 19(4), (5) and (6) would not be declared invalid as they did not concern the revocation procedure.

CHAPTER 7

Integration and inclusion

7.1 STATISTICS

7.1.1 Irish Human Rights and Equality Commission survey on attitudes to multiculturalism

The Irish Human Rights and Equality Commission (IHREC) conducted a survey in 2021 that covered attitudes towards multiculturalism in Ireland. A total of 1,201 people were surveyed, with weights and quotas applied to increase the representativity of the sample. The survey covered several areas relevant to integration. Key findings included the following.

- 32% of survey respondents said that they either witnessed or experienced racism in the previous 12 months. Those over 55 years were least likely to respond to this question in the affirmative (25%) and those aged 25-34 were most likely (43%).
- 54% of respondents agreed that ‘Irish people welcome diversity and interculturalism in society’, an increase on 2020 (47%).
- 91% of respondents agreed that ‘no matter who you are or where you come from, you should be treated equally’.
- 80% of respondents agreed that ‘Ireland benefits as a whole from being a more inclusive and diverse society’. Notably, 100% of those aged 18-24 agreed with the statement, with lower numbers for older age groups. Unemployed respondents were over the index for disagreement.
- 78% of respondents supported the inclusion of a new ground in Ireland’s equality law to protect people against discrimination due to their socio-economic status, with those who had witnessed or experienced racism over index.
- The survey also asked about perceptions of fairness. Only around half (53%) of people surveyed agreed that decisions concerning them are taken in a fair way. A significant disparity existed between respondents who had witnessed or experienced racism (27% agreeing) and those who had not (58% agreeing).
- The survey also asked about the perception of the effectiveness of efforts to fight all forms of discrimination. Almost half (48%) of respondents indicated that these efforts were effective. Those who had experienced discrimination on the grounds of race or disability were the most likely to rate efforts as not effective.
- Only around one-quarter (26%) of respondents stated that they would know who to contact for support with discrimination.³⁹¹

391 Amárach Research (2021). ‘IHREC annual poll 2021 survey results’, www.ihrec.ie.

7.1.2 Ipsos Global Trends survey

For the first time, Ipsos' Global Trends survey included Ireland in 2021. The survey examines public attitudes and values, and the 2021 survey was conducted in 25 countries around the world.³⁹² The sample size in Ireland was around 1,000.³⁹³ While there is no historically comparable data for Ireland, key findings for Ireland related to social cohesion included the following.

- 81% of respondents said that their local area is a place where people from different backgrounds get on well together, placing Ireland close to the middle of the 25 countries surveyed.
- 46% agreed that people from different backgrounds and ethnic minorities are treated fairly, also placing Ireland around the middle of the surveyed countries.³⁹⁴

Respondents in Ireland were the least likely from the 25 countries to feel that there were too many immigrants in the country or to hold the belief that there is more and more conflict between people who don't share the same values.³⁹⁵

7.2 DEVELOPMENTS

7.2.1 Extension of integration strategy

The Migrant Integration Strategy, originally foreseen to run from 2017 to 2020, was extended until the end of 2021, in light of 'the impact of the COVID-19 pandemic on the Strategy's implementation.'³⁹⁶ The Department of Children, Equality, Disability, Integration and Youth (DCEDIY) commissioned an independent evaluation of the strategy to inform the development of the next equality strategies. The consultation process to develop a new migrant integration strategy was due to begin in early 2022.³⁹⁷

7.2.2 County-level integration strategies

Several counties adopted integration strategies in 2021, including Waterford,³⁹⁸ Kilkenny³⁹⁹ and Kildare.⁴⁰⁰ Both Tipperary and Dublin City also began the process of developing a migrant integration strategy in 2021, with Tipperary launching the migrant

392 Ipsos (2022). Ipsos global trends 2021: Aftershocks and continuity, www.ipsos.com.

393 Ibid.

394 Ibid.

395 Loscher, D. (2021) 'Ireland is more open and more equal than other countries', *The Irish Times*, 13 November, www.irishtimes.com.

396 Department of Children, Equality, Disability, Integration and Youth (2021). 'Response to parliamentary questions 59740/21 and 59744/21', 2 December, www.oireachtas.ie.

397 Ibid.

398 Waterford City and County Council (2021). *Waterford Migrant Integration Strategy 2021–2024*, www.waterfordcouncil.ie.

399 Kilkenny County Council (2021). *Kilkenny Migrant Integration Action Plan*, www.cklp.ie.

400 Kildare County Council (2021). *County Kildare Integration Strategy 2020–2026*, www.countykildarelp.ie.

survey that will inform its strategy⁴⁰¹ and Dublin City Council publishing a framework.⁴⁰² The strategies were informed by stakeholder consultations, as well as qualitative and quantitative research.

7.2.3 Anti-Racism Committee and National Action Plan Against Racism

In April 2021, the Anti-Racism Committee (ARC), established in 2019, published an interim report,⁴⁰³ and launched a public consultation as part of the process to develop a new national action plan against racism in Ireland. This first report of the ARC sets out its broad approach and identifies priority issues for the national action plan and recommendations for immediate action. The three recommendations for immediate action were as follows.

- Remove Ireland’s reservation to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which requires states parties to outlaw incitement to racial discrimination and violence, as well as the propagation of ideas of racial superiority, and to prohibit organisations that promote or incite discrimination. Ireland’s reservation to this Article was that Ireland would undertake it with due regard to the principles embodied in the Universal Declaration of Human Rights and Article 5 of CERD, so that ‘the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised’.⁴⁰⁴
- Take steps to put in place ethnic equality monitoring across all public services.
- Remove all barriers to accessing support for migrant women experiencing gender-based violence.⁴⁰⁵

The public consultation ran from April to July 2021 around four themes: access to justice; all forms of media and communications; employment, education, health and accommodation; and inclusion and participation.⁴⁰⁶ Over 100 written submissions were

401 North Tipperary Development Company (n.d.). ‘Tipperary County Council launch migrant survey’, www.ntdc.ie.

402 Dublin City Council (2021). A framework towards an Integration and Intercultural Strategy for Dublin City Council 2021–2025, Report No. 177/2021, www.dublincity.ie.

403 Department of Children, Equality, Disability, Integration and Youth (2021). ‘Minister O’Gorman publishes Interim Report of Independent Anti-Racism Committee and welcomes the launch of the Committee’s Public Consultation’, 21 April, www.gov.ie.

404 The full reservation/interpretive declaration reads: Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination provides that the measures specifically described in sub-paragraphs (a), (b) and (c) shall be undertaken with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the Convention. Ireland therefore considers that through such measures, the right to freedom of opinion and expression and the right to peaceful assembly and association may not be jeopardised. These rights are laid down in Articles 19 and 20 of the Universal Declaration of Human Rights; they were reaffirmed by the General Assembly of the United Nations when it adopted Articles 19 and 21 of the International Covenant on Civil and Political Rights and are referred to in Article 5 (d)(viii) and (ix) of the present Convention.

405 Department of Children, Equality, Disability, Integration and Youth (2021). ‘Minister O’Gorman publishes Interim Report of Independent Anti-Racism Committee and welcomes the launch of the Committee’s Public Consultation’, 21 April, www.gov.ie.

406 Anti-Racism Committee (2021). ‘Towards a National Action Plan Against Racism for Ireland Public Consultation 2021’, 21 April.

made by a diverse range of organisations, including the ESRI,⁴⁰⁷ IHREC,⁴⁰⁸ the Citizens Information Board,⁴⁰⁹ the National Women’s Council,⁴¹⁰ National Youth Council,⁴¹¹ the Irish Congress of Trade Unions,⁴¹² Pavee Point,⁴¹³ the Free Legal Advice Centre,⁴¹⁴ Early Childhood Ireland,⁴¹⁵ Nasc,⁴¹⁶ Community Work Ireland⁴¹⁷ and many others. In addition to this, 14 public consultation sessions were held, attended by 170 people in total.⁴¹⁸

The original timeline for sending the national action plan to the Minister for Children, Equality, Disability, Integration and Youth was August 2021;⁴¹⁹ however, the Minister had not received the plan by the end of 2021.⁴²⁰

7.2.4 General Scheme of the Criminal Justice (Hate Crime) Bill 2021

The *General Scheme of the Criminal Justice (Hate Crime) Bill 2021* was published on 16 April 2021.⁴²¹ It was referred for pre-legislative scrutiny to the Oireachtas Joint Committee on Justice in April 2021,⁴²² which involved discussions with a variety of academia, civil society and government representatives at a session of the Committee in November 2021.⁴²³ The Bill follows on from a public consultation on hate speech, the results of which were published in December 2020.⁴²⁴

The Bill is split into two parts, covering incitement to hatred and hate crime. Incitement to hatred would be a new offence in Ireland, and covers inciting hatred against a person or persons because they are associated with a protected characteristic and

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- 407 McGinnity, F., E. McCullough and E. Quinn (2021). ‘Submission to the Anti-Racism Committee for the Development of a National Action Plan Against Racism (NAPAR)’.
- 408 IHREC (2021). ‘Development a National Action Plan Against Racism: Submission to the Anti-Racism Committee’.
- 409 Citizens Information Board (2021). ‘Developing a National Action Plan against Racism A Submission by the Citizens Information Board’.
- 410 National Women Council (2021). ‘Towards a National Action Plan Against Racism in Ireland’.
- 411 National Youth Council of Ireland (2021). ‘Submission on the National Action Plan Against Racism’.
- 412 Irish Congress of Trade Unions (2021). ‘Congress Submission Towards a National Action Plan Against Racism for Ireland’.
- 413 Pavee Point (2021). ‘Submission to the Anti-Racism Committee The National Action Plan Against Racism’.
- 414 FLAC (2021). ‘FLAC Submission to the Independent Anti-Racism Committee’s Public Consultation: Towards a National Action Plan Against Racism in Ireland’.
- 415 Early Childhood Ireland (2021). ‘Submission towards a National Action Plan Against Racism for Ireland’.
- 416 Nasc (2021). ‘Submission to the Anti-Racism Committee Public Consultation’.
- 417 Community Work Ireland (2021). ‘National Action Plan against Racism: CWI submission’.
- 418 DCEDIY (2022). ‘Response to parliamentary question 5445/22’, 3 February, www.oireachtas.ie.
- 419 Government of Ireland (2020). ‘Interim Report to the Minister for Children, Equality, Disability, Integration and Youth: Anti-Racism Committee’.
- 420 DCEDIY (2021). ‘Response to parliamentary question 15305/22’, www.oireachtas.ie.
- 421 Department of Justice (2021). ‘Tough sentences for hate crimes under new Bill from Minister McEntee’, 16 April, www.gov.ie.
- 422 Houses of the Oireachtas (2022). Report on Pre-Legislative Scrutiny of the General Scheme of the Criminal Justice (Hate Crime) Bill 2021, p. 5.
- 423 Houses of the Oireachtas (2021). ‘Joint Committee on Justice to begin pre-legislative scrutiny of the General Scheme of the Criminal Justice (Hate Crimes) Bill 2021’, 17 November, www.oireachtas.ie.
- 424 Department of Justice (2021). *Legislating for hate speech and hate crime in Ireland: Report on the public consultation 2020*; Department of Justice (2020). ‘Minister McEntee launches findings of public consultation on Hate Speech and Hate Crime and commits to drafting new legislation’, 17 December, www.gov.ie.

disseminating or distributing material inciting hatred.⁴²⁵ The threshold for criminal incitement is intent or recklessness.

The other offences in the Bill are crimes aggravated by their motivation which involves prejudice against protected characteristics – race, colour, nationality, religion, ethnic or national origin, sexual orientation, gender (including gender expression or identity) and disability.⁴²⁶ The protected characteristics listed in the Bill are slightly different from those protected by other equality laws (notably excluding civil status, family status, age, and not listing membership of the Traveller community specifically,⁴²⁷ as under the Bill’s definitions, this is included in ‘ethnicity’). The crimes that can be aggravated offences under the Bill include assault, coercion, harassment, criminal damage, threat to kill or cause serious harm and endangerment. Assault aggravated by prejudice will be a different and more serious offence to ordinary assault. The Bill carries provisions for an ordinary verdict, where the ‘hate’ element of the offence has not been proven. Under the Bill, where a specific, hate-aggravated form of the offence has not been created, but the court finds that the crime was motivated by prejudice, this must be considered an aggravated factor at sentencing and placed on the formal record.⁴²⁸ The only prior legislation in Ireland that deals with hate-based offences is the *Prohibition of Incitement to Hatred Act 1989*, which the Bill is intended to replace.⁴²⁹ Ireland does not currently have any specific legislation to deal with hate crime.⁴³⁰

The proposed legislation has generally been welcomed.⁴³¹ In a submission to the Joint Committee, IHREC emphasised the need to balance the prohibition on hate speech with the right to freedom of expression, underlining the European Court of Human Rights’ position on this issue.⁴³² Submissions were also received from organisations including Nasc,⁴³³ LGBT Ireland,⁴³⁴ Pavee Point,⁴³⁵ and the Coalition Against Hate Crime.⁴³⁶ Many of these submissions emphasised the need for effective participation of affected groups in the legislative process, with many noting that while consultation took place on hate speech and incitement to hatred in 2019, this consultation did not cover hate crime,

425 Department of Justice (2021). ‘Tough sentences for hate crimes under new Bill from Minister McEntee’, 16 April, www.gov.ie.

426 Head 2, General Scheme of the Criminal Justice (Hate Crime) Bill 2021.

427 Comparison with protected characteristics in Equal Status Acts 2000–2018.

428 Department of Justice (2021). ‘Tough sentences for hate crimes under new Bill from Minister McEntee’, 16 April, www.gov.ie.

429 Houses of the Oireachtas (2021). ‘Joint Committee on Justice to begin pre-legislative scrutiny of the General Scheme of the Criminal Justice (Hate Crimes) Bill 2021’, 17 November, www.oireachtas.ie.

430 EMN Ireland (2021). ‘General Scheme of new hate crime legislation published’, 19 April, www.emn.ie.

431 See National Women’s Council (2021). ‘NWC Welcome Inclusion of Gender as a Protected Ground in Hate Crime Legislation’, 16 April, www.nwci.ie; IHREC (2022). ‘Submission on the General Scheme of the Criminal Justice (Hate Crime) Bill’; LGBT Ireland (2021). ‘LGBT Ireland Submission on Criminal Justice (Hate Crime) Bill 2021’; Nasc (2021). ‘Nasc Submission to Joint Committee on Justice on the Criminal Justice (Hate Crime) Bill 2021’.

432 IHREC (2022). ‘Submission on the General Scheme of the Criminal Justice (Hate Crime) Bill’ pp. 10-11.

433 Nasc (2021). ‘Nasc Submission to Joint Committee on Justice on the Criminal Justice (Hate Crime) Bill 2021’.

434 LGBT Ireland (2021). ‘LGBT Ireland Submission on Criminal Justice (Hate Crime) Bill 2021’.

435 Pavee Point (n.d.). ‘Submission on the General Scheme Criminal Justice (Hate Crime) Bill 2021’.

436 Coalition Against Hate Crime Ireland (2021). ‘Coalition against Hate Crime Ireland submission on the General Scheme of the Criminal Justice (Hate Crime) Bill 2021’.

which was to be covered in a later consultation that never took place.⁴³⁷ Almost all submissions mentioned the need to establish a firewall between the criminal justice system and immigration enforcement, so that people feel safe reporting incidents, and almost all emphasised the need to ensure that criminal sanctions are only one element of a policy framework that tackles racism. Many of these issues were also raised in the Joint Committee on Justice meeting on the subject in November 2021.⁴³⁸

7.2.5 Online tool for reporting hate crime

An Garda Síochána launched a new online system for reporting hate crime, as part of its Diversity and Integration Strategy. The tool responds to alleged under-reporting of racism in the country. The system is designed for non-emergency cases, and reports are examined by Gardaí who record and respond to the incidents. To support the launch of the tool, a multilingual leaflet explaining what a hate crime is and how to report it was published simultaneously and is available in all Garda stations and public offices.⁴³⁹

7.2.6 Pathways to Work Strategy

In July 2021, the Department of Social Protection published the Pathways to Work Strategy 2021–2025, a key part of the economic recovery plan.⁴⁴⁰ The strategy outlines the Government’s approach to activation and employment support policy. The aim of the strategy is to assist people back to work as the economy and the labour market recovers from COVID-19. Alongside the aims of reducing long-term unemployment, in particular youth unemployment rates and reducing unemployment durations, the strategy aims to improve unemployment rates of people from disadvantaged or minority backgrounds.⁴⁴¹ Migrants and asylum seekers are explicitly mentioned in the strategy, and proposed actions relevant (but not exclusive) to these groups include:

- the provision of English language and integration classes;
- increased access to further education and training opportunities via the Education and Training Boards;
- access to paid work internships and apprenticeships, including in the public service;
- reserved places on state employment schemes, such as Community Employment and Tús; and

437 Coalition Against Hate Crime Ireland (2021). ‘Coalition against Hate Crime Ireland submission on the General Scheme of the Criminal Justice (Hate Crime) Bill 2021; Nasc (2021). ‘Nasc Submission to Joint Committee on Justice on the Criminal Justice (Hate Crime) Bill 2021’; LGBT Ireland (2021). ‘LGBT Ireland Submission on Criminal Justice (Hate Crime) Bill 2021’.

438 Houses of the Oireachtas (2021). ‘Joint Committee on Justice debate: General Scheme of the Criminal Justice (Hate Crime) Bill 2021: Discussion’, 17 November, www.oireachtas.ie.

439 European Commission (2021). ‘Ireland: New online tool for reporting hate crime’, www.ec.europa.eu/migrant-integration; Kitty Holland (21 July 2021) ‘Hate crimes up by more than 80% in first half of 2021 – Garda figures’, *Irish Times*, 21 July.

440 Department of Social Protection (2021). *Pathways to Work 2021–2025*.

441 *Ibid.*, p. 7.

- extension of the higher level of JobsPlus subsidy to employers who recruit people from minority groups with disadvantage.⁴⁴²

However, the commitments laid out under the same heading do not mention migrants or asylum seekers, and largely focus on Traveller and Roma communities, those with a recent criminal record, lone parents and people with disabilities. The additional language and integration classes are not mentioned under the commitments section in the Strategy.

7.2.7 Other developments

On 10 December 2021, the Minister for Further and Higher Education, Research, Innovation and Science published new guidelines and toolkits to assist migrant learners to improve their English language skills and progress through further education.⁴⁴³ The suite of resources was commissioned by SOLAS⁴⁴⁴ and developed by Cavan and Monaghan Education and Training Board.⁴⁴⁵

On 15 June 2021, the Minister for Children, Equality, Disability, Integration and Youth launched the fifth annual call for proposals for the Community Integration Fund 2021. Eligible community organisations could apply for funding of €1,000 to €5,000 to support local integration initiatives, with a total of €500,000 available for 2021.⁴⁴⁶ The IHREC also made available €350,000 under its Human Rights and Equality Grant Scheme for 2021–2022 for priorities including combatting racism and racial discrimination and advancing social and economic rights and equality, with eligible activities including training and education, research, legal or policy analysis and awareness-raising activities.⁴⁴⁷

The Adult Literacy for Life (ALL) strategy was launched by the Minister for Further and Higher Education, Research, Innovation and Science in September 2021. The strategy outlines a cross-government, cross-economy and cross-society approach, seeking to ensure a society in which every adult has the necessary literacy, numeracy and digital literacy to engage in society and to fully realise their potential. One of the primary aims of the strategy is to increase investment in literacy provision and to provide more English language supports for migrants.⁴⁴⁸

442 Department of Social Protection (2021) . *Pathways to Work 2021–2025*, p. 75.

443 Department of Further and Higher Education, Research Innovation and Science (2021). ‘Minister Harris launches new resources to help migrant learners improve their English language skills’, 10 December, www.gov.ie.

444 SOLAS is a state agency established under the *Further Education and Training Act 2013*.

445 Correspondence with the Department of Further and Higher Education, Research, Innovation and Science, February 2022.

446 Department of Children, Equality, Disability, Integration and Youth (2021). ‘Minister O’Gorman invites applications to the Communities Integration Fund 2021’, 15 June, www.gov.ie.

447 IHREC (n.d.) ‘Human Rights and Equality Grants Scheme 2021-22’, www.ihrec.ie.

448 Correspondence with DFHERIS, June 2022; DFHERIS (2021) ‘“Adult Literacy for Life” – a 10-year adult literacy strategy’, www.gov.ie.

The Immigrant Council of Ireland continued to encourage active participation among migrant communities in Ireland, and in 2021 conducted a six-week training for prospective election candidates.⁴⁴⁹

7.3 RESEARCH

7.3.1 Use of healthcare services among children with a migrant background

Gretta Mohan published a paper in the journal *Sociology of Health and Illness* examining the use of healthcare services by children of migrant parents, using two cohorts of *Growing Up in Ireland* data.⁴⁵⁰ The analysis looked at visits to GPs, attendances at emergency departments and the number of nights spent in hospital in the previous 12 months. Important factors such as medical card status of the family, mother's education, the ability of the mother to read and fill out forms in English and the health status of the child were controlled for in the analysis. The research found that, for both the cohorts analysed, children born to primary caregivers from countries in the non-EU: 'Other' group (i.e. excluding UK, US, Canada and Australia) were less likely to use GP services than children of Irish-born primary caregivers. There were also differences in the use of hospital services across the migrant groups for the two cohorts. For the younger cohort, children for whom the primary caregiver was from an EU (non-UK) background were less likely to go to an emergency department or spend a night in hospital as an in-patient. For the older cohort, those in the non-EU 'Other' group were less likely to go to an emergency department or spend a night in hospital.⁴⁵¹

7.3.2 A review of measures to combat racial discrimination and promote diversity in the labour market

The ESRI published a research report which reviews international literature on effective measures to combat racial discrimination in the labour market. The report was designed to inform the development of the National Action Plan Against Racism (see Section 7.2.3). The review found that, in general:

- changing recruitment and workplace practice may be easier than changing people's attitudes, at least via a short-term intervention;
- understanding the motivation for diversity initiatives and 'buy-in' from both majority and minority workers facilitates effective implementation;
- it is important to monitor outcomes for different groups, something that is not possible without an ethnic identifier; and

449 Buczkowka, T. and A. Elmusharaf (2021). Migrant Electoral Empowerment Project: Evaluation report 2021.

450 Mohan, G. (2021). 'The influence of caregiver's migration status on child's use of healthcare services: Evidence from Ireland', *Sociology of Health and Illness*, Vol. 43, No. 3.

451 Mohan, G. (2021). 'Migrant background and children's use of healthcare services in Ireland', ESRI Research Bulletin, March.

- the most effective strategy is likely to involve the introduction and evaluation of a range of measures, as well as clear communication of their aims and effectiveness.⁴⁵²

A principal finding of the review is that there is no single effective measure that will resolve the issue of racial discrimination in the labour market, but that a range of measures should be introduced and evaluated against outcomes. Findings on specific measures included the following.

- Anti-discrimination legislation is important in order to send signals about what is acceptable, but it is not self-enforcing, and its deterrent effect is unclear. Length of proceedings, lack of awareness and risk of retaliation contribute to a low proportion of cases being taken, which lessens the deterrent effect.
- Linking grants for public contracts to equality and diversity measures can be effective.
- Wage subsidies for hiring disadvantaged groups, when carefully implemented, can significantly improve employment rates among these groups.
- The effectiveness of direct affirmative action (which sets numerical targets and quotas) depends on how it is conducted and communicated. While it has been shown to improve minority representation, it has also triggered significant backlash in other contexts. Tiebreak policies, where a minority is hired in the case of equal qualifications, generally experience less resistance.
- Diversity training is difficult to evaluate and seems to work best to increase minority representation if it is voluntary and the aims are well communicated. There is little evidence that unconscious bias training changes behaviour.
- Formalised recruitment is generally associated with greater diversity of hires, but recruitment processes need to be careful not to indirectly discriminate.
- Anonymised application procedures have the potential to increase interview call-backs for minority groups, but cannot be combined with some other measures, for example affirmative action.
- Social networks play a significant and often underestimated role in both recruitment and progression. Low recruitment can be due to low application rates of minority groups, and measures to tackle this can include outreach to schools and universities, and internships and traineeships. Mentoring and sponsorship have also been shown to facilitate the progression of minority groups within organisations.
- It is important to monitor outcomes and to evaluate the impact of measures taken to promote diversity.⁴⁵³

452 McGinnity, F. et al. (2021). Measures to combat racial diversity and promote diversity in the labour market: A review of the evidence, p. v.

453 Ibid.

7.3.3 Impact of COVID-19 on ethnic minority and migrant groups in Ireland

The National Economic and Social Council (NESC) published a report in January 2021 examining the impact of COVID-19 on ethnic minority and migrant groups in areas such as employment and income, housing, health and well-being, education, immigration services and discriminatory attitudes, as well as government responses to counteract negative impacts.⁴⁵⁴ The research involved a review of available data and research, and their application to the context of COVID-19. Key findings are outlined below.

- **Employment**
 - Non-Irish nationals were over-represented in sectors severely affected by COVID-19 closures, including accommodation and food.
 - Migrant workers are more likely to be in lower-paid jobs, and some of these have poor working and employment conditions.
 - A higher proportion of Africans and Travellers are unemployed, relative to the general population, which may lessen the impacts of any job losses caused by the pandemic.
- **Housing**
 - A higher proportion of non-Irish nationals than that found in the general population are living in rented accommodation, which increases the likelihood of overcrowding, sharing space with non-family members and having less control over the use of space.
 - Direct Provision centres are not conducive to public health guidelines such as social distancing.
 - Government responses included provisions in Direct Provision centres to facilitate social distancing and blanket bans on evictions, rent increases and mortgage breaks.
- **Health and well-being**
 - Recent research suggests that certain ethnic groups are more likely to contract COVID-19 than those who are White Irish, which may be linked to occupation and housing conditions. However, death rates are lower than those of the white Irish group, which may be related to a younger age profile.
 - Ethnic minorities make up a disproportionate number of domestic abuse service users and are likely to be affected by the rise of this abuse.
 - Government responses included a range of supports for asylum seekers, Travellers and Roma such as priority testing, helplines and accessible health guidelines.
- **Education**
 - Children of migrants and ethnic minorities have lower reading scores than others, and the closure of schools is likely to increase this disparity.
 - Some migrant parents may face particular difficulties undertaking home schooling. Disadvantaged students are less likely to have access to broadband and adequate IT devices, limiting their ability to do schoolwork remotely.

454 NESC (2021). Secretariat Covid-19 Working Paper Series: The impacts of Covid-19 on ethnic minority and migrant groups in Ireland, Research Series Paper No. 18.

- Racist attacks and representation
 - Several Asian people in Ireland reported an increase in racist attitudes towards them in 2020, which they attributed to links made between Asian individuals and the origins of COVID-19.
 - Government responses included Community Call Fora set up in local authorities to co-ordinate services provided to vulnerable people during the lockdown, which required a representative for migrants to be included among the members.

7.3.4 Gaps in settlement service provision and immigrant integration outcomes

Mary Gilmartin and Jennifer Dagg published an article in the *Journal of International Migration and Integration* on the relationship between immigrant integration outcomes in Ireland and the provision of settlement and integration services.⁴⁵⁵ Comparing integration outcomes (comparing immigrants with non-immigrants) using large-scale datasets and existing data on settlement services, they assessed the extent to which service provision addresses integration needs. They found ‘considerable gaps in the provision of appropriate settlement services that could support the enhancement of key integration outcomes’.⁴⁵⁶ They recommended improved coordination and targeting of integration service provision, taking into account integration outcomes.

7.3.5 Adequate housing

The IHREC and the ESRI published a report on monitoring adequate housing in Ireland.⁴⁵⁷ It focuses on six dimensions of adequate housing: accessibility, affordability, security of tenure, cultural adequacy, quality and location.⁴⁵⁸ The research both looks at aggregate, societal-level indicators, using survey and Census data, and examines group differences in outcomes.

Aggregate findings included an increase in housing completions from a low base (although these were stalled by COVID-19 shutdowns), and an increase in social housing output, capital spending on housing and housing supplement spending. In general, the research found that average rent has increased substantially, and that it has risen faster than average earnings. The research also found that there has been a decrease in owner-occupied repossessions in the years following the financial crisis, and that the total number of disputes between landlords and tenants reported to the Residential Tenancies Board increased between 2017 and 2019.

The report found that migrants were overrepresented on housing waiting lists and in private rental accommodation. Migrant groups were also more likely to experience

455 Gilmartin, M. and J. Dagg (2021). ‘Finding the gap: Immigrant integration outcomes and settlement service provision in the Republic of Ireland’, *Int. Migration & Integration*, Vol. 23, pp. 679–699.

456 *Ibid.*, p. 679.

457 Russell H. et al. (2021). *Monitoring adequate housing in Ireland*, IHREC Research Series.

458 *Ibid.*, p. ix; from the International Convention on Economic Social and Cultural Rights.

affordability issues than the Irish-born population on each measure of affordability analysed (30/40 rule, post-housing cost poverty rates, and the prevalence of arrears in rent or mortgage), which may be related to their reliance on the private rental sector. Migrants were also found to have lived in their accommodation for a shorter period of time compared to others, but due to limitations in the data, the authors could not rule out the possibility that this was due to preference and age.

In relation to housing quality, the study found that some migrants – specifically those from eastern Europe and non-EU countries – and their children are more likely to live in over-crowded conditions (defined as more than one person per room). The largest differences in over-crowding rates occurred between ethnic groups, with Irish Travellers, Black minorities and Asian minorities reporting worse conditions than other groups. Migrants were also especially likely to report an inability to keep the home warm.

7.3.6 Psychosocial well-being of refugee and migrant children

Researchers from University College Cork (UCC) collaborated with researchers in Greece, as part of a Horizon2020 funded project, on a study that sought to develop indicators of migrant children’s socio-cultural integration in Ireland and Greece.⁴⁵⁹ The research focused on psychosocial well-being and how it relates to integration, concentrating on migrant and refugee children in school and education. Qualitative data involved 160 participants and were collected on three levels: micro (workshops with children and parents); meso (workshops with educators and people working with migrants); and macro (interviews with policy-makers and experts in the fields of education and/or integration). The findings indicated several factors affecting socio-educational integration: confidence and self-esteem; friendships; relationships with teachers; language; bullying and racism; school climate; and housing policy. The findings confirmed previous research that ‘schools can be supportive, stabilising, integrating environments for migrant children, but they can also be sites of isolation, silencing and discrimination.’⁴⁶⁰

459 Martin S. et al. (2021). Report on psycho-social and wellbeing of refugee and migrant children, University College Cork, Cork.

460 Ibid., p. 3.

CHAPTER 8

Trafficking in human beings

8.1 STATISTICS

Thirty-four non-EEA citizens were identified as victims of human trafficking in Ireland in 2021.⁴⁶¹ A further 10 EEA nationals were identified as victims of human trafficking.⁴⁶² Of the total, 57% related to sexual exploitation, and the remainder labour exploitation. Almost two-thirds (64%) of all identified victims were female, a number rising to 96% for those identified as victims of sexual exploitation. Of those identified as victims of labour exploitation, 79% were male. Nigeria was the most common country of origin for victims (39%),⁴⁶³ and the vast majority of non-EEA victims (29 of 34) were African.⁴⁶⁴

8.2 DEVELOPMENTS

8.2.1 Expunging previous convictions

In April 2021, the Minister for Justice announced an initiative to expunge previous convictions for ‘sale of sex’ or prostitution offences. The *Criminal Law (Sexual Offences) Act 2017* makes it an offence to pay for sexual activity with a prostitute or a trafficked person. It also removed those who offer their services as a prostitute from the existing offences of soliciting for prostitution. While it has not been an offence to sell sex in Ireland since 2017, it was considered that previous convictions can be a significant obstacle for persons exiting prostitution. This new development was designed to further support vulnerable persons, including victims of trafficking who had been convicted of prostitution offences under previous legislation, and to emphasise the new focus in the law. According to the Minister for Justice, ‘The erasing of all such convictions, and the expunging of the resulting criminal records, will send an immensely important message to those in the sex trade.’⁴⁶⁵

The proposal required legislative change,⁴⁶⁶ and 607 offences contrary to sections 7 and 8 of the *Criminal Law (Sexual Offences) Act 1993* (soliciting/importuning or loitering for the purpose of prostitution) were identified for expungement.⁴⁶⁷ Offences relating to brothel keeping will not be expunged as this remains a criminal offence.⁴⁶⁸

461 Department of Justice (2022). Trafficking in human beings in Ireland: Annual report 2021, p. 11.

462 Ibid., p. 11. This figure includes Ireland.

463 Correspondence with Garda Human Trafficking Investigation and Co-ordination Unit, April 2022.

464 Department of Justice (2022). Trafficking in human beings in Ireland: Annual report 2021, p. 11.

465 Department of Justice (2021). ‘Minister McEntee announces initiative to expunge previous convictions for ‘sale of sex’, press release, 25 April, www.gov.ie.

466 Department of Justice (2021). ‘Response to parliamentary question 36591/21’, 8 July, www.oireachtas.ie.

467 Department of Justice (2021). ‘Response to parliamentary question 43891/21’, 15 September, www.oireachtas.ie.

468 Department of Justice (2021). ‘Response to parliamentary question 36591/21’, 8 July, www.oireachtas.ie.

Sex Workers Alliance Ireland welcomed the move but said that it does not go far enough, asking the Minister to also consider brothel-keeping offences.⁴⁶⁹ Ruhama also welcomed the move, saying that those with historical convictions have faced challenges in access to education, employment and other opportunities, creating impediments for those who wish to exit the sex trade.⁴⁷⁰

8.2.2 Proposed referral mechanism

In May 2021, the Irish Government approved plans for a revised National Referral Mechanism (NRM) for the identification of victims of human trafficking.⁴⁷¹ The revised proposal acknowledges that, in addition to the police, other state bodies and NGOs can play a role in identifying and referring victims of human trafficking to the NRM. Currently, An Garda Síochána is the sole competent authority for the formal recognition of victims of human trafficking. This proposal would see the Department of Social Protection, the HSE, Tusla, the Department of Children, Equality, Disability, Integration and Youth (DCEDIY), International Protection Accommodation Services (IPAS) and immigration services within the Department of Justice (Justice) become competent authorities for the identification of victims. Together, these agencies will form the National Referral Mechanism Operational Committee, which will make decisions on entry of victims into the NRM. Some NGOs will also be designated as ‘trusted partners’ and will be able to refer victims. Work is underway to operationalise the revised NRM, including drafting legislation to place the new NRM on a statutory footing.⁴⁷²

8.2.3 Development of new national action plan

In 2021, Justice established a subgroup of the Human Trafficking Forum to examine the current National Action Plan for Trafficking and to analyse the value of developing an updated action plan. As part of this process, a consultant was engaged to analyse the current position of human trafficking in Ireland, including a summary of issues that a new national action plan should address and lessons for implementation from previous action plans.⁴⁷³ This analysis was presented to the subgroup, which agreed that a new national action plan should be developed, rather than the current plan being revised. In particular, the new national action plan will include a greater recognition of the gendered nature of trafficking and the need for gendered responses, and a greater focus on the integration of identified victims.⁴⁷⁴ The new plan is due to be published at the end of 2022, with stakeholder and public consultations due to take place in 2022.⁴⁷⁵

469 Irish Legal News (2021). ‘Hundreds of convictions for selling sex to be expunged’, 26 April, www.irishlegal.com.

470 Ruhama (2021). ‘Ruhama welcomes new initiative for victims of sexual exploitation’, 25 April, www.ruhama.ie.

471 Department of Justice (2021). ‘Government approves proposal for a revised National Referral Mechanism to make it easier for human trafficking victims to come forward and receive supports’, 11 May, www.gov.ie; Department of Justice (2022). *Trafficking in human beings in Ireland: Annual report 2021*, p. 16.

472 Minister for Justice (2021). ‘Response to parliamentary question 52036/21’, 2 November, www.oireachtas.ie.

473 Department of Justice (2022). *Trafficking in human beings in Ireland: Annual report 2021*, p. 26-27.

474 Department of Justice (2022). *Trafficking in human beings in Ireland: Annual report 2021*, p. 27.

475 *Ibid.*, p. 27.

8.2.4 Enforcement of anti-trafficking laws

The first convictions for human trafficking occurred in 2021, when two women were sentenced to over five years in prison each in Mullingar Circuit Court.⁴⁷⁶ The Gardaí also commenced action in a number of new cases in 2021,⁴⁷⁷ while Justice indicated that there was a marked increase in the overall number of files being received by the Director of Public Prosecutions (DPP) over the last number of years, citing an increase of 37% between 2018 and 2021.⁴⁷⁸

In 2021, the Organised Prostitution Investigation Unit was set up, within the Garda National Protective Services Bureau, to police organised criminality within the sex trade and to enforce legislation criminalising the purchase of sexual services. According to Justice, the unit will tackle criminal gangs involved in organised prostitution, target the demand for prostitution and safeguard persons trafficked for sexual exploitation.⁴⁷⁹

8.2.5 GRETA third evaluation

Ireland is a party to the Council of Europe Convention on Action against Trafficking in Human Beings.⁴⁸⁰ Under this Convention, regular monitoring is conducted by the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA). The third round of evaluation took place in 2021. As part of this, the Irish Government replied to a questionnaire, the Irish Human Rights and Equality Commission (IHREC) submitted a report and GRETA carried out an evaluation visit in December 2021. During this meeting, GRETA experts met with the Minister for Justice and government officials from relevant departments and agencies, as well as IHREC and the Ombudsman for Children, and other stakeholders. They also visited an accommodation centre being used for victims of trafficking.⁴⁸¹

Each round of monitoring of the Convention focuses on a specific provision, with the third round focusing on trafficking victims' access to justice and effective remedies. The questionnaire covered right to information, legal assistance and free legal aid, compensation from the perpetrators, state compensation, *ex parte* and *ex officio* applications, non-punishment, protection of victims and witnesses, specialised authorities and coordinating bodies and international cooperation, among others.⁴⁸²

476 Ibid., p. 25; Department of Justice (2021). 'Response to parliamentary question 51949/21', 21 October, www.oireachtas.ie.

477 Department of Justice (2022). Trafficking in human beings in Ireland: Annual report 2021, p. 19.

478 Ibid., p. 25.

479 Ibid., p. 30.

480 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

481 Council of Europe (2021). 'GRETA visits Ireland as part of the third evaluation round', 14 December, www.coe.int.

482 GRETA (2021). 'Reply from Ireland to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties', GRETA(2018)26_IRL_rep, 11 June.

The questionnaire also included country-specific follow-up questions from GRETA's second round of evaluation in 2016.⁴⁸³

IHREC was appointed National Rapporteur on the Trafficking of Human Beings under the EU's Anti-Trafficking Directive in 2020 (see 2020 report in this series for further details). As part of this work, IHREC submitted a report to GRETA, which focused mainly on the country-specific follow-up questions in the questionnaire. The report indicated that concerns raised in previous reports remained largely relevant to the current policy, legal and regulatory environment on human trafficking in Ireland.⁴⁸⁴ The IHREC report noted that these included several areas that were marked by inertia, such as the lack of sufficient legal assistance for victims of human trafficking, the absence of viable compensation avenues for some victims; issues around recovery reflection; specific measures to identify child trafficking; the investigation and prosecution of traffickers of victims of forced labour; and the reduction in demand for forced labour.⁴⁸⁵ IHREC's report noted the poor quality of official data available and inconsistency between different sources, which makes in-depth analysis difficult.⁴⁸⁶ IHREC made 45 recommendations in its report. GRETA published a final evaluation report in September 2022.⁴⁸⁷

8.2.6 Trafficking in persons report 2022

The *Trafficking in persons report 2022*, covering developments in 2021,⁴⁸⁸ was published by the US State Department in July. This report outlines efforts of countries to combat human trafficking, and categorises these efforts into four tiers, based on their efforts to meet the US *Trafficking Victim Protection Act's* minimum standards for the elimination of human trafficking. Tier 1 indicates that a country fully meets the minimum standards, while Tier 3 indicates that a country does not meet the minimum standards and is not making a significant effort to do so. Tier 2 indicates a country does not fully meet the minimum standards but is making significant efforts to do so, while 'Tier 2 watchlist' indicates the same level as Tier 2 but with the exacerbating factor of having had a significant number of victims or having failed to provide evidence of greater efforts having been made, compared to the previous year.

In the 2022 report, Ireland moved from Tier 2 watchlist to Tier 2, due to 'overall increasing efforts compared with the previous reporting period'.⁴⁸⁹ This included the first convictions under anti-trafficking law since at least 2013 (see Section 8.2.4), the increased identification of trafficking victims, expunging previous convictions (see

483 Ibid.

484 IHREC (2021). 'Ireland's Actions Against Trafficking in Human Beings Submission by the Irish Human Rights and Equality Commission to the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA)', p. 2.

485 Ibid., p. 2.

486 Ibid., p. 2.

487 Council of Europe (2021). 'GRETA visits Ireland as part of the third evaluation round', 14 December, www.coe.int.

488 The 2022 *trafficking in persons report* covers government efforts undertaken from April 1, 2021 to March 31, 2022.

489 US State Department (2022). *Trafficking in persons report 2022*, p. 298.

Section 8.2.1), increased funding, and the awareness campaign (Section 8.2.7). Despite these improvements, the report indicated that Ireland still did not meet minimum standards, citing:

- low prosecutions of suspected traffickers and no prosecutions of labour traffickers;
- systemic deficiencies in victim support and services;
- lack of screening of vulnerable populations prior to referral for deportation;
- no reforms in the national anti-trafficking action plan, National Referral Mechanism, or the accommodation framework for victims;
- no trafficking-specific training for judges;
- no legal safeguards to protect victims from criminal acts they were forced to commit; and
- no restitution or compensation for any victims in 2021.⁴⁹⁰

The upgraded status was welcomed by the Minister of Justice, who expressed hope that ongoing work on the NRM and the national action plan would be reflected in the 2023 report.⁴⁹¹ In response to references to the fishing industry in the report, Justice stated that all allegations of human trafficking in the fishing industry are fully investigated by An Garda Síochána and that the Director of Public Prosecutions (DPP) has decided not to prosecute in all cases: ‘deeming the necessary threshold of evidence to show human trafficking – as distinct from exploitative work practices – has not been met’ (see Section 3.2.4 for further discussion).⁴⁹² The Minister also expressed concern over references in the report to sex trafficking of Irish children, stating that she was not aware of any evidence of this.⁴⁹³ In response to the report, NGOs working in the area echoed the report’s concern over low victim identification and the urgent need to reform the NRM.⁴⁹⁴ One NGO also highlighted the issue of accommodation of sex trafficking victims in Direct Provision centres, which they called ‘inappropriate and unsuitable’.⁴⁹⁵

8.2.7 Awareness campaign

The Department of Justice and the International Organization for Migration in Ireland (IOM), with the support of other state agencies and non-state organisations, launched a trafficking awareness campaign for the second year in October 2021, to coincide with EU Anti-Trafficking Day.⁴⁹⁶ The #AnyoneTrafficked 2021 campaign had the aim of raising

490 Ibid., p. 298.

491 Department of Justice (2022). ‘Minister McEntee welcomes Ireland’s ranking upgrade in latest “Trafficking in Persons” Report’, 19 July, www.gov.ie.

492 Ibid.

493 Ibid.

494 MRCI (2022). ‘TIP report recognises efforts in combatting human trafficking’, 19 July, www.mrci.ie; Ruhama (2022). ‘Ireland upgraded in the latest Trafficking in Persons report but more needs to be done’, 19 July, www.ruhama.ie.

495 Ruhama (2022). ‘Ireland upgraded in the latest Trafficking in Persons report but more needs to be done’, 19 July, www.ruhama.ie.

496 Department of Justice (2021). ‘Minister Hildegard Naughton and the International Organisation for Migration launch new anti-human trafficking awareness initiative’, press release, 18 October, www.merriestreet.ie.

public awareness of trafficking, including of its signs and indicators. The campaign was rolled out on social media and in key transport hubs across the country, and ran until the end of November 2021. Alongside this, a dedicated website was launched, with campaign videos, case studies and resources.⁴⁹⁷ The website also contains information on how to get help and support services available to victims.

8.2.8 Cultural mediation project

The Department of Justice also worked on a cultural mediation project with IOM during 2021. According to the Minister for Justice, the project aims to build the capacity of state professionals who work directly with and for vulnerable migrants in relation to their: cultural competency and understanding; capacity to identify and address the protection needs of potential victims of domestic, sexual and gender-based violence and trafficking; and provision of culturally sensitive support.⁴⁹⁸ The project also aims to empower migrant and ethnic minority survivors and provide support to victims of domestic, sexual and gender-based violence and trafficking by improving their access to information and their opportunities to effectively engage with support and referral services, through the use of cultural mediators.⁴⁹⁹ A total of €250,000 was initially invested in the project, with the project further approved to run until June 2023 at a total cost of €685,807.⁵⁰⁰

8.2.9 Other developments

Multiple other developments in trafficking advanced during 2021, according to the Minister of State at the Department of Justice.⁵⁰¹ They include: the development of an NGO-run training programme for staff in industries such as hospitality, airline and shipping who may come into contact with trafficked persons; efforts to provide dedicated accommodation for female victims of sexual exploitation; improvements to the criminal justice system to support victims; and an increase in funding for supporting victims of trafficking.⁵⁰²

Significant funding was provided for combatting human trafficking in 2021, including through the Victims of Crime Grant Scheme, which provided €4.104 million to organisations supporting trafficking victims in 2021, and which pledged €4,889 million for 2022. In addition, €5.348 million was allocated for awareness-raising campaigns in 2021 and a total of €1.092 million was granted to anti-human trafficking organisations.

497 See www.anyonetrafficked.com.

498 Department of Justice (2021). 'Response to parliamentary question 14263/21', 24 March, www.oireachtas.ie.

499 Ibid.

500 Ibid.; Correspondence with Justice, October 2022.

501 Department of Justice (2021). 'Response to parliamentary question 44581/21', 21 September, www.oireachtas.ie.

502 Ibid.

The Department of Rural and Community Development allocated €250,000 of the 2020 Dormant Accounts Action Plan to anti-human trafficking efforts.⁵⁰³

The White Paper to End Direct Provision proposes an accommodation strand for victims of trafficking.⁵⁰⁴

The *Criminal Justice (Sexual Offences) Act 2017* was due to be reviewed in 2021, but the review is now due to be completed by the end of 2022. The review will cover the effectiveness of the Act's implementation and further actions that could be taken to protect those engaged in the sex trade.⁵⁰⁵

8.3 RESEARCH

8.3.1 Mary Immaculate College research on the scale of human trafficking in Ireland

Mary Immaculate College published a report on human trafficking and exploitation on the island of Ireland in 2021. The research included an extensive literature review of methodologies for estimating trafficking and included the design of a robust methodology for estimating the prevalence of trafficking based on available data. The findings assessed, among other things, the reasons why victims do not engage with NRMs. They found that victim-related reasons included vulnerability, poverty, skills deficits, a lack of capacity to engage, repatriation concerns, distrust and psychological trauma, a sense of responsibility for their situation, and a lack of awareness or denial that they are victims of trafficking. They also found system-related reasons for a lack of engagement with NRMs, including a feeling of uncertainty that engagement with the NRM will improve their situation, inconsistencies with the process, difficulties with proving trafficking, burdens on victims relating to evidence and credibility, and long waiting times for victims.

Other issues identified in the report included labour exploitation, which the report stated was often under-recognised and under-prosecuted. They also found that those trafficked for criminal exploitation are often arrested for the crimes they were forced to commit while trafficked and that children are underrepresented in the trafficking statistics, despite evidence of exploitation of children that could meet the definition of trafficking. The report found that official trafficking statistics may be as much as 38% lower than actual victims of trafficking in Ireland. Recommendations in the report included the publication of an eligibility protocol for entry into the NRM, the expansion of the authority to refer a victim of trafficking to the NRM, the establishment of an all-island database for cases of human trafficking, training for those involved in the

503 Department of Justice (2022). Trafficking in human beings in Ireland: Annual report 2021.

504 Government of Ireland (2021). White Paper to End Direct Provision and to Establish a New International Protection Support Service, 26 February, p. 43.

505 Department of Justice (2022). Trafficking in human beings in Ireland: Annual report 2021, p. 30.

identification and support of potential victims of trafficking, and a public awareness-raising campaign on the identification of victims of trafficking.

8.3.2 Immigrant Council of Ireland TRIPS report on integration needs of trafficking victims

As part of a European consortium, the Immigrant Council of Ireland contributed to a report identifying the specific integration needs of victims of trafficking in Ireland, Italy, France and the Czech Republic.⁵⁰⁶ The project focused on international protection beneficiaries who were also victims of trafficking. The study outlined both legal frameworks and access to rights and services for these individuals. Issues highlighted included the inconsistent collection of data on trafficking, which makes comparison between countries difficult, a lack of assessment of vulnerability and victims' needs, the lack of additional assistance for trafficking victims to support with access to rights and services, and the impact of COVID-19 on the integration process, which was found to lead to an increased risk of destitution and re-trafficking. Issues highlighted specific to Ireland included the exclusion of asylum seekers from the NRM, the lack of a clear process of vulnerability screening, and a lack of access to safe and appropriate accommodation for international protection beneficiaries. The project included interviews with victims and international protection beneficiaries to identify specific integration needs; identified needs included:

- early identification and appropriate environment;
- assistance during the asylum procedure and adapted asylum procedures;
- adequate and dignified reception conditions;
- prompt issuance of documents and social rights;
- trained officers in charge of social benefits and adapted procedures;
- access to family reunification;
- speedy identification of mental health needs;
- environment of trust;
- access to gender-specific medical care;
- access to childcare; and
- access to vocational training courses.⁵⁰⁷

The report's recommendations included the following:

- Improve identification of trafficked international protection beneficiaries, including through improvements to the NRM;
- Build on capacity among practitioners;
- Monitor the integration of trafficked international protection beneficiaries;

506 Forum Réfugiés – Cosi (2021). Identification of trafficked international protection beneficiaries special needs: Summary European report.

507 Ibid., pp. 11-12.

- Develop a tailor-made and needs-based national integration system;
- Provide access to specialised shelters and durable and appropriate housing;
- Provide support for family unity; and
- Empower those concerned through education and employment.⁵⁰⁸

508 Forum Réfugiés – Cosi (2021). Identification of trafficked international protection beneficiaries special needs: Summary European report, pp. 14-22.

CHAPTER 9

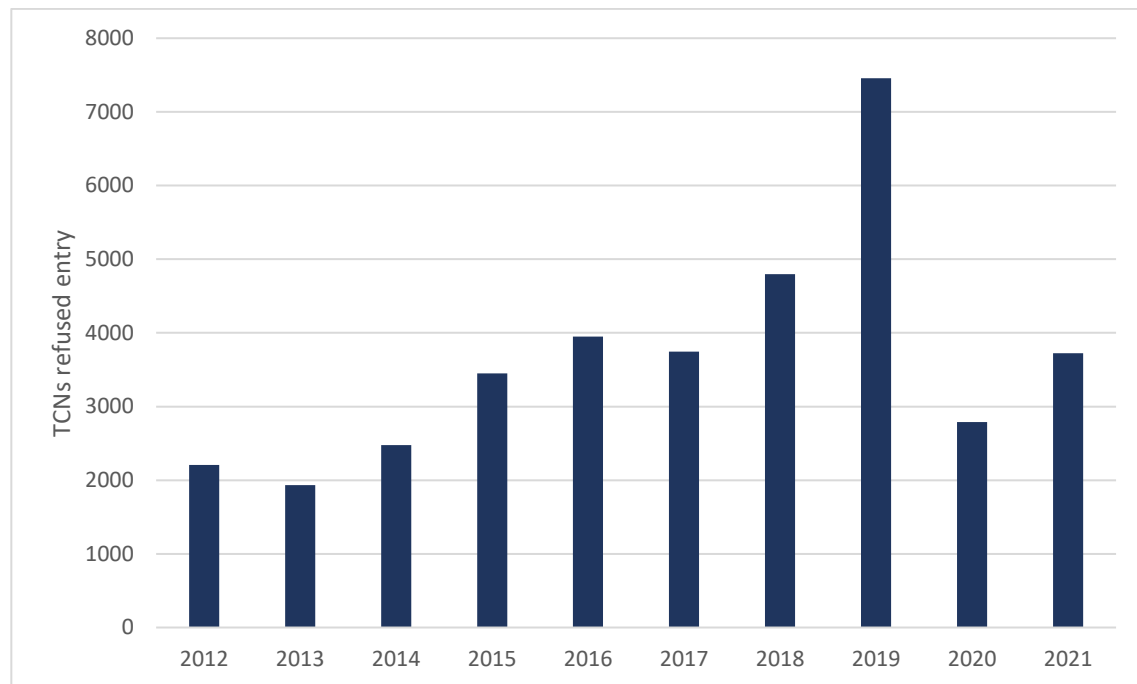
Irregular migration, visas, borders and return

9.1 STATISTICS

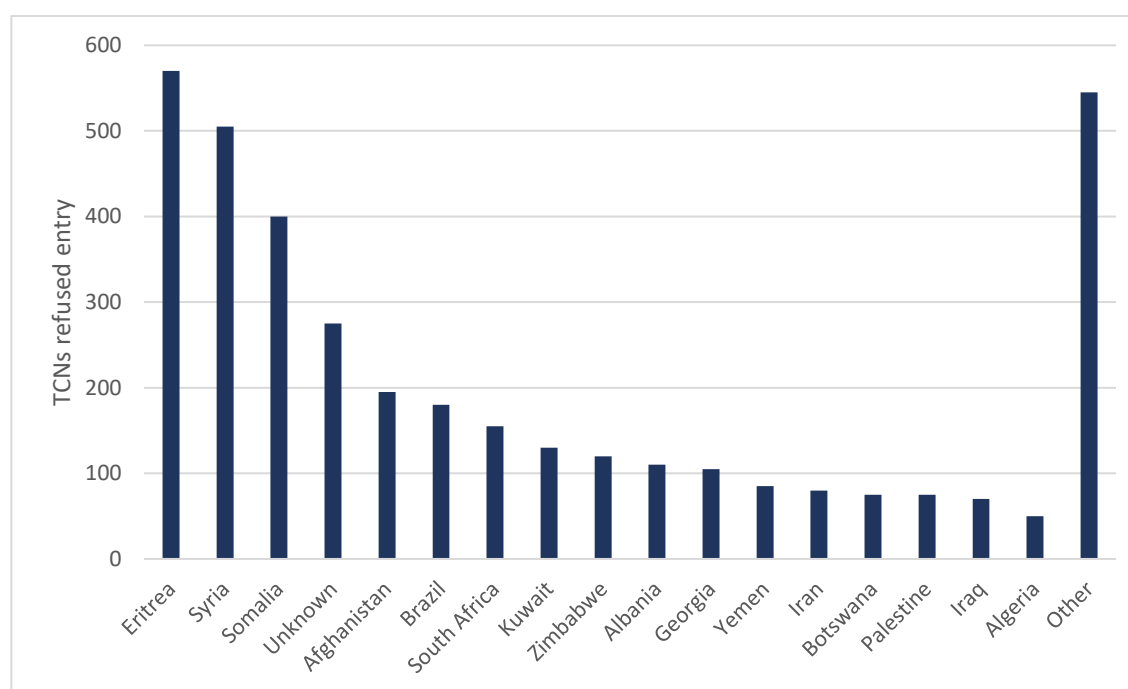
9.1.1 Refusals of leave to land

Figure 9.1 shows refusals of leave to land in Ireland 2012–2021. After a significant decrease in 2020 as a result of COVID-19-related travel restrictions (to 2,790), there was a slight increase in 2021 to 3,725 people, according to rounded Eurostat data. However, 2021 figures were still only around half 2019 figures (when 7,455 people were refused leave to land).

FIGURE 9.1 THIRD-COUNTRY NATIONALS REFUSED ENTRY AT THE BORDER, 2012–2021



Source: Eurostat (2022). 'Third country nationals refused entry at the external borders – Annual data (rounded)', extracted 22 September.

FIGURE 9.2 COUNTRIES OF CITIZENSHIP OF TCNS REFUSED ENTRY AT THE BORDER, 2021

Source: Eurostat (2022). 'Third country nationals refused entry at the external borders – Annual data (rounded)', extracted 22 September.

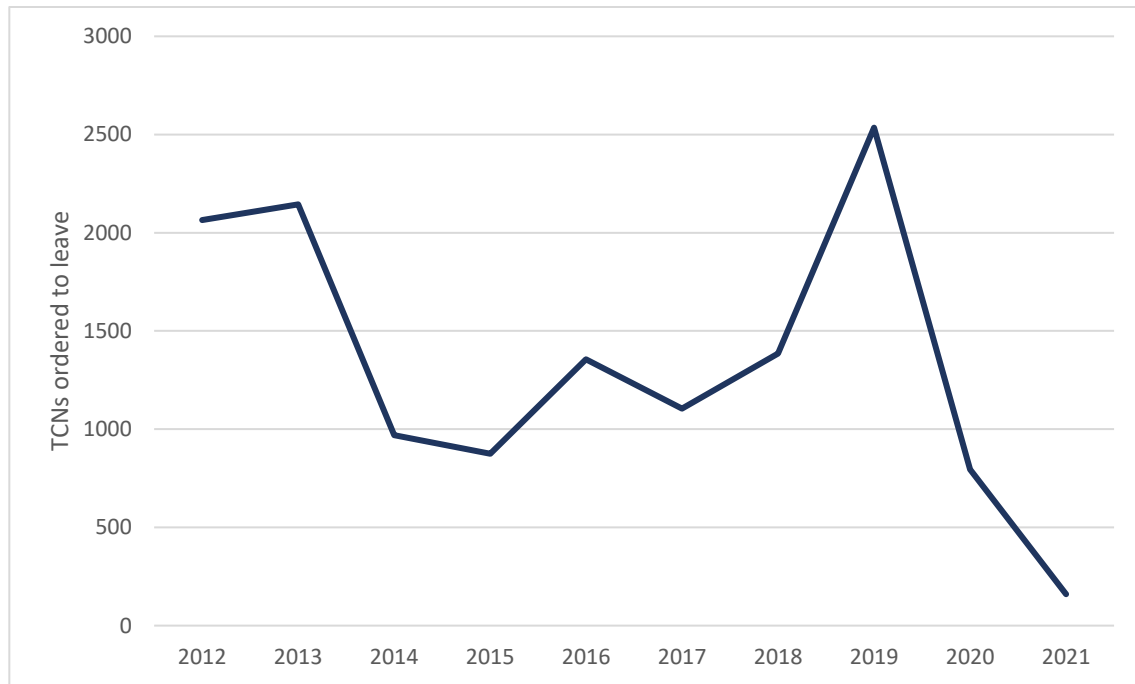
Figure 9.2 shows the nationalities of those refused entry at the border in 2021. The top nationality groups of those refused were: Eritrean, Syrian, Somali, 'unknown' and Afghan.⁵⁰⁹

9.1.2 Return

When examining Irish deportation data, it should be noted that when an individual in Ireland is issued with a deportation order, the person is required to remove themselves from the State. Many people comply with this and leave the country, without notifying the immigration authorities that they have done so, meaning that it is not always possible for the Department of Justice (Justice) or the Garda National Immigration Bureau (GNIB) to ascertain if a deportation order has been complied with.⁵¹⁰

509 Eurostat, 'TCNs refused entry at external borders', extracted 9 September 2022, www.ec.europa.eu.

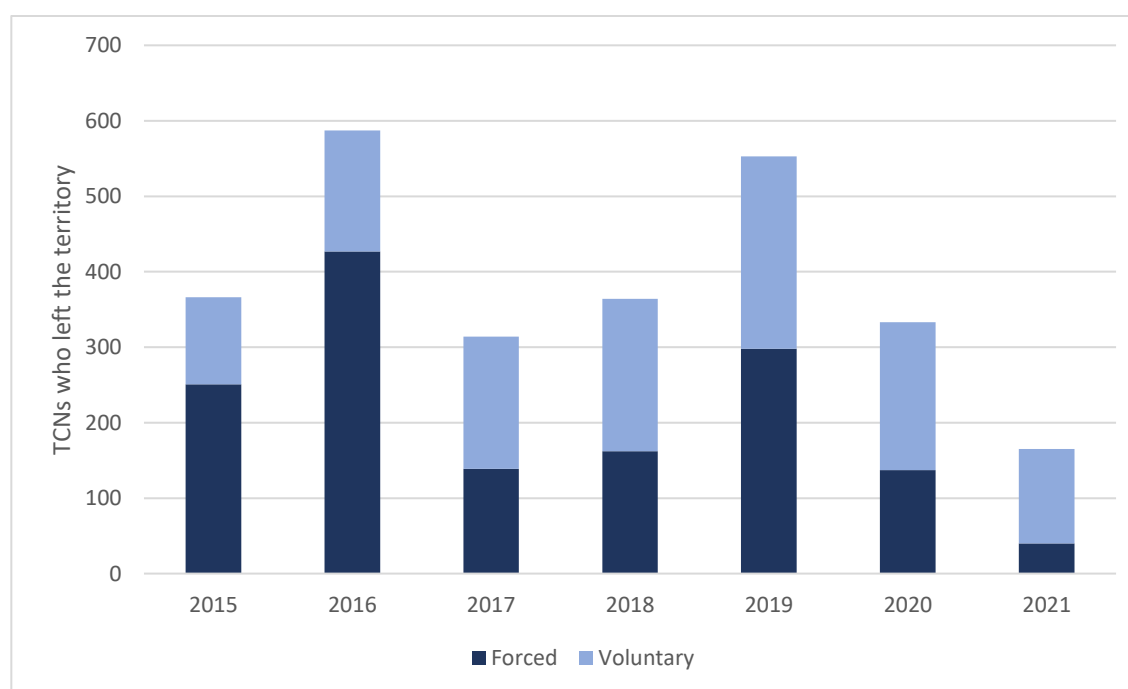
510 Department of Justice (2022). 'Response to parliamentary question 6084/22', 8 February, www.oireachtas.ie.

FIGURE 9.3 THIRD-COUNTRY NATIONALS ORDERED TO LEAVE, 2012–2021

Source: Eurostat (2022). 'Third-country nationals ordered to leave – Annual data (rounded)', extracted 22 September.

Figure 9.3 shows the number of deportation orders issued 2012–2021 and shows the impact in 2020 and 2021 of travel restrictions and the Minister of Justice's decision to only deport persons in very restricted circumstances in the context of the pandemic.⁵¹¹ According to Eurostat data, 160 persons were ordered to leave in 2021, compared with 795 in 2020 and 2,535 in 2019.

⁵¹¹ Department of Justice (2021). 'Response to parliamentary question 57242/21', 23 November, www.oireachtas.ie.

FIGURE 9.4 THIRD-COUNTRY NATIONALS WHO LEFT THE TERRITORY BY TYPE OF RETURN, 2015–2021

Source: Eurostat (2022). 'Third-country nationals who have left the territory by type of return and citizenship', extracted 6 October.⁵¹²

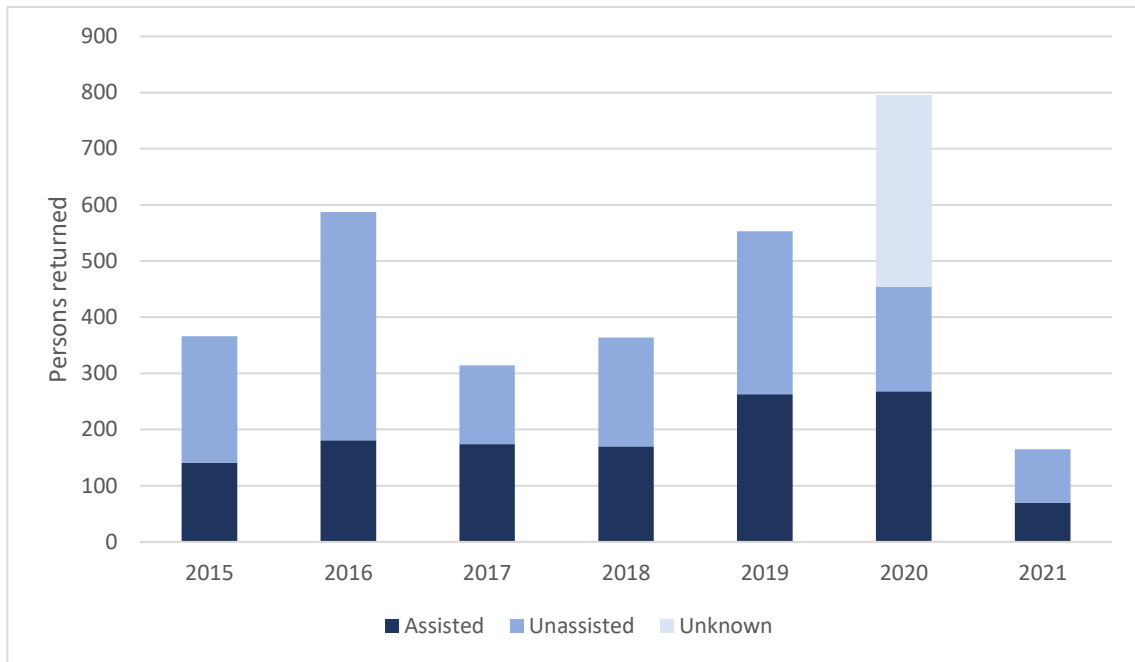
Figure 9.4 shows third-country nationals who left the territory, by type of return. According to rounded Eurostat data, 40 people were subject to forced returns, and 125 returned voluntarily, 82 of whom were assisted by IOM (of whom 40 had applied for international protection).⁵¹³ This represented a decrease from all previous years, in particular in forced returns. As mentioned above, this reflects the Minister of Justice's decision to only deport persons in very restricted circumstances in the context of the pandemic.⁵¹⁴

512 Eurostat, 'Third-country nationals who have left the territory by type of return and citizenship', www.ec.europa.eu.

513 Correspondence with IOM, November 2022.

514 Department of Justice (2021). 'Response to parliamentary question 57242/21', 23 November, www.oireachtas.ie.

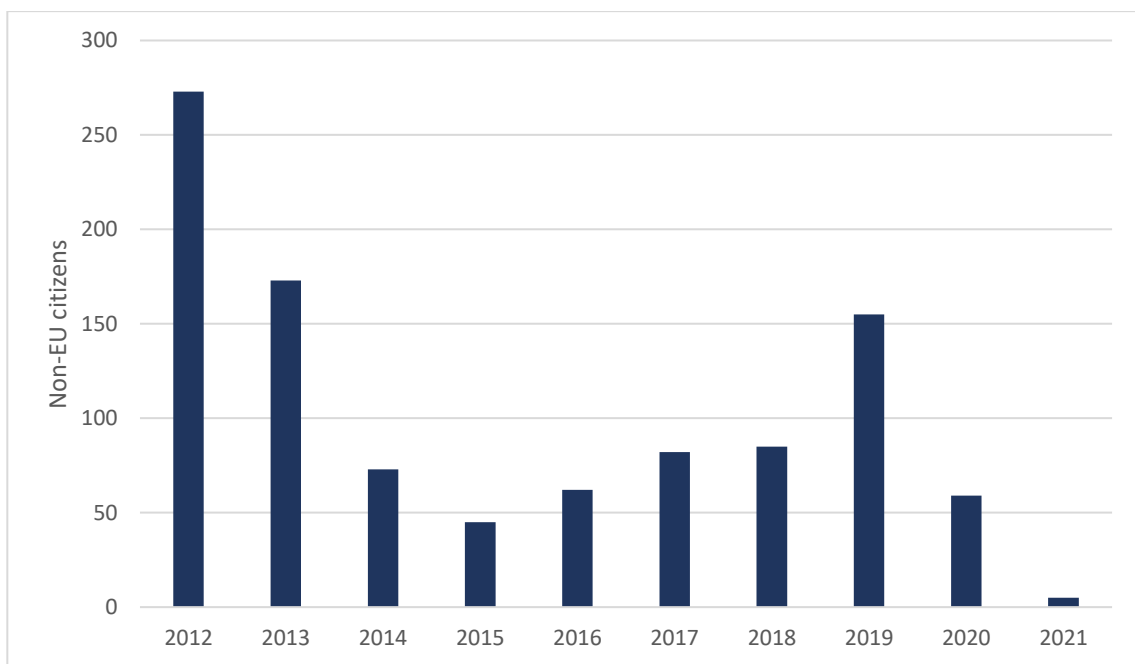
FIGURE 9.5 RETURN BY TYPE OF ASSISTANCE RECEIVED, 2015–2021



Source: Eurostat (2022). ‘Third-country nationals who have left the territory by type of assistance received and citizenship’, extracted 6 October.

Figure 9.5 shows the type of assistance received by third-country nationals who left the territory, according to rounded Eurostat figures. Of those who left the territory, 70 were assisted and 95 unassisted, according to these data. This also represented a significant decrease on 2020 and previous years.

FIGURE 9.6 DEPORTATIONS ENFORCED AGAINST NON-EU CITIZENS, 2012–2021



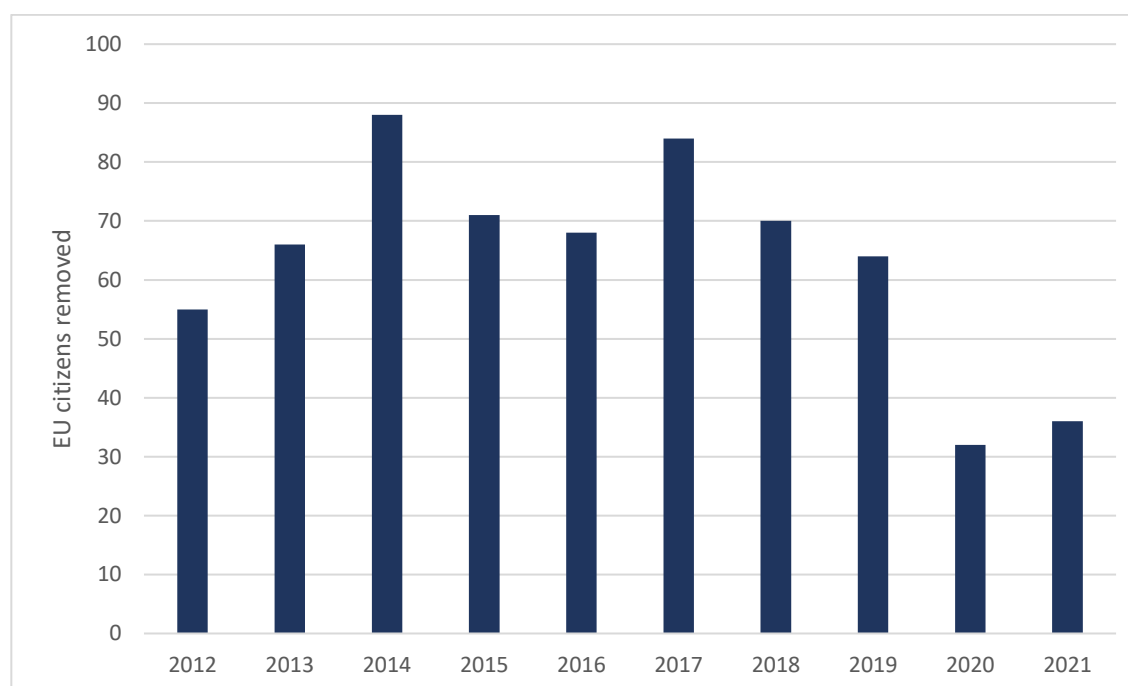
Source: Department of Justice (2022). ‘Response to parliamentary question 4389/22’, 1 February.

Figure 9.6 shows the number of deportations enforced against non-EU citizens. According to these data, there were 5 people against whom deportations were enforced in 2021. This too represented a significant reduction on previous years, including 2020 when 159 people were subject to enforced deportations.

9.1.3 EU removals

Figure 9.7 shows the number of EU removals effected in 2021. That year saw an increase from 2020, which in turn represented a significant drop from 2019 levels.

FIGURE 9.7 EU REMOVALS EFFECTED, 2012–2021



Source: Department of Justice (2022). 'Response to parliamentary question 4389/22', 1 February.

9.1.4 Visas

In 2021, 58,199 entry visa applications were received, an increase of 33% from 2020, although still much lower than 2019 figures. In 2021, 52,255 visas were approved (of which 16,352 were short-stay visas and 35,903 long-stay visas).⁵¹⁵

9.2 DEVELOPMENTS

9.2.1 Regularisation scheme

In December 2021, the Department of Justice announced a scheme to regularise long-term undocumented migrants and their families living in Ireland, with applications

515 Correspondence with ISD, March 2022.

opening from January 2022 for six months.⁵¹⁶ The scheme was developed following a consultation process with stakeholders, including non-governmental organisations (NGOs) and government departments and agencies.⁵¹⁷ Criteria of eligibility for the scheme are that individuals:

- have lived undocumented for four years in the State, or three years for those with children; and
- meet standards regarding good character and criminal record/behaviour and do not pose a threat to the State.⁵¹⁸

Justice clarified that those with a deportation order can apply, and that having convictions for minor offences will not in itself result in disqualification.⁵¹⁹ Successful applicants will be granted immigration permission and unrestricted access to the labour market.⁵²⁰ The immigration permission received under the scheme will be reckonable towards citizenship applications. There is also no need for applicants to demonstrate that they would not be a financial burden on the State, in recognition of the fact that many undocumented people are socially and economically marginalised.⁵²¹ Justice announced that a parallel process would implement the recommendation in the Catherine Day report to allow those who have an outstanding international protection application and have been in the asylum process for a minimum of two years to apply for regularisation.⁵²² This is a part of the strategy to reduce backlog and waiting times within the international protection process to enable the implementation of the White Paper (see Section 4.2.1). A fee of €700 for family units and €550 for individuals will apply, but the international protection strand will be fee exempt.⁵²³ A targeted communication campaign was planned by Justice to reach those most likely to benefit from the scheme.⁵²⁴

According to the Minister for Justice, there will also be an appeals process for unsuccessful applicants. Unsuccessful applicants will be referred for further consideration of their cases by Justice, in accordance with relevant law and the European Convention on Human Rights.⁵²⁵ When asked in a parliamentary question whether unsuccessful applicants will be protected from deportation as a result of their

516 Department of Justice (2021). 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants', 3 December, www.gov.ie.

517 Department of Justice (2021). 'Minister McEntee announces new landmark scheme to regularise long-term undocumented migrants', 3 December, www.gov.ie.

518 Ibid.

519 Ibid.

520 Ibid.

521 Ibid.

522 Ibid.

523 Ibid.

524 Department of Justice (2022). 'Response to parliamentary question 8732/22', 17 February, www.oireachtas.ie; Moreau, E. (2022). 'Regularisation scheme for undocumented immigrants opens today', *The Journal*, 31 January.

525 Department of Justice (2022). 'Response to parliamentary question 8732/22', 17 February, www.oireachtas.ie.

application, the Minister for Justice indicated that those who were unsuccessful had a duty to return to their own country, and referred to the option of voluntary return.⁵²⁶

The scheme was largely welcomed by stakeholders and NGOs such as Migrant Rights Centre Ireland (MRCI), which had been campaigning for a similar scheme.⁵²⁷ According to Asylum Information Database's (AIDA) country report for Ireland, some NGOs have noted gaps in the scheme. Examples given included the fact that when someone receives a negative decision for international protection, their time spent in the international protection system will not count towards the mainstream regularisation scheme and they will no longer be eligible for the international protection strand.⁵²⁸ Other NGOs have pointed out the potentially prohibitive cost,⁵²⁹ as well as potential unfairness for long-term undocumented migrants who recently applied for residence and received less favourable immigration permissions (for example limited Stamp 1 instead of Stamp 4), who are now not eligible for the scheme.⁵³⁰ Others recommended using the date of arrival in Ireland rather than the length of time spent undocumented, shortening the proposed period, and including those who would reach the minimum length while the scheme is open (currently only viable for those who have the minimum number of years before the applications open).⁵³¹ One NGO pointed out that international protection applicants should be able to avail of the scheme while still being able to have their international protection application processed to its conclusion, as this may afford them more robust family reunification rights, for example.⁵³² The heads of 25 organisations, including migrant and other NGOs, industry representatives and trade unions, signed an open letter calling for a broadening of the criteria, to include as many undocumented people as possible.⁵³³

9.2.2 Criminal Justice (Smuggling of Persons) Act 2021

The *Criminal Justice (Smuggling of Persons) Act 2021* was signed into law in December, giving effect, in part, to the Protocol against the Smuggling of Migrants by Land, Sea and Air,⁵³⁴ and transposing EU Council Directive 2002/90/EC⁵³⁵ and EU Framework Decision 2002/946/JHA,⁵³⁶ which supplements the United Nations

526 Ibid.

527 MRCI (2021). 'Justice for Undocumented wins major victory after 11 year campaign', 2 December, www.mrci.ie; Immigrant Council of Ireland (2021). 'Immigrant Council welcomes new scheme to regularise undocumented migrants', 23 April, www.immigrantcouncil.ie; Doras (2021). 'Doras Statement on planned scheme for the undocumented and asylum seekers', 3 December, www.doras.org.

528 AIDA (2022). Country report: Ireland 2021 update, p. 124.

529 Doras (2021). 'Doras Statement on planned scheme for the undocumented and asylum seekers', 3 December, www.doras.org.

530 Immigrant Council of Ireland (2021) 'Undocumented Regularisation Scheme to be profoundly transformative for thousands of migrants', 3 December, www.immigrantcouncil.ie.

531 MASI (2021). 'Comments on regularisation', 1 June, www.masi.ie.

532 Doras (2021). 'Doras Statement on planned scheme for the undocumented and asylum seekers', 3 December, www.doras.org.

533 MRCI (2021). 'Open letter to Minister Heather Humphreys: Upcoming Regularisation Scheme must be broad and inclusive', 26 September, www.mrci.ie.

534 Protocol supplementing the United Nations Convention against Transnational Organized Crime.

535 Defining the facilitation of unauthorised entry, transit and residence.

Convention against Transnational Organized Crime. The legislation replaces most aspects of the Illegal Immigrants (Trafficking) Act 2000.⁵³⁷ The law covers a broad range of scenarios, including intentionally assisting entry, transit or presence where the person knows or has reasonable cause to believe that it is in breach of specified immigration law provisions. The previous law criminalised organising and facilitating entry only.⁵³⁸ While the existing offence is limited to facilitating entry into the State, the revised offence covers smuggling into other countries, including EU Member States and parties to the UN Protocol against people smuggling.⁵³⁹ The maximum penalty laid down in the Act is ten years imprisonment upon conviction or indictment.⁵⁴⁰ A finding that the offender endangered or was likely to endanger the life or safety of the smuggled person or acted in a way that results in the exploitation or inhuman or degrading treatment of the smuggled person is an aggravating factor in sentencing.⁵⁴¹

The Act contains a defence (to be proved on the balance of probabilities) that the actions were to provide assistance to a person seeking international protection in the course of work for a bona fide organisation which gives assistance without charge to people seeking protection, or for the purpose of providing humanitarian assistance and not for obtaining financial or material benefit directly or indirectly.⁵⁴² Under the previous law, the prosecution in practice had to prove that the defendant acted for gain.⁵⁴³ This reversal of the burden of proof was welcomed by MRCI to facilitate the prosecution of human traffickers.⁵⁴⁴

9.2.3 Proposed longer period for voluntary return and changes to grounds for refusal of permission to land

The *General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill*, which was published in June 2021, proposes to extend the period of time that people are given to return voluntarily upon receipt of a negative decision in an international protection application. Under the *International Protection Act 2015*, rejected applicants have 5 days to confirm that they will voluntarily return.⁵⁴⁵ The Bill proposes extending this to 30 days, one of the recommendations of the Catherine Day report.⁵⁴⁶ The proposed change was welcomed by the Law Society of Ireland, which noted that the 5-day window

536 On the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

537 EMN Ireland (2021). 'New Criminal Justice (Smuggling of Persons) Bill enacted', 13 December, www.emn.ie.

538 Section 2(1) of the 2000 Act.

539 EMN Ireland (2021). 'New Criminal Justice (Smuggling of Persons) Bill enacted', 13 December, www.emn.ie.

540 Section 10(1), Criminal Justice (Smuggling of Persons) Act 2021.

541 Section 10(2).

542 Section 9, Criminal Justice (Smuggling of Persons) Act 2021.

543 Law Society Gazette (2021). 'Law against people-smuggling strengthened', 9 December, www.lawsociety.ie.

544 MRCI (2021). 'Submission by MRCI, to Joint Committee on Justice on General Scheme of the Smuggling of Persons Bill 2020'.

545 Section 48(3).

546 EMN Ireland (2021). 'Shorter residence requirement for naturalisation and longer period for voluntary return among changes planned in new Bill', 9 June, www.emn.ie.

proved ‘extremely difficult’ and ‘allowed practically no opportunity for an applicant to obtain an appointment with a solicitor, gather updated documentation and submit a proper review.’⁵⁴⁷

The Bill also proposes to amend the grounds for refusal of permission to enter the State under section 4(3) of the 2004 Immigration Act. The proposed amendment would provide for a separate provision for the public policy ground of refusal under section 4(3), which is currently provided in the same provision as the national security ground.⁵⁴⁸ The Law Society’s submission on the Bill expressed concern over rule of law and procedural fairness considerations in respect of these powers, specifically relating to the right to appeal to an independent body and to access legal advice and translation services for those who are refused. They also expressed concern about the ability of these people to access the reasons for the refusal.⁵⁴⁹

9.2.4 Changes to immigrant detention

In 2020, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted its seventh periodic visit to Ireland to assess Ireland’s treatment of persons deprived of their liberty.⁵⁵⁰ One of the issues identified in this report was the continued practice of detaining people for immigration-related offences with remand and convicted prisoners, with immigration prisoners in some cases subjected to abuse and bullying. The report called for a specifically designed centre for immigrant detainees in accordance with CPT’s requirements.⁵⁵¹ In December 2021, the Minister for Justice advised that work had been completed on a new block in Cloverhill Remand Prison, which is intended to accommodate people detained for immigration purposes and to ensure that they are separated from the general prison population.⁵⁵² However, due to the outbreak of the COVID-19 pandemic, the block was repurposed as a quarantine unit for prisoners with COVID-19.⁵⁵³ The Minister indicated that it was intended to be used for its original purpose of detaining people for immigration-related offences once the pandemic was over, subject to the availability of staff and the impact on resources.⁵⁵⁴ The Minister indicated that, while this will address the situation in the immediate term, work was also proceeding on the consideration of a longer-term solution.⁵⁵⁵

547 Law Society of Ireland (2021), ‘Submission on the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021’, July.

548 Section 4(3)(j); Correspondence with Department of Justice, October 2022.

549 Law Society of Ireland (2021). ‘Submission on the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2021’.

550 Council of Europe (2020). Report to the Government of Ireland on the visit to Ireland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2020) 37.

551 Ibid., p. 4.

552 Department of Justice (2021). ‘Response to parliamentary question 62820/21’, 16 December, www.oireachtas.ie.

553 Ibid.

554 Ibid.

555 Ibid.

The Minister also confirmed that building works were completed in the new Dublin Airport Garda Station, which has been operational since 2019. The station has four single-person cells and two additional detention rooms. However, the cells were not fully commissioned as of December 2021, with outstanding matters to be addressed.⁵⁵⁶ It was intended that the Garda National Immigration Bureau (GNIB) would detain persons refused leave to land overnight in this station in the airport once the detention facilities are fully commissioned.⁵⁵⁷

9.2.5 Schengen Information System II

Ireland implemented the Schengen Information System (SIS) in March 2021. Ireland will send and receive SIS II information (termed ‘Alerts’) on persons and objects; for example, persons wanted for criminal purposes, missing persons and objects which have been stolen or are wanted as evidence for a judicial purpose.⁵⁵⁸ Although Ireland is not a member of the Schengen area, it acceded to certain elements of the Schengen acquis in 2002, in accordance with Council Decision 2002/192/EC.

9.2.6 COVID-19

The COVID-19 pandemic had significant impacts on visas, borders and return. Justice stopped processing voluntary return applications, but continued to record interest in voluntary returns.⁵⁵⁹ This did not prevent individuals applying to IOM for assisted voluntary returns.⁵⁶⁰ Deportations were also severely affected by the pandemic (see Section 9.1.2 for statistics), with the Minister for Justice only deporting persons in very restricted circumstances.⁵⁶¹

Due to public health restrictions associated with the COVID-19 pandemic, certain countries were added and removed from the lists of those who require a visa to enter the country and those who need a visa to transit the country throughout the year.⁵⁶² Visa and preclearance processing ceased for most of the first half of the year due to public health restrictions, except for emergency or priority categories.⁵⁶³ Long stay and preclearance processing recommenced in June 2021, and short stay visa processing

556 Department of Justice (2021). ‘Response to parliamentary question 62820/21’, 16 December, www.oireachtas.ie.

557 Ibid.

558 Correspondence with Border Management Unit, Department of Justice, February 2022.

559 Department of Justice (2021). ‘Impact of COVID-19 on immigration and international protection: Frequently asked questions’, www.irishimmigration.ie.

560 Ibid.

561 Department of Justice (2021). ‘Response to parliamentary question 57242/21’, 23 November, www.oireachtas.ie.

562 See The Immigration Act 2004 (Visas) (Amendment) Order 2021; The Immigration Act 2004 (Visas) (Amendment) (No. 2) Order 2021; Immigration Act 2004 (Visas) (Amendment) (No. 4) Order 2021; Immigration Act 2004 (Visas) (Amendment) (No. 6) Order 2021.

563 Department of Justice (2021). ‘Covid-19 visa arrangements: Updated 15 June 2021’, www.irishimmigration.ie.

resumed in September 2021.⁵⁶⁴ The processing of family reunification visas also recommenced in 2021,⁵⁶⁵ following advocacy from NGOs (see Section 3.2.7.3).⁵⁶⁶

The Short Stay Visa Waiver Programme (which enables people visiting the UK on short stay visas to travel to Ireland) resumed from the end of October 2021, and additional countries were added to the eligible list.⁵⁶⁷ The programme had been temporarily suspended in July 2020 due to divergent approaches between Ireland and the UK in travel measures to combat the pandemic.⁵⁶⁸

Ireland also introduced mandatory hotel quarantine between March and September 2021 for nationals from designated states upon landing Ireland. Over 10,000 people completed mandatory hotel quarantine.⁵⁶⁹ Unaccompanied minors and anyone who indicated they were in need of international protection were exempt from mandatory hotel quarantine.⁵⁷⁰

Justice also confirmed that it would not seek any information on immigration permissions from either the Department of Employment and Social Protection or the HSE for persons coming forward for medical attention or social supports to facilitate access to these supports for undocumented migrants.⁵⁷¹

9.3 RESEARCH

9.3.1 Detention and alternatives to detention in international protection and return procedures

EMN Ireland published a report on the policies and practice around how detention is used for immigration-related reasons.⁵⁷² Key findings included a gradual increase in the number of persons in detention for immigration-related reasons between 2015 and 2019. However, there are no data available for those held at stations or at ports, making

564 Department of Justice (2021). 'Covid-19 visa arrangements: Updated 15 June 2021'; Department of Justice (2021). 'Ministers Humphreys and Browne announce resumption of short stay visa processing', 10 September, www.gov.ie.

565 Department of Justice (2021). 'Ministers Humphreys and Browne announce changes to priority/emergency visas', 20 May, www.gov.ie.

566 Immigrant Council of Ireland (2021). 'Immigrant Council calls on Government to allow international travel for family reunification', 14 May, www.immigrantcouncil.ie.

567 New countries were: Philippines, Vietnam, the Republic of North Macedonia, Kosovo, Colombia and Peru; Department of Justice (2021). 'Resumption of the Short Stay Visa Waiver Programme', 29 October, www.irishimmigration.ie.

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

569 Department of Health (2021). 'Minister for Health announces removal of all States from the list of designated States for mandatory hotel quarantine', 25 September, www.gov.ie.

570 Correspondence with Border Management Unit, Department of Justice, February 2022.

571 Department of Justice (2021). 'Impact of COVID-19 on immigration and international protection: Frequently asked questions', 25 September, www.irishimmigration.ie; EMN Ireland (2021). 'New migration and asylum measures introduced in response to COVID-19: 2021', 10 May, www.emn.ie.

572 Cunniffe, E. (2021). Detention and alternatives to detention in international protection and return procedures, ESRI Research Series Number 128.

it difficult to get a comprehensive picture of the use of detention. The report found that Ireland is the only EU country without a purpose-built immigration detention facility, with men detained in Cloverhill Prison, and women in the Dóchas Centre. Female international protection applicants can only be detained in Garda stations. The report found that the use of non-custodial alternatives (for example, the requirement to report regularly to a Garda station or to reside in a specified place) was quite common, particularly for those with deportation orders or subject to a Dublin transfer decision. Advantages of this approach identified by stakeholders are lower costs and staffing requirements, but identified disadvantages include high levels of absconding and challenges faced by the third-country nationals themselves, such as uncertainty and difficulty travelling for reporting obligations.

The report outlined the different policies and practices around detention for four categories of third-country national: international protection applicants, people subject to a Dublin transfer decision, people refused leave to land upon arrival, and people subject to a deportation order. The report found that refusals of leave to land have increased in recent years (apart from in 2020 due to the pandemic), and the most common ground for refusal is that there is reason to believe that the non-national in question intended to enter the State for purposes other than those expressed. In terms of safeguards, the report found that only the detention of international protection applicants needs to be sanctioned by a judicial authority and that for others judicial review in the High Court or under Article 40.4 of the Constitution is the only means of reviewing the legality of their detention. Stakeholders indicated that while there is access to legal representation in principle, legal aid is not available in practice, which can also be the case for access to healthcare, the right to be informed, and the right to communicate with a third party. There are also no specific provisions for vulnerable individuals, although children are not detained and there is special provision for families, with efforts made to keep families together. In general, the report found more robust protections for international protection applicants than for other categories of third-country national.

9.4 CASE LAW

9.4.1 Social welfare rights while working illegally: *Sobhy v the Chief Appeals Officer, Minister for Employment Affairs and Social Protection and the Attorney General [2021] IESC 81*

The applicant, a national of Mauritius, arrived in Ireland in 2008 under a scheme to attract foreign students. She studied and worked in Ireland lawfully until 2012. A change in the scheme required the applicant to apply for a change of status. Her two applications were refused. The applicant continued to reside and work in Ireland without an immigration permission. Throughout her employment, the applicant paid PAYE, and she and her employer made PRSI contributions. In December 2018, the

applicant took maternity leave and, in March 2019, she regularised her immigration status through a new scheme. The following month, in April 2019, she applied for maternity benefit under the *Social Welfare Consolidation Act 2005*.

This application was refused by a deciding officer who held that as it was illegal for her to work without a permission between 2012 and the date of the regularisation of her status, she therefore did not have an entitlement to social welfare payments. This decision was upheld by the chief appeals officer. On appeal, the High Court quashed this decision and remitted the matter to the chief appeals officer for further consideration.

The Supreme Court appeal centred on the question of whether an employment contract held by a person without permission to work, which is unlawful under the *Employment Permits Act 2003* and entered into unlawfully by virtue of the *Immigration Act 2004*, can be regarded as a ‘contract of service’ for the purposes of the *Social Welfare Contributions Act 2005*. The Supreme Court held that while the *Employment Permits Act 2003* did not expressly provide that such an employment contract is either void or unenforceable, it recalled that a contract of employment entered into without a work permit by a person unlawfully in the State was illegal, save as expressly provided by statute. Thus, the phrase ‘contract of service’ in the *Social Welfare Contributions Act 2005* must exclude the employment contracts of persons who were required to hold a work permit or visa and did not hold one. The Supreme Court could therefore not lend assistance to a claim for social insurance that would undermine the policy of the *Employment Permits Act 2003* and the *Immigration Act 2004*. Furthermore, the relationship between the applicant and the State could not be characterised as a contract or contractual nexus.

It was held that the applicant was not entitled to maternity benefit under the 2005 Act on foot of her PRSI contributions. The PRSI contributions made by the applicant and her employer were to be refunded. In a comment at the end of the ruling, Baker J recognised that the ruling may make it attractive for an employer to employ an undocumented person because PRSI would not have to be paid. The judge stated that this may need further legislative clarity or intervention.

9.4.2 Delay and the right to legal status: *H & anor -v- The Minister for Justice and Equality [2021] IESC 0032*

MIH and her daughter, SIH, are Pakistani nationals. They arrived in Ireland in 2014 with MIH’s brother, a British citizen, and applied for EU1 residence cards. These applications were refused. At that time, the Minister issued notifications proposing to deport the applicants pursuant to section 3 of the *Immigration Act 1999*, as amended. However, it was not until 18 months later that deportation orders were notified to the applicants. The deportation orders were subsequently quashed in the High Court. The instant appeal concerned the 18-month time delay in issuing the deportation orders and the

applicability of rights under the Irish Constitution and European Convention of Human Rights (ECHR) during this delay.

It was recalled that, as a general legal principle, the passage of time may lead to a situation where other rights can arise, generated not by the delay itself but significant circumstantial changes during this time. However, being on the territory of a state as a foreign national without the required visa or immigration permission does not itself give right to a legal status.

The proposition that moving to the State as a family gives rise to a right to remain under the Constitution or the ECHR was found to be untenable. It was affirmed that it was not the delay that may give rise to rights, but rather the interrelationships that may arise as a result of the passage of time. It was nonetheless recognised that delay may be relevant in reducing the weight that would otherwise be accorded to the requirements of a firm and fair immigration system where that delay is a result of a dysfunctional system.

With regard to constitutional rights, Article 41, protecting the rights of family based on marriage, was found to not be relevant, and rights under Article 40 of the Constitution were found to not have been interfered with because both mother and daughter were to be deported. With reference to *Gorry v Minister for Justice and Equality [2020] IESC 55*, it was recalled that even if the relationship between the brother and his sister and niece was protected under the Constitution, it would not override the constitutional entitlement of the State to regulate entry and stay of non-nationals.

It was also recognised that there is a remedy for delay in the form of mandamus, and that while delay may be wrong, the remedy for it did not come in the form of granting the right that was applied for.

9.4.3 Reasoning for visa refusals: *Mukovska v Minister for Justice and Minister for Foreign Affairs [2021] IECA 340*

The appellant, a Ukrainian national, applied for a student visa for Ireland to attend an English language course. The visa application was refused on the grounds of, *inter alia*, insufficient finances and the need to undertake the course not having been demonstrated or warranted. The appellant's appeal was also refused. The appeal officer's refusal cited an additional reason for the refusal: concern that the appellant might overstay her visa. The applicant brought judicial review proceedings challenging the refusal. In the High Court ([2018] IEHC 641), no deficiencies were found in the decision-making process. The appellant appealed this decision to the Court of Appeal.

On the first ground of appeal, contesting the finding that the need to undertake the course in the State was not demonstrated or warranted, Hunt J found the reasoning inadequate. It was stated that the level of detail that must be set out in reasons is

dependent on and influenced by the nature of the decision in each case. While the appellant was informed of the conclusion, she was not informed of the essential rationale for that conclusion.

With regard to the finding that the appellant would fail to observe the conditions of her visa, Hunt J found the reasons given unreasonable and irrational. The appellant had submitted evidence to prove that she would observe the conditions of the visa, including that she had previously left the State within the requisite timeframe. The consideration of the evidence submitted by the applicant was found to be unsatisfactory. This included the appeals officer's reference to fact that she did not have a departure stamp from when she previously left Ireland, which was found to be unreasonable because there was no evidence that Dublin Airport had any organised immigration departure formalities where such a stamp might be obtained or received. It was further held that if the conclusion of the appeals officer was based on a view that the appellant was a visa overstayer who had submitted dubious travel documents, the reasons given failed to express an essential rationale.

The reasons given in the visa refusal were inadequate for the purposes of judicial review and/or for any further application for a visa by the appellant, in line with the essential rationale requirement. The Court of Appeal allowed the appeal, setting aside the judgment of the High Court, and granted an order of *certiorari* quashing the decision of the appeals officer to refuse the visa appeal.

9.4.4 Reasoning for deportation orders and Dublin transfers: *MAH v Minister for Justice [2021] IEHC 302*

The applicant was a Somali national who had studied medicine in Ukraine. Upon completion of her studies, she returned to Somalia where she worked as a doctor. During this time, the applicant was subjected to threats from a fundamentalist group and so she fled to Ukraine through renewing her student visa. Upon the expiry of her student visa, she applied for and was granted refugee status in Hungary. However, the applicant was homeless in Hungary and unable to obtain work. She was physically assaulted by a man and feared being sexually assaulted by others. She also experienced regular racist abuse. In February 2016, the applicant left Hungary and applied for international protection in Ireland. This application was found to be inadmissible because she held refugee status in another EU Member State. A proposal to deport was issued under section 3 of the *Immigration Act 1999*, as amended. The applicant made representations in response, including references from academics and medical personnel, as well as a medico-legal report detailing that she had been diagnosed with a major depressive disorder. In February 2020, the applicant was informed that a deportation order was issued against her. The applicant brought judicial review proceedings seeking to have the deportation order quashed.

The High Court first examined the Minister for Justice's assessment that returning the applicant to Hungary was not contrary to the principle of *non-refoulement*. It was held that the Minister failed to undertake an assessment of whether the presumption that Hungary upheld fundamental rights had been rebutted, despite the submissions of the applicant and the information available to the Minister.

With regard to the consideration of the applicant's employment prospects under section 3(6)(f) of the *Immigration Act 1999*, the Minister for Justice's decision recognised that the applicant would easily take up employment as a qualified medical doctor in Ireland but found that this was undermined by the fact that the applicant did not hold a valid immigration permission. The High Court held that this reasoning was inappropriate because the assessment of the employment prospects of a proposed deportee under section 3(6)(f) of the 1999 Act necessarily only arises where a person does not hold a valid immigration permission. The High Court recalled that section 3(6) requires the Minister to consider each sub-heading on a standalone basis and to then engage in a balancing act in determining whether a deportation order should be issued.

The High Court held that the Minister for Justice's decision to make a deportation order in respect of the applicant was vitiated by the errors made in assessing the applicant's case and accordingly quashed the deportation order.

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ANNEX A: STRUCTURE OF MIGRATION AND ASYLUM POLICY

This section sets out the institutional structure on 31 December 2021.

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 2021. This section provides further detail on their roles and responsibilities.

A.1 STRUCTURE OF THE IMMIGRATION SYSTEM

A.1.1 Department of Justice

The Department of Justice (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 Justice (formerly the Irish Naturalisation and Immigration Service) 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 is carried out by ISD at the Dublin Registration Office, since 2016.

Since 31 December 2016, Immigration Service Delivery (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 which 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; and ‘advance passenger information’ (API), which processes data from inbound flights from outside the EU for immigration purposes.

Under the auspices of An Garda Síochána and, in turn, 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 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 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.

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*.⁵⁷³

The statutorily independent International Protection Appeals Tribunal (IPAT) is responsible for hearing appeals. Justice ensures that both the IPO and IPAT have input into the co-ordination of asylum policy.

Trafficking

Justice also 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.⁵⁷⁴ 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

573 European Union (Dublin System) Regulations 2018, S.I. No. 62 of 2018.

574 European Union (Prevention and Combating of Human Trafficking) (National Rapporteur) Regulations 2020, S.I. 432 of 2020, <https://www.irishstatutebook.ie/eli/2020/si/432/made/en/print?q=rappporteur&years=2020>.

(GNPSB), the Anti-Human Trafficking Team (ATT) in the Health Service Executive (HSE) and a specialised human trafficking legal team in the Legal Aid Board. In Ireland, it is the responsibility of the An Garda Síochána to identify a victim of human trafficking and refer them to the National Referral Mechanism (NRM). Once designated as a victim of trafficking within the NRM, the Human Trafficking Investigation and Coordination Unit (HTICU) has the responsibility to refer the victim to a variety of services.⁵⁷⁵ Dedicated personnel are assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions (DPP), as well as in the New Communities and Asylum Seekers Unit within the Department of Employment Affairs and Social Protection. This unit is tasked with assisting suspected victims that are not in the asylum system with their transition from Direct Provision accommodation to mainstream services for the duration of their temporary residency.

A.1.2 International Protection Appeals Tribunal

The International Protection Appeals Tribunal (IPAT) is a statutorily independent body that exercises the performance of its functions under the International Protection Act 2015.⁵⁷⁶ Established in December 2016 in accordance with section 61 of the *International Protection Act 2015*, IPAT hears and determine 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, the IPAT also hears appeals in relation to the *European Communities (Reception Conditions) Regulations 2018*.

A.1.3 Legal Aid Board

The Refugee Documentation Centre (RDC)⁵⁷⁷ is an independent library and research service with the Legal Aid Board (LAB)⁵⁷⁸ that provides a specialist query and research service in support of the work of the LAB and Justice. The specialised Services for Asylum Seekers office within the LAB 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.⁵⁷⁹ Additionally, the LAB provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit of AGS as ‘potential victims’ of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

575 Breen, M., A.E. Healy and M. Healy (2021). *Report on human trafficking and exploitation on the island of Ireland*, Mary Immaculate College, Limerick.

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

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

578 See www.legalaidboard.ie.

579 Ibid.

A.1.4 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, for integration and resettlement.⁵⁸⁰ 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.

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 the International Protection Accommodation Services (IPAS) and International Protection Procurement Services (IPPS). IPAS is responsible for the procurement and overall administration of State provided accommodation and ancillary services for applicants for international protection. Since 30 June 2018, the statutory basis for this work is the *European Communities (Reception Conditions) Regulations 2018*,⁵⁸¹ which transpose the *EU Reception Conditions Directive 2013/33/EU* into Irish law. Since 2004, RIA has been responsible for supporting the voluntary return, on an ongoing basis and in conjunction with the Department of Employment Affairs and Social Protection,⁵⁸² of destitute nationals of the 13 Member States that have joined the EU since 2004.⁵⁸³ IPAS also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

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 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 in response to the migrant crisis, 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.

580 Disability, Equality, Human Rights, Integration and Reception (Transfer of Departmental Administration and Ministerial Functions) Order 2020, S.I. No. 436 of 2020, Dublin: Irish Statute Book, <http://www.irishstatutebook.ie/eli/2020/si/436/made/en/print>.

581 *European Union (Dublin System) Regulations 2018*, S.I. No. 62 of 2018, Irish Statute Book, <http://www.irishstatutebook.ie/eli/2018/si/62/made/en/print>.

582 See www.welfare.ie.

583 See <http://www.ria.gov.ie/>.

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

A.1.5 Department of Enterprise, Trade and Employment

The Department of Enterprise, Trade and Employment (DETE) administers the States' employment permit schemes. Specifically, the employment permit system is administered by the DETE's Employment Permits Section, which implements a 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 DETE that works to support 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.⁵⁸⁴

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. DETE provides administrative support to the EGFSN.⁵⁸⁵

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

A.1.6 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

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

585 Expert Group on Future Skills Needs (2021). *The Expert Group on Future Skills Needs: Statement of activity 2020*, National Skills Council, Dublin.

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.⁵⁸⁶

A.1.7 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 Justice does not have a dedicated visa office within the country concerned.⁵⁸⁷ The DFA has operative function only and is not responsible for visa policy or decisions, which are the remit 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 combatting poverty.⁵⁸⁸

A.2 STRUCTURE OF THE LEGAL SYSTEM

The Irish asylum process sits outside the courts 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;
- the Supreme Court.

The relevance of the courts in relation to asylum and immigration cases is generally limited to judicial review.⁵⁸⁹ 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

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

587 See Quinn (2009) for further discussion.

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

589 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*.

determination process through which a decision is reached to ensure that the decision-maker makes their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.⁵⁹⁰

A.2.1 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.⁵⁹¹ 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.*⁵⁹²

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*.⁵⁹³ Ireland remains bound by these Directives.

Ireland does not participate in the ‘recast’ *Qualification Directive 2011/95/EU* and *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.^{594 595}

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

590 See

https://www.citizensinformation.ie/en/government_in_ireland/national_government/standards_and_accountability/judicial_review_public_decisions.html.

591 *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>.

592 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’.

593 Ireland does not participate in the ‘recast’ *Qualification Directive 2011/95/EU* or the *Procedures Directive 2013/32/EU*.

594 *European Communities (Reception Conditions) Regulations 2018*, S.I. No. 230 of 2018, Irish Statutes Book, <http://www.irishstatutebook.ie/eli/2018/si/230/made/en/print>.

595 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.

applications made in the EU. Regulation 604/2013⁵⁹⁶ ('the Dublin III Regulation') came into force on 29 June 2013. The *European Union (Dublin System) Regulations 2014*⁵⁹⁷ 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 2016.⁵⁹⁸ The *European Union (Dublin System) Regulations 2018*⁵⁹⁹ came into effect on 6 March 2018. 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*.⁶⁰⁰

Ireland is not part of the Schengen area. In accordance with *Council Decision 2002/192/EC*,⁶⁰¹ 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,⁶⁰² and Council Directive 2002/90/EC on facilitation of unauthorised entry.⁶⁰³

A.2.2 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,⁶⁰⁴ several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland. The

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- 596 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, [www.emn.ie](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm) and http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.
- 597 *European Union (Dublin System) Regulations 2014*, S.I. No. 525 of 2014, Irish Statute Book, <http://www.irishstatutebook.ie/eli/2014/si/525/>.
- 598 *European Union (Dublin System) (Amendment) Regulations 2016*, S.I. No. 140 of 2016, <http://www.irishstatutebook.ie/eli/2016/si/140/made/en/print>.
- 599 *European Union (Dublin System) Regulations 2018*, S.I. No. 62 of 2018, <http://www.irishstatutebook.ie/eli/2018/si/62/made/en/print>.
- 600 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>.
- 601 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.
- 602 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>.
- 603 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.
- 604 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*

*Illegal Immigrants (Trafficking) Act 2000*⁶⁰⁵ 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 Act 2006* (as amended) and secondary legislation made under it set out the legal framework for the employment permits schemes. The *Employment Permits Regulations 2017* set down the different classes of employment permit that may be granted and the qualifying criteria, application process, fees, review process with regard to decisions taken and other matters in respect of such classes.⁶⁰⁶ 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)⁶⁰⁷ 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.⁶⁰⁸

Since 31 December 2016, the single application procedure for international protection claims under the *International Protection Act 2015* has entered operation. Under the single application procedure, applications for refugee status, subsidiary protection and permission to remain are assessed as part of a single procedure. This replaced the former sequential process, whereby applications for refugee status were assessed under the *Refugee Act 1996* and applications for subsidiary protection under the *European Union (Subsidiary Protection) Regulations 2013*.

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 grant refugee status in relation to an appeal heard by IPAT, but retains a discretion not to grant refugee status to a refugee on grounds of danger to the security of the State or to the community of the State where the refugee has been convicted of a particularly serious crime.⁶⁰⁹ 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

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

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

606 *Employment Permits Regulations 2017* S.I. No. 95/2017, <https://www.irishstatutebook.ie/eli/2017/si/95/made/en/print>.

607 *The Refugee Act 1996* has now been repealed.

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

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

statuses and the applicant has not appealed the recommendation or when IPAT upholds the recommendation not to grant either status. The Minister also refuses both refugee and subsidiary protection status 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, as well as any additional information that the applicant is invited to provide, is taken into account.

A.2.3 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 combatting 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 combatting trafficking in human beings and protecting its victims*, which replaced *Council Framework Decision 2002/629/JHA on combatting 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 focusses 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 Organisation 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 well-being 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*⁶¹⁰ designate the Irish Human Rights and Equality Commission (IHREC) as Ireland's Independent National Rapporteur on the Trafficking of Human Beings. 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*.⁶¹¹

A.2.4 Sexual and gender-based violence

The *Criminal Law (Extraterritorial Jurisdiction) Act 2019*⁶¹² gives effect to certain aspects of the Istanbul Convention on preventing and combatting 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 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.

610 *European Union (Prevention and Combating of Human Trafficking)(National Rapporteur) Regulations 2020*, S.I. No. 432 of 2020, <http://www.irishstatutebook.ie/eli/2020/si/432/made/en/print>.

611 IHREC (2020). *Annual report 2020*.

612 Act No. 6 of 2019, <http://www.irishstatutebook.ie/eli/2019/act/6/enacted/en/html>.

A.2.5 Free movement

The *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*⁶¹³ were the principal Regulations to transpose *EU Directive 2004/38/EC*⁶¹⁴ on free movement of persons.⁶¹⁵ These were subsequently amended by the *European Communities (Free Movement) (Amendment) Regulations 2008*⁶¹⁶ following the *Metock*⁶¹⁷ judgment of the European Court of Justice (ECJ). The *European Community (Free Movement of Persons) Regulations 2015*,⁶¹⁸ 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 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 and make provision for the issue of residence documents and permanent residence documents to such persons.

613 *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*, S.I. No. 656 of 2006, <http://www.irishstatutebook.ie/eli/2006/si/656/made/en/print>.

614 *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.

615 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.

616 *European Communities (Free Movement) (Amendment) Regulations 2008*, S.I. No. 310 of 2008, <http://www.irishstatutebook.ie/eli/2008/si/310/made/en/print?q=310&years=2008>.

617 *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/.

618 *European Communities (Free Movement of Persons) Regulations 2015*, S.I. No. 548 of 2015, <http://www.irishstatutebook.ie/eli/2015/si/548/made/en/print>.

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An Roinn Dlí agus Cirt
Department of Justice

