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ANNUAL REPORT ON MIGRATION AND ASYLUM 2018: IRELAND

ANNE SHERIDAN

EVIDENCE FOR POLICY

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This European Migration Network Study, compiled according to commonly agreed specifications, provides a coherent overview of migration, asylum trends and policy developments for 2018. The report consists of information gathered primarily for the EU-level synthesis report of the EMN, *Annual Report on Migration and Asylum 2018.* All reports are available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm

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

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ABBREVIATIONS AND IRISH TERMS

AHTU	Anti-Human Trafficking Unit (of the Department of Justice and Equality)
AIDA	Asylum Information Database
AkiDwA	Akina Dada wa Africa
AMIF	Asylum, Migration and Integration Fund
AOM	aged-out minor
API	Advanced Passenger Information
AWS	Atypical Working Scheme
BIVS	British Irish Visa Scheme
BME	Black and Minority Ethnic
BMU	Border Management Unit
CERD	UN Convention on the Elimination of all forms of Racial Discrimination
CIP	Community Intercultural Project
CJEU	Court of Justice of the European Union
CRA	Children's Rights Alliance
CSO	Central Statistics Office
CSOL	Critical Skills Occupations List
CSP	Calais Special Project
CTA	Common Travel Area
CTAF	Common Travel Area Forum
Dáil	Parliament, lower house
DBEI	Department of Business, Enterprise and Innovation
DEASP	Department of Employment Affairs and Social Protection
DJE	Department of Justice and Equality
DPC	Data Protection Commission

DPP	Director of Public Prosecutions
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
EMPACT	European Multidisciplinary Platform Against Criminal Threats
ENAR Ireland	European Network Against Racism Ireland
EROC	Emergency Reception and Orientation Centre
EU	European Union
FGM	female genital mutilation
Garda Síochána	National police force
GCC	Gulf Cooperation Council
GDPR	General Data Protection Regulation
GNIB	Garda National Immigration Bureau
GNPSB	Garda National Protective Services Bureau
GRETA	Group of Experts Against Trafficking in Human Beings
HPSU	High Potential Start Up
HSE	Health Service Executive
HSEOL	Highly Skilled Eligible Occupations List
HTEPII	Human Trafficking and Exploitation Project in Ireland
HTICU	Human Trafficking Investigation and Co-ordination Unit
ICCL	Irish Council for Civil Liberties
ICEL	Ineligible Categories of Employment List
ICI	Immigrant Council of Ireland
ICT	Intra-Company Transfer

IDG	Interdepartmental Group
IEM	International Education Mark
IGAD	Intergovernmental Authority on Development
IGEES	Irish Government Economic and Evaluation Service
IHAP	Irish Humanitarian Assistance Programme
IHREC	Irish Human Rights and Equality Commission
IIP	Immigrant Investor Programme
ILEP	Interim List of Eligible Programmes
ILO	International Labour Organisation
INIS	Irish Naturalisation and Immigration Service
IOL	Ineligible Occupations List
IOM	International Organization for Migration
IPAT	International Protection Appeals Tribunal
IPIU	Irish Passenger Information Unit
IPO	International Protection Office
IRC	Irish Refugee Council
IRMC	Irish Refugee and Migrant Coalition
IRPP	Irish Refugee Protection Programme
ITWF	International Transport Workers' Federation
IVARRP	Irregular Voluntary Assisted Return and Reintegration Programme
LAB	Legal Aid Board
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
LMNT	Labour Market Needs Test
LSSU	Legal Services Support Unit
MDU	Ministerial Decisions Unit
MRCI	Migrant Rights Centre Ireland
NALA	National Adult Literacy Agency

Nasc	Refugee and Migrant Rights Centre
NCP	National Contact Point
NIC ICTU	Irish Congress of Trade Unions Northern Ireland
OCHA	Office for the Coordination of Humanitarian Affairs
OCO	Ombudsman for Children Office
ODA	Official Development Assistance
Oireachtas	Parliament, both houses
OPCAT	Optional Protocol to the Convention Against Torture
OPMI	Office for the Promotion of Migrant Integration
ORAC	Office of the Refugee Applications Commissioner
PNR	Passenger Name Records
PPN	Public Participation Network
QQI	Quality and Qualifications Ireland
RAT	Refugee Appeals Tribunal
RDC	Refugee Documentation Centre
RIA	Reception and Integration Agency
SCIFA	Strategic Committee on Frontiers, Immigration and Asylum
Seanad	Parliament, upper house
SFPA	Sea Fisheries Protection Authority
STEP	Start-up Entrepreneur Programme
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
TCN	third country national
TD	Teachta Dála (member of the Dáil)
TFEU	Treaty on the Functioning of the European Union
Tusla	Child and Family Agency
UAE	United Arab Emirates

UN	United Nations
UNCAT	United Nations Convention Against Torture
UNHCR	United Nations High Commissioner for Refugees
VARRP	Voluntary Assisted Return and Reintegration Programme
VR	voluntary return
WRC	Workplace Relations Commission

EXECUTIVE SUMMARY

The purpose of this report is to provide an overview of trends, policy developments and significant debates in the area of asylum and migration during 2018 in Ireland.

STATISTICAL OVERVIEW

According to end of year figures for 2018, there were 142,924 non-European Economic Area (EEA) nationals with permission to live in Ireland, compared to 127,955 at the end of 2017. The top ten nationalities, accounting for 60 per cent of all persons registered, were Brazil (16%); India (15%); United States of America (9%); China (8%); Pakistan (4%); Nigeria (3%); Philippines (3%); Malaysia (2%); Canada (2%); and Mexico (2%).

A total of 13,398 employment permits were issued during 2018, an increase of 17.9% over the 2017 total of 11,361. As in 2017, India was the top nationality, with 4,313 permits.

The estimated population of Ireland in the 12 months to April 2019 stood at 4.9215 million, an overall increase of 64,500 since April 2018. This was due to the combined natural increase in the population and net inward migration, which was 33,700. Central Statistics Office (CSO) figures released on 27 August 2019 estimate that the number of newly arriving immigrants decreased slightly year on year to 88,600 at April 2019 from 90,300 at end April 2018. It should be noted that returning Irish nationals are included in these figures. Non-Irish nationals from outside the European Union (EU) accounted for 34.5% of total immigrants. Net inward migration for non-EU nationals is estimated at 19,400.[1]

Non-EU nationals were once again the largest immigrant group (30,600) in the year to April 2019. There was a small decrease in returning Irish nationals, from 28,400 to 26,900. Outward migration of Irish nationals increased slightly in the year to April 2019 (29,000); its peak was 49,700 in 2012. Net outward migration of Irish nationals in the year to April 2019 was minus 2,100, in contrast with a small positive net inward migration of 100 in 2017.

A total of 119,608 visas, both long and short stay, were issued in 2018. The approval rate for visas was 88%.

According to rounded Eurostat figures, a total of 4,795 persons were refused entry

[1] Central Statistics Office (2019).

to Ireland in 2018.

A total of 163 persons were deported from Ireland in 2018. Some 213 persons availed of voluntary return, 202 of whom were third country nationals (TCNs). Of that number, 91 applicants were assisted by the International Organization for Migration (IOM), of whom 80 were TCNs.

Some 237 persons were granted permission to remain under section 49 of the International Protection Act 2015.

There was an increase of 25.5 per cent in applications for international protection (3,673) received by the International Protection Office (IPO) in 2018 from the 2,926 applications for refugee status received by the IPO in 2017.

In addition to new applications, the International Protection Office (IPO) inherited a significant backlog of over 3,500 cases to be processed under transitional provisions of the International Protection Act 2015. A further 500 cases transitioned in the months following commencement. Some 5,660 cases were awaiting processing at the IPO at the end of the year. All transition cases were scheduled for interview where it was possible to do so.

The IPO processed some 3,091 cases in 2018. IPO resources during 2018 were concentrated on scheduling and processing the backlog of legacy cases and prioritised cases (including unaccompanied minors, and cases from refugee generating countries such as Syria).

Waiting times for substantive interview at the IPO for non-prioritised applications made in December 2018 were significantly reduced from January 2018 (19 months) to approximately 8–10 months. Waiting times for prioritised applications to reach substantive interview were considerably shorter at approximately 4 months.

The International Protection Appeals Tribunal (IPAT) received 2,127 appeals during the year in relation to international protection and the Dublin III Regulation, as opposed to 887 in 2017, an increase of 140%. It issued decisions in 1,092 cases, as opposed to 606 in 2017, an increase of 80%. Some 23 of these decisions were in relation to Dublin III Regulation cases.

The IPAT took on new appeal functions under the provisions of Regulation 21 of the Reception Conditions Regulations 2018, which give effect to the EU Reception Conditions Directive in Irish law. A total of 24 appeals were received under the Regulations, bringing the overall total appeals received by the IPAT in 2018 to 2,151.

The main nationalities of first instance applications for international protection in 2018 were Albania, Georgia, Syria, Zimbabwe and Nigeria. Top countries of origin for appeals lodged were Albania, Pakistan, Georgia, Nigeria and Zimbabwe.

The Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality received a total of 331 valid applications for family reunification under the International Protection Act 2015, in respect of 432 subjects. Some 211 subjects were approved.

During 2018, a total of 64 suspected victims of trafficking were identified, compared to 75 suspected victims in 2017. Some 43 of these victims were third-country nationals.

LEGISLATION

The most significant legal development in 2018 was the introduction of the European Communities (Reception Conditions) Regulations 2018, which transposed the EU Reception Conditions Directive 2013/33/EU into Irish law.

The International Protection Act 2015 (Safe Countries of Origin) Order 2018 designated the following countries as safe countries of origin in accordance with section 72 of the International Protection Act 2015 – Bosnia and Herzegovina; Former Yugoslav Republic of Macedonia;[2] Georgia; Kosovo; Montenegro; Albania; Serbia; and South Africa .

The European Union (Dublin System) Regulations 2018 give further effect to Regulation (EU) 604/2013 (the Dublin III Regulation) in Ireland and revoke the previous European Union (Dublin System) Regulations 2014 and the European Union (Amendment) Regulations 2016.

Other relevant instruments which were introduced related to domestic violence, data protection, employment permits, visas and return. A list of legislation is included in Chapter 2.

CASE LAW

There were a number of significant cases related to migration and asylum during 2018 in the areas of international protection, return, legal migration, and irregular migration. Case summaries are included under thematic headings throughout the Report.

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2 Now Republic of North Macedonia.

BREXIT

The Department of Justice and Equality (DJE) continued to make preparations for Brexit during 2018. The *INIS Business Plan 2018* sets out actions in relation to Brexit and the protection of the Common Travel Area (CTA) (see Chapter 2). The Minister for Justice and Equality consistently highlighted the importance of the CTA in Brexit planning and the resources being allocated to Brexit planning by his Department. British nationals continued to make applications for Irish citizenship in the wake of the Brexit referendum. The United Kingdom was the third highest nationality of new citizens who were naturalised in Ireland in 2018, at 8.4%.

UNITED NATIONS-RELATED DEVELOPMENTS

Ireland was involved in intergovernmental negotiations for the conclusion of the Global Compact on Migration and the Global Compact for Refugees during 2018. Ireland signed the Global Compact on Safe, Orderly and Regular Migration at an Intergovernmental signing conference in Marrakech, Morocco held on 10–11 December 2018. The Global Compact for Refugees was adopted by the United Nations (UN) General Assembly on 17 December 2018.

Ireland submitted its joint fifth to ninth Periodic Report to the UN Committee on the Convention on the Elimination of all forms of Racial Discrimination (CERD) in October 2018, with a view to examination by the Committee in late 2019.

INTERNATIONAL PROTECTION

As reported for 2017, the Supreme Court made a landmark judgment in the case *NVH v Minister for Justice and Equality* in May 2017. This case concerned a challenge by an asylum seeker against the ban in Irish law on access to the labour market for asylum seekers in the Refugee Act 1996 and re-enacted in the International Protection Act 2015. The judgment found that the absolute prohibition on the right to work – in circumstances where there is no temporal limit on the asylum process – was contrary to the constitutional right to seek employment.

An Inter-Departmental Taskforce convened to consider a response to the judgment recommended to Government that the best option available to the State was to opt into the EU recast Reception Conditions Directive (2013/33/EU). A motion of approval for Ireland’s participation in the Directive was debated and passed by the Oireachtas in January 2018.

Transitional measures for access to the labour market were introduced from 9 February 2018, pending the preparation of regulations to transpose the Directive and the European Commission's formal approval of Ireland's participation.

The Reception Conditions Regulations 2018 came into force on 30 June 2018. Under the Regulations, protection applicants have access to the labour market nine months from the date when their protection application was lodged, if they have not yet received a first instance recommendation from the IPO, and if they have co-operated with the process. Eligible applicants have access to self-employment and all sectors of employment with the exception of the Civil and Public Service, An Garda Síochána and the Irish Defence Forces (which are only open to EEA and Irish nationals).

Pressure on accommodation supply for protection applicants continued to pose a challenge during 2018. At the end of 2018, contracted capacity in Department of Justice and Equality Reception and Integration Agency (RIA) accommodation centres was 6,135 spaces with an occupancy of 6,115.

Pressure on accommodation supply was such that it led to the use of temporary emergency accommodation for newly arrived applicants. From September 2018, RIA arranged for emergency beds on a temporary basis where mainstream accommodation was at full capacity.

One issue that impacted on pressure on accommodation supply for new arrivals was the number of persons with status who remained in accommodation centres. In December 2018, this was estimated at 12% of people residing in RIA accommodation centres, or over 700 people. Funding under the Asylum, Migration and Integration Fund (AMIF) was awarded to some non-governmental organisations (NGOs) to support residents with status to transition out of accommodation centres into housing.

In October 2018, the Government announced as part of Budget 2019 that the Daily Expenses Allowance (previously called a Direct Provision Allowance) weekly rate would increase to €29.80 for children and €38.80 for adults from 25 March 2019. This brings the allowance up to the level recommended by the McMahon Report on *Improvements to the Protection Process including direct provision and supports to asylum seekers,* published in 2015. The pilot scheme to provide access to third-level student supports for school leavers in the protection system (other than those at deportation stage) was once again extended for the academic year 2018/2019. As in previous years, the scheme was criticised by commentators for the restrictiveness of the eligibility criteria.

Draft *National Standards for Direct Provision Centres* were developed during 2018 by a Standards Advisory Committee that had been convened in February 2017. The draft National Standards were issued for public consultation in August 2018.

RESETTLEMENT AND RELOCATION

The Irish Refugee Protection Programme (IRPP) was established in 2015 and provides that Ireland will take in up to 4,000 persons, primarily through a combination of relocation and resettlement. By the end of 2018, 1,022 persons had arrived to Ireland under the relocation strand of the IRPP and 1,130 persons under the resettlement strand of the programme.

The relocation strand of the programme concluded in March 2018. A total of 267 persons arrived in Ireland on relocation from Greece in 2018.

A total of 338 persons were resettled to Ireland in 2018.

Ireland also responded positively to requests from Malta and Italy for assistance regarding the distribution of migrants rescued in the Mediterranean during the summer of 2018. Ireland agreed to relocate migrants rescued by three vessels – the MV *Lifeline* (26 persons, including four unaccompanied minors); the MV *Aquarius* (16 persons); and the *Diciotti* (16 persons). These individuals arrived in Ireland with the assistance of the International Organization for Migration, the UN Migration Agency (IOM).

As reported previously, a total of 2,622 persons was originally envisaged under the relocation strand of the IRPP. As the expected number did not become available for relocation, Ireland addressed the balance of approximately 1,800 places in the IRPP by additional resettlement commitments for 2018 and 2019 and the introduction of a new Irish Refugee Protection Programme Humanitarian Assistance Programme 2 (IHAP) for family members announced in November 2017.

Two calls for applications under the IHAP were opened during 2018. The programme provides for up to 530 eligible family members ('beneficiaries') of Irish citizens, persons with Convention refugee or subsidiary protection status and persons with programme refugee status (the 'proposer') to be admitted to Ireland over two years. In deciding the eligible countries of nationality for consideration under the IHAP, the Department of Justice and Equality chose the top ten major source countries of refugees set out in UNHCR's Annual Global Trends Report. During the first and second calls for the IHAP those countries were: Syria, Afghanistan, South Sudan, Somalia, Sudan, the Democratic Republic of Congo, Central African Republic, Myanmar, Eritrea and Burundi.

UNACCOMPANIED MINORS AND OTHER VULNERABLE GROUPS

According to figures published by Tusla, a total of 129 referrals were made to the Social Work Team for Separated Children Seeking Asylum in 2018, a decrease of 46 over 2017, when 175 referrals were made. There were 17 applications for international protection made to the IPO by unaccompanied minors in 2018.

The Calais Special Project to relocate unaccompanied minors who had previously been living in the unofficial migrant camp in Calais concluded in 2018. A total of 41 children were relocated to Ireland under the project, with the assistance of IOM.

In May 2018, the Department of Justice and Equality published a Child Safeguarding Statement applicable to the activities of RIA and the IRPP. The *Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for Persons in the International Protection Process under Contract to the Department of Justice and Equality* was published in July 2018.

The annual Children's Rights Alliance (CRA) Report Card covering 2018 marked the developments for refugee and asylum-seeking children as a 'C', an improvement over the 'D+' grade for this category for 2017.

ECONOMIC MIGRATION

A review of economic migration policy and the employment permits regime was conducted by the DBEI during 2018. The purpose of the review was to examine the policies underpinning the employment permits regime, to ensure that it remains supportive of Ireland's current labour market needs, be they skills or labour shortages in certain sectors.

The review was overseen by an Inter-Departmental Group (IDG) chaired by DBEI. The core finding of the review was that the current employment permits system was largely robust but needed some adjustments to continue to respond to changing labour market needs. An Action Plan, overseen by the IDG, has been devised to oversee the recommendations of the review.

Some key recommendations of the review were that the twice yearly review of the employment occupations lists would continue, but sectors experiencing severe shortages would have the opportunity to submit a business case for consideration to DBEI at other times of the year; and the introduction of a Seasonal Employment Permit to facilitate certain categories of short-term workers (see Chapter 3 for further detail). According to DBEI, a new Bill will need to be considered given the extent of legislative changes proposed.

Four sets of amended employment permits regulations were made during the year, to make changes to the employment occupations lists to adjust for skills needs and to make certain other amendments to the Employment Permits Regulations 2017. In relation to the Ineligible Occupations List (IOL), these regulations provided for the removal from the IOL by quota of certain specific occupations in the agri-food sector with a minimum annual remuneration threshold of €22,000. The changes in these amended regulations were made on foot of a pilot scheme announced by the DBEI to address immediate labour shortages in certain occupations in the agricultural sector, following the submission of a detailed business case by the sector in consultation with the Department of Agriculture, Food and the Marine.

UNDOCUMENTED FORMER STUDENTS

In October 2018, the Minister for Justice and Equality announced a scheme for non-EEA nationals resident in the State who first came to Ireland and had held a valid student permission between 2005 and 2010, and had not since held an alternative immigration permission, to apply for permission to remain. According to the Minister, this scheme would address ‘a significant cohort of people who have been in the State for a long number of years and who form part of the “undocumented” persons in the State by virtue of them having moved from a position of having permission to be in the State some years ago to having fallen out of permission’. The scheme also addressed concerns raised in the *Luximon* and *Balchand* judgments of April 2018, providing a residency pathway for persons who may have acquired family rights in the State under Article 8 of the European Convention on Human Rights (ECHR).

The scheme was welcomed by commentators in the NGO sector, with the Migrant Rights Centre Ireland (MRCI) noting that it was a step in the right direction of addressing the situation of undocumented people in Ireland.

PRECLEARANCE SCHEMES

New preclearance schemes for ministers of religion and volunteering in Ireland were introduced from 30 April 2018. These include a pre-clearance procedure for all applicants, whether or not they are visa-required nationals. Both schemes apply to stays of longer than three months. According to the Department of Justice and Equality, it is intended to roll out preclearance to other categories of migrants in due course, once proof of concept is established.

BORDERS AND VISA POLICY

In January 2018, Ireland added the United Arab Emirates (UAE) to the list of countries whose nationals are visa exempt for Ireland.

The Irish Passenger Information Unit (IPIU) required to implement the EU Directive 2016/681/EC on Passenger Name Records (PNR) was formally established on 25 May 2018, and is based at Dublin Airport. The EU Directive is aimed at the prevention and prosecution of terrorist offences and serious crime. The European Union (Passenger Name Record Data) Regulations 2018, transposing Directive 2016/681/EC into Irish law, were signed on 24 May 2018.

As reported for 2017, plans were progressed for the development of a dedicated immigration detention facility at Dublin Airport. Work commenced on site on 8 May 2018.

Nasc (Refugee and Migrant Rights Centre) published the report *Immigration Detention and Border Control in Ireland* in May 2018. The report examined legislation, policy and practice in relation to border control and immigration detention in Ireland.

The chief concerns raised in the report in relation to border control were the number of refusals of entry; lack of transparency about the reasons for refusals; lack of an appeal mechanism to refusal of entry under law, other than judicial review; access to the asylum procedure for persons refused entry; and the need for better training of border control officials, particularly in light of the civilianisation of border control at Dublin Airport. In relation to immigration-related detention, the chief concerns were around the unsuitability of prisons as an environment for immigration detainees.

INTEGRATION

The *Migrant Integration Strategy – A Blueprint for the Future*, which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.

A Monitoring and Coordination Committee was established under the Strategy, which is chaired by the Minister of State at the Department of Justice and Equality. The Committee met on three occasions during 2018.

In November 2018, the Minister of State at the Department of Justice and Equality launched the Bridging Programme for Immigrant Internationally Educated Teachers, which is funded by the Department of Justice and Equality under the National Integration Funding Programme. The Bridging Programme has been developed for migrant teachers who have been educated and trained outside Ireland.

Promoting the political participation of migrants was a strong theme during 2018; events were held in Dublin and Cork. The Dublin event was jointly organised by a number of migrant organisations and brought together over 100 migrant community leaders from all over Ireland together with a panel of representatives from Irish political parties.

The ICI ran 27 workshops across Ireland on migrant voting rights and the operation of the Irish political system. The ICI also produced ten videos in November 2018, #GoVote!, to encourage migrants to vote in the local elections in 2019. The ICI also initiated a political internship scheme in 2018 in which migrants were paired with local councillors to learn about local politics across five constituencies in Wicklow, Dundalk, Cork, Longford and Swords.

The Communities Integration Fund continued during 2018. In August 2018, the Minister of State at the Department of Justice and Equality announced the projects to receive funding under the 2018 Communities Integration Fund. A total of 115 organisations are to receive grants of up to €5,000 each for activities to integrate migrants into communities. The total amount awarded was just over €500,000.

Campaigns to challenge racism and prejudice continued in 2018. The ICI ran two campaigns – with Transport for Ireland during which over 1,600 posters were displayed on public transport and the #Bloody Foreigners campaign which highlighted the donations to the Irish Blood Bank from Polish nationals.

There was an ongoing discussion related to the need for amended hate crime legislation during 2018. In July 2018, the Irish Council for Civil Liberties (ICCL) published the comparative report *Lifecycle of a Hate Crime* funded by the Rights, Equality and Citizenship Programme 2018–2020 of the EU. The comparative research undertook to examine the 'lifecycle' of a hate crime from reporting to prosecution to sentencing in order to identify gaps and good practices in the application of laws, in five jurisdictions across the EU.

CITIZENSHIP AND NATURALISATION

A total of 8,225 citizenship certificates were issued in 2018. This compares with 8,200 certificates issued in 2017. The top nationalities among those awarded citizenship included Poland, Romania, United Kingdom, India, Nigeria, Pakistan, Philippines, Latvia, China and Brazil.

MIGRATION, DEVELOPMENT AND HUMANITARIAN AID

Ireland used Official Development Assistance (ODA) to assist in several humanitarian crises around the world in 2018, including conflicts in the Middle East, contributing €25 million for the Syrian crisis in 2018 and €5 million to the Yemen Humanitarian Fund. In June 2018, Ireland took over the Chair of the Donor Support Group of the UN Office for the Coordination of Humanitarian Affairs (OCHA).

Ireland also continued to work with international and EU partners, contributing €42.2 million to the EU Development Fund, €7.3 million to the EU Emergency Trust Fund for Africa and €5.9 million to the Facility for Refugees in Turkey.

Education was a core theme in the *Government of Ireland Official Development Assistance Annual Report for 2018* ('Irish Aid Annual Report'). The report noted that EU instruments such as the EU Emergency Trust Fund for Africa and the Facility for Refugees in Turkey continued to provide support for vital education and training, targeting vulnerable groups. For example, 410,000 children are attending school through the EU Facility for Refugees in Turkey.

TRAFFICKING

Ireland maintained its Tier 2 status for the second year in the United States' State Department's *Trafficking in Persons* (TIP) *Report 2019*, which covers developments for 2018. Ireland had held Tier 1 status between 2011 and 2016. The TIP report measures the effort of states to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. According to the Tier 2 rating, Ireland does not fully meet the minimum standards for the elimination of trafficking, but it is making significant efforts to do so.

The Domestic Violence Act 2018 introduced an offence of forced marriage which creates an offence of removing a person from the State in the knowledge that the person will be subject to violence, threats, undue influence or any form of coercion or duress for the purpose of causing that person to enter into a ceremony of marriage.

As reported for 2017, the Criminal Law (Sexual Offences) Act 2017 was signed into law in February 2017. Part 4 (section 27) of the Act contains a specific reporting requirement on the implementation of the Act within three years, including in respect of the number of arrests and convictions and an assessment of the impact of the legislation on the safety and well-being of persons who engage in sexual activity for payment. In September 2018, the Department of Justice and Equality invited proposals for funding applications to research and assess the safety and

well-being of persons who engage in sexual activity for payment. A further call in relation to awareness raising was advertised in October 2018 for campaigns that will focus on public awareness of exploitation in the sex trade and on buyer behaviour.

In June 2018, work began on a two-year research project on human trafficking in Ireland – Human Trafficking and Exploitation Project in Ireland (HTEPII). The research project will be undertaken by researchers and experts in Mary Immaculate College, Limerick, who will be working in co-operation with the Department of Justice and Equality, An Garda Síochána, the Police Service of Northern Ireland and the Department of Justice Northern Ireland. The project is focused on mining data to provide a clear picture of the extent of human trafficking on the island of Ireland.

As in previous years, the Anti-Human Trafficking Unit of the Department of Justice and Equality (AHTU) and the Human Trafficking Investigation and Co-ordination Unit (HTICU) of An Garda Síochána continued to engage in a wide range of training and awareness activities, which are detailed in Chapter 8.

CHAPTER 1

Introduction

This report is the fifteenth in a series of Annual Policy Reports, a series that is intended to provide a coherent overview of migration and asylum trends and policy development during consecutive periods beginning in January 2003. From 2016 these reports are called Annual Reports on Migration and Asylum.[3] Previous comparable Annual Policy Reports are available for a number of other EU countries participating in the European Migration Network (EMN). The purpose of the EMN report is to provide an insight into the most significant political and legislative (including EU) developments at Member State level, as well as public debates, in the area of migration and asylum.

In accordance with Article 9(1) of Council Decision 2008/381/EC establishing the EMN, the EMN National Contact Points (NCPs) in each Member State and Norway are tasked with providing an annual report detailing the migration and asylum situation in the Member State, including policy developments and statistical data. The information used to produce this report is gathered according to commonly agreed EMN specifications developed to facilitate comparability across countries. Each EMN NCP produces a national report and a comparative synthesis report is then compiled, which brings together the main findings from the national reports and places them within an EU perspective. Since 2009, EMN Annual Policy Reports also contribute to the Commission's Annual Reports on Immigration and Asylum, reviewing progress made in the implementation of asylum and migration policy.

All current and prior reports are available at www.emn.ie.[4]

The EMN *Annual Report on Migration and Asylum 2018: Ireland* covers the period 1 January 2018 to 31 December 2018.

1.1 METHODOLOGY

For the purposes of the 2018 report, 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, a 'significant development/debate' within a particular year was defined as 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.

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3 This is to bring the title of the national reports in line with the title of the EU-level synthesis report, *EMN Annual Report on Migration and Asylum*.

4 Available National Reports from other EMN NCPs can be found at http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/index_en.htm.

Developments will also be considered significant if they subsequently led to any proposals for amended or new legislation.

A significant development is defined in the 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;
- the debate is also engaged with in parliament;
- items of scale that are discussed outside a particular sector and as such are considered newsworthy while not being within the Dáil remit;
- academic research.

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

- published and adopted national legislation;
- Government press releases, statements and reports;
- published Government schemes;
- media reporting (both web-based and print media);
- other publications (e.g. European Commission publications, and Annual Reports, publications and information leaflets from IGOs and NGOs);
- Case law reporting.

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 it was not possible to access original statistical sources, data were taken from media articles based on access to unpublished documents. Where possible, verified data have been used; where provisional data have been included, this has been highlighted.

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

- Department of Business, Enterprise and Innovation;
- Department of Foreign Affairs and Trade;
- Department of Justice and Equality;
- Child and Family Agency, Tusla;
- Immigrant Council of Ireland (ICI);
- International Organization for Migration (IOM);
- Irish Refugee Council (IRC);
- Migrant Rights Centre Ireland (MRCI);
- Nasc (Migrant and Refugee Rights Centre);
- International Protection Office (IPO);
- International Protection Appeals Tribunal (IPAT);
- UNHCR Ireland.

All definitions of technical terms or concepts used in the study are as per the EMN Migration and Asylum Glossary 6.0.[5]

Three departments are involved in migration management in Ireland (see Figure 1.1).

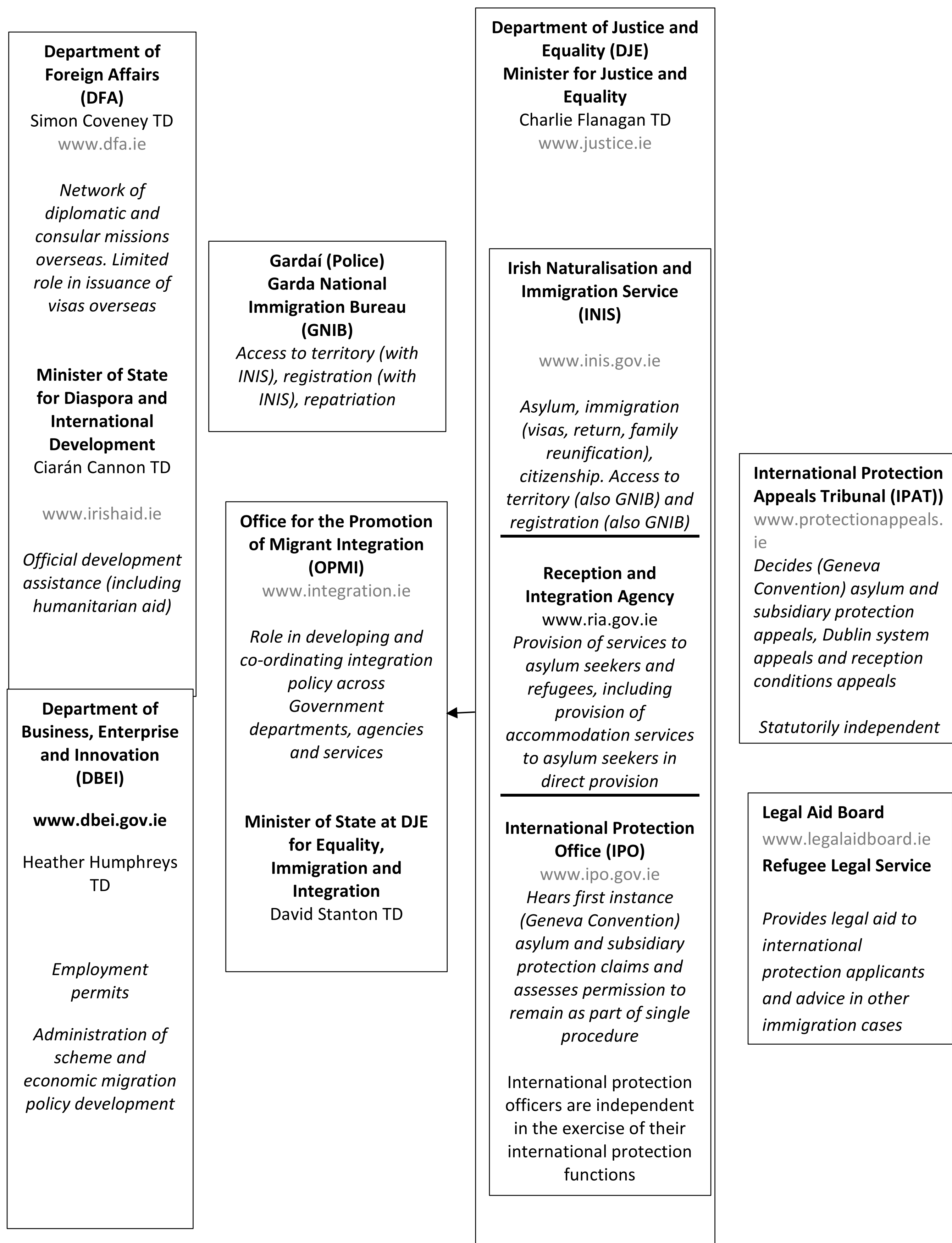
In addition, the Child and Family Agency, Tusla, is responsible for administration of the care for unaccompanied third-country minors in the State and sits under the Department of Children and Youth Affairs.

5 Available at www.emn.ie and http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en.htm.

1.2 STRUCTURE OF MIGRATION AND ASYLUM POLICY

1.2.1 Institutional context

FIGURE 1.1 INSTITUTIONS IN IRELAND WITH RESPONSIBILITY FOR ASYLUM AND IMMIGRATION, 2018



Department of Justice and Equality

The Department of Justice and Equality (DJE) underwent restructuring in late 2019 which will be reflected in the 2019 report of this series. The information below describes the structure and functions in 2018.

The DJE[6] is responsible for immigration management. The Minister for Justice and Equality has ultimate decision-making powers in relation to immigration and asylum. The Garda National Immigration Bureau (GNIB) is responsible for all immigration-related Garda operations in the State and is under the auspices of An Garda Síochána (national police force) and, in turn, the DJE. The GNIB enforces deportations and border control, and carries out investigations related to illegal immigration and trafficking in human beings. Since 2015, the INIS[7] of the Department of Justice and Equality has implemented a civilianisation project to take over frontline border control functions at Dublin Airport. GNIB also carries out the registration of non-EEA nationals, who are required to register for residence purposes, at locations outside Dublin. Since 2016, the registration function has been carried out by the INIS/DJE in Dublin. An Garda Síochána has personnel specifically dealing with immigration in every Garda district, at all approved ports and airports, and at a border control unit attached to Dundalk Garda Station.

In addition, the Anti-Human Trafficking Unit[8] undertook anti-trafficking work in the D JE during the reporting period. There are three other dedicated units dealing with this issue: the Human Trafficking Investigation and Co-ordination Unit (HTICU) in the Garda National Protective Services Bureau (GNPSB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised human trafficking legal team in the Legal Aid Board (LAB). Dedicated personnel are assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions (DPP), as well as in the New Communities and Asylum Seekers Unit within the Department of Social Protection, which is tasked with providing assistance to suspected victims not in the asylum system with their transition from direct provision accommodation to mainstream services for the duration of their temporary residency.

During the reporting period, INIS was responsible for administering the statutory and administrative functions of the Minister for Justice and Equality in relation to asylum, visa, immigration and citizenship processing; asylum, immigration and citizenship policy; and return decisions.[9] The Reception and Integration Agency (RIA) is a separate office within the DJE and is responsible for arranging

6 www.justice.ie.
7 www.inis.gov.ie.
8 www.justice.ie/en/JELR/Pages/WP09000005.
9 Since late 2019, these functions are carried out by Immigration Service Delivery and other areas of the Department of Justice and Equality.

accommodation and working with statutory and non-statutory agencies to co-ordinate the delivery of other services (including health, social services, welfare and education) for applicants for international protection.[10] Since 30 June 2018, the statutory basis for this work is the *European Communities (Reception Conditions) Regulations 2018*,[11] which transpose the EU Reception Conditions Directive 2013/33/EU into Irish law. Its staff include officers from the Department of Education and Skills and Tusla. Since 2004, it has also been responsible for supporting the voluntary return, on an ongoing basis and for the Department of Social Protection,[12] of destitute nationals of the 13 Member States that have joined the EU since 2004. It also provides accommodation to suspected victims of trafficking pending a determination of their case and during the 60-day recovery and reflection period.

With regard to applications for asylum and decision-making on the granting of refugee status under the 1951 Geneva Convention Relating to the Status of Refugees, a two-tier structure exists for asylum application processing. Up to 31 December 2016, this consisted of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). Since 31 December 2016, with the commencement of the *International Protection Act 2015*, these bodies have been replaced by the IPO and the IPAT, which have responsibility for processing first-instance applications for international protection and for hearing appeals, respectively. Since 30 June 2018, the IPAT also hears appeals in relation to the *European Communities (Reception Conditions) Regulations 2018.* The IPO is an office within the INIS responsible for processing applications for international protection under the *International Protection Act 2015*. It also considers, as part of a single procedure, whether applicants should be given permission to remain. International protection officers are independent in the performance of their international protection functions. The IPAT is independent in the performance of its functions under the *International Protection Act 2015*.[13] The Department of Justice and Equality ensures that both bodies have input into the co-ordination of asylum policy.

Since 31 December 2016, the single application procedure for international protection claims under the *International Protection Act 2015* has entered into operation. Under the single application procedure, applications for refugee status, subsidiary protection and permission to remain are assessed as part of a single procedure. This replaced the former sequential process, whereby applications for refugee status were assessed under the *Refugee Act 1996* and applications for

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10 See http://www.ria.gov.ie/en/RIA/Pages/Functions_Responsibilities.
11 S.I. No. 62 of 2018.
12 www.welfare.ie.
13 Section 61(3)(b) of the International Protection Act 2015.

subsidiary protection under the *European Union (Subsidiary Protection) Regulations 2013* (S.I. No. 426 of 2013).

Under section 47(1) of the *International Protection Act 2015*, the Minister is bound to accept a positive recommendation of refugee status of the international protection officer or a decision to grant refugee status in relation to an appeal heard by the IPAT, but retains a discretion not to grant refugee status to a refugee on grounds of danger to the security of the State or to the community of the State where the refugee has been convicted of a particularly serious crime.[14] The Minister shall refuse a refugee declaration where an international protection officer has recommended that the applicant be refused refugee status but be granted subsidiary protection status, and the applicant has not appealed the decision not to grant refugee status. The Minister is also bound by a recommendation or decision on appeal in relation to subsidiary protection status, under section 47(4) of the Act. The Minister shall refuse both refugee status and subsidiary protection status where the recommendation is that the applicant be refused both statuses and the applicant has not appealed the recommendation or when the IPAT upholds the recommendation not to grant either status. The Minister also refuses both refugee and subsidiary protection status in circumstances where appeals are withdrawn or deemed to be withdrawn.

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

From 31 December 2016, the INIS is responsible for investigating applications by beneficiaries of international protection to allow family members to enter and reside in the State and for providing a report to the Minister on such applications, under sections 56 and 57 of the *International Protection Act 2015*.

The Refugee Documentation Centre (RDC)[15] is an independent library and research service within the Legal Aid Board.[16] The specialised Services for Asylum Seekers office within the Legal Aid Board provides ‘confidential and independent legal services’ to persons applying for asylum in Ireland. Legal aid and advice is also provided in ‘appropriate cases’ on immigration and deportation matters.[17] Additionally, the Legal Aid Board provides legal services on certain matters to persons identified by the Human Trafficking Investigation and Co-ordination Unit

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14 Section 47(3) International Protection Act 2015.

15 www.legalaidboard.ie/lab/publishing.nsf/Content/RDC.

16 www.legalaidboard.ie.

17 Ibid.

of An Garda Síochána as 'potential victims' of human trafficking under the *Criminal Law (Human Trafficking) Act 2008*.

The Office for the Promotion of Migrant Integration (OPMI) also came under the auspices of the Department of Justice and Equality during the reporting period.[18] With a focus on the promotion of the integration of legal immigrants into Irish society, the OPMI had a mandate to develop, lead and co-ordinate integration policy across Government departments, agencies and services. Ireland joined the UNHCR-led resettlement scheme in 1998. The OPMI co-ordinated the resettlement of refugees admitted by Ireland under the Programme, as well as the administration of EU and national funding for the promotion of migrant integration.

The Irish Refugee Protection Programme (IRPP) was approved by Government on 10 September 2015 in response to the migration crisis. Under this programme, the Government confirmed that Ireland will take in a total of 4,000 persons, primarily through a combination of relocation under the EU relocation mechanism and the UNHCR-led programme currently focused on resettling refugees from Lebanon.

Department of Business, Enterprise and Innovation

The Department of Business, Enterprise and Innovation[19] (DBEI; formerly the Department of Jobs, Enterprise and Innovation) administers the employment permit schemes under the general auspices of the Labour Affairs 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[20] implements a skills-oriented employment permits system in order to fill labour and skills gaps that cannot be filled through European Economic Area (EEA) supply. The Employment Permits Section processes applications for employment permits; issues guidelines, information and procedures; and produces online statistics on applications and permits issued.[21]

The Office of Science, Technology and Innovation deals with the administration of applications from research organisations seeking to employ third-country national

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18 www.integration.ie.
19 www.dbei.gov.ie.
20 www.dbei.gov.ie/en/What-We-Do/Jobs-Workplace-and-Skills/Employment-Permits.
21 Department of Jobs, Enterprise and Innovation, April 2015.

researchers pursuant to *Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research*.

Department of Foreign Affairs and Trade

The Department of Foreign Affairs and Trade[22] has responsibility for the issuance of visas via Irish Embassy consular services in cases where the Department of Justice and Equality does not have a dedicated visa office within the country.[23] The Department of Foreign Affairs and Trade has operative function only and is not responsible for visa policy or decisions, which are the remit of the Department of Justice and Equality. Most visas are now applied for and issued via an online service, administered by the Department of Justice and Equality.[24]

Irish Aid, under the auspices of the Department of Foreign Affairs and Trade, administers Ireland's official development assistance programme, with a particular focus on reducing poverty and hunger in countries in sub-Saharan Africa.[25]

1.2.2 General structure of the legal system

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

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

The relevance of the courts in relation to asylum and immigration cases is generally limited to judicial review.[26] Judicial review focuses on assessing the determination process through which a decision was reached to ensure that the decision-maker

22 www.dfa.ie.
23 See Quinn (2009) for further discussion.
24 Quinn and Kingston (2012).
25 www.irishaid.ie.
26 There is a statutory appeal to the courts against decisions to revoke refugee status under section 52 of the *International Protection Act 2015*.

made their decision properly and in accordance with the law. It does not look to the merits or the substance of the underlying case.[27]

As discussed in previous reports in this series, prior to the mid-1990s Irish asylum and immigration legislation was covered under such instruments as the Hope Hanlon procedure and the *Aliens Act 1935* (and Orders made under that Act),[28] together with the relevant EU free movement Regulations and Directives[29] which came into effect in Ireland after it joined the European Union in 1973. Following a sharp rise in immigration flows from the mid-1990s, several pieces of legislation were introduced to deal with immigration and asylum issues in Ireland.

The *International Protection Act 2015* sets out the domestic legal framework regarding applications for international protection and replaces the *Refugee Act 1996* (as amended) and the *European Communities (Subsidiary Protection) Regulations 2013* (as amended). The *Refugee Act 1996* has now been repealed. While Ireland participated in some of the first generation of instruments under the Common European Asylum System (the Qualification Directive 2004/83/EC and Procedures Directive 2005/85/EC), Ireland does not participate in the 'recast' Qualification Directive (2011/95/EU) and Procedures Directive (2013/32/EU). Ireland does not participate in the original Reception Conditions Directive (2003/9/EC). Ireland has opted into the recast Reception Conditions Directive (2013/33/EU) and the *European Communities (Reception Conditions) Regulations 2018* came into operation on 30 June 2018.[3031]

Ireland is also a signatory to the 'Dublin Convention', and is subject to the 'Dublin Regulation' which determines the EU Member State responsible for processing asylum applications made in the EU. Regulation 604/2013[32] ('the Dublin III Regulation') came into force on 29 June 2013. The *European Union (Dublin System) Regulations 2014*[33] were adopted for the purpose of giving further effect to

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27 Available at www.citizensinformation.ie.

28 *Aliens Order 1946* (S.I. No. 395 of 1946); *Aliens (Amendment) Order 1975* (S.I. No. 128 of 1975).

29 Relevant EU legislation included *Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC on freedom of movement for workers within the Community*, *68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families*, *72/194/EEC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, *73/148/EEC on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services*, *75/34/EEC concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity*, *90/364/EEC on the right of residence*, *90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity*, and *93/96/EEC on the right of residence for students.*

30 S.I. No. 230 of 2018.

26 Note that the European Commission in July 2016 launched proposals to replace the Asylum Qualifications and Procedures Directives with Regulations and to further recast the Reception Conditions Directive.

32 *Regulation (EU) No. 604/2013* (Dublin III Regulation) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. See EMN *Asylum and Migration Glossary 3.0.* Available at www.emn.ie.

33 S.I. No. 525 of 2014.

Regulation EU 604/2013 – the Dublin III Regulation. These regulations were amended by the *European Union (Dublin System) (Amendment) Regulations 2016* in 2016.[34] The *European Union (Dublin System) Regulations 2018*[35] came into effect on 6 March 2018. The Regulations give further effect to the Dublin III Regulation in Ireland and revoke the 2014 and 2016 Regulations.

S.I. No. 310 of 2008 amended the *European Communities (Free Movement of Persons) (No. 2) Regulations 2006* (S.I. No. 656 of 2006) following the *Metock* judgment of the European Court of Justice (ECJ). The *European Community (Free Movement of Persons) Regulations 2015* (S.I. No. 548 of 2015) which came into operation on 1 February 2016 give further effect to EU Directive 2004/38/EC and revoke the 2006 Regulations, subject to transitional provisions.

Domestic immigration law in Ireland is based on various pieces of legislation including the *Aliens Act 1935* and Orders made under it; the *Illegal Immigrants (Trafficking) Act 2000*; and the *Immigration Acts 1999, 2003 and 2004*. The *Employment Permits Act 2006* as amended[36] and secondary legislation made under it sets out the legal framework for the employment permits schemes in Ireland.

Regarding the situation of Ireland concerning an 'opt-in' provision on EU measures in asylum and migration, under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union (TFEU), Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title V of the TFEU unless it decides to participate in the measure pursuant to a motion of the Houses of the Oireachtas. Under Declaration number 56 to the TFEU, Ireland has declared its

> *firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.*[37]

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34 S.I. 140 of 2016. Available at www.irishstatutebook.ie.

35 S.I. No. 62 of 2018.

36 The most recent amendment is the Employment Permits (Amendment) Act 2014 (No. 26 of 2014).

37 Declaration by Ireland on Article 3 of the *Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice* (TFEU). Ireland also 'affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety'. An example is Ireland's participation in Council Directive 2005/71/EC ('the Researchers' Directive').

CHAPTER 2

Political and international developments and statistical context

2.1 POLITICAL DEVELOPMENTS

Charlie Flanagan TD remained as Minister for Justice and Equality during 2018. David Stanton remained as Minister of State at the Department of Justice and Equality with responsibility for Equality, Immigration and Integration.

2.1.1 Brexit

The EU–UK Joint Progress Report on progress during the first phase of the negotiations under Article 50 of the Treaty on the European Union was published on 8 December 2017. The progress report recognised that:

> *the United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (Common Travel Area), while fully respecting the rights of natural persons conferred by Union law. The United Kingdom confirms and accepts that the Common Travel Area and associated rights and privileges can continue to operate without affecting Ireland's obligations under Union law, in particular with respect to free movement for EU citizens.*[38]

The impact of Brexit on the Common Travel Area (CTA) between Ireland and the United Kingdom continued to be a priority throughout 2018. The Irish Naturalisation and Immigration Service (INIS) Business Plan for 2018 set out the following actions in relation to Brexit and the protection of the CTA:

- Continue to develop BREXIT strategy in relation to the Common Travel Area;
- Work with the UK through the Common Travel Area Forum (CTAF) on the ongoing operation of the CTA;
- Liaise with the Garda National Immigration Bureau (GNIB) on periodic operations to protect the Common Travel Area;
- Further enhance the security of the Common Travel Area;
- Evaluate and agree the further rollout of the British Irish Visa Scheme (BIVS) with UK partners.[39]

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[38] Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union, 8 December 2017, paragraph 54. Available at https://ec.europa.eu.

[39] Department of Justice and Equality (October 2018a).

In the *Immigration in Ireland Annual Review* for 2018, INIS stated that: 'INIS has been actively involved with other Government departments in contingency planning to make sure that we are prepared for any outcome, including a no-deal withdrawal from the EU.'[40]

Throughout 2018, the Minister for Justice and Equality answered multiple parliamentary questions relating to Brexit planning and the resources being allocated to it by his Department. These questions were relevant to preparations across the Justice sector – continued co-operation with the UK both on criminal and civil justice matters and in the maintenance of the CTA were key priorities.[41] In one response in December 2018 the Minister said that he had had nine meetings with UK counterparts since he took office in June 2017, covering issues such as continued co-operation on justice, immigration and security issues, and the maintenance of the CTA.[42]

The Minister consistently highlighted the preservation of the CTA as the priority in Brexit negotiations. In a speech at the Irish Law Awards in May 2018, the Minister explained that his officials had conducted research back to the 1920s to establish the legal basis for the CTA. He said:

> *We, as part of team led by the Taoiseach's Department and Foreign Affairs, had to present our case to the Commission negotiating team and show them that it was a valid pre-existing bilateral arrangement that did not conflict with EU law. Fortunately, the UK from the outset made clear their intent to maintain the Common Travel Area and the Commission were conscious of its importance in the context of Northern Ireland. The Common Travel Area was part of the first phase of negotiations and we are happy with the progress made there.*[43]

As reported for 2017, British nationals continued to make applications for Irish citizenship in the wake of the Brexit referendum. The United Kingdom was the third highest nationality of new citizens naturalised in Ireland in 2018, at 8.4%.[44] The number of UK nationals obtaining Irish citizenship increased from 41 in 2015 to 687 in 2018.[45] In addition, a total of 22% of applications for Irish passports in 2018 were from Northern Ireland or Britain.[46]

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40 Department of Justice and Equality (2019a), p. 7.

41 Department of Justice and Equality (20 November 2018), Response to Parliamentary Question 47955/18. Available at www.justice.ie.

42 Department of Justice and Equality (11 December 2018). Response to Parliamentary Question 51891/18. Available at www.justice.ie.

43 Department of Justice and Equality (2018b).

44 Department of Justice and Equality (2019a), p. 24.

45 Department of Justice and Equality (2019b) and Department of Justice and Equality (2019d).

46 Ryan (2019).

A cross-border project collaboration between the Migrant Rights Centre of Ireland (MRCI), Community Intercultural Project (CIP), Irish Congress of Trade Unions Northern Ireland (NIC ICTU) and Ulster University (UU) was launched on 24 January 2018. This project will support the integration of Black and Minority Ethnic (BME) workers in the agriculture, food processing and service sectors in Donegal/Derry, Cavan/Armagh and Monaghan/Newry–Down, securing rights and conducting research. The project has received €1m in funding under the EU's PEACE IV Programme, which is matched with funding from the Executive Office in Northern Ireland and the Department of Rural and Community Affairs.[47]

2.2 LEGISLATION

The following pieces of legislation relevant to migration, international protection and trafficking in human beings were enacted during 2018.

- Data Protection Act 2018 (Section 60 (7)(h)) (No. 7 of 2018)
- Domestic Violence Act 2018 (No. 6 of 2018)
- European Union (Dublin System) Regulations 2018 (S.I. No. 62 of 2018)
- European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230 of 2018)
- European Union (Passenger Name Record Data) Regulations 2018 (S.I. No. 177 of 2018)
- International Protection Act 2015 (Safe Countries of Origin) Order 2018 (S.I. No. 121 of 2018)
- International Protection Act 2015 (Section 6(2)(j)) (Commencement) Order 2018 (S.I. No. 119 of 2018)
- Immigration Act 2004 (Visas) (Amendment) Order 2018 (S.I. No. 17 of 2018).

2.3 UNITED NATIONS AND OTHER INTERNATIONAL DEVELOPMENTS

2.3.1 Global Compact on Safe, Orderly and Regular Migration and Global Compact on Refugees

As reported for 2016, Ireland and Jordan co-facilitated the negotiation of the *New York Declaration on Refugees and Migrants*, which was adopted by the UN General Assembly in September 2016. The New York Declaration launched a phase of

[47] Migrant Rights Centre of Ireland (2018a).

intergovernmental negotiations for the Global Compacts on Migration and on Refugees.[48]

The Global Compact on Refugees was adopted on 17 December 2018 at the UN General Assembly, after a negotiation period led by the United Nations High Commissioner for Refugees (UNHCR) with Member States, international organisations, refugees, civil society, the private sector and experts. The Global Compact for Refugees has four objectives: to ease the pressures on host countries; enhance refugee self-reliance; expand access to third-country solutions; and support conditions in countries of origin for return in safety and dignity.[49]

Throughout 2018, Ireland actively engaged in the negotiations on the Global Compact on Safe, Orderly and Regular Migration and it joined the consensus on the document when it was adopted at an Intergovernmental Signing Conference in Marrakech, Morocco on 10–11 December 2018.

According to the United Nations, the Global Compact for Migration

> *is the first-ever UN global agreement on a common approach to international migration in all its dimensions.*
>
> *The Global Compact for Migration is non-legally binding. It is grounded in values of state sovereignty, responsibility-sharing, non-discrimination, and human rights, and recognizes that a cooperative approach is needed to optimize the overall benefits of migration, while addressing its risks and challenges for individuals and communities in countries of origin, transit and destination.*[50]

Ireland's engagement in the negotiation phase was led by the Department of Foreign Affairs and Trade, with support from across Government departments, particularly the INIS. Furthermore, consultation was sought with civil society in Ireland during the negotiation of the document. Ireland was active in the process itself at the United Nations in New York, and also active in feeding into discussions on the document in Brussels through various EU Working Groups, including the High Level Working Group on Asylum and Migration, and the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).[51]

In his speech at the signing conference in Marrakech, the Minister for Justice and Equality welcomed the Global Compact on Migration as providing: 'a strong

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48 See Sheridan (2017) (online version), pp. 18–19.
49 See UNHCR Ireland, 'The Global Compact on Refugees'. Available at https://www.unhcr.org/en-ie/the-global-compact-on-refugees.html.
50 See https://refugeesmigrants.un.org/migration-compact.
51 Correspondence with Department of Justice and Equality, INIS, Policy Division, December 2018.

framework for cooperation as we together strive to address challenges and ensure that the 2030 Agenda for Sustainable Development is advanced'. He also welcomed the establishment by the UN Secretary General of a UN Network on Migration, with the International Organization for Migration (IOM) at the centre and each UN agency playing its part in a co-ordinated manner, and noted the importance of the role of the International Labour Organisation (ILO) in addressing challenges faced by migrant workers.[52]

The Irish Refugee and Migrant Coalition (IRMC)[53] welcomed the Irish Government's engagement with the process and signing of the compact.[54]

The Minister for Foreign Affairs and Trade in the foreword to the *Government of Ireland Official Development Assistance Annual Report* ('Irish Aid Annual Report') for 2018 noted that the adoption of both compacts was:

> *a significant milestone – a demonstration of solidarity with migrants, refugees, and the countries which welcome them. The vast majority of refugees are in developing countries. In 2018, the Irish Embassies in Ethiopia and Uganda, two of the most generous host countries, engaged closely with partners on the implementation of the Comprehensive Refugee Response Framework, an innovative approach to integrating refugees, addressing both their needs, and the needs of host communities.*[55]

2.3.2 Official Development Assistance

Ireland used Official Development Assistance (ODA) to assist in several humanitarian crises around the world in 2018. Ireland continued to contribute to conflicts in the Middle East, contributing €25 million for the Syrian crisis in 2018 and €5 million to the Yemen Humanitarian Fund. In Africa, Ireland contributed to the Intergovernmental Authority on Development (IGAD) to facilitate peace talks in South Sudan, in recognition of the need to address root causes of humanitarian need. Ireland also supported emerging crises such as in Indonesia as a result of natural disasters, and supported UNHCR's work with Rohingya refugees in

[52] Department of Justice and Equality (10 December 2018) Speech by Minister Flanagan on the Global Compact for Safe, Orderly and Regular Migration. Available at www.justice.ie.

[53] The IRMC comprises over 20 organisations working in the area of asylum and migration. Its members are: ActionAid Ireland; Association of Leaders of Missionaries and Religious of Ireland; Community Work Ireland; Christian Aid; Comhlámh; Crosscare; Cultúr Migrants Centre; Dóchas; Doras Luimní; ENAR Ireland; Immigrant Council of Ireland; Irish Refugee Council; Jesuit Refugee Service; Mercy International Association; Migrant Rights Centre Ireland; Mayo Intercultural Action; Nasc Ireland; National Women's Council of Ireland; Oxfam Ireland; Trócaire; World Vision Ireland.

[54] IRMC (2018).

[55] Department of Foreign Affairs and Trade (2019), p. 5.

Bangladesh. In June 2018, Ireland took over the Chair of the Donor Support Group of the UN Office for the Coordination of Humanitarian Affairs (OCHA). [56]

Ireland continued to work with international and EU partners during 2018. Ireland contributed €42.2 million to the EU Development Fund; €7.3 million to the EU Trust Fund for Africa and €5.9 million to the Facility for Refugees in Turkey, in addition to a contribution of over €208 million to EU development co-operation instruments mainly through contribution to the EU general budget.[57]

Education was a core theme in the Irish Aid Annual Report for 2018. The report noted that EU Instruments such as the EU Emergency Trust Fund for Africa and the Facility for Refugees in Turkey continued to provide support for vital education and training, targeting vulnerable groups. For example, 410,000 children are attending school through the EU Facility for Refugees in Turkey. The report stated:

> *The Global Compact for Safe, Orderly and Regular Migration, adopted by the UN in December 2018, sets out how cooperation on migration can be advanced, including in education – through, for example, the provision of inclusive and quality education to migrant children and youth, as well as access to lifelong learning opportunities and vocational training.*
>
> *The EU and its Member States, including Ireland, are the biggest contributor to the Global Partnership for Education (GPE). The EU committed an overall funding of €475 million for the period 2014–2020 of which Ireland's contribution will amount to €7.7 million.*[58]

Aid for trade was also highlighted in the Irish Aid Annual Report for 2018, and Ireland continued to support partners who are helping developing countries to develop infrastructure to benefit from trade. Since 2007, Ireland has supported the UN Conference on Trade and Development (UNCTAD): UNCTAD's Port Management Programme was hosted by Dublin Port Company and delegates in 2018 came from Ghana, Nigeria, Indonesia, Malaysia, the Philippines and Serbia.[59]

2.3.3 Convention on the Elimination of all forms of Racial Discrimination

Ireland ratified the UN Convention on the Elimination of all forms of Racial Discrimination (CERD) in 2000.

[56] Ibid., pp. 42–43.
[57] Ibid., p. 46.
[58] Ibid., p. 47.
[59] Ibid., p. 48.

Ireland submitted its joint fifth to ninth periodic reports to the CERD Committee in October 2018.[60] The report covered the period from 2010 to 2017. Preparation of the periodic report was preceded by a consultation phase, with three meetings held in December 2017 and December 2018 and an invitation for written submissions by January 2018.[61] The periodic report responds to the Concluding Observations of the UN CERD Committee on Ireland's third and fourth periodic reports.[62]

In particular, with regard to migration-related issues, the periodic report responded to concerns expressed by the UN CERD Committee in paragraphs 15, 20, 22, 25, 28, 29 and 30 of the Committee's concluding observations. In paragraph 15, the Committee had regretted the delays in passing or reviewing the Immigration, Residence and Protection Bill, the Criminal Justice (Female Genital Mutilation) Bill 2011 and the Prohibition of Incitement to Hatred Act 1989. The State responded that the protection elements of the Immigration, Residence and Protection Bill had been prioritised via the International Protection Act 2015,[63] and that the legislation regarding female genital mutilation[64] had been enacted on 2 April 2012.[65] Regarding hate crime legislation, the periodic report noted that the Migrant Integration Strategy contains a commitment to: 'review current legislation on racially motivated crime with a view to strengthening the law against hate crime, including in the area of online hate speech.'[66] In addition, the periodic report noted that the Department of Justice and Equality was conducting a legislative review of the law relating to hate crime and incitement to hatred 'in order to ensure the best possible public policy response to racism and xenophobia in the context of Ireland's integration policy, the EU Framework Decision 2008/913/JHA on Combating Racism and Xenophobia, and legislative developments in other jurisdictions',[67] which was expected to be concluded by the end of 2018.

Paragraph 20 of the concluding observations concerned the Committee's concerns about the direct provision system, including the length of time spent in the system and the lack of an independent oversight mechanism given that the Office of the Ombudsman did not have a remit in asylum and immigration matters. In its response, the State reported on the single application procedure; the

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60 Committee on the Elimination of Racial Discrimination, *Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014*, CERD/C/IRL/5-9, advance unedited version 3 October 2018. Available at www.justice.ie.

61 See webpage on CERD – www.integration.ie.

62 Concluding observations of the Committee on the Elimination of Racial Discrimination Ireland, CERD/C/IRL/CO/3-4 4 April 2011. Available at tbinternet.ohchr.org/.

63 Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, CERD/C/IRL/5-9, advance unedited version 3 October 2018, paragraphs 57–63.

64 Criminal Justice (Female Genital Mutilation) Act 2012.

65 Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, CERD/C/IRL/5-9, advance unedited version 3 October 2018, paragraph 64.

66 Ibid., paragraph 69.

67 Ibid., paragraph 68.

recommendations in the McMahon Report[68] on the protection process; improvements in relation to self or communal catering in accommodation centres; the process to draft standards for reception accommodation; the extension of the remit of the Office of the Ombudsman and Ombudsman for Children to accept complaints from residents of Reception and Integration Agency (RIA) accommodation centres; and the decision to opt into the EU (recast) Reception Conditions Directive.[69]

Paragraph 22 of the concluding observations expressed concerns regarding the legal framework for separated and unaccompanied children, which it considered did not meet standards set by UNHCR. It recommended that the State appoint a guardian *ad litem* or adviser to every unaccompanied/separated child regardless of whether they made a protection application or not. In its response, the State noted that the provisions of the Child Care Acts 1991 to 2013 apply to unaccompanied minors seeking asylum once they have been referred to Tusla.[70] It noted that an international protection application does not have to be made by the child at this stage, and that an equity of care principle applies to their care. The periodic report stated:

> *Each unaccompanied minor is allocated a social worker who acts as a de facto guardian for the child in loco parentis. […] The social worker advises the child, oversees their childcare plan, and also acts on the child's behalf, including obtaining legal or other formal advice. For example, a legal advisor is available to the young person in respect of applications for international protection. Tusla works with relevant agencies in respect of family reunification. Section 15(4) of the International Protection Act 2015 provides that Tusla should seek legal advice in deciding whether or not to make an application for international protection on behalf of the unaccompanied minor. When an application is made on behalf of the unaccompanied minor, Tusla will represent and assist the child during the examination of the application.*[71]

The response also noted that Tusla's Social Work Team for Separated Children Seeking Asylum develops individualised aftercare plans for unaccompanied minors who age out of statutory care on turning 18 years of age. The State submission also

68 Working Group on the Protection Process (2015).
69 Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, CERD/C/IRL/5-9, advance unedited version 3 October 2018, paragraphs 98–110.
70 Ibid., paragraph 123.
71 Ibid., paragraph 124.

noted that family reunification is subject to judicial oversight.[72] This is judicial review, rather than statutory appeal.[73]

Paragraph 25 of the concluding observations called for the State to put in place a legislative framework around family reunification, and furthermore encouraged the State to establish an independent body and an appellate structure for family reunification applications. The State's response pointed to the legislative framework for family reunification for beneficiaries of international protection under sections 56 and 57 of the International Protection Act 2015; the Irish Humanitarian Assistance Programme (IHAP) under the Irish Refugee Protection Programme (IRPP); and the policy guidelines for family reunification applications for non-EEA applicants outside the protection system, published in 2013 and updated in 2016.[74]

Paragraph 28 of the concluding observations recommended that Ireland ratify the *International Convention on the Rights of all Migrant Workers and Members of their Families.* The State noted that the employment law protections envisaged by the Convention are already extensively incorporated into Irish law, and that Ireland ratified the ILO Convention on Decent Work for Domestic Workers in July 2014.[75] It has been noted by commentators that Ireland has previously stated its reservations in relation to signing or ratifying this Convention.[76]

Paragraph 29 of the concluding observations referred to the Action Plan adopted in 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and its review in 2009, and asked that the State give information in its next periodic report on the measures in place to meet the commitments in the Action Plan. The State response stated that combatting racism and xenophobia is a specific theme within Ireland's *Migrant Integration Strategy* for 2017–2020, which commits public authorities to a range of actions to combat racial discrimination.[77] The response also noted funding available for anti-racism projects and initiatives.[78]

In paragraph 30 of the concluding observations, the Committee recommended that Ireland undertake activities to commemorate 2011 as the International Year for People of African Descent. The State response noted the Africa Day celebrations

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72 Ibid., paragraph 125.

73 Correspondence with Immigrant Council of Ireland, October 2019.

74 Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, CERD/C/IRL/5-9, advance unedited version 3 October 2018, paragraphs 132–134.

75 Ibid., paragraph 161.

76 For example, response to Parliamentary Question 1217/14 of 15 January 2014. Available at www.kildarestreet.com. Correspondence with Immigrant Council of Ireland, October 2019.

77 Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014, CERD/C/IRL/5-9, advance unedited version 3 October 2018, paragraph 163.

78 Ibid., paragraph 164.

supported by Irish Aid of the Department of Foreign Affairs and Trade since 2006.[79] The response also noted that 'the state is currently in dialogue with civil society organisations to develop a comprehensive programme for the UN Decade of African Descent'.[80]

In its submission in relation to the draft periodic report, the European Network Against Racism Ireland (ENAR Ireland) highlighted several immigration-related concerns from the concluding observations on the third and fourth periodic reports.[81] Regarding paragraph 15 of the concluding observations, on the need for immigration legislation, the ENAR Ireland submission supported the position of the MRCI that 'successful integration, including freedom from structural and incidental racism, can only be achieved through comprehensive legislation which addresses rights, entitlements and obligations'. ENAR Ireland also stated its principled objection to the direct provision system. With regard to family reunification, the submission reiterated the MRCI's concern that family reunification is best dealt with through comprehensive immigration legislation. It also endorsed the position of the MRCI that employment protections for migrant workers in the State do not fully address the Committee's concerns about the protection of migrant workers and their families and do not fully fulfil obligations under the *Convention on the Rights of all Migrant Workers and their Families.* In the opinion of MRCI:

> *[it] is incorrect that the non-EEA nationals are offered the same employment protections as guaranteed by the Conventions … the scope of the Convention is not limited to employment issues but addresses other fundamental rights which are present in the International Bill of Rights and other international conventions which Ireland is part of. Secondly, one of the key features of the convention is the protection, including in employment law, of migrants irrespective of their legal status. Currently, it is unclear whether undocumented migrants can access compensation for breaches of employment law through the Labour Court and the State has failed to clarify this; and while the Employment Permits (Amendment) Act 2014 has introduced a provision for irregular migrants to seek compensation through the civil courts, it is only limited to breaches under the National Minimum Wage Act and only when it has been demonstrated that the applicant has taken all steps available to them in order to regain legal status. These restrictions do not represent an effective complaints mechanism for victims of labour exploitation, which as a matter of employment law should be addressed in employment courts and fall short of the protections guaranteed by the UN Convention.*[82]

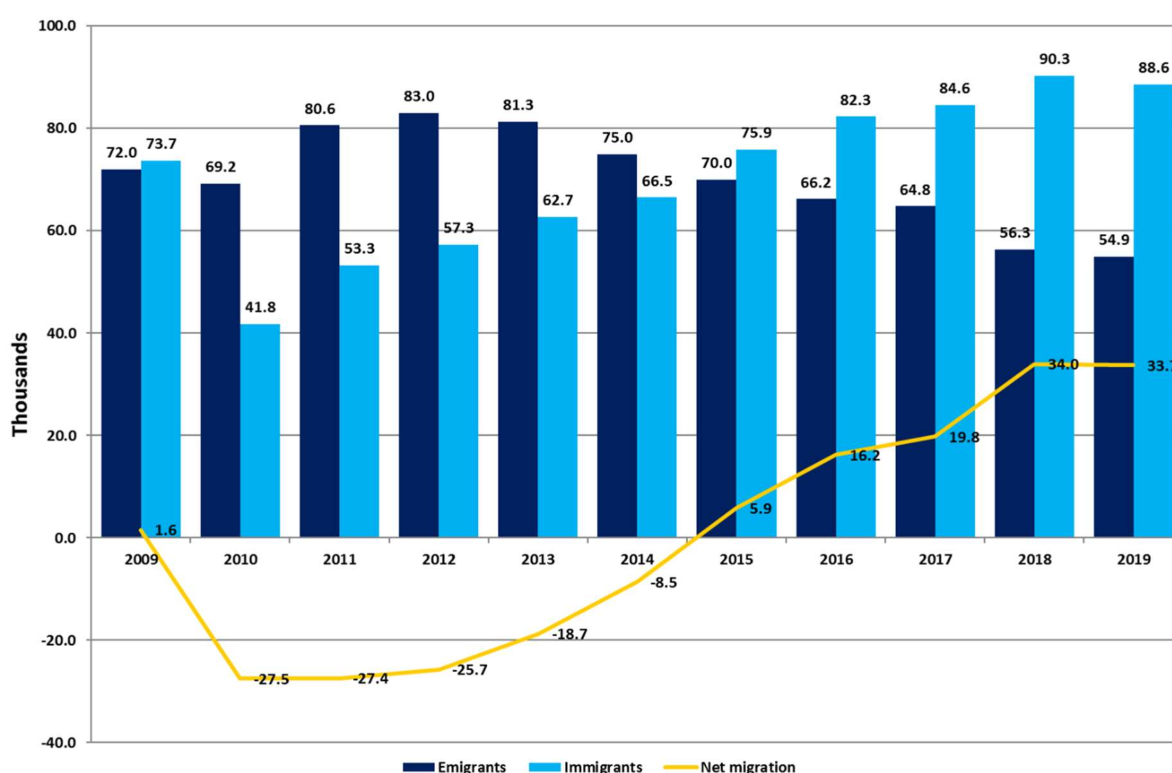
79 Ibid., paragraph 166.
80 Ibid., paragraph 168.
81 European Network Against Racism, Ireland (2018).
82 Ibid.

The Irish Human Rights and Equality Commission (IHREC) is statutorily obliged to produce a parallel report to the Committee, and this report was to be prepared during 2019.[83] A joint shadow civil society report is also being prepared by European Network Against Racism (ENAR).[84]

Ireland will be examined by the Committee during its 100th session from 25 November to 13 December 2019.[85]

2.4 POPULATION AND MIGRATION ESTIMATES

FIGURE 2.1 GROSS AND NET MIGRATION, IRELAND, 2009–APRIL 2019



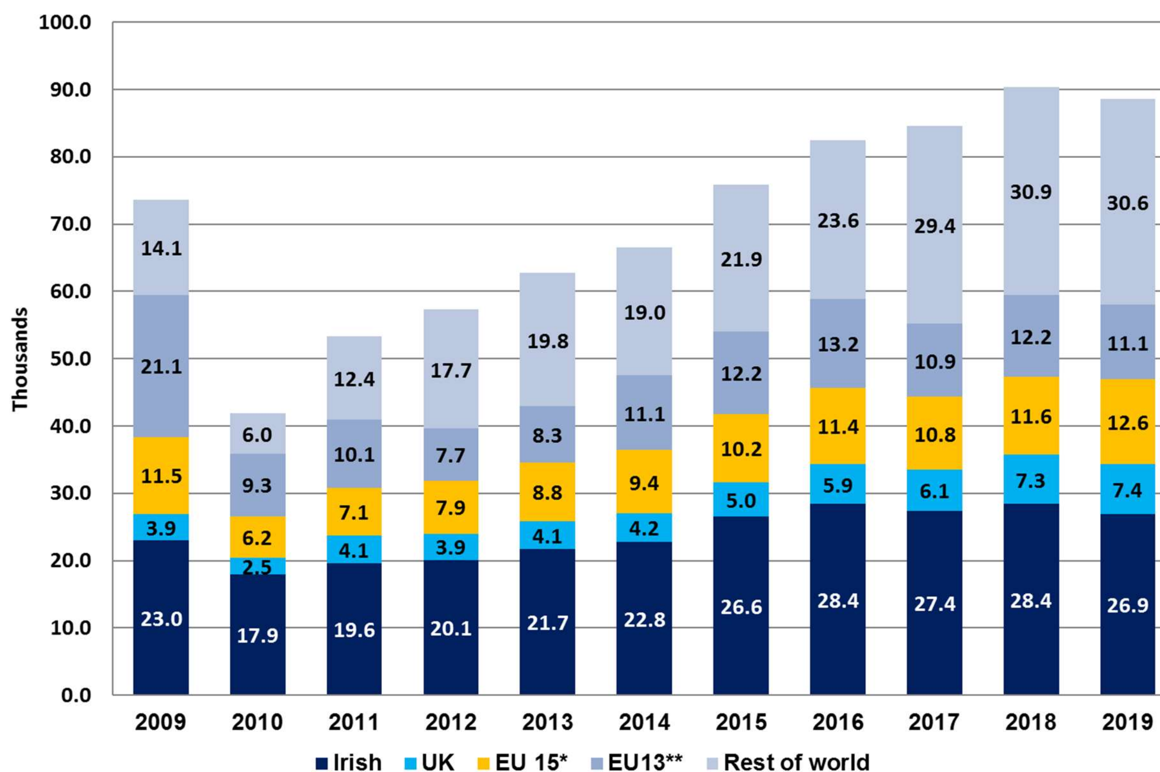
Source: Population and Migration Estimates, CSO.

Figure 2.1 shows gross and net migration for Ireland from 2009 to April 2019. Total net inward migration for Ireland decreased slightly to 33,700 from 34,000, which had been the highest level of net migration since 2008, in April 2018. Non-Irish nationals from outside the EU continued to display strong migration flows, accounting for 30,600 of total immigrants (see Figure 2.2) and 11,200 of total

83 See UN CERD at www.ihrec.ie.
84 Correspondence with Immigrant Council of Ireland, October 2019.
85 Correspondence with UNHCR Ireland, October 2019.

emigrants (see Figure 2.3). This resulted in a total net inward migration figure for non-EU nationals of 19,400.

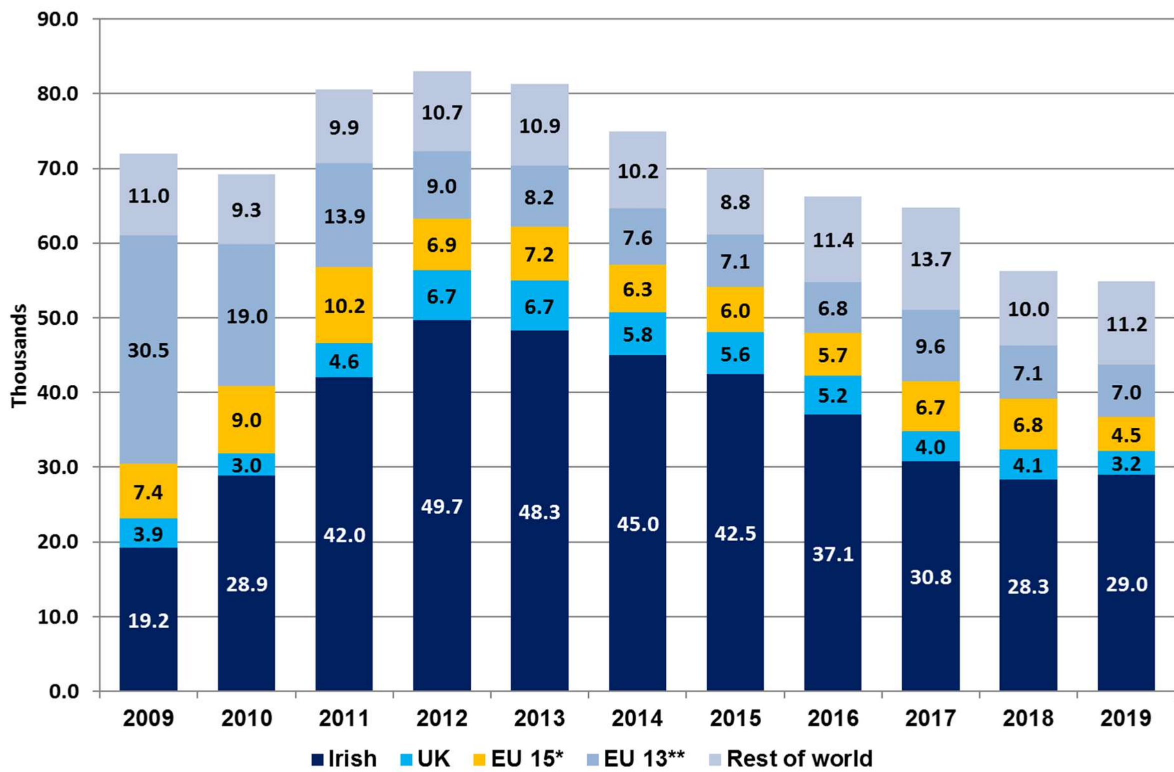
FIGURE 2.2 ESTIMATED IMMIGRATION TO IRELAND, 2009–APRIL 2019



Source: *Population and Migration Estimates, CSO.*
Notes: **EU15 excluding UK and Ireland; **EU 13 Member States that joined in 2004, 2007 and 2013.*

As shown in Figure 2.2, the estimated total number of immigrants to Ireland decreased slightly year-on-year to 88,600 in April 2019 from 90,300 in April 2018, a decrease of 1.9 per cent. The largest group of immigrants during this period was non-EU nationals, showing a small decrease of 300 over 2018. Immigration by UK nationals increased by 100 over 2018. As in the year ending April 2018, non-EU nationals remained the largest immigrant group. There was a small decrease of 1,500 in returning Irish nationals, from 28,400 in 2018 to 26,900 in the year ending April 2019.

FIGURE 2.3 ESTIMATED EMIGRATION FROM IRELAND, 2009–APRIL 2019



Source: *Population and Migration Estimates, CSO.*
Notes: **EU 15 excluding UK and Ireland; **EU13 Member States that joined in 2004, 2007 and 2013.*

As Figure 2.3 shows, there was an overall decrease of 2.5 per cent in the numbers emigrating from Ireland in the year ending April 2019, from 56,300 in 2018 to 54,900 at end April 2019. The largest group was non-EU nationals – the number of non-EU nationals emigrating increased by 1,200 from 10,000 in 2018 to 11,200 in the year ending April 2019. Emigration by Irish nationals increased slightly, having peaked at 49,700 in 2012.

CHAPTER 3

Legal migration

3.1 RESIDENCE STATISTICS

According to end-of-year figures for 2018, 142,924 non-EEA nationals were given permission to live in Ireland compared to just over 127,955 in 2017. The top ten registered nationalities, which account for 60% of all nationalities registered, were: Brazil (16%); India (15%); United States of America (9%); China (8%); Pakistan (4%); Nigeria (3%); Philippines (3%); Malaysia (2%); Canada (2%) and Mexico (2%).[86]

There were a total of 145 applications for long-term residency in 2018 – the top three nationalities being China (including Hong Kong), India and Brazil. There were a total of 41 grants of long-term residency during the year.[87]

3.2 ECONOMIC MIGRATION

3.2.1 Employment permit statistics

A total of 13,398 employment permits were issued during 2018: 11,305 new permits and 2,093 renewals.[88] This was an increase over the 2017 total of 11,361 employment permits.[89] As for 2017, the top nationality was India with 4,313 permits.[90] The top three sectors were the service industry, medical and nursing, and industry.[91]

Employment permits processing times

An increase in employment permit applications of 27% throughout 2018 resulted in a subsequent increase in processing times during Quarter 2 2018. According to the Department of Business, Enterprise and Innovation (DBEI), through a combination of increased resources, staff working overtime and some information and communications technology and other operational improvements, the processing times stabilised during Quarter 3 and began reducing during Quarter 4. By December 2018, processing times for Trusted Partners (71% of total applications) were 5 weeks (reduced from a peak of 7), and Standard applications (29% of total applications) were 12 weeks (reduced from a peak of 16 weeks).

86 Department of Justice and Equality (2019a), pp. 11 and 13.
87 Department of Justice and Equality (2019b), pp. 9–10.
88 Department of Business, Enterprise and Innovation (2019a).
89 Sheridan (2018) (print version), p. 83.
90 Department of Business, Enterprise and Innovation (2019a).
91 Department of Business, Enterprise and Innovation (2019b).

Quarter 4 in 2018 saw the highest number of permits issued in any quarter in the previous 10 years.

During 2019, DBEI will invite tenders for a Business Processing Reengineering study to identify further efficiencies and possible new system requirements including exploring the development of a new IT system which will take advantage of all the new technologies available, including full digitisation.[92]

3.2.2 Legislation

Four sets of amended regulations in relation to employment permits were passed during 2018. These regulations made changes to the employment permits occupation lists to adjust for skills needs, and certain other amendments to the Employment Permits Regulations 2017. Occupations on the Critical Skills Occupations List (CSOL))[93] are in the main professional positions in medicine, ICT, sciences, and finance and business and are eligible for Critical Skills Employment Permits. Those on the Ineligible Occupations List (IOL)[94] are generally lower skilled occupations and are deemed ineligible for the grant of employment permits.

The Employment Permits (Amendment) Regulations 2018[95] provided for changes to the CSOL, i.e. the addition of several occupations in the field of animation.[96] The amended regulations also provided for the removal by quota of all categories of chef grade, with the exception of commis chef, with a minimum annual remuneration of €30,000 from the IOL.[97]

In addition, the Employment Permits (Amendment) Regulations 2018 made an amendment to the employment permits regulations to provide that the IOLis no longer applied to Intra-Company Transferee employment permit applications.[98]

These regulations also made a number of technical amendments, including in relation to the type of documentation submitted with an employment permit application. This included a requirement that a copy of the signed contract of employment be submitted with all new and renewal employment permit applications.[99]

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92 Correspondence with Department of Business, Enterprise and Innovation, October 2019.
93 Formerly known as the Highly Skilled Eligible Occupations List (HSEOL).
94 Formerly known as the Ineligible Categories of Employment List (ICEL)
95 S.I. No. 70 of 2018.
96 Department of Business, Enterprise and Innovation (2018a).
97 Correspondence with Department of Business, Enterprise and Innovation, February 2019.
98 Explanatory note to S.I. No 70 of 2018, 'Intra Company Transferee Permits' – www.dbei.gov.ie.
99 Ibid.

Three further sets of employment permits regulations were made during the year. These regulations provided for the removal from the IOL by quota of certain specific occupations in the agri-food sector with a minimum annual remuneration threshold of €22,000.[100] The Employment Permits (Amendment) (No. 2) Regulations 2018[101] provided for the removal by quota of meat processor operatives, horticulture workers and dairy farm assistants from the IOL. The Employment Permits (Amendment) (No. 3) Regulations 2018[102] and the Employment Permits (Amendment) (No. 4) Regulations 2018[103] provided for additional quotas of meat processor operatives.[104]

The changes in these amended regulations were made on foot of a pilot scheme announced by the DBEI to address immediate labour shortages in certain occupations in the agricultural sector, following the submission of a detailed business case by the sector in consultation with the Department of Agriculture, Food and the Marine (DAFM). Employment permits for third country national (TCN) workers were allocated as follows:

- 500 permits for horticulture workers, 250 for meat processing operatives and 50 for dairy farm assistants in May 2018;
- an additional 500 permits for meat processing operatives in August 2018;
- an additional 750 permits for meat processing operatives in December 2018.

The occupations being applied for under these quotas were required to have a minimum remuneration of €22,000 per annum and the employer was required to provide a copy of a declaration stating that the employer would provide the TCN concerned with suitable accommodation and training (which could include language training).[105]

3.2.3 Review of employment permits policy

In 2017, in light of strong economic and employment growth, the DBEI committed to undertake an overarching review of the economic migration policies underpinning the employment system in the Action Plan for Jobs 2018. The purpose of the review was to examine the policies underpinning the employment

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100 Correspondence with Department of Business, Enterprise and Innovation, February 2019.
101 S.I. No. 163 of 2018.
102 S.I. No. 318 of 2018.
103 S.I. No. 550 of 2018.
104 See explanatory notes to S.I. No. 163 of 2018, S.I. No. 318 of 2018 and S.I. No. 550 of 2018. Available at www.irishstatutebook.ie.
105 Department of Business, Enterprise and Innovation (2018b).

permits regime, to ensure that it remains supportive of Ireland's current labour market needs, be they skills or labour shortages in certain sectors.

The review took place in 2018. It was overseen by an Interdepartmental Group (IDG), chaired by DBEI, and included a public and stakeholder consultation as well as an EU and international benchmarking exercise. Senior officials participated in the IDG from all relevant Government departments:[106]

- Department of Justice and Equality;
- Department of Agriculture, Food and the Marine;
- Department of Education and Skills;
- Department of Health;
- Department of Housing, Planning and Local Government;
- Department of Public Expenditure and Reform;
- Department of Transport, Tourism and Sport;
- Department of Employment Affairs and Social Protection.

Solas (the Further Education and Training Authority) also participated.[107]

The *Review of Economic Migration Policy – Report of the Inter-Departmental Group* was published in September 2018.[108]

According to the DBEI:

> *the Review found that the current employment permits system is largely robust, but needs some adjustments to ensure that it continues to be responsive to changing labour market needs. An Action Plan has been devised to drive these recommendations which will continue to be overseen by the IDG.*[109]

The report made recommendations for implementation in the short, medium and long term. Key recommendations included:

106 Correspondence with Department of Business, Enterprise and Innovation, February 2019.
107 Department of Business, Enterprise and Innovation (2018c).
108 Department of Business, Enterprise and Innovation (2018d).
109 Correspondence with Department of Business, Enterprise and Innovation, February 2019.

- the twice-yearly review of the employment occupation lists for highly skilled (HSEOL) and ineligible (ICEL) occupations would continue, but sectors experiencing severe labour shortages would have the opportunity to submit a business case at other times of the year for consideration by the DBEI;
- introduction of a Seasonal Employment Permit to facilitate certain categories of short-term workers;
- a review of salary thresholds and other criteria for the various employment permit types to ensure a good fit with changing skills and labour market needs with minimal disruption to the labour market;[110]
- changes be made to the Employment Permit Acts to make the system more agile and easier to modify to meet changing economic circumstances and to keep pace with technological and process changes as they arise.

The DBEI considers that, given the extent of the legislative changes proposed, a new bill will need to be considered.[111]

The *Review of Economic Migration Policy* also emphasised the importance of employment rights for migrants. A specific recommendation of the Review was that the Employment Permits Unit (of the DBEI), Workplace Relations Commission (WRC), Department of Employment Affairs and Social Protection (DEASP) and the Irish Naturalisation and Immigration Service (INIS) *should develop and deliver a coherent and unified information campaign* [in relation to employment rights] *to employers, particularly when low skilled employments are removed from the ineligible occupations list*.[112]

A total of 34 submissions were received by DBEI as part of the consultation exercise on *Proposed Guiding Principles to Frame the State's Economic Migration Policy*, which formed part of the review.[113] Submissions were received from a wide range of interest groups across employment sectors, other organisations such as Ibec, and NGOs. Organisations from the agri-food, hospitality, home care/health care, construction and IT sectors responded. These submissions raised concerns about labour shortages in their sector, a request to remove a particular occupation from the ICEL or a concern about the removal of a particular occupation from the HSEOL. For example, Meat Industry Ireland noted the serious challenges faced in accessing labour at general operative level in the sector. The Horticulture Industry Forum considered that horticulture should be removed from the ICEL, arguing that the fact that other EU Member States have seasonal work permit programmes made

110 Department of Business, Enterprise and Innovation (2018c).
111 Correspondence with Department of Business, Enterprise and Innovation, October 2019.
112 Department of Business, Enterprise and Innovation (2018d), p. 8.
113 All submissions are available on the Department's website: www.dbei.ie.

it difficult for Irish producers to compete with imported produce. Farm Relief Services asked for 'repeatable, end-dated seasonal employment permits specifically for the dairy industry' to be considered.

The Migrant Rights Centre Ireland (MRCI) made a submission as part of the consultation exercise. Among its recommendations, MRCI called for DBEI to work with the Department of Justice and Equality on a scheme to allow undocumented workers to formalise their employment relations modelled on the Reactivation Employment Permit Scheme and the 2004 Student Probationary Extension Scheme. The Alliance of Age Sector NGOs also submitted that there should be transitional measures to allow undocumented workers to apply for permits via the Reactivation Employment Permit.

The MRCI submission also recommended that a reduced salary threshold to access the employment permits system would help reduce irregularity in many sectors. The submission called for a greater balance between labour and skills needs to address labour market shortages and for the removal of quotas, 'as LMNT[114] acts as a check to ensure shortage is genuine'[115] and for the introduction of sectoral work permits to ensure mobility of workers and redress power imbalances within the system.[116]

Two European Migration Network ad hoc queries launched by Ireland in January 2018 brought together information from 21 EU Member States and Norway regarding economic migration policies for lower skilled jobs. The first ad hoc query addressed the labour market situation and the need for low skilled labour generally in the other Member States and Norway, and sought to find out if there were any particular restrictions in place for low skilled workers. The second query dealt with wage levels, and sought to assess whether or not other Member States and Norway had in place a salary threshold to qualify for the granting of employment-related residence permits in respect of low skilled work and if this salary threshold differed from national minimum wage standards. The query also asked if the salary threshold for low skilled workers was considered sufficient to cover all the workers' social care needs, and those of their dependants, or if other countries offered access to additional State supports.

A summary of those ad hoc query responses, which are available for public dissemination, can be found on www.emn.ie. These ad hoc queries formed part of the comparative background research for the review.

114 Labour Market Needs Test.
115 Migrant Rights Centre Ireland (2018a), pp. 13–14.
116 Correspondence with MRCI, October 2019.

Spousal/dependant employment permits

In order to enhance Ireland's attractiveness as a destination for the holders of critical skills, the *Review of Economic Migration Policy* recommended that a proactive marketing of the existing opportunities for eligible family members of Critical Skills Employment Permit Holders/researchers on hosting agreements to work in the State, including clarification of the Stamp 3 immigration permission,[117] should be undertaken. It was recommended that it should be made clear that the Stamp 3 immigration permission does not preclude eligible family members from entering the labour market and applying for an employment permit.[118] Explanatory information is included on the DBEI website.[119]

It was also recommended that DBEI would continue to work closely with the INIS on other initiatives to streamline the process for the spouses and partners of Critical Skills Employment Permit holders/Third Country Researchers.[120]

The *Review of Economic Migration Policy* also considered whether or not to extend the link to the Dependant/Partner/Spouse employment permit type from Critical Skills employment permit holders to Intra-Company Transfer (ICT) permit holders. In the consultation process for the review, Permits Foundation submitted that ICT permit family members should be considered under the Dependant/Partner/Spouse employment permit. It was recommended that the DBEI should conduct an analysis of ICT employment permit data as part of an evaluation of the merits of extending the link of the Dependant/Partner/Spouse employment permit type from the Critical Skills employment permit type to the ICT employment permit type.[121]

Au pairs and employment rights

In February 2018, the Labour Court ordered awards totalling over €5,000 in two separate rulings, involving a Brazilian au pair, whose employers had obliged her to make a payment in lieu of notice and who had been paid an effective hourly rate of €2.78. [122] Commenting after the ruling, the MRCI said that greater education was

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117 Stamp 3 immigration permission does not in itself allow access to the labour market. However, spouses/partners/dependants of Critical Skills Employment Permit Holders/TCN researchers can apply for a Dependant/Partner/Spouse employment permit. See 'Important Information regarding Dependant/Partner/Spouse employment permit' at https://dbei.gov.ie/en/What-We-Do/Workplace-and-Skills/Employment-Permits/Latest-updates/

118 Department of Business, Enterprise and Innovation (2018d), p. 45.

119 Department of Business, Enterprise and Innovation, 'Important Information regarding Dependant/Partner/Spouse employment permit' Available at www.dbei.gov.ie

120 Department of Business, Enterprise and Innovation (2018d), pp. 7 and 45.

121 Ibid., pp. 45–46.

122 Deegan (2018).

needed for families employing au pairs to be aware of their obligations as an employer.[123]

3.2.4 Atypical Working Scheme

During 2018, a total of 2,911 applications (out of 2,986 received)[124] were approved under the Atypical Working Scheme (AWS), which provides for short term employment contracts in the State,[125] due to the short term nature of the contract (i.e. 90 days or less), and/or which are not facilitated by the employment permit process. Contracts under the AWS can be for less than or greater than 90 days depending on the purpose for which permission is sought.[126] The following streams are included: seafarers, nurses, locum GPs, locum hospital doctors, Gulf doctors and general atypical permissions.[127]

Permissions granted were largely in the medical sector – non-EEA national nurses undertaking the adaptation process prior to the application for an employment permit and non-EEA national locum doctors. Additionally a significant number of permissions were granted to engineers and computer skills specialists.[128]

The *Review of Economic Migration Policy* recommended that the DBEI and the INIS would 'continue to work closely to ensure that the Atypical Working Scheme (AWS) and the employment permits system operate in a complementary and streamlined manner'.[129]

As reported for previous years, the AWS was expanded to include permission for non-EEA workers to work in the Irish fishing fleet in December 2015. A total of 65 applications in respect of non-EEA national workers for the Irish fishing fleet were approved in 2018. An additional 130 permissions were renewed; 14 requests to transfer active permission to a new employer were also approved.[130]

In May 2018, the International Transport Workers' Federation (ITWF) wrote to the Minister for Justice and Equality seeking a moratorium on the issue or renewal of atypical work permission to workers in the Irish fishing fleet and threatening High Court proceedings within 21 days. This arose from ITWF concerns about abuse of

123 Pollak (2018a).
124 Department of Justice and Equality (2019a), p. 20.
125 Subject to the employment type as listed on the eligible jobs list published by DBEI. Correspondence with Irish Naturalisation and Immigration Service: Immigration and Citizenship Policy Division, February 2018.
126 See Atypical Working Scheme – Criteria on www.inis.gov.ie.
127 Department of Justice and Equality (2019a), p. 20.
128 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, INIS Policy Division, February 2019.
129 Department of Business, Enterprise and Innovation (2018d), p. 52.
130 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, Atypical and Investment Unit, February and October 2019.

employment conditions and suspected trafficking for non-EEA fishermen in the Irish fishing fleet.[131] The Irish Human Rights and Equality Commission (IHREC) was granted leave on 14 October 2018 to appear as an *amicus curiae* in the case before the High Court.[132] According to the Department of Justice and Equality: 'Following an initial High Court ruling refusing injunctive relief to the plaintiff, the Department of Justice & Equality together with various Departments and agencies, in an effort to avoid lengthy and costly litigation entered into a mediation process with the ITWF. The Court proceedings were subsequently struck out on 30 April 2019 following the conclusion of a successful mediation process.'[133]

Issues regarding the situation of non-EEA national workers in the Irish fishing fleet are discussed further in Chapter 8.

3.2.5 Circular migration

In 2018, the INIS began developing a circular migration pilot project with selected third countries as part of the wider EU pilot projects on legal migration, with the dual aim of creating regular migration pathways for TCNs and helping to reduce the labour deficit within the agri-food sector in Ireland. The scheme will aim to support the migrant through vocational training and skills enhancement involving employers and training institutions, and will build on existing links in the sector between Ireland and third countries. The project has entailed the collaboration of the DBEI and the Department of Agriculture, Food and the Marine, with a focus on the horticulture, dairy farming and meat processing sectors. The design of the scheme is currently being finalised.[134]

3.3 INTERNATIONAL STUDENTS

3.3.1 International Education Mark

As reported in previous years, the *International Education Strategy for Ireland 2016–2020* was published in October 2016.[135]

One of the commitments in the Strategy related to the development of an International Education Mark (IEM), which was originally planned to come onstream in 2016. It committed as a strategic priority to 'Ensure Ireland's International Education offering is underpinned by a robust regulatory environment in order to safeguard Ireland's reputation internationally. The

131 Rogers (2018).
132 Irish Human Rights and Equality Commission (2018b).
133 Correspondence with Department of Justice and Equality, Atypical and Investment Unit, October 2019.
134 Correspondence with Department of Justice and Equality, INIS Policy Division, February and October 2019.
135 Department of Education and Skills (2016).

International Education Mark will be developed and legislation enacted to enhance our quality framework for international education in this regard.'

In May 2017, the Irish Government approved a draft outline of legislation to include provision for the IEM. Announcing the *Qualifications and Quality Assurance (Amendment) Bill*, the Minister for Education said:

> *The new Bill will allow for the introduction of the International Education Mark, which is a significant part of the Government's International Education Strategy which will grow the value of the sector by one third to €2.1 billion. Only providers who meet the robust quality assurance procedures of QQI*[136] *will be allowed to carry the Mark. This will benefit both education and training providers and students by highlighting those providers who are delivering high quality educational services.*[137]

The Qualifications and Quality Assurance (Amendment) Bill 2017 reached Committee Stage in Seanad Éireann in November 2018.[138]

As the IEM was not implemented during 2018, the Departments of Justice and Equality and Education and Skills decided that the lifespan of the Interim List of Eligible Programmes (ILEP) (which lists the eligible educational programmes for immigration purposes) would be further extended. Revised criteria for providers (in both the English Language Training and Higher Education and Professional sectors) for inclusion on the ILEP were introduced on 14 September 2018, and revised application forms were published.[139] A total of 1,342 programmes were added to the list across two updates in 2018, including Higher Education and English Language Training Programmes. Over 6,950 programmes are currently listed on the ILEP and are offered by a mix of over 130 State and private providers.[140]

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136 QQI (Quality and Qualifications Ireland) is an independent State agency responsible for promoting quality and accountability in education and training services in Ireland. See www.qqi.ie.

137 Sheridan (2017) (print version), pp. 88–89.

138 Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 (Bill 95 of 2018), Available at www.oireachtas.ie.

139 Department of Justice and Equality (2018c).

140 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, Policy Division, February 2019.

3.3.2 Education in Ireland information campaigns

The Education in Ireland[141] website promotes third-level education opportunities for international students, including TCN students, in Ireland. For TCN students, the website includes information on immigration requirements.

Education in Ireland and participating colleges and universities continued to participate in international education fairs throughout 2018, including in Malaysia, Hong Kong, Mexico, Sri Lanka, India, Nigeria and the United States (Salt Lake City).[142]

3.4 IMMIGRANT INVESTOR AND ENTREPRENEUR PROGRAMMES

3.4.1 Start-Up Entrepreneur Programme

During 2018, 42 applications were received under the Start-Up Entrepreneur Programme (STEP), and 19 were approved. This contrasts with 158 applications and 32 approvals in 2017.[143] Updated guidelines for the STEP were published in January 2018.[144] The STEP was established to stimulate productive investment in the State and to offer residency in the State with its associated advantages to business professionals who have a proven record of success and their immediate family members. It was devised to facilitate the relocation of international entrepreneurs who have a business that would potentially fit the Enterprise Ireland High Potential Start Up (HPSU) eligibility criteria.

3.4.2 Immigrant Investor Programme

A total of 420 applications were received under the Immigrant Investor Programme (IIP) in 2018. A total of 45 applications were approved, 3 refused, 15 withdrawn and the remainder carried over into 2019. By the end of 2018, over 700 applications to the value of over €500 million had been approved through the IIP.[145]

The Department of Justice and Equality has noted that the IIP was under increased scrutiny in 2018, from both the European Commission and the Organisation for Economic Co-operation and Development (OECD), as part of wider concerns about investor schemes generally. Measures to improve the governance and transparency of the IIP were introduced during 2018 with improved quality control checks of applications, including enhanced anti-money laundering checks, and

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[141] Enterprise Ireland manages the Education in Ireland national brand under the authority of the Minister for Education and Skills. Enterprise Ireland is responsible for the promotion of Irish higher education institutions overseas. See www.educationinireland.com.

[142] See www.educationinireland.com/news.

[143] Department of Justice and Equality (2019a), p. 20.

[144] Department of Justice and Equality (2018d).

[145] Department of Justice and Equality (2019a), p. 20.

provision for a new data sharing agreement with Revenue, based on the OECD Common Reporting Standard.[146]

The IIP was discussed at a hearing of the Joint Oireachtas Committee on Justice, Defence and Equality in July 2018. At that hearing, the INIS outlined to the Committee the changes in the scope and focus of the scheme since its inception in 2012, from a job creation focus to types of investment with a specific benefit to the State, such as social housing, primary healthcare centres and nursing homes. The INIS also noted the plans to have a detailed external review of the IIP. It was noted that an unpublished internal review from an economic perspective had been carried out in 2017 by the Irish Government Economic and Evaluation Service (IGEES). Questions and concerns raised by Committee members centred on lack of transparency around the operation of the IIP and its evaluation. The INIS stated that the expectation was to publish the report of the external review, and it took on board the concerns of the Committee about the need for transparency.[147]

The Department of Justice and Equality published terms of reference for an external review of the IIP on 5 November 2018.[148] According to the terms of reference:

> *The review proposed will be in two Phases, Phase 1 will consider and review the overall policy, current objectives and future options. Following the outcome of Phase 1, Phase 2 will consider governance and oversight arrangements for the programme; the associated resource options and the risks, including financial and reputational, associated with the operation of the Programme. The scope of this phase will be determined by the outcome of Phase 1.*[149]

3.5 PRE-CLEARANCE SCHEMES

As reported for 2017, in December 2017, the INIS announced that the Immigration Scheme for Admission of Ministers of Religion and Lay Volunteers would be closed for the first three months of 2018, pending preparation of a new scheme with revised conditions of entry. New pre-clearance schemes for ministers of religion and volunteering in Ireland applied from 30 April 2018. The new procedures include a pre-clearance procedure applicable to all applicants, whether or not they

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146 Ibid.

147 Joint Oireachtas Committee on Justice, Defence and Equality (11 July 2018) 'Immigrant Investor Programme and International Protection Applications: Discussion'. Available at www.kildarestreet.com.

148 Department of Justice and Equality (11 December 2018) Response to Parliamentary Question 51986/18 Available at www.justice.ie.

149 Department of Justice and Equality (2018e).

are visa-required nationals. Both schemes apply to stays of longer than three months.

Visa-required applicants still require a visa to travel to Ireland and need to submit a pre-clearance letter of approval as part of their visa application. If non-visa-required applicants cannot produce the relevant pre-clearance letter to an immigration officer at a port of entry, they will not be permitted entry to the State to work as a 'long-stay' minister of religion or a 'long-stay' volunteer.

For ministers of religion, residence permission may be granted to work as a minister of religion with an eligible religious body or faith community in Ireland for up to three years with a possible three-year extension. The initial residence permission is for one year. Ministers of religion may not do paid work other than as ministers of religion. They may bring immediate family members (spouse/partner/minor children). They may not apply for permission to remain as a volunteer once the minister of religion permission expires, and they cannot change the religious body or faith community they work for while in Ireland.

For volunteers, residence permission may be granted to work in a volunteering role with an eligible organisation for up to two years, with an option to extend for a third year. The initial residence permission is for one year. Volunteers may not do paid work of any kind, or bring any family members to Ireland or change their sponsoring organisation more than once in any 12-month permission period.

A condition common to both permissions is that beneficiaries of the schemes may not rely on public services or claim any State benefits, e.g. health services. Private medical health insurance is required for individuals, and, in the case of ministers of religion, any family members. Police clearance/criminal records checks are required, and clearance to work with children and/or vulnerable adults, if applicable.

Both ministers of religion and volunteers have a sponsoring organisation – the religious body/faith community or volunteer organisation that invites the person to work in Ireland. Sponsor organisations have important responsibilities, including to co-operate with the immigration authorities to ensure that the person leaves Ireland on expiry of their residence permission.

Applicants from visa-required countries will require an entry visa along with their pre-clearance approval for the scheme.[150]

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[150] Department of Justice and Equality (2018f). Also correspondence with Irish Naturalisation and Immigration Service, Visa Division, February 2019.

In 2018, a total of 123 minister of religion applications were received, of which 88 were successful (81.5%). Some 19 applications were refused, with the remainder still being processed. This compares to 209 applications for the volunteer scheme, of which 169 were successful (81%). Some 27 applications were refused, with the remainder still being processed.[151]

It is intended to roll out pre-clearance to other categories of migrants in due course, once proof of concept is established.[152]

3.6 VISA POLICY

3.6.1 Statistics

Approximately 140,500 entry visa applications (including both short and long stays) were received in 2018, an increase of 12% on 2017[153] and a cumulative increase of 44% over the 2013 figure. The approval rate for entry visa applications was 88%. The top five nationalities applying for visas in 2018 were India (24%); People's Republic of China (16%); Russian Federation (11%); Nigeria (5%); and Turkey (4%).[154]

The total number of visas granted was 119,608, of which 97,754 were 'C' short stay and 21,854 were 'D' long stay.[155] The top ten countries of origin for visas granted were India, China, Russia, Pakistan, Nigeria, Turkey, Philippines, Ukraine, Saudi Arabia and Indonesia.[156]

In the *Immigration in Ireland: Annual Review 2018*, the Department of Justice and Equality noted the spike in EU Treaty Rights visa applications (from family members of EU citizens exercising the right to free movement in Ireland) over the period 2014–2016. There were concerns that many of these applications were 'seeking to circumvent immigration laws either in Ireland or in other EU countries'. In 2018, a total of 2,845 EU Treaty Rights visa applications were received. Of a total of 2,269 applications processed, only 218 (9.61%) were granted. Most were refused or withdrawn.[157] Jurisprudence regarding visa delays for TCN family members of EU citizens is included at section 3.8.4.

151 Department of Justice and Equality (2019a), p. 17.
152 Correspondence with Department of Justice and Equality, Migration Policy Unit, October 2019.
153 Department of Justice and Equality (2019a), p. 16.
154 Correspondence with Department of Justice and Equality, Visa Division, February 2019.
155 European Migration Network (2019).
156 Department of Justice and Equality (2019a), p. 16.
157 Ibid., p. 18.

During the year, the Department of Justice and Equality conducted a joint visa service review with the Department of Foreign Affairs and Trade, with a view to improving the service.[158]

Visa applications by Libyan nationals

In July 2018, the Minister for Justice and Equality announced the relaxation of certain restrictions on Irish visa applications from Libyan nationals that had been in place since August 2014. Visa applications from certain categories of applicant in relation to the beef industry; oil industry; immediate family members of Irish citizens; long-term Irish residents and EU citizens; visitors of Libyan nationality who are long-term residents of EU Member States or other countries with good and recent UK, EU, Australian, New Zealand, Canadian or US travel history; and applicants supported by Irish Government Departments and State agencies can be considered.[159]

3.6.2 Legislation

In January 2018 , Ireland added the United Arab Emirates (UAE) to the list of countries whose nationals are not required to have a visa to travel to Ireland.[160] The Minister for Justice and Equality commented that the lifting of the visa requirement was a very significant step which will facilitate Ireland's growing trade, tourism and business relationships with the UAE. It represents a further strengthening of the strategically important relationships between the two countries and will foster increased cooperation across a wide variety of areas including innovation, trade, investment, financial services, food, education, healthcare, aviation and technology.[161]

UAE is Ireland's largest tourism market in the Gulf Cooperation Council (GCC) region (50,000 visitors in 2016) and 10,000 Irish nationals are registered in the UAE, the largest Irish community in the Middle East.[162]

3.7 CROSS-CUTTING ISSUES

3.7.1 Service delivery

The INIS published the *Service Improvement Plan 2018–2020: Irish Naturalisation and Immigration Service* in October 2018.[163] The Plan sets out the strategic priorities, objectives and actions for the INIS over this period. INIS stated that 'the

158 Ibid., p. 15.
159 'Irish Visa Applications from Libyan nationals'. Available at www.inis.gov.ie.
160 Immigration Act 2004 (Visas) (Amendment) Order 2018.
161 Department of Justice and Equality (2018g).
161 Ibid.
163 Department of Justice and Equality (2018a).

plan promotes the principle of designing our services around our customers' needs'.[164]

The Plan was developed in a context where there has been an increasing demand for INIS services. The Plan noted that, in 2017, INIS processed almost 214,000 applications across all business areas, completed 75,000 registrations for residence permission in the Dublin registration office, and processed 15 million inbound passengers at Dublin airport. It also noted that INIS processes are currently paper-based and the ICT infrastructure has limited interoperability.

The Plan acknowledged that without measures to create procedural and technological efficiencies, the staffing increases necessary to cope with the workload would become unsustainable. The Plan used the high-level recommendations set down in the Service Delivery Strategy (which was produced in February 2017), to inform its detailed objectives. These were:

- to invest in up-to-date technologies;
- to review the current immigration processes from start to finish;
- to build change management policy and procedures. This would start with a centre of excellence and, in time, develop change management competencies across the organisation.

An exercise was initiated in 2018 to identify areas where business processes could be improved. This yielded 76 suggestions covering areas such as restructuring of INIS business areas, process improvements and ICT developments. These and other inputs informed the development of five pillars to help shape the delivery of the Plan up to 2020. The five pillars are:

1. mission, purpose and legislative context;
2. maintaining a safe and secure immigration system;
3. efficient and effective service delivery;
4. services designed based on customer needs;
5. investing resources in delivering change.[165]

164 Ibid.
165 Ibid. Also correspondence with Irish Naturalisation and Immigration Service, February 2019.

Plain English

During 2018, the INIS committed to further the use of Plain English across all of its communications. Plain English is a way of presenting information that helps ensure people will understand it the first time they read it.

A total of 70 people across the organisation received training in Plain English from the National Adult Literacy Agency (NALA), including the senior management team. A full review of paper-based application forms was carried out, with most forms redesigned and rewritten to ensure ease of use. Plain English is now being used on all new information going on the INIS website, with a full review of all existing content ongoing.[166]

The Immigration Annual Reviews for 2017 and 2018 received the Plain English Approval Mark from NALA, as did the INIS *Service Improvement Plan 2018–2020*.

3.7.2 Registration

As reported in previous years, responsibility for the registration of non-EEA nationals who are resident in Dublin transferred from the Garda National Immigration Bureau (GNIB) to the INIS in 2016. GNIB remains responsible for the registration of non-EEA nationals who are resident in all other parts of the country. INIS introduced an online appointment system in 2016.

In early September 2018 the online appointment system was targeted by third-party agents who used bots (automated software) to block-book appointments for resale. This also received media attention.[167] Technical fixes have reduced the problem. The appointment system will be replaced in 2020 to improve security and to make it more customer friendly. It has been noted, however, that it remains difficult to get an appointment.[168]

INIS provided dedicated weekend registration sessions for third-level students from October to December 2018, in co-operation with the Irish Universities Association. Student appointments were co-ordinated by international student officers in the Dublin third-level colleges.[169]

166 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, May 2019.
167 Pollak (2018b).
168 Correspondence with Immigrant Council of Ireland, October 2019.
169 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, Registration Unit, February and October 2019.

In 2018, INIS and An Garda Síochána issued almost 138,000 new or renewed registrations of permission to remain in the State.[170]

Extension of registration requirement to non-nationals under 16 years

Section 35(b) of the Employment Permits (Amendment) Act 2014 provides for the deletion of the exemption from registration requirements for non-nationals under 16 years of age contained in section 9(6)(a) of the Immigration Act 2004. According to a parliamentary question response from June 2018, this provision remained to be commenced.[171,172]

The Immigrant Council of Ireland (ICI) published its submission made in March 2018 to the INIS in response to stakeholder consultation in relation to the immigration registration of foreign national children.[173] This consultation process arose from the proposed commencement of the legislative provisions to delete the exemption from registration of children under 16. The submission recommended a wider consultation of stakeholders, including the Data Protection Commission (DPC), IHREC, the Ombudsman for Children, UNICEF, the Children's Rights Alliance and the Irish Council for Civil Liberties (ICCL). The submission noted that the objective of reducing risks to children through registration was positive. However, the submission emphasised consideration of the best interests of the child principle in the arrangements for commencing the requirement for registration, and posited that: 'there is a difference between informing immigration authorities regarding the presence of children in the State, being granted residence permission and the imposition of registration and reporting requirements'.[174] The submission also raised some current issues around registration of children between 16 and 18 years, including lack of awareness of the registration requirement among those required to register and their parents/guardians and professionals working with them; lack of published guidance on the registration process for this group; and issues regarding consistency of procedures for children who are not dependent on parents/legal guardians and, therefore, cannot obtain a residence permission which is an extension of that held by their parents. This was highlighted as a

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170 Department of Justice and Equality (2019a), p. 11.

171 Department of Justice and Equality (12 June 2018). Response to Parliamentary Question 25182/18. 'Employment Permits (Amendment) Act 2014. Section 35 (a),(b) and (c) and Section 36. Pending finalisation with An Garda Síochána of arrangements for the transfer of the immigration registration function to the Irish Naturalisation and Immigration Service (INIS).'

172 The Progress Report on the Migrant Integration Strategy published in July 2019 indicated that: 'INIS will introduce registration for minors in 2022, when responsibility for registration of non-EEA nationals is fully transferred from the Gardaí to INIS. This will ensure that minors do not have to present to Garda stations to register.' *Migrant Integration Strategy: Progress Report to Government. Office for the Promotion of Migrant Integration, 2019,* p. 27. Available at www.justice.ie.

173 Immigrant Council of Ireland (2018a).

174 Ibid., p. 3.

particular problem for children who are in the care of the State, for example unaccompanied minors.[175]

The submission recommended exemption from registration requirements for particularly young children and infants; no registration fee for minors; for the INIS to publish an impact assessment; and for the INIS to have in place sufficient resources to implement the extra registrations. It noted that there was merit in commencing the requirement on a phased basis, for example for 14–16 year olds in the first instance. The submission stated that the registration requirement should not be commenced until after 'sufficient consideration of the privacy, fundamental rights, child safeguarding and legislative issues arising'. [176]

3.7.3 Data protection

Section 60 of the Data Protection Act 2018 provides for certain restrictions on the obligations of controllers and rights of data subjects for important objectives of general public interest. The rights and obligations are those covered in Articles 12 to 22[177] and Article 34[178] of the General Data Protection Regulation and Article 5 insofar as it relates to those rights and obligations.

Section 60(6) of the Data Protection Act 2018 provides that regulations may be made restricting these rights and obligations where the regulations are considered necessary to safeguard important objectives of public interest. Section 60(7) sets out important objectives of public interest in respect of which regulations may be made. One of these objectives is: *ensuring the effective operation of the immigration system, the system for granting persons international protection in the State and the system for the acquisition by persons of Irish citizenship, including by preventing, detecting and investigating abuses of those systems or breaches of the law relating to those systems.*

This provision was raised in a discussion at the Joint Oireachtas Committee on Justice, Defence and Equality in July 2018. At that debate, INIS officials noted that this was a complex issue and that the precise content of Regulations to be brought forward had to be worked out.[179]

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175 Ibid. pp. 3–5.

176 Ibid., p. 5.

177 This includes the rights of access to, rectification and erasure of personal data for the data subject and the obligations of the data controller in relation to the exercise of the rights of the data subject.

178 Communication of a data breach to the data subject.

179 'Immigrant Investor Programme and International Protection Applications: Discussion.' Joint Oireachtas Committee on Justice, Defence and Equality, 11 July 2018. Available at www.kildarestreet.com.

INIS updated application forms with regard to the General Data Protection Regulation (GDPR) during 2018.[180]

3.8 CASE LAW

3.8.1 Challenge to refusal of employment permit

In *Ling and Yip Limited v Minister for Business, Enterprise and Innovation* [2018] IEHC 546 the applicant was a limited company that operated a restaurant in Dunboyne, Co. Meath. The applicant employed a Malaysian national as a chef, in respect of which an employment permit for one year was granted by the respondent in July 2016. The information furnished by the applicant to the respondent, which was recorded in the permit, included a description of the employee's position and that his remuneration was €600.00 per week. In July 2017, eight days after this permit had expired, the applicant applied for renewal of the permit. This was refused by the respondent in September 2017 for two reasons: the first was that the employee was present in the State without the permission of the respondent (as his permission had lapsed along with the employment permit) and the second was that the documentation submitted with the renewal application showed that the employee had received less than the annual remuneration stated on the previous employment permit and fell below the minimum required by the Employment Permits Act 2006 (as amended). The applicant subsequently appealed against the refusal, but the decision was upheld for the same reasons by decision of 31 October 2017.

The applicant subsequently instituted judicial review proceedings challenging this decision, arguing that the respondent misapplied the relevant provisions of the Employment Permits Act 2006, as amended, which conferred a discretion on her to grant or refuse an employment permit even in the presence of the two identified circumstances and that the respondent misconstrued her powers under the Act in concluding that she could not issue a permit in the presence of those circumstances. Alternatively, it was claimed that the respondent unlawfully fettered her discretion by determining that she could not issue a permit in the relevant circumstances. The applicant further submitted that the respondent failed to examine and consider the particular circumstances of its case.

Noonan J referred to the relevant parts of s.12 of the 2006 Act, which provides:

[180] Correspondence with Immigrant Council of Ireland, October 2019.

> *12(1) The Minister may refuse to grant an employment permit if …*
>
> *(i) the foreign national concerned lands or has landed, or is or has been, in the State without permission*

Reference was also made to s.20(8A)(b) of the 2006 Act as amended by the Employment Permits (Amendment) Act 2014, which provides:

> *(8A) In addition to, pursuant to subsection (8), the grounds specified in section 12 for refusing an application for renewal, the Minister may refuse to renew an employment permit if—*
>
> *…*
>
> *(b) in the opinion of the Minister, the remuneration paid to the foreign national, during the period for which the employment permit has been in force, is less than the remuneration stated, pursuant to section 9(2), in the employment permit or the deductions referred to in section 9(2), and stated, pursuant to that section, in the employment permit, were different to the deductions made by the employer.*

Noonan J held that it was evident from the use of the word 'may' in ss.12 and 20 that the Minister has a discretion to grant or refuse an employment permit even in the presence of the circumstances identified in those sections:

> *The permissive rather than mandatory language adopted by the Oireachtas places a duty upon the Minister to act fairly and judicially in exercising the power conferred by the statute. That much is evident from the authorities going back to the locus classicus, East Donegal Co-Operative Livestock Mart Limited v Attorney General [1970] I.R. 317.*

The court also stated that in exercising this discretionary power, the Minister has a duty to consider the individual facts of each case as they arise. For example, in the context of an applicant being in the State without permission, a wide range of circumstances could arise. An applicant may have arrived in the State unlawfully and worked here unlawfully for a lengthy period. In contrast, in the present case, Noonan J noted that the employee entered the State lawfully and worked here lawfully for several years but his employer was eight days late in applying for a new permit. It was noted that the two situations were not comparable but both fall within the range of circumstances that the Minister must have regard to in the exercise of her discretion.

In the present case, Noonan J was satisfied that the Minister abdicated her responsibility to exercise the discretion so clearly conferred upon her by

concluding that the mere fact that the employee was technically in the State without permission at the material time meant that an employment permit could not be issued, and that this statement was, as a matter of law, manifestly incorrect. The same considerations applied to the second reason given which again was legally erroneous. The applicant furnished an explanation for the fact that between July and December 2016, the employee was not paid the correct salary identified on the work permit. That was however corrected from January onwards. Noonan J held that the respondent's duty to act fairly in exercising her powers under the 2006 Act included an obligation to engage with and consider the explanation offered by the applicant for non-compliance with the terms of the previous permit. The respondent might of course in the exercise of her discretion come to the conclusion that the explanation offered was not acceptable but if she were to arrive at that conclusion, she would have to give reasons for so doing in accordance with *Meadows v Minister for Justice, Equality & Law Reform* [2010] 2 I.R. 701 and *Mallak v Minister for Justice, Equality & Law Reform* [2012] IESC 59.

Accordingly, Noonan J was satisfied that the respondent fell into error in concluding that she had in fact no discretion to grant the permit. Even if it could be said that the respondent's statement amounted to the adoption of a policy to refuse applications in the presence of the two circumstances identified, it was clear from the case law that the respondent was not entitled to adopt a fixed and inflexible policy which effectively did not admit of the exercise of any discretion or have regard to the circumstances of the individual case under consideration. The court was further satisfied that the failure of the respondent to engage in any meaningful way with the explanation offered by the applicant or to give any reasons as to why it was not acceptable rendered the decision fatally flawed. For those reasons, the court quashed the decision and remitted the matter to the respondent to be reconsidered in accordance with the terms of the judgment.

3.8.2 Whether Minister obliged to consider constitutional and ECHR rights in application for change of immigration status under section 4 of the Immigration Act 2004

In *Luximon v Minister for Justice* [2018] IESC 24 the applicants were Mauritian citizens who came to Ireland lawfully on student permissions which were renewed periodically from time to time for several years. In 2011 the government adopted a new policy which placed a maximum time limit on how long students could remain in the State. The applicants subsequently applied to the Minister for a change of status to regularise their position in the State, which would effectively allow them to continue to reside in Ireland without the requirement that they were students. These applications were based in part on the length of time the applicants had lived in Ireland and the private life rights they and their children had acquired during that time. These applications were refused by the Minister in

November 2012. The Minister's decision did not evaluate the applicants' claims in relation to private life, saying such rights would only be considered in the context of the deportation process. The applicants challenged the Minister's decision by way of judicial review. In the High Court in *Luximon* ([2015] IEHC 227) Barr J found in favour of the applicants and held that the Minister was obliged to consider constitutional and/or ECHR rights when deciding a change of status application under s.4 of the Immigration Act 2004. In the High Court in *Balchand* ([2016] IEHC 132) Humphreys J found against the applicants, holding that they had no constitutional or ECHR rights as a matter of fact which arose for consideration because their immigration status was only ever 'precarious'.

The Court of Appeal heard the appeals in both cases together, and decided in favour of the applicants ([2016] IECA 383). The Court of Appeal held that a proposed decision not to renew an immigration permission could have the consequence that a non-national was then unlawfully present in the State and had the potential to be an interference with that individual's right to respect for private and family life such that it was capable of engaging art.8 of the European Convention on Human Rights. For this reason, in considering such an application, the Court of Appeal held that the Minister was obliged to consider any rights of the applicant alleged to be protected by the Constitution or art.8 of the Convention prior to making a decision to refuse to renew the permission.

The Minister appealed to the Supreme Court, which agreed to hear an appeal in relation to the question of whether, under s.4(7) of the Immigration Act 2004, the Minister was under a duty to consider constitutional family rights or art.8 European Convention on Human Rights (ECHR) rights, either generally or in the circumstances of these case, in deciding such applications ([2017] IESCDET 55).

MacMenamin J delivered the judgment of the Supreme Court, holding that requiring a person who applied to have their residence permission renewed or varied pursuant to s.4(7) of the 2004 Act to remove themselves from the State in order to make the application was not permitted by that section. As a matter of statutory construction, s.4(7) dealt with an application to be made from within the State.

MacMenamin J said that s.4(7) of the 2004 Act was not in *pari materia* with s.3 of the Immigration Act 1999 which applied to deportation orders. The 2004 Act could best be seen as regulating lawful entrants coming into the State; the 1999 Act, by contrast, was concerned generally with the sovereign power of the State to deal with unlawful entrants to the State. Absent an appropriate assessment when the rights to respect for family and private life arose, it was no answer to say that these rights might be considered later at the s.3 of the 1999 Act deportation stage, in light of the position in which an applicant must then place themselves. If a person

simply complied and left the State such rights would only be considered when they were already outside the State, by which time those rights may already have been violated. If they did not comply and remained in the State, they would have to place themselves in the situation of 'remaining on' illegally in the State, which would itself trigger the possibility of deportation under s.3(2)(g) of the 1999 Act.

It was held that a decision pursuant to s.4(7) of the 2004 Act was the exercise of a 'function' within the meaning of s.3 of the European Convention on Human Rights Act 2003. In making a decision under s.4(7), the appellant was under a duty to act in a manner compatible with the provisions of the ECHR. A consideration under s.4(7) should be carried out having regard to art.8 ECHR rights where necessary at the time of that assessment, and at a time when the applicant remained within the State. Pursuant to art.8 ECHR, there may be a positive obligation to establish an effective and accessible procedure.

MacMenamin J noted that jurisprudence interpreting art.8 ECHR had moved beyond the proposition that human rights only arose in removal decisions, to cases where variation of leave applications may need to take into account a wide variety of aspects of family and private life under art.8, thereby enabling an independent assessment of an application to remain without the person concerned running the risk of breaking the law.

The Supreme Court held that in circumstances where an applicant had entered the State lawfully and resided lawfully in the State on a student permission with limited permission to work for some time, they acquired many of the characteristics of a long-term migrant and their status could not be described as 'precarious' for the purpose of an assessment of their rights under art.8 ECHR.

3.8.3 Whether persons on student permissions to be considered as 'settled migrants'

In *Rughnoonauth v Minister for Justice and Equality; Omrawoo v Minister for Justice and Equality* [2018] IECA 392 the Court of Appeal considered whether persons who had permission to reside in the State on student/stamp 2 permissions could be considered as 'settled migrants' and as such entitled to a detailed consideration of their private life rights under art.8 ECHR, including a proportionality assessment under art.8(2), before any decision is taken whether to deport them. The applicants in each case were citizens of Mauritius who had lawfully entered the State on foot of student permissions, which permissions subsequently expired and the applicants remained unlawfully in the State thereafter. The period of unlawful residence was of different duration, ranging from three years and nine months to one year and five months. In due course in each case the Minister made a deportation order. The Minister did consider the private rights asserted under art.8

ECHR but determined in each case under the test in *R. (Razgar) v Home Secretary* [2004] 2 AC 36 that the consequences of the interference with private life was not of such gravity as to engage art.8, and therefore did not require a proportionality assessment under art.8(2).

Peart J noted at the outset that stamp 2 student permission has a number of conditions attaching, including the fact that (a) student permissions are for one year only; (b) since 2011, the maximum stay permitted on foot of renewals is for a period of seven years; (c) holders have no right to bring family members to the State; (d) student permissions are not automatically renewable; (e) student permissions cannot amount to reckonable residence in law for the purposes of naturalisation; (f) holders can work only a limited number of hours per week; (g) holders must be enrolled in an accredited educational institution; (h) holders have no access to public resources. Peart J also noted that each of the applicants must be taken to have been aware of these conditions attaching to their student permission to be in the State, and of the requirement that they must leave the State upon the expiry thereof.

In *Omrawoo* O'Regan J concluded after a full hearing (leave having been granted) that the applicant was a settled migrant since she had been residing lawfully on foot of her student permission for a portion of her overall period of residence in the State. The Minister appealed against that finding. The Minister was given leave to appeal by O'Regan J in respect of two questions:

(a) Where a person has been granted a student permission is he or she entitled to or eligible as a matter of right to 'settled migrant' status within the meaning of the jurisprudence of the ECHR notwithstanding the finite and qualified nature of such an immigration permission?

(b) If so, whether such a person can lose their 'settled migrant' status within the meaning of art.8 ECHR by virtue of the expiry of his or her student permission followed by a period of unlawful residence within the State.

In *Rughoonauth* the High Court (Humphreys J) refused leave on the basis that the grounds sought to be advanced to impugn the deportation orders in question did not constitute substantial grounds. He went on to grant leave to appeal having first refused to accede to an application to set aside his previous order refusing leave (the order not having been by then perfected), having regard to the decisions of the Court of Appeal in *Luximon v Minister for Justice and Equality* [2016] IECA 382 and *Balchand v Minister for Justice and Equality* [2016] IECA 382. The following point of law was certified by Humphreys J:

> *Given their periods of residency in the State as students, are the applicants considered as 'settled migrants' and if so, must the respondent when*

> *considering whether or not she is to deport them, acknowledge that their deportation would engage the operation of Article 8 ECHR and conduct a proportionality exercise pursuant to Article 8 (2) of the ECHR in order to determine whether the aims/interests of the State are such as will outweigh the private life rights of the applicants that would be engaged by their deportation?*

The issue for determination therefore was common to both appeals, namely whether a person who has been present in the State under a limited, conditional and temporary permission in the form of a student immigration permission (stamp 2) has 'settled migrant' status for the purposes of any consideration of rights asserted by him/her to exist under art.8 ECHR when the Minister is deciding whether to make a deportation order following the expiry of the student permission and any renewals thereof.

It was submitted by the Minister that a critical consideration as to whether the applicants were settled migrants was the period that they were in the State unlawfully following the expiry of their student permission. It was the Minister's submission that a period of unlawful residence in the State could not be relied upon by the applicants in order to transform their 'precarious migrant' status into 'settled migrant' status. In this regard the Minister submitted that a resident migrant can fall into any of three possible categories: (1) an unlawful migrant; (2) a migrant whose residence is lawful but precarious; and (3) a settled migrant. An unlawful migrant is one who has never had a permission to reside in the State. A migrant whose residence is lawful but precarious would be, for example, a person who has entered the State and claimed asylum, and who is permitted to remain in the State pending the determination of that application. It was the Minister's submission that a person such as any of the present applicants was in that category also, since they would have been aware from the outset that they were obliged to leave the State when their permission expired. In other words, they could not have had a legitimate expectation that that they could remain following the expiry of their permission. Settled migrant status, in the Minister's submission, was confined to a person who has had a prolonged period of lawful residence in the State. The Minister submitted that the residence these applicants had on foot of study permissions, while lawful for the duration of the permission and any renewals thereof, was nevertheless precarious given the known conditions to which it was subject, and its limited purpose and limited duration, and that this status could not be transformed into anything better by any period of unlawful residence following its expiry. The counter-argument made by the applicants was that each applicant achieved the status of settled migrant by reason of having resided here lawfully on foot of their student permission, and that they did not cease to be settled migrants by reason of a period of unlawful residence after the expiry of these permissions, and also that once given their student permissions their status was not precarious.

They submitted that there was no such category as lawful but precarious, and it was argued that a migrant is either unlawfully resident or is a settled migrant. The applicants submitted that the Minister's decisions were clearly based on a view that because they were lawfully present in the State on foot of a student visa, they could never be considered to be settled migrants, that in all the circumstances their residence status was precarious, and as such that they were not entitled to an assessment under art.8(2). It was submitted that this inflexible view was wrong, and that it wrongly equated them to persons in the position of failed asylum seekers whose status has been considered to be precarious. The applicants submitted that this fixed view adopted by the Minister in relation to student visa applicants wrongly precluded any possibility that a student, depending on his/her particular facts and circumstances, might acquire private life rights akin to those acquired by persons who are entitled to be considered as settled migrants, and that the *Razgar* test may be satisfied such that a proportionality assessment must be carried out.

Although the applicants placed significant reliance on the Supreme Court decision in *Luximon and Balchand v Minister for Justice* [2018] IESC 24, Peart J held that those cases were very different on their facts from the present cases. It was held that the issue was also different as the Minister had taken the view that there was no requirement to give any consideration whatever to private life rights at the point in time when she was considering whether or not to grant an application to renew a student permission and vary conditions under s.4(7) of the 2004 Act. In the present cases, Peart J stated that the applicants did have their art.8 rights considered, albeit the Minister did not consider that their asserted rights were such as to engage the need for a proportionality assessment under art.8(2).

Peart J held that it was 'not helpful to try and shoe-horn particular categories of migrants into one of a number of differently labelled boxes in order to discover the extent of rights to which they may be entitled'. The adjective 'precarious' connoted a level of uncertainty around an applicant's right to indefinitely reside lawfully in the State, and on that basis it was held that students were in a worse position than asylum seekers because they were aware from the very outset that, although their permission was renewable up to a maximum of seven years, the lawfulness of their residence would terminate at an identified time and once the conditions of residence could no longer be satisfied. In contrast, Peart J stated, at least for an asylum seeker there is a possibility that the application will be successful, thereby enabling them to reside permanently in the State. In such circumstances, Peart J held that it was difficult to see how a person in a worse position than an asylum seeker could be accorded the higher status of 'settled migrant' leading to the type of proportionality assessment contended for by the applicants. Peart J reiterated that it was not helpful to look at the applicants in a purely binary way, i.e. to simply consider whether a student is or is not a settled migrant, and let that alone

determine whether the Minister was obliged to carry out a proportionality assessment; rather, the position was more nuanced. It was held that insofar as Humphreys J in *Rughoonauth* concluded that because the applicants were students they could therefore never be considered to be 'settled migrants' and ergo by definition they were not entitled to a proportionality assessment, 'he took too black and white a view'. On the other hand, in *Omrawoo*, it was held that O'Regan J fell into error in concluding that the student permission enjoyed by the applicant automatically equated to her having acquired settled migrant status.

Turning to the actual decisions made in each case by the Minister, Peart J held that there was 'nothing fundamentally incorrect in describing the position of a person whose presence in the State is on foot of a temporary and purpose-limiting student permission as being 'precarious', in the sense that under normal and foreseeable circumstances, it is known that the permission will inevitably come to an end, and indeed is intended to come to an end by virtue of its specified time limitation, on the expiry of which the person will be required to leave the State'. For this reason, it was held that the particular words used to describe the quality of a person's status can distract from the more fundamental question as to not only whether or not a particular person's residence in the State has been such as to give rise to the existence of art.8 rights, but also whether those rights are of such gravity as to engage the requirement for proportionality under art.8(2). That was the question that the Minister must ask when giving consideration to whether an applicant was entitled to have private life rights assessed for proportionality, and not simply (as in the case of the present applicants) determine that there was no such entitlement because the applicant had been in the State of foot of a student permission. Peart J therefore concluded that while in the vast majority of cases of persons in the State on foot of a student permission, such private life rights under art.8 as may have been acquired will not be such as to engage the right to a proportionality assessment, one could never rule out the possibility that in an exceptional case, such an assessment might be required. For that reason, it was held that the High Court judge in *Rughoonauth* was wrong to conclude as he did on the leave application by stating:

> *There are no substantial grounds to contend that students present on permissions for up to the maximum 7-year period, or present in the State thereafter without permission, are settled migrants; nor are there substantial grounds for contending that the deportation of such persons breaches art.8 of the ECHR in the absence of exceptional circumstances.*

In relation to the *Omrawoo* case, Peart J was satisfied that the High Court erred in automatically equating student permission with settled migrant status, reiterating that:

> *the focus of the decision should not be whether a person here on a student permission, for however long, is or is not a 'settled migrant', but rather whether in the light of the facts and circumstances of the particular case such private life rights as are asserted are of such substance and significance for the applicant that their interference by deportation could be so grave as to engage Article 8, and therefore to require a proportionality assessment under Article 8(2).*

The court therefore allowed the Minister's appeal against the decision in *Omrawoo*, and also allowed the applicants' appeal against the decision in *Rughoonauth.* However, the court did not remit the application for leave to the High Court for any reconsideration, on the basis that there were no substantial grounds for considering that these applicants, on the facts asserted by them, had an entitlement to a proportionality assessment, and to remit the application in those circumstances would serve no useful purpose.

3.8.4 Visa delays for TCN family members of EU citizens

In *Mahmood v Minister for Justice* [2018] IECA 3 the Court of Appeal dealt with four joined appeals raising important questions concerning the interpretation and application of Directive 2004/38/EC ('the 2004 Directive'), namely, the time that may lawfully be taken by the Minister to determine applications for visas for non-national family members of EU citizens to join such EU citizens in the State. In each of these the appeals the first named applicant was an EU citizen who was living and working in the State and their third country spouse (or other family member) was based in one of three particular third countries, namely, Iraq, Pakistan and Afghanistan. The Minister maintained that by reason in particular of specific security considerations peculiar to these states and the surge in recent applications from those states, these visa applications could be processed speedily. The delays amount to at least a year and in some instances up to two years. The applicants contend that these delays amount to a breach of the requirements of art.5(2) of the 2004 Directive, which requires an accelerated procedure for this type of visa.

The High Court (Faherty J) held that the Minister had unlawfully delayed in determining the applicants' visa applications and directed the Minister to take a decision on the visa applications within six weeks of the perfection of the court's order ([2016] IEHC 600 and [2016] IEHC 691). The Minister appealed to the Court of Appeal, contending that the applicants were not entitled to invoke art.5(2); that the delays involved in processing or deciding upon these applications were not in any event unreasonable having regard to the necessity for background checks to ensure that any given application is not fraudulent or that the marriage amounts to a marriage of convenience; that the delays in processing or deciding upon these applications were not unreasonable by reason of the necessity to conduct

extensive background and security checks on persons coming from certain third countries because of particular concerns relating to security in these countries; and that the delays were also not unreasonable by reason of a sudden and unanticipated surge in such applications coming from certain third countries which were thought to present real security concerns.

The Court of Appeal was concerned lest the delays at issue in these proceedings went beyond that which was contemplated by art.5(2) of the 2004 Directive. While recognising the concerns of the Minister in relation to matters such as fraud, abuse of rights and marriages of convenience, it was noted that if the 2004 Directive permitted a Member State to delay processing a visa application for a period of a year or more this would have been expressly stated, whether in art.35 or elsewhere. The Court expressed the same concerns in relation to the necessity for extensive background checks in respect of persons coming from certain countries because of concerns relating to security and religious radicalisation concerns; if it had been intended that the necessity for such checks could take from the obligation for the timely processing of visa applications under art.5(2), on at least one view of the matter it was likely that this would have been provided for, whether in art.27(1) or elsewhere. The court also queried whether resource issues peculiar to one Member State can be allowed to derogate from the terms of art.5(2).

The court recognised that this was a case of very considerable importance concerning the practical implications and effects of key provisions of the 2004 Directive, as it had direct implications for over 4,000 cases currently being processed by the Minister's Department. It was also noted that both the question of the time periods contemplated by art.5(2) of the 2004 Directive and the possible justifications for the delay in processing these applications (especially concerns regarding fraud and the necessity for extensive security checks) had not yet been directly considered by the Court of Justice. In those circumstances, the court decided to refer the following questions to the Court of Justice pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU):

1. Subject to Questions 2, 3 and 4, is a Member State in breach of the requirement in Article 5(2) of Directive 2004/38/EC ('the 2004 Directive') to issue a visa as quickly as possible to the spouse and family members of a Union citizen exercising free movement rights in the Member State in question where the delays in processing such an application exceed 12 months or more?
2. Without prejudice to Question 1, is a Member State entitled to delay processing or otherwise deciding on an application for a visa pursuant to Article 5(2) by reason of the necessity to ensure in particular by way of background checks that the application is not fraudulent or that the marriage

amounts to a marriage of convenience, whether by virtue of Article 35 of the 2004 Directive or otherwise?

3. Without prejudice to Question 1, is a Member State entitled to delay processing or deciding on an application for a visa pursuant to Article 5(2) by reason of the necessity to conduct extensive background and security checks on persons coming from certain third countries because of specific concerns relating to security in respect of travellers coming from those third countries, whether by virtue of Article 35 of the 2004 Directive or otherwise?

4. Without prejudice to Question 1, is a Member State entitled to delay processing or deciding on an application for a visa pursuant to Article 5(2) by reason of a sudden and unanticipated surge in such applications coming from certain third countries which are thought to present real security concerns?

CHAPTER 4

International protection

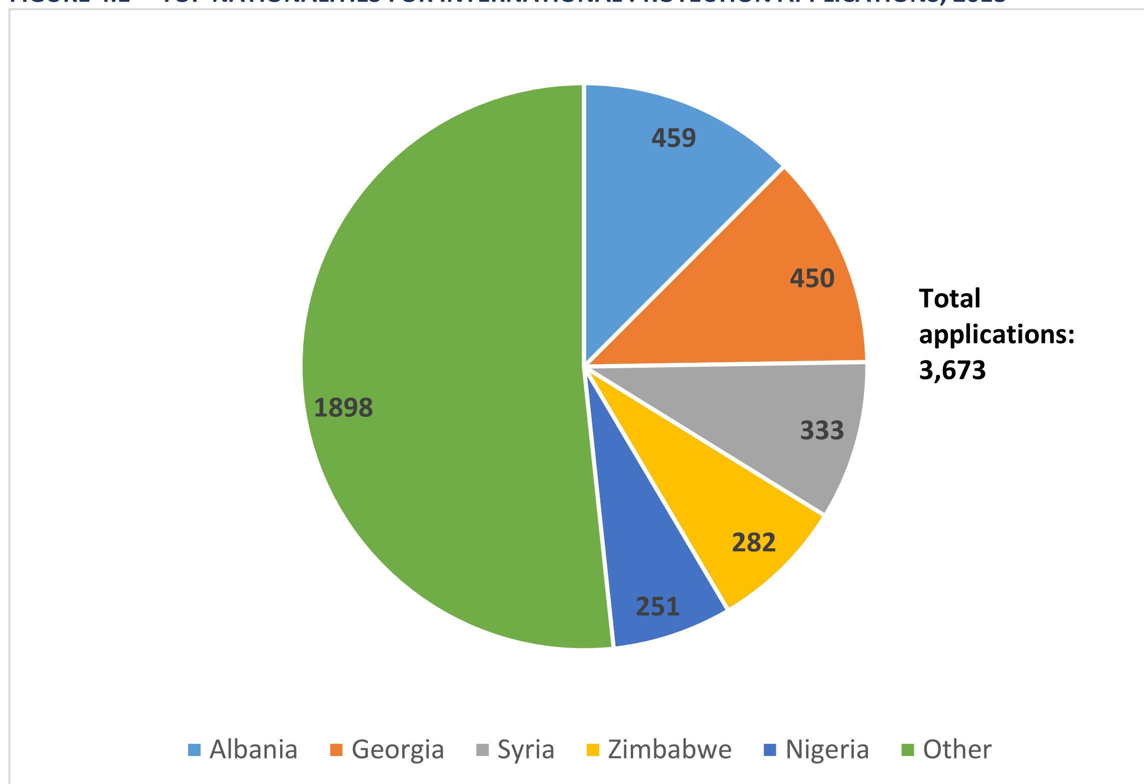
4.1 INTERNATIONAL PROTECTION STATISTICS

4.1.1 Protection applications

During 2018, a total of 3,673 applications for international protection status were submitted to the International Protection Office (IPO). These figures include relocation cases from Greece under the EU relocation programme. This was an increase of 25.5% over the 2,926 applications for refugee status submitted to the IPO in 2017. Ireland's applications accounted for 0.5% of the EU total of 647,165[181] applications in 2018.

As Figure 4.1 shows, the main countries of origin for applicants in 2018 were Albania (12.5%), Georgia (12.3%), Syria (9.1%), Zimbabwe (7.7%) and Nigeria (6.8%).

FIGURE 4.1 TOP NATIONALITIES FOR INTERNATIONAL PROTECTION APPLICATIONS, 2018



Source: International Protection Office statistics, December 2018.

181 Eurostat, Asylum and first-time asylum applicants by citizenship, age and sex, annual aggregated data (rounded) [migr_asyappctza], data extracted on 12 November 2019. Available at https://ec.europa.eu/eurostat.

Albania was the top nationality for international protection applications in 2018, with 459 applications. This was a substantial increase of 62.7% over the 2017 total of 282 protection applicants from Albania. The second highest nationality for protection applicants was Georgia, with 450 applications, rising by 49% from the 2017 total of 302. In 2016 there had been 75 applications from Georgian nationals. As in the previous two years, Syrian applicants were mostly relocation cases. Ireland finalised its relocation programme from Greece in 2018 (see section 4.4 for further detail). Applications made in Ireland by nationals of Zimbabwe and Nigeria accounted for 44% and 0.9% of the total EU applications for these nationalities respectively.[182]

As reported for 2017, in addition to new applications, the IPO inherited a significant backlog of over 3,500 cases to be processed under transitional provisions of the International Protection Act 2015. A further 500 cases transitioned in the months following commencement.[183] This included cases transferred from the former Refugee Appeals Tribunal (RAT) (more than 1,800 cases)[184] and refugee status and subsidiary protection cases transferred from the former Office of the Refugee Applications Commissioner (ORAC) (some 1,500 cases).[185] Some 5,660 cases were awaiting processing at the IPO at the end of the year. The IPO notes that:

> *All transition cases were scheduled for interview where it was possible to do so. The vast majority of legacy cases have now been processed to completion in the IPO, where possible to do so, and the concentration is now on post commencement 2015 Act single procedure cases. It should be noted that some legacy cases will continue to trickle into this legacy category as transition applicants who have not co-operated up to this point, re-engage with the process, come back into the process through judicial review etc.*[186]

The IPO processed some 3,091 cases in 2018.[187] IPO resources during 2018 were concentrated on scheduling and processing the backlog of legacy cases and prioritised cases (including unaccompanied minors, and cases from refugee-generating countries such as Syria).[188]

At the end of 2018, the IPO had 5,700 cases on hand. Of this total, more than more than 1,600 were either scheduled for interview or waiting for a recommendation

182 Ibid., data extracted on 29 July 2019.
183 Correspondence with International Protection Office, October 2019.
184 Correspondence with International Protection Appeals Tribunal, October 2019.
185 Department of Justice and Equality (19 December 2018) Response to Parliamentary Question 53871/18. Available at www.ipo.gov.ie.
186 Correspondence with International Protection Office, October 2019.
187 Dodd (2019a).
188 Department of Justice and Equality (19 December 2018) Response to Parliamentary Question 53871/18. Available at www.justice.ie.

or decision, and 1,500 were waiting to have an interview scheduled in the IPO.[189]

Subsidiary protection

In 2018, the IPO also received 22 applications for 'subsidiary protection' made under the European Union (Subsidiary Protection) Regulations 2017.[190]

4.1.2 Decisions on protection applications

Statistics reported to Eurostat by Ireland on asylum decisions are of first instance decisions made by the Minister for Justice and Equality pursuant to recommendations of the IPO, or final decisions made by the Minister following appeal decisions of the International Protection Appeals Tribunal (IPAT).[191] A total of 1,226 recommendations made by the IPO under the provisions of the International Protection Act 2015 were received by the Ministerial Decisions Unit (MDU) of the Department of Justice and Equality during 2018.[192]

The procedure that is followed by the MDU was set out in a parliamentary question response in June 2019:

> *An applicant for international protection is awarded international protection, whether refugee status or subsidiary protection status, upon a declaration of status being issued from the Ministerial Decisions Unit of the Irish Naturalisation and Immigration Service (INIS). This is done on foot of a grant recommendation from the International Protection Office (IPO) or a decision of the International Protection Appeals Tribunal (IPAT) to set aside a refusal recommendation of the IPO. The Ministerial Decisions Unit processes recommendations received from the International Protection Office and decisions of the International Protection Appeals Tribunal in chronological order based on the date the file is received in that Unit. Once the necessary due diligence has been carried out by the Ministerial Decisions Unit, a declaration of status will issue as soon as possible.*[193]

According to Eurostat (rounded) figures, Ireland made a total of 1,175 first instance decisions in 2018. This was an increase of almost 33% over the 2017 total of 885 decisions. Of the 1,005 positive first instance decisions in 2018, there were 630 grants of Geneva Convention status, 180 of subsidiary protection status and 195 of humanitarian status. Some 170 negative decisions were reported. Of the total

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189 Department of Justice and Equality (2019a), p. 37.

190 Ibid. See also Sheridan (2017) (print version), pp. 49–50 for further detail on these regulations.

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

192 Response to Parliamentary Question 19226/19. Available at www.justice.ie.

193 Response to Parliamentary Question 26415/19. Available at www.justice.ie.

Geneva Convention status decisions, 420 related to applicants with Syria as the country of citizenship.[194]

Some 85.5% of Ireland's total first instance decisions reported to Eurostat for 2018 were positive. Eurostat reported a total recognition rate of 85%, and a refugee and subsidiary protection status recognition rate of 69% at first instance for Ireland. Recognition rates for final decisions on appeal were 42% and 36% respectively. According to Eurostat figures, Ireland's first instance total recognition rate was the highest in the EU in 2018.[195]

The Irish Refugee Council (IRC), reporting for Ireland in the Asylum Information Database (AIDA) published by the European Council on Refugees and Exiles (ECRE), also reports on first instance recognition rates. The AIDA database reports the number of new applications made during 2018 and the number of outstanding applications pending at year end. The database reports 683 grants of refugee status and 200 grants of subsidiary protection status for 2018. The first instance recognition rates are calculated at 23% for refugee status and at 6.73% for subsidiary protection.[196] These figures are based on recommendations from the IPO, not Ministerial decisions.

In June and July 2019, the *Sunday Business Post* reported a disparity in the recognition rate calculated by the United Nations High Commissioner for Refugees (UNHCR) and the recognition rate derived from the official Eurostat statistics provided by Ireland. UNHCR collects statistics directly from the IPO on recommendations, which show that the actual recognition rate for 2018 was closer to 30% (23% refugee status and 7% subsidiary protection) than the 85% published by Eurostat.[197]

The Department of Justice and Equality clarified that:

> *the Department and the UNHCR work closely on asylum related matters. Applications for international protection are first considered by the International Protection Office (IPO), which makes a recommendation to the Minister as to whether the application should be granted. Where this recommendation is positive, a formal decision is then made by the Ministerial Decisions Unit (MDU) following a process of due diligence checks. Where the IPO recommendation is negative, the applicant can appeal to the International Protection Appeals Tribunal.*

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194 Eurostat – First instance decisions on applications by citizenship, age and sex. Annual aggregated data (rounded). Table migr_asydctsfa. Data extracted 29 July 2019. Available at https://ec.europa.eu/eurostat.

195 Eurostat, 2019.

196 Asylum Information Database (AIDA) Ireland 2018 update. Available at www.asylumineurope.org.

197 Dodd (2019a, 2019b). Also correspondence with UNHCR Ireland, October 2019.

The Ministerial Decisions Unit will only make negative decisions if an applicant chooses not to appeal the IPO recommendation, or after an applicant has exhausted the appeals mechanism, and where the original negative recommendation has been upheld.

Hence the statistics which Ireland is required to provide to Eurostat, which relate only to decisions issued on behalf of the Minister, will never be directly comparable to recommendations issued by the International Protection Office.[198]

4.1.3 Appeals

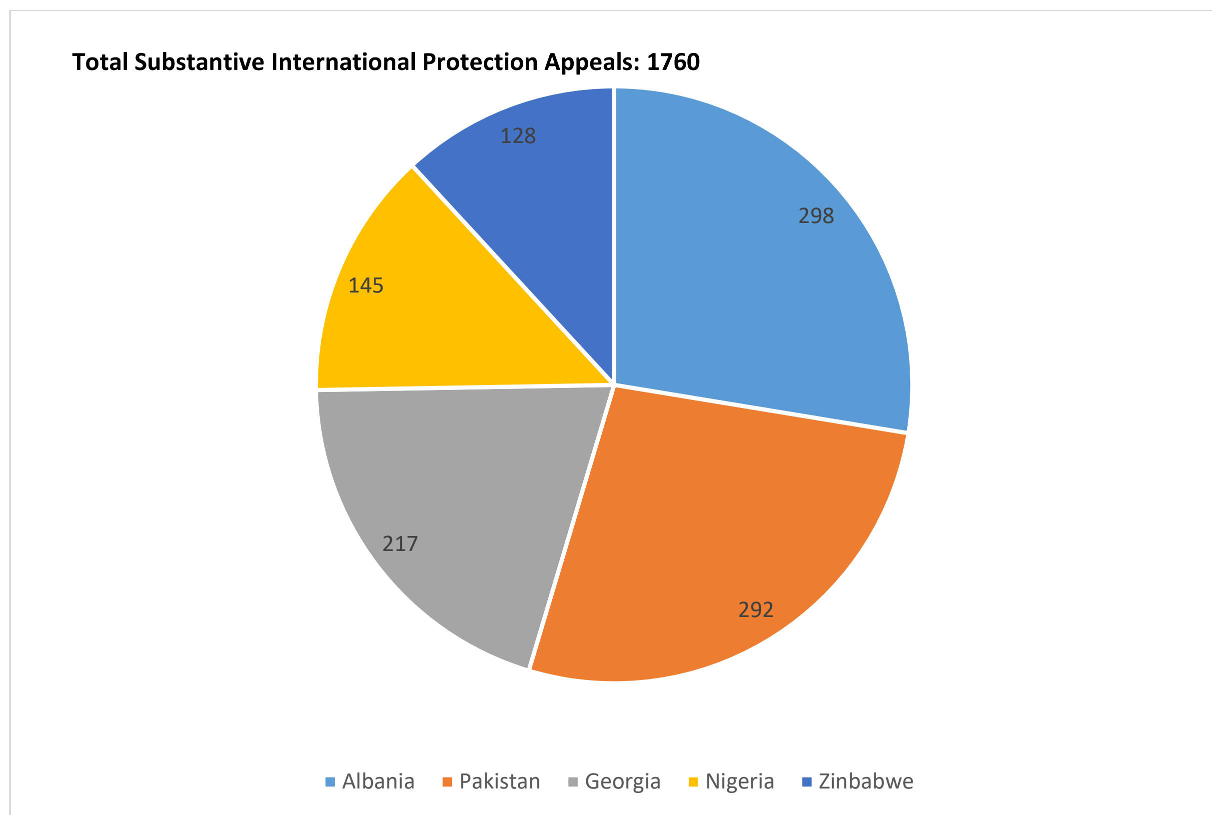
Throughout 2018, a total of 2,127 appeals in relation to international protection and the Dublin III Regulation were received by the IPAT.[199] This total includes substantive international protection appeals, legacy international protection appeals, inadmissibility and subsequent appeals and appeals under the Dublin III Regulation.[200] This contrasts with 887 new appeals in 2017, an increase of 140%.[201] Some 653 appeals were on hand at the beginning of 2018, and the year ended with 1,596 protection appeals pending.

The IPAT took on new appeal functions under the provisions of Regulation 21 of the Reception Conditions Regulations 2018, which give effect to the EU Reception Conditions Directive (2013/33/EU) in Irish law. Applicants may appeal decisions refusing to grant, to reduce or, in exceptional circumstances, to withdraw material reception conditions as well as decisions to refuse a labour market access permission to the IPAT. A total of 24 appeals were received under the Regulations, bringing the overall total appeals received by the IPAT in 2018 to 2,151.

As shown in Figure 4.2 below, the top five countries of origin for substantive international protection appeals[202] received by the IPAT during 2018 were Albania, Pakistan, Georgia, Nigeria and Zimbabwe. Albania and Georgia were not among the top five countries of origin for appellants in 2017.[203]

198 Correspondence with Department of Justice and Equality, Repatriation and Ministerial Decisions Unit, October 2019.
199 International Protection Appeals Tribunal (2019), p. 3.
200 Ibid., p. 35.
201 Sheridan (2018) (print version), p. 46.
202 Substantive international protection appeals, subsequent appeals and inadmissible appeals.
203 See Sheridan (2018) (print version), p. 46.

FIGURE 4.2 TOP FIVE NATIONALITIES OF APPELLANTS TO IPAT, 2018



Source: International Protection Appeals Tribunal Annual Report 2018[204]

Decisions were issued in 1,092 cases, an increase of 80% over the total of 606 decisions issued in 2017. The breakdown of decisions between the different types of appeals is set out in Table 4.1 below.

[204] International Protection Appeals Tribunal (2019), p. 52.

TABLE 4.1 BREAKDOWN OF DECISIONS ISSUED BY IPAT IN 2018

Substantive 'single procedure' international protection decisions issued	853
Refugee status decisions issued under the transitional provisions of the International Protection Act 2015	7
Total number of substantive international protection (subsidiary protection only) decisions issued	57
Total number of subsidiary protection decisions issued under the transitional provisions of the International Protection Act 2015	74
Total number of Dublin III Regulation decisions issued	23
Inadmissibility appeals decisions issued	9
Appeals against refusal to permit subsequent application decisions issued	46
Reception conditions appeals decisions issued	21
Legacy asylum appeals	2
TOTAL	1,092

Source: International Protection Appeals Tribunal (2019).[205]

The IPAT affirmed the first instance recommendation in 686 cases and set aside the first instance recommendation in 296 cases relating to international protection, subsidiary protection, subsequent appeals and inadmissible appeals. The total set asides – where the appellant's appeal was successful – came to 31% of the total decisions.[206]

Under the Dublin III Regulation, which establishes the criteria and mechanisms for determining the Member State responsible for examining an application for international protection, the IPAT affirmed the original recommendation in 18 out of a total of 23 cases. This was an affirmation rate – where the applicant's appeal was unsuccessful – of 78%.[207]

4.1.4 Permission to remain

Permission to remain under section 49 of the International Protection Act 2015 was granted by the Minister for Justice and Equality to a total of 237 persons in 2018.[208]

205 Ibid., pp. 45–49.
206 Ibid., p. 55.
207 Ibid.
208 Correspondence with International Protection Office, October 2019.

4.1.5 Transfers under the Dublin Regulation

Under the Dublin III Regulation, a total of 780 requests were received by Ireland under the outgoing procedure ('take back'),[209] and a total of 22 applicants for international protection were transferred under the Dublin III Regulation to the EU country in which they had first made an application during 2018.[210] There were 311 requests to Ireland under the incoming procedure ('take charge') and a total of 34 persons were transferred to Ireland.[211] At the end of 2018, there were 80 cases under the Dublin Regulation under consideration at the IPO.[212]

4.1.6 Family reunification statistics

During 2018, some 331 valid family reunification applications were received under the International Protection Act 2015 in respect of 432 subjects. Some 211 subjects were approved; however, some of these may relate to applications made in previous years. The top five nationalities of subjects accepted were: Syria, Afghanistan, Zimbabwe, Pakistan, and Nigeria.[213]

4.1.7 Judicial review

During 2018, 530 judicial review applications were submitted to the High Court on the 'asylum list', a small increase over the 497 applications in 2017. It should be noted that cases on the asylum list include not only asylum-related cases but also judicial review against Ministerial decisions in other immigration matters – for example, naturalisation, EU Treaty rights and family reunification. Some 130 judicial reviews on this list were resolved by the High Court in 2018, with 332 cases settled out of court. Orders were made by the court in a total of 1,239 cases.[214]

The Court of Appeal received 38 new asylum list appeals during the year, with 26 cases pending from the beginning of 2018. Some 20 cases were determined in court during the year and eight were withdrawn out of court. The Court of Appeal also had 32 asylum list 'Article 64'[215] appeals pending before it which had been transferred from the Supreme Court.[216]

As reported for 2017, initiatives had been made by the Courts Service to reduce waiting times in the High Court asylum list.[217] Waiting times continued to improve

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209 Asylum Information Database: AIDA 2018 Update: Ireland. Available at www.irishrefugeecouncil.ie.
210 Correspondence with Repatriation Unit, Irish Naturalisation and Immigration Service, September 2019.
211 Asylum Information Database: AIDA 2018 Update: Ireland. Available at www.irishrefugeecouncil.ie.
212 Department of Justice and Equality (2019a), p. 37.
213 Correspondence with Family Reunification Unit, Irish Naturalisation and Immigration Service, September 2019.
214 Courts Service of Ireland (2019), p. 57.
215 These cases had been initiated before the Supreme Court prior to the establishment of the Court of Appeal on 28 October 2014 but had not yet been fully or partly heard prior to the Court of Appeal establishment date and were transferred to the Court of Appeal for determination. These cases are known as Article 64 cases.
216 Courts Service of Ireland (2019), pp. 94–95.
217 Sheridan (2018) (print version), pp. 48–49.

in 2018. The waiting time was eliminated at the pre-leave application stage for asylum list cases (from one week in 2017), and there was a reduction to two months waiting time at the post-leave stage (from four months in 2017).[218]

A Practice Direction for the Asylum, Immigration and Citizenship list was published on 17 December 2018 and entered into force from 1 January 2019.[219] Commentary on the practice direction from early 2019 will be discussed in the 2019 report of this series.

As reported for 2016, it was decided, with the agreement of the Department of Justice and Equality, that the IPAT, because it is *functus officio* following the issue of its decision, would no longer participate in judicial reviews from the commencement of the International Protection Act 2015, save in exceptional circumstances where allegations of *mala fides* are made or where Tribunal procedures are being challenged. The IPAT reported that once the cases on hand are dealt with, it will not be dealing with future judicial reviews.[220] However, the IPAT does liaise with the Legal Services Support Unit (LSSU) of the Department of Justice and Equality, the Chief State Solicitor's Office and the Attorney General in relation to judicial reviews where it is named as a respondent, to provide relevant information and observations.[221]

At the start of 2018, the IPAT had 40 active judicial reviews on hand, as compared to 146 at the start of 2017.[222] The LSSU of the Department of Justice and Equality had approximately 240 judicial reviews on hand with the Tribunal named as a respondent at the end of 2018.[223]

At the end of 2018, the IPAT had 33 active judicial reviews on hand, of which 26 were awaiting a court outcome.[224]

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218 Ibid., p. 109.
219 Practice Direction HC81- Asylum, Immigration and Citizenship list. Available at: www.courts.ie.
220 Sheridan (2017) (print version), p. 49 and correspondence with International Protection Appeals Tribunal, October 2019.
221 International Protection Appeals Tribunal (2019), p. 20.
222 Responsibility for 65 of the 146 cases in 2017 was transferred to the Department of Justice and Equality LSSU in the first quarter of 2017. International Protection Appeals Tribunal (2019), p. 21.
223 Ibid., p. 21.
224 Ibid.

4.2 LEGISLATIVE, ADMINISTRATIVE AND INSTITUTIONAL DEVELOPMENTS

4.2.1 Legislative developments

Regulations transposing the Reception Conditions Directive (2013/33/EU) in Ireland

The Minister for Justice and Equality signed the European Communities (Reception Conditions) Regulations 2018[225] into effect from 30 June 2018. The Regulations, which transpose the EU (recast) Reception Conditions Directive into Irish law, set out the reception conditions available to applicants for International Protection including: access to the labour market, education, healthcare, material reception conditions – housing, food, clothing, and a daily expenses allowance. The Regulations provide for the reduction or withdrawal of the daily expenses and for the applicant to contribute towards the cost of providing material reception conditions where they are working and have sufficient means, in line with the Directive. Applicants may also appeal decisions refusing to grant, to reduce or in exceptional circumstances to withdraw material reception conditions as well as decisions to refuse a labour market access permission. These appeals are made to the IPAT.

Under the Regulations, protection applicants have access to the labour market nine months from the date when their protection application was lodged, if they have not yet received a first instance recommendation from the IPO, and if they have co-operated with the process. Access is by way of a labour market access permission issued by the Minister for Justice and Equality. The permission is valid for a period of six months and may be renewable if the applicant has not received a final decision on their protection application. Eligible applicants have access to self-employment as well as all sectors of employment, with the exception of the Civil and Public Service, An Garda Síochána and the Irish Defence Forces.[226]

From 9 February 2018, an interim measure had applied, pending the completion of Ireland's opt-in to the Reception Conditions Directive, whereby protection applicants could apply for an employment permit from the Department of Business, Enterprise and Innovation (see Section 4.3.1 for further detail). From the introduction of the Regulations in June 2018, applicants were no longer eligible to apply for an employment permit.[227]

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225 S.I. No. 230 of 2018.

226 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, INIS Policy Division, December 2018.

227 Ibid.

The IRC and the ECRE hosted a conference on the scope of Directive 2013/EU and seeking to inform its implementation in Ireland via the Regulations, in March 2018. The conference included speakers from academia (Vrie Universiteit Amsterdam, University College Dublin, NUI Galway), the European Migration Network, and civil society, including ECRE, IRC and Nasc. The IRC published a submission along with the conference, advocating a rights-based approach to implementation of the Directive.[228]

New regulations relating to safe countries of origin

A revised safe country of origin list was introduced in April 2018 via the International Protection Act 2015 (Safe Countries of Origin) Order 2018.[229] The Minister for Justice and Equality has the power to designate safe countries of origin under section 72 of the International Protection Act 2015. Applications from applicants from a safe country may be subject to a shorter deadline to lodge an appeal and may have their appeal decided without an oral hearing in accordance with section 43 of the Act. The IPAT can arrange an oral hearing for such cases if the Tribunal member feels it is in the interests of justice under section 42(1)(b) of the Act. Section 33 of the Act provides that a designated safe country shall only be considered to be a safe country of origin for the purposes of assessment of the protection application if it is the applicant’s country of origin and the applicant does not submit any serious grounds for considering that the country is not a safe country of origin in his/her particular circumstances.

The following countries are designated as safe countries of origin under the Order: Albania; Bosnia and Herzegovina; Former Yugoslav Republic of Macedonia; Georgia; Kosovo; Montenegro; Serbia; and South Africa. This Order came into effect on 16 April 2018.

The IPO published an Addendum to the Information Booklet for Applicants and advised applicants of the following practical effects of the Order:

> *If you are an applicant for international protection in the State from one of these countries, your application will have a full consideration on its merits in the International Protection Office (IPO).*
>
> *However, the following situation will apply for the purposes of its assessment:*
>
> *(i) Your application for international protection may be prioritised for interview;*

228 Irish Refugee Council (2018a).
229 S.I. No. 121 of 2018.

> *(ii) Your country will be considered to be a safe country of origin in relation to your application where you do not submit any serious grounds for considering the country not to be a safe country of origin in your particular circumstances and in terms of your eligibility for international protection.*
>
> *(iii) If the recommendation of an International Protection Officer is that you should be given neither a refugee declaration nor a subsidiary protection declaration, the finding that you are from a safe country of origin may be included in the section 39 Report of the examination of your application.*
>
> *(iv) Where such a finding is made, any appeal lodged by you to the International Protection Appeals Tribunal (IPAT) must be made by notice in writing within 10 working days from the date of the sending of the notification of the recommendation by the Minister.*
>
> *(v) Unless the IPAT considers it is not in the interests of justice to do so, it shall make its decision in relation to the appeal without holding an oral hearing.*[230]

Dublin System Regulations

The European Union (Dublin System) Regulations 2018[231] came into effect on 6 March 2018. The Regulations give further effect to Regulation (EU) 604/2013 (the Dublin III Regulation) in Ireland and revoke the previous European Union (Dublin System) Regulations 2014[232] and the European Union (Dublin System) (Amendment) Regulations 2016.[233]

Regulation 3 of the 2018 Regulations designates the performance of the various functions under the Dublin Regulation as between the IPO and the Minister for Justice and Equality. Regulation 4 provides for the conduct of the personal interview in accordance with article 5 of the Dublin III Regulation, and expressly permits delegation of this function to a person who has entered into a contract for services. Regulation 5 deals with notification of transfer decisions, regulation 6 provides for appeals against transfer decisions while regulation 7 provides for requests for permission to bring a late appeal. Regulation 8 provides for suspension of implementation of transfer decisions pending the outcome of an appeal. Regulation 9 deals with withdrawal and deemed withdrawal of appeals. Regulation 10 sets out the procedure for transfer of an applicant to the Member State deemed

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230 International Protection Office (20 April 2018), 'Addendum no. 2 to the information booklet for applicants for international protection (IPO 1)'. Available at www.ipo.gov.ie.

231 S.I. No. 62 of 2018.

232 S.I. No. 525 of 2014.

233 S.I. No. 140 of 2016.

responsible for the application, including the power to make directions and if necessary detain the applicant for a period of up to seven days.

Regulations 11 to 16 deal with particular categories of persons such as persons to whom article 18 of the Dublin Regulation applies, and certain persons taken back under the Dublin Regulation. Regulation 17 provides that the chief international protection officer shall be independent in the exercise of his or her functions under the Regulations, with similar provisions applicable to international protection officers generally (regulation 18) and the IPAT (regulation 19). Regulation 20 governs the service of notices under the Regulations, while regulation 21 provides for the prioritisation of applications and appeals. Regulation 22 provides that the 2014 Regulations and 2016 Regulations are revoked, subject to the transitional provisions set out in Regulation 23.[234]

4.2.2 Administrative developments

Processing times for international protection applications and appeals

The waiting time for a non-prioritised application for international protection to reach the initial interview stage at the International Protection Office (IPO) continued to be of concern in 2018. The Minister for Justice and Equality said, in January 2018, that it was estimated it would take 19 months for a non-prioritised application made in January 2018 to reach interview.[235] In 2016, the waiting time for an initial interview had been 16 weeks.[236] Waiting times for substantive interview for non-prioritised applications made in December 2018 were significantly reduced to approximately 8-10 months.[237]

The prioritisation procedure relating to the scheduling of interviews for certain categories of international protection applications, which had been introduced in February 2017, continued during 2018. These prioritised categories included applications that are well founded, from certain vulnerable groups (unaccompanied minors; applicants aged over 70 not part of a family group) and applicants from certain well-founded countries of origin or habitual residence such as Syria. Waiting times for prioritised interviews are considerably shorter.[238] In respect of a prioritised application made in December 2018, the waiting time to substantive interview is approximately four months.[239]

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234 Analysis provided by EMN Ireland Legal Consultant, February 2019.

235 Department of Justice and Equality (30 January 2018), Response to Parliamentary Questions 3928/18, 3929/18, 3930/18. Available at www.justice.ie.

236 Sheridan (2017) (online version), p. 53.

237 Correspondence with International Protection Office, October 2019.

238 Ibid.

239 Ibid.

The IPO's target is to issue a recommendation within eight weeks of the interview, depending on the complexity of the case.[240]

As in previous years, commentators continued to express concerns about the delays in decision making in the system. UNHCR considered delays in decision making to be the basis of other problems in the system, particularly in the reception system.[241]

In a parliamentary question response in June 2018, the Minister for Justice and Equality referred to some of the factors that had led to the increased waiting time for non-prioritised applications, including: the transitional caseload from prior to the introduction of the International Protection Act 2015, the increase in new applications in both 2017 and 2018, and the new streamlined single procedure, which is more comprehensive and time-consuming for the individual caseworker, even while leading to overall economies of scale. The Minister commented:

> *It is recognised that currently many applicants for international protection are waiting longer than they should for their first instance interviews in the IPO and to have their cases decided. While the structural causes of delays have been removed with the commencement of the International Protection Act 2015, the main challenge now faced is the need to quickly eradicate the substantial number of cases carried over from the previous system. As I indicated, these challenges are being addressed by deploying increased resources and a continual assessment and reform of the use of those resources and, having due regard to the requirements of the International Protection Act 2015.*[242]

The impact of an increased caseload on the IPAT was also raised during the year. The Minister for Justice and Equality said that the reverting of categories of cases from the IPAT to the IPO 'has added significantly to the IPO's caseload, but has freed up the restructured and resourced Appeals Tribunal process considerably'.[243] However, in its 2017 Annual Report, the IPAT emphasised that it needed to be adequately equipped for an expected increase in caseload.[244]

As already noted in Section 4.1, there was a large increase in the caseload of the IPAT in 2018. The number of appeals received by the IPAT increased by 140%. The IPAT also took on a new role in relation to appeals under the Reception Conditions

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240 Department of Justice and Equality (7 March 2019), Response to Parliamentary Question 11447/19. Available at www.justice.ie.

241 O'Neill (2018); Nasc (2018a); Irish Refugee Council (2018b).

242 Department of Justice and Equality (12 June 2018), Response to Parliamentary Question 25425/18. Available at www.justice.ie.

243 Department of Justice and Equality (30 January 2018), Response to Parliamentary Questions 3928/18, 3929/18 and 3930/18. Available at www.justice.ie.

244 Sheridan (2017) (print version), p. 54.

Regulations 2018. The number of hearings scheduled by the IPAT increased by 181% in 2018 over 2017, and the number of decisions issued increased by 80%. The IPAT stated in its *2018 Annual Report* that:

> *It is likely that the caseload of the Tribunal will continue to rise over the coming period and it is imperative that the Tribunal is equipped, both with regard to staffing numbers and the availability of Tribunal members who are trained and experienced in the efficient delivery of high quality determinations of international protection appeals.*[245]

The average time for the IPAT to process substantive international protection and transition appeals to it in 2018 was 154 days.[246] In 2017, the average length of time taken to process all categories of appeals, including legacy asylum appeals, was 133 days. The IPAT noted various factors that impacted on this processing time, including the fact that many members remained in training during the year, and staff shortages. The IPAT set an objective for 2019 that the average processing time for an appeal that requires an oral hearing would be 70 working days.[247]

Guidelines of Chairperson of the IPAT

Section 63(2) of the International Protection Act 2015 provides that the Chairperson of the IPAT may issue the members with guidelines on the practical application and operation of the Act, and on legal developments in relation to international protection. In addition, section 63(3) provides that the Chairperson may issue guidelines to the Registrar in relation to the assignment of appeals.

The following guidelines were published during 2018:

- Chairperson's Guidelines 2018/1: Compelling Grounds
- Chairperson's Guidelines 2018/2: Adjournments and Postponements of Appeal Hearings
- Chairperson's Guidelines 2018/3: Witnesses.[248]

These guidelines are available on the IPAT website.

Quality audit system in the IPAT

The IPAT introduced a quality audit system in 2018 analysing its own decisions, those of the Irish Superior Courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights. The quarterly quality audit allows the

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245 International Protection Appeals Tribunal (2019), pp. 9–10.
246 Ibid., p. 50.
247 Ibid., pp. 50–51. Also correspondence with International Protection Appeals Tribunal, October 2019.
248 International Protection Appeals Tribunal (2019), p. 13.

IPAT to 'identify and address training needs of Tribunal members, highlight and remedy procedural issues arising and further increase efficiencies in the delivery of decisions by Tribunal members'.[249,250]

General Data Protection Regulation

The General Data Protection Regulation entered into force on 25 May 2018. The IPO published a privacy notice in July 2018 outlining arrangements around its processing of personal data, covering purpose; legal bases; sharing of personal data with certain entities; data security; retention; and rights of access, rectification and erasure. The privacy notice superseded the information on data protection contained in the Information Booklet for Applicants for International Protection (IPO 1).[251]

4.2.3 Institutional developments

Appointments to IPO Case Processing Panel

A competition was held during 2018 for further appointments to the IPO Case Processing Panel of Legal Graduates. It was decided to further expand the panel in order to support the INIS and the IPO to carry out their functions to optimum effect and to assist in the reduction of caseloads.

The functions of panel members, in relation to the protection process, include:

- carrying out interviews with applicants for international protection under the International Protection Act, 2015 and undertaking specified follow-up functions in this regard;
- interviewing applicants for subsidiary protection under the European Union (Subsidiary Protection) Regulations, 2013 (and any amendments thereto) and undertaking specified follow-up functions in this regard;
- representing the Minister via the IPO at appeal hearings in respect of applications for international protection, subsidiary protection and transfer decisions under the EU Dublin III Regulation at the IPAT.[252]

The issue of whether the previous Refugee Applications Commissioner or Chief International Protection Officer had the authority to delegate functions to case processing panel members was raised in the case *IG v Refugee Applications*

249 Ibid., p. 10.
250 There is also an ongoing quality initiative between UNHCR and the IPO since 2011. Correspondence with UNHCR Ireland, October 2019.
251 General Data Protection Regulation – Privacy Notice – IPO (PP) 52 Rev 1. Available at www.ipo.gov.ie.
252 Department of Justice and Equality (May 2018), 'Case processing panel: recruitment of additional members'. Available at www.inis.gov.ie and www.ipo.gov.ie.

Commissioner {2018] IESC 25 (see Section 4.8 for case summary), and also in a number of other challenges.

The Supreme Court proceedings related solely to the issue of leave. When this was granted by the Supreme Court, the *IG* proceedings were remitted to the High Court for a substantive hearing.

The High Court *IX* proceedings dealt with the issue of the use of the panel members under the Refugee Act 1996. The *NY* proceedings dealt with the use of the panel members under the International Protection Act 2015. While the proceedings were distinct and separate, an all-encompassing judgment was delivered by the High Court.[253]

The cases were subsequently heard by the High Court and dismissed in January 2019.[254]

Appointments to the IPAT

Having served as interim Chairperson since April 2017,[255] the Chairperson of the IPAT was appointed in January 2018, following an open competition under the Public Service Management (Recruitment and Appointment) Act 2004, and a second Deputy Chairperson was appointed in March 2018, also following open competition. These appointments are for a period of five years. In September 2018, three whole-time members of the Tribunal were appointed for a period of three years following open competition. The remaining part-time members are appointed for a term of three years on a contract for services.

Membership of the IPAT stood at 71 members (including the Chairperson, Deputy Chairpersons and three whole-time members) at the end of 2018.[256]

4.3 RECEPTION

4.3.1 Right to work for international protection applicants

As reported for 2017, a landmark judgment was made by the Irish Supreme Court on 30 May 2017 in the case *NVH v Minister for Justice and Equality*.[257] This case concerned a challenge by an asylum seeker against the ban in Irish law on access

253 Correspondence with International Protection Office, October 2019.

254 IX v The International Protection Office & anor; XX v The International Protection Office & anor; FX v The International Protection Office & anor; NY v Chief International Protection Officer & anor: JZ v Chief International Protection Officer & anor [2019] IEHC 21.

255 S.62(8) International Protection Act 2015.

256 International Protection Appeals Tribunal (2019), pp. 24–25.

257 NVH v Minister for Justice and Equality [2017] IESC 35.

to the labour market for asylum seekers in the Refugee Act 1996 and re-enacted in the International Protection Act 2015.[258]

The judgment found that the absolute prohibition on the right to work – in circumstances where there is no temporal limit on the asylum process – was contrary to the constitutional right to seek employment. The Supreme Court adjourned the form of Order to be made for six months in order to allow the Government and legislature to consider a response.

Following a Government decision in July 2017, an Inter-Departmental Taskforce was established to examine the implications of the judgment and to propose solutions.

The Taskforce recommended to Government that the best option available to the State was to opt into the EU (recast) Reception Conditions Directive (2013/33/EU), and the Government decided for Ireland to exercise its discretion to participate in Directive 2013/33/EU under Protocol 21 of the Treaty of Lisbon, on 22 November 2017.

In order to opt in to the Directive, a motion of approval was required to be passed by both Houses of the Oireachtas, and formal approval by the European Commission of Ireland's application to participate in the Directive was required. The motion of approval was debated and passed by the Oireachtas in January 2018.[259]

Interim scheme for access to the labour market from 9 February 2018 to 30 June 2018

On 9 February 2018, the Supreme Court struck down the prohibition under Section 16(3)(b) of the International Protection Act 2015, which prevents international protection applicants from entering the labour market or engaging in self-employment.

On this date, the State had not yet completed the opt-in procedure to the EU Directive. Therefore, it was necessary to introduce a temporary interim measure for access to the labour market from 9 February 2018 until the date of entry into force in the State of the EU (recast) Reception Conditions (30 June 2018).

Under this interim scheme, international protection applicants were eligible to access the labour market in two ways:

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[258] Sheridan (2018) (print version), pp. 57–58.

[259] Dáil Debates (23 January 2018), *Reception Conditions Directive: Motion.* Available at www.kildarestreet.com.

- All applicants were eligible to apply to the Department of Business, Enterprise and Innovation for an employment permit under the Employment Permits Act 2003, as amended. The normal fee and conditions of employment (including the permitted sectors of employment) applied as for all other TCNs.

- The Minister for Justice and Equality introduced an administrative scheme under discretionary powers to provide eligible international protection applicants with permission to be self-employed. To be eligible for this scheme an applicant must have been waiting on a first instance recommendation on their protection application for nine months or more and have co-operated with the process. A permission under this scheme was valid for a period of six months, which was renewable if the applicant was still awaiting a final decision on their protection application.[260]

The interim scheme was heavily criticised by civil society organisations. According to the IRC, not one employment permit application had been successful.[261]

Access to the labour market from 30 June 2018

The European Communities (Reception Conditions) Regulations 2018 (see also Section 4.2.1) came into effect from 30 June 2018, and the European Commission approved Ireland's participation in Directive 2013/33/EU.

Under the Regulations, protection applicants have access to the labour market nine months from the date when their protection application was lodged, if they have not yet received a first instance recommendation from the IPO, and if they have co-operated with the process. Access is by way of a labour market access permission issued by the Minister for Justice and Equality. The permission is valid for a period of six months and may be renewable if the applicant has not received a final decision on their protection application. Eligible applicants have access to self-employment as well as all sectors of employment, with the exception of the Civil and Public Service, An Garda Síochána and the Irish Defence Forces (which are only open to EEA and Irish nationals). The Regulations provide for the reduction or withdrawal of the daily expenses and for the applicant to contribute towards the cost of providing material reception conditions where they are working and have sufficient means, in line with the Directive.

From 30 June 2018, protection applicants were no longer eligible to apply for employment permits.[262]

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260 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, INIS Policy Division, December 2018.

261 Irish Refugee Council (2018b).

262 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, INIS Policy Division, December 2018.

By the end of 2018, a total of 2,889 applications for labour market access permissions had been received and 1,965 were approved.[263]

The introduction of the Regulations was broadly welcomed by commentators. The Irish Human Rights and Equality Commission (IHREC) said:

> *The Commission welcomes the opening of almost all sectors of employment to eligible applicants for international protection, which is key to providing meaningful opportunities to take up work around the country. It also welcomes the waiving of any fee, and the removal of any minimum salary threshold, when applying for permission to access the labour market. The new scheme also provides for access to vocational training for asylum seekers, which has been another key recommendation of the Commission. These measures go a long way to reducing barriers to meaningful access to the labour market for applicants for international protection.*[264]

However, concerns were expressed about the provisions to reduce or withdraw the daily expenses allowance for persons working,[265] and the limiting of eligibility to persons who have waited for more than nine months for a first instance decision.[266] UNHCR Ireland also welcomed the development, noting that access to work would help ease the stress for applicants waiting for long periods in the system, but reiterated its position that overall processing times for international protection applications needed to be reduced.[267]

4.3.2 Reception conditions

Reception capacity

Pressure on accommodation supply for protection applicants continued to pose a challenge during 2018. According to statistics published by the Reception and Integration Agency (RIA) of the Department of Justice and Equality in November 2018, the accommodation portfolio of RIA consisted of a total of 39 accommodation centres with a contracted capacity of 6,007, and five temporary emergency accommodation centres.[268] The centres were one reception centre located in Dublin, 37 accommodation centres throughout the country, one self-catering centre and five emergency accommodation centres that are not RIA centres. At end of 2018, capacity in RIA centres was 6,135 spaces with an

263 Department of Justice and Equality (2019a), p. 40.
264 Irish Human Rights and Equality Commission (2018b).
265 Irish Refugee Council (2018b); Irish Human Rights and Equality Commission (2018b).
266 Irish Refugee Council (2018b).
267 UNHCR (2018a).
268 Temporary accommodation centres are not subject to contracted capacity.

occupancy of 6,115.[269] The IRC has noted that the reception system reached its 10% buffer of spare capacity in April 2017, and capacity has been reducing since.[270] Commentators, including UNHCR and the IRC, remarked that the root cause of the capacity issues in the reception system remained the delays faced by protection applicants in Ireland.[271]

A particular challenge that affected pressure in accommodation supply for new arrivals was the number of persons with international protection status or persons granted permission to remain who stay on in centres for some time after they have been granted status while they source accommodation in the community. In a parliamentary question answer from December 2018, the Minister for Justice and Equality said that:

> *some 12% of the people currently residing in the accommodation centres provided by RIA, over 700 people, have permission to remain in Ireland. […..] Where an individual or family has permission to remain in Ireland, they can access the mainstream housing supports and services on the same basis as nationals/EEA nationals. Considerable work continues to be done to support residents with status to move out of accommodation centres and to secure permanent accommodation in the community. Funding under the Asylum, Migration and Integration Fund (AMIF) was awarded to a number of NGOs specifically to assist and support residents with international protection status to move out of accommodation centres and to source longer term accommodation.*[272]

Some organisations that have received support from the Department of Justice and Equality are the Jesuit Refugee Service and the Peter McVerry Trust under the Asylum, Migration and Integration Fund Ireland 2017–2019 for the PATHS project (Providing Asylum-seekers in Transition with Housing and Support). In addition, funding has been granted to South Dublin County Partnership for a two- year housing and integration programme, a key part of which is to assist residents who have their status to access housing supports.[273]

The IRC reported in its *2018 Impact Report* that it had sourced accommodation for over 70 people who would otherwise be in direct provision or homeless, as part of its housing programme A Place to Call Home.[274] The housing project aims to

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269 Correspondence with International Protection Accommodation Services, Department of Justice and Equality, October 2019.
270 Irish Refugee Council (2018c).
271 O'Neill (2018); Irish Refugee Council (2018b).
272 Department of Justice and Equality (19 December 2018), Response to Parliamentary Questions 53867/18 to 53869/18. Available at www.justice.ie.
273 Department of Justice and Equality (17 October 2018), Response to Parliamentary Question 42437/18. Available at www.justice.ie.
274 Irish Refugee Council (2018d).

provide direct support and accommodation, including in donated premises, and this aspect of this project is supported by the United Dioceses of Dublin and Glendalough, the Association of Leaders of Missionaries and Religious in Ireland, members of the public and the St Stephen's Green Trust. The project also provides support with more general housing queries, and support to people attempting to source rental accommodation. This aspect of the project is co-financed under the 2014–2020 AMIF and supported by the Department of Justice and Equality.[275]

Procurement of further accommodation premises

During 2018, RIA advertised for expressions of interest for suitable accommodation premises.[276] Offers of accommodation were assessed against the criteria of availability, standard of property, ability to provide communal social spaces for residents, ability to cater at mealtimes and proximity to various required services. The Department of Justice and Equality conducted on-site assessments of the premises offered to decide on their suitability.[277]

One such proposed centre was in Moville, Co. Donegal. Parliamentary questions were asked regarding the proposed centre in relation to adequate consultation with the local community[278] and the remote location of the centre. This could make travel to Dublin for international protection appointments difficult – the most direct route being through Northern Ireland.[279] The Department of Justice and Equality acknowledged that it would not be possible for protection applicants to travel through Northern Ireland and put in place an arrangement for comfort and overnight breaks for travellers in an accommodation centre in Sligo.[280]

However, the opening of the proposed centre in Moville was subject to delays due to an arson attack in November 2018, some weeks before the first group of asylum seekers were due to arrive. The Minister for Justice and Equality condemned the arson attack, saying:

> *I want to take this opportunity to reiterate my condemnation of that attack. Until a full assessment of the damage has been carried out, the Department won't be able to decide on the impact of any delay that may arise from this incident. A full investigation is underway to determine the*

275 See 'A Place to Call Home – IRC Housing Project' on www.irishrefugeecouncil.ie.

276 Department of Justice and Equality (26 September 2018), Response to Parliamentary Question 39043/18. Available at www.justice.ie.

277 Department of Justice and Equality (4 December 2018), Response to Parliamentary Question 50200/18. Available at www.justice.ie.

278 Department of Justice and Equality (4 December 2018), Parliamentary Question 50200/18. Available at www.justice.ie

279 Department of Justice and Equality (20 November 2018), Parliamentary Question 48238/18. Available at www.justice.ie.

280 Ibid.

> *cause of the events that took place there and the level of any damage caused.*
>
> *Following that review, matters will be reassessed as necessary. We remain committed to working with the local community to ensure that the best possible support is provided to those seeking international protection. And indeed I was encouraged by the response of the community in Moville to the fire, which was very tangible evidence of the welcome shown by people in Donegal and all over Ireland to international protection applicants.*[281]

Emergency accommodation

The pressure on accommodation supply led to the use of emergency accommodation for newly arrived applicants from late 2018. In September 2018, the IRC raised concerns that no beds were available for some new applicants arriving in the country, estimating that at least 20 persons were informed that no bed was available over one weekend in September 2018.[282] There was also media attention on the issue.[283] From September 2018, RIA arranged for emergency beds on a temporary basis where mainstream accommodation was at capacity. As of 9 December 2018, three hotels were being used in this capacity with a total occupancy of 199 persons.[284]

Daily Expenses Allowance

In October 2018, as part of Budget 2019, the Government announced that the Daily Expenses Allowance (formerly called a Direct Provision Allowance) weekly rate would increase to €29.80 for children and €38.80 for adults (from week beginning 25 March 2019).[285] This brings the allowance up to the level recommended by the McMahon Report on *Improvements to the Protection Process including direct provision and supports to asylum seekers,* published in 2015.[286]

Access to education

The pilot scheme to provide access to student supports for school leavers in the protection system (other than those at the deportation order stage) was once again extended for the academic year 2018/2019. The scheme opened for applications on 7 September 2018.[287] However, it was again criticised by the IRC for the restrictiveness of the eligibility criteria, and for being announced late in

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281 Department of Justice and Equality (27 November 2018), Response to Parliamentary Question 49265/18. Available at www.justice.ie.

282 Irish Refugee Council (2018c).

283 Pollak (2018).

284 Department of Justice and Equality (11 December 2018) Response to Parliamentary Question 51945/18. Available at www.justice.ie.

285 Citizens Information (24 October 2018), ‘Budget 2019’. Available at www.citizensinformation.ie.

286 Working Group on the Protection Process (2015), recommendation 5.30. Available at www.justice.ie.

287 Department of Education and Skills (2018).

2018 (a month later than in 2017).[288] The IRC called for a revision of eligibility criteria:

> *In particular the Irish Refugee Council is calling on the Government to reduce the residency requirement from five years to three, as well as reducing the requirement for time spent in the school system from five years to two, reflecting the Leaving Certificate cycle. Not only would this widen the pool of eligible applicants, it would bring the support scheme in line with the SUSI residency requirement of three years. It will mean that more people who have worked hard and received their Leaving Certificates here will have a chance to move forward in their education alongside their classmates.*[289]

The University of Limerick (UL) and Dublin City University (DCU) marked World Refugee Day on 20 June 2018 by announcing refugee scholarships for 2018/2019.[290] UL offered 15 four-year undergraduate scholarships from September 2018. UL had offered 15 one-year Mature Student Access Certificate (MSAC) scholarships in 2017,[291] and ten of those students applied for undergraduate courses in 2018. DCU announced 30 refugee scholarships in partnership with FutureLearn, an online learning platform worldwide. These scholarships offered refugees access to online courses, and the opportunity to complete degrees online via DCU Connected.[292]

Complaints made to Ombudsman from residents of accommodation centres

As reported for 2017, complaints from residents of direct provision centres could be accepted by the Ombudsman and Ombudsman for Children offices from 3 April 2017. The Ombudsman received a total of 152 complaints from people living in direct provision accommodation in 2018, up from 97 in 2017. The *Annual Report* states:

> *Of these complaints, 60 were about the Reception and Integration Agency (RIA), 39 related to the accommodation centres, 18 were about the Irish Refugee Protection Programme (IRPP) and one about an Emergency Reception and Orientation Centre (EROC). The remaining 34 complaints received from people living in direct provision accommodation were about public service providers not directly related to direct provision such as the*

288 Sheridan (2018) (print version), p. 61.
289 Irish Refugee Council (2018e).
290 Halloran (2018).
291 See Sheridan (2018) (print version), p. 61.
292 Halloran (2018).

> *Department of Employment Affairs and Social Protection, the health sector and other bodies.*[293]

Staff from the Office of the Ombudsman visited 26 accommodation centres in 2018. They noted higher levels of dissatisfaction at newer centres than at more established centres, but did not notice any great difference in the level of facilities available in the newer centres. The Ombudsman noted: 'It could be that the higher levels of reported dissatisfaction and complaint numbers are simply linked to residents taking time to adjust to new surroundings and a communal living environment.'[294] Ombudsman's Office staff also noted some improvements in cooking facilities and the roll-out of food halls in the centres visited, and the positive impact of the right to work.[295]

The Ombudsman also published in 2019 an extended commentary on the complaints received in 2018 about direct provision accommodation.[296]

4.3.3 Draft national standards for direct provision centres

As reported for 2017, the *Report to Government on Improvements to the Protection Process, Including Direct Provision and Supports for Asylum Seekers* (the McMahon Report) recommended that a standard-setting committee be established to reflect Government policy across all areas of service in direct provision, as well as an inspectorate independent of the RIA to monitor the standards set.

On 3 February 2017, the Standards Advisory Committee was convened to develop a draft standards document. The membership of the group included representatives of the Departments of Justice and Equality and Children and Youth Affairs, the HSE National Office for Social Inclusion, AkiDwa, the Children's Rights Alliance, Core Group of Asylum Seekers and Refugees, Jesuit Refugee Service, Nasc, Spirasi and UNHCR. The National Standards were developed within three interconnected strands, Governance, Accommodation and People, each prepared by a Working Group. Members of the Standards Advisory Group met regularly at plenary meetings to input and advise on all aspects of the National Standards. [297] The IRC did not participate in the Working Group due to staffing constraints at the time and also because it was of the view that the process would be better led by an independent body.[298]

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293 Office of the Ombudsman (2019a), pp. 12–13.
294 Ibid., p. 14.
295 Ibid.
296 Office of the Ombudsman (2019b).
297 Sheridan (2018) (print version), pp. 62–63.
298 Irish Refugee Council (2018f).

The draft National Standards were issued for public consultation in August 2018. When launching the consultation process, the Department of Justice and Equality noted:

> *The draft National Standards are intended to meet the criteria set out in both EASO Guidance on Reception Conditions: Operational Standards and Indicators and Directive 2013/33/EU (the recast Reception Conditions Directive). As drafted, they have taken cognisance of the responsibility to promote equality, prevent discrimination and protect the human rights of residents, employees, customers and everyone affected by policies and plans as defined by public sector equality and human rights duty (s.42 Irish Human Rights and Equality Act 2014).*[299]

The draft Standards were structured around ten themes, each including binding standards and indicators of how a service provider could meet that standard. The ten themes were:

- Governance, accountability and leadership
- Responsive workforce
- Contingency planning and emergency preparedness
- Accommodation
- Food, catering and cooking facilities
- Person-centred care and support
- Individual, family and community life
- Safeguarding and protection
- Health, wellbeing and development
- Identification, assessment and response to special needs.

The draft standards also set out steps for 'meaningful engagement with the national standards'. These would include: a guide for residents; incorporation of the standards as contractual obligations in service provider contracts to ensure compliance; establishment of an independent inspectorate to monitor compliance with the standards; a specified review period and other measures to ensure necessary amendments to the standards; and inclusion of a chart setting out existing complaints mechanisms for residents in the finalised standards.[300]

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299 Department of Justice and Equality (2018h).
300 Department of Justice and Equality (2018i), pp. 1–5.

UNHCR Ireland, which had been involved in the drafting process, welcomed the publication of the draft standards. UNHCR called on the government to move forward with creating an independent inspectorate for accommodation centres, as recommended in the 2015 McMahon Report. Such an inspectorate could encourage more organisations, including not-for profit organisations, to engage in the tendering process. It was noted that Ireland is unusual among EU Member States in not having not-for-profit organisations operating accommodation centres for asylum seekers.[301]

The consultation process was completed at the end of October 2018. The consultations included residents' meetings and submissions from a number of national bodies and individuals as well as consultation with those seeking to deliver accommodation and those expert in a variety of fields including groups working with refugees.[302]

The IRC expressed several concerns in its submission on the draft standards.[303] In particular, it argued that the standards would place a significant burden on service providers, and that some would be unwilling or unqualified to bring current direct provision centres up to these standards. It also noted some specific concerns throughout the submission, including emphasising the need for an independent inspectorate, and better definition of indicators to measure the performance of service providers.[304]

According to the IRC, a fundamental problem with the system is the outsourcing of accommodation to private sector actors, and a challenge for the future is to source non-profit actors who would consider providing accommodation. It noted that it has begun work in this area. The IRC also noted that the standards did not refer to certain elements that would provide an alternative to the current direct provision system. It considered that the following elements needed to be developed:

- increased delivery of support and services by non-profit housing organisations that are expert in this area;
- the location of accommodation in areas that are close to support services, communities and amenities;
- Reduced waiting times for the processing of applications for international protection;

301 UNHCR (2018b).
302 Department of Justice and Equality (20 December 2018), Response to Parliamentary Question 48038/18. Available at www.justice.ie.
303 Irish Refugee Council (2018f).
304 Ibid., pp. 3–5.

- Increased legal aid to support a person's initial application for asylum to reduce over-reliance on the appeals process;
- A broader access to the right to work and education for people seeking asylum;
- Integration services and strategies that apply to people from the point at which they make their asylum claim, not just when they receive status.[305]

4.4 RELOCATION AND RESETTLEMENT

4.4.1 Irish Refugee Protection Programme

As reported for previous years, in September 2015 the Irish Government established the Irish Refugee Protection Programme (IRPP). Under the Programme, Ireland agreed to accept up to 4,000 asylum seekers and refugees overall into Ireland under relocation and resettlement programmes at the earliest time possible.

Ireland voluntarily opted into two EU decisions on Relocation – Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015.[306]

Table 4.3 shows a breakdown of arrivals under the relocation and resettlement strands of the IRPP from 2015 to 2018.

TABLE 4.2 ARRIVALS UNDER RELOCATION AND RESETTLEMENT STRANDS OF THE IRPP 2015–2018

	Relocation arrivals			Resettlement arrivals		
Year	Adults	Minors	Total	Adults	Minors	Total
2015				73	90	163
2016	132	108	240	167	189	356
2017	283	232	515	123	150	273
2018	137	130	267	159	179	338
TOTAL	552	470	1022	522	608	1130

Source: Sheridan (2018); Department of Justice and Equality, IRPP, 2019.

305 Ibid., p. 3.
306 Sheridan (2018) (print version), pp. 64–65.

Relocation

Ireland admitted a total of 267 persons under the EU relocation programme in 2018.[307] Some 515 persons had been admitted in 2017, and 240 in 2016.[308] All of the persons admitted under the relocation strand were assisted by the International Organization for Migration (IOM), the UN Migration Agency, from Greece.

The relocation strand of the IRPP concluded in March 2018, with the final arrivals from Greece under the programme on 23 March 2018. In total, Ireland relocated 1,022 persons from Greece under the relocation strand of the IRPP.[309]

The Ministers at the Department of Justice and Equality expressed appreciation to the wide range of State organisations and other organisations, including from the NGO sector, that had contributed to the implementation of the relocation programme. According to the Department of Justice and Equality:

> *The Ministers thanked the staff of the IRPP, the International Protection Office (IPO) and An Garda Síochána for their work in bringing this part of the IRPP to a successful conclusion. These agencies have met and interviewed the relocation applicants in Athens and IPO staff have liaised with the Greek authorities and international bodies in relation to their travel to Ireland. The IPO will also be processing their applications for international protection. The Ministers also expressed their appreciation to all organisations involved in the delivery of the IRPP, those represented on the National Taskforce and all those in the voluntary, civil society and NGO sector who are working hard to welcome and make a better life for those resettling in Ireland under the IRPP.*[310]

A total of 2,622 persons was originally envisaged under the relocation strand of the IRPP – 1,089 from Greece, 623 from Italy and 910 who remained unallocated by the European Commission. As the expected number did not become available for relocation, Ireland addressed the balance of approximately 1,800 places in the IRPP by additional resettlement commitments for 2018 and 2019 and the introduction of a new Irish Humanitarian Assistance Programme (IHAP) for family members announced in November 2017 (see Section 4.4.3).[311]

As reported in previous years, Ireland's relocation programme was focused on Greece, as there were difficulties between the Irish and Italian authorities relating

307 Correspondence with Department of Justice and Equality, IRPP, July 2019.
308 Sheridan (2018) (print version), p. 65.
309 Department of Justice and Equality (2018j).
310 Ibid.
311 Sheridan (2018) (print version), p. 66.

to security assessments on Italian soil by An Garda Síochána of applicants for relocation.[312]

On 5 December 2018, the Oireachtas Committee on Justice and Equality considered a motion for Ireland to opt in under Protocol 21 to the Treaty of Lisbon to a revision of the AMIF 2014–2020 (EU Regulation 516/2014). The AMIF had allocated a sum of €843 million for use by the Member States by the end of 2018 for implementation of the EU relocation programmes from Greece and Italy and the legal admission of persons in need of international protection from Turkey. Due to these programmes not reaching their original targets, a large proportion of this funding allocation (€567 million) remained unspent. The amendment to the Regulation was required in order for this money not be lost from the AMIF. As Ireland was unable to participate in relocation from Italy due to difficulties in relation to security assessments, some €4.14 million of the funding allocated for relocation in its AMIF programme remained unspent. The opt-in was necessary in order for Ireland to continue to be able to benefit from this money in relation to AMIF programme activities.[313] Ireland notified the European Commission by letter of 7 December 2018 of its wish to participate in the amended Regulation EU 2018/2000.[314]

Resettlement

A total of 338 persons were resettled to Ireland, with the assistance of IOM, under the UNHCR resettlement programme in 2018.[315]

The Minister for Justice and Equality announced resettlement commitments of 600 for 2018 and 600 in 2019, as part of the European Commission/UNHCR pledging exercise for 2018 and 2019. These commitments are to be met within the overall total of 4,000 persons under the IRPP. The commitment of 600 for 2018 included the balance of Ireland's total commitment of 1,040 under the resettlement strand of the IRPP for the period 2015–2017. Thus, the additional commitment was for 345 refugees in 2018 and 600 in 2019.[316]

There were calls for the Government to consider focusing on additional nationalities to Syria, Iraq and Eritrea during the Joint Committee on Justice and Equality debate on 5 December 2018. It was asked if Afghans and Kurds could also

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312 Ibid., p. 65.

313 Joint Committee on Justice and Equality, 'EU Asylum Migration and Integration Fund', 5 December 2018. Available at www.oireachtas.ie.

314 Regulation (EU) 2018/2000 of the European Parliament and of the Council of 12 December 2018 amending Regulation (EU) No 516/2014 of the European Parliament and of the Council, as regards the recommitment of the remaining amounts committed to support the implementation of Council Decisions (EU) 2015/1523 and (EU) 2015/1601 or the allocation of those amounts to other actions under the national programmes – Recital 13.

315 Correspondence with Department of Justice and Equality, IRPP, July 2019.

316 Sheridan (2018) (print version), pp. 66–67.

be offered help under Ireland's national programme. The Minister of State noted that Syrians and Eritreans were the nationalities most in need at the time of inception of the EU programmes. However, he also noted that the European Commission could seek pledges from Member States in the near future in relation to other countries.[317]

Distribution of migrants rescued in the Mediterranean during 2018

Ireland responded positively to requests for assistance from Malta and Italy regarding the distribution of migrants rescued in the Mediterranean during the summer of 2018.

MV Lifeline – Malta

Ireland agreed to relocate 25 migrants from the MV *Lifeline* disembarked in Malta. In total, Ireland relocated 26 migrants including four unaccompanied minors. All 26 migrants have arrived in Ireland with the assistance of the IOM, the UN Migration Agency.

MV Aquarius – Pozzallo, Italy

Sixteen migrants who were disembarked in Italy following search and rescue operations in the Mediterranean arrived in Ireland on 7 November 2018 with the assistance of the IOM, and entered the international protection system.

Diciotti – Italian Coastguard vessel

Ireland also agreed to relocate migrants from the *Diciotti* (Italian Coastguard vessel). Ireland was the only EU Member State to make such an offer. Sixteen migrants arrived in Ireland on 20 December 2018, with the assistance of the IOM, and entered the international protection system.[318]

4.4.2 Emergency Reception and Orientation Centres

As reported for 2016, among the measures agreed under the IRPP was the establishment of Emergency Reception and Orientation Centres (EROCs) which are used to provide initial accommodation for asylum seekers relocated from Greece while their applications for international protection status are processed. EROCs are also used to provide temporary initial housing for refugees arriving under the resettlement element of the IRPP. The two streams are accommodated separately.

The facilities and services provide include onsite education, health and social

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[317] Joint Committee on Justice and Equality (5 December 2018), 'EU Asylum, Migration and Integration Fund'. Available at www.oireachtas.ie.

[318] Correspondence with Department of Justice and Equality, INIS Policy Division, December 2018, and International Protection Office, October 2019.

protection services, orientation classes and IRPP clinics.[319]

The Office of the Ombudsman received 18 complaints from residents of Emergency Reception and Orientation Centres (EROCs) during 2018. Some 17 of the complaints related to delays in access to housing. The Ombudsman noted that all the 17 complainants were subsequently housed or received what he considered to be 'reasonable offers of housing'.[320]

The Ombudsman reported that the practice of allocating a family or resident to a particular local authority who would take care of their housing needs had given rise to particular frustration, as some local authorities could deliver housing more quickly, leading to perceptions of unfairness among residents. The system was subsequently changed in late 2018 to a system whereby residents are matched on a 'first come, first served' basis in whatever local authority housing becomes available.

The Ombudsman acknowledged that delays in provision of housing should be seen as part of the larger picture of pressure on housing supply in Ireland generally. However, complaints received also referred to lack of information regarding residents' individual cases. The IRPP put in place measures to record more information on individual cases, and the Ombudsman reported that he was now satisfied that residents were being kept up to date.[321]

A parliamentary question response from November 2018 stated that 1,690 refugees – Syrian, Palestinian and Iraqi – had been housed by local authorities and the Irish Red Cross, under the IRPP. Almost 85% of refugees who had arrived under the programme had been housed at that point.[322] This issue was raised again in the Joint Committee on Justice and Equality in December 2018. On that occasion, the Minister of State commented:

> *The number I gave in reply to the parliamentary question on housing was correct. I visited some Syrians in Donegal two weeks ago who were being rehoused and they are happy with how they are being rehoused. They also have a settlement worker who stays with them for 18 months and assists them with the reintegration process. Learning English is a major issue and while children learn English quickly, adults, especially men, find it more difficult and challenging. The resettlement workers help them and there are classes in the ETBs in 19 counties. The housing programme is going*

[319] Sheridan (2017) (online version), p. 49.
[320] Office of the Ombudsman (2019b), p. 14.
[321] Ibid., pp. 14–15.
[322] Department of Justice and Equality (29 November 2018), Response to Parliamentary Question 49977/18. Available at www.justice.ie.

well in respect of the programme refugees and the people we bring in from Greece.[323]

4.4.3 IHAP

As reported for 2017, the Minister for Justice and Equality announced an IRPP Humanitarian Admissions Programme (IHAP) to be met from the existing commitment of 4,000 persons under the IRPP in November 2017.[324]

The first call for applications under the IHAP opened on 14 May 2018 and remained open until 30 June 2018. The programme provides for up to 530 eligible family members ('beneficiaries') of Irish citizens, persons with Convention refugee or subsidiary protection status and persons with programme refugee status (the 'proposer') to be admitted to Ireland over two years. In deciding the eligible countries of nationality for consideration under the IHAP, the Department of Justice and Equality chose the top ten major source countries of refugees set out in UNHCR's Annual Global Trends Report. During the first and second calls for the IHAP programme those countries were: Syria, Afghanistan, South Sudan, Somalia, Sudan, the Democratic Republic of Congo, Central African Republic, Myanmar, Eritrea and Burundi.[325] The second call for applications was launched on 20 December 2018 and ended on 8 February 2019.

The eligible categories of beneficiary under IHAP are:

- **the proposer's adult child** (who must be unmarried and without dependants);
- **the proposer's minor child** (where the minor child is not eligible for reunification with a sponsor under the terms of the International Protection Act 2015 – the minor child must be unmarried and without dependants);
- **the proposer's parent** (where not eligible for reunification with a sponsor under the terms of the International Protection Act 2015);
- **the proposer's grandparent**;
- **a related minor child without parents for whom the proposer has parental responsibility** (the related minor child must be unmarried and without dependants) (e.g. orphaned niece/nephew/grandchild, sibling);
- **a vulnerable close family member who does not have a spouse/partner or other close relative to support them**;

323 ETB: Education and Training Board. Joint Committee on Justice and Equality (5 December 2018), 'EU Asylum Migration and Integration Fund'. Available at www.oireachtas.ie.
324 Sheridan (2018), print version, p. 69.
325 Department of Justice and Equality (2018e); correspondence with UNHCR Ireland, October 2019.

- **the proposer's spouse or civil partner as recognised under Irish law** (where not eligible for reunification with a sponsor under the terms of the International Protection Act 2015) or **the proposer's de facto spouse**.

Due to pressure on housing supply in Ireland, proposers who can show they can provide accommodation for family members will be prioritised.[326] The Irish Refugee Council (IRC) notes that housing had to be of a particular standard and the landlord had to agree to it. In their experience, this has been a barrier to applications.[327]

On 21 December 2018, the Minister and Minister of State at the Department of Justice and Equality announced the first approvals under the scheme. An initial group of 80 beneficiaries were approved from the first call for proposals. The countries represented were: Syria, Afghanistan, Sudan, Democratic Republic of Congo, Somalia and Eritrea.[328]

4.5 FAMILY REUNIFICATION

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

As reported in previous years, concerns were expressed by non-governmental commentators about the revised rules for family reunification introduced by the International Protection Act 2015. Under the new legislation, the definition of a family member covers spouses, civil partners, children (under 18) of the sponsor and parents/siblings of the sponsor (if sponsor and siblings are under age 18). Other dependent family members can make applications for family reunification under the terms of the INIS *Policy Document on non-EEA Family Reunification.* Family members outside the scope of the International Protection Act 2015 are eligible to make applications under the IHAP if within the criteria as discussed in Section 4.4.3 above.

The International Protection (Family Reunification) (Amendment) Bill 2017 was initiated as a private members' bill in Seanad Éireann in July 2017. The Bill proposed changes to the International Protection Act 2015 to reinstate the discretionary power of the Minister for Justice and Equality, which had been provided for under section 18(4) of the Refugee Act 1996, to allow dependent family members, other

326 Department of Justice and Equality (2018m).
327 Correspondence with Irish Refugee Council, October 2019.
328 Department of Justice and Equality (2018n).

than immediate family members, to enter the State. It also proposed to remove the 12-month time limit on family reunification applications.[329]

The Government was defeated in the vote on the Bill at Committee Stage in Seanad Éireann in November 2017.[330]

The Bill was initiated in Dáil Éireann in December 2018. In presenting the Bill, Deputy Clare Daly emphasised that the Bill proposed went further than the opportunities for family reunification available via the IHAP under the IRPP, which are limited to particular countries and operate under the Minister's discretionary power. The Bill as initiated in Dail Éireann provided for a definition of eligible family member to include dependent grandparent, parent, brother, sister, child, grandchild, ward or guardian of the sponsor, and reinstated section 18(4) of the Refugee Act 1996 while removing the discretionary decision-making element for the Minister.[331]

In response, the Minister of State at the Department of Justice and Equality reiterated that the Government is committed to family reunification but opposed to the provisions of the Bill for several reasons. The fundamental objection was that, the discretionary element of the former section 18(4) would be replaced by an open-ended right to family reunification for extended family members, and that the State would be legally obliged: 'to reserve resources for unquantifiable numbers of potential applicants with future rights instead of directing available resources to those in greatest humanitarian distress today'.[332] The Minister of State elaborated on the resource implications of such a legal obligation and stated that these were such that, if a money message[333] were deemed to be required by the Ceann Comhairle, the Government would decline it for passage of this Bill.

He also noted that discretion in relation to family reunification applications is retained in the *INIS Policy Document on non-EEA family reunification*, which enables the Minister to take a flexible approach to humanitarian cases. He emphasised the importance of such flexibility, stating:

> *The Bill fails to recognise that the discretionary permission under the 1996 Act has not been abandoned. The Minister proactively applies this*

329 Sheridan (2018) (print version), p. 70.

330 Seanad Éireann, Committee Stage Debate, 8 November 2017. Available at www.beta.oireachtas.ie.

331 The Bill replaces sections 56(8) and 56(9) of the International Protection Act 2015. It provides for an expanded definition of 'member of the family' which would fall under the scope of sections 56 and 57 of the International Protection Act.

332 Dáil Éireann (6 December 2018), International Protection (Family Reunification) (Amendment) Bill 2017 [Seanad]: Second Stage [Private Members]. Available at www.beta.oireachtas.ie.

333 Money message: a recommendation from the Government, signed by the Taoiseach, supporting the expenditure of public moneys proposed by a Private Members' Bill (PMB). Glossary of Parliamentary Terms. Available at www.oireachtas.ie.

> *provision under the Irish Naturalisation and Immigration Service, INIS, non-EEA policy document on family reunification. Where appropriate, the Minister will waive the economic conditions for sponsors on humanitarian grounds. This practice will continue. This form of discretion continues to be the most flexible tool available to the Minister to allow the State to respond to humanitarian cases when and as they occur. It is impossible to predict in law every scenario that may need to be considered, and ministerial discretion allows the broadest possible humanitarian consideration for such changing and volatile situations facing those fleeing conflict. I urge Deputies not to reduce the impact of such considerations.*[334]

The Bill was referred to the Select Committee on Justice and Equality on 13 December 2018.

Nasc reiterated its support and that of other NGOs (IRC and Oxfam Ireland) to the Bill, and urged individuals to write to their local representatives asking for a vote in support of the Bill in the Dáil.[335]

4.6 COMMUNITY SPONSORSHIP

As reported for 2017, proposals for community sponsorship models in relation to refugee resettlement were examined and discussed by Government and NGOs during 2017. A pilot community sponsorship project was jointly developed in Wicklow Town by Nasc, the Migrant and Refugee Rights Centre and Wicklow Syrian Appeal. Nasc worked closely with community group Wicklow Syria Appeal to provide housing and other integration supports such as education, language and community supports to a Syrian refugee family, to arrive through refugee family reunification, in a project spanning over two years. The aim of the pilot project was to provide a template for the introduction of a national community sponsorship programme.

In June 2018, the Syrian family arrived in Wicklow. The family of nine was made up of a couple and seven of their children who had been living in Lebanon since 2013. They came to Ireland to be reunited with their eldest daughter who had arrived in Ireland two years with her husband and children under the IRPP.[336]

In October 2017, the Minister for State at the Department of Justice and Equality had indicated that the IRPP was willing to work with NGOs interested in developing

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334 Dáil Éireann (6 December 2018), International Protection (Family Reunification) (Amendment) Bill 2018 [Seanad]: Second Stage [Private Members]. Available at www.beta.oireachtas.ie.

335 Nasc (2018b).

336 Nasc (2018c).

a community sponsorship model. He further indicated that he expected progress towards this goal during 2018.[337]

Ireland made a joint statement supporting community sponsorship programmes with Canada, the United Kingdom, Argentina, Spain and New Zealand prior to the adoption of the United Nations Global Compact on Refugees at the United Nations General Assembly in July 2018. The Declaration stated:

> *Community-based refugee sponsorship allows individuals, communities, and organisations to directly engage in refugee resettlement efforts. In partnership with government, sponsors commit to providing financial, emotional, and integration support to help newly-arrived refugees adapt to life in a new country.*

In welcoming the statement, the Minister of State said:

> *Ireland, in partnership with UNHCR, has a long-standing programme of refugee resettlement. The addition of community sponsorship as a further durable solution will enhance the capacity of societies to respond effectively to the resettlement and integration needs of refugees through a partnership approach between states, civil society, the private sector and, most importantly, local communities. We look forward to working collaboratively with colleagues in Canada, the UK and elsewhere to make this approach a shared reality.*[338]

In December 2018, a Syrian family was welcomed to Dunshaughlin, Co. Meath, with the support of Nasc and local community organisers. This was the first family to be resettled to Ireland under Community Sponsorship Ireland, which was launched by the Minister of State at the Department of Justice and Equality on 6 March 2019.[339]

4.7 RESEARCH

The IRC continued to participate in the ECRE Asylum Information Database (AIDA) in 2018. The IRC prepared a 2017 update to the Country Report for Ireland which included information up to 31 December 2018, where available.[340] The Country Reports provide a detailed overview of all aspects of a country's asylum system – covering statistics, legislation, the application procedure, due process, reception conditions and the content of international protection. The 2018 report covered developments such as Ireland's participation in the EU Reception Conditions

337 Sheridan (2018) (print version), pp. 71–72.
338 Department of Justice and Equality (2018o).
339 Department of Justice and Equality (2019c).
340 European Council for Refugees and Exiles (2019).

Directive (2013/33/EU) and the ongoing problems with capacity in accommodation centres.

The European Migration Network (EMN Ireland) published *Ireland's Response to Recent Trends in International Protection Applications* in June 2018.[341] This study was the Irish contribution to the EMN Study *Changing Influx of Asylum Seekers 2014–2016.*[342] It looked at Ireland's response to trends in international protection applications over the period 2014–2016. While Ireland did not experience the same level of flows of displaced persons as other countries did over this period, there were increases in the number of international protection applications received in Ireland. The study examined the operational, legislative and policy changes that took place in Ireland over those years, some of which were a direct response to the wider EU refugee and migrant crisis as well as to national increases and decreases in protection applications.

In March 2018, the IRC, Nasc and Oxfam Ireland released the report *A Family Belongs Together – Refugees' Experience of Family Reunification in Ireland*.[343] This report was authored by Róisín Hinds on behalf of the IRC, Nasc and Oxfam Ireland. It was based on nine interviews with refugees now living in Ireland from Syria, Central African Republic, Ethiopia, Sudan and West Africa, and one interview with a resettlement worker.[344] The report concluded that family reunification is an essential aspect of integration for the refugee. Its primary recommendation was that the International Protection Act 2015 be amended along the lines of the Family Reunification (Amendment) Bill 2017 (discussed at Section 4.5 above) to allow for an extended right to family reunification on a statutory basis. It also called for legal aid to be available for persons seeking family reunion from the Legal Aid Board; waiving income requirements for persons with international protection applying via the non-EEA policy document on family reunification; and a statutory right of appeal for family reunification applications refused under the International Protection Act 2015.[345]

In December 2018, Nasc, in association with the Centre for Justice and Human Rights, University College Cork, published a series of essays from some of the speakers and participants at the conference *Beyond McMahon – the future of asylum reception* held in University College Cork in April 2018.[346] The compilation included contributions on the future of asylum reception in Ireland; international

341 Arnold et al. (2018).
342 European Migration Network (2018a).
343 Hinds (2018).
344 Ibid., p. 3. Irish Refugee Council (2018g).
345 Hinds (2018), p. 18.
346 Nasc (2018d).

perspectives from Scotland and Portugal; and alternative models for asylum reception in Ireland, including a not-for-profit model.[347]

4.8 CASE LAW

4.8.1 IG v Refugee Applications Commissioner [2018] IESC 25

The applicants were an Albanian mother and her two daughters whose applications for asylum were refused by the Refugee Applications Commissioner. They subsequently brought judicial review proceedings challenging the manner in which their applications had been processed by the Refugee Applications Commissioner, arising from the fact that the Commissioner had established a 'case processing panel of legal graduates' to perform 'case processing' in relation to applications for asylum and subsidiary protection. The applicants complained that the Refugee Act 1996 did not provide for delegation of the Commissioner's powers in this manner.

The High Court (Humphreys J) refused to grant leave to seek judicial review in respect of this issue, despite the fact that another High Court judge (MacEochaidh J) had previously granted leave on the point in a number of other cases. The applicants appealed against the refusal to grant leave.

The Supreme Court held that the High Court (Humphreys J) had erred in deciding that the appellants had not established substantial grounds for their applications for leave to apply for judicial review. It was also held that in the circumstances of this case the High Court judge erred in not following the decisions of MacEochaidh J to grant leave on the same issue where there was no apparent basis for him to come to a different view. The Supreme Court was satisfied that the issue of whether the Refugee Applications Commissioner was entitled to delegate the performance of certain functions to case processing panel members raised substantial grounds and that the matter should be remitted to the High Court for full hearing.

Note: This case was subsequently heard by the High Court and dismissed in January 2019.

4.8.2 HN v International Protections Appeals Tribunal [2018] IECA 102

The applicant was an Afghan national who applied for asylum in the State. A Eurodac search subsequently revealed that he had previously applied for asylum in the United Kingdom and the Refugee Applications Commissioner subsequently made a decision to transfer the applicant to the United Kingdom pursuant to the

[347] Nasc and Centre for Criminal Justice and Human Rights (2018).

Dublin III Regulation. The applicant appealed this decision to the IPAT, which dismissed his appeal. The applicant then brought judicial review proceedings challenging the decision of the IPAT. The High Court (O'Regan J) granted leave on a number of grounds but refused leave on two specific issues, namely (i) whether the IPAT was entitled to exercise the discretion conferred by Article 17 of the Dublin III Regulation (which permits a Member State to examine an application for international protection even if that Member State is not the responsible state under the Dublin III Regulation) and (ii) whether the IPAT was entitled to have regard to the potential impact of Article 8 of the European Convention on Human Rights (ECHR) in deciding whether or not to set aside the transfer order. The IPAT held that these were matters for the Minister to decide, not the Tribunal.

The applicant appealed to the Court of Appeal against the refusal to grant leave on those two issues. During the course of the appeal the court was informed that upwards of 100 cases were pending in the High Court in which these particular issues had been raised.

Hogan J delivered the judgment of the Court of Appeal, holding that it was at least arguable in the light of the decision of the Court of Justice of the European Union in Case C-578/16 PPU *CK v Republika Slovenija* EU:C:2017:127 that the IPAT was in fact required to consider exercising the Article 17 discretion. Accordingly, the Court of Appeal granted leave to seek judicial review on the following ground:

The respondent Tribunal erred in law by ruling that it had no jurisdiction to exercise the jurisdiction conferred by Article 17(1) of the Dublin III Regulation and by failing to consider the consequences for the applicant's mental health of physically transporting him from Ireland to the United Kingdom and all the significant and permanent consequences that might furthermore arise from such a transfer.

4.8.3 MIF v International Protection Appeals Tribunal [2018] IECA 36

The applicant was a Pakistani national who applied for asylum in the State. A Eurodac search subsequently revealed that he had previously resided in the United Kingdom and the Refugee Applications Commissioner subsequently made a decision to transfer the applicant to the United Kingdom pursuant to the Dublin III Regulation. The applicant appealed this decision to the IPAT, which dismissed his appeal. The applicant then brought judicial review proceedings in which he claimed that the Dublin III Regulation was invalid on the grounds that Article 31 of the Refugee Convention contained a right for refugees to choose the country in which to submit an application for asylum. The High Court refused to grant leave on this issue, and the applicant appealed that refusal to the Court of Appeal.

The applicant appealed to the Court of Appeal against the refusal to grant leave on those two issues. During the course of the appeal the court was informed that upwards of 100 cases were pending in the High Court in which these particular issues had been raised.

Hogan J delivered the judgment of the Court of Appeal, dismissing the appeal. It was held that while it was true that Article 31 of the Geneva Convention conferred some element of choice to those seeking refugee status as to the country in which to submit their application for status, that choice was largely confined. The choice was held to be confined to applicants who were en route to a particular destination and whose choice of country of refuge was not nullified simply because they did not make an application in a country where they were simply stopping over or transiting. In particular, it was held that Article 31 does not give refugee applicants an open-ended choice of the kind claimed by the applicant.

Within the context of the European Union, Hogan J pointed out that Article 31 of the Geneva Convention was, in any event, supplemented and developed by the existence of a multilateral agreement between the Member States of the Union reflected in the Dublin III Regulation which provides for a system of jurisdiction allocation between these Member States which is designed to avoid forum shopping and potentially abusive applications in a multiplicity of States. This system of regulation was expressly contemplated by Article 78(2)(e) of the Treaty on the Functioning of the European Union (TFEU). Hogan J was satisfied that it could not be said that a system expressly authorised by the Treaties could in itself be unlawful on the ground that it was contrary to an international treaty (such as the Refugee Convention) which, in any event, was not in itself part of the law of the European Union.

Accordingly, Hogan J was satisfied that the applicant did not reach the threshold of arguability required and dismissed the appeal.

4.8.4 AAL (Nigeria) v IPAT [2018] IEHC 792

The applicant was a Nigerian national who applied for asylum in the State. He claimed that his mother was a Christian and his father a Muslim, and that his family was attacked after his father converted to Christianity and his mother was killed. His application for asylum was deemed withdrawn after the applicant left direct provision accommodation without a forwarding address, and a deportation order was thereafter made. The deportation order was subsequently revoked when the applicant submitted an application for subsidiary protection. During his subsidiary protection interview the applicant was unable to give dates of many of the key incidents of his account and said that he was ‘not mentally ok’. His application for subsidiary protection was rejected at both first instance and appeal, on credibility

grounds. The applicant subsequently brought judicial review proceedings challenging the decision of the Tribunal.

Humphreys J rejected the contention that the Tribunal had dismissed out of hand the applicant's explanation of a mental disability, pointing out that the applicant had not furnished any medical evidence of mental illness or disability. The applicant's argument regarding the application of the 'shared duty' in article 4 of the Qualification Directive in respect of this issue was also rejected. Humphreys J noted that in accordance with the decision of the Court of Justice of the European Union in *Case C-277/11 MM v Minister for Justice and Equality* (22 November 2012), under article 4(1) of the Qualification Directive it is generally for the applicant to submit all elements needed to substantiate the application. It is the duty of a Member State to co-operate with the applicant at the stage of determining the relevant elements of the application. This involves co-operation with the applicant as opposed to a fully inquisitorial procedure. It also involves identifying the elements of the application actually made, not an application that the applicant could have made but did not. Humphreys J held that the elements of the application fall broadly into two categories: the country situation and factors personal to the applicant. Insofar as information regarding the country situation is concerned, Member States have an investigative burden with regard to the information listed in art.4(3) of the Qualification Directive. It was held that a Member State may also be better placed than an applicant to gain access to certain types of documents, which is more likely to arise in relation to country documentation. Humphreys J noted that State protection bodies are not in a position to obtain documents personal to an applicant because attempting to do so identifies the applicant to third parties as a protection seeker, contrary to section 26 of the International Protection Act 2015. Insofar as factors personal to the applicant are concerned, it was held that the primary responsibility to describe the facts and events which fall into his or her personal sphere is that of the applicant, citing *BB (India) v International Protection Appeals Tribunal* [2018] IEHC 741. Humphreys J concluded that if the applicant fails to assemble the elements of his or her claim that are personal to him or her, the State has only a limited role in supplying the deficit, as it is unlikely to be in a better position to do so than the applicant.

4.8.5 FB v Minister for Justice (No.2) [2018] IEHC 716

The applicant was a 75-year-old Nigerian national who arrived in the State in 2005 and claimed asylum. She was recognised as a refugee in 2008 and in 2012 became a naturalised citizen. The applicant applied for family reunification with her granddaughters who were dependent on her. The application was refused by the Minister and the applicant brought judicial review proceedings challenging that refusal.

The applicant claimed that the decision was unlawful because the Minister failed to address certain submissions made on her behalf, and because the Minister disregarded the requirements of both Article 41 of the Constitution of Ireland and Article 8 of the ECHR in reaching it. The applicant also contended that the Minister's decision was invalid because the reason given for it was impermissibly opaque and inadequate, because it was irrational or unreasonable, or both, and because it was capricious.

Keane J noted that there was no evidence in the decision of any consideration of the family rights between the applicant and one of her granddaughters, and that the decision was therefore unlawful. It was held that it was incumbent on the Minister to consider the concrete reality of the relationship between the persons concerned and the extent to which it was one of 'de facto family ties' protected by the right to family life under Article 8 of the Convention, and to set out the Minister's reasoning on that issue expressly in the decision. It was also held that there was a fundamental error of law in the Minister's decision in the manner and basis on which it purported to identify the best interests of one of the children such that it could not stand, and that the Minister's decision to refuse the permission sought for the child was couched in terms so vague and opaque that the rationale for it was neither patent nor capable of being inferred from its terms and context.

4.8.6 MAM v Minister for Justice [2018] IEHC 113

The issue raised in these proceedings was effectively whether a refugee who subsequently acquired Irish citizenship by naturalisation lost the right to family reunification pursuant to section 18 of the Refugee Act 1996. The evidence before the court was that between 2010 and 2017 the Minister for Justice accepted applications for family reunification from refugees who had acquired Irish citizenship by naturalisation, but on foot of legal advice in 2017 the Minister reverted to the pre-2010 position that such persons lost their right to refugee family reunification upon naturalisation. The applicants challenged this position in judicial review proceedings.

Humphreys J commenced by noting the declaratory nature of refugee status, and held that three consequences arose from this: first, if the grant of refugee status is declaratory it follows that the withdrawal of the recognition of refugee status is also declaratory in the sense that it recognises the person has ceased to be, or is not, a refugee. Secondly, the declaratory nature of the grant of refugee status acknowledges that there will be a time lag between the person being a refugee and being recognised as such. Thirdly, there will inevitably be a time lag between the person ceasing to be a refugee and the declaration of refugee status being withdrawn. During that time lag, the person may be a person in respect of whom there is a declaration of refugee status but he or she is not fact a refugee.

Humphreys J held that the crucial thing was that to avail of s.18 of the Refugee Act 1996 a person not only must be in possession of a declaration but also must actually be a refugee.

It was held that on the ordinary words of the Refugee Act 1996, a person who is an Irish citizen is no longer a refugee within the meaning of section 2 of the 1996 Act. Humphreys J held that there was no prejudice to the applicant arising from this interpretation because acquisition of citizenship by naturalisation is a volitional act. Humphreys J also rejected the argument that EU law requires the loss of refugee status on the acquisition of nationality to be expressly revoked or legislated for as an automatic consequence, and also rejected the submission that there was a legitimate expectation arising from the Minister's policy between 2010 and 2017.

Humphreys J concluded that a refugee in the State automatically ceases to be a refugee by operation of law on acquisition of citizenship of the State, and that no formal revocation of a declaration of refugee status is required in that regard. The applications were dismissed.

CHAPTER 5

Unaccompanied minors and other vulnerable groups

5.1 UNACCOMPANIED MINORS

As reported in previous reports in this series, Tusla, the Child and Family Agency, was established under the Child and Family Agency Act 2013 as an independent legal entity. The Agency, which is overseen by the Department of Children and Youth Affairs, brings together key services relevant to children and families including child protection and welfare services previously operated by the Health Service Executive (HSE), the Family Support Agency and the National Educational Welfare Board. The Social Work Team for Separated Children Seeking Asylum sits under Tusla, and provides support, assessment and care to children arriving alone into Ireland.[348]

5.1.1 Statistics

There were 17 applications for international protection - 15 male and 2 female applicants - made to the International Protection Office (IPO) by unaccompanied minors in 2018.[349]

A total of 129 referrals were made to the Social Work Team for Separated Children Seeking Asylum (Tusla) in 2018, a decrease of 46 over 2017 when 175 referrals were made. This included referrals under the Calais Special Project (CSP) and Irish Refugee Protection Programme (IRPP). At the beginning of 2018, a total of 80 children were in the care of the Social Work Team for Separated Children Seeking Asylum; this had decreased to 68 by November 2018.[350] Table 5.1 shows the breakdown of referrals to the service in 2018.

[348] Sheridan (2017) (print version), p. 87.

[349] Correspondence with International Protection Office, May 2019.

[350] Tusla (2019a), p. 27.

TABLE 5.1 REFERRALS TO TUSLA SOCIAL WORK TEAM FOR SEPARATED CHILDREN SEEKING ASYLUM IN 2018

Source	Referrals
Garda National Immigration Bureau (GNIB)/Tusla out of hours service	82
IPO	28
CSP/IRPP	13
Dublin III Transfer via IPO	3
Irish Naturalisation and Immigration Service (INIS)	3
Total	129

Source: Tusla (2019a).

As reported in Chapter 4, the relocation strand of the IRPP from Greece concluded in 2018. A total of six unaccompanied minors were relocated to Ireland from Greece under the Programme, with the assistance of the International Organization for Migration (IOM), the UN Migration Agency.

During 2018, Ireland accepted 58 persons from Search and Rescue operations in the Mediterranean, of whom four were unaccompanied minors.[351]

In December 2018, Ireland agreed to accept up to 36 unaccompanied minors from Greece on a phased basis throughout 2019. This commitment was made by the Minister for Justice and Equality to his Greek counterpart in the margins of the Justice and Home Affairs Council. These young people were to be included in the overall commitments under the IRPP and would be granted programme refugee status on arrival in Ireland. The INIS and Tusla are to co-operate on the logistical arrangements.[352]

5.1.2 Calais Special Project

As reported in previous years, in November 2016, the Government agreed, following an all-Party motion in Dáil Éireann, to work with the French authorities and some Irish volunteers to identify up to 200 unaccompanied minors previously living in the unofficial migrant camp at Calais and who expressed a wish to relocate to Ireland. To coordinate Tusla's role in this effort, Tusla established the CSP, which is led by the Separated Children's Team. Additional resources were allocated –

351 Department of Justice and Equality (12 March 2019), Response to Parliamentary Question 11781/19. Available at www.justice.ie.

352 Department of Justice and Equality (2018p).

including additional social workers, aftercare workers and administrative support – and three new residential intake units specifically for separated children were opened in 2017.[353]

Following 13 Tusla missions to France, a total of 41 children (11 in 2018) were relocated to Ireland under this project with the assistance of the IOM. The project concluded in 2018. The Minister for Justice and Equality noted that no child who expressed an interest in coming to Ireland was refused admission. All of the children who arrived in Ireland were given programme refugee status.[354]

During 2018, Tusla secured the agreement of the Department of Children and Youth Affairs and the Department of Justice and Equality to provide placements for 20 unaccompanied children in need of care under the CSP and the IRPP.[355]

The nationalities of the 41 children relocated to Ireland under the CSP are set out in Table 5.2 below.

TABLE 5.2 RESETTLEMENT TO IRELAND OF UNACCOMPANIED MINORS FROM CALAIS AS AT 31 DECEMBER 2018

Country of Origin	Number
Eritrea	17
Afghanistan	15
South Sudan	4
Ethiopia	4
Syria	1
Total	41

Source: Department of Justice and Equality (2019b), p. 27.

353 Sheridan (2018).
354 Department of Justice and Equality (12 July 2018), Response to Parliamentary Question 31905/18. Available at www.justice.ie.
355 Tusla (2019b), p. 16.

5.2 OTHER VULNERABLE GROUPS

5.2.1 Migrant children

CRA Report Card

The annual CRA Report Card covering 2018 marked the developments for refugee and asylum-seeking children as a 'C', an improvement over the 'D+' grade for this category for 2017. As for 2017, this report based its grading on Government commitments in relation to offering a safe haven for refugees and reforming the direct provision system in the Programme for a Partnership Government 2016–2020.[356]

The grade awarded reflected progress made in relation to the completion of the relocation strand of the IRPP; the publication of the draft national standards for direct provision; the further increase in the direct provision allowance for children; and the transposition of the Reception Conditions Directive (2013/33/EU) into Irish law. The report considered that there was 'some' progress on IRPP commitments and 'steady' progress towards reforming the direct provision system. The Report card noted that Ireland had not yet met its resettlement targets under the IRPP.[357]

In reporting developments in relation to the direct provision system, the Report Card noted that the Department of Justice and Equality had published its child safeguarding statement in May 2018 followed by the *Child Protection and Welfare Policy and Practice Document* for Reception and Integration Agency (RIA) accommodation centres and Emergency Reception and Orientation Centres (EROCs), published in July 2018.[358]

The Report Card recommended that Ireland should fulfil its commitments under the IRPP to resettle 1,985 programme refugees and 60 unaccompanied minors by the end of 2019. In order to continue to transform the direct provision system, the Report Card recommended that the Government should:

- Publish and implement the National Standards for reception accommodation centres for people seeking protection as a priority. The standards should inform contractual obligations between the service provider and the Department of Justice and Equality.
- Identify an independent inspectorate to support the implementation of the National Standards, monitor compliance and ensure that refugee children

356 Children's Rights Alliance (2019).
357 Ibid., p. 124.
358 Ibid., p. 130.

receive a consistent quality of care in reception accommodation centres for people seeking protection.

- Provide 'own-door' accommodation with private living space for families.
- Given the increase in the Direct Provision Allowance for children to the level in the McMahon recommendation, conduct a review to assess the specific social protection needs of children in the direct provision system.
- Develop and implement a child welfare and protection strategy with a prevention and early intervention focus to address the particular needs of families living in reception accommodation and in direct provision centres. Ensure that the redeveloped Prevention, Partnership and Family Support pays particular attention to the needs of children and parents living in EROCs and direct provision accommodation. Tusla should appoint a child and family services manager for the Child and Family Unit as a priority.[359]

Children in State-provided accommodation for protection applicants and refugees: Department of Justice and Equality Child Safeguarding Statement and Child Protection Policy and Practice Document for the RIA and the IRPP

In May 2018, the Department of Justice and Equality published a Child Safeguarding Statement applicable to the activities of RIA and the IRPP. This statement was developed in accordance with the Children First Act 2015, Children First National Guidance 2017 and Tusla's Child Safeguarding: A guide for policy, procedure and practice. The Safeguarding Statement sets out principles and a risk assessment to be followed by RIA or IRPP staff and staff in RIA or EROC accommodation if harm, risk or suspicion of harm to a child resident is made known to them. The principles include:

- The safety and protection of children living in the centres is of paramount concern to RIA and IRPP.
- The best interests of the child should be a primary consideration in planning and service delivery within RIA and IRPP.
- By law, all staff working in RIA and IRPP centres are required to complete Garda Vetting and have a Vetting Disclosure in advance of starting their employment. RIA and IRPP comply with the requirements of the National Vetting Bureau legislation.
- All referrals to Tusla and reports of child protection/welfare concerns are confidential and security of records is assured.

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359 Ibid., p. 131.

- Children remain in the care of their parents, not the State, while resident in RIA/EROC accommodation. Therefore, access to community supports and provision of information on Irish child protection and welfare legislation and policy for parents is vital.
- All children living in RIA/EROC centres have the same rights to protection as any Irish citizen child.
- All centre managers for RIA/EROC accommodation are Mandated Reporters under the Children First Act, 2015.
- Each accommodation centre must have a Designated Liaison Person whose responsibility it is to report child protection concerns to Tusla, maintain records of referrals and act as a contact person for child protection matters on behalf of the centre.
- All staff working in RIA/EROC centres have a responsibility to report any concern they have for children living in the centre. This includes any staff of RIA or IRPP who are on site at an accommodation centre during the course of their normal duties.
- All children living in RIA/EROC centres should know their rights and be encouraged to tell an adult they trust if they are worried, have experienced harm or do not feel safe.
- All children living in RIA/EROC accommodation should have space for play, study and recreation that is separate from adult recreation areas.
- All staff and management receive training in RIA's child protection policy and Children First training. Each centre has a Designated Liaison Person who is responsible for reporting child protection concerns and for the implementation of the Child Protection Policy in the centre.
- Any person living in, visiting, or who knows a child living in RIA or IRPP accommodation may make a report about their concern for a child to Tusla.

The risk assessment sets out possible identifiable risks and actions to be taken. The list of risks is not exhaustive. The Safeguarding Statement commits to a review every 12 months or as soon as practicable if there is a material change in anything relevant to the statement.[360]

In July 2018, the Department of Justice and Equality published the *Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for persons in the International Protection process under contract to the Department*

360 Department of Justice and Equality (2018q).

of Justice and Equality.[361] This was an updated and reviewed version of RIA's child protection policy taking account of requirements under the Children First Act 2015 which had been fully commenced since December 2017. Accommodation services for persons seeking international protection in the State are designated as 'relevant services' under the Act, and the Act requires that 'Mandated Persons' be appointed in relation to mandatory reporting of child protection concerns. Managers of accommodation centres are designated as 'Mandated Persons' for the purposes of the Act. The Children First Act 2015 also requires a mandatory Child Safeguarding Statement. The policy is also based on the Department of Children and Youth Affairs document 'Children First - National Guidance for the Protection and Welfare of Children 2017'. It recognises that RIA, the IRPP and centres under contract to the Department have a duty of care to all residents in accommodation centres but recognises that children live in a family unit and that parents/guardians have the primary responsibility for their welfare.

The *Child Protection and Welfare Policy and Practice Document* applies to all RIA and IRPP staff, and to all persons who are resident in or work in accommodation centres, including service delivery staff in centres. All staff, including service delivery staff, must sign a declaration that they have understood and will adhere to the policy.[362]

The policy provides for a Designated Liaison Person (DLP) in each centre and in RIA. The centre DLPs are responsible for dealing with any child protection concerns that arise in a specific accommodation centre, children absent from centres or suspected trafficking. Concerns in accommodation centres should be reported directly to the DLP, who will then report the concern to the RIA Child and Family Services Unit and to Tusla (depending on the seriousness of the concern). The DLPs work with the Mandated Person (centre manager) in relation to reporting of child protection concerns, but the Mandated Person has a separate statutory duty under the Children First Act 2015 in relation to reporting to Tusla. The DLP cannot report a concern to Tusla on behalf of the Mandated Person.

The DLPs in RIA have an overarching role to ensure that the policy is being followed in centres and to provide advice and support, provide support to other RIA staff and ensure appropriate record keeping. The Principal Officer in RIA is also designated as a DLP, in particular if an allegation is made against a member of RIA staff.[363]

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361 Department of Justice and Equality (2018r).
362 Ibid., pp. 8–9.
363 Ibid., pp. 18–22.

The policy does not apply specifically to aged-out minors (AOMs) who are accommodated in RIA centres. However, it does provide that if concerns arise, the DLP in a centre will report this to RIA's Child and Family Services Unit who will bring the issue to the attention of the Separated Children's Team, Tusla.[364]

Complaints to the Ombudsman and Ombudsman for Children

As discussed in Chapter 4, complaints from residents of direct provision centres could be accepted by the Ombudsman and Ombudsman for Children offices from 3 April 2017.[365]

One of the issues raised in the Office of the Ombudsman's commentary on direct provision for 2018 was the lack of facilities for children. This had been raised as an issue in a number of centres to staff from the Ombudsman's Office who visited the centres during 2018. The Ombudsman noted that the tendering competition run by RIA for accommodation centres requires a dedicated living area for families and a dedicated teenagers' room to be provided. The commentary also noted an example in a centre where it was found that the residents had a role in ensuring that a dedicated play area for children and toys provided were well maintained and the children were supervised when playing there.[366]

The Ombudsman for Children Office (OCO) received 21 individual complaints or contacts in relation to children in direct provision accommodation in 2018. The complaints related to communication, complaint management and management of transfers to different centres or larger accommodation, all of which were resolved locally. The OCO also received complaints about inadequate financial support to meet the needs of children, which is outside its remit.

The OCO ran an outreach programme publicising its services to children living in direct provision accommodation. Workshops were arranged by the OCO's Participation and Rights Education team in 12 direct provision centres, in co-operation with RIA and centre managers. A total of 189 children attended Rights Awareness workshops. In addition, 70 parents attended workshops or met with the Participation and Rights Education staff.[367]

The OCO also welcomed its inclusion in the Working Group on the draft National Standards for Direct Provision during 2018. It recommended that the standards should include a specific rights-based complaints-handling structure. A particular concern also expressed by the OCO was in relation to the transitioning of aged-out unaccompanied minors to direct provision accommodation. While this practice

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364 Ibid., p. 7.
365 Sheridan (2018).
366 Office of the Ombudsman (2019b), p. 10.
367 Office of the Ombudsman for Children (2019), p. 19.

continues, the OCO recommended that the standards should address the role that accommodation centres can play in preparing children for this transition before they reach 18.[368]

Guide for young people on immigration procedures

In January 2018, the Immigrant Council of Ireland (ICI) published a guide for young people, *Immigration Status: What do I need to know?*[369] It outlines rules and advice in relation to registration, immigration stamps, getting documents from countries of origin, issues relating to higher education, specific issues for children in care, and citizenship. The guide highlights issues of particular relevance to children and young people, such as the requirement to register for children over 16, specific issues for children in care in relation to access to a residence permission, and the possibility to apply for naturalisation for dependent young adults.

5.2.2 Migrant women

Female genital mutilation (FGM)

As reported for 2016, AkiDwa published its multi-annual strategy *Towards a National Action Plan to Combat Female Genital Mutilation 2016–2019* in 2016.[370]

AkiDwA recruited and trained 13 volunteer Community Health Ambassadors in 2018, as part of its programme that develops a network of volunteer Community Health Ambassadors to raise awareness of FGM in their local communities.[371]

International Women's Day

To mark International Women's Day on 8 March 2018, the ICI profiled six migrant women who had made a significant impact on Irish society. These were:

- Roja Fazael – assistant professor of Islamic civilizations at Trinity College Dublin;
- Dil Wickremasinghe – journalist and social entrepreneur;
- Ellie Kisyombe – co-founder of Our Table pop-up cafes highlighting the cooking ban in direct provision;
- Hajar Akl – journalism student and founder of Under One Tent, an initiative to share the *iftar*[372] meal with the wider community;

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368 Ibid., pp. 37–38.
369 Immigrant Council of Ireland (2018a).
370 Sheridan (2017) (print version), p. 79.
371 See www.akidwa.ie.
372 Meal that breaks Ramadan fast.

- Zainab Boladale – reporter and presenter for RTÉ children's news programme *News2Day*;
- Raneem Saleh – medical student and spoken-word artist.[373]

Referendum on the Eighth Amendment to the Constitution

The ICI, Nasc, the Irish Refugee Council, the Migrant and Refugee Rights Centre and Doras Luimní issued a joint statement ahead of the vote on the Eighth Amendment to the Constitution regarding access to abortion services in Ireland.[374] It called for a 'yes' vote to repeal the amendment, and highlighted the additional barriers faced by migrant and asylum seeking women as a result of the amendment. The foremost of these was that these groups might not enjoy the right to travel to another state to seek abortion services. For example, an asylum seeking woman is required to seek the permission of the Minister for Justice and Equality under section 16(3) of the International Protection Act 2015. In addition, migrant women may need a visa for the state being entered and to state the reason for their visit. The statement also noted additional economic barriers for migrant women.

5.3 RESEARCH

In December 2018, European Migration Network (EMN) Ireland published *Approaches to Unaccompanied Minors Following Status Determination in Ireland*.[375] This report was based on the Irish contribution to the wider EMN study *Approaches to Unaccompanied Minors Following Status Determination in the EU and Norway*.[376] The Irish report examined the policies and practices on unaccompanied minors following an international protection or immigration status decision in Ireland. It considered two potential outcomes for unaccompanied minors in Ireland: a positive decision for immigration permission or international protection and subsequent integration in-country, and forced or voluntary return. The situation of unaccompanied minors turning 18 is highlighted in particular throughout the report, which also presents information on implications arising from a lack of status.[377]

The findings of the report in relation to AOMs, the possible implications of delaying an application for international protection or residence permission and the consequent impact on accessing rights such as family reunification were raised in parliamentary questions in Dáil Éireann on 13 December 2018.[378] In a priority question, the Minister for Children and Youth Affairs was asked to comment on

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373 See www.immigrantcouncil.ie.

374 Immigrant Council of Ireland, Nasc, the Irish Refugee Council, the Migrant and Refugee Rights Centre and Doras Luimní (2018).

375 Groarke and Arnold (2018).

376 European Migration Network (2018b).

377 Groarke and Arnold (2018).

378 Dáil Debates (13 December 2018), Parliamentary Questions 52433/18; 52432/18, Available at www.kildarestreet.com.

why 'only a small proportion of minors have secured immigration status and … this was due to delays by Tusla social workers in making the minors' applications'.[379] The Minister explained Tusla's approach as follows:

> *All separated children seeking asylum are assessed by a social worker from the specialist team working with these children on the day of their referral arrival and are placed in the care of Tusla. The immigration arrangements of young asylum seekers, mainly in the age group of 15 to 17 years, are considered in the broader, holistic context of the child's needs.*
>
> *Many of these children may have high levels of vulnerability and have experienced trauma. Many face problems and challenges on issues including separation and bereavement from family and friends, social isolation, language barriers, emotional and mental health problems, discrimination and racism. In addition, they must live with the anxiety brought on by their possible removal from the country or uncertainty as to their future.*
>
> *Based on a clinical decision approach, they may be deemed to need a period of stability and care before being supported in making their application for residency.*

The Minister also noted that out of 93 aftercare cases open to Tusla's Separated Children aftercare service at that time, 70 had some form of residency permission.[380]

EMN Ireland hosted a conference, *Looking to the Future for Unaccompanied Minors in Ireland and Europe*, linked to the launch of the report on 4 December 2018. The conference provided an opportunity to discuss the longer-term prospects of unaccompanied minors in Ireland and Europe. It was opened by an address from Dr Bryan McMahon, former chair of the Working Group on Improvements to the Protection Process, and included contributions from Ireland (including Tusla and other providers of services to unaccompanied minors, the Department of Justice and Equality, UNHCR and NGOs), Sweden and the University of Lucerne.[381]

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379 Dáil Debates (13 December 2018), Parliamentary Question 52433/18. Available at www.kildarestreet.com.

380 Department of Children and Youth Affairs (13 December 2018), Response to Parliamentary Question 52433/18. Available at www.kildarestreet.com.

381 European Migration Network Ireland (2018).

5.4 CASE LAW

5.4.1 Agha (a minor) v Minister for Social Protection; Osinuga (a minor) v Minister for Social Protection [2018] IECA 155

The appellants were two sets of parents who were refused payment of child benefit due to their immigration status. In the *Agha* case, the parents were Afghan nationals who arrived in Ireland in 2008. They lived in direct provision and had four children, three of whom were born in Ireland. The entire family applied for asylum in 2013. In December 2014, the Refugee Appeals Tribunal (RAT) issued a decision declaring their youngest son to be a refugee; this was communicated to the family by letter dated 8 January 2015. Upon receipt of this decision, the entire family applied for family reunification, and permission to remain in the State was granted in September 2015. The Agha parents applied for child benefit in respect of all four children in February 2015 and were refused as they were deemed not to be habitually resident. They renewed this application in September 2015 and were successful following the grant of family reunification. The parents instituted proceedings arguing that child benefit was payable in respect of all children from the date of their application for refugee status in 2013 or, alternatively, in respect of their youngest son from the date of his recognition as a refugee in January 2015.

In the *Osinuga* case, the child's mother was a Nigerian citizen who entered the state in 2013 and applied for asylum in November 2014. She entered into a relationship with a naturalised Irish citizen and her daughter was born in December 2014. Her daughter was an Irish citizen from birth. The child's mother applied for the right to reside and work in the State in September 2015, which was granted in January 2016. She had applied for child benefit in October 2015 and was refused on the basis that she was not habitually resident and was therefore not a 'qualifying parent' pursuant to s.246 of the Social Welfare Consolidation Act 2005 (as amended) (the '2005 Act'). Following the recognition of her right to reside in the State, child benefit was granted with effect from October 2015.

In both cases, the High Court (White J) held that the appellants had not suffered discrimination ([2017] IEHC 6).

Hogan J delivered the judgment of the Court of Appeal, holding that insofar as s.246(6) and s.246(7) of the 2005 Act prevented the payment of child benefit in respect of an Irish citizen child resident in the State solely by reason of the immigration status of the parent claiming such benefit, those provisions must be adjudged to be unconstitutional. It was nonetheless appropriate that, save insofar as it concerns the rather small payment of backdated child benefit due in the *Osinuga* case, that declaration should remain otherwise suspended until 1 February 2019.

In the *Agha* case, Hogan J held that the statutory requirement that the qualifying parent must also have a legal entitlement to reside in the State could not be regarded as unconstitutional. The key difference between the Agha case and the Osinuga appeal was that of citizenship. As the child in the Agha case was not an Irish citizen, his entitlement to reside in the State was contingent on a statutory entitlement to which the Oireachtas may attach conditions, one of which was that any parent who claimed that benefit must also have an entitlement to reside in the State.

Insofar as the claim was based on Article 23 of the Refugee Convention, Hogan J noted the Convention was not, as such, part of EU law. In relation to social security payments, Article 28 of the Qualification Directive provided that there was no right to such benefits prior to the grant of refugee or subsidiary protection status. Accordingly, with the exception of the youngest child, the parents had no entitlement to claim such benefits in respect of the other three children prior to the family reunification decision in September 2015. However, because her youngest child was recognised as a refugee in January 2015, Ms Agha was held to be entitled to child benefit payment in respect of him as and from that date in accordance with Article 28 of the Qualification Directive. Insofar as s.246(6) and s.246(7) of the 2005 Act precluded this payment, Hogan J held that these provisions must be regarded as inapplicable as a matter of EU law and a national court such as the Court of Appeal had no jurisdiction to suspend that finding of inapplicability as this would otherwise compromise the uniformity and supremacy of EU law.

CHAPTER 6

Border control, irregular migration and return

6.1 STATISTICS

A total of 1,187 deportation orders were made in 2018[382] and a total of 163 deportation orders were effected,[383] up from 140 in 2017.[384] The top nationalities for deportation orders effected were Pakistan, China (including Hong Kong), Nigeria, Brazil, India and Malaysia.[385] In addition, 22 transfers under the Dublin III Regulation took place during 2018.[386] A total of 68 EU nationals were also returned to their home countries on foot of EU removal orders in 2018.[387]

During 2018, 213 persons were returned voluntarily (up from 171 in 2017), of whom 91 were assisted by the International Organization for Migration (IOM) under the Voluntary Assisted Return and Reintegration Programmes (VARRP/IVARRP).[388] When EU nationals are excluded, 202 third country nationals (TCNs) returned voluntarily, of whom 80 were assisted by IOM.[389] Table 6.1 shows the top five nationalities for voluntary return (VR) in 2018 and the top five countries of return, excluding EU nationals.[390]

TABLE 6.1 TOP NATIONALITIES AND COUNTRIES OF RETURN FOR VOLUNTARY RETURN, 2018

Nationality	Total	Country of return	Total
Brazil	43	Brazil	42
Malaysia	18	Malaysia	18
Pakistan	15	India	15
Georgia	14	Pakistan	15
India	14	Georgia	14
Other	98	Other	98
Total	202		202

Source: Repatriation Division, Irish Naturalisation and Immigration Service, June 2019.

382 Department of Justice and Equality (9 July 2019), Response to Parliamentary Question 29221/19. Available at www.justice.ie.
383 Correspondence with Repatriation Division, Irish Naturalisation and Immigration Service, February 2019.
384 Sheridan (2018) (print version), p. 107.
385 Correspondence with Repatriation Division, Irish Naturalisation and Immigration Service, June 2019.
386 Ibid., September 2019.
387 Department of Justice and Equality (2019a), p. 30.
388 Correspondence with Repatriation Division, Irish Naturalisation and Immigration Service, February 2019.
389 Ibid.
390 Ibid., June 2019.

6.2 BORDERS

6.2.1 Refusals of leave to land

According to Eurostat figures, a total of 4,795 people were refused permission to enter Ireland in 2018. This was an increase from a total of 3,745 in 2017.[391] The top ten nationalities for refusals of entry were Albania, Brazil, South Africa, United States of America, Bolivia, Georgia, India, Zimbabwe, China (including Hong Kong) and Nigeria.[392]

6.2.2 Border control systems and technology

Irish Passenger Information Unit

As reported for 2017, Government approval was obtained in May 2017 for the establishment, staffing and funding of the Irish Passenger Information Unit (IPIU) required to implement the EU Directive 2016/681/EC on Passenger Name Records (PNR). The EU Directive is aimed at the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

The European Union (Passenger Name Record Data) Regulations 2018 were signed on 24 May 2018. The Regulations transpose the EU Passenger Name Record Directive 2016/681 into Irish law. The Directive requires air carriers to provide Member States' authorities with advance PNR information in respect of flights entering or departing the EU.

In a parliamentary question response in February 2019, the Minister for Justice and Equality outlined the fundamental rights and data protection safeguards in the Regulations:

> *The Regulations provide that PNR data shall not be processed in such a manner as to reveal a person's race or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, health, sexual life or sexual orientation.*
>
> *The Regulations also provide that an assessment of passengers prior to their arrival in or departure from the State carried out against pre-determined criteria shall be carried out in a non-discriminatory manner. The pre-determined criteria must be targeted, proportionate and specific in nature, regularly reviewed and shall not, in any circumstances, be based on the factors referred to above, e.g., a person's race, ethnic origin, etc.*

391 Eurostat, Third country nationals refused entry at the external borders – annual data (rounded) [migr_eirfs], data extracted on 26 September 2018.

392 Department of Justice and Equality (2019b), p. 31.

The Regulations provide for the appointment to the PIU of a Data Protection Officer responsible for monitoring the processing of PNR data and for data protection safeguards under the Regulation and a Data Protection Officer has been duly appointed.

Regulation 15 provides that the Data Protection Commission is responsible for advising on and monitoring the application of the Regulations within the State with a view to protecting fundamental rights in relation to the processing of personal data.[393]

The Irish PIU, a unit of the Department of Justice and Equality, was formally established on 25 May 2018 and is based at Dublin Airport.[394] It processes PNR data for terrorism and serious crime purposes and also Advanced Passenger Information (API) for immigration control purposes. The primary function of the Irish PIU is to carry out assessments of passengers prior to their scheduled arrival in or departure from the State in order to identify persons who require further examination by the Irish authorities.[395]

When announcing the proposed Regulations in February 2018, the Minister for Justice and Equality noted that:

The proposed new PNR system is recognised across the EU as a key element in the fight against terrorism. This shared intelligence resource will be available to law enforcement and other competent authorities throughout the EU. It will facilitate informed, coordinated and targeted action among Member States and enhance national and EU security to protect the safety and lives of EU citizens.[396]

E-gates

As reported for 2017, automatic border control e-gates were introduced at Terminals 1 and 2, Dublin Airport, available to national and EU/EEA passport holders over 18 years of age on 30 November 2018.[397] According to the Irish Naturalisation and Immigration Service (INIS), over 2.5 million travellers successfully used the e-gates in 2018, including 1.3 million Irish passport holders.[398] In 2018, the immigration services at Dublin airport processed 15.6 million arriving passengers. The Department of Justice and Equality has extended the use of e-

[393] Department of Justice and Equality (13 February 2019), Response to Parliamentary Question 7328/19. Available at www.justice.ie.
[394] Sheridan (2018) (print version), p. 108.
[395] Correspondence with Irish Naturalisation and Immigration Service, Border Management Unit, October 2018.
[396] Department of Justice and Equality (2018s).
[397] Sheridan (2018) (print version), p. 108.
[398] Department of Justice and Equality (2019a), p. 27.

gates to Irish passport card holders, and plans to develop a Registered Traveller Programme for non-EU travellers by Q1 2020.[399]

6.2.3 Detention

Detention facilities

As reported for 2017, plans were progressed for the development of a dedicated immigration detention facility at Dublin Airport. The redevelopment will provide for the refurbishment of an existing facility for use as a Garda station, office accommodation and detention facilities. This work, carried out by the Office of Public Works on behalf of An Garda Síochána, commenced on site on 8 May 2018.[400] The expected operational date was May 2019, but matters are still being addressed by An Garda Síochána.[401]

Nasc report on immigration detention and border control

Nasc published the report *Immigration Detention and Border Control in Ireland* in May 2018.[402] The report examined legislation, policy and practice in relation to border control and immigration detention in Ireland. It updated earlier research on immigration detention, *Immigration Related Detention in Ireland* by Mark Kelly, which was published through the collaboration of the Immigrant Council of Ireland (ICI), the Irish Penal Reform Trust and the Irish Refugee Council, in 2005. The 2018 report was supported with funding from the St Stephen's Green Trust.

The research was commissioned by Nasc arising from its concern that refusals of entry at the Irish border had been increasing in recent years (from 1,935 in 2013 to 3,950 in 2016, according to Eurostat) and that there was a lack of transparency about the reasons for these refusals and how people were being subsequently admitted to seek asylum in the State. There also had been no research on immigration-related detention since the 2005 study, and it was considered that there was an information deficit in this area. While the report acknowledged that 'statistically the number of people detained for immigration related offences in Ireland is relatively low, particularly as compared to other European countries', it still considered that it was 'notable that information about this group of people is difficult to access. It argued that this pointed to a lack of transparency and accountability within the immigration detention process.'[403]

The Nasc report also referenced observations and recommendations made by international bodies including the UN Convention Against Torture (UNCAT)

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399 Correspondence with Department of Justice and Equality, Border Management Unit, October 2019.
400 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, Border Management Unit, February 2019.
401 Correspondence with Department of Justice and Equality, Border Management Unit, October 2019.
402 Nasc (2018e).
403 Ibid., p. 9.

Committee in relation to Ireland's use of mainstream prisons and Garda stations for immigration-related detention. This issue was among others examined by the UNCAT Committee during Ireland's examination on its second periodic report to UNCAT in July 2017. A review of this hearing and the UNCAT Committee's recommendations are contained in the 2017 report of this series.[404] The Committee's recommendations in relation to publication of disaggregated data regarding refusals of entry were also discussed by the Oireachtas Joint and Select Committee on Justice and Equality in July 2018.[405]

Ten male detainees at Cloverhill prison were interviewed for the Nasc report, as well as a range of relevant stakeholders. These included staff of the INIS and the Office of the Refugee Applications Commissioner (ORAC); Governors of Cloverhill prison and the Dóchas centre and an assistant chief officer at Cork prison; United Nations High Commissioner for Refugees (UNHCR) Ireland; the Irish Human Rights and Equality Commission (IHREC); the ICI; and the Children's Rights Alliance. It was not possible to interview the Garda National Immigration Bureau (GNIB) for the report.

The report also sets out a review of international and domestic legislation in relation to immigration-related detention in Ireland. Regarding domestic law, this includes provisions regarding detention pending removal under sections 3(1)(a) and 5(1) of the Immigration Act 1999; detention of a person refused leave to land, pending removal under section 5(3) of the Immigration Act 2003; and detention of international protection applicants under certain circumstances under section 20 of the International Protection Act 2015.[406]

The regulations setting out places of detention are also set out. The International Protection Act 2015 (Places of Detention) Regulations 2016[407] provide for the places of detention for the purposes of section 20 of the International Protection Act 2015. The Immigration Act 1999 (Deportation) (Amendment) Regulations 2017[408] provide for the places of detention in relation to holders of deportation orders pending removal. Persons refused permission to land can be held pending removal in any authorised place under the Immigration Act 2003 (Removal Places of Detention) Regulations 2005. In practice these regulations designate Garda

404 Sheridan (2018) (print version), pp. 13–18.

405 Joint Oireachtas Committee on Justice, Defence and Equality, 'Immigrant Investor Programme and International Protection Applications: Discussion', 11 July 2018. Available at www.kildarestreet.com.

406 Section 20(1) of the International Protection Act 2015 sets out certain circumstances in which an applicant for international protection may be detained, including if the person poses a threat to public security or public order, has committed a serious non-political crime outside the State, has not made reasonable efforts to establish their identity, has destroyed identity/travel documents without reasonable excuse, or is in possession of forged or fraudulent identity documents.

407 S.I. No. 666 of 2016.

408 The Immigration Act 1999 (Deportation) (Places of Detention) Regulations 2005 are referenced in the report.

stations and mainstream prisons in the State as places of detention. The report noted the plans for a dedicated immigration detention facility at Dublin Airport.

The report also noted the statutory prohibition on immigration-related detention of minors in Irish law. However, it noted the provisions under section 20(7)(a) of the International Protection Act 2015 that a person may be detained if two immigration officers or two members of An Garda Síochána, or an immigration officer and a member of An Garda Síochána, have reasonable grounds to believe that the person has attained the age of 18 years.

The report also contains a statistical overview of refusals of permission to land; detention in prison for immigration purposes; places of application for asylum; and deportations, using Eurostat data and data published or provided by GNIB, INIS, ORAC and the Irish Prison Service. The report noted that data on refusals of entry and subsequent applications for asylum were very difficult to compile, often requiring the use of a number of sources that sometimes conflicted. It argued that this pointed to a lack of transparency around these issues and 'the urgent need to improve recording and monitoring of detention for immigration reasons, to ensure greater accountability in decisions to detain'.

The report assessed policy and practice in relation to border control and immigration-related detention, using stakeholder interviews. Chief concerns in relation to border control were the rising number of refusals of entry; lack of transparency about the reasons for refusals; lack of an appeal mechanism under law, other than judicial review; access to the asylum procedure for persons refused entry; and the need for better training of border control officials, particularly in the light of the civilianisation of border control at Dublin Airport. In relation to immigration-related detention, the chief concerns were around the unsuitability of prisons as an environment for immigration detainees. This was highlighted in particular in terms of the short-term detention of persons refused entry, pending their removal. The report noted the plans for a dedicated immigration detention facility at Dublin Airport (see above) and hoped that this would meet appropriate human rights standards in relation to detention.

In its conclusions, the report noted the welcome development that immigration-related detention is on the decrease in Ireland but argued that 'prison is a fundamentally inappropriate place for people being detained for immigration related reasons'. It made several recommendations including in relation to:

- access to rights and legal safeguards;
- access to asylum procedure at ports of entry – it was recommended that there should be an awareness-raising campaign communicating information

regarding asylum and immigration to arriving passengers. It was also recommended that access to transit zones should be provided to NGOs and legal representatives to provide advice to passengers;

- an appeals mechanism for persons refused leave to land;
- - airport monitoring by an independent oversight body such as IHREC to ensure human rights and equality obligations are met by the authorities at ports of entry;
- guidance on refusal of leave to land – publication of guidance on how a decision of refusal of entry and to detain is formed by an immigration official, in order to improve transparency and accountability in decision making;
- proper data collection and disaggregation;
- training of border control personnel;
- civilianisation - it was recommended to extend the civilianisation programme beyond Dublin Airport to all ports of entry;
- language issues – availability of interpretation;
- access to a complaints mechanism at ports of entry;
- use of detention as a last resort – Ireland should continue its prohibition on detention of minors;
- detention facilities – prisons are not suitable places for immigration-related detention and the dedicated immigration detention facility at Dublin Airport should meet all relevant human rights standards;
- ratification by Ireland of the Optional Protocol to the Convention Against Torture (OPCAT);
- greater use of alternatives to detention already available in Irish law (residence requirements; reporting conditions; surrender of travel documents);
- a number of specific legislative amendments.[409]

The Minister for Justice and Equality reacted to the report in a parliamentary question response in March 2018. The Minister welcomed the fact that officials from his Department and the prison service had been interviewed as key stakeholders in the course of the research for the report. The Minister stated that detention in a Garda station or a prison for a person refused entry to the State is undertaken as a last resort, and that most persons are returned on the same day they are refused entry. He also noted the rise in passenger numbers to Dublin

[409] Nasc (2018e).

Airport since 2011 and that the number of persons refused permission to enter the State as a percentage of overall incoming passenger numbers had remained virtually unchanged at approximately 0.025%. He said: 'In this context, the sample size used in the report is extremely small when measured against the number of passengers encountered in any period.'[410]

6.3 IRREGULAR MIGRATION

6.3.1 Operation Vantage

As reported in previous reports of this series, Operation Vantage was established in August 2015 by the GNIB to investigate illegal immigration and identify marriages of convenience as defined under the Civil Registration Act 2014. The Operation involves co-operation with a number of other State agencies including the INIS, the Department of Social Protection, the Revenue Commissioners, the Office of the Director of Corporate Enforcement and the Workplace Relations Commission. The operation focuses on the prevention of immigration abuses, including abuse of free movement though the facilitation of marriages of convenience. It is specifically targeted at those engaged in organised facilitation of marriages of convenience for financial gains. It also focused on those who seek to gain illegal immigration status by engaging in such arranged marriages. Under the operation, past cases are being reviewed with a view to revoking immigration permissions that may have been fraudulently obtained.[411]

There were media reports of arrests under Operation Vantage in June 2018. The *Irish Times* reported that 17 addresses had been targeted in co-ordinated searches in Dublin, Waterford and Limerick. As a result of these raids, 13 men who had been involved in sham marriages were arrested and brought to Cloverhill Prison pending deportation.[412]

As part of Operation Vantage, the INIS EU Treaty Rights Investigation Unit investigates applications for residence cards by non-EEA national family members of EU citizens who are exercising free movement rights under the EU free movement directive (2004/38/EC). INIS reports that almost 2,500 applications for residence cards have been reviewed since the operation began, and more than 2,100 of these investigations have been finalised. These completed investigations resulted in a combined revocation or refusal rate of 91%. Investigations were

410 Department of Justice and Equality (29 March 2018), Response to Parliamentary Question 14724/18. Available at www.justice.ie.

411 Sheridan (2018) (print version), pp. 110–111.

412 Lally (2018).

initiated in more than 1,000 cases in 2018. A total of 865 EU Treaty Rights residence permissions were revoked in 2018, an increase of 173% over 2017.[413]

6.3.2 Scheme for undocumented former students

As reported for 2017, the issue of undocumented persons had been discussed over a number of years, in particular led by the Migrant Rights Centre of Ireland's (MRCI) 'Justice for the Undocumented' campaign.[414] In this regard, the Oireachtas Joint Committee on Justice and Equality called on the Minister for Justice and Equality to:

> *introduce a time-bound scheme, with transparent criteria, to regularise the position of undocumented migrants in Ireland. Such a scheme would give undocumented migrants a window of opportunity to come forward, pay a fee and regularise their situation. Given the urgency of addressing this situation, the scheme should be introduced, initially at least, on an administrative basis rather than through legislation. Applications should be administered on a case-by-case basis.*[415]

In October 2018, the Minister for Justice and Equality announced a scheme for certain former students then resident in the State to apply for permission to remain. The Scheme was open to non-EEA nationals resident in the State who first came to Ireland and held a valid student permission between 2005 and 2010, and who had not in the intervening period acquired an alternative immigration permission.

According to the Department of Justice and Equality:

> *The Scheme addresses a significant cohort of people who have been in the State for a long number of years and who form part of the 'undocumented' persons in the State by virtue of them having moved from a position of having permission to be in the State some years ago to having fallen out of permission.* [416]

The scheme also addressed concerns raised in the *Luximon* and *Balchand* judgments of April 2018 (see Chapter 3 for case summary), providing a residency pathway for persons who may have acquired family rights in the State under Article 8 of the European Convention Human Rights.[417]

The scheme was open for applications between 15 October 2018 and 20 January

413 Department of Justice and Equality (2019a), p. 32.
414 See Sheridan (2018) (print version), p. 111.
415 Joint Committee on Justice and Equality (2017), p. 26.
416 Department of Justice and Equality (2018t).
417 Department of Justice and Equality (2019a), p. 21.

2019. A total of 3,097 applications were received.[418] Successful applicants will be granted a temporary 2-year immigration permission (Stamp 4S) to allow them access the labour market without an employment permit. After the 2-year period, if they have abided by the conditions of the scheme, applicants will be granted a general immigration Stamp 4 immigration permission for one year, which allows access to the labour market, and this stamp will be renewable.[419]

The conditions of the scheme during the two-year probationary period include that the applicant lives fulltime in Ireland; can support his/her self without recourse to State funds and be tax compliant; not come to the adverse attention of the Gardaí (Irish police), immigration authorities, or other State authorities; and, at the end of the 2 year period, demonstrate the acquisition of at least the minimum language skills (English) at level A.2 of the Common European Framework of Reference for Languages.[420]

The scheme does not allow for family reunification, but, if applicants have families residing with them in the State, their family circumstances will be taken into consideration, and the family unit living with them in the State may be given permission to remain.[421]

The MRCI welcomed the scheme as a step in the right direction to addressing the situation of undocumented people in Ireland, saying:

> *This scheme will not cover every undocumented person in Ireland – there are people living and working here for a very long time who will not be eligible – but it is a long-awaited step in the right direction, and the Minister has shown strong political leadership on this. Undocumented adults and children are part of every community in Ireland, and we'll continue to work for a pathway to papers for everyone.*[422]

The ICI also welcomed the scheme, noting that a humanitarian approach was needed.[423]

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418 Ibid.

419 Department of Justice and Equality (2018u).

420 Department of Justice and Equality (2018q).

421 Department of Justice and Equality (2018p); also correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, February 2019.

422 Migrant Rights Centre Ireland (2018c).

423 Immigrant Council of Ireland (2018c).

6.4 RETURN

6.4.1 Forced return

A total of 163 deportation orders were effected in 2018. In 2018, Ireland worked with other EU member states and the European Border and Coast Guard Agency (Frontex) in the areas of joint planning and enforcing the law.[424]

Out of the total of 1,187 deportation orders made in 2018, some 200 were made under Operation Vantage (see section 6.3.1 above).[425]

In May 2018, in order to continue to carry out functions effectively and to reduce caseloads, the INIS and the International Protection Office (IPO) decided to expand the Case Processing Panel of Legal Graduates. One of the proposed functions to be carried out by the panel members was in relation to 'producing a reasoned, balanced and legally robust report/submission to an officer of the Minister on cases to be considered under section 3 of the Immigration Act, 1999'. Section 3 of the Immigration Act 1999 refers to the making of deportation orders. Section 3(6) outlines the factors that the Minister shall have regard to in determining whether to make a deportation order.[426]

6.4.2 Assisted voluntary return

A total of 213 persons chose to return home voluntarily in 2018, 202 of whom were TCNs. Of the 213, 91 applicants (80 of whom were TCNs) were assisted by the IOM, the UN Migration Agency, through its VARRP programmes.

Table 6.2 shows the top nationalities and top countries of return of TCNs assisted by IOM Ireland in relation to assisted VR in 2018.

[424] Department of Justice and Equality (2019a), p. 31.
[425] Ibid., p. 32.
[426] Department of Justice and Equality (2018v); correspondence with Department of Justice and Equality, Repatriation Unit, October 2019.

TABLE 6.2 IOM ASSISTED VOLUNTARY RETURN, 2018

Top nationalities of VR 2018 (IOM only)*	Total	Top 5 countries of return 2018 (IOM only)*	Total
Brazil	15	Brazil	15
Georgia	13	Georgia	13
Syrian Arab Republic	8	Germany	8
South Africa	6	South Africa	6
Indonesia	5	Indonesia	5
Other	33	Other	33
Total	80	Total	80

Source: *Irish Naturalisation and Immigration Service, Repatriation Unit, June 2019.*
Note: ** excludes EU nationals.*

The IOM, funded by the Department of Justice and Equality, offers voluntary assisted return and reintegration programmes for asylum seekers, rejected asylum seekers and other illegally present migrants in vulnerable situations.

Asylum seekers, or asylum seekers who have failed in their claim and who have not had a deportation order made against them, unaccompanied minor children (where return has been deemed to be in their best interests by relevant social work teams) and suspected victims of trafficking (identified within the national referral mechanism identification system), who wish to return home, are assisted with return under the VARRP. Other illegally present migrants are assisted with return under the IVARRP, which is co-funded by the EU on a 75/25 basis.

Under these programmes, all travel arrangements including flights for such persons are arranged and paid for and, where required, the IOM will assist in securing travel documents, arranging fitness to travel medical assessments, providing medical escorts where required, and give assistance at the airport at departure, transit and arrival. Persons availing of these programmes can apply for reintegration assistance to allow them to start up a business or enter further education or training when they are back in their country of origin. This takes the form of an 'in-kind' grant rather than a cash payment.[427]

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[427] Correspondence with IOM Ireland, October 2019.

The INIS Repatriation Unit invited proposals for projects focusing on the voluntary return of TCNs under the 'Return' objective of the Asylum, Migration and Integration Fund (AMIF) for 2019, in December 2018.[428] The 2019 call was for projects focusing on the voluntary return of TCNs for the period 1 January 2019 to 15 October 2020. Applicants must have demonstrable experience of working with TCNs and be able to carry out the project in Ireland.[429]

6.5 CASE LAW

6.5.1 Return

Challenge to deportation order under Article 3 ECHR on health grounds

In *DE v Minister for Justice* [2018] IESC 16, the applicant was a child born in the State on 29 March 2009, his mother having arrived some two months previously. DE was diagnosed with sickle cell disease for which he was receiving medical treatment in Ireland.

Following an unsuccessful application for asylum, the Minister made a deportation order against DE and his mother on 1 July 2011. Judicial review proceedings were initiated to challenge the validity of the deportation order, but leave was refused on the basis that 'substantial grounds' had not been established (Cross J) ([2012] IEHC 100). Between 14 June 2012 and 22 June 2014, DE's mother evaded the GNIB.

A subsequent application to revoke the deportation was refused on 8 July 2014. Judicial review proceedings were initiated to challenge the refusal but, on the application of the Minister, these were struck out as being moot. The basis for this was that the Minister had been furnished with a medical report which was being treated as a fresh application to revoke the deportation order.

On 2 July 2015, DE sought to avail of what was said to be a 'de facto' policy, arising out of the report of the Working Group on the Protection Process, of granting residence to applicants who had been in the State for five years or more. In a decision issued on 28 July 2016, refusing this application, the Minister disputed that there was such a 'policy' and indicated that, in any event, DE would not have been able to benefit from it as a consequence of him being classified as an evader of the GNIB.

DE sought leave to apply for judicial review of this decision but this was refused on several grounds. The High Court (Humphreys J) ([2016] IEHC 650) held that it was not apparent that there were substantial grounds for contending that the *Lumba*

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428 See www.inis.gov.ie/repatriation-amif#return.

429 Department of Justice and Equality (2018w).

approach – i.e. that if there was a policy, DE was entitled to be informed as to the content of the policy so as to be able to make submissions in relation to its application to his case – applied in a deportation context. In any event, the issue did not properly arise in this case as there had been sufficient notice of the relevant exception, being an exclusion in the case of persons who were considered to have evaded GNIB, such that DE was not handicapped in making submissions in that regard. Humphreys J also held that reliance on *Okunade v Minister for Justice, Equality and Law Reform* [2012] 3 I.R. 152; [2013] 1 I.L.R.M. 1 for the proposition that the best interests of the child should be a primary consideration in the deportation context was a fundamental misunderstanding of the law by the Working Group. Humphreys J further held that it was not apparent that the medical report, indicating that DE's condition was 'really quite severe' and required more than basic care, could be said to represent a substantial ground for contending that the exceptionally high threshold in *D v United Kingdom* (1997) 24 E.H.R.R. 423 and *N v United Kingdom* (2008) 47 E.H.R.R. 39 – i.e. that there must be 'exceptional circumstances' – had been met. The High Court also rejected the applicability of art.8 of the European Convention of Human Rights to DE's case.

The High Court (Humphreys J) ([2017] IEHC 276) refused to grant the certificate necessary to enable an appeal to be brought to the Court of Appeal. Subsequently, DE successfully applied to the Supreme Court (Denham CJ, Clarke and O'Malley JJ) ([2017] IESCDET 85) for leapfrog leave to appeal directly from the High Court to the Supreme Court on the following grounds:

> *Whether the High Court was incorrect to conclude that substantial grounds justifying a grant of leave to appeal had not been made out in the circumstances of this case having regard to the following issues:*
>
> *(a) Whether Irish law recognises the same or an appropriately adapted principle such as that identified by the Supreme Court of the United Kingdom in Lumba such that there is an obligation on public authorities enjoying a broad discretion to publish any policy or criteria by reference to which such discretion is likely to be exercised whether that policy has been formally adopted or represents an established practice;*
>
> *(b) Having regard to any propositions determined to arguably represent the law under (a), it is sufficiently arguable that such principles have application in the case of E so as to justify a grant of leave to seek judicial review on a substantial grounds basis; and*
>
> *(c) Whether it is sufficiently arguable, on a substantial grounds basis, that E's medical condition and requirement for treatment meets the high threshold which requires to be met in order to make it unlawful to deport.*

The Supreme Court dismissed the appeal and affirmed the order of the High Court. Insofar as it was suggested that the decision of the Minister was not legally sound because of an alleged failure to disclose guidance or criteria by reference to which the Minister's general discretion under s.3(11) of the 1999 Act was to be exercised, it was held that to the extent that it was arguable that any such obligation existed and to the extent that it was arguable that a relevant practice existed in the circumstances of this case, DE and his advisers were sufficiently aware of the alleged practice in question so as to be able to structure their submissions to the Minister by reference to the asserted practice. On that basis, the court was not satisfied that there were arguable grounds, sufficient for an application for leave to seek judicial review on a substantial grounds basis, under that heading.

Clarke CJ noted that the evidence and materials which were presented to the Minister were not, for understandable reasons having regard to the fact that *Paposhvili v Belgium* [2016] ECHR 1113 had not been decided at the time, sufficiently directed to the questions that the European Court of Human Rights had indicated must be assessed. On that basis, the court was not satisfied that there were arguable grounds for suggesting that DE had complied with the initial obligation that rested on an applicant to put forward evidence of a real risk that art.3 rights would be interfered with if they were deported or returned. The court noted that it might well be that medical evidence focused on the criteria set out in *Paposhvili* could now be presented to the Minister in a fresh application.

In a separate concurring judgment, O'Donnell J noted that the decision in *Paposhvili* should be viewed as essentially procedural and clarificatory and, while an extension of the existing test, should not at this stage be interpreted without more as a dramatic change, and moreover could not be taken as a guide to, or encouragement of, further expansion. He stated that the cases in which art.3 would be violated because of a naturally occurring illness and the lack of sufficient resources in the receiving country must remain exceptional. This interpretation was said to be consistent with the approach of the European Court of Human Rights, which considered that a 'very high threshold' was appropriate where the alleged breach of art.3 emanated not from the intentional acts or omissions of public authorities or non-state bodies 'but instead from a naturally occurring illness, and a lack of sufficient resources to deal with it in the receiving country'. O'Donnell J noted that if a state was made responsible under art.3 for the removal from its territory (or refusal to admit to the same territory) anyone with a serious illness where treatment, and therefore outcomes, were superior in the contracting state than would be the case in a country of origin, then the contracting state would clearly be obliged to make free and unlimited health care available to aliens who otherwise had no right to stay in the jurisdiction, or at least all such aliens suffering from a serious illness where there was a measurable difference in treatment and outcomes between the contracting state and countries of origin. He

also commented that situations that may not reach the high threshold posed by art.3 might nevertheless properly be taken into account by a decision-maker in considering the broad question of humanitarian leave to remain.

Service of deportation orders

In *E v Minister for Justice and Equality* [2018] IESC 20 the applicant was an Egyptian national who arrived in the State and claimed asylum. Although he was provided with accommodation at an accommodation centre, he did not take up residence there and did not engage with the asylum process. His application for asylum was therefore deemed withdrawn. Subsequently, the Minister issued a notice of his proposal to make a deportation order against the applicant, inviting representations within 15 working days. However, as the applicant had never provided an address to the Minister, this letter was never sent but instead was simply placed on the applicant's file. Similarly, the deportation order that was subsequently made in respect of the applicant was not served but rather placed on the applicant's file.

The applicant subsequently sought to challenge the deportation order on the basis that the statutory procedure set out in section 3 of the Immigration Act 1999 (as amended) had not been complied with. The High Court (Humphreys J) held that on a literal reading the statutory procedure had been complied with – the Minister was obliged to serve the section 3 notice and deportation order at the applicant's last known address, which in this case was none. Alternatively, the High Court held that it would be absurd to interpret the statute in the manner contended for by the applicant, given that it was an offence not to provide an address, and the consequence of the applicant's argument was that the applicant's breach of the law in failing to provide an address could permit him to evade deportation. The applicant appealed against the decision, but the Minister subsequently withdrew the deportation order and indicated that he no longer wished to offer any opposition to the contention that the notice of intention to deport was not lawfully served upon the applicant.

While the appeal was technically moot, O'Donnell J deemed it desirable to clarify the legal position. While the applicant's behaviour was regarded as reprehensible, nonetheless the Supreme Court held that neither a literal nor a purposive interpretation of section 3 of the Immigration Act 1999 (as amended) led to the conclusion that there had been effective service in accordance with the statutory requirements. On its face, the statutory procedure permitted two types of service: either personal service or service by ordinary prepaid post. If prepaid registered post was not available then personal service might still be effected. O'Donnell J held that there was nothing intrinsically absurd or creating impossibility in an interpretation of the section which found that placing a letter on a file was not service by registered post at the last known address. It was held that there may be

a lacuna in the Act, in that the Oireachtas did not contemplate the possibility of a person not providing an address at all and thus frustrating the capacity to effect service by registered post. However, it was noted that even this conclusion was not beyond doubt: 'It may be that the Oireachtas considered that since service of the s.3 notices is an important matter, that it should be effected by one or other of the two specified routes.' Accordingly, O'Donnell J held that there was no absurdity in the interpretation of the Act, and stated that while 'it may well be a matter for comment that the Oireachtas did not anticipate all possible circumstances and make provision for them … that does not amount in itself to absurdity.' Even if it did, the court did not think it was possible to determine the clear purpose of the Act in this regard so as to offer a purposive interpretation; instead, the court would be obliged to construct an entirely new provision governing the situation such as that which arose in this case where no address was provided at all, and in doing so to offer a solution which the Oireachtas may or may not have adopted. O'Donnell J was satisfied that this went further than s.5 of the Interpretation Act 2005 permitted. Accordingly, he was satisfied that the approach taken by the parties in this case was correct.

In *K v Minister for Justice & Equality* [2018] IESC 18, which was argued on the same day as *E v Minister for Justice*, the issue was whether a deportation order must specify the date on which the person concerned must leave the State, or whether it was sufficient for that date to be set out in the letter accompanying the deportation order. The applicant relied on a literal reading of s.3(1) of the Immigration Act 1999, which provides that the Minister 'may by order (in this Act referred to as 'a deportation order') require any non-national specified in the order to leave the State within such period as may be specified in the order and to remain thereafter out of the State'. The applicant was a Pakistani national who was served with a deportation order which required him 'to leave the State within the period ending on the date specified in the notice served on or given to you …'. The deportation order was served on the applicant along with a letter which specified that he was required to leave the State by 3 March 2017. The applicant argued that because the date was not specified in the deportation order itself, this did not comply with the statutory procedure.

O'Donnell J was satisfied that this issue had previously been addressed in *FP v Minister for Justice* [2002] 1 IR 164, where Hardiman J held that there was 'no substance whatever in any submission that there is inadequacy, technical or otherwise, in either the letter or the order or in both of them taken together'. Applying the principles set out in *Mogul of Ireland v Tipperary (NR) County Council* [1976] 1 IR 260, O'Donnell J was satisfied that there were no new factors, no shift in the underlying considerations, and no suggestion that the decision has produced untoward results, not within the range of the court's foresight when *FP* was decided. Furthermore, he noted that the decision has to that extent become

inveterate and acted on, on that basis to such an extent that greater harm would result from overruling it than from allowing it to stand. Accordingly, the appeal was dismissed.

Whether Minister required to consider prospective position and prospective rights of unborn person subject to deportation

In *M v Minister for Justice* [2018] IESC 14 the Supreme Court was required to consider the nature and extent, if any, of the rights of the unborn child in the deportation process. The applicants brought judicial review proceedings challenging the Minister's refusal to revoke the deportation order in respect of the first named applicant ('the father'). The second named applicant ('the mother') was the partner of the first named applicant and was pregnant with his child. The third named applicant ('the child') was joined to the proceedings after birth. The High Court ([2016] IEHC 478) granted a declaration that, in an application to revoke a deportation order under s.3(11) of the Immigration Act 1999, the Minister was obliged to consider the prospective position of a child (who would be an Irish citizen) of that person. In the course of its decision, the High Court made a number of findings in respect of the unborn which were the subject of the appeal by the Minister. Leave was granted by the Supreme Court to bring a leapfrog appeal ([2017] IESCDET 147) on a number of grounds, including whether the High Court had erred in determining that the matters that the first named appellant was obliged to take into account when considering representations involving an unborn made under s.3(11) of the Immigration Act 1999 seeking to revoke a deportation order in force against a non-national prospective father of a potential Irish citizen child unborn at the date of such consideration; whether the High Court had erred in holding that the first named appellant must, in an application to revoke a deportation order in force against a non-national prospective parent of a potential Irish child unborn at the date of consideration, give appropriate consideration to rights or interests which that child will acquire on birth and enjoy into the future, in so far as they were raised and relevant; that the High Court had erred in the period of time with respect to which it had considered the respondents' circumstances; whether the High Court had erred in holding that an unborn child enjoyed statutory, common law and constitutional rights justiciable before birth and which extended beyond that right contained in Art.40.3.3˚ of the Constitution; whether the High Court had erred in holding that Art.42A of the Constitution applied to the unborn; whether the High Court had erred in holding that the reference to 'all children' in Art.42A extended the protection of that article to children before birth; whether the High Court had erred in holding that Art.40.3.3˚ did not state the legal position of the unborn on an exclusive basis and that the reference to the 'unborn' in that Article equated to a child; and whether the High Court had erred in holding that the 28th, the 31st and the 34th Amendments to the Constitution together with societal changes had meant that members of non-marital unions and non-marital parents enjoyed inherent constitutional rights

greater than previously recognised. In respect of the finding that the unborn possessed enforceable rights independent of the right contained in Article 40.3.3˚, Humphreys J had differed from an earlier decision of Cooke J in *Ugbelase v Minister for Justice* [2010] 4 I.R. 233.

The Supreme Court characterised the issues that arose in the case as involving an analysis of the following: the factors that the first named appellant would have to take into account in the context of an application under s.3(11) for revocation of a deportation order having regard to the birth of a child that would have Irish citizenship and whether any independent consideration would have to be given to that child and its rights as a citizen; the common law and statutory position of the unborn; the constitutional position of the unborn; the provisions of Art.42A of the Constitution; and the position of the non-marital family in the Constitution.

The Supreme Court dismissed the appeal, holding that in an application under s.3(11) of the Immigration Act 1999 for revocation of a deportation order, the Minister was obliged to take account of the position of an unborn that may be born to anyone the subject of such an application and the fact that the unborn would enjoy significant constitutional rights when born, distinguishing *Ugbelase v Minister for Justice* [2010] 4 I.R. 233. In that regard, it was held that the High Court had been correct in its declaration and the appeal by the Minister in that context would be dismissed.

However, the Supreme Court held that to say that the position of the unborn had to be considered was not to say that the unborn, prior to birth, had currently enforceable rights to the care and company of its father. Likewise, to say that the fact that the unborn, if and when born, would enjoy constitutional rights was a factor to be taken into account did not mean that the unborn would have independently enforceable rights to the care and company of its father. It was simply to state that they were relevant factors for the Minister to take into consideration. These factors were not necessarily the same as those which the Minister had to consider in respect of the potential deportation of the father of a born Irish citizen child.

It was noted that the weight to be attached to those factors was not an issue in the case and it was not the case that the Minister, having considered those matters, was precluded from revoking the deportation order. The Supreme Court held that there was nothing in the common law or statutory law provisions considered by the High Court that entailed enforceable legal rights belonging to an unborn notwithstanding the fact that the common law and certain statutory provisions did make some provision for the unborn. In that regard, it was held the High Court had been in error, and that the unborn did not have any existing constitutional rights, including a right to the care and company of its father, independent of the right to

life contained in Art.40.3.3˚, which required consideration by the Minister in an application under s.3(11) of the 1999 Act. The court held that the most plausible view of the position of the rights of the unborn prior to the Eighth Amendment to the Constitution was that the existence and status of such rights was uncertain. However, since the Eighth Amendment, the court's view was that the present constitutional rights of the unborn were those confined to the right to life contained in Art.40.3.3˚. Such a finding did not, however, mean that the unborn was constitutionally 'invisible'. The terms of Art.40.3.3˚ and the obligation, described in this case, that the Minister was required to take account of rights acquired on birth and certain aspects of the common law and statute law all recognised and protected the interests of the unborn. However, the court was satisfied that it was not possible to interpret the wording of Art.42A so as to include the unborn given the clear objectives of the article and the clear and unambiguous terms in which it was expressed. In this regard, the decision of the High Court was incorrect. Furthermore, it was held that the comments of the High Court relating to the constitutional rights of non-marital families had not formed part of the *ratio decidendi* of the decision under appeal and were *obiter dicta*. Those issues did not arise in this case and could not be regarded as having been decided in the High Court and it was therefore not necessary to consider them any further. Accordingly, the court dismissed the appeal and affirmed the declaration of the High Court.

6.5.2 Border control

Challenge to refusal of leave to land under section 4 of the Immigration Act 2004

In *Akram v Minister for Justice and Equality* [2018] IEHC 643 the High Court considered a challenge to a refusal of leave to land under s.4 of the Immigration Act 2004, including consideration of the power of immigration officers to search mobile phones under section 7 of the 2004 Act.

The applicant was a national of Pakistan who arrived at Dublin airport on 21 October 2017. Although he had a travel visa, an interview with an airport immigration officer and a perusal by that officer of text messages on the applicant's phone led the officer to conclude that the applicant – who maintained he was coming to the State to visit his brother – in fact was coming to enter into a marriage of convenience. Pursuant to s.4(3)(k) of the Immigration Act 2004, the immigration officer refused the applicant permission to land. Section 4(3)(k) allows for such refusal where 'there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national'. The applicant was handed a standard form document, signed by the immigration officer and addressed personally to the applicant, stating 'This is to inform the person to whom this notice is addressed … [that] s/he is being refused permission to land in

accordance with the provisions of the Immigration Act 2004 on the following grounds: (k) that there is reason to believe that the non-national intends to enter the State for purposes other than those expressed by the non-national.' The applicant was then held at Cloverhill Prison until 25 October 2017, on which date he was removed from Ireland.

The applicant subsequently brought proceedings complaining that the taking of his phone from him and the perusal of the text messages thereon was unlawful, that the Minister (through the immigration officer) erred in law in failing to provide any reason for the belief that the applicant intended to enter the State for purposes other than those expressed by him, and erred in law and/or took into account irrelevant considerations and/or failed to take into account relevant considerations in the decision to refuse the applicant permission to enter the State. Complaint was also made that the conditions under which the applicant was held at Cloverhill breached art.5(1) ECHR.

Barrett J noted that the complaint that the immigration officer took an irrelevant consideration into account arose from a reference in his notebook to 'Brother's sham marriage?' The court held that the notebook merely contained a record of the immigration officer's conversation with the applicant, as well as thoughts (and potential/real lines of inquiry) arising, and rejected the complaint that any irrelevant consideration was taken into account.

In relation to the issue of the immigration officer accessing messages on the applicant's phone, Barrett J noted that section 7 of the 2004 Act provides, inter alia, in respect of any non-national landing at any place in the State, that an immigration officer or a member of An Garda Síochána may, per s.7(3)(b), 'search … such non-national and any luggage belonging to him … with a view to ascertaining whether the non-national is carrying or conveying any documents and may examine and detain for such time as he or she may think proper for the purpose of such examination, any documents so produced or found on the search'. The word 'documents' is defined in s.7(3)(c)(iii) as including 'any information in non-legible form that is capable of being converted into legible form'. Barrett J held that the natural meaning to be given the phrase 'search any such non-national' includes e.g. removing a phone on the person of that non-national and perusing its contents. It was held that section 7(3)(c)(iii) puts this beyond doubt, by including within the definition of 'documents' data that would be found on an electronic device ('any information in non-legible form that is capable of being converted into legible form'). Thus, Barrett J was satisfied that it was clearly contemplated by the Oireachtas that a search done pursuant to s.7(3)(b) would embrace, for example, removing an electronic device on the non-national's person and reading the data contained thereon. The applicant pointed to the fact that under s.7(4) a non-national who contravenes s.7(3) is guilty of an offence, and thus submitted that s.7

falls to be interpreted strictly. However, Barrett J noted that strict interpretation does not equate to strained or strange interpretation, and was satisfied that the reading that the court gave s.7(3)(b) and (c)(iii) was the natural and correct reading of those provisions. Thus the court considered that the search of the applicant's phone was done in accordance with s.7.

In relation to the complaint that more fulsome reasons for the decision to refuse admission were not provided to the applicant, Barrett J held that it flowed from the acceptance by the Supreme Court of the three pro forma refusals to land that featured in *Ejerenwa v Governor of Cloverhill Prison* [2011] IESC 41 (equivalents of the notice here impugned) that the impugned notice was adequate to inform the applicant of the reason why he was refused permission to land. Barrett J stated that even if that was not so, as Hardiman J observed in *FP v Minister for Justice* [2002] 1 IR 164 at 175, 'Where an administrative decision must address only a single issue its formulation will often be succinct.' Barrett J noted that the process involving the applicant was not an inter partes dispute where the decision-maker received contrary submissions and was required to resolve in favour of one side, which might require more extensive reasons to be given. Here, the applicant was questioned about why he was coming to Ireland, following that questioning he was told that he was being refused permission to land, and he was handed a signed, standard-form document addressed to him and indicating that he was being refused permission because the immigration officer considered there was reason to believe that he intended to enter the State for purposes other than those he expressed. Barrett J noted that three reasons pervade the case-law as to why reasons are required for an administrative law decision, namely that (i) the subject of a decision understands what has been decided, (ii) the subject can bring an informed challenge to same, if s/he desires, and (iii) a court can undertake an informed review. The court was satisfied in this case that none of these objectives was impeded and all were satisfied.

So far as complaint was made as to the standard-form nature of the written refusal, Barrett J held that the answer to this complaint was to be found in Hardiman J's observation in *FP* at p. 175 that 'Where a large number of persons apply, on individual facts, for the same relief, the nature of the authorities' consideration and the form of grant or refusal may be similar or identical. An adequate statement of reasons in one case may thus be equally adequate in others.' By way of a related point, Barrett J held that:

> *one has to have regard to the context in which the refusal to land issued, viz. a busy airport environment in which thousands of people are churning through each day before a finite number of immigration officers. In that context, the State has to find a means of successfully reconciling (a) administrative law requirements and (b) practical reality in such a way*

> *that (i) those requirements are discharged and (ii) that reality is accommodated.*

The court was satisfied that the Minister had complied with his obligations in that regard; what was required was, as Hogan J observed in *Ni v Garda Commissioner* [2013] IEHC 134, para.17, a decision that was 'bona fide … not unreasonable and … factually sustainable'. The court was satisfied that that was what the applicant got, and dismissed his challenge. In relation to the issue of conditions at Cloverhill Prison, Barrett J noted that not a lot was made at hearing of this complaint, and stated that while prison doubtless is not pleasant, there was nothing in the evidence to suggest that the conditions of the applicant's detention at Cloverhill breached art.5(1) ECHR.

Accordingly, the court refused the reliefs sought. On 29 January 2019 Barrett J certified the following question for the purposes of an appeal pursuant to s.5 of the Illegal Immigrants (Trafficking) Act 2000:

> *Does s.7 of the Immigration Act 2004 enable an immigration officer or a member of An Garda Síochána to search the phone of a non-national landing or embarking in the State?*

Requirement to give reasons for exclusion order in respect of EU citizen

In *Balc v Minister for Justice* [2018] IECA 76 the Court of Appeal considered whether separate reasons were required to be given to justify an exclusion order made in respect of an EU citizen who has been issued with a removal order. The applicant was a Romanian citizen who was convicted of sexual assault, for which he received a three-year prison sentence, with the final 18 months suspended on certain conditions. As a result of this conviction, the Minister issued a removal order and also imposed a five-year exclusion period. The applicant challenged both the removal and exclusion orders on a number of grounds, including proportionality and the adequacy of judicial review as an effective remedy, neither of which succeeded. However, the Court of Appeal held that the decision to make an exclusion order against the applicant for a period of five years, with no reasons being given for the exclusion period beyond those reasons giving rise to the decision to make the removal order, meant that the Minister failed to comply with the duty to give a reasoned decision. Peart J, giving the judgment of the Court of Appeal, held (at para.124):

> *The length of any such exclusion period is at the discretion of the Minister. Where that is the case the Minister must provide reasons for the decision made. The person affected to such a significant degree is entitled to know why he is excluded for a period of five years, rather than for some lesser period. Indeed, it is not necessary to include an exclusion period at all. It is but an option available in addition to making the removal order. The*

> *person is entitled to know why an exclusion order was considered necessary. If he does not know the reasons for these decisions it is impossible for him to challenge their legality.*

Accordingly, the appeal was allowed and the matter remitted to the Minister for fresh consideration of the application for removal in the light of the judgment.

Subsequently, in *Krupecki v Minister for Justice and Equality* [2018] IEHC 505 the High Court applied the *Balc* principle in finding that the Minister had failed to give reasons for the exclusion order and then in *Krupecki v Minister for Justice (No.2)* [2018] IEHC 538 considered the appropriate remedy in those circumstances. Humphreys J held that rather than simply quashing the decision, the court had jurisdiction to direct the Minister to give reasons for the decision to make the exclusion order in respect of the applicant, which must include whether those reasons were the Minister's reasons at the time when the exclusion order was made.

6.5.3 EU Treaty rights

Extent of protection enjoyed by TCN family member of EU citizen who applies for residence card pursuant to EU Treaty rights

In *SS (Pakistan) v Governor of the Midlands Prison* [2018] IECA 384 the Court of Appeal considered the extent of the protection enjoyed by a TCN who has applied for a residence card as a qualifying family member of an EU citizen. The appellant arrived in Ireland in June 2012 and submitted an asylum application on 27 June 2013. On 5 September, he was refused refugee status and a deportation order was made on 2 July 2015. This was notified to the GNIB in August 2015 and was served on the appellant on 9 January 2018. On 30 January 2018, the appellant applied for a residence card under the European Union (Free Movement of Persons) Regulations 2015 (S.I. No.548 of 2015) asserting that he was a qualifying family member, on the basis that he was the adult dependent child of the spouse of an EU citizen exercising her EU treaty rights in the State by virtue of the marriage between his father and a Romanian national. On 20 June 2018, the appellant was arrested and detained on foot of the unchallenged deportation order. On 27 June 2018, the Minister refused the appellant's application for a residence card on the basis that he was not a qualifying family member as he was not dependent on the EU citizen. His father's residence card was also revoked on that day as his marriage was considered to be a marriage of convenience. The appellant contended that his arrest and detention on foot of the deportation order were unlawful due to his application for a residence card. The High Court (Humphreys J) ([2018] IEHC 442) refused an order directing the appellant's release pursuant to Article 40.4.2° of the Constitution on the basis that the appellant had not satisfied the Minister that he was dependent on the EU citizen and was not to be treated as a qualifying family member entitled to the rights contained in the Regulations, including a right of

residence in the State. Humphreys J distinguished between a person who makes an application for a residence card based on the assertion that he or she is a qualifying family member, and a person who is *actually* a qualifying family member, holding that the rights set out in the Regulations apply only to the latter and not the former. The appellant appealed, submitting that the respondent was incorrect in asserting that applicants who are dependent on a Union citizen and/or her spouse differ from other applicants and that the Minister is entitled to make a prima facie assessment of whether the applicant is actually dependent. The Minister contended that as the appellant had not established the fact of his dependency, he was not a qualifying family member within the meaning of the 2015 Regulations nor was he a family member within the meaning of the Directive, and as such, he did not acquire a temporary right of residence under regulation 7(6) of the 2015 Regulations such that his detention on foot of the deportation order was valid.

Kennedy J giving the judgment of the Court of Appeal noted that the appellant's contention raised the question of whether the intention of the legislator, as expressed in the Regulations, was to permit all individuals who have applied for a residence card on the basis of a mere assertion that they are a qualifying family member by virtue of being a dependent adult child of the spouse of an EU citizen, and in particular who have merely asserted, but have provided either no evidence of, or insufficient evidence of, dependency, to automatically acquire an entitlement to remain pending the determination of the application. Having analysed the provisions of the Regulations and the Directive, in the light of the decision of the Court of Appeal in *CA v Governor of Cloverhill Prison* [2017] IECA 46, Kennedy J held that that the correct construction of regulation 3(5) of the Regulations required that an applicant establish to the satisfaction of the Minister that he/she is an actual qualifying family member where such an application is made on the basis of an adult dependency:

> *This must be done by providing to the Minister, at the time of application, evidence of sufficient cogency to demonstrate the prima facie existence of such dependency.*

It was held that it was not the intention of the Minister to provide a temporary right of residence to any person who simply submits a form seeking a residence card on the basis of dependency without first establishing on a *prima facie* basis that he/she is an actual qualifying family member. It followed, accordingly, that it was not necessary that the Regulations expressly provide that an individual making an application on the basis of dependency must firstly establish that he/she is a qualifying family member and in that respect establish a relationship of dependency. The court was satisfied that it was clear from a consideration of the Regulations that, before an applicant could be considered as an applicant for a

residence card, he/she must be a qualifying family member. Regulation 3(5) provides that a person is a qualifying family member where the person is a direct descendant of the Union citizen's spouse, and is a dependant of the Union citizen's spouse. Therefore, the court held, an applicant must establish both elements to the satisfaction of the Minister before he or she could be considered to be an actual qualifying family member; any other construction of the Regulation was deemed to be contrary to the intention of the Minister. The court thus dismissed the appeal, holding that the High Court was correct to find that the appellant had not demonstrated that he had an entitlement to the rights under regulation 7(6) of the Regulations and the appellant's detention on foot of the deportation order was therefore lawful.

Legal status of marriages of convenience for immigration purposes

In *MKFS v Minister for Justice* [2018] IEHC 103, the High Court considered the status of marriages of convenience entered into for the purpose of obtaining an immigration advantage. The first and second named applicants were married in the State on 12 February 2010, some eight months after the first named applicant arrived in the State from Pakistan. The second named applicant was a Latvian national. The first named applicant subsequently applied for, and was granted, a residence card for five years under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006). That permission noted that the onus was on the applicant to keep the Minister informed of changes of circumstances, and that if it was established that rights were acquired by fraudulent means he would cease to enjoy them immediately. The applicant claimed that the parties separated in March 2011, and the second named applicant subsequently had a child with another man who later died. The first and second named applicants reconciled in 2015 and resumed living together. In October 2015 the first named applicant again applied for a residence card. On 4 May 2016 the first named applicant was given notice that the Minister's view was that the marriage was one of convenience and given an opportunity to make submissions, which he did. On 9 July 2016 the Minister formally decided that the marriage was one of convenience under the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015). Regulation 28 of the 2015 Regulations allows the Minister to disregard any marriage as being one of convenience and provides for notice to a party of an intention to so decide and for a formal decision by the Minister deeming the marriage to be one of convenience. Notice of that decision was duly given. The applicant sought a review of that decision, and on 20 March 2017, the Minister's decision that the marriage was one of convenience was upheld and the first named applicant was refused a permission under the 2015 Regulations. No proceedings were taken challenging that decision. A proposal to deport the first named applicant was issued on the same day. The first named applicant made submissions relying inter alia on family rights under Article 41 of the Constitution and art.8 of the ECHR. A deportation order was made on 30 June

2017, and was notified to the first named applicant on 7 July 2017. The first named applicant subsequently brought judicial review proceedings challenging the deportation order on a number of grounds, including a failure to consider the rights of the parties.

Humphreys J rejected the submission that the Minister was not entitled in the deportation decision to rely on the previous finding that the applicant's marriage was one of convenience, noting that 'no administrative system could work if there was some sort of free-floating obligation to revisit any formal and unchallenged decision merely because a further step in the process predicated on that decision had to be taken'. Humphreys J also held that where an unchallenged determination is made that the marriage is one of convenience, it is not open to a party to challenge that in later proceedings. Thus, the failure of the applicant to challenge the Minister's decision that his marriage was one of convenience at the time it was made meant he could not now challenge that decision as part of the proceedings concerning the deportation order.

Significantly, Humphreys J went on to address the effect of a finding that a marriage is one of convenience, holding that 'where it is determined that the applicants' relationship is based on fraud, no "rights" can arise from such a relationship; and an absolutely necessary consequence is that no obligation arises under the Constitution, the ECHR or EU law to consider any such "rights"'. Humphreys J went on to hold that a marriage of convenience is a nullity in law and was void *ab initio*, even prior to the 2014 Act, declining to follow the decision of Hogan J in *Izmailovic v Commissioner of An Garda Síochána* [2011] 2 I.R. 522; [2011] 2 I.L.R.M. 442.

Humphreys J subsequently refused to grant a certificate of leave to appeal (*MKFS v Minister for Justice (No. 2)* [2018] IEHC 222). However, on 26 February 2019 ([2019] IESCDET 54) the Supreme Court granted leave to appeal on the basis that there were two conflicting judgments of the High Court concerning this matter of general public importance.

CHAPTER 7

Integration

7.1 INTEGRATION

7.1.1 Migrant Integration Strategy

The *Migrant Integration Strategy – A Blueprint for the future*,[430] which provides the framework for Government action on migrant integration from 2017 to 2020, was published in February 2017.

As reported in previous years, a cross-Departmental Group on Integration was established in March 2014 with a mandate to review the activities being undertaken by Government Departments and agencies directed to promoting the integration of migrants, preparing a Draft Integration Strategy taking account of the policies and actions already being implemented, and undertaking consultation with key stakeholders.[431]

Integration is defined in current Irish policy as the 'ability to participate to the extent that a person needs and wishes in all of the major components of society without having to relinquish his or her own cultural identity'.[432] The Strategy's key message is that successful integration is the responsibility of Irish society as a whole.[433]

The Strategy is intended to cover EEA and non-EEA nationals, including economic migrants, refugees and those with legal status to remain in Ireland.[434] It is directed at Government Departments, public bodies, the business sector, and community, voluntary, faith-based, cultural and sporting organisations as well as at families and individuals.[435]

The Monitoring and Coordination Committee which was established under the Migrant Integration Strategy met on three occasions during 2018**.** The Committee has membership from Government Departments, State agencies and NGOs and has the responsibility of supporting the process of implementing the actions of the

430 Department of Justice and Equality (2017).
431 Sheridan and Whelan (2016) (online version), pp. 81–82.
432 Department of Justice and Equality (2017), p. 11.
433 Ibid., p. 9.
434 Ibid., p. 18.
435 Ibid., p. 9.

strategy. The Committee is chaired by the Minister of State at the Department of Justice and Equality.[436]

7.1.2 Bridging Programme for Migrant Teachers

In November 2018, the Minister of State at the Department of Justice and Equality launched the Bridging Programme for Immigrant Internationally Educated Teachers. This is one component of the wider Migrant Teacher Project which is funded by the Office for the Promotion of Migrant Integration (OPMI) of the Department of Justice and Equality under the National Integration Funding Programme. Specifically, the Bridging Programme has been developed for migrant teachers who have been educated and trained outside Ireland. The Programme aims to recruit 60 immigrant internationally educated teachers and will be delivered over one academic year.

Action 27 of the Migrant Integration Strategy provides that:

> *Proactive efforts will be made to attract migrants into teaching positions, including raising awareness of the Irish language aptitude test and adaptation period for primary teaching.*[437]

7.1.3 National Intercultural Health Strategy

The second *National Intercultural Health Strategy* (2018–2023), published by the Health Service Executive (HSE), was launched in January 2019. The first *National Intercultural Health Strategy* had covered the period 2007 to 2012. A summary of the submissions received during the consultation process for the second Strategy was also published.

According to the Health Service Executive (HSE):

> *This strategy provides a comprehensive and integrated approach to addressing the many unique, health and support needs experienced by the increasing numbers of HSE service users from diverse ethnic and cultural backgrounds and who live in Ireland.*

Five main goals are outlined in the strategy:

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436 Department of Justice and Equality (2018x).
437 Department of Justice and Equality (2018y).

- enhance accessibility of services to service users from diverse ethnic, cultural and religious backgrounds;
- address health issues experienced by service users from diverse ethnic, cultural and religious backgrounds;
- ensure provision of high-quality, culturally responsive services to service users from diverse ethnic, cultural and religious backgrounds;
- build an evidence base;
- strengthen partnership working to enhance intercultural health.[438]

7.1.4 Community engagement

As reported for 2017, a Communities Integration Fund was launched by the Minister of State at the Department of Justice and Equality alongside the Migrant Integration Strategy in February 2017. A total amount of €500,000 was to be made available throughout 2017 to local community-based groups to promote integration in their area, for example local sports clubs, faith-based groups and theatrical and cultural organisations. In August 2018, the Minister of State at the Department of Justice and Equality announced the projects to receive funding under the 2018 Communities Integration Fund. A total of 115 organisations are to receive grants of up to €5,000 each for activities to integrate migrants into communities. The total amount awarded was just over €500,000.[439]

Local authorities

The Migrant Integration Strategy published in 2017 contains a number of specific actions for local authorities. These are:

- Action 52 – Integration Strategies will be updated;
- Action 53 – A Migrant Integration Forum will be established in every local authority area, ideally through existing Public Participation Network (PPN) structures, and will meet regularly;
- Action 54 – An Integration Network will be established where migrant groups can engage with the Government and public bodies on issues of concern and on barriers to integration;
- Action 62 – Local authorities will take action to have migrant representation on all Joint Policing Committees;

438 Health Service Executive (2019).
439 Department of Justice and Equality (2018z).

- Action 64 – Local authorities will develop and publish their policy on the early removal of racist graffiti in their respective areas.

A conference, hosted by the Office for the Promotion of Migrant Integration (OPMI) of the DJE, was held for local authorities from across Ireland on integration of migrants into communities in November 2018. The conference was titled: 'Supporting Integrated Communities: Linking National and Local Action on Migrant Integration'. Delegates explored ways in which local and national government can work together to achieve migrant integration in Ireland's cities, towns and rural communities.[440]

The Immigrant Council of Ireland (ICI) published *Keeping it Local: Discussion Document and Proposed Actions for Local Authorities on Developing Local Migrant Integration Strategies* in July 2018.[441] The report focuses on action 52 of the Migrant Integration Strategy: that local authorities develop migrant integration strategies between 2017 and 2020. It reviewed 22 existing integration/intercultural/diversity strategies in place in local authorities, noting core themes emerging such as employment supports, English language training and intercultural events. The report noted that, at the time of writing, only three out of 31 local authorities had in-date integration strategies. A survey was conducted to which 21 local authorities provided a response. They were asked to comment on the perceived strengths and weaknesses of their strategies, and on what they considered to be elements of an effective strategy. Strong themes that emerged here were the importance of an inter-agency approach with the involvement of migrant groups, and clear achievable goals, monitoring and timeframes. The report made recommendations in relation to principles to underpin the development of any strategy, and specific actions. The recommended principles included: prioritising interaction between Irish, non-Irish and local integration groups; building and retaining relationships with local partners and migrants; adequate resources; clear actions and indicators of progress; and to integrate actions outside the direct remit of the local authority's core functions into the Local Economic and Community Plans, with oversight by the local community development committees. Recommended actions were proposed in relation to: social housing; library services; electoral register; residents' association; intercultural small grants scheme; public communications; local enterprise offices; public sector duty assessment and staff and councillor training; community inclusion open days; including migrant voices and perspectives in the strategies and plans of all local authority functions; local community development committees; and local economic and community plans.

440 Department of Justice and Equality (2018aa).
441 Immigrant Council of Ireland (2018d).

7.1.5 Research on attitudes to immigration in Ireland

The Minister of State at the Department of Justice and Equality welcomed Ireland's results in the *Special Eurobarometer 469* on Immigrant Integration in April 2018. The Eurobarometer found that 80% of respondents in Ireland felt that integration is successful in the local area or country; this compared with 54% of respondents across the EU as a whole. In response to the question on whether immigration is more of a problem or more of an opportunity, 30% of respondents in Ireland felt immigration was equally a problem and an opportunity, in line with the EU response rate of 31%. However, 36% of respondents in Ireland felt immigration was more of an opportunity, as opposed to 20% of EU respondents. Some 28% of respondents in Ireland felt they were fairly well informed about immigration and integration matters, as opposed to 33% of EU respondents.[442]

The Minister of State said:

> *I am very pleased to see Ireland's strong performance in the Special Eurobarometer on Immigrant Integration. This survey measures people's perceptions of immigrant integration across the EU. The results for Ireland are encouraging and are a credit to local communities and organisations working in support of integration throughout Ireland. Embracing diversity is key to successful integration and we hope to build on these positive results.*[443]

The Social Change Initiative report *Immigration and Refugee Protection in Ireland: An Analysis of Public Attitudes* was launched in December 2018. It was one of a suite of reports also undertaken in France, Germany, Italy and Greece. The Irish report was supported by a number of NGOs including the ICI, the Irish Refugee Council (IRC), Doras Luimní, Children's Rights Alliance and Nasc, the Migrant and Refugee Rights Centre, which issued a joint statement on its publication. The research was conducted via online surveys with a representative sample of 800 adults. This was followed up by mini focus groups with two of the 'middle segments' identified from the online surveys to probe attitudes further.[444]

Headline findings of the Irish research included:

- 74% of survey respondents agree that no child should grow up undocumented in Ireland;

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442 Special Eurobarometer 469 Factsheet: Ireland, October 2017. Available at https://ec.europa.eu/home-affairs/news/results-special-eurobarometer-integration-immigrants-european-union_en.

443 Department of Justice and Equality (2018bb).

444 Social Change Initiative (2018), p. 4.

- 60% agree that people living in Ireland for a long time should be able to become citizens;
- 70% believe refugee and asylum seeking children should have equal access to education and training;
- Two-thirds (66%) agree that everyone should be treated fairly when the Government is making laws.[445]

7.1.6 Vulnerable groups

As reported for 2017, the Minister of State at the Department of Justice and Equality with responsibility for Equality, Immigration and Integration announced funding of €485,000 from the Dormant Accounts Fund – *Measure 4 – Pre-activation Supports for Female Refugees and Female Family Members of Refugees*, to support the labour market integration of female refugees in November 2017. The seven projects successful in obtaining funding were administered across Ireland over the course of 2018. In December 2018, the Minister of State at the Department of Justice and Equality announced extended funding for a second year for the seven projects. The exact amount allocated is €485,018.[446]

7.1.7 Non-discrimination and racism

In March 2018, the Minister of State at the Department of Justice and Equality announced national funding totalling €210,000 for projects to promote Roma inclusion. Six organisations nationwide are to receive grants of up to €50,000 each. The projects included provision of English language and literacy classes; provision of free legal advice and advocacy services; provision of dedicated Community Development Workers and project workers in certain areas in Ireland; and the establishment of a parent/toddler group in Dublin. This is a new initiative funded by the Department of Justice and Equality to address some of the concerns raised in the report *Roma in Ireland – A National Needs Assessment*.[447] This needs assessment was undertaken by Pavee Point (an NGO) in partnership with the Department of Justice and Equality.[448]

The ICI ran two campaigns related to challenging racism and prejudice in 2018. The Transport Against Racism campaign ran for two weeks in August 2018, during which over 1,600 posters were displayed on public transport. In the #BloodyForeigners campaign, the ICI joined with the Irish Blood Transfusion Board and Forum Polonia in highlighting the donations of Polish nationals to the Irish Blood Bank. This campaign had the dual purpose of promoting the Blood Bank and

445 Children's Rights Alliance, Doras Luimní, Immigrant Council of Ireland, Irish Refugee Council, and Nasc, the Migrant and Refugee Rights Centre (2018).
446 Department of Justice and Equality (2018cc).
447 Department of Justice and Equality (2018dd).
448 Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018).

challenging prejudice. It culminated in a day of action on 30 July 2018.[449]

The ICI also provides a Racist Incidents Support and Referral Service. During 2018, ICI provided such support to 25 people.[450]

Hate crime[451]

As reported for 2017, there was an ongoing discussion on the need for amended hate crime legislation, reflected in many parliamentary questions,[452] and the Migrant Integration Strategy contains a commitment to review the existing legislation on hate crime.[453]

The Irish Council for Civil Liberties (ICCL) published *Lifecycle of a Hate Crime: Comparative Report* in July 2018.[454] The report was produced with the support of funding from the Rights, Equality and Citizenship Programme 2018–2020 of the European Union. The comparative research was undertaken in five jurisdictions within the EU – the Czech Republic, England and Wales, Ireland, Latvia, and Sweden. It examined the 'lifecycle' of a hate crime from reporting to prosecution to sentencing in order to identify gaps and good practices in the application of laws.

The Minister for Justice and Equality welcomed the publication of the report, saying:

> *These recommendations include changes to legislation on incitement to hatred and sentencing, better reporting and recording of hate-motivated crimes, enhanced procedures for the investigation of such crimes, and training and guidelines for prosecutors. They are a very valuable contribution to the development of improved policy and procedures in this important area.*

The Minister noted that a review of the Incitement to Hatred Act 1989 was ongoing.[455]

Ireland's fifth to ninth periodic reports to the UN Committee on the Elimination of Racial Discrimination (see also Section 2.3.3 of this report) noted that the Department of Justice and Equality was conducting a legislative review of the law

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449 Immigrant Council of Ireland (2018e), pp. 17–20.
450 Ibid., pp. 20–21.
451 The European Union Agency for Fundamental Rights (FRA) defines hate crimes as 'violence and crimes motivated by racism, xenophobia, religious intolerance or by a person's disability, sexual orientation or gender identity'.
452 For example, PQ 29838/18 of 5 July 2018 and PQs 31186/18, 31450/18 and 31451/18 of 11 July 2018. Available at www.justice.ie.
453 Sheridan (2018) (print version), p. 101.
454 Schweppe et al. (2018).
455 Department of Justice and Equality (4 July 2018) Statement by Minister Flanagan on hate crime legislation. Available at www.justice.ie.

relating to hate crime and incitement to hatred 'in order to ensure the best possible public policy response to racism and xenophobia in the context of Ireland's integration policy, the EU Framework Decision 2008/913/JHA on Combating Racism and Xenophobia, and legislative developments in other jurisdictions'.[456]

7.1.8 Civic participation

The *Migrant Integration Strategy – A Blueprint for the Future*, which was published in 2017, contains two actions specifically focused on migrant political participation. These are:

- Action 58: Migrants will be encouraged to participate in local and national politics to the extent that these areas are legally open to them.
- Action 59: Migrants will be supported and encouraged to register to vote and to exercise their franchise.

An event, 'Promoting Political Engagement of Migrants 2018', was held in Dublin in March 2018. It was jointly organised by a number of migrant organisations – AkiDwA, ICI, New Communities Partnership, Places of Sanctuary, International Organization for Migration, Cairde, Wezesha, and Forum Polonia – and supported by funding from the OPMI at the Department of Justice and Equality. This event brought together over 100 migrant community leaders from all over Ireland together with a panel of representatives from Irish political parties. A similar event took place in Cork in September 2018. The Minister of State at the Department of Justice and Equality spoke at both events.[457]

The Dublin event was chaired by Salome Mbugua, who wrote an opinion piece in the *Irish Examiner* about migrant participation in political life in Ireland. She noted that one in eight people in Ireland are from a migrant background, yet there is huge underrepresentation of migrants in politics. For example, she stated that, at the time of writing, just three out of 949 councillors are from a migrant background and there was one naturalised Irish citizen TD. She noted that the existing rights of migrants to vote in local elections (since 1963) and for migrants to stand for local election (since 1974) needed to be better promoted, including to migrants themselves.[458]

During 2018, the ICI ran 27 workshops across Ireland on migrant voting rights and the operation of the Irish political system. The ICI also produced ten videos, in

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[456] Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014. CERD/C/IRL/5-9 Advanced unedited version 3 October 2018, paragraph 68.

[457] Department of Justice and Equality (2018ff, 2018gg).

[458] Mbugua (2018).

November 2018, in ten different languages – #GoVote! – to encourage migrants to vote in the upcoming local elections in 2019.[459]

The ICI initiated a political internship scheme in 2018 in which migrants were paired with local councillors to learn about local politics across five constituencies in Wicklow, Dundalk, Cork, Longford and Swords. The purpose of the scheme was to promote migrant participation in local politics, which is an integral part of the ICI's strategic goal to: 'help shape the narrative on migrant rights and to continue playing a leading role in supporting integration in Ireland and combatting xenophobia and racism'.[460]

7.1.9 Engagement of diaspora communities

As reported for other years, Africa Day was celebrated at a number of locations throughout Ireland in 2018. The flagship event, supported by Irish Aid, took place in the Phoenix Park, Dublin, on 24 May. It was opened by the Minister of State at the Department of Foreign Affairs and Trade with responsibility for the Diaspora and International Development.[461]

7.1.10 Research

The *Monitoring Report on Integration 2018* was published by the Economic and Social Research Institute in November 2018,[462] and launched by the Minister of State at the Department of Justice and Equality. The key finding of the research was that non-Irish nationals match Irish nationals on many key indicators (such as employment and education) but some groups remain disadvantaged. For example, employment rates were slightly higher for non-Irish nationals as a whole (70%) than for Irish nationals (66%), but rates varied across national groups, with a very low rate of around 45% for African nationals. The research found that 37% of Irish people had third-level education in 2017 and the percentage was higher among almost all non-Irish groups (Eastern Europeans were the lowest at 35%).

The special theme in the 2018 report was Muslims in Ireland, using census data. The report noted that the Muslim population increased from less than 20,000 in 2002 to over 62,000 in 2016. Just under 30% were born in Ireland. Muslims in Ireland are highly educated compared to the total population, but more likely to be unemployed. They are twice as likely as the general population to be students.[463]

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459 Immigrant Council of Ireland (2018e), pp. 22–26.
460 Immigrant Council of Ireland (2018f).
461 See www.africaday.ie.
462 McGinnity et al. (2018)
463 Economic and Social Research Institute (2018).

7.2 CITIZENSHIP AND NATURALISATION

7.2.1 Citizenship statistics

A total of 8,225 citizenship certificates were issued in 2018.[464] This figure includes EU and non-EU nationals.

The top ten nationalities among those naturalised in 2018 were: Poland (17.8%), Romania (10%), United Kingdom (8.4%), India (7.6%), Nigeria (5.8%), Pakistan (4.4%), Philippines (3.9%), Latvia (3.7%), China (2.8%) and Brazil (2.7%).[465]

As reported for 2017, British nationals continued to make applications for Irish citizenship in the wake of the Brexit referendum.[466] The number of UK nationals obtaining Irish citizenship increased from 41 in 2015 to 687 in 2018.[467]

In 2018, there were three citizenship ceremony days: two were in Killarney, where almost 6,500 candidates received their certificates of naturalisation, and one was in the National Concert Hall where almost 500 people received their certificates.[468] This was the first year in which large-scale citizenship ceremonies were held outside Dublin.[469]

7.2.2 Case law

Extent of reasons required for refusal of naturalisation on national security grounds

In *AP v Minister for Justice* [2018] IECA 112 the applicant was an Iranian national who was granted refugee status in the State in 1991. Since that time he had applied to the respondent for a certificate of naturalisation on several occasions. All of these applications were refused, including an application made on 30 April 2013. The respondent provided no reason for the refusal of this application, relying on the provisions of the Freedom of Information Act 1997 as amended for so doing. The applicant challenged this decision by way of judicial review before McDermott J in the High Court, seeking inter alia an order quashing the Minister’s decision and a declaration that the failure to provide reasons was unlawful. In those proceedings, an affidavit was filed by the respondent alluding to the existence of certain documents (documents A, B and C) concerning the applicant and his background. The respondent asserted executive privilege over these documents on the ground that disclosure would be adverse to the interests of the State. The applicant sought to inspect the documents referred to in the respondent’s

464 Department of Justice and Equality (2019a), p. 23.
465 Ibid., p. 24.
466 Ibid.
467 Department of Justice and Equality (2019b), p. 16.
468 Department of Justice and Equality (2019a), p. 23.
469 Department of Justice and Equality (2019d).

affidavit, contending that the respondent's actions breached his right to fair procedures, constitutional justice and an effective judicial remedy. McDermott J delivered a written judgment on this motion ([2014] IEHC 17) in which he found it necessary for the court to inspect the documents in question under the principles outlined in *Murphy v Dublin Corporation* [1972] IR 215 and *Breathnach v Ireland (No. 3)* [1993] 2 IR 548. He also held that the decision reached in *Ambiorix v Minister for the Environment (No. 1)* [1992] 1 IR 277 enabled the court to decide which public interest should prevail – that involved in the production of evidence or that involved in respecting executive privilege for the purpose of national security.

McDermott J held that document A should be disclosed in full and that document B should be disclosed in a redacted form. The court upheld the claim of privilege over document C in its entirety. This decision was not appealed. The case proceeded to a hearing and McDermott J delivered a judgment on the substantive application for judicial review on 2 May 2014 ([2014] IEHC 241). McDermott J ruled in favour of the applicant, finding that there was nothing inhibiting the respondent from providing a more detailed reason or justification for the decision. A cryptic reference to the provisions of the Freedom of Information Act 1997 did not suffice.

Following this judgment, the applicant made a further application for a certificate of naturalisation, which was the subject matter of this appeal. Two civil servants working for the respondent prepared a report that set out *inter alia* the national security/international relations concerns that arose in the applicant's case. The report recommended against granting the application on the basis that 'the Minister cannot have confidence in the applicant's declaration of fidelity to the Irish State in this case nor be satisfied that the applicant meets the condition of good character as specified in s.15(1)(b) of the Irish Nationality and Citizenship Act 1956 as amended'. The report also stated that the applicant's right to specific reasons was outweighed by national security interests in maintaining confidentiality over the information concerned. The respondent signed and dated the report on 25 August 2014 indicating her acceptance of the negative recommendation in relation to the applicant's case. By letter dated 1 September 2014 the applicant was informed of the refusal of his application and a copy of the report as relied on was also sent to the applicant.

While the applicant was provided with a reason for the refusal, namely, national security interests, he was not provided with the basis for the conclusion that national security interests required the maintenance of confidentiality over the basis of the reason which resulted in the application being refused. The applicant claimed that his good name had been seriously impugned by the respondent and he had no idea as to what was being held against him. He believed that whatever it was, it was mistaken because he was a man of good character. He claimed that

he was being denied the opportunity to correct whatever slur or damaging assertion had been held or levied against him and was being maintained behind closed doors. Damaging data remained on file against him which he was not being allowed to meet or address in even the most general way and to rectify. The applicant asserted that this was manifestly unfair and a gross violation of his constitutional right to have his good name protected and vindicated and further that it was in breach of his rights and the respondent's duties under Art.40.3 of the Constitution and was not permitted under European law or the European Convention on Human Rights. It was the Minister's position that this case was covered by Irish law and not by EU law. It was accepted on behalf of the Minister that the reason given for refusing a certificate of naturalisation was in the interests of national security and that this essential reason was a justification for not having to give any further reasons for the conclusion arrived at. It was submitted on the respondent's behalf that there was no disputing that in this situation, the normal rules of fair procedures did not apply because there was an issue as to national security.

Gilligan J, giving the principal judgment of the Court of Appeal, held that the judgment of the trial judge (Stewart J) involved a comprehensive review of the facts, submissions on behalf of the parties and an analysis of the legal principles applicable, and she arrived at a reasoned conclusion that the applicant failed to discharge the burden of satisfying her that there was an error in the decision-making process engaged by the respondent. Gilligan J stated that it had to be borne in mind that there was no question of the appellant being deprived of any liberty. He was entitled to apply for a certificate of naturalisation to the Minister which, if successful, would enable him to obtain an Irish passport and to travel with all the benefits that an Irish passport confers on the holder. However, the granting of Irish citizenship was a privilege, which, if granted, carried significant responsibility in many ways: principally on the respondent's behalf. In the circumstances of this case, Gilligan J was satisfied that the Minister had complied with the requirements set out by the Supreme Court decision in *Mallak v Minister for Justice* [2012] 3 IR 297, as the applicant was given a reason for the refusal of his application, namely, the interests of national security. The Court of Appeal accepted that from the applicant's perspective, it was unfair that the Minister had relied on information that was obtained from an outside source that put the Minister on notice of certain matters, which in the interest of national security and in the interest of protecting the subject matter and source of such information caused her to decline to divulge the content thereof to the applicant. However, Gilligan J commented that:

> *The reality is that there is no other better solution available. There is not, as such, any formal procedure in place in this jurisdiction whereby an independent body or person, such as a retired or current judge of the High Court or a senior barrister, can examine a particular document over which*

> *privilege is claimed in the interest of national security so as to consider whether or not the document should be released, or alternatively, that perhaps the gist of the document in some way can be released to an unsuccessful applicant seeking Irish citizenship.*

It was noted that McDermott J had considered those documents in this particular case, and as set out in his judgment in relation to the privilege aspect, he clearly indicated that document B could be released subject to the redacted portions as directed by the court and that document C may not be released, being satisfied that it was in the public interest that the contents remain confidential. Gilligan J held that:

> *the interests of national security … outweigh the position of the applicant who finds himself in an unfair situation whereby he does not know the basis of the reason for the respondent coming to a conclusion that national security interests result in him not being given the basis of the conclusion arrived at by the respondent Minister.*

Accordingly, he found no fault in the reasoning and conclusion as arrived at in the judgment of Stewart J and the appeal was therefore dismissed.

Hogan J delivered a separate concurring judgment addressing the applicant's contention that the refusal of his application for naturalisation was in breach of EU law. Hogan J held that the decision by the State to grant citizenship represented the exercise of its own national sovereignty and did not in any sense involve the implementation of Union law within the meaning of Article 51 of the Charter, distinguishing *Case C-135/08 Rottmann* EU:C:2010:104; [2010] E.C.R. I-4449 on its facts.

By determination dated 25 September 2018 ([2018] IESCDET 131), the Supreme Court granted leave to appeal on the following grounds:

(i) Whether the grant of citizenship is within the unfettered discretion of the Minister for Justice and Equality and, if so, whether any procedures inure to the benefit of an applicant?

(ii) Whether national security issues need to be disclosed to an applicant for citizenship in such a way as to enable that applicant to meet, or at least make any relevant representations that may be thought appropriate, those concerns prior to any decision against a grant of citizenship is made?

(iii) Whether fairness of procedures demands that a decision internal to the Department of Justice and Equality to refuse citizenship be reviewed externally and by what mechanism?

(iv) Whether the European Union Charter of Fundamental Rights and Freedoms governs the application for and refusal of citizenship by the Minister for Justice and Equality?

CHAPTER 8

Countering trafficking in human beings

8.1 STATISTICS

As reported for 2017, the Anti-Human Trafficking Unit (AHTU) of the Department of Justice and Equality realigned the reporting of trafficking statistics beginning in 2017. Statistics from 2017 no longer include victims of crimes prosecuted under section 3(2) of the Child Trafficking and Pornography Act 1998, as amended by the Criminal Law (Human Trafficking) Act 2008. In addition, in its *Annual Report 2017*, the AHTU revised trafficking statistics since 2013 to exclude these crimes.

According to the AHTU:

> *Up to this year, victims of crimes prosecuted under section 3(2) of the Child Trafficking & Pornography Act 1998 [as amended by Criminal Law (Human Trafficking) Act 2008] had been reported as victims of human trafficking. As international evaluations have consistently queried the inclusion of child sexual exploitation statistics, not generally deeming them to amount to trafficking , we have decided to discount these cases to provide a more accurate picture of the extent of trafficking in Ireland, while making our data more comparable to that of other jurisdictions.*

Charges brought under section 3(2) of the Child Trafficking & Pornography Act 1998 relate to offences of sexual exploitation. According to the *Anti-Human Trafficking Unit Annual Report 2017*, the offence has generally been 'committed against an Irish child, without the involvement of a third party and without any commercial element. Furthermore, the offender is usually somebody known to the victim, and the offence has occurred without any significant movement.' The AHTU acknowledges, however, the value of having some data available on these crimes and undertook to report this information separately to human trafficking data.[470]

A total of 64 suspected victims of trafficking, under the revised reporting methods, were identified by An Garda Síochána during 2018.[471] Some 75 victims of human trafficking were detected by An Garda Síochána in 2017.[472] These figures include EU nationals.

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470 Sheridan (2018) (print version), p. 121.

471 US State Department (2019) p. 252.

472 Sheridan (2018) (print version), p. 122. Confirmed in correspondence with Department of Justice and Equality, October 2019.

TABLE 8.1 SUSPECTED VICTIMS OF TRAFFICKING IDENTIFIED IN 2018

Gender	33 were female and 31 were male
Regions of origin	14 were from Romania; ten from Egypt; nine from Nigeria; one from Ireland and the remainder from Europe, Africa, South Asia, the Near East and South America.
Type of exploitation	35 were exploited in labour trafficking; 27 in sex trafficking and two in forced participation in criminality.

Source: *Trafficking in Persons Report 2019.*

A total of 43 victims were third-country nationals. Victims from Nigeria, Egypt and Ghana were the largest discernible groups. These victims were evenly divided between sexual exploitation and labour exploitation (22 and 21 respectively).[473]

Four persons were arrested or otherwise involved in a criminal proceedings in 2018.[474] There were no trafficking convictions in 2018.[475] According to the *Trafficking in Persons* report, the Government gave some form of immigration permission to 47 victims in 2018, via a 60-day recovery and reflection period, a six-month temporary residence permission or a two-year residence permission allowing access to the labour market.[476]

8.2 TRAFFICKING IN PERSONS REPORT

Ireland maintained its Tier 2 status for the second year in the United States State Department's *Trafficking in Persons* (TIP) *Report 2019*, which covers developments for 2018. The TIP report measures the efforts of states to eliminate human trafficking against the minimum standards set in the US Trafficking Victims Protection Act. Ireland had held Tier 1 status between 2011 and 2016. According to the Tier 2 rating, 'Ireland does not fully meet the minimum standards for the elimination of trafficking, however it is making significant efforts to do so.'[477] The report stated that Ireland had maintained its Tier 2 status as 'the government demonstrated overall increasing efforts compared to the previous reporting period. These efforts included beginning coordination with stakeholders to develop a new national identification and referral mechanism.'[478] However, the

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473 Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, July 2019. See European Migration Network (2019), Table 15.

474 Correspondence with Anti-Human Trafficking Unit, Department of Justice and Equality, July 2019. See European Migration Network (2019), Table 17.

475 Department of Justice and Equality (2018hh), p. 13.

476 US State Department (2019), p. 252.

477 Ibid., p. 251.

478 Ibid.

report considered that Ireland did not meet minimum standards in certain areas. As in other years, the report highlighted that Ireland had not had a trafficking conviction since the law was amended in 2013. As in the previous reporting period, the report referred to 'chronic deficiencies in victim identification, referral and assistance'.[479]

As in other years, the TIP report focused on concerns expressed by commentators regarding the victim identification mechanism and referral to services for victims. This included difficulties for EEA national victims to access service until granted an exemption from the Habitual Residence Condition (HRC).[480] The report noted however that all 64 suspected victims in 2018 were referred to services.[481]

One aspect highlighted by the report was ongoing concerns about alleged trafficking in the Irish sea fishing industry and shortcomings with the Atypical Working Scheme in relation to sea fishers. The report asserted that the Government had taken no concrete action to address concerns raised by the Oireachtas Committee on Business, Enterprise and Innovation in 2017. A review of the recommendations of this committee is available in the 2017 report of this series.[482] The report also referred to the injunction sought by an NGO in 2018 for a moratorium on all permits for sea fishers issuing under the scheme (see also Section 8.4.1 below). The reported noted that mediation was ongoing between the Government and the NGO in question at the end of the reporting period.[483]

The TIP report 2019 also contained a special focus on exploitative sham marriages and human trafficking in Europe, and referred to Ireland as a country where this practice was a concern. It stated:

> *The trend of exploitative sham marriages has been a concern in Europe for several years. With international studies and organizations shedding more light on the issue, awareness has grown across the continent, resulting in increased training, capacity building, and enhanced cooperation, including joint investigative teams. Countries, such as Latvia, the UK, and Ireland, have financially invested in addressing the root causes and empowering vulnerable populations.*[484]

479 Ibid.
480 Applicants must satisfy the HRC for certain social welfare payments and Child Benefit. Habitual residence means that you are residing in Ireland and have proven close links to the State. Department of Social Protection (February 2016), SW108: Habitual Residence Condition, available at www.welfare.ie.
481 US State Department (2019), p. 252.
482 Sheridan (2018), pp. 126–127.
483 US State Department (2019), p. 253.
484 Ibid., pp. 18–19.

8.3 LEGISLATIVE DEVELOPMENTS

8.3.1 Domestic Violence Act 2018

The Domestic Violence Act 2018[485] introduced an offence of forced marriage which creates an offence of removing a person from the State in the knowledge that they will be subject to violence, threats, undue influence or other forms of coercion or duress for the purpose of causing another person to enter into a ceremony of marriage. This addresses acts of coercion where the purpose is a broader form of sexual exploitation.[486] The Act was signed into law on 8 May 2018. It was commenced via the Domestic Violence Act (Commencement) Order 2018,[487] which provided for the Act to come into operation from 1 January 2019.

8.3.2 Ratification of the Optional Protocol No. 29 to the ILO Forced Labour Convention

The Irish Government, with the Department of Business, Enterprise and Innovation as lead Department, continued work to ratify Optional Protocol No. 29 to the Forced Labour Convention of the International Labour Organisation (ILO) during 2018. This Protocol further strengthens the international legal framework against all forms of forced labour, including trafficking in persons, by supporting due diligence by public and private sectors to prevent and respond to risks of forced labour.[488]

8.3.3 Criminal Law (Sexual Offences) Act 2017

The Criminal Law (Sexual Offences) Act 2017 was signed into law on 22 February 2017.[489] The Act criminalises the purchase of sexual services in an effort to target the demand for prostitution and thus the exploitation, including trafficking, that is associated with organised prostitution. The legislation also decriminalises those involved in providing sexual services.

Part 4 (Section 27) of the Act contains a specific reporting requirement on the implementation of the Act within three years, including in respect of the number of arrests and convictions and an assessment of the impact of the legislation on the safety and well-being of persons who engage in sexual activity for payment.

485 Domestic Violence Act 2018. No. 6 of 2018. Available at www.irishstatutebook.ie.
486 Correspondence with Department of Justice and Equality, Anti-Human Trafficking Unit, May 2019.
487 S.I. No. 532 of 2018.
488 Correspondence with Anti-Human Trafficking Unit, May 2019.
489 Criminal Law (Sexual Offences) Act 2017. No. 2 of 2017. Available at www.irishstatutebook.ie.

In September 2018, the Department of Justice and Equality announced a call for projects under funding from the Dormant Accounts Fund.[490] Proposals were invited for funding applications to research and assess the safety and well-being of persons who engage in sexual activity for payment.

A further call in relation to awareness raising was advertised in October 2018 for campaigns that will focus on public awareness of exploitation in the sex trade and on buyer behaviour, with the ultimate goal of preventing those who may be considering purchasing sex from embarking on this behaviour.[491]

On the first anniversary of the passing into law of the legislation on 27 March 2018, a group of NGOs and other organisations (Sexual Exploitation Research Project, UCD; Space International; Ruhama; Immigrant Council of Ireland (ICI); Children's Rights Alliance; National Women's Council of Ireland; Irish Nurses and Midwives Organisation; One in Four; Sexual Violence Centre Cork; Doras Luimní) gathered to call for more effective implementation of the legislation. While calling for swifter and more effective implementation of the law, it was noted by Ruhama that there was 'some emerging evidence that women in prostitution seem more willing to report violent crimes committed against them'. The ICI also noted: 'We know by the Swedish experience of criminalising the purchase of sex back in 1999 that the full positive impact of this type of law takes effect over time. Evidence shows it leads to a long-term reduction in demand. There has been a shift in societal attitudes and buying sex has become socially unacceptable.'[492]

8.3.4 Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 was introduced at second stage to Dáil Éireann on 10 May 2018. Introducing the Bill, the Minister for Justice and Equality noted that targeting the proceeds of serious and organised crime, including human trafficking, can remove the incentive for the commission of such crime.[493]

490 The Dormant Accounts Fund is a scheme for the disbursement of unclaimed funds in credit institutions. See www.pobal.ie.

491 Correspondence with Anti-Human Trafficking Unit, May 2019.

492 Sexual Exploitation Research Project, UCD; Space International; Ruhama; Immigrant Council of Ireland; Children's Rights Alliance; National Women's Council of Ireland; Irish Nurses and Midwives Organisation; One in Four; Sexual Violence Centre Cork; Doras Luimní (2018).

493 Department of Justice and Equality (10 May 2018), Second Stage speech, 'Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018'. Available at www.justice.ie.

8.4 DEVELOPMENTS AT NATIONAL LEVEL

8.4.1 Labour exploitation in the Irish fishing industry

As reported for 2015, new rules regarding the employment of non-EEA fishermen in the Irish fishing fleet were agreed following media allegations of labour exploitation in 2015. A range of measures was agreed by a numbr of relevant Government departments and agencies, including changes to the Atypical Working Scheme to provide permission for non-EEA workers to work in the Irish fishing fleet, and a Memorandum of Understanding on enforcement agreed between bodies having oversight in the industry.[494] A total of 65 applications in respect of non-EEA national workers for the Irish fishing fleet were approved in 2018. An additional 130 permissions were renewed.[495] According to the TIP Report 2019, NGOs asserted there were 23 victims of trafficking in the fishing industry in 2018, 16 of whom were officially identified as suspected victims in 2018.[496]

The Workplace Relations Commission (WRC) submitted to the ILO a *Report on WRC Enforcement of the Atypical Workers Permission Scheme in the Irish Sea Fishing Fleet* in June 2017, detailing the WRC's enforcement of the sector since February 2016.[497] WRC Inspectors carry out inspections for the purposes of monitoring and enforcing compliance with employment rights and employment permits legislation, including National Minimum Wage, Payment of Wages, Organisation of Working Time, Terms of Employment and Employment Agency legislation. Such inspections relate to persons engaged under a contract of employment (employees). Officers from the Department of Transport, Tourism and Sport inspect for compliance with rest period and maximum working hours requirements in the fishing and merchant shipping sectors.[498]

In the period from February 2016 to the end of 2018, the WRC:

- delivered an educational and awareness campaign within the whitefish sector;
- made available the WRC's *Employment Law Explained* publication in Arabic, Mandarin, Hindi and Filipino, the primary languages of non-EEA crews;
- participated in Fisheries Information Events organised by the Sea Fisheries Protection Authority (SFPA);

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494 Lead policy responsibility for the fishing sector resides with the Minister for Agriculture, Food and the Marine and the atypical worker permission is administered by the Irish National Immigration Service (INIS) on behalf of that Department.

495 Correspondence with Department of Justice and Equality, Irish Naturalisation and Immigration Service, Atypical and Investment Unit, February 2019.

496 US State Department (2019), p. 252.

497 Workplace Relations Commission (2017).

498 Ibid., Appendix 1.

- provided a WRC contact helpline for fishing vessel owners and crews (T: 1890 80 80 90);
- trained 12 WRC inspectors at the National Fisheries Training College for deployment on fisheries inspections;
- undertook three specific targeted operations – Operation Trident, the first WRC operation, which took place from 29 to 31 March 2017; Operation Neptune in March 2018; and Operation Poseidon in June 2018 involved unannounced inspections at several fishing ports by WRC Inspectors. These operations followed up on Operation Egg Shell, the Garda Síochána-led campaign that took place on 5 and 7 October 2016 and focused on labour exploitation and human trafficking in the fishing industry;
- undertook 325 port inspections of the whitefish fleet, involving 169 whitefish vessels over 15 metres in length (172 vessels currently registered);
- detected 227 contraventions, relating to 112 vessels;
- initiated 12 prosecutions where compliance by other means was not secured and, to date, secured five convictions. Proceedings were pending in the other seven cases.

According to the WRC, 'WRC Inspections are multi-faceted and may involve surveillance, on-board/port inspections of records and interviews with crews, on-shore inspections of records at the owner's premises, interviews with crews in fishing ports and landing places, and detailed examination of records off-site.'

Some 26% of contraventions related to failure to produce or to keep records, 19% related to leave, public holiday and Sunday entitlements, 16% involved the detection of illegal workers while 13% involved a failure to issue payslips. The WRC seeks rectification of contraventions and, where relevant, the payment of any unpaid wages arising from contraventions by means of contravention, compliance and fixed payment notices while vessel owners who fail to engage with Inspectors are prosecuted.

The WRC issued some 112 contravention notices over the period. These advise vessel owners of contraventions detected and of the actions required, within a specified deadline, to effect compliance, including the payment of any unpaid wages arising from contraventions. Failure to respond to the contravention notice and/or to effect compliance may result in the issue of compliance notices and/or fixed payment notices, depending on the nature of the contravention and, ultimately, the initiation of prosecution proceedings. To end December 2018, the

WRC had secured five successful convictions while prosecution proceedings were pending in seven other cases.[499]

In May 2018, the International Transport Workers' Federation (ITWF) wrote to the Minister for Justice and Equality seeking a moratorium on the issue or renewal of atypical work permission to workers in the Irish fishing fleet and threatening High Court proceedings within 21 days. This arose from ITWF concerns about abuse of employment conditions and suspected trafficking for non-EEA fishermen in the Irish fishing fishing fleet.[500] The Irish Human Rights and Equality Commission (IHREC) was granted leave on 14 October 2018 to appear as an *amicus curiae* in the case before the High Court.[501] According to the Department of Justice and Equality: 'Following an initial High Court ruling refusing injunctive relief to the plaintiff, the Department of Justice & Equality together with various Departments and agencies, in an effort to avoid lengthy and costly litigation entered into a mediation process with the ITWF. The Court proceedings were subsequently struck out on 30 April 2019 following the conclusion of a successful mediation process.'[502]

8.4.2 Human Trafficking and Exploitation Project

In June 2018, work began on a two-year research project on human trafficking in Ireland – Human Trafficking and Exploitation Project in Ireland (HTEPII).

The research project has been undertaken by researchers and experts in Mary Immaculate College, Limerick, who will be working in co-operation with the Department of Justice and Equality, An Garda Síochána, the Police Service of Northern Ireland and the Department of Justice Northern Ireland. The project is focused on mining data to provide a clear picture of the extent of human trafficking on the island of Ireland. It will:

- identify high-quality data sets that exist in Ireland on human trafficking;
- analyse human trafficking and slavery information data for Ireland;
- hold workshops to disseminate awareness-raising information to bodies such as schools and institutions.[503]

8.4.3 Review of national identification mechanism

One of the commitments in the *Second National Action Plan to Prevent and Combat Human Trafficking in Ireland*[504] is to conduct a fundamental examination of

499 Correspondence with Department of Business, Enterprise and Innovation, WRC Liaison Unit, February 2019.
500 Rogers (2018).
501 Irish Human Rights and Equality Commission (2018b).
502 Correspondence with Department of Justice and Equality, Atypical and Investment Unit, October 2019.
503 Correspondence with Anti-Human Trafficking Unit, May 2019.
504 Department of Justice and Equality (2016).

procedures for the identification of victims of trafficking. The AHTU states that this examination was prioritised in 2017 and that it engaged with other State agencies and NGOs in an effort to identify and resolve any deficiencies and to maintain and improve practices in relation to identification procedures in Ireland. A series of meetings were held throughout 2017, including a Victim Identification Working Group in April and further engagement with An Garda Síochána and major NGOs involved in the identification process, with a view to making any necessary amendments. This work was planned to continue in 2018.[505,506]

It has been noted by commentators that no changes have been made to the relevant administrative immigration arrangements since the decision of the High Court in the *P* case in 2015. This has been the subject of repeated criticism by international monitoring bodies, including the US TIP report for 2018 discussed at Section 8.2 above.[507]

The Department of Justice and Equality describes the National Referral Mechanism as providing a way for all agencies, both State and civil society, to co-operate, identify potential victims and facilitate their access to advice, accommodation and support. Dedicated units in the Department of Justice and Equality, An Garda Síochána, the Health Service Executive (HSE) and the Legal Aid Board work together to ensure a co-ordinated and comprehensive response to human trafficking, and the co-operation extends to a number of other State agencies; for example, the WRC. WRC inspectors are trained to recognise indicators of trafficking and to refer any cases where such indicators are present to the Gardaí. The Office of the Director of Public Prosecutions has a specific unit to deal with cases referred by An Garda Síochána with a view to initiating a prosecution. There is an agreed Statement on the roles and responsibilities of all parties in the National Referral Mechanism and this Statement is being reviewed as part of the examination of the identification process.[508]

As reported in previous years, the system of victim identification in Ireland has been subject to criticism by international commentators and by NGOs. According to the AHTU: 'Progress has been made to improve the access of victims to State supports. A health-service led strategy for the identification of victims of trafficking has been proposed at Ministerial level and further discussions on this are due to take place shortly.'[509]

505 Correspondence with Anti-Human Trafficking Unit, February 2018.
506 AHTU (2018), p. 16.
507 Correspondence with Immigrant Council of Ireland, October 2019.
508 Correspondence with Anti-Human Trafficking Unit, February 2018.
509 Correspondence with Department of Justice and Equality, October 2019.

8.4.4 Funding

The AHTU continues to be the main source of funding for anti-human trafficking NGOs involved in service provision in Ireland. In 2018, €375,000 was disbursed to two organisations, €325,000 for Ruhama for awareness raising and €50,000 for Migrant Rights Centre Ireland (MRCI) for research.[510]

8.4.5 Training and awareness raising

Training is provided to a wide range of frontline personnel including those working at borders and in the International Protection Office (IPO), who are expected to come into contact with vulnerable groups, including migrants. Such training covers modules on how to identify potential victims of human trafficking and how to respond to their needs in a sensitive manner.

The Human Trafficking Investigation and Co-Ordination Unit (HTICU) within An Garda Síochána and the AHTU continued to raise awareness of the crime of human trafficking to a variety of targeted focus groups during 2018.

For example, in April 2018 the HTICU hosted a three-day national conference entitled 'Trafficking in Human Beings: Prevention, Protection, Prosecution and Partnership', which was supported by the International Organization for Migration (IOM) Ireland. Speakers were from a range of State and NGO backgrounds, including An Garda Síochána, the AHTU, the Anti-Human Trafficking Unit within the HSE; the WRC, Tulsa (the Child and Family Agency) and a range of NGOs – the ICI, AkiDwA, the MRCI and Ruhama.[511]

In April 2018, the Minister for Justice and Equality launched a revamped website highlighting the crime of human trafficking in Ireland. The website – www.blueblindfold.gov.ie – provides an overview of how the crime of human trafficking manifests in Ireland, how members of the public can spot and report the signs of trafficking, and how the State supports the victims once identified. The website is maintained by the AHTU, which has the primary responsibility for the co-ordination and development of the Government response to the crime of human trafficking in Ireland. The AHTU can be followed on Facebook at: www.facebook.com/AntiHumanTraffickingUnitIreland.[512]

In February 2018, members of the AHTU presented an overview of the State's response to human trafficking to Master's students within the 'Child, Family and Community Studies' programme and to Criminology students at the Dublin

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510 Ibid.
511 Department of Justice and Equality (2018ii).
512 Department of Justice and Equality (2018jj).

Institute of Technology. Representatives from An Garda Síochána spoke about the criminal justice response to trafficking and Tusla (Child and Family Agency) provided an overview of the Irish model of care for unaccompanied minors seeking asylum in Ireland.[513]

A pack for the Civic, Social and Political Education (CSPE) curriculum in Secondary schools was developed in previous years, and this year was again distributed to newly trained CSPE teachers across Ireland. It contained leaflets, a poster, a booklet entitled *Don't Close Your Eyes to Slavery* and information cards that facilitate a group learning activity for students in the junior cycle. This pack is available to be sent to schools on request.

EU Anti-Human Trafficking Day 2018 was marked by the AHTU through hosting a screening of an award-winning documentary, *The Price of Sex*, alongside a talk from a survivor of sex trafficking, Fiona Broadfoot. Invitations to the talk and documentary screening were sent out to Government bodies, NGOs, charities and frontline personnel in local shops and hotels.

INIS ran an induction course for the latest Immigration Control Officer recruits in the Border Management Unit (BMU) on 19 April in Dublin Airport. Representatives from BMU, INIS, the Garda Protective Services Bureau and the UK Border Force presented to attendees for the full day on all aspects of human trafficking and the identification of potential victims.

On 20 April, INIS conducted a joint exercise with the Garda Protective Services Bureau and UK Border Force anti-human trafficking specialists on certain flights to Terminal 1 at Dublin Airport. This allowed officers to focus on identifying possible victims of trafficking through different methods they had been trained in, such as spotting physical indicators, behavioural traits or 'travel companions' that might give rise to concerns.[514]

8.5 INTERNATIONAL CO-OPERATION

8.5.1 Nomination to GRETA elections

The Department of Justice and Equality invited nominations for election to the Council of Europe's Group of Experts Against Trafficking in Human Beings (GRETA) in February 2018.[515] Kevin Hyland was one of seven members of GRETA elected at the 23rd meeting of the Committee of the Parties Council of Europe Convention on

513 Department of Justice and Equality (2018kk).
514 Correspondence with Department of Justice and Equality: Anti-Human Trafficking Unit, May 2019.
515 Department of Justice and Equality (2018ll).

Action Against Trafficking in Human Beings, held on 9 November 2018.[516] Mr Hyland succeeded Professor Siobhán Mullally as the Irish member of GRETA from January 2019. The Minister for Justice and Equality welcomed Mr Hyland's election.[517]

8.5.2 Co-operation by police and other enforcement authorities

Ireland participated in two Europol EMPACT (European Multidisciplinary Platform Against Criminal Threats) 'Joint Action Weeks' in 2018. The first, in May, was on Human Trafficking for Labour Exploitation and the second was held in July 2018 on Human Trafficking for Child Exploitation. These actions were co-ordinated by the HTICU of An Garda Síochána. As well as national police, the Border Management Unit at Dublin Airport, the WRC and Tusla (the Child and Family Agency) were involved in the actions.

Targeted interventions were undertaken at a number of Irish airports (Dublin, Shannon, Knock and Cork) to identify indicators/potential victims of trafficking. Information material such as 'Blue Blindfold' leaflets was given to any vulnerable persons identified, and the Blue Blindfold message was displayed at Dublin Airport during the two weeks of action. Targeted interventions also took place at seaports to identify indicators/potential victims of trafficking among persons disembarking from vessels. In co-operation with the WRC, An Garda Síochána undertook inspections of nail bars with a view to identifying labour exploitation. A number of interviews with potential child victims were undertaken in conjunction with Tusla.

These targeted activities uncovered a number of illegal immigration offences, employment permit offences and family reunification cases. No victims of human trafficking were discovered at ports of entry. During the investigations, a number of persons displaying possible indicators of trafficking were identified. Following further investigations, including enquiries with other EU Member States, investigators were satisfied that no human trafficking was involved.[518]

A Cross Border Conference on Organised Crime is held each year. The 2018 conference, with the theme of human trafficking, was organised by the Northern Ireland Department of Justice and took place in Newcastle, Co. Down on 7–8 November.[519]

[516] Council of Europe (19 March 2019), Committee of the Parties Council of Europe Convention on Action Against Trafficking in Human Beings, 23rd meeting. THB-CP(2018)RAP23. Available at rm.coe.int.

[517] Government Press Service (2018).

[518] Department of Justice and Equality (July 2018), *18th Anti-Human Trafficking Unit Newsletter*, received by email.

[519] Correspondence with Department of Justice and Equality: Anti-Human Trafficking Unit, May 2019.

8.6 RESEARCH

The ICI published the comparative report of the Disrupt Demand project in November 2018.[520] The report was the culmination of a two-year project led by the ICI and funded by the European Commission under the Internal Security Fund of the European Union. The research was conducted in six EU countries by the project partners: ICI (lead partner); Mediterranean Institute for Gender Studies (Cyprus); Exit – pois prostituutiosta ry (Finland); Mouvement du Nid (France); Klaipeda Social and Psychological Services Center (Lithuania); and Institute for Feminism and Human Rights (Sweden). The report author was Dr Monica O'Connor, a senior researcher at the Sexual Exploitation Research Project, University College Dublin.

The report aimed to research measures to address demand for the purchase of sex from victims of human trafficking and from women exploited in prostitution. The six national reports gave an overview of trafficking and prostitution in the Member States with a specific focus on the purchase of sex from victims of trafficking. The report comes from the perspective of the gendered nature of human trafficking and emphasises that the issues of human trafficking, prostitution and demand should be located firmly within a gender and gender-based violence framework. The report also focuses on understanding the demand for women and girls for sale for sex as a root cause of human trafficking.

The report noted the success of the Swedish model of criminalising the purchase of sex, which has been in force in Swedish law since 1999. The report found that since 1 January 1999, 7,059 men have been apprehended for attempting to purchase or for having purchased a sexual service resulting in 3,006 convictions. This model is adopted in Ireland via the Criminal Justice (Sexual Offences) Act 2017. France also amended its legislative framework in 2016 making it an offence punishable by a fine to solicit, accept or obtain sexual relations from a person engaging in prostitution, in exchange for remuneration or other benefit in kind. The report also noted that the Swedish model goes beyond the remit of the EU Directive 2011/36/EU, which criminalises the purchase of sexual services only where there is proof the person is a victim of human trafficking.[521]

The report made a large number of recommendations. It recommended that Member States should recognise the limits of the scope of Directive 2011/36/EU in criminalising the purchase of sex,[522] and recommended that Member States should criminalise the purchase of sex along the lines of the Swedish model.[523] The report also recommended that laws on human trafficking and exploitation needed

520 O'Connor (2018a).
521 O'Connor (2018b).
522 Ibid., Recommendation 1.
523 Ibid., Recommendation 2.

to be accompanied by practical measures such as enforcement policies, protection and support for all victims of sexual exploitation, monitoring and evaluation, and preventative initiatives,[524] measures to ensure there are no negative consequences for trafficked and prostituted women,[525] and measures to support their exit from prostitution.[526] Another key recommendation was for the appointment of an independent National Rapporteur in Human Trafficking in each Member State.[527] This recommendation was highlighted by commentators at the launch of the Report.[528]

524 Ibid., Recommendation 3.
525 Ibid. Recommendation 8.
526 Ibid., Recommendations 9 and 10.
527 Ibid., Recommendation 13.
528 Immigrant Council of Ireland (2018g).

REFERENCES

Arnold, S., C. Ryan and E. Quinn (2018). *Ireland's response to recent trends in international protection applications*, Research Series No. 72, Dublin: The Economic and Social Research Institute, available at www.emn.ie.

Central Statistics Office (2019). *Population and migration estimates 2019,* available at www.cso.ie.

Children's Rights Alliance (2019). *Report card 2019*, available at www.childrensrightsalliance.ie.

Children's Rights Alliance, Doras Luimní, Immigrant Council of Ireland, Irish Refugee Council, and Nasc, the Migrant and Refugee Rights Centre (2018). 'Polling shows importance of integration measures in maintaining the Irish Céad Míle Fáilte', joint press release, December, available at www.nascireland.org.

Combined fifth to ninth periodic reports submitted by Ireland under article 9 of the Convention, due in 2014 CERD/C/IRL/5-9, advanced unedited version, 3 October 2018, available at www.integration.ie.

Concluding observations of the Committee on the Elimination of Racial Discrimination Ireland CERD/C/IRL/CO/3-4 4 April 2011, available at tbinternet.ohchr.org/.

Courts Service of Ireland (2019). *Annual report 2018*, available at www.courts.ie.

Deegan, G. (2018). 'Couple ordered to pay au pair €5,000 after appeal rejected.' *Irish Times,* 1 February, available at www.irishtimes.com

Department of Business, Enterprise and Innovation (2018a). *New Employment Permits Regulations 2018*, 15 March, available at www.dbei.gov.ie.

Department of Business, Enterprise and Innovation (2018b). *Changes to employment permits for horticulture workers, meat processing operatives and dairy farm assistant*s, 17 May, available at www.dbei.ie.

Department of Business, Enterprise and Innovation (2018c). 'Minister Humphreys publishes review of Ireland's economic migration policy', press release, September, available at www.dbei.gov.ie.

Department of Business, Enterprise and Innovation (2018d). *Review of economic migration policy – report of the Inter-Departmental Group*, 28 September, available at www.dbei.gov.ie.

Department of Business, Enterprise and Innovation (2019a). *Employment permits statistics 2018 by nationality*, available at www.dbei.ie.

Department of Business, Enterprise and Innovation (2019b). *Employment permits statistics 2018 by sector*, available at www.dbei.ie.

Department of Education and Skills (2016). *International Education Strategy*, available at www.education.ie.

Department of Education and Skills (2018). 'Student Support Scheme for Asylum Seekers to continue for coming year', press release, 7 September, available at www.education.ie.

Department of Foreign Affairs and Trade (2019). *Government of Ireland official development assistance annual report 2018*, 2 October, available at www.irishaid.ie.

Department of Justice and Equality (2017). *Migrant Integration Strategy: a blueprint for the future*, available at www.integration.ie.

Department of Justice and Equality (2018a). *Service Improvement Plan 2018–2020: Irish Naturalisation and Immigration Service*, available at www.inis.gov.ie.

Department of Justice and Equality (2018b). Speech by the Minister for Justice and Equality, at Irish Law Awards, May, available at www.justice.ie.

Department of Justice and Equality (2018c). 'ILEP Criteria 14 September 2018', notice, available at www.inis.gov.ie.

Department of Justice and Equality (2018d). 'Start-up Entrepreneur Programme – January 2018 – Guidelines', available at www.inis.gov.ie.

Department of Justice and Equality (2018e). 'Immigration Investor Programme – terms of reference for external review', 5 November, available at www.inis.gov.ie.

Department of Justice and Equality (2018f). 'Volunteering in Ireland' and 'Ministers of religion', 21 November, available at www.inis.gov.ie.

Department of Justice and Equality (2018g). 'Minister Flanagan announces the lifting of the visa requirement for the United Arab Emirates (UAE)', press release, 22 January, available at www.inis.gov.ie.

Department of Justice and Equality (2018h). 'Launch of consultation process on draft national standards for accommodation offered to people in the consultation process', notice, 16 August, available at www.inis.gov.ie.

Department of Justice and Equality (2018i). *Draft National Standards for Direct Provision Centres*, 16 August, available at www.inis.gov.ie.

Department of Justice and Equality (2018j). 'Ministers Flanagan and Stanton welcome final arrivals from Greece under EU relocation programme', press release, 23 March, available at www.inis.gov.ie.

Department of Justice and Equality (2018k). 'Ministers Flanagan and Stanton welcome Syrian refugee families to Ireland', press release, 27 December, available at www.inis.gov.ie.

Department of Justice and Equality (2018l). 'Ministers Flanagan and Stanton announce opening of the new humanitarian admissions programme', press release, 12 May, available at www.inis.gov.ie.

Department of Justice and Equality (2018m). 'Irish Refugee Protection Programme Humanitarian Admission Programme 2 (IHAP), 21 February 2018, update', available at www.inis.gov.ie.

Department of Justice and Equality (2018n). 'Ministers Flanagan and Stanton announce first approvals under Irish Refugee Protection Programme – Humanitarian Admissions Programme', press release, 21 December, available at www.inis.gov.ie.

Department of Justice and Equality (2018o). 'Ministers Flanagan and Stanton welcome new Community Based Refugee Sponsorship Programmes', press release, 20 July, available at www.inis.gov.ie.

Department of Justice and Equality (2018p). 'Minister Flanagan agrees to invite up to 36 unaccompanied minors to Ireland from Greece', press release, 6 December, available at www.inis.gov.ie.

Department of Justice and Equality (2018q). 'Child Safeguarding Statement: Department of Justice and Equality covering the offices of the Reception and Integration Agency and the Irish Refugee Protection Programme', 30 May, available at www.ria.gov.ie.

Department of Justice and Equality (2018r). *Child Protection and Welfare Policy and Practice Document for Reception and Integration Agency (RIA), Irish Refugee Protection Programme (IRPP) and Accommodation Centres for Persons in the International Protection Process under Contract to the Department of Justice and Equality*, July, available at www.ria.gov.ie.

Department of Justice and Equality (2018s). 'Flanagan announces proposed counter-terrorism legislation requiring advance passenger information for flights entering or leaving the State', press release, 3 February, available at www.inis.gov.ie.

Department of Justice and Equality (2018t). 'Minister Flanagan announces Special Scheme allowing certain non-EEA nationals to apply for permission to remain in the State', press release, 15 October, available at www.inis.gov.ie.

Department of Justice and Equality (2018u). 'Special Scheme for non-EEA nationals who held a Student Permission in the State during the period 1 January 2005 to 31 December 2010', information note, 15 October, available at www.inis.gov.ie.

Department of Justice and Equality (2018v). 'Case Processing Panel: recruitment of additional panel members', May, available at www.inis.gov.ie.

Department of Justice and Equality (2018w). 'Asylum Migration and Integration Fund for the Return of Third Country Nationals, Call for Applications 2019', available at www.inis.gov.ie.

Department of Justice and Equality (2018x). '5th meeting of the Migrant Integration Strategy Monitoring and Coordination Committee (MISMCC) takes place', *OPMI News*, 18 October, available at www.integration.ie.

Department of Justice and Equality (2018y). 'Minister Stanton launches Bridging Programme for Migrant Teachers', press release, 14 November, available at www.integration.ie.

Department of Justice and Equality (2018z). 'Minister Stanton announces €500,000 Community Integration Fund 2018', press release, 2 August, available at www.inis.gov.ie.

Department of Justice and Equality (2018aa). 'Minister Stanton hosts Conference for Local Authorities on Integration of Migrants into Communities', press release, 21 November, available at www.inis.gov.ie.

Department of Justice and Equality (2018bb). 'Minister of State Stanton welcomes Ireland's results in Special Eurobarometer on Immigrant Integration', press release, 19 April, available at www.inis.gov.ie.

Department of Justice and Equality (2018cc). 'Minister Stanton announces extended funding for female refugee employment projects', press release, 4 December, available at www.inis.gov.ie.

Department of Justice and Equality (2018dd), 'Minister Stanton announces projects under National Funding to promote Roma Inclusion 2018–2020', press release, 12 March, available at www.integration.ie.

Department of Justice and Equality (2018ee). 'Statement by Minister Flanagan on hate crime legislation', 4 July, available at www.justice.ie.

Department of Justice and Equality (2018ff). 'Minister of State Stanton opens 'Promoting Political Engagement of Migrants 2018', press release, 24 March, available at www.inis.gov.ie.

Department of Justice and Equality (2018gg). 'Minister of State Stanton speaks at 'Promoting Political Participation of Migrants in Cork', press release, 24 September, available at www.inis.gov.ie.

Department of Justice and Equality (2018hh). *Anti-Human Trafficking Unit annual report 2017*, available at www.blueblindfold.gov.ie.

Department of Justice and Equality (2018ii). 'Human trafficking training within An Garda Síochána – April 2018', available at www.blueblindfold.gov.ie.

Department of Justice and Equality (2018jj). ' Minister for Justice and Equality, Charlie Flanagan TD, launches revamped website highlighting the crime of human trafficking in Ireland' 6 April 2018 *Press Release* Available at www.blueblindfold.gov.ie.

Department of Justice and Equality (2018kk). 'Awareness raising at Dublin Institute of Technology, Grangegorman' Available at www.blueblindfold.gov.ie.

Department of Justice and Equality (2018ll). 'Expressions of interest in nomination to GRETA elections'. 7 February 2018 Available at www.blueblindfold.gov.ie.

Department of Justice and Equality (2019a). *Immigration in Ireland: Annual Review 2018*, 26 September, available at www.inis.gov.ie.

Department of Justice and Equality (2019b). *Immigration in Ireland: Annual Review 2018: Immigration Statistics 2018*, 26 September, available at www.inis.gov.ie.

Department of Justice and Equality (2019c). 'Minister Stanton calls on communities to sponsor a refugee family as he launches pilot Community Sponsorship Ireland initiative', press release, 6 March, available at www.justice.ie.

Department of Justice and Equality (2019d). 'Minister Flanagan announces that over 10,000 people were granted Irish citizenship in 2018', press release, 1 January, available at www.inis.gov.ie.

Dodd, E. (2019a). 'Department of Justice statistics show that it granted asylum to 85 per cent of people whose applications were processed last year, but the United Nations says the real rate is around 30 per cent', *Sunday Business Post*, 23 June, available at https://www.businesspost.ie/news/un-enters-row-states-official-figures-asylum-seekers-446785.

Dodd, E. (2019b). 'Eurostat checks asylum figures. Business Post reveals major discrepancies', *Sunday Business Post,* 14 July, available at https://www.businesspost.ie/news/eurostat-checks-asylum-figures-business-post-reveals-major-discrepancies-data-448288.

Economic and Social Research Institute (2018). 'Many non-Irish nationals have similar employment and education levels to Irish people, but some remain disadvantaged', press release, 7 November, available at www.esri.ie.

European Council for Refugees and Exiles (2019). *AIDA Country Report Ireland – 2018 update*, available at www.irishrefugeecouncil.ie.

European Network Against Racism, Ireland (2018). 'To the Office for the Promotion of Migrant Integration/Department of Justice and Equality on the State's Draft Combined 5th 6th and 7th Report in Response to the Recommendations of the United Nations Committee on the Elimination of Racial Discrimination – Submission of ENAR Ireland, the European Network Against Racism, Ireland', January, available at www.enarireland.org.

European Migration Network (2018a). *Changing influx of asylum seekers 2014–2016*, August, available at www.emn.ie.

European Migration Network (2018b). *Approaches to unaccompanied minors following status determination in the EU and Norway*, 9 August, available at www.emn.ie.

European Migration Network (2019). *Annual Report on migration and asylum 2018: statistical annex*, available at www.emn.ie.

European Migration Network Ireland (2018). *Looking to the Future for Unaccompanied Minors in Ireland and Europe: Conference Report*, available at www.emn.ie.

Eurostat (2019). 'EU Member States granted protection to more than 300 000 asylum seekers in 2018', Eurostat news release, 71/2019, 25 April, available at https://ec.europa.eu/eurostat/documents/2995521/9747530/3-25042019-BP-EN.pdf/22635b8a-4b9c-4ba9-a5c8-934ca02de496.

Government Press Service (2018). 'Minister Flanagan welcomes election of Kevin Hyland as the Irish Member to the Group of Experts on Action against Trafficking in Human Beings (GRETA)', press release, 9 November, available at www.merrionstreet.ie.

Groarke, S. and S. Arnold (2018). *Approaches to unaccompanied minors following status determination in Ireland*, 4 December, available at www.emn.ie and www.esri.ie.

Halloran, C. (2018). 'Colleges announce scholarships for asylum seekers and refugees', 20 June, available at www.rte.ie.

Health Service Executive (2019). *Second National Intercultural Health Strategy 2018–2023*, January, available at www.hse.ie.

Hinds, R. (2018). *A family belongs together – refugees' experience of family reunification in Ireland*, March, available at www.irishrefugeecouncil.ie.

Immigrant Council of Ireland (2018a). *Immigration status: what do I need to know?*, January, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018b). 'Submission to INIS on registration of foreign national children', March, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018c). 'More compassion needed for new immigration regularisation scheme', press release, 15 October, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018d). *Keeping it local: Discussion document and proposed actions for local authorities on developing local migrant integration strategies*, July, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018e). *Impact report*, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018f). 'Political Internship Scheme – a great opportunity for migrants' local political participation', 29 August, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland (2018g). 'New report comparing EU countries finds criminalising purchase of sex most effective way to end demand and tackle trafficking', press release, 13 November, available at www.immigrantcouncil.ie.

Immigrant Council of Ireland, Nasc, the Irish Refugee Council, the Migrant and Refugee Rights Centre and Doras Luimní (2018). 'Joint statement from migrant rights groups ahead of referendum on the 8th amendment' 30 April 2018, press release, available at www.immigrantcouncil.ie.

International Protection Appeals Tribunal (2019). *Annual report 2018*, available at www.protectionappeals.ie.

Irish Human Rights and Equality Commission (2018a). 'Human Rights and equality commission granted liberty to appear before court in case focused on human trafficking', press release, 15 October, available at www.ihrec.ie.

Irish Human Rights and Equality Commission (2018b). 'Human Rights and Equality Commission welcomes scheme to grant access to the labour market for applicants for international protection', press release, 27 June, available at www.ihrec.ie.

Irish Refugee and Migrant Coalition (2018). 'Civil society groups welcome Ireland's adoption of Global Compacts', press release, 10 December, available at www.mrci.ie.

Irish Refugee Council (2018a). 'Irish Refugee Council and European Council on Refugees and Exiles host conference exploring scope of new EU Directive and implications for people seeking asylum in Ireland', press release, 22 March, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018b). 'Important and welcome changes to the right to work but problematic elements remain', press release, 27 June, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018c). 'Irish Refugee Council calls for Government to urgently address issue of people seeking asylum being made homeless', press release, September, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018d). *Irish Refugee Council: 2018 impact report*, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018e). 'IRC call for education support scheme for young people in asylum process to be made more accessible', press release, 7 September, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018f). 'Submission on the draft national standards for direct provision centres', 3 October, available at www.irishrefugeecouncil.ie.

Irish Refugee Council (2018g). 'New report links family separation to anxiety and depression in refugees in Ireland', press release, 7 March, available at www.irishrefugeecouncil.ie.

Lally, C. (2018). 'More than 1,000 marriages in Republic confirmed as illegal', 20 June, *Irish Times*, available at www.irishtimes.com.

Mbugua, S. (2018). 'Time to recognise strength in diversity', *Irish Examiner*, 26 March, available at www.irishexaminer.com.

McGinnity, F., E. Fahey, E. Quinn, S. Arnold, B. Maitre, and P. O'Connell (2018). *Monitoring report on integration 2018*, Dublin: The Economic and Social Research Institute and the Department of Justice and Equality, available at www.esri.ie.

Migrant Rights Centre of Ireland (2018a). 'Promoting migrant rights in Brexit times: new cross-border project launched', press release, 24 January, available at www.mrci.ie.

Migrant Rights Centre Ireland (2018b). 'MRCI submission to consultation on proposed guiding principles to frame the State's economic migration policy', available at www.mrci.ie.

Migrant Rights Centre Ireland (2018c). 'MRCI welcomes "long-awaited, life-changing" scheme and calls for "clarity, flexibility and common sense" from decision makers', press release, 15 October, available at www.mrci.ie.

Nasc (2018a). 'Series of essays on direct provision issued by Nasc and UCC's Centre for Criminal Justice and Human Rights to mark International Human Rights Day', press release, 10 December, available at www.nascireland.org.

Nasc (2018b). 'Dáil debate on family reunification (amendment) Bill – keep families together this Christmas', available at www.nascireland.org.

Nasc (2018c). 'Syrian family welcomed to Wicklow with open arms in pilot Community Sponsorship project', press release, 23 June, available at www.nascireland.org.

Nasc (2018d). ‘Series of essays on direct provision issued by Nasc and UCC’s Centre for Criminal Justice and Human Rights to mark International Human Rights Day’, press release, 10 December, available at www.nascireland.org.

Nasc (2018e). *Immigration detention and border control in Ireland*, May, available at www.nascireland.org.

Nasc and Centre for Criminal Justice and Human Rights (2018). *Beyond McMahon: Reflections on the future of asylum reception in Ireland*, December, available at www.nascireland.org.

O’Connor M. (2018a). *Comparative report: Disrupt demand*, available at www.immigrantcouncil.ie.

O’Connor M. (2018b). *Comparative report: Disrupt demand*, executive summary, available at www.immigrantcouncil.ie.

Office of the Ombudsman (2019a). *Annual report 2018*, 28 May, available at www.ombudsman.ie.

Office of the Ombudsman (2019b). *The Ombudsman & Direct Provision: Update for 2018. A commentary by the Ombudsman*, March, available at www.ombudsman.ie.

Office of the Ombudsman for Children (2019). *Annual report 2018*, 28 May, available at www.oco.ie.

O’Neill, E. (2018). ‘Crippling delays are the biggest crisis facing asylum-seekers’, 27 April, available at www.unhcr.ie.

Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018). *Roma in Ireland – a national needs assessment, available at* www.paveepoint.ie.

Pollak, S. (2018a). ‘Group urges families to be aware of au pairs’ rights’, *Irish Times*, 2 February, available at www.irishtimes.com.

Pollak, S. (2018b). ‘“Bots” used to block immigrants in Ireland from making visa appointments’, *Irish Times*, 7 September, available at www.irishtimes.com.

Pollak, S. (2018c). ‘Hotels in the east being used as temporary direct provision centres’, *Irish Times*, 19 November, available at www.irishtimes.com.

Quinn, E. (2009). *The organisation of asylum and migration policies in Ireland: 2009,* available at www.emn.ie and www.esri.ie.

Quinn, E. and G. Kingston (2012). *The organisation of migration and asylum policies 2012: Ireland*, November, available at www.emn.ie and www.esri.ie.

Rogers, S. (2018). ‘16 possible cases of trafficking in fishing industry: government urged to halt work permit scheme’, *Irish Examiner*, 16 May, available at www.irishexaminer.com.

Ryan, O. (2019). ‘More than 230,000 people have applied for Irish passports so far this year’, *The Journal*, 16 March, available at www.thejournal.ie.

Schweppe, J., A. Haynes, and M.A. Walters (2018). *Lifecycle of a hate crime: Comparative report*, Dublin: ICCL, available at www.iccl.ie.

Sexual Exploitation Research Project, UCD; Space International; Ruhama; Immigrant Council of Ireland; Children's Rights Alliance; National Women's Council of Ireland; Irish Nurses and Midwives Organisation; One in Four; Sexual Violence Centre Cork; and Doras Luimní (2018). 'First anniversary of new law to tackle sex buyers: more needs to be done', press release, 27 March, available at www.immigrantcouncil.ie.

Sheridan, A. (2017). *Annual report on migration and asylum 2016: Ireland*, available at www.emn.ie and www.esri.ie.

Sheridan, A. (2018). *Annual report on migration and asylum 2017: Ireland*, available at www.emn.ie and www.esri.ie.

Sheridan, A. and S. Whelan (2016). *Annual policy report on migration and asylum 2015: Ireland*, available at www.emn.ie and www.esri.ie.

Social Change Initiative (2018). *Immigration and refugee protection in Ireland: an analysis of public attitudes*, December, available at thesocialchangeinitiative.org.

Tusla (2019a). *Business plan 2019*, available at www.tusla.ie.

Tusla (2019b). *Annual report 2018*, available at www.tusla.ie.

UNHCR (2018a). 'UNHCR welcomes Irish decision to grant the right to work to asylum-seekers', press release, 27 June, available at www.unhcr.org/en-ie.

UNHCR (2018b). 'New standards are an opportunity to significantly enhance accommodation system', press release, 16 August, available at www.unhcr.org/en-ie.

United States State Department (2019). *Trafficking in persons report 2019*, available at https://state.gov.

Working Group on the Protection Process (2015). *Report to Government on improvements to the protection process, including direct provision and supports to asylum seekers*, available at www.justice.ie.

Workplace Relations Commission (2017). *Report on WRC enforcement of the atypical worker permission scheme in the Irish sea fishing fleet*, available at https://www.workplacerelations.ie.

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