



EUROPEAN MIGRATION NETWORK

ANNUAL POLICY REPORT ON MIGRATION AND ASYLUM 2008: IRELAND

CORONA JOYCE

2009

Research Study Prepared for the European Migration Network

The opinions presented in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice, Equality and Law Reform or the European Commission Directorate-General Freedom, Security and Justice.

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ISBN 978 0 7070 0291 0

ACKNOWLEDGEMENTS

This report has benefited greatly from comments on an earlier draft by Hilka Becker, Catherine Cosgrave of the Immigrant Council of Ireland (ICI); Emma Carey, Robin Hanan, Jyothi Kanics, Michael Quinlan, Caoimhe Sheridan of the Irish Refugee Council (IRC); Raluca Anucuta and Siobhan O'Donoghue of the Migrant Rights Centre Ireland (MRCI); staff members of the Department of Justice, Equality and Law Reform; staff members of the Office of the Minister for Integration, and by my colleague Philip O'Connell.

Thanks are also due to Deirdre Whitaker, Mary Cleary and Regina Moore for preparing this manuscript for publication.

This report is the fifth in a series of Annual Policy Reports, a series that is intended to provide a coherent overview of immigration trends and policy development during consecutive periods beginning in January 2003. Many thanks to my colleague Emma Quinn for her valuable comments and input into this report.

Assistance with analysis of significant legal occurrences during 2008 was provided by John Stanley, independent consultant.

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ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, lower House
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
IBC/05	Irish Born Child Scheme 2005
ICI	Immigrant Council of Ireland
IHRC	Irish Human Rights Commission
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
JHA	Justice and Home Affairs
MRCI	Migrant Rights Centre Ireland
NCCRI	National Consultative Committee on Racism and Interculturalism
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
PPSN	Personal Public Service Number
RAT	Refugee Appeals Tribunal
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UNHCR	United Nations High Commissioner for Refugees

EXECUTIVE SUMMARY

This report is the fifth in a series of Annual Policy Reports, a series which is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. Previous comparable Annual Policy Reports are also available for a number of other EU countries participating in the European Migration Network.

One of the most significant developments in Ireland during 2008 was the publication of the *Immigration, Residence and Protection Bill, 2008* in January. By year end of 2008 the Bill was through Committee Stage and awaiting a Report Stage in the Dáil. The 2008 Bill was an amended version of the draft *Immigration, Residence and Protection Bill, 2007* which fell with the change of government after the general election of 2007. Upon publication it was stated that when enacted it would seek to transpose *Council Directive 2005/85 EC* ('The Procedures Directive') into Irish law, and to integrate the provisions of the *Asylum Qualification Directive Regulations 2006 (S.I. No. 518 of 2006)* into primary legislation. As with the 2007 Bill, for the first time in domestic legislation the phrase 'foreign nationals' would refer only to those who are from outside the European Union. There were substantial amendments to the published Bill during the year, with 706 amendments in the Dáil and a further 200 announced by the Minister for Justice, Equality and Law Reform in April 2008. The Bill, as published in January 2008, proposes the first statutory basis for the issuing and revoking of visa applications. The Bill proposes a new system comprising different residence permits allocated according to which category a foreign national falls into. It also outlines provisions for a category of long-term residency for an initial period of five years and under which foreign nationals would broadly be entitled to the same rights of travel, work and medical care and social welfare services as Irish citizens. Regarding protection applications, the Bill proposes to repeal the *European Communities (Eligibility for Protection) Regulations, 2006*. All functions currently being carried out by the Office of the Refugee Applications Commissioner with regard to protection, including subsidiary protection, would be carried out by the Minister for Justice, Equality and Law Reform. Proposed changes include a shift to a single protection determination procedure where all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure and at first instance. A significant change from previous legislation contained in the Bill is that it allows for the summary removal of a foreign national without notice.

On a national political level, there were a number of changes in political appointments during 2008. On 7 May 2008 Brian Cowen T.D. became Taoiseach following the resignation of the previous Taoiseach Bertie Ahern T.D., and Mary Coughlan T.D. was appointed Tánaiste, and Minister for Enterprise, Trade and Employment. There was a change in Minister for

Justice, Equality and Law Reform during 2008 also, when the previous Minister (Brian Lenihan T.D.) became Finance Minister on 7 May 2008, and Dermot Ahern T.D. assumed Ministerial responsibility for the Department of Justice, Equality and Law Reform. A Supplementary Budget announced by the Irish Government in October 2008 saw cuts to several organisations and agencies in the area of asylum and migration including the cessation of funding to the National Consultative Committee on Racism and Interculturalism (NCCRI). Additionally, the budget of the Office of the Minister for Integration was announced as being cut by 26 per cent, and as part of cost-saving measures certain administrative functions of the Equality Authority and the Human Rights Commission were to be amalgamated.

There were several developments related to changes in structure of the institutional context related to migration and asylum during the year, including the appointment of the first Head of the Anti-Human Trafficking Unit in February 2008. In addition, some 90 staff members within the Citizenship Division of the Irish Naturalisation and Immigration Service (INIS) decentralised from the Dublin-based Burgh Quay office to Tipperary Town. In April 2008 a full-time Garda National Immigration Bureau (GNIB) Unit opened at Ireland West Airport at Knock, Co. Mayo.

Main legislative initiatives during 2008 included the enactment of the *Criminal Law (Human Trafficking) Act, 2008* in June 2008 and publication of the *Employment Compliance Bill, 2008*. The *Criminal Law (Human Trafficking) Act, 2008* created separate offences of trafficking in children for the purpose of labour exploitation or the removal of their organs; trafficking in children for the purpose of their sexual exploitation; and trafficking in adults for the purposes of their sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose. Of note was the inclusion of a provision under which it becomes an offence to solicit or importune a trafficked person for the purpose of prostitution. Protection for victims of trafficking was provided in August and November 2008, when the Anti-Human Trafficking Unit of the Department of Justice, Equality and Law Reform published *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*. The publication of the notice aimed to provide information related to administrative arrangements whereby a suspected victim of human trafficking from outside the EEA may be granted a 45 day period of 'recovery and reflection' in the State and may also, in certain circumstances, be granted one or more periods of temporary residence in the State. The 45 day period of recovery and reflection was subsequently changed to 60 days in the arrangements published in November 2008.

The *Employment Compliance Bill, 2008* contained measures which will strengthen the ability of the State to secure improved compliance with employment legislation, and to establish the National Employment Rights Authority on a statutory footing. It would also serve to increase penalties for certain offences under employment legislation and certain other enactments; to further amend employment legislation and certain other enactments and to provide for related matters, including underpayment of staff. The Bill would result in fines of €5,000 or imprisonment of up to 12 months for summary offences. Penalties of €250,000 or 3 years' imprisonment would follow for indictable offences. Criticism of the Bill

centred on the potential power of labour inspectors to request employment permits from workers and that the Bill does not include provisions for domestic workers in private homes or clarity regarding undocumented workers. In May 2008 the Minister for Justice, Equality and Law Reform stated his intention to draft and publish an administrative scheme relating to foreign nationals who were holders of work permits but have become undocumented and, thereby, are unlawfully in the State. It was announced that such case would be dealt with in a 'humanitarian way.' During the year the Department of Enterprise, Trade and Employment published a policy regarding a decision to 'look favourably' on applications made by foreign nationals who are current employment permit holders and who have been made redundant within the previous three months. In addition, it also agreed to change published regulations on the right of work permit holders to change employers, with certain limitations. Work permit holders may now change employers, after a minimum of one year with the same employer, provided that their new employment is within the same economic sector in which they are currently employed or within another eligible sector. Importantly, in both cases there no longer exists a labour market test requirement.

A prominent and lengthy media and parliamentary debate in mid-2008 concerned several cases related to alleged discrimination at Dublin Airport by Immigration Officers against legally-entering third-country nationals. Debate centred around allegations that immigration procedures at ports of entry were arbitrary and reliant on a high level of discretion on the behalf of individual Immigration Officers. Two of the most high profile cases concerned an Indian tourist (who had won the visit at a Tourism Ireland-sponsored event in Mumbai and who complained of 'harassment and racial discrimination' at Dublin Airport and which lead to an exchange of letters between Tourism Ireland and the Department of Arts and Tourism regarding similar, previous incidents), and a situation in September 2008 involving a Nigerian priest (and requiring the intervention of the Nigerian Ambassador to Ireland) whereby he was refused leave to land, arrested, searched and placed overnight in a prison cell upon his arrival in Dublin despite being in possession of a valid tourist visa and documents.¹ Much NGO commentary on the cases occurred with calls for 'greater scrutiny of immigration officers', particularly given continued proposed powers for discretion on behalf of Immigration Officers under the published *Immigration, Residence and Protection Bill, 2008*.

In 2008 the further administrative scheme with regard to the renewal of leave to remain for the non-national parents of Irish-born children granted permission to remain under the *Irish Born Child (IBC/05) Scheme* continued. Applicants who were successful have had their leave to remain renewed for up to three years at which stage those qualifying will be eligible to apply for

¹ It was later reported that the refusal of right to land stamp on the individual's passport was 'cancelled without prejudice'.

full citizenship having held five years of legal residence in Ireland.² Processing of applications for renewal of this permission to remain in the State commenced in January 2007 and finished on 31 March 2008. By the end of 2008, some 14,261 applications for renewal had been received, with 14,117 granted positive decisions. In a related set of legal challenges, in May 2008 the Irish Supreme Court rejected an attempt by the Minister for Justice, Equality and Law Reform to uphold deportation orders issued against the parents of two Irish-born children who had been born in Ireland prior to enactment of the changed citizenship law.³ As a result of the case ruling the deportation orders were to be quashed, with the families to be invited to make an application to the Minister regarding leave to remain in the State. The case generated much media and NGO debate, particularly in light of a potential application of the ruling to ‘thousands’ of resident non-Irish nationals in a similar situation.

Some 1,274 persons were granted Leave to Remain in the State by the Minister for Justice, Equality and Law Reform under Section 3 of the Immigration Act, 1999 (as amended) during 2008, and a further 316 persons had previous Leave to Remain status renewed.

Applications for asylum decreased in 2008, with a significant increase in return migration (deportations, transfers and voluntary repatriations) from Ireland year-on-year from 2007. Regarding Subsidiary Protection, some 1,465 applications were received during 2008 with 7 applications granted. Some 162 deportation orders to non-EU countries were effected during 2008, with 271 Dublin Regulation transfer orders effected during the same period. In 2008 in Ireland, 561 persons opted to be assisted to return home voluntarily, a substantial increase from previous years. During 2008 some 336 unaccompanied minors were referred to HSE care in the Dublin region⁴ and there was a slight increase in asylum applications received from unaccompanied minors. In 2008 Ireland continued to participate in the Resettlement programme for vulnerable refugees in conjunction with UNHCR with 101 refugees resettled in Ireland during the year.

There was significant case law and parliamentary discussion on the right of residence for third-country non-EU spouses of EU citizens residing in Ireland during 2008, particularly the requirement that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland only if he or she is already lawfully resident in another Member State. Several cases concerning third-country national spouses of an EU citizen residing in Ireland were taken to the European

² In order to qualify for a renewal an applicant must:

- Have been successful under the first *IBC/05 Scheme*,
- Must have been living in Ireland with his or her child since being granted permission to remain, and
- Must have made every effort to become economically viable.

³ *Oguekwe .v. Minister for Justice Equality and Law Reform; Dimbo .v. Minister for Justice Equality and Law Reform.*

⁴ Figures related to the HSE Social Work Team for Separated Children Seeking Asylum based in the Dublin area.

Court of Justice (ECJ) (headed by the *Metock* case),⁵ with the ECJ subsequently finding that the Government should not prevent third-country spouses of EU citizens from living in Ireland, and thus providing residency rights to significant numbers of non-EU national spouses who have been served with ‘intent to deport’ notices by the Department of Justice, Equality and Law Reform beginning in 2007. It also resulted in the Government amending a 2006 Regulation stipulating that third-country non-EU nationals married to EU citizens must have resided in another Member State before moving to Ireland, and in July 2008 *the European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* was published.

Regarding EU legislation, during 2008 Ireland indicated its decision to take part in *Council Directive 2008/381/EC* establishing a European Migration Network.

The *Criminal Law (Human Trafficking) Act 2008* was enacted in June 2008 and sought to give effect to, amongst other measures, the *Council Framework Decision 2002/629/JHA* of 19 July 2002 on Combating Trafficking in Human Beings.

In July 2008 the Minister for Justice, Equality and Law Reform introduced the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* amending the previous Regulation and in light of developments in the *Metock* case. *S.I. No. 336 of 2008, the Immigration Act 2004 (Registration Certificate Fee) Regulations 2008* came into operation on 23 August 2008 and gave effect to *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*. This Directive seeks to provide that the fee would be waived for spouses and dependants of EU nationals who receive a residence permit under *Directive 2004/38/EC*.

⁵ *Case C-127/08-Metock and Ors v Minister for Justice, Equality and Law Reform, Unreported, European Court of Justice, 25/07/2008; Unreported, High Court, Finlay Geoghegan J., 14/03/2008.*

1. POLITICAL DEVELOPMENTS IN IRELAND

1.1 General Structure of the Political System and Institutional Context Relevant for Migration and Asylum

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Constitution was enacted in 1937 and it defines the powers and functions of the President, the Government and the Oireachtas. The Government is led by the Taoiseach (the Prime Minister, Brian Cowen T.D. as of year end 2008) and Tánaiste (Deputy Prime Minister, Mary Coughlan as of year end 2008). Each of the Dáil's 166 members is a Teachta Dála (T.D.), who is directly elected by the people. General elections take place at least once every five years. Since the *Agreed Programme for Government* announced after the general election of 2007, a coalition government has existed between Fianna Fáil, the Green Party, the Progressive Democrats and four Independent TDs.

There are 15 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland. The Department of Justice, Equality and Law Reform has a range of responsibilities including immigration policy and services, crime and security, law reform, equality and human rights and houses the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Department also has political responsibility for the national police force An Garda Síochána including the Garda National Immigration Bureau (GNIB).⁶ The Department of Enterprise, Trade and Employment administers the employment permit schemes. The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice, Equality and Law Reform does not operate a dedicated visa office. The Garda National Immigration Bureau (GNIB) is responsible for all immigration related to Garda (police) operations in the State and is under the auspices of An Garda Síochána and, in turn, the Department of Justice, Equality and Law Reform. The GNIB carries out deportations, border control, and investigations related to illegal immigration and trafficking in

⁶ Further information on the specific activities of each government department, including the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA) can be found in the previously-published *Policy Analysis Report on Asylum and Migration: Ireland 2006*, *Annual Policy Report on Migration and Asylum 2007: Ireland* and *The Organisation of Asylum and Migration Policies in Ireland*.

human beings. 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.

With regard to applications for asylum and decision-making regarding the granting of refugee status under the *1951 Geneva Convention*, the Refugee Applications Commissioner (commonly referred to as the Office of the Refugee Applications Commissioner [ORAC]) and the Refugee Appeals Tribunal (RAT) are statutorily independent offices. These bodies have responsibility for processing first-instance asylum claims and for hearing appeals, respectively. Both bodies are closely associated with the Department of Justice, Equality and Law Reform and make recommendations on asylum claims and hearings to the Minister of the Department.

1.2 General Political Developments

1.2.1 CHANGE IN GOVERNMENTAL APPOINTMENTS

There were a number of changes in political appointments in government during 2008. On 7 May 2008 Brian Cowen T.D. became Taoiseach following the resignation of the previous Taoiseach Bertie Ahern T.D. Both also held the role of leader of the Fianna Fáil political party. Mary Coughlan T.D. was appointed Tánaiste, and Minister for Enterprise, Trade and Employment on 7 May 2008.

There was a change in Minister for The Department of Justice, Equality and Law Reform during 2008 also, when the previous Minister (Brian Lenihan T.D.) became Finance Minister on the 7 May 2008, and Dermot Ahern T.D. assumed Ministerial responsibility for the Department of Justice, Equality and Law Reform.

1.3 Institutional Developments

1.3.1 ANTI-HUMAN TRAFFICKING UNIT

Following on from the establishment of a new Anti-Human Trafficking Unit within the Department of Justice, Equality and Law Reform in 2007, the first head of the Unit was appointed in February 2008. The Office was established to work with governmental and non-governmental agencies in developing, coordinating and implementing the Government's national strategy to address human trafficking in Ireland.⁷ The establishment of a new High Level Group on Combating Trafficking in Human Beings took place during 2008, with one of the key outputs of the High Level Group the drafting of a *National Action Plan to Combat Trafficking in Human Beings* (see section 2.3.10 for further discussion).

⁷ Department of Justice, Equality and Law Reform (7 February 2008) 'Appointment of Executive Director of new Anti Human Trafficking Unit'. Press Release. Available at www.justice.ie/en/JELR/Pages/Appointment%20of%20Executive%20Director%20of%20new%20Anti%20Human%20Trafficking%20Unit

1.3.2 DECENTRALISATION OF CITIZENSHIP SECTION OF IRISH NATURALISATION AND IMMIGRATION SERVICE (INIS)

During 2008 the Citizenship Division of the Irish Naturalisation and Immigration Service (INIS) decentralised from the Dublin-based Burgh Quay office to Tipperary Town. The decentralisation process saw an initial relocation of 60 staff, increasing to 90 by the end of 2008. All 186 staff are due to relocate once new offices are completed.

1.3.3 GNIB UNIT AT IRELAND WEST AIRPORT

In April 2008 a full-time Garda National Immigration Bureau (GNIB) Unit opened at Ireland West Airport at Knock, Co. Mayo. The presence of the new GNIB Unit was placed in context of new UK and charter flight services operating out of the airport. The opening of the full-time desk saw Garda personnel involved in immigration matters at the airport increase from 1 local member to 8 dedicated officers.⁸

⁸ *RTE News* (14 April 2008) 'Ireland West Airport gets garda unit.' Available at www.rte.ie/news/2008/0414/knock.htm; *The Observer* (20 April 2008) 'Something new has just arrived at Knock airport. It's called security'. Available at <http://www.guardian.co.uk/uk/2008/apr/20/transport.ireland>

2. POLICY AND LEGISLATIVE DEVELOPMENTS IN THE AREA OF MIGRATION AND ASYLUM

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

The modern Irish legal system is based on Common Law as modified by subsequent legislation and by the Constitution of 1937. All draft legislation or Bills may be initiated in either the Dáil or the Seanad. The First Stage of the legislative process is the initiation of a Bill by presentation in either the Dáil or the Seanad. There then follows a series of Stages during which the Bill is examined, debated and amended in both houses. At the Final, or Fifth Stage, a debate takes place on a motion of whether the Bill would now constitute good law. If passed in the motion, the Bill is then passed to the other House, with second to fifth stages repeated there. Finally, the President of Ireland signs the Bill into law.⁹

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 and guaranteed independence in the exercise of their functions. The Irish court system is hierarchical in nature and there are basically four types of courts in Ireland which hear different types and levels of cases. In ascending hierarchical order the four types of courts are the District Court, the Circuit Court, the High Court and the Supreme Court. Of interest, Quinn (2009) notes how the Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice, Equality and Law Reform. The relevance of the Courts in relation to asylum and immigration cases is generally limited to judicial review.

As discussed in previous reports in this series (most notably the *Policy Analysis Report on Asylum and Migration: Ireland 2006*), prior to the mid-1990s Irish asylum and immigration legislation was covered under the *Aliens Act, 1935* (and Orders made under that Act), together with the *EU Rights of Residence Directives* which came into effect after Ireland joined the European

⁹ Quinn (2009) provides an insightful discussion on the structure of the Irish legal system, specifically the place of immigration and asylum within it.

Union in 1973. Following a sharp rise in immigration flows as from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

Regarding domestic legislation dealing with refugees and asylum seekers, the most notable piece of legislation is the *Refugee Act, 1996*, as amended. In addition, S.I. No. 518 of 2006 seeks to ensure compliance with *EU Directive 2004/83/EC* (“The Qualification Directive”).¹⁰ Ireland is also a signatory to the *Dublin Convention*, and is subject to the *Dublin Regulation (EC 343/2003)* which succeeded that Convention and which determines the EU member state responsible for processing asylum applications made in the EU. Domestic immigration law in Ireland is based on various pieces of immigration legislation, including the *Aliens Act, 1935* and Orders made under it, the *Illegal Immigrants (Trafficking) Act, 2000*, and the *Immigration Act, 1999, 2003* and *2004*.¹¹ *The Immigration, Residence and Protection Bill, 2008* constitutes a single piece of proposed legislation for the management of both immigration and protection issues and by the end of 2008 the Bill was at Committee Stage within the Dáil.¹²

2.1.1 PUBLICATION OF IMMIGRATION, RESIDENCE AND PROTECTION BILL, 2008

In January 2008 the Government published the *Immigration, Residence and Protection Bill, 2008*, an amended version of the draft *Immigration, Residence and Protection Bill, 2007* which fell with the change of government after the general election of 2007. Like its previous incarnation, the 2008 Bill seeks to codify, integrate and update various pieces of previous legislative measures and would set forth a legislative framework for the management of inward migration to Ireland.

Set forth in the 2008 Bill are provisions to restate and modify certain aspects of the law relating to the entry into, presence in and removal from the state of certain foreign nationals and others, including foreign nationals in need of protection from the risk of serious harm or persecution elsewhere. Upon publication in January 2008, it was stated that when enacted it would seek to give effect to *Directive 2001/55/EC*¹³ and *Directive 2005/85/EC*.¹⁴ By the end of 2008 the 2008 Bill was at Committee Stage within the Dáil.

¹⁰ Quinn (2009) *The Organisation of Asylum and Migration Policies in Ireland* discusses both current and past development of legislation in great detail.

¹¹ See Quinn (2009) for further discussion on this issue, particularly legislative development.

¹² See Quinn, Stanley, Joyce and O’Connell (2008) *Handbook on Immigration and Asylum in Ireland 2007* for further discussion on this issue. A list of relevant legislation (and description) in the area of migration and asylum is included in Annex II.

¹³ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons.

¹⁴ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status.

2.1.2 MAIN MINISTRIES IN THE AREA OF ASYLUM AND MIGRATION

There are three main ministries involved in the area of asylum and migration in Ireland.¹⁵ In addition, the Department of Health and Children (which is responsible for administration of the Health Service Executive (HSE)) is tasked with providing care for unaccompanied third-country minors in the State.

2.1.2.1 *Department of Justice, Equality and Law Reform*

The Department of Justice, Equality and Law Reform is responsible for immigration management and the Minister of that Department has ultimate decision making powers in relation to immigration and asylum. The Office of the Minister of State with special responsibility for Integration Policy is tasked with supporting the integration of legally resident migrants in Ireland. In addition, the Garda National Immigration Bureau (GNIB) and the Anti-Human Trafficking Unit are housed within the Department.

The Irish Naturalisation and Immigration Service (INIS) was established in 2005 and is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, immigration (including Visas) and citizenship matters. The INIS also brings the Reception and Integration Agency (RIA) under its aegis. The Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) have strong links with the Department, although the latter two bodies have their own independent statutory existence:

- The Reception and Integration Agency (RIA) is responsible for coordinating the provision of services to both asylum seekers and refugees. Since 2004 it has also been responsible for supporting the repatriation, on an ongoing basis and for the Department of Social and Family Affairs, of nationals of the twelve new EU Member States who fail the Habitual Residency Condition attached to social assistance payments and require assistance in returning to their country of origin.
- A two-pillar structure exists for asylum application processing, consisting of:
 - The Office of the Refugee Applications Commissioner (ORAC)
 - The Refugee Appeals Tribunal (RAT).

The Refugee Documentation Centre (RDC) is an independent library and research service within the Legal Aid Board. The Refugee Legal Service (RLS) was established in 1999 to provide a comprehensive legal aid service for asylum seekers and falls within the remit of the statutory, independent body of the Legal Aid Board. During 2008 the RLS commenced the dispensing of advice related to broader immigration-related applications

¹⁵ In-depth discussion and analysis on the institutional context of asylum and migration in Ireland is provided in Quinn (2009) *The Organisation of Asylum and Migration Policies in Ireland*. Available at www.esri.ie.

but this had ceased by the time of writing of this report. Immigration advice is included under the remit of the Legal Aid Board.¹⁶

2.1.2.2 *Department of Enterprise, Trade and Employment*

The Department of Enterprise, Trade and Employment administers the employment permit schemes under the general auspices of the Labour Force Development Division:

- The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland.
- The Employment Permits section implements a vacancy-driven employment permits system in order to fill those labour skills gaps which cannot be filled through domestic/EU supply. The Employment Permits section processes applications for employment permits, issues guidelines and procedures information and produces online statistics on applications and permits issued. The section also operates a telephone helpline that receives 250/300 calls per day.¹⁷

2.1.2.3 *The Department of Foreign Affairs*

The Department of Foreign Affairs has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice, Equality and Law Reform does not have a dedicated visa office present within the country.¹⁸

2.2

General Overview of the Main Policy and Legislative Debates

2.2.1 CRIMINAL LAW (HUMAN TRAFFICKING) ACT, 2008

The *Criminal Law (Human Trafficking) Act*, 2008 was enacted in June 2008 and sought to give effect to, amongst other measures, *the Council Framework Decision of 2002 on Combating Trafficking in Human Beings*; *the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; and *the Council of Europe Convention on Action against Trafficking in Human Beings*.

The Act creates separate offences of trafficking in children for the purpose of labour exploitation or the removal of their organs, trafficking in children for the purpose of their sexual exploitation and trafficking in adults for the purposes of their sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose. Of note was the inclusion of a provision under which it becomes an offence to solicit or importune a trafficked person for the purpose of

¹⁶ The Legal Aid Board website states that 'Legal aid and advice is also provided in appropriate cases on immigration and deportation matters'. Available at http://www.legalaidboard.ie/lab/publishing.nsf/Content/Refugee_Legal_Service

¹⁷ Quinn (2009) *The Organisation of Asylum and Migration Policies in Ireland*. Available at www.esri.ie.

¹⁸ See Quinn (2009) for further discussion.

prostitution.¹⁹ The Act does not include a non-punishment provision as required by Article 26 of the *Council of Europe Convention on Action against Trafficking in Human Beings*.

Upon signing of the Act, the Minister for Justice, Equality and Law Reform noted that the published *Immigration, Residence and Protection Bill, 2008* would provide protection for victims of trafficking, including a period of recovery and reflection of 45 days and, where the person assists a Garda investigation, a further 6-month residence. As discussed later in this report in section 2.3.10, INIS introduced administrative arrangements for the granting a recovery and reflection permit for 60 days to suspected victims of trafficking in September 2008. Thereafter a 6-month temporary residence permit can be issued to a victim of trafficking who is co-operating with an investigation/prosecution against perpetrators.

2.2.2 IMMIGRATION ACT 2004 (REGISTRATION CERTIFICATE FEE) REGULATIONS 2008

S.I. No. 336 of 2008, the Immigration Act 2004 (Registration Certificate Fee) Regulations 2008 came into operation on 23 August 2008. The S.I. made provisions for changes to the fee prescribed for registration certificates for non-EEA nationals in Ireland under section 19 (1)(b) of the *Immigration Act, 2004*.

All legally resident non-EEA nationals who have entered the State with the intention of residing in Ireland for a period of more than three months must register with their local immigration registration officer. An immigration certificate of registration (GNIB Registration Card) is issued by the Garda National Immigration Bureau to a non-EEA national who so registers on payment of an appropriate fee. Certain categories are exempt from payment including Convention Refugees; persons who have been reunified with such refugees under section 18 of the *Refugee Act 1996*; persons who are under 18 years of age at the time of registration; spouses, widows and widowers of Irish citizens; spouses and dependants of EU nationals who receive a residence permit under *EU Directive 2004/38/EC*; and Programme Refugees as defined by section 24 of the *Refugee Act, 1996*.²⁰

2.2.3 IMMIGRATION ACT 2004 (REGISTRATION CERTIFICATE) (AMENDMENT) REGULATIONS 2008

S.I. No. 340 of 2008, Immigration Act, 2004 (Registration Certificate) (Amendment) Regulations, 2008 came into force on 16 August 2008. It sought to amend Part 2 of the *Immigration Act, 2004* related to the furnishing of fingerprints to the registration office.

¹⁹ Department of Justice, Equality and Law Reform (May 2008) 'Ahern announces enactment of the Criminal Law (Human Trafficking) Act 2008'. Press Release. Available at [http://www.justice.ie/en/JELR/Pages/Ahern%20announces%20enactment%20of%20the%20Criminal%20Law%20\(Human%20Trafficking\)%20Act%202008](http://www.justice.ie/en/JELR/Pages/Ahern%20announces%20enactment%20of%20the%20Criminal%20Law%20(Human%20Trafficking)%20Act%202008)

²⁰ Department of Justice, Equality and Law Reform (2008) 'Immigration Certificates of Registration issued to non-EEA nationals'. Available at www.inis.gov.ie/en/INIS/Pages/WP07000031

2.2.4 PUBLICATION OF THE IMMIGRATION, RESIDENCE AND PROTECTION BILL, 2008

As discussed earlier in this report, the draft *Immigration, Residence and Protection Bill, 2007* fell with the change of government in 2007. January 2008 saw the publication of the *Immigration, Residence and Protection Bill, 2008* which again sought to propose reformed systems for dealing with a broad range of matters related to immigration, protection, residence and removal from the State. If enacted, it would repeal, inter alia, the *Immigration Acts, 1999, 2003 and 2004*; the *Refugee Act, 1996*; and section 5 of the *Illegal Immigrants (Trafficking) Act, 2000*, but would not change or replace legislation on citizenship and naturalisation. As with the 2007 Bill, for the first time in domestic legislation the phrase “foreign nationals” would refer only to those who are from outside the European Union.²¹ There were substantial amendments to the published Bill during the year, with 706 amendments in the Dáil and a further 200 announced by the Minister for Justice, Equality and Law Reform in April 2008. The removal of one of the most controversial measures in the Bill was discussed in a set of amendments proposed by the Minister after Committee stage (but not yet debated in the Dáil as of time of writing of this report), namely the proposed requirement for non-EU nationals to obtain the permission of the Minister prior to marriage. By year end of 2008 the Bill was through Committee Stage and awaiting a Report Stage in the Dáil.

The Bill, as published in January 2008, proposes the first statutory basis for the issuing and revoking of visa applications. It sets out proposals regarding entry into the State, with existing legislative provisions largely restated, including regulations dealing with approved ports for entry, the requirement to present on arrival, the power to inspect on arrival, permission and refusal of permission to enter the State, and carrier liability. Regarding residence permits and requirements for registration, the Bill proposes a new system comprising different residence permits allocated according to which category a foreign national falls into. It also outlines provisions for a category of long-term residency for an initial period of five years and under which foreign nationals would broadly be entitled to the same rights of travel, work and medical care and social welfare services as Irish citizens.²² Of note, the long-term residence provision in Irish legislation falls short of the wider EU standard pursuant to the Directive on long-term residence in that first, it is granted on the basis of ministerial discretion only and that second, it is a permit with limited duration.²³

The Bill seeks to transpose *Council Directive 2005/85 EC* (“The Procedures Directive”) into Irish law, and to integrate the provisions of the *Asylum Qualification Directive Regulations 2006 (S.I. No. 518 of 2006)* into primary legislation.

²¹ Section 2 of the Bill defines a ‘foreign national’ as meaning a person who is neither (a) an Irish citizen, nor (b) a person who has established a right to enter and be present in the State under the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006)*, the *European Communities 5 (Aliens) Regulations 1977 (S.I. No. 393 of 1977)* or the *European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997)*.

²² See Quinn *et al.* (2008) for significant discussion of this new Bill.

²³ Comments as received from the Immigrant Council of Ireland (ICI) in June 2009.

Regarding the detention and removal of foreign nationals, a significant change from previous legislation contained in the Bill is that it allows for the summary removal of a foreign national without notice. Foreign nationals may be detained pending removal, and those under 18 years of age could be detained if they do not comply with a condition imposed by an immigration officer or member of An Garda Síochána. Regarding judicial review, the Bill proposes that the validity of any act, decision or determination under the proposed act, as well as any decision under *S.I. No. 57 of 1997*,²⁴ *S.I. No. 656 of 2006*,²⁵ and *S.I. No. 393 of 1977*,²⁶ shall not be questioned otherwise than by way of judicial review.²⁷ The Bill proposes that a Court could declare an application for judicial review to be “frivolous or vexatious”. In addition, the Court could direct that the costs be borne by an applicant’s legal representative. An application for leave to apply for judicial review would not suspend or prevent an applicant’s transfer from the State. It also limits the instances whereby the Court can extend the 14 day time period that was laid down in the *Illegal Immigrants Trafficking Act, 2000*.

Regarding protection applications, the Bill proposes to repeal the *European Communities (Eligibility for Protection) Regulations, 2006*. Under the Bill all functions currently being carried out by the Office of the Refugee Applications Commissioner with regard to protection, including subsidiary protection, would be carried out by the Minister for Justice, Equality and Law Reform. The Bill proposes a reformed system for processing applications for protection, and proposes to repeal, inter alia, the *Refugee Act 1996*, the *Immigration Acts 1999, 2003, and 2004*, and section 5 of the *Illegal Immigrants (Trafficking) Act 2000*. Proposed changes include a shift to a single protection determination procedure where all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure and at first instance. A Protection Review Tribunal is proposed under the Bill and would effectively replace the Refugee Appeals Tribunal. Further definitions regarding protection and exclusion and cessation of protection are also outlined in the Bill, however no definition of “unaccompanied minor” or separated child is provided.

2.2.4.1 *Comments on the Immigration, Residence and Protection Bill, 2008*

Analysis and comments on the published *Immigration, Residence and Protection Bill, 2008* focused predominantly on access to the State for those seeking protection; provisions for detention of those seeking protection in the State while pending an entry permit; detention of irregular migrants; the existence of an independent immigration appeals mechanism and publication of said decisions; and a reflection and recovery period, as well as temporary residency for victims of trafficking.

The UN Human Rights Committee *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding Observations of the*

²⁴ *European Communities (Right of Residence for Non-Economically Active Persons) Regulations 1997*.

²⁵ *European Communities (Free Movement of Persons) (No. 2) Regulations 2006*

²⁶ *European Communities (Aliens) Regulations 1977*.

²⁷ Judicial review is the only mechanism for challenging/reviewing an immigration-related decision. Unlike protection decisions, the proposed legislation does not provide for an independent appeal in immigration related applications.

Human Rights Committee – Ireland made a number of observations on the published Bill, noting that: “The State party should amend the Immigration, Residence and Protection Bill, 2008 to outlaw summary removal which is incompatible with the Covenant and ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should also introduce an independent appeals procedure to review all immigration-related decisions. Engaging such a procedure, as well as resorting to judicial review of adverse decisions, should have suspensive effect in respect of such decisions. Furthermore, the State party should ensure that the Minister for Justice, Equality and Law Reform is not charged with the appointment of members of the new Protection Review Tribunal.”²⁸

The Irish Refugee Council (IRC) proposed three separate submissions on the published Bill, primarily on general provisions within the Bill, separated children and protection for suspected victims of trafficking. Main areas of content included the protection of separated children; the publication of asylum decisions, particularly by the proposed Protection Review Tribunal; a potential for imprisonment of asylum seekers and those who have not committed a crime; detention upon arrival and time limit of said detention; carriers liability provisions; and minors being deemed to be part of their parent’s protection application. The United Nations High Commission for Human Rights (UNHCR) produced a substantial number of recommendations for amendment regarding the Bill, particularly regarding the protection of non-refoulement within the legislation. In addition, comments regarding access of those in need of protection to the State and the use of detention were also submitted. The Law Society of Ireland also made a substantial submission on the Bill, centred predominantly on the potential for summary deportation, reduction in time for submission of a judicial review application and potential responsibility for costs related to same by an applicant’s legal representation. The Irish Human Rights Commission (IHRC) produced 59 recommendations on the draft 2008 Bill in which the main areas of focus concerned removal from the State; protection of victims of trafficking; potential for detention of those seeking subsidiary protection; conditions attached to the marriage of a third-country national while in Ireland; high level of Ministerial discretion; the recommendation for publishing of decisions of the proposed Protection Review Tribunal; refoulement protection not sufficient.

The Immigrant Council of Ireland (ICI) made several submissions and proposed over 100 amendments to the published Bill, highlighting inter alia the need for an Independent Appeals Tribunal for the adjudication of immigration related decisions. The Migrant Rights Centre Ireland (MRCI) noted the absence of protection of undocumented workers. Later in the year the Minister for Justice, Equality and Law Reform noted that workers who had become undocumented through no fault of their own would be “accommodated” under a scheme. In addition, an ad hoc arrangement regarding undocumented workers continued throughout 2008.

The treatment of separated children attracted the criticism of several organisations (including the Ombudsman for Children) particularly the lack of definition of a separated child/unaccompanied minors and lack of

²⁸ UN Human Rights Committee (July 2008) *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding observations of the Human Rights Committee – Ireland.*

special protection as a group. In addition, the lack of specification of the best interests of the child as being the primary consideration when dealing with this client group was noted.

2.2.5 PUBLICATION OF EMPLOYMENT LAW COMPLIANCE BILL, 2008

The *Employment Law Compliance Bill, 2008* was published in March 2008 and referred to the Select Committee during the same month. An order for Second Stage was made in February 2009. The Bill contains measures that will strengthen the ability of the State to secure improved compliance with employment legislation, and to establish the National Employment Rights Authority on a statutory footing. It would also serve to increase penalties for certain offences under employment legislation and certain other enactments; to further amend employment legislation and certain other enactments and to provide for related matters, including underpayment of staff. The Bill would result in fines of €5,000 or imprisonment of up to 12 months for summary offences. Penalties of €250,000 or 3 years' imprisonment would follow for indictable offences.

The Migrant Rights Centre Ireland (MRCI) campaigned on issues related to the *Employment Law Compliance Bill* during 2008, particularly regarding the potential power of labour inspectors to request employment permits from workers. It was argued that this potential could create a conflicting aspect to the role and would assign an immigration aspect to an inspector's role. In addition, the MRCI highlighted the potential for case testimonies to be heard via TV link; a practice which it ascertained was problematic and not always successful in other jurisdictions. The MRCI also highlighted gaps in the Bill including a lack of provisions for domestic workers in private homes; a lack of clarity regarding undocumented workers and a lack of provision for interpreters.

2.2.6 SCHEME TO REGULARISE UNDOCUMENTED MIGRANT WORKERS

In May 2008 in a Dáil debate on the *Immigration, Residence and Protection Bill, 2008* at Committee Stage,²⁹ the Minister for Justice, Equality and Law Reform stated his intention to draft and publish an administrative scheme relating to foreign nationals who were holders of work permits but have become undocumented and, thereby, are unlawfully in the State. In addition it was noted that "Such arrangements must and will be made prior to the commencement of the legislation" and that "it is important that this specific group has an assurance from the Minister prior to the commencement of the legislation that he will address its members' cases in a humanitarian way."

²⁹ Dail Debates (1May 2008). Available at <http://debates.oireachtas.ie/DDebate.aspx?F=JUS20080501.XML&Ex=All&Page=2>

2.2.7 BUDGET 2008

A *Supplementary Budget* announced by the Irish Government in October 2008 saw cuts to several organisations and agencies in the area of asylum and migration. In particular it was announced in the Budget that State funding for the National Consultative Committee on Racism and Interculturalism (NCCRI) would cease, with some of its functions to be absorbed by the Office of the Minister for Integration. Public debate and criticism surrounded this decision, with uncertainty of whether the NCCRI tasks of advising government and other bodies, recording racist incidents and coordinating research on migration, would continue. The NCCRI ceased operation in late 2008.

In addition, the budget of the Office of the Minister for Integration was announced as being cut by 26 per cent, and as part of cost-saving measures certain administrative functions of the Equality Authority and the Human Rights Commission were to be amalgamated.³⁰

2.2.8 STUDENT WORK PERMITS

Mid-2008 saw significant media debate concerning proposed work permits for non-EEA students studying in Ireland. Following an announcement by the then Minister for Enterprise, Trade and Employment in March 2008 that a proposal for student work permits was to be submitted to social partners, in June of the same year several media sources stated that a draft proposal had been shared.³¹ The proposal stated that non-EEA students were to be required, on receipt of a job offer, to provide details on the position to the Garda National Immigration Bureau (GNIB) upon registration. This would result in a de facto requirement for non-EEA national students to work for only one employer at a time.³² A work permit would then be issued to a student upon registration.

The draft proposal was shared with social partners for discussion in June 2008 and if enacted would see students issued with a Stamp 2 by GNIB. In addition, it would be an offence for any student to be in employment prior to providing employer information to GNIB upon registration. The proposals say that to qualify, students must be registered on a full-time course of at least one year's duration. However, no labour market tests would be applied and various job categories, including those currently ineligible for employment permits, would be open to students. In addition, under the proposals, students doing an internship as an integral part of an academic course would not be obliged to apply for a work permit. Under the plan, students who do not present at registration with a job offer and employer details would be issued with a separate Stamp 2A, signifying they are not entitled to work.³³ To date at time of writing, these proposals have not come into effect.

³⁰ *The Irish Times* (16 October 2008) 'Immigrants' groups critical of funding cut'.

³¹ *The Irish Times* (19 March 2008) 'Law to introduce student work permits'.

³² At present, non-EEA students are entitled to work up to 20 hours during term time and 40 hours during holidays.

³³ *The Irish Times* (23 June, 2008) 'Work permits proposed for non-EEA students'.

2.3

Policy and Legislative Developments in the Area of Migration and Asylum

2.3.1 CONTROL AND MONITORING OF IMMIGRATION

2.3.1.1 Identity Establishment

As discussed in the *Annual Policy Report on Migration and Asylum 2007: Ireland*, in November 2007 the Minister for Justice, Equality and Law Reform launched the first phase of the new Automated Fingerprint Identification System for An Garda Síochána and the INIS. The new fingerprinting system was introduced on a phased basis and sees the replacement of the existing system in the Garda Technical Bureau and the installation of electronic fingerprint capture livescan units at the Office of the Refugee Applications Commissioner (ORAC). The livescan units would allow for the electronic capturing, storing and exchange of fingerprint data of non-EU nationals including, all persons seeking asylum with the central EURODAC fingerprint database.³⁴ In figures cited in February 2008, out of 300 requests put through the system during the course of one month, more than 30 “hits” were recorded where matches with fingerprints in other EU countries were found. As of February 2008 the system had cost €7 million, with a further roll-out expected during 2009 when it would be linked to the main Garda Pulse system and fed into international police networks through Europol and Interpol.³⁵ During 2008 some 3,402 sets of prints were sent to EURODAC, with 359 “hits” confirmed.

In July 2008 a joint statement regarding the Common Travel Area between Ireland and the United Kingdom was made by the Minister for Justice, Equality and Law Reform and the UK Home Secretary. The statement declared that while both countries had agreed a “range of joint and national measures specifically to strengthen our Common Travel Area”, both Governments stated that “...have no plans to introduce fixed controls on either side of the Irish land border for immigration or other purposes”. It was also stated that challenges related to border management would be tackled via “state of the art” border technology (particularly electronic border management) as well as the continued exchange of intelligence. Joint sea and port operations would continue.³⁶

2.3.1.2 Health Screening of Immigrants

A significant newspaper debate in November 2008 related to a case whereby an application for a *habeas corpus* application to the High Court was made on behalf of a South African woman in Ireland. She had been detained in a hospital in Ireland for almost a year with a suspected strain of drug-resistant Tuberculosis (TB).³⁷ The woman had previously been treated for TB in South Africa prior to travelling to Ireland in 2001, and was treated as both an in- and out-patient after becoming ill in Ireland towards the end of 2006. The Health Service Executive (HSE) made an application for her detention and segregation in December 2007. The woman had refused treatment, and of particular media debate was the fact that a

³⁴ Department of Justice, Equality and Law Reform, 2008. Annual Report 2007. Dublin: Government Publications. Available at www.justice.ie

³⁵ *Sunday Business Post* (3 February 2008) ‘Fingerprint database reveals bogus asylum applications’.

³⁶ Department of Justice, Equality and Law Reform (July 2008) ‘Joint Statement regarding the Common Travel Area’. Available at www.justice.ie

³⁷ *The Irish Times* (6 November 2008) ‘Court action over woman’s year-long forced hospitalisation’.

specific test had not been carried out to determine what, if any, form of TB she may be suffering.

2.3.1.3 Issuance of Residence, Work Permits

There was a notable decrease in the number of new employment permits issued in 2008 year-on-year from 2007, with new permits falling by 16.3 per cent. As discussed in the previous report in this series, 2007 saw a marked increase in the number of new permits issued, attributable perhaps to the new employment permit scheme in operation since January 2007. Figures for 2008 also show that the number of overall renewals fell by over 60 per cent, with the number of all permits issued falling year-on-year by 42.5 per cent during 2008.³⁸

Eligibility criteria for a category of Long-Term Residence were placed on the Department of Justice, Equality and Law Reform website. Persons who have completed 5 years (60 months) legal residence in the State on the basis of work permit conditions (i.e. 60 months of a Stamp 1 endorsement in their passport) may apply to the General Immigration Division of the Department. If applications are successful, an individual will be granted a residence permit with an exemption from employment permit and business permission requirements for a period of five years. Periods of residence in the State for the purpose of study; as a temporary registered doctor, intra-company transfer or holiday working visa do not count for this purpose.³⁹ Long-term residence permits are granted at the absolute discretion of the Minister for Justice, Equality and Law Reform. It is currently taking over two years for an application for a long-term residence permit to be processed. During 2008, some 4,073 applications for Long-Term Residency were received, with 1,779 cases granted and 532 refused.

In August 2008 new fees for registration at the Garda National Immigration Bureau (GNIB) were introduced, rising by 50 per cent from €100 to €150. All migrants from outside the EEA are required to register with the GNIB. The Immigrant Council of Ireland (ICI) criticised the increase noting that work permit holders (particularly those with families) and international students would be particularly hard hit by the increase in fees. It was also noted that international students must register with the GNIB when they arrive in Ireland, and possibly may have to pay another €150 to apply for a work permit if proposed change to rules are adopted.

In 2008 the Department of Enterprise, Trade and Employment published a policy regarding a decision to “look favourably” on applications made by foreign nationals who are current employment permit holders and who have been made redundant within the previous three months.⁴⁰ In addition, the Department of Enterprise, Trade and Employment also agreed to change published regulations on the right of work permit holders to change employers, with certain limitations. Work

³⁸ See the Department of Enterprise, Trade and Employment website (www.entemp.ie) for further information.

³⁹ Department of Justice, Equality and Law Reform (2008) ‘Permission to Remain for Non-E.E.A. Nationals’. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP07000168>

⁴⁰ Department of Enterprise, Trade and Employment (May 2009) ‘Policy for persons on valid Employment Permits who have been made redundant.’ Available at <http://www.entemp.ie/labour/workpermits/redundant.html>

permit holders may now change employers, after a minimum of one year with the same employer, provided that their new employment is within the same economic sector in which they are currently employed or within another eligible sector. Importantly, in both cases there no longer exists a labour market test requirement.

2.3.1.4 Visa Applications

During 2008 some 134,788 visas were issued by Irish authorities worldwide, including approximately 63,400 re-entry visas. During the same year 149,671 visa applications were received.

2.3.1.5 Entry Procedures to the State

Much public and parliamentary debate during 2008 centred on several cases concerning alleged discrimination at Dublin Airport by Immigration Officers against legally-entering third-country nationals. Debate centred around allegations that immigration procedures at ports of entry were arbitrary and reliant on a high level of discretion as exercised by individual Immigration Officers.

Several incidents related to immigration procedures were reported on during 2008. Of note was an incident in March 2008 concerning an Indian tourist (who had won the visit at a Tourism Ireland-sponsored event in Mumbai) and who complained of “harassment and racial discrimination” at Dublin Airport, leading to an exchange of letters between Tourism Ireland and the Department of Arts and Tourism regarding similar, previous incidents.⁴¹ In the same month, a diplomatic discussion occurred between Ireland and Brazil after three Brazilian students, stating upon arrival in Ireland that they intended to return to university in Portugal, were detained in Mountjoy Prison in Dublin. On 9 September 2008, a situation involving a Nigerian priest (and requiring the intervention of the Nigerian Ambassador to Ireland) occurred whereby the individual was refused leave to land and was arrested, searched and placed overnight in a prison cell upon his arrival in Dublin despite been in possession of a valid tourist visa and documents.⁴² In response to the debates in October 2008, the Minister for Justice, Equality and Law Reform stated that “on occasions mistakes will be made” but that the Garda National Immigration Bureau (GNIB) was doing a “very difficult job”.⁴³ The Immigrant Council of Ireland (ICI) called for “greater scrutiny of immigration officers”, stating that the events had shown a need for an independent review mechanism, particularly given continued proposed powers for discretion on behalf of Immigration Officers under the *Immigration, Residence and Protection Bill, 2008*.⁴⁴

2.3.1.6 Removal from the State

Some 952 persons were removed from Ireland during 2008, representing a 23 per cent increase in return migration (deportations, transfers and

⁴¹*The Irish Times* (26 September 2008) ‘Ireland of the unwelcomes?’; *The Irish Times* (24 September 2008) ‘Concern over airport treatment of tourist’.

⁴² It was later reported that the refusal of right to land stamp on the individual’s passport was ‘cancelled without prejudice’.

⁴³*The Irish Times* (26 September 2008) ‘Ireland of the unwelcomes?’

⁴⁴*The Irish Times* (23 September 2008) ‘Call for more scrutiny of immigration officers?’.

voluntary repatriations) from Ireland year-on-year from 2007. Of these, 162 deportation orders to non-EU countries were effected.

Regarding *Dublin II Regulation* transfer orders, 271 transfer orders were effected during 2008, an increase of over 20 per cent on 2007 figures. The rate of effecting of transfer orders signed in 2008 was 74 per cent, an increase from 62 per cent in 2007. Some 475 formal requests were made by the Office of the Refugee Applications Commissioner (ORAC) to EU Dublin II Regulation States, with 294 concerning “take back” requests and 181 concerning “take charge” requests. During 2008 overall determinations in ORAC under the *Dublin II Regulation* increased by 4.6 per cent year-on-year, with some 385 determinations. In response to a Parliamentary Question in November 2008, the Minister for Justice, Equality and Law Reform stated that in the period from 2004 to 2008 a total of 1,019 people were transferred to the country where they first entered the EU.⁴⁵

2.3.1.7 Judicial Review

Figures on judicial review released by the Courts Service in their *Annual Report 2008* show that there was a 25 per cent reduction in asylum-related applications for judicial review cases during 2008.

Overall, some 785 applications for the judicial review of decisions of the Office of the Refugee Appeals Commissioner, the Refugee Appeals Tribunal, and the Minister for Justice, Equality & Law Reform were made during 2008 – a decrease of 30 per cent on figures from 2007 and representing 57 per cent of all judicial review applications to the courts during 2008. An almost 80 per cent increase in orders made in asylum-related judicial review cases occurred year-on-year from 2007.

During 2008 the number of legal challenges of recommendations made by the Office of the Refugee Applications Commissioner (ORAC) fell by some 29.6 per cent in 2008 to 266 from 378 in 2007.

Of interest, the Programme for Government published during 2007 (and as discussed in-depth in the *Annual Policy Report on Migration and Asylum 2007: Ireland*) had referenced provisions for introduction of a system for appeals to the immigration system.

As discussed in detail in Quinn (2009) within the asylum process in Ireland there is no right of appeal from the Refugee Appeals Tribunal to the Courts, whether generally or on points of law. Neither are there any immigration-related processes that allow appeals to the Courts. Judicial review is a means for the High Court to exercise its supervisory function over inferior decision-making bodies, such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, as well as over administrative decisions, including those made in the various immigration processes. Judicial review is not concerned with the substance of decisions, but with the decision-making process. Currently, section 5 of the *Illegal Immigrants (Trafficking) Act, 2000* provides that certain prescribed decisions made in the immigration and asylum processes (including the Minister’s decision refusing a recommendation of refugee status, the Minister’s proposal to deport, and the Minister’s decision to deport) cannot

⁴⁵ *The Irish Times* (17 November 2008). ‘Thousands of asylum applications withdrawn’.

be questioned other than by way of judicial review. As discussed earlier in this report, the *Immigration, Residence and Protection Bill, 2008* explicitly mentions provisions related to judicial review, with proposition that that the validity of any act, decision or determination under the proposed act shall not be questioned otherwise than by way of judicial review. In relation to immigration-related matters, no appeal and/or Tribunal process (comparable to the Refugee Appeals Tribunal [RAT] for asylum applications) is in place.⁴⁶

Significant public and parliamentary debate occurred on a High Court challenge to deportation made by a Nigerian woman requesting residence in Ireland based on subsidiary protection grounds occurred during 2008. The case had been on-going since 2005 and centred on an assertion by the individual that if returned to Nigeria, her two daughters would be forced to undergo FGM similar to their sister who allegedly died from the practice in Nigeria in 1994. In March 2008 an application to seek a High Court injunction to block the family's deportation was made, following a decision by the Minister for Justice, Equality and Law Reform not to accept the family's applications for subsidiary protection. The applicant and her daughters were also granted permission for a judicial review of the Minister for Justice, Equality and Law Reform's decision not to consider the family's application for subsidiary protection, which is still on-going. The case was referred to the European Court of Human Rights (ECtHR) during 2008, with lawyers for the applicants applying to the ECtHR to intervene under Rule 39 of the Convention for the Protection of Human Rights. In November 2008 the ECtHR asked the Irish Government not to deport the applicant or her family pending the hearing of her case at the ECtHR, with a further request for a stay on her deportation made in December 2008. The case has received much wide-spread discussion, including in national parliament, and was also taken up by a number of NGOs including the Irish Society for Prevention of Cruelty to Children (ISPCC), the National Women's Council and Women's Aid who had written to the Minister for Justice, Equality and Law Reform to argue that the State had a duty to protect the two children. Issues regarding evidence presented in the case arose during the following year, with the case due to be heard in the Supreme Court in July 2009.

During 2008 planning began within the Judicial Review Unit of the Office of the Refugee Applications Commissioner (ORAC) to identify the broadening range of legal challenges for which it will have responsibility arising from the introduction of new legislation under the proposed single protection procedure in the published *Immigration, Residence and Protection Bill, 2008*.

⁴⁶ This lack of an immigration appeals process was criticised by the UN Human Rights Committee in its concluding observations on Ireland under the ICCPR (July 2008): "The State party should amend the *Immigration, Residence and Protection Bill, 2008* to outlaw summary removal which is incompatible with the Covenant and ensure that asylum-seekers have full access to early and free legal representation so that their rights under the Covenant receive full protection. It should also introduce an independent appeals procedure to review all immigration-related decisions. Engaging in such a procedure, as well as resorting to judicial review of adverse decisions, should have a suspensive effect in respect of such decisions. Furthermore, the State party should ensure that the Minister for Justice, Equality and Law Reform is not charged with the appointment of members of the new Protection Review Tribunal".

Regarding legal challenges to proposed transfer, removal and deportation cases, some 219 challenges via judicial review were instigated during 2008. By year end of 2008, some 316 of such judicial review cases were awaiting decisions by the courts.⁴⁷

2.3.1.8 *European Free Movement Directive*

There was significant case law and parliamentary discussion on the right of residence for third-country non-EU spouses of EU citizens residing in Ireland during 2008. (See section 3.22 for further discussion).

Irish legislation transposing *Directive 2004/38/EC*⁴⁸ provided that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland only if he is already lawfully resident in another Member State. During 2008, several cases concerning third-country national spouses of an EU citizen residing in Ireland were taken to the European Court of Justice (ECJ), headed by the *Metock* case.⁴⁹ The ECJ found that the Government should not prevent third-country spouses of EU citizens from living in Ireland, with the ruling providing residency rights to significant numbers of non-EU national spouses who have been served with “intent to deport” notices by the Department of Justice, Equality and Law Reform beginning in 2007. It also forced the Government to amend a 2006 Regulation stipulating that third-country non-EU nationals married to EU citizens must have resided in another Member State before moving to Ireland. Accordingly, the Minister for Justice, Equality and Law Reform published the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* on 31 July 2008 amending the 2006 Regulations. The 2008 Regulations remove from the 2006 Regulations the requirement that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland, and thus brings Irish legislation into line with the ECJ’s ruling in *Metock*.

As discussed in significant detail in Quinn *et al.* (2008), in each of the cases referred to the ECJ a third-country national had arrived in Ireland and applied unsuccessfully for asylum. While resident in the State they had also married an EU citizen. It was accepted by the Minister for Justice, Equality and Law Reform, and the Court, that they were not marriages of convenience. Each of the non-EU spouses subsequently applied for a residence card as the spouse of a Union citizen. The applications were refused on the ground that the spouse did not satisfy the condition of prior lawful residence in another Member State. The applicants sought to quash these decisions by way of judicial review. The High Court referred several legal questions on the issue to the European Court of Justice in March 2008, and asked the ECJ to make a preliminary ruling on the interpretation of the 2004 Directive. At the ECJ hearing, lawyers representing other Member States including Austria, Denmark, Germany and the U.K.

⁴⁷ Department of Justice, Equality and Law Reform (2009) *Annual Report 2008*. Dublin: Stationery Office.

⁴⁸ Directive 2004/38/EC on the right of citizens of the European Union and their family members to move and reside freely within the territory of the EU.

⁴⁹ *Case C-127/08-Metock and Ors v Minister for Justice, Equality and Law Reform*, Unreported, European Court of Justice, 25/07/2008; Unreported, High Court, Finlay Geoghegan J., 14/03/2008.

supported the Irish Government, arguably as a judgment in favour of the applicants would have set a precedent and bolster rights of non-EU spouses to stay in the EU.

The ECJ subsequently found that the application of the Directive was not conditional on previous lawful residence in another Member State, and that the Directive applied to all EU citizens who move to or reside in a Member State other than their State of origin, and to their family members who accompany or join them. The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into, and residence in, that Member State. The Court held that a non-Community spouse of a Union citizen who accompanies or joins that citizen can benefit from the Directive, irrespective of when and where their marriage took place and of how that spouse entered the host Member State. The Court stated that the Directive did not require that the EU citizen must have already founded a family at the time when he moves, in order for his family members to enjoy the rights established by the Directive. The Court also stated that it made no difference whether the family members of an EU citizen enter the host Member State before or after becoming family members of the citizen.⁵⁰

Much public debate on the referred cases occurred during 2008, centred on assertions that a deportation of a spouse of an EU citizen was discriminatory and contrary to one of the four European freedoms: that of the freedom to live and work in all EU Member States.⁵¹

In September 2008 at a meeting of EU justice ministers on the matter at the European Parliament, the Department of Justice, Equality and Law Reform stated that between 2006 and 2008 some 4,600 people had applied for residency in Ireland on the grounds of having spouses who were EU citizens. Of these figures, some 600 were each from Nigeria and Pakistan.⁵² Of the 4,600 applications for residency rights made since the Free Movement Directive came into force here in May 2006, 15 per cent were asylum seekers and a further 15 per cent had entered Ireland on student visas. Just under half (2,000) of the total applications had been turned down but this had subsequently been reversed following the *Metock* ECJ ruling in July 2008. At a meeting to discuss this trend in September 2008 at the European Parliament, Ireland (supported by Denmark, Germany, the Czech Republic, the UK and Austria) sought to have the *EU Free Movement Directive* reversed – while the European Commission, Cyprus, Portugal and Sweden were strongly opposed to reopening the Directive. The President of the Commission was quoted as stating that the 2004 Directive “allowed states to limit entry into their territory of family members of EU citizens based on health, security or public policy grounds.”⁵³ It was subsequently announced that a group of experts from Member States and the Commission would examine the 2004 Directive to see if alleged assertions

⁵⁰ Quinn *et al.* (2008) ; *The Irish Times* (24 September 2008) ‘Government trying to amend law on non-EU spouses’ rights’

⁵¹ *The Irish Times* (24 September 2008) ‘Government trying to amend law on non-EU spouses’ rights’; *The Irish Times* (4 June 2008) ‘Fighting for the right to live together’.

⁵² *The Irish Times* (26 September 2008) ‘EU free movement rule ‘exploited’, say officials’.

⁵³ *Ibid.*

of abuse of the system could be verified and stopped. The *European Commission Report on Directive 2004/38/EC*⁵⁴ highlighted Ireland's participation in the Directive, particularly the conditionality of right of residence of third-country family members upon their prior lawful residence in another Member State; and how Ireland had not fully transposed Articles 12(2) and 13(2) of the Directive, omitting the possibility to retain the right of residence for family members of a person satisfying the requirements to retain the right of residence in the event of death, departure or divorce.

2.3.2 REFUGEE PROTECTION AND ASYLUM

In 2008 the number of asylum applications received in the State continued to decline, with a total of 3,866 asylum applications received in the State, a 2.9 per cent decrease on the corresponding figure of 3,985 in 2007. Classifying applications for asylum according to nationality, the top five source countries in 2008 were Nigeria (26.1 per cent), Pakistan (6.1 per cent), Iraq (5.3 per cent), Georgia (4.7 per cent) and China (4.7 per cent).

During 2008 some 4,581 asylum applicants received decisions or determinations in their cases from the Office of the Refugee Applications Commissioner (ORAC), representing an increase of 10.3% on the number (4,152) made in 2007. Of these cases finalised, 6.4 per cent concerned cases where the Commissioner made a recommendation that the applicant be granted refugee status. Taken on a quarterly basis, asylum applications in Ireland peaked slightly in the third quarter at 1,032 applications. Some 3,070 asylum decision appeals were received by the Refugee Appeals Tribunal during 2008, an increase of 10 per cent on those received during 2007. Decisions were issued by the Refugee Appeals Tribunal in 2,460 cases. Nigerian nationals represented the highest proportion of applicants received by the Tribunal.⁵⁵ Overall, 88 per cent of recommendations made by the ORAC were upheld by the Refugee Appeals Tribunal during 2008.

In a global context, in 2008 the UNHCR listed the number of individuals requesting refugee or asylum status in the 51 European and non-European countries as having increased by 12 per cent year-on-year since 2007.⁵⁶ Within these figures, among the 27 Member States of the European Union some 238,000 asylum applications were lodged in 2008, representing an increase of 6 per cent on 2007 figures.

In figures released in April 2008, the Minister for Justice, Equality and Law Reform noted that more than 90 per cent of asylum applications were made at the Office of the Refugee Applications Commissioner and not at port of entry.⁵⁷ Of the number who sought asylum at places other than the

⁵⁴ European Commission (COM(2008) 840/3) *Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*. Available at:

http://ec.europa.eu/justice_home/news/intro/doc/com_2008_840_en.pdf

⁵⁵ Refugee Appeals Tribunal (2009) *Annual Report 2008*.

⁵⁶ UNHCR (2009) *Asylum Trends in Industrialised Countries 2008*. Available at www.unhcr.org

⁵⁷ Figures provided by the Minister for Justice, Equality and Law Reform in response to a parliamentary question from Labour Justice spokesperson Pat Rabbitte in April 2008, as

office of ORAC, 12 sought asylum at ports; 304 at airports upon entry; 244 sought asylum from prison.

In November 2008, and in response to a Parliamentary Question on changes to the asylum system since the enactment of the Immigration Act, 2003, the Minister for Justice, Equality and Law Reform stated that “5,799 asylum applications had been withdrawn including 1,777 applications last year and a further 607 up to the end of October this year”.⁵⁸

2.3.2.1 Asylum Application Processing Times

As discussed in-depth in previous reports in this series, new arrangements for the processing of prioritised applications were introduced by legislation in September 2003. These arrangements apply in the main to nationals of Nigeria, Croatia and South Africa, with Romania and Bulgaria also included prior to their accession to the EU on 1 January 2007. In figures released in early 2009, the Minister for Justice, Equality and Law Reform indicated that prioritised asylum applications continued to be processed in under 20 working days at first instance in the Office of the Refugee Applications Commissioner (ORAC) while non-prioritised asylum applications were processed within 20 weeks at first instance in ORAC. As of year end 2008, 2,276 applications were on hand for over 6 months – 116 applications were on hand at ORAC and 2,160 at the RAT.

Regarding length of time taken for appeals submitted to the Refugee Appeals Tribunal, the average time to process and complete substantive appeals was approximately 30 weeks, 9 weeks for accelerated appeals and 11 weeks for prioritised appeals.⁵⁹

2.3.2.2 Asylum Seeker Accommodation Provision

In a case taken during 2008, and supported by the Irish Refugee Council, a legal challenge was presented by a “homeless and destitute” asylum seeker aimed at obtaining re-admittance to the State-managed Direct Provision accommodation. He had been barred from his original accommodation centre due to behaviour related to health issues. A return to State-provided accommodation for asylum seekers (with the exclusion of an accommodation centre in which he had previously resided and been barred from) was obtained for the Afghan asylum seeker after agreement that he would adhere to the rules of the accommodation. The individual had spent three months sleeping in a factory and in his legal proceedings his lawyer ascertained that he had not been given an opportunity to respond to the claims about his behaviour; had been banned from his previous accommodation at a time when he was ill; that no other accommodation option was available to the man; and that due to restrictions on asylum seekers working while in Ireland he was unable to work.

The Irish Refugee Council (IRC) stated that the case highlighted the concerns of the IRC and other NGOs in the area who were “increasingly concerned” about the growing number of homeless asylum seekers in Ireland who had been barred from Direct Provision accommodation while

cited in *The Irish Times* (30 April 2008) ‘Most asylum seekers already in State when making initial application’.

⁵⁸ *The Irish Times* (17 November 2008) ‘Thousands of asylum applications withdrawn’.

⁵⁹ Refugee Appeals Tribunal (2009) *Annual Report 2008*.

suffering from mental health issues. In addition, the IRC stated that the Direct Provision system and lack of a right to work for asylum seekers “caused and exacerbated mental distress and instability”.⁶⁰ The case reiterated calls for a change to entitlements for asylum seekers, with most comments surrounding the weekly living allowance of €19.10 for adults and €9.60 for children in the obligatory Direct Provision system for asylum seekers.

2.3.2.3 *Refugee Appeals Tribunal*

Much significant debate regarding the Refugee Appeals Tribunal continued during 2008. Costs related to asylum application appeals were cited in April 2008 at a Dáil Public Accounts Committee. The Director General of the Department of Justice, Equality and Law Reform stated that €20 million was spent on legal costs related to asylum application appeals during 2007, with €10 million spent by the Refugee Legal Service to fund asylum seekers in their actions against the State and a further €10 million was paid by the State to defend its position during the same year.⁶¹

As discussed in the *Annual Policy Report on Asylum and Migration 2007: Ireland*, controversy regarding the alleged decision record of a member of the Refugee Appeals Tribunal occurred during 2007. In a case taken by the Refugee Legal Service on behalf of three asylum seekers it was alleged that a Member of the Tribunal, James Nicholson, was “biased” against those making an appeal with a reported 95 per cent refusal rate. The case was subsequently settled out of court in June 2007 with the cases assigned to another Member of the Tribunal. In March 2008 it subsequently became clear that the Member had resigned from the Tribunal in November 2007.⁶²

In March 2008 then Minister for Justice, Equality and Law Reform Brian Lenihan refuted opposition TDs regarding criticism that he had not acted on the allegations regarding the Tribunal, specifically regarding those relevant to the Member James Nicholson.⁶³ Earlier that same month it was reported that the Refugee Legal Service (RLS) had asked the Refugee Appeals Tribunal to review all cases which had been decided by James Nicholson (estimated to be up to 1,000 rejected asylum applications) and those of a second Member of the Tribunal, Ben Garvey, to see if there were similar grounds for a court challenge of his record.⁶⁴ In addition, much discussion was generated by media reporting on the preparedness of three members of the Tribunal to challenge, in Court and as part of the case centred on the decision-making rate of James Nicholson, to challenge pleadings made by the Chairman of the RAT to the Supreme Court in which he had stated that James Nicholson’s record was “not at variance” with that of other Members of the Tribunal.

⁶⁰ *The Irish Times* (17 November 2008) ‘Thousands of asylum applications withdrawn’.

⁶¹ *The Irish Times* (25 April 2008) ‘State spent €20m on asylum appeals’.

⁶² *The Irish Times* (4 March 2008) ‘Lawyer accused of bias against refugees quits appeal tribunal’.

⁶³ *The Irish Times* (12 March 2008) ‘Minister defends refugee tribunal’.

⁶⁴ *The Irish Times* (10 March 2008) ‘Call for review of up to 1,000 rejected asylum applications’.

In light of developments the Irish Refugee Council (IRC) called for the resignation of the Chair of the Refugee Appeals Tribunal,⁶⁵ with the opposition Labour Party stating that activities had raised concerns as to public confidence in the system of administrative tribunals and called for the RAT Chair to answer questions about his chairing of the Tribunal or “if [he] does not, for his removal from his position”.⁶⁶ It was also noted that provisions in the published *Immigration, Residence and Protection Bill, 2008* controversially provided for the automatic continuation of the current Chair of the RAT to that of Chair of the proposed Protection Review Tribunal. The on-going refusal of the Tribunal to publish all its decisions and information regarding allocation of cases to individual Members was also criticised by the IRC and by a High Court judge who cited a lack of transparency.⁶⁷

In June 2008 it was noted that during the year some 86 per cent of substantive appeals against negative ORAC decisions regarding refugee status were turned down by the Refugee Appeals Tribunal. When all types of appeal are taken into account, including accelerated appeals where no oral hearing is allowed, the refusal rate for last year rose to 90 per cent.⁶⁸

2.3.2.4 Proposed Detention of Asylum Seekers

While the systematic detention of asylum seekers does not take place in Ireland, during 2008 a significant debate on the topic occurred. In the context of the development of a new prison complex in Dublin, March 2008 saw reporting on the availability of a section of the complex for detention of asylum seekers, as well as illegal immigrants who are unlawfully in the State for a limited period before deportation.⁶⁹ The Department of Justice, Equality and Law Reform stated that the new complex would provide for the facilitation of the current practice of occasional detention of a deportee pending deportation. The decision was criticised in a joint statement between the Irish Refugee Council and the Irish Penal Reform Trust who stated that the move represented a worrying move towards the incarceration of asylum seekers. The Department also added that the new complex was responding to previous NGO concerns regarding the detention of deportees in the same areas of prisons as those convicted of criminal activities. The Irish Human Rights Commission (IHRC) commented that the detention of asylum seekers “should be avoided”.

As discussed earlier in this report, the published *Immigration, Residence and Protection Bill, 2008* contained provisions for the detention of those illegally present in the State. Comments on these provisions were made by a

⁶⁵ *The Irish Times* (5 March 2008) ‘Refugee body urges tribunal head to resign’; *The Irish Times* (3 March 2008) ‘Members of refugee appeal body considered taking legal action’.

⁶⁶ Labour Party spokesperson on Justice Pat Rabbitte as cited in *The Irish Times* (5 March 2008) ‘Refugee body urges tribunal head to resign’.

⁶⁷ *The Irish Times* (4 March 2008) ‘Lawyer accused of bias against refugees quits appeal tribunal’; *The Irish Times* (4 March 2008) ‘Evidence of disharmony among members of refugee appeal process’.

⁶⁸ NCCRI Bulletin (June 2008) citing article in *The Irish Times* (28 June 2008) ‘86% of Appeals to Refuse Refugee Status Turned Down’. Available at www.irishtimes.com/newspaper/ireland/2008/0628/1214600743908.html.

⁶⁹ *The Irish Times* (27 March 2008) ‘Strong criticism of detention plan for asylum seekers’; *The Irish Times* (26 March 2008) ‘New prison to contain detention centre for foreign nationals’.

number of NGO and IGO groups, with the Department of Justice, Equality and Law Reform stating that any detention provisions in the Bill are intended as a “short term measure” for “asylum seekers who, for practical reasons, cannot be granted an entry permit on arrival in Ireland.”⁷⁰

2.3.2.5 *Subsidiary Protection*

During 2008 some 470 decisions on applications for Subsidiary Protection in the State were made.⁷¹ Subsidiary Protection Regulations came into force on 10 October 2006 and by the end of 2008 some 2,896 applications had been received. By the end of 2008 some 9 cases had been granted Subsidiary Protection status, with 545 cases refused.

2.3.2.6 *Resettlement*

In 2008 Ireland continued to participate in the Resettlement Programme for vulnerable refugees in conjunction with UNHCR, with 101 refugees resettled in Ireland. In September 2008 the Minister for Integration announced that Ireland would accept 80 Congolese refugees under Ireland’s Programme Refugee quota.⁷² They are expected to arrive in Ireland in April 2009.

2.3.2.7 *Leave to Remain*

During 2008 some 1,274 persons were granted permission by the Minister for Justice, Equality and Law Reform for Leave to Remain in the State. The status of Leave to Remain is in accordance with section 3 of the *Immigration Act, 1999* (as amended). In addition a further 316 persons also had their previously granted status of Leave to Remain renewed during the year.

Figures released by the Department of Justice, Equality and Law Reform in their *Annual Report 2008* saw that between 2004 and 2008 some 2,714 statuses of Leave to Remain were granted under section 3 of the *Immigration Act, 1999*: in 2004 some 210 statuses were granted; in 2005 some 154 statuses were granted; in 2006 some 216 statuses were granted; in 2007 some 860 statuses were granted; and in 2008 some 1,274 statuses of Leave to Remain were granted.

2.3.3 UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

2.3.3.1 *Separated Children/Unaccompanied Minors*

During 2008 some 336 unaccompanied minors were referred to HSE care in the Dublin region.⁷³ Of this number, 156 unaccompanied minors were taken into State care and 157 reunified with family members. Some 98 asylum applications were received from unaccompanied minors in 2008.

⁷⁰ *The Irish Times* (26 March 2008) ‘New prison to contain detention centre for foreign nationals’.

⁷¹ In accordance with the *European Communities (Eligibility for Protection) Regulations, 2006* (S.I. No. 518 of 2006).

⁷² *RTE News* (September 2008) ‘Congo refugees to resettle in Ireland’. Available at <http://www.rte.ie/news/2008/0919/congo.html>.

⁷³ Joyce, C. and E. Quinn (2009) *Policies on Unaccompanied Minors in Ireland*. Available at www.esri.ie.

In May 2008 the Council of Europe *Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his Visit to Ireland*⁷⁴ was published and offered criticism on the level of State care provided to foreign national children who were “in danger of being trafficked for exploitation” due to a low level of State care provision. It was noted that for separated children between 16 and 18 years old, private hostel accommodation with no professional care staff was provided. In addition, the report expressed “deep concern” regarding the large number of children who had gone missing from State-run care facilities. The report recommended that accommodation centres should be staffed by “vetted and professional personnel” and that the provision of a guardian *ad litem* for each child would assist in preventing disappearances. Recognising that data on separated children varied greatly according to each authority in Ireland, the report cited figures that indicate that the total number of separated children who arrived in Ireland between 2000 and 2007 amounts to 5,369 of which 2,635 were reunited with family members. Some 1,939 children applied for asylum during the period 2000 to 2007, with 180 children in Health Service Executive (HSE) care at year end 2007. The lack of resources for separated children, particularly related to Social Worker allocation, was noted as was an inequitable standard of care in relation to Irish children in care. Concerns regarding the need for an adapted asylum system for children were noted, as were a lack of standardised age assessment procedure by Irish Immigration Officials at port of entry. The Commissioner also commented that based on European case law separated children should not be detained on immigration issues or refused entry to the State, and welcomed provisions under the Immigration, Residence and Protection Bill⁷⁵ that children may not be detained on immigration grounds.

The UN Human Rights Committee⁷⁶ published a report during 2008 in which it recommended that with regard to unaccompanied minors the “State party should also ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied and separated children and that social services, such as the Health Service Executive, are involved in the age assessment of asylum-seekers by Immigration Officials.”

In November 2008, a draft operational policy for separated children seeking asylum was presented by the Health Service Executive (HSE) at a conference in Dublin. The specifications are an initiative with the Department of Justice, Equality and Law Reform and will seek to standardise procedures for the referral, reception and care of unaccompanied minors in Ireland. In addition, negotiation on a joint protocol on missing children between An Garda Síochána and the Health Service Executive (HSE) continued during 2008.⁷⁷ The new protocol sets out the roles and responsibilities of key agencies dealing with missing

⁷⁴ Council of Europe (2008) Report by the Commissioner for Human Rights Mr. Thomas Hammarberg on his Visit to Ireland 26 30 November 2007. Available at https://wcd.coe.int/ViewDoc.jsp?id=1283555&Site=CommDH&BackColorInternet=FE C65B&BackColorIntranet=FFC65B&BackColorLogged=FFC679#P85_1515

⁷⁵ Government of Ireland (2007) Immigration, Residence and Protection Bill, 2007.

⁷⁶ UN Human Rights Committee (July 2008) Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding observations of the Human Rights Committee – Ireland.

⁷⁷ This protocol was subsequently signed in April 2009.

children and provides for clearly defined arrangements in the case of children (including UAMs) going missing while in State care.

In December 2008 and in response to a Parliamentary Question,⁷⁸ figures related to investigations occurring under Operation Snow were discussed. “Operation Snow” refers to an initiative undertaken by the Garda National Immigration Bureau (GNIB) which is designed to prevent the trafficking and smuggling of minors into, out of and within the State; to ensure the welfare of suspected victims of such criminal activity is adequately provided for; and to achieve prosecutions where criminal activity of the nature concerned has been detected. In the Parliamentary Question it was announced that since the initiative had begun in 2007, almost 200 incidents had been subject to investigation, with assistance provided to 164 children. It was highlighted that of the children assisted, many of the cases had either not found to be related to, or were not expected to, be cases of trafficking.

2.3.3.2 Health

The Health Service Executive (HSE) *National Intercultural Health Strategy* was launched in February 2008. The strategy aims to ensure that healthcare is provided in an inclusive, respectful and fair way to minority communities.⁷⁹ Included in the Strategy are plans to provide greater access to information through the establishment of a national translation service; delivering services on the basis of equality of access; anti-racism training for health professionals; and research into health outcomes for different ethnic groups.⁸⁰ Speaking at the launch, the Immigrant Council of Ireland (ICI) highlighted the need to include ethnic identifiers in public service delivery but warned against potential misuse of the data that could harm community relations.

2.3.4 ECONOMIC MIGRATION

2.3.4.1 Migration Flows

Central Statistics Office (CSO) figures for 2008⁸¹ showed a decrease in overall net immigration, together with increased emigration. The total number of immigrants into the State in the year to April 2008 fell by 26,000 to 83,800, while the number of emigrants has shown a marginal increase on the previous year to 45,300. As a result net migration is estimated to have fallen from 67,300 in the year ending April 2007 to 38,500 in the subsequent period.

Using data supplied by the CSO in the *Quarterly National Household Survey*, in quarter 4 of 2008 18 per cent of those aged 15 years and over in employment in Ireland were non-Irish. Of all persons in employment in Ireland, 3.9 per cent were third-country nationals.⁸²

⁷⁸ Parliamentary Question Number 170 (10 December 2008).

⁷⁹ Health Service Executive (2008) *National Intercultural Strategy*. Available at www.hse.ie/en/Publications/HSEPublicationsNew/HSECorporatePlans/InterculturalHealthStrategy.

⁸⁰ *The Irish Times* (22 February 2009) ‘HSE plan for minorities welcomed’.

⁸¹ CSO (August 2008) *Population and Migration Estimates 2008 (April 2007 to April 2008)*. Available at www.cso.ie.

⁸² CSO (February 2009) *Quarterly National Household Survey*. Available at www.cso.ie.

A further CSO report released in 2008 and based on *Census 2006* figures showed that the 420,000 non-Irish nationals living in Ireland at the time of the Census in April 2006 came from 188 different countries.⁸³ At the time of the Census, excluding UK Nationals, one in seven non-Irish nationals was living in rural areas. Regarding age demographics, non-Irish nationals were dominated by people in the 20-30 years age grouping, with significantly more men than women. Few children and older persons were listed among the non-Irish nationals, arguably attributable to the predominance of persons of working age in the non-Irish groups. This can also be argued as reasons for differences between Irish and non-Irish nationals in areas such as labour force participation rates and levels of educational attainment. Regarding education attainment levels, the report surmises that while non-Irish nationals had distinctly higher overall levels of education than the Irish population, this is largely a demographic effect caused by the older age profile of the Irish population, many of whom ceased their education at primary level. Snapshot profiles of main countries of nationality of non-Irish nationals were also provided, including Nigerian, US, Chinese, and Filipino nationals.

2.3.4.2 Ireland Decision on Opting in to EU “Blue Card” Scheme

Regarding the EU “Blue Card” initiative, the government announced during 2008 that it was still considering whether to formally opt-in to the process. The Government did not adopt the proposal at first stage in January 2008, and later in the year governmental officials stated that it was still considering the initiative. Of consideration regarding the initiative was the preservation of the Common Travel Area with the UK who had also not opted-in to the Directive. Under the Directive, holders of the card (and their families) could avail of two years’ residency in any state in the European Union in which they are offered a job, and move freely within the EU and to avail of jobs in other Member States also.

In a submission to the Joint Committee on European Scrutiny on the proposed Directive the Immigrant Council of Ireland (ICI) argued that if Ireland was to decide not to opt in to the blue card proposal, it could put Ireland at a competitive disadvantage when trying to attract highly skilled migrants to work in the State. It also highlighted the need for Ireland to opt in to EU Directives on long-term residency and family reunification if it was to adopt the “Blue Card” Scheme. The Migrant Rights Centre Ireland (MRCI) expressed concern at the possible impact of the Scheme on “brain drain” in the developing world.⁸⁴ (See section 3.2.5)

2.3.4.3 Prosecutions under the *Employment Permits Act, 2003*

In response to a parliamentary question submitted to the Minister for Enterprise, Trade and Employment in June 2008, figures related to the number of prosecutions under the *Employment Permits Acts 2003* and *2006* were released. No prosecutions to date had taken place under the 2006 Act, with 185 proceedings commenced against employers and 47 convictions under the 2003 Act. In addition and under the same 2003 Act, 103 case proceedings against employees had been initiated with 34 convictions.⁸⁵

⁸³ CSO (June 2008) *Census 2006 – Non-Irish Nationals living in Ireland*. Available at www.cso.ie.

⁸⁴ *The Irish Times* (12 March 2008) ‘Government wavers over EU ‘blue card’ work scheme’.

⁸⁵ Dail Eireann, Parliamentary Question No.519 (17 June 2008).

2.3.4.4 *Migrant Experience in the Workplace*

Research published in December 2008 reported the over-qualification of migrants in jobs in Ireland with many stating that their years of study and working in their country of origin are “meaningless” in Ireland. Some 160 migrants from 21 countries participated in the study, along with access and admissions officers in third-level colleges and employer bodies. In addition, many of those interviewed stated that they had faced difficulties in accessing higher educational opportunities in Ireland including fee levels; a lack of recognition of existing qualifications; English language difficulties; and lack of access to information on courses and fee structures.⁸⁶

The Migrant Rights Centre Ireland (MRCI) published several pieces of research related to migrant workers during 2008, in particular the equality of migrant women in rural Ireland and exploitation in the restaurant industry in Ireland.⁸⁷ The study, which looked at the experiences and situation of migrant women in rural Ireland, found that they were at risk of poverty, social exclusion and discrimination, and identified strategies for their inclusion and progression at a local level. It is hoped that this study will be a practical and constructive basis for action in contributing to the promotion of equality for women. The MRCI report on exploitation in Ireland’s restaurant industry found that the entire hospitality industry, hotels and restaurants, had one of the highest migrant worker composition with 35 per cent of the work force. It found that the restaurant industry was almost entirely non-unionised, and noted that migrant workers within the restaurant industry had been the largest group reporting workplace exploitation. The MRCI initiated the Restaurant Workers Action Group (RWAG) in early 2007 to bring migrant workers employed in restaurants together to work for change. The study compiled 115 surveys of migrant workers employed in restaurants in Ireland and found that 53 per cent earned less than the minimum hourly wage; 45 per cent worked 9 or more hours per day; 44 per cent did not get rest breaks; 85 per cent did not receive extra pay for Sunday work or overtime pay; 34 per cent did not receive their annual leave entitlements and 84 per cent did not receive a contract or terms of employment.

Recognition of qualifications from outside Ireland takes place by the National Qualifications Authority of Ireland. In its *Annual Report for 2008* it announced that during the year a number of Country Education Profiles (CEPs) for countries including Russia, Nigeria, Pakistan, China and Ukraine (as relevant to non-EU countries) had been produced by the Authority for main countries of origin and/or study of applicants. The CEPs had been produced in order to allow staff access to relevant information to make informed decisions on the assessment of particular qualifications.

2.3.4.5 *Migrants and Unemployment*

Quarterly National Household (QNHS) data released in early 2009 showed that between quarter 3 2007 and quarter 3 of 2008 the unemployment rate increased by almost 70 per cent to 7.7 per cent and is expected to rise even

⁸⁶ Hogan and Linehan (eds.) *Migrants and Higher Education in Ireland*.

⁸⁷ MRCI (December 2008) *Exploitation in Ireland’s Restaurant Industry*. Available at www.mrci.ie; MRCI (June 2008) *Enabling Equality: Migrant Women in Rural Ireland*. Available at www.mrci.ie.

more steeply in 2009. In quarter 3 2008 the unemployment rate for non-Irish nationals was 9.5 per cent compared to 7.3 per cent for Irish nationals. The sectors experiencing the most significant job losses including construction, other production industries, wholesale and retail trade, hotels and restaurants are sectors where migrants tend to work.⁸⁸

2.3.4.6 *Racial Discrimination in the Workplace and in Access to Goods and Services*

Figures published by The Equality Tribunal in early 2009 show that of all claims brought to the Tribunal on alleged discrimination at work, almost half of the work-related cases were brought on the ground of race.⁸⁹ There were 359 cases referred on the grounds of discrimination based on race under the *Employment Equality Acts, 1998-2008* during 2008, an increase of 17 per cent on 2007. During 2008, the number of cases referred to The Equality Tribunal regarding discrimination in access to goods and services on the grounds of race (18 cases) under the *Equal Status Acts 2000-2008*, increased by 80 per cent on 2007 figures.

2.3.4.7 *Romanian and Bulgarian Work Restrictions*

The Government announced in December 2008 that it would continue to impose work restrictions for European Union citizens from Romania and Bulgaria for at least a further three years due to rising unemployment levels in the State.⁹⁰ Upon accession to the EU in January 2007, a work permit requirement in Ireland was placed on Romanian and Bulgarian nationals for a period of two years. Bulgarian and Romanian citizens are free to travel and live here, even though they may not get a job without a work permit and do not qualify for social welfare. There are exceptions, such as the self-employed, or those who were resident and held a work permit for a year prior to 2007. In the Government announcement regarding the continuation, it was noted that preference when applying for a permit would be given to Romanian and Bulgarian nationals over nationals of non-European Economic Area countries. It was also noted that the 2008 continuation decision would be kept under review and assessed comprehensively before the end of 2011.⁹¹

In figures cited by *The Irish Times*, and in a continuing issue as discussed in the *Annual Policy Report on Migration and Asylum 2007: Ireland*, half-year figures released by the Department of Social and Family Affairs in July 2008 point to a continuing discrepancy between the number of Romanians who secured work permits (76 permits) and those who were issued with Personal Public Service Numbers (3,306 PPSN).⁹²

⁸⁸ Central Statistics Office (February 2009) *Quarterly National Household Data*. Available at www.cso.ie.

⁸⁹ The Equality Tribunal (3 February 2009). '2008 End of year'. Press Release.

⁹⁰ *The Irish Times* (17 November 2008). 'Romanian and Bulgarian work restrictions to stay'.

⁹¹ Department of Enterprise, Trade and Employment (December 2008) 'Government decides to continue the existing Work Permits Regime for Nationals of Bulgaria and Romania from 1st January 2009'. Press Release. Available at <http://www.entemp.ie/press/2008/20081217a.html>

⁹² *The Irish Times* (17 July 2008) 'Migrants from new accession states down 40% on last year'.

2.3.4.8 International Students

As discussed in the *Annual Policy Report on Migration and Asylum 2007: Ireland*, a significant debate occurred in 2007 regarding international students with school-aged children who were not entitled to enrol in free State primary and secondary education. The Department of Justice, Equality and Law Reform indicated that from July 2008 children of international students will generally not be permitted to access State-funded education, with this to be interpreted as the student being in breach of the requirement of their residence permit to be self-sufficient. In rules published by the Department of Justice, Equality and Law Reform in mid-2008, first-time students from outside the European Economic Area (EEA) who begin a third-level course in Ireland in 2008 will be denied registration clearance by immigration authorities unless they can confirm they are not accompanied by children “nor do they intend to have their children join them later on”. If they are unable to do so, they will not be registered unless the placement of the child in education has been approved in writing either by the Department of Justice, Equality and Law Reform or by the Department of Education. In cases where the child has been attending a State school in Ireland for at least some of the last school year, the child will be allowed remain in education until the completion of the parent's course.⁹³

2.3.5 FAMILY REUNIFICATION

The Department of Justice, Equality and Law Reform received a total of 408 applications for family reunification from recognised refugee status holders in 2008. This represented an increase of 9.4 per cent per cent on similar figures for 2007.

An internal Department of Justice, Equality and Law Reform consultancy report cited by *The Irish Times* in July 2008, stated that the current maximum case processing time of up to 24 months was too long from the “perspective of ‘the customer’” and that additional resources were needed to shorten the processing times.⁹⁴ It was also noted that there were over 2,000 cases still waiting processing in the family reunification unit of the INIS. The NGO Refugee Information Service (RIS) noted that processing times for cases were, on average, more than 30 months. The Office of the Refugee Applications Commissioner *Annual Report 2008* stated that processing times from the receipt of the file from the Department of Justice, Equality and Law Reform to the issue of the section 18 report under the *Refugee Act, 1996* were between 12 and 16 weeks on average over the year and with a limited number of files being on hands at any one time.

Much public debate during 2008 concerned the delay of reunification of family members of a Somali woman whose family members had been residing in a refugee camp in Ethiopia for three years as a result. The Somali woman had been granted refugee status in Ireland in 2004 and had subsequently applied for family reunification. The Department of Justice, Equality and Law Reform did not respond to letters from either the

⁹³ Irish Naturalisation and Immigration Service (July 2008) ‘Children of Non-EEA Students attending State Schools’. Available at <http://www.inis.gov.ie/en/INIS/Pages/WP08000025>.

⁹⁴ *The Irish Times* (24 July 2008) ‘Reunification of families still a thorny issue’.

applicant or her solicitor, with information on the status of her reunification application becoming available in late 2007 when her solicitors secured her Department file under the Freedom of Information Act. It then became evident that visas for her husband and three children had been issued in August 2005. The lengthy delay in reunification of family members was discussed at length in both the media and in the Irish parliament, with the Minister for Justice, Equality and Law Reform subsequently issuing an apology for the delay.⁹⁵ The Minister apologised before the High Court for a “profound systems failure” which had resulted in such a delay.⁹⁶

During 2008 (and in light of submissions made on the *Immigration, Residence and Protection Bill, 2008*) the Immigrant Council of Ireland (ICI) continued to lobby for a statutory entitlement to family reunification for Irish citizens and all legally-resident immigrants in Ireland in a manner similar to that provided in *Directive 2003/86/EC on the right to family reunification*. In 2008, the Immigrant Council of Ireland brought several applications for judicial review regarding the right to family life as protected by the Irish Constitution and Article 8 of the ECHR to the High Court. All cases brought by the ICI in 2008 settled out of court. One of the cases involved a reverse discrimination claim by a couple who are Irish citizen and who argued that if one of them was an EU national exercising EU Treaty rights, they would have a statutory entitlement to have the wife’s mother, a Chinese national, reside with them in the State.

2.3.6 OTHER LEGAL MIGRATION

Overall, some 164,344 Certificates of Registration (referring to new registrations and renewals) were issued during 2008.⁹⁷ A Certificate of Registration is issued by the Garda National Immigration Bureau (GNIB) to lawfully resident non-Irish and non-EEA nationals who expect to stay in the State for more than three months. It verifies that the person has registered with their registration officer. The Certificate of Registration contains the person’s photo, registration number, relevant immigration stamp, and an expiry date. A certificate of registration card contains one of a number of different immigration stamps.⁹⁸

⁹⁵ *The Irish Times* (25 November 2008) ‘Somali woman at centre of visa affair was arrested in Dublin.’

⁹⁶ In October 2008, the Somali woman was subsequently arrested in Dublin by the GNIB for alleged fraud concerning the woman’s relationship to some of her family members as described by her on her application for family reunification, with a file sent to the Director of Public Prosecutions.

⁹⁷ See ‘Appendix IV – Statistical Data’ for further information on this matter.

⁹⁸ Categories of Stamps are as follows: Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission; Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions; Stamp number 2A: issued to non-EEA national students who are not permitted to work; Stamp number 3 is issued to non-EEA nationals who are not permitted to work. Also Stamp number 4 is issued to people who are permitted to work without needing an employment permit or business permission: Non-EU EEA nationals, Spouses and dependants of Irish and EEA nationals, People who have permission to remain on the basis of parentage of an Irish child, Convention and Programme refugees, People granted leave to remain, Non-EEA nationals on intra-company transfer, Temporary registered doctors, Non-EEA nationals who have working visas or work authorisations. Stamp number 4 (EU FAM) is

2.3.7 INTEGRATION

2.3.7.1 *Publication of “Migration Nation”*

A Statement on Integration and Diversity Management, *Migration Nation*, was launched by the Minister for Integration in May 2008. This was the first document of its kind released by the Office of the Minister for Integration since the Office was established in June 2007. The Statement on Integration sets out the future direction of integration policy in Ireland. It contains four key principles which will inform and underpin State policy in this area, namely (i) a partnership approach, (ii) a mainstream approach to service delivery, (iii) a strong link between integration policy and wider state social inclusion measures and (iv) a commitment to effective local delivery mechanisms. This integration policy focuses on the role of local authorities, sporting bodies and faith-based groups in building integrated communities. It also looks at the way in which integration is of necessity a two-way process with responsibilities and rights for both newcomers and the current population. A key deliverable of the Strategy will be to mainstream the delivery of services to migrants to avoid the “advent of parallel communities”.⁹⁹ The Strategy on Integration was welcomed by some NGO partners, particularly the proposal for a partnership approach between Government and non-governmental agencies on integration policy. (Immigrant Council of Ireland).¹⁰⁰

2.3.7.2 *Accommodation Measures for Asylum Seekers*

A report on housing policy and integration commissioned by the National Consultative Committee on Racism and Interculturalism (NCCRI) and with funding made available under the *National Action Plan against Racism* (NPAR) was published in October 2008. Displaying a warning of a danger of migrant segregation in housing, the report highlighted the clustering of migrants in some localities. Although it noted that there were low current levels of segregation, it was noted that this was a possibility unless social integration was mainstreamed in housing policy. The report noted a natural tendency of migrants to live among other newcomers means that some geographical clustering is inevitable.

2.3.7.3 *Education Provision for Newcomer Students*

Significant debate continued to surround the provision of education services to non-Irish national children during 2008. In figures provided by

issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the European Communities (Free Movement of Persons) Regulations 2006. People holding this stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations; Stamp number 5 is issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Law Reform to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work; Stamp number 6 can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport. See table A.6 in Appendix II.

⁹⁹Department of Justice, Equality and Law Reform (May 2008) ‘Minister for Integration, launches ‘Migration Nation’ a Statement on Integration Strategy and Diversity Management’. Press Release. Available at www.justice.ie

¹⁰⁰Immigrant Council of Ireland (2008) ‘Policy statement on integration welcomed’.

the Office of the Minister for Integration it was noted that approximately 10 per cent of primary students and 8 per cent of post-primary students are “newcomer” students. In a speech to an intercultural education conference in October 2008, the Minister for Integration stated that “...some parents are removing their children from schools with large numbers of foreign-national pupils, despite evidence that diversity in the classroom does not have a detrimental effect on learning”.¹⁰¹

The issue of language immersion classes where newcomer students are provided with intensive language tuition before being placed in a mainstream class also sparked much controversy, particularly between the two main political parties. Preliminary findings from ESRI research on newcomer students¹⁰² showed that up to 20 per cent of schools already used an immersion intensive language tuition technique. The study is due to present findings in June 2009 and is the first national study of the integration of newcomer students in primary and second-level schools in Ireland. At the time of the fieldwork, high levels of dissatisfaction were also expressed by teachers regarding available language resources, particularly for older children. The social integration of newcomer students was also a presenting issue. The study is based on 1,200 questionnaires and 12 case studies.

Regarding English as an Additional Language (EAL) teacher provision, numbers of allocated teachers rose from over 260 in 2001-2002 to over 2,000 teachers in 2008-2009, and at an estimated cost of over €120million. Continuing Professional Development was also offered to all EAL teachers in 2008/2009.

As discussed in detail in the *Annual Policy Report on Migration and Asylum 2007: Ireland*, the issue of education provision for pupils coming from non-Irish families was a controversial issue during 2007 as many such pupils were unable to secure school places prior to the opening of a new non-denominational “Educate Together” school in North County Dublin. It was feared that this represented evidence of emerging segregation in the Irish education system. The majority of primary schools in Ireland are managed by the Catholic Church with State funding. In 2008 the first State-run primary schools (based on a community model) opened in Dublin, operated by the County Dublin Vocational Education Committee (CDVEC).¹⁰³ It is expected that “several hundred schools” will open under this new model in the next decade as the primary school population grows by more than 100,000 pupils. In addition, the multi-denominational group Educate Together opened 12 new primary schools in September 2008.

The issue of wearing a hijab in a classroom context generated much public and political discussion during 2008. In September 2008 the Minister for Education and the Minister for Integration issued a joint statement on the matter clarifying that the Government would not issue a Directive to schools on the wearing of a hijab within a classroom context, but rather would continue to allow schools to decide their own uniform rules. The

¹⁰¹ *The Irish Times* (2 October 2008) ‘Diversity does not damage learning, claims Lenihan’.

¹⁰² Smyth *et al.* (2009) *Adapting to Diversity: Irish Schools and Newcomer Students*. Dublin: ESRI. Available at www.esri.ie.

¹⁰³ *The Irish Times* (1 September 2008) ‘First State-run primary schools to open today’.

Minister for Integration subsequently stated¹⁰⁴ that while the Government believed that “no school uniform policy should act in such a way that it, in effect, excludes students of a particular religious background from seeking enrolment or continuing their enrolment in a school”, they did not “recommend the wearing of clothing in the classroom which obscures a facial view and creates an artificial barrier between pupil and teacher” as “such clothing hinders proper communication.” While the decision to allow schools to continue to decide their own uniform policy was welcomed by the main teaching unions, the Irish Council of Civil Liberties (ICCL) criticised the move stating that “there is a responsibility on the State to ensure that decisions on such a sensitive issue are taken on a firm lawful basis, and in a consistent way.”¹⁰⁵

During 2008 the Department of Education and Science announced its intention to develop a national intercultural education strategy. Using a process of consultation with key stakeholders, announcement on development of the strategy was welcomed by NGOs including the National Consultative Committee on Racism and Interculturalism (NCCRI).

2.3.7.4 Cuts in Education Provision to Adult Refugees

A controversial cut in State funding to the country’s main language and integration centre for refugees occurred in July 2008. Integrate Ireland Language and Training (IILT), a Government-funded company providing English language teaching to 1,000 adult refugees (and their families) and teaching materials for primary and secondary schools closed at the end of July with their duties for adult refugee English language classes being taken over by the VEC sector.¹⁰⁶

2.3.7.5 Research into Levels of Integration

A low level of immigrant integration was highlighted in a 2008 Immigrant Council of Ireland (ICI) report, *Getting On: From Migration to Integration – Chinese, Indian, Lithuanian and Nigerian Migrants’ Experiences in Ireland*.¹⁰⁷ The aim of the research was to obtain baseline quantitative information about migrants living in Ireland, to acquire qualitative information about migrant integration and identity formation, and to provide a basis for comparative analysis of migrants’ experiences that will inform future policy recommendations. Levels on integration via political, economic, social cultural and spheres of everyday life were assessed via 78 in-depth interviews and found 12 per cent of Chinese immigrants, and 22 per cent of Lithuanians, are “highly integrated” into Irish society.¹⁰⁸ In terms of finding employment, friends and family networks were important across all

¹⁰⁴ Conor Lenihan, T.D. Minister for Integration (1 October 2008). Remarks made at ‘Towards an Intercultural Education Strategy’ Conference.

¹⁰⁵ Department of Education and Science (23 September 2008) ‘Ministers agree recommendations on school uniform policy’. Press Release. Available at <http://www.education.ie/robots/view.jsp?pcategory=10861&language=EN&ccategory=10876&link=link001&doc=42160>

¹⁰⁶ *The Irish Times* (4 July 2008) ‘Language teachers for refugees protest at closure outside the Dáil’.

¹⁰⁷ Immigrant Council of Ireland (2008) *Getting On: From Migration to Integration – Chinese, Indian, Lithuanian and Nigerian Migrants’ Experiences in Ireland*.

¹⁰⁸ *The Irish Times* (30 May 2008) ‘Low level of immigrant integration highlighted’.

groups. With regard to treatment and/or discrimination at work, 86 per cent of Nigerians and 69 per cent of Chinese nationals experienced difficulties at work. Those who had experienced racism at work were “significantly more likely to have reported Irish perpetrators” than non-Irish perpetrators. Levels of bullying or harassment by co-workers were highest for Nigerian respondents. The migration (legal) status of a migrant was seen as a key factor as to their level of integration in Ireland.

2.3.7.6 Discrimination Research

Several pieces of research highlighting subjective discrimination levels felt by immigrants were published during 2008. Russell *et al.* (2008) found that just over 12 per cent of Irish adults felt that they had been discriminated against in the preceding two years on grounds such as family status, gender, age and race.¹⁰⁹ Rates of reported discrimination rose to 31 per cent among those of Black, Asian or Other ethnicity and 24 per cent among non-Irish nationals. The results show that the highest rates of reported discrimination occur while looking for work (5.8 per cent) and in the workplace (4.8 per cent). The survey showed that non-Irish nationals are more than twice as likely as Irish respondents to report discrimination in the work place. Non-Irish national respondents were also more than two times more likely to report discrimination when looking for work than Irish nationals. When other variables are controlled in regression models, these differences are maintained. The fact that non-Irish nationals experience more discrimination than Irish nationals is not accounted for by socio-demographic or job characteristics.

O’Connell and McGinnity (2008) discuss immigrants and their workplace experience, with analysis is based on the CSO *Quarterly National Household Survey: Equality Module 2004* (collected in Quarter 4, 2004), in the published research *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*.¹¹⁰ Findings suggest that immigrants fare less well than Irish nationals in the Irish labour market, facing higher risks of unemployment and are less likely to secure the higher level (professional and managerial) occupations. The research report shows higher levels of disadvantage among minority ethnic groups in accessing work and indicates that English language skills are an important factor in migrants’ labour market experience. Experience of discrimination in access to employment and in the workplace is also more likely in Non-Irish nationals. Over double the Non-Irish national respondents (13.4 per cent) reported experience of discrimination when looking for work, in comparison to 5.3 per cent of Irish nationals. Nationals from non-English speaking countries displayed a consistently higher rate of reported discrimination when looking for work.

¹⁰⁹ Russell, H., Quinn, E., King O’Riain, R. and McGinnity, F. (2008) *The Experience of Discrimination in Ireland: Analysis of the QNHS Equality Module*. Dublin: Equality Authority and ESRI. Available at www.esri.ie.

¹¹⁰ O’Connell and McGinnity (2008) *Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market*. Dublin: Equality Authority and ESRI. Available at www.esri.ie.

2.3.8 CITIZENSHIP AND NATURALISATION

Some 10,885 applications for naturalisation were received in 2008, representing a 36 per cent increase on the previous year of 8,003 cases. Of these, 3,798 applications were granted and 2,480 refused. During the year, 3,117 naturalisation certificates and 1,224 post-nuptial citizenship certificates were issued. As discussed in detail in previous reports in this series, at present migrants can apply for citizenship if they have been legally resident in Ireland for five years. There is no language requirement, although applicants must be of “good character” and pledge fidelity to the State. Persons who have been resident in the State for five years or more as students or asylum seekers are not eligible to apply for citizenship. In the case of recognised refugees eligibility for citizenship is based on three years of legal residence in Ireland; and as refugee status is declaratory it is on a retroactive basis beginning on the date they have applied for asylum. Applications for naturalisation are granted at the absolute discretion of the Minister for Justice, Equality and Law Reform.

A change in prescribed fees for applying for Irish citizenship came into effect on 1 August 2008. Costs for adult applicants rose to €950 from €630, with fees for minors at €200. Recognised refugees are exempt from paying these fees. As referenced earlier in this report, a decentralisation of the Department of Justice, Equality and Law Reform’s Citizenship Division took place during 2008 when it relocated from the Dublin-based Burgh Quay office to Tipperary.

Media discussion during mid-2009 took place regarding a Department of Justice, Equality and Law Reform internal document related to the 2008 increase in fees. According to media reports, staff in the Citizenship Division had been directed to “stop approving citizenship applications until higher fees came into force”, with citizenship applications showing a marked drop during July before the new fees came into effect on the 1 August 2008 – some 301 applications approved in June 2008; 57 applications approved in July 2008; 434 applications approved in August 2008; and 558 applications approved in September 2008.¹¹¹ In addition, debate during both 2008 and 2009 centred on refusal of applications for naturalisation by migrant workers who had accessed social welfare during their time of legal residence in Ireland.

Processing times for citizenship and naturalisation continued to be a much documented media issue during 2008, with the Department of Justice, Equality and Law Reform stating that average processing times were 23 months from application to decision.¹¹² In a recent response to a Parliamentary Question, the Minister for Justice, Equality and Law Reform indicated that it is currently taking two years on average to process an application for naturalisations, although it is not uncommon for applications to be pending for three years and longer.

¹¹¹ RTÉ News (19 May 2009) ‘Delay to citizenship applications over fees’. Available at www.rte.ie/news/2009/0519/immigration.html.

¹¹² Department of Justice, Equality and Law Reform (2009) *Annual Report 2008*. Dublin: Stationery Office.

2.3.8.1 *Renewal of Permission to Remain Granted under Irish-born Child Scheme*

As discussed in detail in previous reports in this series (most notably the *Annual Policy Report on Migration and Asylum 2007: Ireland* and the *Policy Analysis Report on Asylum and Migration: Ireland 2006*), some very significant policy developments in relation to non-Irish nationals and Irish citizenship took place in recent years. A post-referendum Constitutional amendment in 2004 saw the enactment of the *Irish Nationality and Citizenship Act, 2004*, which commenced in January 2005 and stipulated the grounds by which citizenship of children born on the island of Ireland may be granted. In January 2005 the Department of Justice, Equality and Law Reform moved to clarify the position of the non-Irish national parents of Irish-born children who had applied for residency on the basis of their Irish child but had had their claims suspended in 2003, and invited such persons to apply under the *Irish Born Child 2005 Scheme (IBC/05)*. This was a special scheme under which non-Irish national parents of Irish children could apply for permission to remain in the State. Almost 18,000 applications were submitted under the 2005 Scheme, with 16,693 applications approved.

In early 2007 a Scheme for renewal of leave to remain for the non-Irish national parents of Irish born children granted leave to remain under the *IBC/05 Scheme*. Applicants who were successful have had their leave to remain renewed for up to three years at which stage those qualifying will be eligible to apply for full citizenship having held five years of legal residence in Ireland.¹¹³ Processing of applications for renewal of this permission to remain in the State commenced in January 2007 and finished on the 31 March 2008. By the end of 2008, some 14,261 applications for renewal had been received, with 14,117 granted positive decisions and 102 applications refused.

As discussed in the *Annual Policy Report on Migration and Asylum 2007: Ireland*, there were a number of legal challenges against refusal decisions under the IBC/05 administrative scheme. In November 2006, in a number of test cases, the High Court overturned the Minister's decision refusing permission to remain on grounds the Minister was required, but had failed, to consider the constitutional and convention rights of the Irish-born children prior to making that decision.

In December 2007 the Supreme Court overturned the decision of the High Court in relation to its findings in the series of test cases,¹¹⁴ which overturned previous and recognised the fundamental power of the State to control the entry, residence and exit of foreign nationals. The Bode case judgment stated that the Irish-born child scheme was an administrative scheme, and the Minister was entitled to apply the conditions laid down in the scheme. In a further related set of cases in May 2008, the Irish Supreme Court rejected an attempt by the Minister for Justice to uphold deportation orders issued against the parents of two Irish-born children who had been

¹¹³ In order to qualify for a renewal an applicant must:

- Have been successful under the first IBC/05 Scheme,
- Must have been living in Ireland with his or her child since being granted permission to remain, and
- Must have made every effort to become economically viable.

¹¹⁴ *Bode .v. Minister for Justice, Equality & Law Reform & Ors.*

born in Ireland prior to enactment of the changed citizenship law.¹¹⁵ The two families in the latter set of cases had been issued with deportation orders prior to making unsuccessful applications under the IBC/05 Scheme.

The Supreme Court's ruling declared that the Minister for Justice, Equality and Law Reform had failed to consider the children's rights under the Constitution and the European Convention on Human Rights, including their right to family life and had also failed to give "substantial" reasons as to his reasons to deport the parents of both Irish-born children. In both cases the court allowed the Minister's appeal against the decision of the High Court that the applicants were entitled to an order of certiorari in relation to the Minister's rejection of their entitlement to stay in Ireland under the Irish-born child scheme. As a result of the case ruling the deportation orders were to be quashed, with the families to be invited to make an application to the Minister for Justice, Equality and Law Reform regarding leave to remain in the State. The case generated much debate, particularly in light of a potential application of the ruling to "thousands" of resident non-Irish nationals if facing the issuance of a deportation order.¹¹⁶ The ruling was welcomed by a number of NGOs including the Immigrant Council of Ireland (ICI) who said it was reassured by the judgment, but raised concern that the Immigration Bill would permit the deportation of those who were here unlawfully, without any consideration of exceptional circumstances, "even when this involves the rights of their Irish national children or spouses".¹¹⁷ Individuals still apply to the Minister for Justice, Equality and Law Reform to "change status" if already legally resident in Ireland or for permission to reside in Ireland as the parent of an Irish child if they do not already have residency status. Generally the response to any such application is that it is not possible to make an application on this basis. However, the Minister will then consider submissions in the context of a notice of intention to deport issued against the applicant parent pursuant to section 3 of the *Immigration Act, 1999*. The issue of residency for parents of Irish children continues to give rise to High Court proceedings.¹¹⁸

2.3.9 ILLEGAL IMMIGRATION

Persons arriving in Ireland must meet with certain criteria before being allowed to enter the country and be granted leave to land. Possession of a visa does not guarantee entry to the State and all persons arriving in Ireland are subject to immigration controls upon arrival. These controls are applied on an occasional basis on passengers arriving from within the Common Travel Area with the UK and systematically on other passengers. Non-EEA nationals, whether visa required or not, are required to be in a position to satisfy an Immigration Officer that they can be granted leave to land. In particular, they should be able to satisfy an Immigration Officer that they have sufficient funds to support themselves during their visit, that

¹¹⁵ *Oguekwe .v. Minister for Justice Equality and Law Reform; Dimbo .v. Minister for Justice Equality and Law Reform.*

¹¹⁶ *The Irish Times* (2 May 2008) 'Court ruling may be of help to thousands facing deportation'.

¹¹⁷ *Ibid.*

¹¹⁸ Analysis provided by the Immigrant Council of Ireland (ICI) to the IE EMN NCP in June 2009.

they have a work permit if one is required and that they do not otherwise intend to breach Irish immigration or other law.¹¹⁹ Some 5,394 persons were refused leave to land in Ireland at Irish ports during 2008. This number refers to those refused overall leave to land in the State upon presentation at an Irish port or airport or held in an Irish prison until a return flight can be arranged, and those classified as leave to land for administrative purposes and admitted entry to the State for the purpose of submitting an application for asylum.

2.3.10 ACTIONS AGAINST HUMAN TRAFFICKING

2.3.10.1 Legislative and Administrative Arrangements

As discussed earlier in this report, the *Criminal Law (Human Trafficking) Act, 2008* became law in June 2008 and was the first dedicated piece of anti-human trafficking legislation in the State since the *Child Trafficking and Pornography Act, 1998*.

During the same month, and with additional arrangements published in November 2008, the Anti-Human Trafficking Unit of the Department of Justice, Equality and Law Reform published *Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking*. The publication of the notice aimed to provide information related to administrative arrangements which apply whereby a foreign national is identified as a person suspected of being a victim of human trafficking and the Minister for Justice, Equality and Law Reform is required to consider that person's immigration status in the State. The document sets out the administrative arrangements whereby a suspected victim of human trafficking from outside the EEA may be granted a 45 day period¹²⁰ of "recovery and reflection" in the State and may also, in certain circumstances, be granted one or more periods of temporary residence in the State. The 45 day period of recovery and reflection was subsequently changed to 60 days in the arrangements published in November 2008. The purpose of the recovery and reflection period is to allow the person "...time to recover, to escape the influence of the alleged perpetrators of the trafficking, and to take an informed decision as to whether to assist Gardai or other relevant authorities in relation to any investigation or prosecution arising in relation to the alleged trafficking".¹²¹ A category of Temporary Residence Permission for a period of 6 months may be granted in certain circumstances either during the recovery and reflection period or thereafter, and where the Minister for Justice, Equality and Law Reform is satisfied that the alleged victim of trafficking is cooperating with an investigation and where "...the person has severed all relations with the alleged perpetrators of the trafficking, and it is necessary for the purpose of allowing the suspected victim to continue to assist the Garda Síochána or other relevant authorities in relation to an investigation or prosecution

¹¹⁹ Department of Justice, Equality and Law Reform (2005) 'The Immigration Process in Ireland'. Available at <http://www.inis.gov.ie/en/INIS/THE%20IMMIGRATION%20PROCESS%20IN%20IRELAND%20050509.pdf/Files/THE%20IMMIGRATION%20PROCESS%20IN%20IRELAND%20050509.pdf>

¹²⁰ This is a 60 day period of recovery and reflection as of time of writing in June 2009.

¹²¹ Department of Justice, Equality and Law Reform (June 2008). 'Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking'.

arising in relation to the trafficking.”¹²² The recovery and reflection measure was used for the first time in December 2008 in the case of a woman discovered in a suspected brothel in November of that year.¹²³ During 2008 many NGOs continued to work with An Garda Síochána to develop a Memorandum of Understanding (MoU) regarding the identification of suspected victims of trafficking. The prospective MoU would possibly provide for the identification of victims by NGOs as well as members of An Garda Síochána.

Much public debate during November 2008 surrounded an investigation into an organised crime gang suspected of bringing women from Africa, South America and Eastern Europe into Ireland to work in an internet and brothel-based prostitution ring across the country. Operation Abbey operated on a cross-border basis and involved Irish Garda Units together with the Police Service of Northern Ireland (PSNI) the UK Serious and Organised Crime Agency, the UK Border Agency and the Welsh police force. In response to much media reporting on the discovery of non-Irish national and non-EU women during the course of the investigation and their removal from the State, the Minister for Justice, Equality and Law Reform stated that he would not be “...signing any deportation orders in respect of people who are the subject of possible human trafficking.”¹²⁴

As part of Ireland’s membership of the European G6 Human Trafficking Initiative, Ireland launched an anti-human trafficking Blue Blindfold awareness raising campaign in October 2008.¹²⁵ Posters representing the campaign were advertised to remind people to remain vigilant and a hotline was also set up for people to report their suspicions in secret. As of the time of writing of this report, no data concerning the impact of the campaign has been released. The Irish campaign followed a similar initiative launched in the United Kingdom during 2007.

Development of a *National Action Plan to Prevent and Combat Human Trafficking* also continued during 2008 and is due to be published and adopted during 2009.

The UN Human Rights Committee’s *Concluding Observations on Ireland under the ICCPR* in July 2008¹²⁶ commented on Ireland’s efforts in the counter-trafficking arena, recommending that “Accordingly, the State party should continue to reinforce its measures to combat trafficking of human beings, in particular by reducing the demand for trafficking. It should also ensure the protection and rehabilitation of victims of trafficking. Moreover, the State party should ensure that permission to remain in the State party is not dependent on the cooperation of victims in the prosecution of alleged traffickers. The State party is also invited to consider ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women

¹²² *Ibid.*

¹²³ *The Irish Times* (6 December 2008) ‘One of five women discovered in suspected brothels leaves Ireland.’

¹²⁴ *The Irish Times* (5 December 2008) ‘Women trafficked into State will not be deported, says Ahern.’

¹²⁵ <http://www.blueblindfold.gov.ie>

¹²⁶ UN Human Rights Committee (July 2008) *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant Concluding Observations of the Human Rights Committee Ireland.*

and Children, supplementing the United Nations Convention against Transnational Organized Crime.”

2.3.10.2 Published Research into Trafficking into Ireland

Preliminary findings from research into forced labour undertaken by the Irish School of Ecumenics for a European Science Foundation EUROCORES project on trafficking for forced labour were launched in October 2008.¹²⁷ Some 50 non-Irish nationals were found to have been trafficked into Ireland as forced labourers since 2002, with victims of trafficking coming mainly from Bangladesh, Egypt, Pakistan and the Philippines. Most were involved in the catering, manufacturing and domestic work sectors.¹²⁸ The figures, which were described by the authors as conservative, were based on case files held by support groups such as the MRCI, trade unions and other bodies.

2.3.11 RETURN MIGRATION

2.3.11.1 Voluntary Assisted Return

In 2008 in Ireland, 561 persons opted to be assisted to return home voluntarily, a substantial increase from 2007 and 2006 when 417 and 238 persons sought voluntarily assisted return respectively. Of the 2008 figure, some 452 persons were assisted to return by the International Organization for Migration (IOM) and 109 persons received administrative assistance to return by the Department of Justice, Equality and Law Reform. IOM continued to run a number of programmes related to voluntary return during 2008: the Voluntary Assisted Return and Reintegration Programme and the Voluntary Assisted Return Programme for Vulnerable Irregular Nigerian Nationals (in conjunction with IOM Netherlands) until May 2008.

Two migrant mapping exercises also occurred during 2008 in relation to members of the Georgian and Moldovan communities in Ireland. Research into the Brazilian community, in conjunction with IOM offices in Brussels and Portugal also took place.

2.3.11.2 Deportation

There were 162 deportations to non-EU countries during 2008, with 271 transfers under the *Dublin Regulation*.¹²⁹ In response to a Parliamentary Question in November 2008 on changes arising after the enactment of the *Immigration Act, 2003*, the Minister for Justice, Equality and Law Reform stated that between 2003 and 2008 some 8,486 deportation orders were issued and 2,118 implemented. The largest number of deportations occurred in the first two years of the new rules with 591 deported in 2003 and 599 the following year.¹³⁰

¹²⁷ Wylie and Coghlan (2008) Irish School of Ecumenics, Trinity College Dublin. Reports forthcoming.

¹²⁸ *The Irish Times* (15 October 2008) ‘More than 50 cases of trafficking into Ireland’; *The Irish Times* (20 October 2008) ‘Opinion - Human trafficking’.

¹²⁹ Department of Justice, Equality and Law Reform (February 2009). ‘Minister Dermot Ahern Announces End of Year Asylum Statistics’. Press Release; *The Irish Times* (6 January 2009). ‘Applications for asylum continue to fall as departures of illegals rise 23%’.

¹³⁰ *The Irish Times* (17 November 2008) ‘Thousands of asylum applications withdrawn’.

The total cost of effecting deportations and *Dublin Regulation* transfers during 2008 was €1,074,179.¹³¹

As discussed earlier in this report, during 2008 much media and parliamentary debate centred on the case of a deportation order issued to a Nigerian citizen and her daughters. The case concerned an assertion by the national that her daughters were likely to endure forced genital mutilation if they returned to Nigeria, with a daughter allegedly previously having died in Nigeria from the practice. The case was referred to the European Court of Human Rights and deportation orders were postponed pending a decision whether the case is admissible in that court.

2.3.12 OTHER POLICY AREAS/TOPICS

2.3.12.1 Population and Labour Force Projections 2006-2041

Published in April 2008, the Central Statistics Office (CSO) *Population and Labour Force Projections 2011-2041* presents population projections, based on a number of contrasting scenarios relating to future trends in fertility, mortality and migration for 2011 to 2041 and Labour Force projections for 2011 to 2021.¹³² The projections in the document show both a high migration scenario (M1) which assumes an annual net immigration of 39,000 over the projection period, and a migration scenario M2 assumes a more modest net inflow of 21,400 per annum in the period to 2041. Comments on the projections stated that, in light of the Irish economy decelerating rapidly, a real prospect of a return to net emigration in the short term at least was possible.

¹³¹ Department of Justice, Equality and Law Reform (2009) Annual Report 2008. Dublin: Stationery Office.

¹³² Central Statistics Office (April 2008) *Population and Labour Force Projections 2011-2041*. Available at www.cso.ie

3. IMPLEMENTATION OF EU LEGISLATION

3.1 Transposition of EU Legislation in the Field of Migration and Asylum into National Law/ Administrative Practice 2008

3.1.1 TRANSPOSITION OF EU LEGISLATION IN 2008

Four pieces of legislation related to migration and asylum were enacted in Irish legislation during 2008. A comprehensive list of Ireland's participation in all European Union measures related to asylum and migration and published during 2008 are contained in Annex V.

3.1.1.1 *Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings: Criminal Law (Human Trafficking) Act 2008*

The *Criminal Law (Human Trafficking) Act, 2008* was enacted in June 2008 and sought to give effect to, amongst other measures, the *Council Framework Decision of 2002 on Combating Trafficking in Human Beings*; the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*; and the *Council of Europe Convention on Action Against Trafficking in Human Beings*. The Act creates separate offences of trafficking in children for the purpose of labour exploitation or the removal of their organs, trafficking in children for the purpose of their sexual exploitation and trafficking in adults for the purposes of their sexual or labour exploitation or the removal of their organs. It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person, adult or child, for any purpose. Of note was the inclusion of a provision under which it becomes an offence to solicit or importune a trafficked person for the purpose of prostitution. Upon signing of the Act, the Minister for Justice, Equality and Law Reform noted that the published *Immigration, Residence and Protection Bill, 2008* would provide protection for victims of trafficking, including a period of recovery and reflection of 45 days and, where the person assists a Garda investigation, a further six-month residence.

3.1.1.2 *Directive 2004/38/EC of the European Parliament: (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)*

The Minister for Justice, Equality and Law Reform introduced the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* amending the *European Communities (Free Movement of Persons) Regulations 2006 (S.I. No.656 of 2006)*, to remove from the 2006 Regulations the requirement that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland, thus bringing Irish legislation into line with the ECJ's ruling in *Metock*.

*3.1.1.3 Directive 2004/38/EC of the European Parliament:
Immigration Act 2004 (Registration Certificate Fee) Regulations
2008 (S.I. No. 336 of 2008)*

S.I. No. 336 of 2008, the Immigration Act 2004 (Registration Certificate Fee) Regulations 2008 came into operation on 23 August 2008. The S.I. made provisions for changes to the fee prescribed for registration certificates for non-EEA nationals in Ireland under Section 19 (1)(b) of *Immigration Act, 2004*. The S.I. seeks to provide that the fee would be waived for spouses and dependants of EU nationals who receive a residence permit under Directive 2004/38/EC. It is noted, however, that the instant S.I. refers to waiving the fees for holders of a valid residence card issued under Regulation 7 of the *European Communities (Free Movement of Persons) Regulations 2006 (S.I. No. 226 of 2006)*, that latter S.I. having in fact been revoked by Regulation 27 of the *European Communities (Free Movement of Persons) Regulations 2006 (S.I. No.656 of 2006)*, as amended.

*3.1.1.4 Council Decision 2008/381/EC of 14 May 2008 establishing a
European Migration Network*

Ireland's decision to partake in the European Migration Network via exercising its option to notify the Council and the Commission of the above measure via Article 4 of the fourth Protocol set out in the *Treaty of Amsterdam* was approved in a motion by Seanad Éireann on 9 July 2008. The Commission Decision for the opt-in of Ireland to the EMN Council Decision was adopted on 28 April 2009, reference COM (2009) 2708.

3.1.2 EUROPEAN UNION MEASURES IN RELATION TO ASYLUM AND MIGRATION, IRELAND'S TRANSPOSITION, 2008

European Union Legislation	Measures in Relation in Ireland's Transposition Measures
Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings	Criminal Law (Human Trafficking) Act 2008
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	European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)
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	S.I. No. 336 of 2008, the Immigration Act 2004 (Registration Certificate Fee) Regulations 2008 came into operation on 23 August 2008
Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131 of 12 May 2008, p. 7)	Opt In – not relevant Seanad Éireann approved the exercise by the State of the option, provided by Article 4 of the fourth Protocol set out in

the Treaty of Amsterdam, to notify the Council and the Commission that it wished to accept the measure Council Decision 2008/381/2008 of 14 May 2008 establishing a European Migration Network on the 9 July 2008. The Commission Decision for the opt-in of Ireland to the EMN Council Decision was adopted on the 28th April 2009, reference COM (2009) 2708.

3.1.3 PROPOSED TRANSPOSITION OF EU LEGISLATION

Council Directive 2005/85/EC; Council Directive 2001/55/EC; Council Directive 2004/83/EC; Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings: The Immigration, Residence and Protection Bill 2008

The Bill seeks to give effect to *Council Directive 2005/85 EC* (“The Procedures Directive”) and *Council Directive 2001/55/EC*, to complement the *Criminal Law (Human Trafficking) Act, 2008*’s provisions giving effect to *Council Framework Decision 2002/629/JHA of 19 July 2002 on Combating Trafficking in Human Beings*, and to integrate the provisions of the *Asylum Qualification Directive Regulations 2006 (S.I. No. 518 of 2006)*, which previously gave effect to *Council Directive 2004/83/EC*, into primary legislation.

3.2 Experiences and Debates Regarding the Implementation of EU Legislation in Asylum and Immigration

3.2.1 PUBLIC DEBATE ON THE PROPOSED TRANSPOSITION OF COUNCIL DIRECTIVE 2005/85 EC ETC.

The *Immigration, Residence and Protection Bill, 2008* gave rise to considerable public debate. The Bill seeks to give effect to *Council Directive 2005/85 EC* (“The Procedures Directive”) and *Council Directive 2001/55/EC*, and to integrate the provisions of the *Asylum Qualification Directive Regulations 2006 (S.I. No. 518 of 2006)*, which previously gave effect to *Council Directive 2004/83/EC*, into primary legislation.

Many organizations, including the UNHCR, the Immigrant Council of Ireland, Integrating Ireland, Irish Refugee Council, Migrant Rights Centre of Ireland and Refugee Information Service were highly critical of the Bill’s provisions. See section 2.2.4.1.

3.2.2 CONTROVERSY AND LITIGATION REGARDING IRELAND’S TRANSPOSITION OF DIRECTIVE 2004/38/EC

There continued to be controversy in 2008 regarding Ireland’s transposition of *Directive 2004/38/EC of 29 April 2004 on the right of citizens of the European Union and their family members to move and reside freely within the territory of the Member States*. As discussed in the *Annual Policy Report on Migration and Asylum 2007: Ireland, S.I. No. 656 of 2006 (European Communities (Free Movement of Persons) Regulations 2006)*, sought to give effect to the Directive but contained the requirement that a non-EU family member had to have been lawfully resident in another EU Member State prior to

applying for a residence permit in Ireland. Many applications for residence permits from spouses and other family members of EU nationals living in Ireland were refused on the basis of this requirement, giving rise to media coverage of the issue, as reported in last year's report.

The impugned requirement in the Irish Regulations was the subject of many High Court judicial review applications, and the matter came to a head in *Case C-127/08-Metock and Ors v Minister for Justice, Equality and Law Reform*.¹³³ The third-country national applicants in this case arrived in Ireland and applied unsuccessfully for asylum, but while resident in the State married EU citizens. The Minister for Justice, Equality and Law Reform, and the Court, accepted that these were not marriages of convenience. Each of the non-EU spouses subsequently applied for a residence card as the spouse of a Union citizen. Each of the applications was refused on the ground that the non-national spouse did not satisfy the condition of prior lawful residence in another Member State. The applicants sought to quash these decisions by way of judicial review. The High Court asked the ECJ whether such a condition of prior lawful residence in another Member State is compatible with the Directive.

The ECJ found that the application of the Directive was not conditional on previous lawful residence in another Member State, and that the Directive applied to all EU citizens who move to or reside in a Member State other than their State of origin, and to their family members who accompany or join them, irrespective of when and where a marriage takes place, and of how a spouse entered the host Member State. The Court found that if EU citizens were not allowed to lead a normal family life in the host Member State, the exercise of their guaranteed freedoms would be seriously obstructed, since they would be discouraged from exercising their rights of entry into, and residence in, that Member State. The Court observed that Member States could refuse entry and residence on grounds of public policy, public security or public health, and could refuse any right conferred by the Directive in the case of abuse of rights or fraud.

The Department of Justice issued a press release on the judgment stating that the Minister had consequently decided to revoke the impugned requirement, and inviting applicants who had been refused for failure to have prior legal residence to have their applications for residence cards reviewed under the Directive.¹³⁴ The Minister for Justice, Equality and Law Reform subsequently introduced the *European Communities (Free Movement of Persons) (Amendment) Regulations 2008 (S.I. No. 310 of 2008)* amending the 2006 Regulations. The 2008 Regulations remove from the 2006 Regulations the requirement that a non-EU family member must have been lawfully resident in another EU Member State prior to applying for a residence permit in Ireland.

The EU Commission welcomed the European Court's clarification of "the rights of free movement of European Union citizens and their family

¹³³ Unreported, High Court, Finlay Geoghegan J., 14/03/2008; Unreported, European Court of Justice, 25/07/2008.

¹³⁴ Department of Justice, Equality and Law Reform (31 July 2008) 'Press Release on *Metock and Others v the Minister for Justice, Equality and Law Reform*'.

members throughout the EU.”¹³⁵ The Court’s ruling was reported widely in the press.¹³⁶

Later in the year, it was reported that, the Irish Government had been working since July with an EU panel on what RTE News referred to as “the fallout” from the *Metock* case, and that the Department of Justice believed it had uncovered a large number of “sham marriages” between Latvians living in Ireland and people from the Indian subcontinent.¹³⁷ *RTE News* reported that it obtained figures given to “the panel on so-called sham marriages” indicating that 4,600 non-EU nationals had applied for residence in Ireland since the Directive was introduced, that 30 per cent of these were either failed asylum seekers or students who had overstayed their visas, that 10 per cent of the EU spouses were Latvians, and that 50 per cent of the Latvians had married Pakistanis, Indians or Bangladeshis compared to only 39 per cent who married non-EU citizens “closer to home”. *RTE News* also reported that the Government said that these marriages were statistically abnormal and could not have arisen by chance.¹³⁸

3.2.3 LITIGATION CONCERNING IRELAND’S TRANSPOSITION OF COUNCIL DIRECTIVE 2004/83/EC

The year saw significant litigation in the Irish High Court relating to Ireland’s transposition of *Council Directive 2004/83/EC*. In 2007, in *H & D v Minister for Justice, Equality and Law Reform*,¹³⁹ J Feeney held that while people in respect of whom deportation orders are made after 10 October 2006 have an automatic right to apply for subsidiary protection, Regulation 4(2) gave the Minister a discretion to consider applications for subsidiary protection from other applicants, that such applicants, who had been issued with deportation orders before 10 October 2006, did not have an automatic right to apply for subsidiary protection under the Directive, but that for the Minister reject such applications without regard to that discretion would be in breach of the Minister’s obligations. This ruling gave rise to further litigation in 2008, most notably in *N & Anor v Minister for Justice Equality and Law Reform*¹⁴⁰ and *Gavrylyuk & Bensaada v The Minister for Justice, Equality and Law Reform*.¹⁴¹

In *N & Anor v Minister for Justice Equality and Law Reform* the Nigerian national applicants were failed asylum seekers who subsequently applied for subsidiary protection. The Minister refused their applications and they sought to quash those decisions by way of review. The applicants argued that subsidiary protection was a right under EU law and *Directive 2004/83/EC* and not a matter of Ministerial discretion, and that they were therefore entitled to a consideration of their claims for subsidiary protection in a manner divorced from the Irish domestic legislation of the

¹³⁵ EU Commission (July 2008) ‘EU Commission welcomes Metock case clarification on free movement of citizens by ECJ’. Press Release.

¹³⁶ *The Irish Times* (26 July 2008) ‘Residency refusal to 1,500 non-EU spouses for review’; RTE News (26 July 2008) ‘EU overturns Irish residency laws’.

¹³⁷ *RTE News* (25 September 2008) ‘Large number of ‘sham marriages’ uncovered’

¹³⁸ *Ibid.*

¹³⁹ Unreported, High Court, 27 July 2007 [2007] IEHC 277.

¹⁴⁰ [2008] IEHC 107 High Court, Charleton J. 24/04/2008.

¹⁴¹ [2008] IEHC, 321, Unreported, High Court, Birmingham J, 14 October 2008.

Refugee Act, 1996. The Court refused the relief sought, holding that an applicant for subsidiary protection must, as a matter of law, have already ventilated the facts and circumstances regarding the claimed risk of persecution, and that it is only upon rejection of such a claim that applicants are entitled to make an application for subsidiary protection. The Court said that the primary focus in such an application is any risk to which an applicant alleges he or she would be subject if returned, considered in the light of the situation in terms of peacefulness and the functionality of ordinary protection of that country. The Court stated that a primary question in considering an applicant's claim for subsidiary protection should be whether what is contended for is new, or has already been the subject of an asylum determination. The Court held that if substantially new material is put forward it must be given a fair and reasoned consideration, and that nothing in *Directive 2004/83/EC* requires that the decision making process as to whether a non-citizen is entitled to subsidiary protection should be the same as that for refugee status.

In *Gavrylyuk & Bensaada v The Minister for Justice, Equality and Law Reform* the applicants had been refused asylum and had also been refused leave to remain and were issued with deportation orders before 10th October 2006, the date on which the provisions of *Council Directive 2004/83/EC* were transposed into Irish domestic law by *S.I. No 518 of 2006*. Following the transposition of the Directive, they then applied for subsidiary protection. The Gavrylyuks, who were Ukrainian citizens, claimed that they would be subjected to inhuman or degrading treatment in the Ukrainian penal system, and furnished country information stating, *inter alia*, that detention facilities in Ukraine likely reached the threshold of Article 3 of the ECHR. Mr Bensaada, an Algerian citizen, claimed that he would be subjected to inhuman or degrading treatment and torture in Algeria by the (non-State) GIA who had already tortured him, and provided a new SPIRASI medico-legal report confirming that he had been tortured, and made submissions, *inter alia*, arguing that he feared serious harm pursuant to Article 15 of *Council Directive 2004/83/EC*. In considering whether Mr Bensaada was at risk of torture before originally recommending, in 2004, that he be deported, the Repatriation Unit of the Department of Justice had stated that while Mr Bensaada was a victim of torture, it was important to note that the torture was carried out by non-State agents.

The Minister had refused to exercise his discretion to consider subsidiary applications made by the applicants, in respect of whom deportation orders had been signed and notified prior to the transposition of the 2006 regulations, for the stated reason that the applicants had failed to identify altered circumstances which would lead to them being at risk of suffering serious harm. The applicants sought to challenge the Minister's refusal by way of judicial review on three grounds: (a) that the Minister's interpretation of the decision of Feeney J. in *H & D* (see above) was erroneous in that by limiting the discretion exercised to consideration of whether there were changed or altered circumstances the Minister had misinterpreted the ratio of the *H & T* decision, adopted an inflexible rule and had fettered his discretion, (b) that there was unfairness or discriminatory treatment in that the Minister had allowed a group of people in respect of whom deportation orders had been made but who had not been notified of this fact, to make an application for subsidiary protection, and (c) that even if the Minister was correct in his interpretation of the decision in *H & D*, he had failed to give adequate consideration to submissions made in respect of changed circumstances. The applicants

contended that in *H & D Feeney J* was merely setting out a number of indicative criteria as to when the Minister might chose to exercise his discretion, while the Respondent contended that the exercise of the Minister's discretion under Regulation 4(2) was limited to situations where the applicants show new facts or circumstances.

The Court refused certiorari in respect of Mr and Mrs Gavrylyuks applications, but granted certiorari in respect of Mr Bensaada's application. The Court held that the Minister's, and not the Applicants, interpretation of the law was correct, and that the Minister had not acted unfairly in drawing the distinction that he did between applicants generally and those who had not yet been notified of extant deportation orders made before the transposition the 2006 regulations, had pursued a legitimate aim designed to achieve fairness and to promote confidence in the system. With regard to the claim that the Minister had failed to give adequate consideration to the criteria he said he was applying, i.e., whether there were changed circumstances, the Court against the Gavrylyuks, but found in Mr Bensaada's favour. The Court noted that Feeney J had indicated three non-exhaustive examples of changed circumstances: (a) where an applicant's position is affected by a change in the definition of serious harm, (b) where altered personal circumstances have arisen, and (c) where conditions in the country of origin have changed. The Court noted, *inter alia*, that the Minister's letter informing Mr Bensaada of the possibility of applying for subsidiary protection referred only to the latter two of these possible scenarios, and held that the Minister failed to have sufficient regard to the changed definitions of serious harm and torture, pursuant to Article 15 of the Directive, in circumstances where the applicant had, in fact, been subjected to torture.

3.2.4 CRITICISM OF IRELAND'S TRANSPOSITION OF COUNCIL FRAMEWORK DECISION ON COMBATING TRAFFICKING IN HUMAN BEINGS

The Immigrant Council of Ireland (ICI) claimed in a press release that a significant, and possibly the largest, number of women trafficked into Ireland for the purposes of sexual exploitation will receive no benefit from the Government's measures intended to protect them in the *Criminal Law (Human Trafficking) Act*.¹⁴² The ICI stated "We are particularly pleased that the Government, through this legislation, criminalises human trafficking, provides a definition of trafficking and introduces tough penalties for those who profit from human exploitation," but was concerned that the Government decided not to include protection measures in *the Criminal Law (Human Trafficking) Bill*, but to provide them within the just-published *Immigration, Residence and Protection Bill*. The ICI was particularly concerned that as the *Immigration, Residence and Protection Bill* only applies to people from outside the EU, the needs of people who are trafficked to Ireland from within the EU will not be met.

¹⁴² Immigrant Council of Ireland (February 2008) "Legislation lets down victims of trafficking". Available at http://www.immigrantcouncil.ie/images/5176_070208_irpbilltraffickingrelease.pdf

3.2.5 CRITICISM OF IRELAND'S "OPT IN" POLICY ON EU IMMIGRATION DIRECTIVES

Hilkka Becker, of the Immigration Council of Ireland, speaking at a Joint Committee on European Scrutiny hearing at the Dáil on 11 March 2008, argued that what it referred to as Ireland's "cherry-picking" which EU Directives on immigration to opt into would put the country at a disadvantage when trying to attract and retain highly-skilled migrants. The ICI noted that Ireland had opted into some Directives, such as the *Researchers Directive*, but not others, such as the *Directive on the Right to Family Reunification*, but contended that Ireland was not fully compliant with the *Researchers Directive* because it did not have national rules on the right to family reunification. The Immigration Council of Ireland issued a press release on the matter on the day of the hearing.¹⁴³

The ICI urged the Government to opt in to the "Blue Card Proposal"¹⁴⁴, and on the proposal for a single application procedure for a single permit for non-EU citizens to live and work in the territory of a Member State and on a common set of rights for non-EU citizen workers legally residing in a Member State, but to do so as part of a comprehensive package of measures, including measures allowing lower-skilled migrants into the State.

3.2.6 EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE (ECRI)

The European Commission Against Racism and Intolerance (ECRI) published its *Annual Report 2008* and called on Ireland, to ratify *Protocol No. 12 to the European Convention on Human Rights*, providing for a general prohibition of discrimination and of which it is a signatory, as soon as possible.

¹⁴³ Immigrant Council of Ireland (March 2008) 'Cherry Picking of EU Immigration directives will put Ireland at a disadvantage'. Available at: http://www.immigrantcouncil.ie/press_detail.php?id=14

¹⁴⁴ See section 2.3.4.2.

ANNEX I – METHODOLOGY, TERMS AND DEFINITIONS

A.I.1 Methodology

A.I.1.1 DEFINITION OF A SIGNIFICANT DEVELOPMENT

For the purpose of the *Annual Policy Report on Migration and Asylum 2008: Ireland*, specific criteria regarding the inclusion of significant developments and/or debates have been adopted to ensure standard reporting across all national country reports. On an EMN central level, the definition of a “significant development/debate” within a particular year was an event that had been discussed in parliament and had been widely reported in the media. The longer the time of reporting in the media, the more significant the development, and likewise if such developments/debates then led to any proposals for amended or new legislation.

A significant development is defined in the current Irish report as an event involving one or more of the following:

- All legislative developments;
- Major institutional developments;
- Major debates in parliament and between social partners;
- Government statements;
- Media and civil society debates:
- - If the debate is also engaged with in parliament, or
- - Items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit.

A.I.1.2 SOURCES AND TYPES OF INFORMATION USED

The sources and types of information used include:

- Published and adopted national legislation;
- Government press releases, statements and reports;
- Published government schemes;
- Media reporting (both web-based and print-media); Other publications (European Commission publications; I/NGO Annual Reports; publications and information leaflets);
- Case Law reporting.

Significant constraints were experienced in accessing certain information due to the timing of the *Annual Policy Report on Migration and Asylum 2008: Ireland*. In particular, certain governmental and NGO Annual Reports for 2008 were not available at the time of writing.

A.I.1.3 STATISTICAL DATA

Statistics, where available, were taken from published first-source material such as Government/Other Annual Reports and published statistics from the Central Statistics Office. Where noted, and where not possible to access

original statistical sources, data were taken from media articles based on access to unpublished documents. Additional statistical reporting contained in *Annex II – Statistical Data* is taken from governmental websites of the Department of Enterprise, Trade and Employment and Department of Justice, Equality and Law Reform.

A.I.1.4 CONSULTED PARTNERS

In order to provide a comprehensive and reflective overview of national legislative and other debates, a representative sample of core partners were contacted with regard to input on a draft *Annual Policy Report on Asylum and Migration 2008: Ireland*.

- Immigrant Council of Ireland (ICI)
- Irish Refugee Council (IRC)
- Migrant Rights Centre Ireland (MRCI)
- Department of Justice, Equality and Law Reform
- Office of the Minister for Integration

A.I.2 Concepts and Definitions

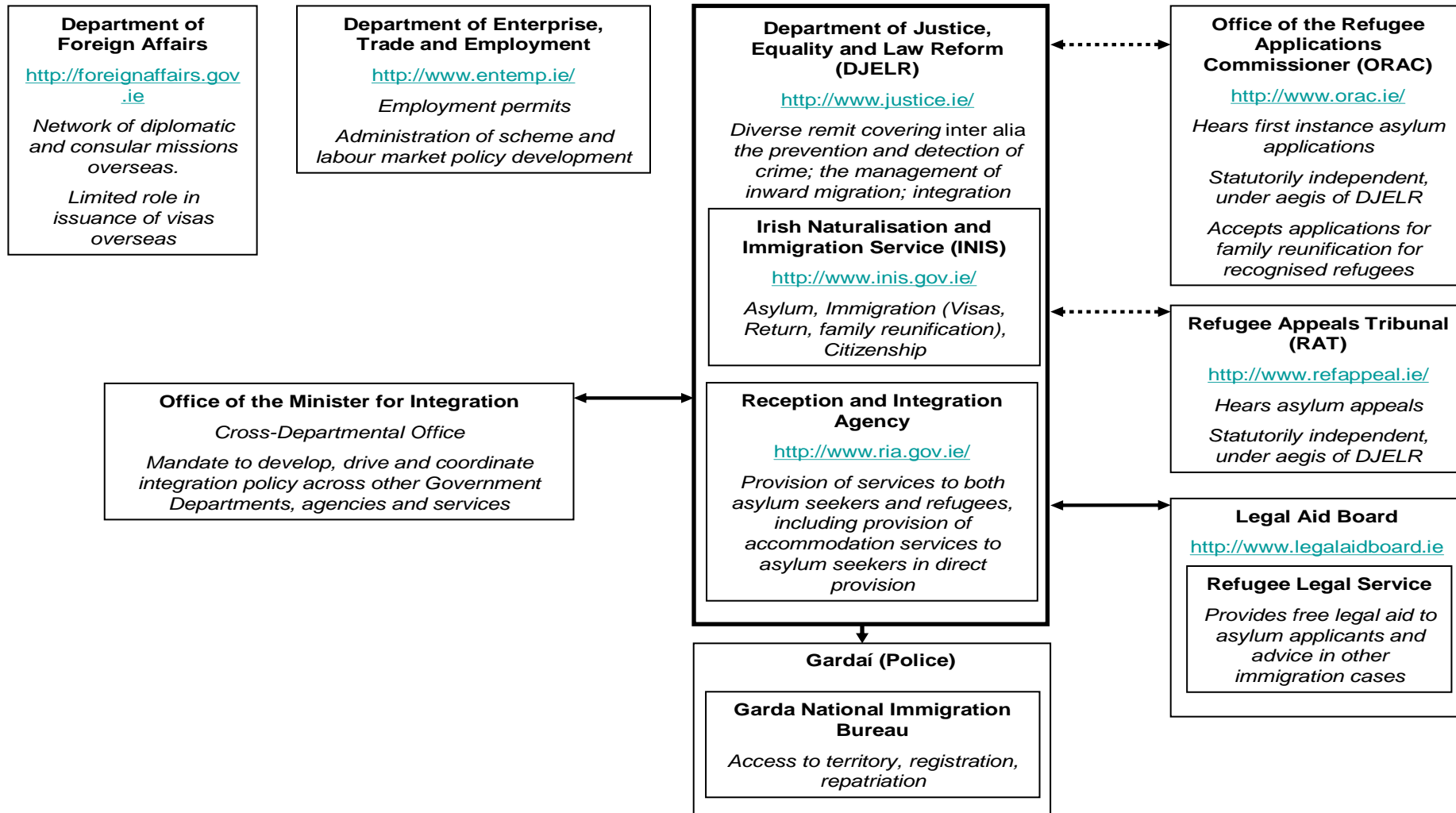
All definitions for technical terms or concepts used in the study are as used in the EMN draft Glossary.

ANNEX II – MAJOR LEGISLATION IN THE AREA OF MIGRATION AND ASYLUM

- The *Refugee Act, 1996* set out, for the first time, a system for the processing of asylum applications in Ireland.
- The *Immigration Act, 1999* set out the principles, procedures and criteria, which govern the detention and removal of foreign nationals from the State, and made provision for the issuing of deportation and exclusion orders.
- The *Immigration Act, 2003* introduced carrier liability whereby a carrier can be held responsible and fined accordingly for bringing an undocumented immigrant to the State. Provision was also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.
- The *Immigration Act, 2004* included a wide range of provisions that would previously have been contained in the Orders made under the 1935 Act. It made provision for the appointment of immigration officers and established criteria for permission to land. The Act empowered the Minister to make orders regarding visas and approved ports for landing, and it imposed limits on the duration of a foreign national's stay. Certain obligations were imposed on carriers, and persons landing in the State were required to be in possession of a valid passport or identity document. It also outlined a requirement for foreign nationals to register with the Gardai (police).
- The *Illegal Immigrants (Trafficking) Act, 2000* created an offence of smuggling illegal immigrants, with significant penalties on conviction and extends the powers of An Garda Síochána (Police) to enter and search premises, and to detain in relation to such activities. The Act also contained special provisions in relation to judicial review of decisions in the asylum and immigration processes.
- The statute law governing Irish citizenship is the Irish Nationality and Citizenship Act, 1956. The 1956 Act was amended by the Irish Nationality and Citizenship Act 1986, 1994, 2001 and 2004.
- The *Employment Permits Act, 2003* was enacted to facilitate the accession of ten new EU Member States in 2004 and introduced particular offences for both employers and employees working in breach of employment permit legislation.

- The *Employment Permits Act, 2006* enabled the introduction of significant changes to the existing employment permits system and came into entry in 2007. Reflecting the general policy of meeting most domestic labour needs from within the enlarged EU, the 2006 Act contained a reformed system with three elements including a type of “Green Card” for any position with an annual salary of €60,000 or more in any sector, or for a restricted list of occupations, where skill shortages have been identified, with an annual salary range from €30,000 to €59,999; a re-established Intra-Company transfer scheme for temporary trans-national management transfers; a Work Permit scheme for a very restricted list of occupations up to €30,000 and where the shortage is one of labour rather than skills (discussed further below).
- The *Criminal Law (Human Trafficking) Act, 2008* created offences criminalising trafficking in persons for the purposes of sexual or labour exploitation, or for the removal of their organs, and criminalised the selling or purchasing of human beings.

**ANNEX III – SCHEMATIC REPRESENTATION OF IMMIGRATION AND ASYLUM-RELATED INSTITUTIONS IN IRELAND
(SIMPLIFIED FOR ILLUSTRATION PURPOSES)**



Source: Quinn (2009) The Organisation of Asylum and Migration Policies in Ireland.

ANNEX IV – STATISTICAL DATA

The tables below contain further relevant statistics for the reference year of 2008.

A.IV. 1 Migration Flows

Table A1: Gross and Net Migration Flows, 1987-2008¹⁴⁵

Year (ending April)	Outward	Inward (‘000)	Net
1987	40.2	17.2	-23.0
1988	61.1	19.2	-41.9
1989	70.6	26.7	-43.9
1990	56.3	33.3	-22.9
1991	35.3	33.3	-2.0
1992	33.4	40.7	7.4
1993	35.1	34.7	-0.4
1994	34.8	30.1	-4.7
1995	33.1	31.2	-1.9
1996	31.2	39.2	8.0
1997	25.3	44.5	19.2
1998	28.6	46.0	17.4
1999	31.5	48.9	17.3
2000	26.6	52.6	26.0
2001	26.2	59.0	32.8
2002	25.6	66.9	41.3
2003	29.3	60.0	30.7
2004	26.5	58.5	32.0
2005	29.4	84.6	55.1
2006	36.0	107.8	71.8
2007	42.2	109.5	67.3
2008	45.3	83.8	38.5

Source: Population and Migration Estimates (various releases).

<http://www.cso.ie/px/pxeirestat/database/eirestat/Population%20Estimates/Population%20Estimates.asp>

Note: These figures are derived from the CSO series of Annual Labour Force Surveys from 1987 to 1996 and the QNHS series from 1997 onwards. The immigration estimates relate to persons resident in the country at the time of the survey who were living abroad at a point in time twelve months earlier.

Information regarding applications for asylum (overall; per nationality) and recognition rate is included, as is information regarding work permit renewals and issuances during the year. Overall gross and net migration flows in Ireland since 1987 are also provided.

¹⁴⁵ Tables A1 and A2 (or part of) are referenced from O’Connell, P.J. (2008) *International Migration and Ireland, 2008 Report to OECD Continuous Reporting System on Migration (SOPEMI)*

Table A2: Estimated Immigration by Nationality, 1996-2008

	Irish	UK	EU 13 (EU15 excl IE and UK)	EU 16-27	USA	Rest of World	Total
				000s			
2006	18.9	9.9	12.7	49.9	1.7	14.7	107.8
2007 ¹	20.0	5.9	10.4	52.7	2.8	17.8	109.5
2008 ¹	16.2	7.0	8.6	33.7	2.0	16.3	83.8
				%			
2006	17.5	9.2	11.8	46.3	1.6	13.6	100.0
2007	18.3	5.4	9.5	48.1	2.6	16.3	100.0
2008	19.3	8.4	10.3	40.2	2.4	19.5	100.0

Note:¹ Preliminary

Source: CSO Population and Migration Estimates – Various.

A.IV. 2 Asylum and Refugee Recognition

Table A3: Asylum Applications 1994-2008

Year	Applications
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,314
2007	3,985
2008	3,866
<i>Total 1994-2008</i>	<i>80,249</i>

Source: Office of the Refugee Applications Commissioner.

Available at www.orac.ie

Table A4: Applications for Asylum by Top Five Nationalities in 2008

Country	No.	%
Nigeria	1,009	26.1
Pakistan	237	6.1
Iraq	203	5.3
Georgia	181	4.7
China	180	4.7
Other	2,056	53.2
<i>Total</i>	<i>3,866</i>	<i>100.0</i>

Source: Office of the Refugee Applications Commissioner, Available at www.orac.ie

Table A5: Decisions/Recommendations to Grant Refugee Status at First Instance and Appeal Stage 1992 – 2008

	Decisions/ Recommendations to grant refugee status at first instance	Decisions/ Recommendations to grant refugee status at appeal stage	Yearly Total
1992	4	0	4
1993	1	0	1
1994	2	0	2
1995	21	0	21
1996	27	0	27
1997	197	4	201
1998	128	40	168
1999	166	351	517
2000	211	394	605
2001	459	481	940
2002	894	1,097	1,991
2003	345	832	1,177
2004	430	708	1,138
2005	455	511	966
2006	397	251	648
2007	376	204	580
2008	295	293	588
Total	4,408	5,166	9,574

Source: Department of Justice, Equality and Law Reform/INIS.¹⁴⁶

¹⁴⁶ Two independent bodies were established in November 2000 [under the *Refugee Act, 1996*] to deal with the processing of asylum applications, the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). Prior to November 2000, asylum applications in Ireland were dealt with at first instance by the Asylum Division of the Department of Justice, Equality and Law Reform and at appeal stage by the Appeal Authorities.

Table A6: Total Registrations by Stamp 2002 – 2008*

	2002	2003	2004	2005	2006	2007	2008
Unrecorded	-	-	2,425	1,728	2,182	1,260	1,985
Stamp 1	-	-	47,400	30,199	29,872	31,472	32,040
Stamp 1A	-	-	-	-	-	-	66
Stamp 2	-	-	31,338	28,021	29,426	36,019	41,156
Stamp 2A	-	-	-	2,198	3,630	3,701	3,850
Stamp 3	-	-	13,641	12,663	16,004	17,220	17,480
Stamp 4	-	-	38,997	57,220	61,928	63,748	63,794
Stamp 4EUFam	-	-	-	-	916	1,660	3,727
Stamp 5	-	-	28	88	117	149	218
Stamp 6	-	-	9	7	11	17	26
Stamp A	-	-	36	2	2	6	2
Stamp B	-	-	83	11	2	1	-
Total Registrations	93,546	127,956	133,957	132,137	144,090	155,253	164,344

* Please note that a breakdown of registrations by stamp in 2002 and 2003 is not available.

A.IV.3 Work Permits

Table A8: Work Permits Issued and Renewed, 1998-2008

	New Permits Issued	Permits Renewed	Total	Percentage Renewed
1998	3,830	1,886	5,716	42
1999	4,597	1,660	6,262	29
2000	15,735	2,271	18,006	36.3
2001	29,951	6,485	36,446	36
2002	23,759	16,562	40,321	45.4
2003	22,512	25,039	47,551	62.1
2004	10,821	23,246	34,067	48.9
2005	8,166	18,970	27,134	55.7
2006	8,524	16,600	24,854	61.1
2007	10,147	13,457	23,604	54.1
2008	8,481	5,086	13,567	21.5

Source: Department of Enterprise, Trade and Employment website. www.entemp.ie.

Note: The percentage renewed is calculated on the basis of the total permits issued for the previous year.

Includes group permits.

ANNEX V – EUROPEAN UNION MEASURES IN RELATION TO ASYLUM AND MIGRATION PUBLISHED DURING 2008, IRELAND’S PARTICIPATION

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
ASYLUM	
A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1st May 1999) None	
B. International Agreements	
Agreement between the European Community and the Swiss Confederation, concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (OJ L 53 of 27 February 2008, p. 5)	Participating.
C. Other acts adopted before entry into force of the Amsterdam Treaty (1st May 1999) ¹⁴⁷ None	
EXTERNAL BORDERS	
A. Conventions to which accession is obligatory None	
B. Joint Actions, Joint Positions (Maastricht Treaty); Common Positions, Framework Decisions and Decisions (Amsterdam Treaty) Instruments adopted under the TEC	
Regulation (EC) No 296/2008 of the European Parliament and of the Council of 11 March 2008 amending Regulation (EC) No 562/2006 establishing a Community Code on rules governing the movement of persons across borders (Schengen Borders Code), as regards the implementing powers conferred on the Commission (OJ L 97 of 9 April 2008, p. 60)	This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part in accordance with 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.

¹⁴⁷ Relevant insofar as the later legislation has not replaced them.

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
Commission Recommendation of 25 June 2008 amending the Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final) (C (2008) 2976 final)	Not participating. This Recommendation is derived from Regulation 562/2006 on the Schengen Borders Code. This Regulation constitutes a development of the provisions of the Schengen acquis in which Ireland does not take part, in accordance with 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. Ireland is therefore not bound by it or subject to its application.
Commission Decision (2008/456/EC) of 5 March 2008 laying down the rules for the implementation of Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (notified under number C(2008) 789 final, OJ L 167 of 27 June 2008, p. 1).	This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part in accordance with 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. Ireland is therefore not bound by it or subject to its application.
C. Other European Union Instruments and documents	
None	
VISA	
A. Conventions to which accession is obligatory	
None	
B. Joint Actions, Joint Positions (Maastricht Treaty); Common Positions, Framework Decisions and Decisions (Amsterdam Treaty)	
Instruments adopted under the TEC¹⁴⁸	
Council Regulation (EC) No 856/2008 of 24 July 2008 amending Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas (OJ L 235 of 2 September 2008, p. 1)	Not participating. In accordance with Article 1 on the Protocol

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
	<p>on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are not participating in the adoption of this Regulation. As a result, and without prejudice to Article 4 of the said Protocol, the provisions of the Regulation do not apply to the UK and Ireland.</p>
<p>Council Decision (2008/374/EC) of 29 April 2008 amending Annex 3, Part I, to the Common Consular Instructions on third-country nationals subject to airport visa requirements (OJ L 129 of 17 May 2008, p. 46)</p>	<p>Not participating</p> <p>This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with 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. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals (OJ L 115 of 29 April 2008, p. 1)</p>	<p>Opt In – Yes</p>
<p>Commission Decision 2008/602/EC of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase (OJ L 194 of 23 July 2008, p. 3)</p>	<p>Not participating</p> <p>In accordance with 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, Ireland has not taken part in the adoption of Decision 2004/512/EC and is not bound by it or subject to its application</p>

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
<p>Commission Decision of 17 June 2008 laying down the physical architecture and requirements of the national interfaces and of the communication infrastructure between the central VIS and the national interfaces for the development phase (notified under document number C(2008) 2693) (OJ L 194 of 23 July 2008, p. 3)</p>	<p>as it constitutes a development of provisions of the Schengen acquis. Ireland is therefore not an addressee of this Commission Decision.</p>
<p>THIS SEEMS TO BE A REPETITION OF THE PREVIOUS BOX</p>	<p>Not participating</p> <p>In accordance with 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, Ireland has not taken part in the adoption of Decision 2004/512/EC and is not bound by it or subject to its application as it constitutes a development of provisions of the Schengen acquis. Ireland is therefore not an addressee of this Commission Decision.</p>
<p>Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218 of 13 August 2008, p. 60)</p>	<p>Not participating.</p> <p>This Regulation constitutes a development of the Schengen acquis in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some provisions of the Schengen acquis. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences (OJ L 218 of 13 August 2008, p. 129)</p>	<p>Not participating.</p> <p>This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance</p>

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
	<p>with 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. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Decision No 586/2008 of the European Parliament and of the Council of 17 June 2008 amending Decision No 896/2006/EC establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory (OJ L 162 of 21 June 2008, p. 27)</p>	<p>Not participating</p> <p>This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part, in accordance with 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. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Decision No 582/2008 of the European Parliament and of the Council of 17 June 2008 introducing a simplified regime for the control of persons at the external borders based on the unilateral recognition by Bulgaria, Cyprus and Romania of certain documents as equivalent to their national visas for the purposes of transit through their territories (OJ L 161 of 20 June 2008, p. 30)</p>	<p>Not participating</p> <p>In accordance with Articles 1 and 2 of the Protocol on the Position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, these Member States are not taking part in the adoption of this Decision.</p>
<p>C. Other European Union Instruments and documents</p>	
<p>None</p>	
<p style="text-align: center;">IMMIGRATION</p>	
<p>ADMISSION</p>	
<p>A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1st May 1999)</p>	

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network (OJ L 131 of 12 May 2008, p. 7)	Opt In – Yes Commission Decision for the opt-in of Ireland to the EMN Council Decision was adopted on the 28th April 2009, reference COM (2009) 2708.
Commission Decision (2008/457/EC) of 5 March 2008 laying down the rules for the implementation of Council Decision 2007/435/EC establishing the European Fund for the integration of third-country nationals the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (OJ L167, 27 June 2008, p. 69)	Opt In – Yes In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland is bound by the basic act, and, as a consequence, by this Decision.
<p>B. Other acts adopted before entry into force of the Amsterdam Treaty (1st May 1999) None</p>	
<p>FIGHT AGAINST ILLEGAL MIGRATION AND RETURN</p>	
<p>A. Legislative acts adopted after entry into force of the Amsterdam Treaty (1st May 1999)</p>	
Commission Decision (2008/458/EC) of 5 March 2008 Laying down the rules for the implementation of Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General programme "Solidarity and Management of Migration Flows" as regards Member States' management and control systems, the rules for administrative and financial management and the eligibility of expenditure on projects co-financed by the Fund (OJ L167, 27 June 2008, p. 135)	Opt In –Yes In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Ireland is bound by the basic act, and, as a consequence, by this Decision.
Council Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348 of 24.12.2008, p98)	Opt In – No
<p>B. International Agreement None</p> <p>C. Other acts adopted before entry into force of the Amsterdam Treaty (1st May 1999) ¹⁴⁹</p>	

SCHENGEN (HORIZONTAL ISSUES)/ SIS ISSUES)/ SIS

Council Decision (2008/146/EC) of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation, on the Swiss Confederation's association with the implementation,

application and development of the Schengen acquis (OJ L 53 of 27 February 2008, p. 1)

Council decision 2008/149/JHA of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation, on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53 of 27 February 2008, p. 50)

Council Decision (2008/261/EC) of 28 February 2008 on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 83, 26.3.2008, p. 3)

**Ireland opt in?
Y/N/Not Relevant
How measure is
transposed into
national law**

This Decision does not prejudice the position of Ireland, under the Protocol integrating the Schengen acquis into

the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and 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.

This Decision does not prejudice the position of Ireland, under the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and 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.

This Decision does not prejudice the position of Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty on European Union and to the Treaty establishing the European Community and Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
<p>Council Decision (2008/262/EC) of 28 February 2008 on the signature, on behalf of the European Union, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss</p>	<p>provisions of the Schengen acquis.</p> <p>This Decision does not prejudice the position of Ireland under the Protocol integrating the Schengen acquis into the framework of the European Union annexed to the Treaty</p>
<p>Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 83, 26.3.2008, p.5) Corrigendum (OJ L 110, 22.4.2008, p. 16)</p>	<p>on European Union and to the Treaty establishing the European Community and 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.</p>
<p>Decision No 1/2008 of the EU/Switzerland Mixed Committee established by the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association in the implementation, application and development of the Schengen acquis of 28 February 2008 amending its Rules of Procedure (OJ L 83, 26.3.2008, p. 37)</p>	<p>The Rules of Procedure provide that: "Where the termination of the Agreement or the Protocol results from non-acceptance of an act or a measure which does not apply to Ireland and/or the United Kingdom, their respective representatives may not oppose unanimity."</p>
<p>Council Decision 2008/422/EC of 5 June 2008 on declassifying Annex 4 to the SIRENE Manual adopted by the Executive Committee established by the Convention implementing the Schengen Agreement of 14 June 1985 (1990 Schengen Convention) (OJ L 149 of 7 June 2007, p. 78)</p>	<p>Ireland's participation or otherwise is not mentioned in this Decision. However, Ireland is taking part in certain non-border-related aspects of the SIRENE manual, in accordance with its request to take part in some of the provisions of the Schengen acquis.</p>
<p>Council Decision 2008/328/EC of 18 April 2008 amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS) (OJ L 113 of 25 April 2008, p. 21)</p>	<p>Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union and</p>

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
	<p>the Treaty establishing the European Community and Article 6(2) of 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.</p>
<p>Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57 of 1 March 2008, p. 1)</p>	<p>This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part in accordance with 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; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Council Decision 2008/173/EC of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57 of 1 March 2008, p. 14)</p>	<p>Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union and the Treaty establishing the European Community and Article 6(2) of 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.</p>
<p>Commission Decision 2008/333/EC of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (notified under document number C(2008) 774) (OJ L 123 of 8 May 2008, p. 1)</p>	<p>This Decision constitutes a development of provisions of the Schengen acquis in which Ireland does not take part in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's</p>

	Ireland opt in? Y/N/Not Relevant How measure is transposed into national law
<p>Commission Decision 2008/334/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 123 of 8 May 2008, p. 39)</p>	<p>request to take part in some of the provisions of the Schengen acquis; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p> <p>Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union and the Treaty establishing the European Community and Article 6(2) of 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.</p>
<p>Council Decision 2008/421/EC of 5 June 2008 on the application of the provisions of the Schengen acquis relating to the Schengen Information System in the Swiss Confederation (OJ L 149 of 7 June 2008, p. 74)</p>	<p>Doesn't apply to Ireland.</p>
<p>COUNCIL REGULATION (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II)</p>	<p>This Regulation constitutes a development of provisions of the Schengen acquis in which Ireland does not take part in accordance with 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; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.</p>
<p>Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), OJ L 299, 8.11.2008, p. 43–49</p>	<p>Ireland is taking part in this Decision in accordance with Article 5 of the Protocol integrating the Schengen acquis into the framework of the European Union and</p>

**Ireland opt in?
Y/N/Not Relevant
How measure is
transposed into
national law**

the Treaty establishing
the European
Community and Article
6(2) of 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.

Source: Department of Justice, Equality and Law Reform.

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