



EUROPEAN MIGRATION NETWORK

THE ORGANISATION OF ASYLUM AND MIGRATION POLICIES IN IRELAND

EMMA QUINN

FEBRUARY 2009

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and
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The opinions expressed in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice, Equality and Law Reform, the European Commission Directorate-General Justice, Freedom and Security, The Economic and Social Research Institute or any other agency.

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LIST OF ABBREVIATIONS AND IRISH TERMS

Dáil	Parliament, Lower House
EEA	European Economic Area
EMN	European Migration Network
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
HRC	Habitual Residency Condition
HSE	Health Service Executive
IBC/05	Irish Born Child Scheme 2005
IGC	Intergovernmental Consultations on Migration, Asylum and Refugees
INIS	Irish Naturalisation and Immigration Service
GDISC	General Directors of Immigration Services Conference
NERA	National Employment Rights Authority
NCP	National Contact Point
NGO	Non-Governmental Organisation
ORAC	Office of the Refugee Applications Commissioner
Oireachtas	Parliament, both houses
RAT	Refugee Appeals Tribunal
Seanad Éireann	Parliament, Higher House
Tánaiste	Deputy Prime Minister
Taoiseach	Prime Minister
UNHCR	United Nations High Commissioner for Refugees

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EXECUTIVE SUMMARY

This study is intended to be a useful reference document, descriptive in nature, providing a “map” of immigration and asylum-related policy in Ireland in 2008: how it is formed, its substance and how it is implemented. The focus is on non-EU immigration. Irish immigration policy is unusual within Europe in that it is strongly influenced by the Common Travel Area we share with the UK. In addition Ireland and the UK may opt out of EU measures relating to immigration and asylum. Ireland does not have a long history of immigration and this is reflected in the still disparate nature of our immigration policy. A new Immigration, Residency and Protection Act, expected to become law this year, will have a major impact on both immigration and asylum-related policy. This report attempts to lend clarity to how immigration and asylum policies are currently organised in Ireland as well as indicating where changes may soon be made.

In Chapter Two an overview is provided of the organisation of the political, legislative and institutional framework in relation to immigration and asylum in Ireland. The main political responsibility for immigration and asylum rests with the Minister for Justice, Equality and Law Reform. The Minister for Enterprise, Trade and Employment is responsible for labour market policy and the administration of the employment permit schemes while the Minister for Foreign Affairs has responsibilities for visas. A description of the relevant areas within the government departments, as well as external agencies working with departments, is also provided.

The legislative and institutional framework around asylum in Ireland has been in development for only the last 10-15 years. The Refugee Act 1996 was commenced in 2000 and allowed for the establishment of the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the Reception and Integration Agency. The 1996 Act was amended by several subsequent pieces of legislation enabling the system to be modified in response to changing circumstances. Irish asylum law has also been impacted upon by a number of EU instruments.

In contrast to the asylum system the immigration area is less well defined. Domestic immigration law is currently based on various pieces of immigration legislation, including the Aliens Act of 1935 and Orders made under it. Significant parts of the system remain on an administrative rather than legislative basis. Due in part to the Irish opt-out facility, EU legislation has had a limited impact on immigration policy. The new Immigration, Residency and Protection legislation expected to be enacted this year will constitute the first codification in law of many aspects of Irish immigration policy.

The recent history of migration and asylum flows to Ireland is interesting. Examining the flows from the perspective of the current study,

i.e. the development of immigration and asylum systems, the recent history of Irish migration can be characterised as having had five phases (dates are approximate):

- A history of sustained net emigration prior to the early 1990s.
- Increasing immigration from the mid 1990s to early 2000s, driven by returning Irish nationals. Dramatic increases in the number of asylum applicants.
- 2002-2004. New peaks reached in non-EEA immigration flows and numbers of asylum applications during 2002. Asylum applications fell quickly from 2002 peak and stabilised at much lower level from 2004.
- 2004-2007. Substantial part of non-EEA immigration flows converted to intra-EU flow after accession in 2004. New highs reached in overall immigration, driven by nationals of the enlarged EU.
- 2007/2008. Reduced but still significant net immigration, fall largely resulting from decreased flows from new EU member states.

Chapter Three provides an historical overview of the development of immigration and asylum systems in the context of these flows. It can be seen that between the mid 1990s and mid 2000s the government placed a deliberate emphasis on addressing the asylum situation and developments in the immigration area have lagged behind somewhat, evolving in an ad hoc manner in response to issues as they arose. For example the Immigration Act 2003 introduced carrier liability and the Immigration Act 2004 was introduced in response to a court challenge to the Minister's right to operate immigration controls. Significant and far reaching issues also emerged around citizenship which resulted in a referendum and constitutional change (discussed in Section 3.2.2.1). In advance of the 2004 EU enlargement the Irish employment permits system was encoded in law for the first time, in the form of the Employments Permit Act 2003. Prior to 2003 the work permit system was almost entirely employer-led with little government intervention. The development of the current employment permits system is discussed in Section 3.2.3.

Chapter Four provides a detailed description of entry procedures, admission conditions, legal residence, access to the labour market and return. Each topic is discussed in turn in relation to asylum and immigration. Where available the relevant legislative position is provided. Information is frequently more difficult to access in relation to immigration. Where no legislative provision exists, information on existing administrative practices is used if available. Links between the asylum and immigration areas and between asylum and immigration and other policy areas are discussed in Section 4.6.3.

Chapter Five provides an analysis of Irish asylum and immigration systems. The Immigration, Residence and Protection Bill 2008 has been formulated to address problems – as seen by Irish policy makers – with the current systems. The proposed changes are discussed here together with the corresponding submissions made by relevant NGOs, international organisations and others. While the draft legislation is broadly welcomed as a progressive step towards transparent and coherent asylum and, in particular, immigration systems, many of the individual provisions are very much contested. In relation to asylum provisions, groups have expressed concerns around judicial review (the application of more stringent rules on

applications for judicial review of immigration and asylum related decisions), the replacement of the Refugee Appeals Tribunal with the Protection Review Tribunal or PRT (independence of the PRT and access to previous decisions) along with other issues. In relation to immigration, the main concerns lie around marriage, availability of appeal of immigration related decisions, trafficking and long-term residence.

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

This study is intended to be a useful reference document for the European Commission, policymakers at national and European levels, other European Migration Network (EMN) National Contact Points (NCPs) and the general public. The current report is descriptive in nature, the intention being to provide a “map” of immigration and asylum-related policy in Ireland in 2008, how it is formed, its substance and how it is implemented. The focus is on non-EU immigration.

Irish immigration policy is strongly influenced by the Common Travel Area that Ireland shares with the UK, the Isle of Man, Jersey and Guernsey. Unlike the other 25 EU member states Ireland and the UK are not Schengen states and have no plans to become Schengen states, choosing instead to maintain border controls with the rest of the EU and to maintain their own Common Travel Area. In addition the application of Title IV of the EC Treaty to Ireland and the UK is subject to the provisions of a fourth Protocol to the Treaty of Amsterdam. This fourth Protocol means that Ireland and the UK may opt out of EU measures relating to immigration and asylum. As a result Irish immigration and asylum policy differs significantly to that of other EU Member States.

Ireland does not have a long history of immigration. Instead a well established tradition of emigration was dramatically reversed in a decade beginning in the mid 1990s. As a result Irish immigration policy has been developed under pressure and in a piecemeal manner, in response to the challenges posed by very rapidly increasing flows. While Irish asylum policy is grounded in legislation the immigration system is still mainly on an administrative rather footing (legislation is expected to be enacted in 2009) therefore, unlike the asylum area, many procedural aspects are not well defined. This report attempts to lend clarity to how immigration and asylum policies are organised in Ireland.

The current study was compiled mainly through desk research using official sources such as the websites of the Department of Justice, Equality and Law Reform, Department of Enterprise, Trade and Employment and

the Department of Foreign Affairs. A Citizen's Information website¹ also proved to be a useful source of information. Parliamentary questions, annual reports of relevant organisations, strategy statements, and information leaflets were also consulted. In order to access outstanding information and to check the accuracy of the report interviews were conducted with officials from the Department of Justice, Equality and Law Reform (Immigration and Citizenship areas) and the Department of Enterprise, Trade and Employment (Economic Migration Policy and Employment Permits Section). The Refugee Applications Commissioner also provided comments on a draft report.

This report aims to draw together available material in order to provide an overview of the area. A similar report will be produced by other participating EMN NCPs. A synthesis report will be compiled that will draw together the findings of individual studies and place them in a European context. Country studies will be updated on an ongoing basis.

Chapter two provides an overview of the legal system in relation to asylum and immigration in Ireland followed by a description of the main institutions (mainly government departments) involved. Chapter three provides an historical overview of asylum and immigration flows and of the development of the asylum and immigration systems. This is followed by a more detailed discussion in Chapter four of how policy is organised at each step of the asylum/immigration procedure i.e. from pre-entry visas to family reunification and return. Finally Chapter five provides an analysis of the Irish asylum and immigration systems.

¹ www.citizensinformation.ie/

2. OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN IRELAND

2.1 The Irish Political System

Ireland is a parliamentary democracy. The two houses of the Oireachtas (Parliament) are Dáil Éireann (the House of Representatives) and Seanad Éireann (the Senate). The Government is led by the Taoiseach (the Prime Minister, Brian Cowen T.D.) and Tánaiste (Deputy Prime Minister, Mary Coughlan T.D.). Each of the Dáil's 166 members is a Teachta Dála (TD), who is directly elected by the people. General elections take place at least once every five years and the most recent one took place in May 2007. An *Agreed Programme for Government* announced after the general election of 2007 saw a change from a coalition between Fianna Fáil and the Progressive Democrats to a coalition government between Fianna Fáil, the Green Party, the Progressive Democrats and four Independent TDs. (Joyce, 2008).

There are 15 government departments, each headed by a Minister. Three departments are involved in migration management in Ireland.

- (a) The Department of Justice, Equality and Law Reform has a range of responsibilities including asylum and immigration policy and services, crime and security, law reform, equality and human rights. The Department houses the Irish Naturalisation and Immigration Service (INIS) and the Reception and Integration Agency (RIA). The Garda National Immigration Bureau (GNIB) is part of An Garda Síochána (police force) which is under political responsibility of the

Minister for Justice, Equality and Law Reform. The Department of Justice, Equality and Law Reform is the main government department involved in asylum and migration management in Ireland. The Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) are statutorily independent offices under the aegis of the Department of Justice, Equality and Law Reform. These bodies have responsibility for processing first-instance asylum claims and for hearing appeals respectively.

- (b) The Department of Enterprise, Trade and Employment administers the employment permit schemes and develops labour market policy.
- (c) The Department of Foreign Affairs has responsibility for the issuing of visas to immigrants via consular services in countries where the Department of Justice, Equality and Law Reform does not operate a dedicated visa office. The majority of visas are now applied for and issued via an online service.

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

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

In accordance with the Constitution, justice is administered in public in courts established by law, with judges appointed by the President on the advice of the Government and guaranteed independence in the exercise of their functions. The Irish court system is hierarchical in nature and there are basically four types of courts in Ireland which hear different types and levels of cases. In ascending hierarchical order the four types of courts are as follows:

- District Court
- Circuit Court
- High Court
- Supreme Court.

The Irish asylum process sits outside the Court system. Immigration matters are dealt with on an administrative basis by the Minister for Justice, Equality and Law Reform, and the relevance of the Courts is generally limited to judicial review (see below).

The Refugee Applications Commissioner was established under Section 6 of the Refugee Act 1996 as amended. The Act also provides that the

Commissioner shall be independent in the exercise of his or her functions and that the position of the Commissioner shall be a position in the Civil Service. Section 11 of the 1996 Act provides that it is the function of the Refugee Applications Commissioner to investigate an application for asylum for the purpose of ascertaining whether the applicant is a person in respect of whom a refugee declaration should be given. The Refugee Applications Commissioner's role is primarily an investigative one in contrast to the adversarial nature of court proceedings.

Section 15 of the Refugee Act 1996 as amended established the Refugee Appeals Tribunal. Tribunals are bodies with quasi judicial or administrative functions established by statute and which lie outside the court system. The Refugee Appeals Tribunal's function is to affirm or set aside a recommendation of the Refugee Applications Commissioner on appeal.

It is important to note that it is the Minister who declares, in light of the Refugee Applications Commissioner and Refugee Appeals Tribunal decisions, that an applicant is a refugee, or who refuses to grant such a declaration.

There is no right of appeal from the Refugee Appeals Tribunal to the Courts, whether generally or on points of law. Neither are there any immigration-related processes that allow appeals to the Courts. Judicial review is a means for the High Court to exercise its supervisory function over inferior decision-making bodies, such as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, as well as over administrative decisions, including those made in the various immigration processes. Judicial review is not concerned with the substance of decisions, but with the decision-making process.

Section 5 of the Illegal Immigrants (Trafficking) Act 2000 provides that certain prescribed decisions made in the immigration and asylum processes, including the Minister's decision refusing a recommendation of refugee status, the Minister's proposal to deport, and the Minister's decision to deport, cannot be questioned other than by way of judicial review. The Act also stipulates certain more stringent requirements for such applications for judicial review.

Firstly the application for leave (i.e. permission) from the High Court for judicial review must be made within fourteen days of the date of the notification of the impugned decision (such time being extendable by the High Court only where the Court is satisfied that there is good and sufficient reason to so extend). In the case of normal judicial review applications the time limit is usually six months. Secondly the application for leave must be made on notice to the Minister for Justice, Equality and Law Reform; this requirement does not exist in a normal application. Thirdly the High Court shall not grant leave unless it is satisfied that there are substantial grounds for contending that the impugned decision should be quashed as opposed to merely a "stateable case" in the case of normal applications. Fourthly the right of appeal to the Supreme Court is severely restricted in respect of such "special" judicial review applications.² The

² Stack, Siobhan and Shipsey, Bill, "Judicial review and the asylum process". In Fraser, Ursula and Harvey, Colin (2003). *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*. Dublin: IPA.

2000 Act provides that a determination of the High Court on a matter to which the Section applies can be appealed to the Supreme Court only where the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.³ The Supreme Court is the court of final appeal in Ireland.

It is important to note that not all immigration and asylum related decisions are subject to these more stringent rules for judicial review, only those stipulated under Section 5 of the Illegal Immigrants (Trafficking) Act 2000.⁴

2. 2.1 RELEVANT IRISH LAW

Appendix A1 contains a list of relevant legislation in the asylum and immigration area.

The principal piece of domestic legislation dealing with refugees and asylum seekers is the Refugee Act 1996, as amended by several subsequent pieces of legislation. In addition S.I. No. 518 of 2006 seeks to ensure compliance with EU Directive 2004/83/EC ("The Qualification Directive"). Prior to the commencement in full of the Refugee Act 1996, in 2000 Ireland examined applications for asylum in accordance with administrative procedures which were formalised in letters to the UNHCR representative with responsibility for Ireland at the time. Ireland is also a signatory to the Dublin Convention, and is subject to the Dublin Regulation (EC 343/2003) which succeeded that Convention and which determines the EU member state responsible for processing asylum applications made in the EU.

Domestic immigration law in Ireland is currently based on various pieces of immigration legislation, including the Aliens Act of 1935 and Orders made under it, the Illegal Immigrants (Trafficking) Act 2000, and the Immigration Act 1999, 2003 and 2004. The Immigration, Residence and Protection Bill 2008 constitutes a single piece of proposed legislation for the management of both immigration and protection issues.⁵

Prior to the introduction of the Immigration Act 2004, the principal piece of legislation governing the entry and residence of non Irish nationals in Ireland was the Aliens Act 1935. The 2004 Immigration Act includes a wide range of provisions that would previously have been contained in Orders made under the 1935 Act including provision for the appointment of immigration officers and criteria for permission to land. It provides the

³ Statistics on applications for judicial review of the decisions of the Office of the Refugee Appeals Commissioner, the Refugee Appeals Tribunal and the Minister for Justice, Equality and Law Reform in asylum related matters are published by the Courts Service. There were 1,024 new asylum related judicial review applications made in the High Court in 2007, a 12 per cent increase on the figure for 2006. There were 263 orders made granting leave to seek judicial review in asylum related cases in 2007. This is an 89 per cent increase compared with 2006 when 139 such orders were granted (Courts Service, 2008).

⁴ The Immigration, Residence and Protection Bill 2008 proposes that all decisions arising from that Act would be subject to special judicial review rules similar to those set out in Section 5 of the 2000 Act.

⁵ See Quinn, Stanley, Joyce and O'Connell (2008) *Handbook on Immigration and Asylum in Ireland 2007* for further discussion on this issue.

Minister with powers to make orders regarding visas and approved ports for landing, and imposes limits on the duration of a non-Irish national's stay. Persons landing in the State are required to be in possession of a passport or identity document, and non-Irish nationals are required to register with the Gardai.

The Immigration Act 1999 gave the Minister for Justice, Equality and Law Reform power to deport. It sets out the principles, procedures and criteria which govern the detention and removal of non-Irish nationals from the State, and makes provision for the issuing of deportation and exclusion orders. This Act also amended the Refugee Act 1996 substantially, *inter alia*, amending the jurisdiction of the Refugee Applications Commissioner and establishing the Refugee Appeals Tribunal in place of the former, non-statutory, Appeals Authority. The Immigration Act 2003 introduced substantial amendments to the Refugee Act 1996 (dealt with in Section 3.2.1) and introduced carrier sanctions and liability. Carriers are required to carry out basic checks to ensure that passengers boarded for carriage into the State from outside the Common Travel Area are in possession of valid documentation necessary for entry into the State. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation.

2.2.2 EU LEGISLATION IMPLEMENTATION IN IRELAND

All EU legislation must have a legal basis on a particular EC Treaty article. Most asylum and immigration related measures fall under Title IV of the Treaty. Under the terms of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community by the Treaty of Amsterdam, Ireland does not take part in the adoption by the Council of proposed measures pursuant to Title IV of the EC Treaty unless Ireland opts into the measure by notifying the Council that it wishes to take part in the adoption and application of any such proposed measure.

In practice, once a proposal for legislation in the area is presented, the UK and Ireland have three months to decide whether they wish to participate in discussions. If either State does not wish to participate in discussion on the proposal then it could ultimately be adopted by the other Member States without their participation. After adoption of legislation in cases which proceeded without UK and/or Irish participation, either of the two Member States may then choose to opt-in to that piece of legislation at a later date and with the approval of the European Commission. Ireland has given an undertaking to opt in to measures that do not compromise the Common Travel Area with the UK.

As a result of these special conditions the development of the Irish asylum and immigration systems has been influenced more by the existence of the Common Travel Area with the UK than the European acquis. On the immigration side the main influence of European law has been around illegal immigration and border control management. Although Ireland is not a Schengen state it is party to measures related to Schengen police and judicial cooperation in criminal matters. Ireland also participates with observer status on Frontex, (the European agency for the management of operational cooperation at the external borders of the member states of the European Union).

EU legislation has had a more significant impact on the Irish asylum system. As mentioned above Irish asylum law is currently based on the 1996 Refugee Act as amended, and S.I. No. 518 of 2006 which seeks to implement EU Directive 2004/83/EC ("The Qualification Directive"). Other significant EU instruments impacting on Irish asylum law are Directive 2001/55/EC ("The Temporary Protection Directive"), Regulation (EC) No. 343/2003 ("The Dublin Regulation"), Directive 2005/85/EC ("The Procedures Directive") and Regulation (EC) No. 2725/2000 (EURODAC), each of which Ireland has opted into.

2.3 The Institutional Context

2.3.1 DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM⁶

The Minister for Justice, Equality and Law Reform is currently Dermot Ahern T.D. An organisational chart of the Department of Justice, Equality and Law Reform is supplied at Annex A2. The Secretary General of the Department of Justice, Equality and Law Reform, Mr. Seán Aylward, is the senior civil servant and non-political head of the Department of Justice, Equality and Law Reform. The Secretary General is responsible for management of the Department and its non-political strategic planning and direction. He is assisted by the Department's Management Advisory Committee, of which he is Chair.

The Management Advisory Committee is composed of the Director General of the Irish Naturalisation and Immigration Service (INIS), Assistant Secretaries and other senior officials who head up functions within the Department. Functions represented on this Committee that are directly relevant to the EMN include:

- (a) Immigration Related Services (asylum, immigration and citizenship).
- (b) Reception and Integration Agency represented by the Assistant Secretary, Steve Magner.
- (c) Anti-Trafficking Unit, represented by Marion Walsh, Executive Director.
- (d) EU/International Matters, represented by Assistant Secretary Richard Ryan.
- (e) An Garda Síochána, represented by Assistant Secretary Michael Flahive. (Department of Justice, Equality and Law Reform, 2008a)

2.3.1.1 *Irish Naturalisation and Immigration Service (INIS)*⁷

The Irish Naturalisation and Immigration Service (INIS) was established in 2005 and is responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Law Reform in relation to asylum, immigration (including Visas) and citizenship matters. INIS can be subdivided into the following units/divisions:

⁶ <http://www.justice.ie/>

⁷ <http://www.inis.gov.ie/>

- Immigration Policy Unit
- Asylum Policy Division
- Immigration and Citizenship (Operations) Division
- Repatriation Unit
- Ministerial Decisions Unit
- Irish Born Child Unit
- EU Treaty Rights Unit

The INIS also brings the Reception and Integration Agency under its aegis, as well as the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal, although the latter two bodies have their own independent statutory existence.

2.3.1.2 Reception and Integration Agency (RIA)⁸

The Reception and Integration Agency has responsibility for planning and coordinating the provision of services to asylum seekers, refugees and persons granted leave to remain. The Integration Unit is now operating at the Office of the Minister of State with special responsibility for Integration Policy.

2.3.1.3 Anti-Human Trafficking Unit (AHTU)

An Anti-Human Trafficking Unit was established within the Crime Section of the Department of Justice, Equality and Law Reform in February, 2008. The Unit is working to ensure that the State's response to trafficking in human beings is co-ordinated and comprehensive. It is working, in conjunction with national and international stakeholders, to facilitate the implementation of a new national strategy to prevent and tackle trafficking in human beings.

A High Level Group on Combating Trafficking in Human Beings was established earlier this year. The Group is tasked with presenting to the Minister the most appropriate and effective response to dealing with trafficking in human beings. The Group, co-chaired by the Director General of the Irish Naturalisation and Immigration Service and the Assistant Secretary in the Department dealing with, amongst other issues, crime. This high level group includes representatives of An Garda Síochána and other key Departments and Offices.

2.3.1.4 The Garda National Immigration Bureau (GNIB)

The Garda National Immigration Bureau is responsible for all immigration-related Garda (police) operations in the State and is under the auspices of an Garda Síochána and works closely with the Department of Justice, Equality and Law Reform. The GNIB carries out deportations, border control, and investigations related to illegal immigration and trafficking in human beings. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and at all approved ports and airports. There is also a border control unit attached to Dundalk Garda Station.

⁸ <http://www.ria.gov.ie/>

2.3.1.5 Other Relevant Divisions under the Department of Justice, Equality and Law Reform

The Department of Justice, Equality and Law Reform works with EU and other international bodies such as the Council of Europe and the United Nations and strategies in the area of crime, law reform, asylum, immigration and equality are influenced by initiatives and programmes arising at EU and international level.

- *EU Affairs*: Most of the Department's involvement in this area takes place within the Council of Ministers, especially the Justice and Home Affairs (JHA) Council (which deals with immigration and asylum policy and Schengen-related matters among other issues) and within more than 25 Council working groups including the Strategic Committee on Immigration Frontiers and Asylum (SCIFA).
- *Council of Europe Working Groups*: The Department is involved in various working groups of the Council of Europe including committees on asylum and refugees (CAHAR) and criminal matters (CDPC).
- *International Policy Division*: The International Policy Division (IPD) is involved in internally co-ordinating and preparing the Department's participation in key areas such as the Justice and Home Affairs (JHA) Council, Schengen and Oireachtas scrutiny (examination by the Oireachtas of EU issues).
- *IGC - Intergovernmental Consultations on Migration, Asylum and Refugees*: Ireland participates in the IGC by attending working groups as well as high level policy meetings at Director General level.⁹
- *GDISC - General Directors of Immigration Services Conference*: Ireland also participates in GDISC. This network was established to facilitate practical cooperation between the immigration and asylum services of Europe. GDISC works on areas such as: asylum, immigration, country of origin information, data, technology and returns. There are working groups organised as well as meetings up to Director General level. GDISC has a rotating Chair currently occupied by the Swiss.¹⁰

2.3.1.6 Bodies/Offices Under the Aegis of the Department of Justice, Equality and Law Reform

- *Office of the Minister for Integration*: The Office of the Minister for Integration sits across three Departments: the Department of Community, Rural and Gaeltacht Affairs, the Department of

⁹ Established in 1985 the IGC is an informal, non-decision making forum for intergovernmental information exchange and policy debate on the management of international migration. The IGC brings together 16 participating states (Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, The Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, UK and USA) and three organisations: European Commission, IOM and UNHCR.

¹⁰ GDISC has 33 member countries: the 27 EU states, Croatia, Turkey and the Former Yugoslav Republic of Macedonia, Iceland, Norway and Switzerland.

Education and Science and the Department of Justice, Equality and Law Reform. The Minister for State with Special Responsibility for Integration, currently Conor Lenihan T.D., has a cross Departmental mandate to develop, drive and coordinate integration policy across other government departments, agencies and services.

- *Office of the Refugee Applications Commissioner*:¹¹ The Office of the Refugee Applications Commissioner (ORAC) is the first instance decision making body in the Irish asylum system. The office was established under the Refugee Act, 1996 (as amended). Under the Act, the Commissioner is required to investigate each asylum application lodged within the state and to make recommendations to the Minister for Justice, Equality and Law Reform. ORAC has responsibility for processing cases under the EU Dublin Regulation. The Commissioner is also responsible for investigating applications by refugees to allow family members to enter and reside in the State and for providing a report to the Minister on such applications. The Commissioner is independent in the exercise of his or her functions
- *Refugee Appeals Tribunal*:¹² The Refugee Appeals Tribunal was established in 2000 and decides appeals of those asylum seekers whose applications for refugee status has not been recommended by the Office of the Refugee Applications Commissioner. The Tribunal is a statutorily independent body and exercises a quasi-judicial function under the 1996 Refugee Act.
- *Legal Aid Board*:¹³ The Legal Aid Board is responsible for the provision of legal aid and advice on matters of civil law to persons unable to fund such services from their own resources. The Legal Aid Board does not provide legal aid in criminal matters. Within the Legal Aid Board the Refugee Legal Service provides legal services to persons applying for asylum in Ireland. Legal aid and advice is provided also in appropriate cases on immigration and deportation matters. The Refugee Documentation Centre (RDC) is an independent library and research service within the Legal Aid Board.

2.3.1.7 External Bodies Related to the Work of the Department of Justice, Equality and Law Reform

The International Organisation for Migration (IOM) mission in Dublin coordinates a number of Voluntary Assisted Return Programmes on behalf of the Department of Justice, Equality and Law Reform.¹⁴

The United Nations High Commissioner for Refugees (UNHCR) monitors government compliance with international refugee law and provides assistance in the area of refugee law training to the main statutory agencies dealing with asylum.¹⁵

¹¹ <http://www.orac.ie/>

¹² <http://www.refappeal.ie/>

¹³ <http://www.legalaidboard.ie/>

¹⁴ <http://www.iomdublin.org/>

¹⁵ <http://www.unhcr.ch/>

2.3.2 DEPARTMENT OF ENTERPRISE, TRADE AND EMPLOYMENT

The current Minister for Enterprise Trade and Employment, Mary Coughlan, T.D., is also the Tánaiste (Deputy Prime Minister). Sean Gorman is Secretary General of the Department of Enterprise, Trade and Employment. The Department is organised into seven divisions which broadly reflect distinct functional units but there is also a substantial degree of co-operation and interaction between divisions.

- Labour Force Development Division – most relevant to the European Migration Network
- Competitiveness and International Affairs Division
- Employment Rights and Industrial Relations Division
- Science, Technology and Intellectual Property Division
- Corporate Services and Economic Policy Division
- Consumers, Competition and Commerce Division
- Enterprise and Agencies Division

2.3.2.1 Labour Force Development Division

The role of the Labour Force Development Division is to pursue labour market policies which help to address the skills needs of the economy, promote the development of human capital and lifelong learning, facilitate increased participation in and access to employment, and contribute to social inclusion. The Economic Migration Policy and Employment Permits Section is a section within the Labour Force Development Division.

The Economic Migration Policy Unit contributes to the Department's work in formulating and implementing labour market policies by leading the development and review of policy on economic migration and access to employment in Ireland, promoting research and planning on the contribution of economic migrants to the development of the Irish economy, working with other national authorities to ensure a whole-of-Government approach in this area, managing on behalf of the Department specific domestic, EU and international initiatives arising in the field of economic migration.

The Employment Permits Section implements a vacancy driven employment permits system in order to fill those skills gaps which cannot be filled through domestic/EU supply. The Employment Permits Section processes applications for employment permits, issues guidelines and procedures information and produces online statistics on applications and permits issued. The Section also operates a telephone helpline that receives 250/300 calls per day.

2.3.2.2 Bodies/Offices Under the Aegis of the Department of Enterprise, Trade and Employment

FÁS¹⁶. Foras Áiseanna Saothair (FÁS), Ireland's National Training and Employment Authority, was established in 1988 under the Labour Services Act 1987. FÁS' functions include the operation of training and employment programmes; the provision of an employment/recruitment service; an advisory service for industry; and support for community-based enterprises. The Board of FÁS is appointed by the Minister for Enterprise, Trade and Employment. The Economic Migration Policy and Employment Permits Section of the Department of Enterprise, Trade and Employment work with FÁS who administer the labour market needs test which must be conducted before an employment permit is issued. FÁS also has a research function relevant to the Department through the Skills and Labour Market Research Unit (see below).

Expert Group on Future Skills Needs. The Expert Group on Future Skills Needs (EGFSN) advises the Irish Government on current and future skills needs of the economy and on other labour market issues that impact on Ireland's enterprise and employment growth. It has a central role in ensuring that labour market needs for skilled workers are anticipated and met. Established in 1997, the EGFSN reports to the Minister for Enterprise, Trade and Employment and the Minister for Education and Science. In conjunction with Forfás the Skills and Labour Market Research Unit (SLMRU) within FÁS produce an annual National Skills Bulletin for the EGFSN. The Economic Migration Policy and Employment Permits Section of the Department uses this information to help formulate green card lists and work permit ineligible lists.

National Employment Rights Authority (NERA)¹⁷. The National Employment Rights Authority (NERA) was established under the Social Partnership Agreement "Towards 2016" in order to enforce employment law and to promote compliance. NERA provides information to employers and employees and currently has 80 inspectors.

2.3.2.3 External Bodies Related to the Work of the Department of Enterprise, Trade and Employment

The Economic Migration Policy and Employment Permits Section consults closely with social partners (Trade Unions and employers organisations such as IBEC and CIF) and NGOs on policy initiatives as they emerge. They also work with social partners to formulate green card lists and lists of occupations ineligible for work permits. The section liaises with the Health Service Executive on a weekly basis regarding nurses and other medical workers.

¹⁶ <http://www.fas.ie/en/>

¹⁷ <http://www.employmentrights.ie/en/>

2.3.2.4 *Department of Enterprise, Trade and Employment: Expenditure and Staff Employed*

Table 2.1: Staff Employed in Economic Migration Policy and Employment Permits Section and Number of Permits Issued, 2000, 2004 and 2008

	Staff employed in Economic Migration Policy and Employment Permits	Work Permits Issued*	Work Visa/ Authorisations	Total
2000	22	18,006	1,383	19,389
2004	37	34,567	1,444	36,011
2008	49	13,567**	NA	13,567

Source: Department of Enterprise, Trade and Employment

*Includes ICTs and spousal permits

**Includes green cards

Table 2.1 shows the number of staff employed in the Economic Migration Policy and Employment Permits Section and the number of permits issued in the years 2000, 2004, 2008. It is clear that there is not a direct correlation between staff numbers and permits issued. More complex decision making and new administrative arrangements following the enactment, in 2007, of the new Employment Permits Act give rise to some additional staff overheads in processing and maintaining adequate customer service. In 2009 there are 42 staff employed in the areas of Economic Migration Policy and Employment Permits and 656 permits have issued to date (as of end of January 2009).

2.3.3 DEPARTMENT OF FOREIGN AFFAIRS¹⁸

The Department of Foreign Affairs advises the Minister for Foreign Affairs, currently Mr. Micheál Martin T.D., the Ministers of State and the Government on all aspects of foreign policy and coordinates Ireland's response to international developments. The Department works to advance Ireland's political and economic interests in the European Union and in the wider world, to promote Ireland's contribution to international peace, security and development both through the European Union and through active participation in international organisations. The Secretary General of the Department is Mr. Dermot Gallagher. Officials of the Department work in Dublin and in Ireland's network of seventy-five diplomatic and consular missions overseas. The missions work to further Ireland's interests abroad and to enhance Ireland's international profile.

The role of the Permanent Representation to the European Union in Brussels is to represent the State in its interface with the EU institutions and in negotiations at official level in the Council of Ministers. It also advises on negotiations at political level in the Council of Ministers and at the European Council. The Department has a staff of approximately 1,400, around half of whom serve abroad.

¹⁸ <http://www.dfa.ie/>

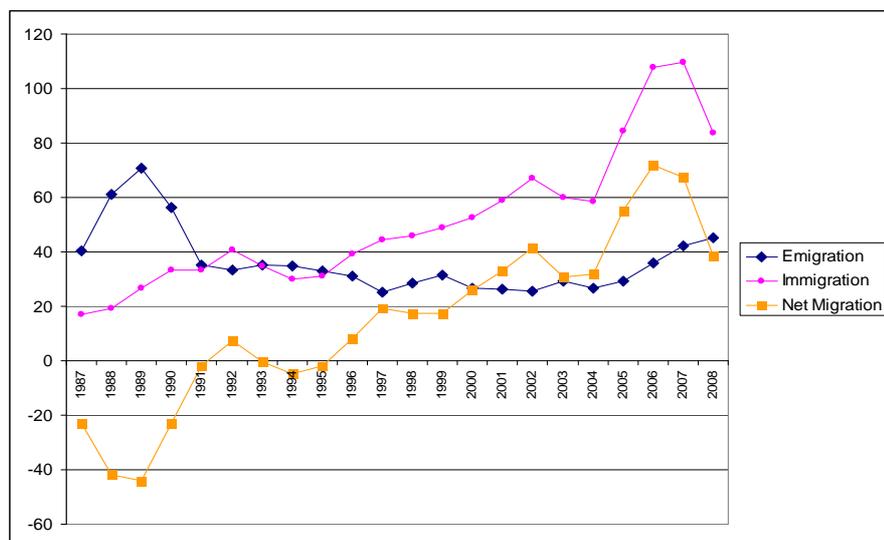
3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

3.1. Recent History of Migration and Asylum Flows

In general terms the recent history of Irish migration can be characterised as having had five phases (dates are approximate):

- A history of sustained net emigration prior to the early 1990s.
- Increasing immigration from the mid 1990s to early 2000s, driven by returning Irish nationals. Dramatic increases in the number of asylum applicants.
- 2002-2004. New peaks reached in non-EEA immigration flows and numbers of asylum applications during 2002. Asylum applications fell quickly from 2002 peak and stabilised at much lower level from 2004.
- 2004-2007. Substantial part of non-EEA immigration flows converted to EU flow after accession in 2004. New highs reached in overall immigration, driven by nationals of the enlarged EU.
- 2007/2008. Reduced but still significant net immigration, fall largely resulting from decreased flows from new EU member states.

Figure 3.1 Immigration, Emigration and Net Migration 1987-2008



Source: CSO, Population and Migration Estimates, Various releases

3.1.1 RECENT DEVELOPMENTS IN MIGRATION FLOWS

Table 3.1 shows that Ireland experienced unprecedented increases in immigration flows from the middle of the 1990s. Historically Ireland had been a country of emigration. In the early 1990s the outward and inward flows were more or less balanced. From around 1996 immigration accelerated significantly.

Table 3.1 Gross and Net Migration Flows: 1987-2008

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

Source: O’Connell (2008) and CSO (2008)

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

The nationality breakdown of the inflow is important. Table 3.2 shows that in the 1990s around half of the immigrants each year were returning Irish emigrants, and therefore the demands they placed on the immigration services would have been minimal. Between 2005 and 2007 more than 40 per cent of the immigration flow was made up of nationals of the 12 EU States that acceded in 2004 and 2006.¹⁹ Due to the freedom of movement within the EU these migrants could reside, work²⁰ and move freely without permission and therefore constituted a lighter burden on immigration services.

As Table 3.2 shows between 2001 and 2004 there were substantial numbers of non-EU migrants coming to Ireland. A significant subsection

¹⁹ Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia joined the EU in 2004. Bulgaria and Romania joined in 2006.

²⁰ With the exception of nationals of Romania and Bulgaria who continue to require employment permits in order to take up employment in Ireland.

of this flow came from the then EU-accession, now EU-member states and these flows required a specific policy response which is discussed below at Section 3.2.2²¹ Immigrants from non-EU countries (comprising the USA and “Rest of World” categories) require permission to enter and remain on Irish territory and to work here, their movements involve a substantial degree of involvement of the immigration services.

Table 3.2. Estimated Immigration by Nationality, 1996-2008

Year (ending April)	Irish	UK	EU 13**	EU 16-27***	USA	Rest of World	Total
				000's			
1996	17.7	8.3	5.0	-	4.0	4.2	39.2
1997	20.8	8.4	5.5	-	4.2	5.5	44.5
1998	24.3	8.6	6.1	-	2.3	4.7	46.0
1999	26.7	8.2	6.9	-	2.5	4.5	48.9
2000	24.8	8.4	8.2	-	2.5	8.6	52.6
2001	26.3	9.0	6.5	-	3.7	13.6	59.0
2002	27.0	7.4	8.1	-	2.7	21.7	66.9
2003	17.6	9.1	8.8	-	2.1	22.4	60.0
2004	16.7	7.4	13.3	-	2.3	18.8	58.5
2005	18.5	8.9	9.3	34.1	2.1	11.6	84.6
2006	18.9	9.9	12.7	49.9	1.7	14.7	107.8
2007*	20.0	5.9	10.4	52.7	2.8	17.8	109.5
2008*	16.2	7.0	8.6	33.7	2.0	16.3	83.8
				%			
1996	45.2	21.2	12.8	-	10.2	10.7	100.0
1997	46.7	18.9	12.4	-	9.4	12.4	100.0
1998	52.8	18.7	13.3	-	5.0	10.2	100.0
1999	54.6	16.8	14.1	-	5.1	9.2	100.0
2000	47.1	16.0	15.6	-	4.8	16.3	100.0
2001	44.6	15.3	11.0	-	6.3	23.1	100.0
2002	40.4	11.1	12.1	-	4.0	32.4	100.0
2003	29.3	15.2	14.7	-	3.5	37.3	100.0
2004	28.5	12.6	22.7	-	3.9	32.1	100.0
2005	21.9	10.5	11.0	40.3	2.5	13.7	100.0
2006	17.5	9.2	11.8	46.3	1.6	13.6	100.0
2007*	18.3	5.4	9.5	48.1	2.6	16.3	100.0
2008*	19.3	8.4	10.3	40.2	2.4	19.5	100.0

* Preliminary.

** EU15 (i.e. the 15 EU Member States prior to 2004 Accession) excluding Ireland and the UK.

*** Note that prior to April 2005 EU16-27 nationals were counted in the “Rest of World” category. From 2004 this category includes only the 10 new Member States that joined the EU in May 2004. The 2007 data include immigrants from Bulgaria and Romania, which joined the EU in January 2007.

Source: 1996-2001: CSO Population and Migration Estimates April 2003; 2002-2007: CSO Population and Migration Estimates April 2007.

In 2006 Census results indicated that 10.1 per cent of Ireland’s usually resident population was non Irish compared to 5.8 per cent in 2002. See Table 3.3. The majority of non Irish nationals who were living in Ireland

²¹ For a fuller discussion of immigration to Ireland see Quinn, Stanley, Joyce and O’Connell (2008).

<http://www.esri.ie/UserFiles/publications/20081128110945/RS005.pdf>

(65.7 per cent) in 2006 were EU nationals but a significant minority (33.4 per cent or 144,000 people) held non EU nationality.

Table 3.3: Persons Usually Resident and Present in the State on Census Night 2002 and 2006, Classified by Nationality

	2002		2006	
	000s	%	000s	%
Irish	3,584,975	92.9	3,706,683	88.8
UK	103,476	2.7	112,548	2.7
Other EU 15	29,960	0.8	42,693	1
New EU 10	-	-	120,534	2.9
Total EU*	133,436	3.5	275,775	6.6
Other European	23,105	0.6	24,425	0.6
USA	11,384	0.3	12,475	0.3
Africa	20,981	0.5	35,326	0.8
Asia	21,779	0.6	46,952	1.1
Other nationalities	11,236	0.3	22,422	0.5
Total Non-EU	88,485	2.3%	141,600	3.4%
Total Non Irish**	224,261	5.8	419,733	10.1
Multi/No nationality/Not stated	51,599	1.3%	47,955	1.1%
Total	3,858,495	100	4,172,013	100

*2006 data include EU10 countries.

The number of people applying for Irish citizenship increased seven-fold between 2000 and 2006 as Table 3.6 indicates.

3.1.2 RECENT DEVELOPMENTS IN ASYLUM FLOWS

The number of new asylum applications made in Ireland was very low prior to 1992. The next ten years saw a huge increase in applications. In 2000 the number of applicants was almost 11,000 having increased more than nine-fold from 1,200 in 1996. The flow peaked in 2002 at 11,600. The scale of these increases took Ireland by surprise and policy makers struggled to cope with the flows. Section 3.2.1 discusses the construction of an entire asylum system in the context of this rapidly increasing demand. Since 2002 the number of asylum seekers has been declining and since 2005 the number is relatively stable at approximately 4,000-5,000 per year.

Table 3.4 Asylum Seekers 1992-2008

Year	Number of Applications
1992	39
1993	91
1994	362
1995	424
1996	1,179
1997	3,883
1998	4,626
1999	7,724
2000	10,938
2001	10,325
2002	11,634
2003	7,900
2004	4,766
2005	4,323
2006	4,313
2007	3,985
2008	3,886

Source: Office of the Refugee Applications Commissioner
Available at <http://www.orac.ie>

The nationality breakdown of asylum applicants is shown below in Table 3.5. The flows have been dominated over the years by Nigerian and Romanian nationals although the number of applications from Romanian nationals has fallen off since the country's accession to the EU in 2006.²²

Table 3.5: Applications for Asylum by Nationality 2001, 2004, 2007

2001		2004		2007	
Country	No.	Country	No.	Country	No.
Nigeria	3,461	Nigeria	1,778	Nigeria	1,009
Romania	1,348	Romania	286	Pakistan	237
Moldova	549	Somalia	200	Iraq	203
Ukraine	376	China	152	Georgia	181
Russia	307	Sudan	143	China	180
Other	4,284	Other	2,207	Other	2,056
Total	10,325	Total	4,766	Total	3,866

Source: Office of the Refugee Applications Commissioner

²² INIS states that by virtue of the application by Ireland of the EU Treaty Protocol on Asylum for Nationals of Member States of the European Union, asylum applications are not accepted in Ireland from nationals of other Member States of the EU, and that application of this Protocol provides that any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State in very exceptional circumstances (INIS, January 2007; <http://www.inis.gov.ie/en/INIS/Pages/PB07000136>).

3.2. Development of Asylum and Immigration Systems

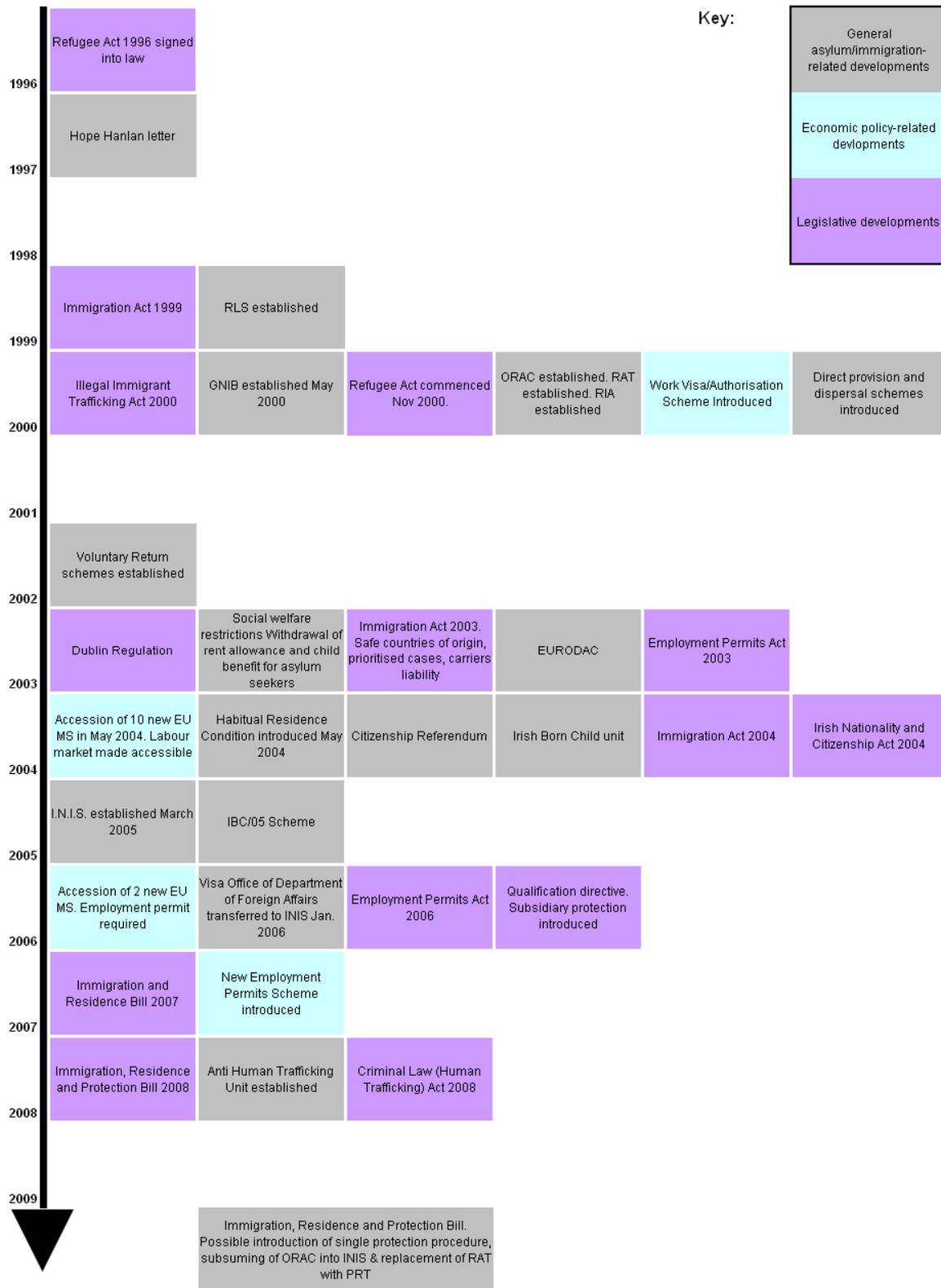
As the discussion in Section 3.1 showed, both the number of new asylum applications and the numbers of non EEA immigrants peaked around 2002. The former flow grew particularly suddenly from a very low base and resulted in widespread problems as the necessary structures for processing asylum applications were hastily put in place (see below). The government placed a deliberate emphasis on addressing the asylum situation first and developments in the immigration area have lagged behind somewhat. Even now most immigration related services remain on an administrative rather than a legislative basis. Legislation is due to be enacted in 2009 to remedy this situation.

In response to increasing numbers in the asylum and immigration area the government approved the allocation of 370 additional staff to Department of Justice, Equality and Law Reform in 2000 and increased expenditure from €94 to €122 million between 2001 and 2004 with a view to enhancing processing of asylum, citizenship and visa applications and repatriations in particular (P.A. Knowledge Limited, 2006). The majority of these resources were channelled into the asylum area where legislation was also developed.²³

Figure 3.2 summaries the main events that will be discussed in more detail in Sections 3.2.1 and 3.2.2 below.

²³ In 2005 an Expenditure Review Initiative was conducted of this investment of resources. Review of funding allocated from Subheads D1 (Asylum, Immigration and Citizenship services) and D2 (Refugee Legal Service) of Vote 19. PA Knowledge Limited, 2006.

Figure 3.2: Timeline Showing Major Developments in Immigration and Asylum 1996-2009



3.2.1 DEVELOPMENT OF THE ASYLUM SYSTEM

It was only in the late 1990s that asylum became an important policy issue in Ireland due to rapidly increasing numbers of applications. In 1996 there were four people in the asylum division of the Department of Justice, Equality and Law Reform, known then as the Asylum Seekers Task Force (Fraser and Harvey, 2003). As the number of applicants multiplied long queues developed outside asylum processing centres, calls were made for emergency accommodation for applicants and backlogs in the processing of asylum applications drew significant media attention. The government was under pressure to address the problems and in 2000 asylum was the key government priority in the Justice area.

The Refugee Act 1996 had been drafted at a time when there were fewer than 500 asylum applications per year. The Act had to be substantially revised in subsequent years in order to make it workable in the context of many thousands of applicants. An administrative arrangement based on a letter sent by the Irish Government to the UNHCR in 1997, “the Hope Hanlan letter”, served as an interim measure in that it set out in detail the Irish asylum procedures.²⁴

The Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003 provided opportunities for the government to substantially amend the 1996 Act which was eventually commenced on 20 November 2000. The Refugee Act 1996 established the Refugee Applications Commissioner as a statutorily independent body which considers asylum applications at first instance. The ORAC is also responsible for investigating family reunification applications made by refugees. The ORAC reports its recommendations to the Minister for Justice, Equality and Law Reform.

The Refugee Act 1996 originally provided for the establishment of an independent Refugee Appeals Board to ‘consider and decide appeals’. This Board was replaced by the Refugee Appeals Tribunal under amendments to the Act introduced in the Immigration Act 1999. An independent Refugee Appeal Advisory Board was also established at this time, some provisions relating to the office of Refugee Applications Commissioner were altered and fingerprinting of all asylum seekers over 14 years was introduced.²⁵ The Illegal Immigrants (Trafficking) Act 2000 introduced more stringent requirements in relation to making applications for judicial review of certain asylum and immigration-related decisions (see Section 2.2).

²⁴ A letter written in 1985 by the then Assistant Secretary for the Department of Justice, to the UNHCR in London (which became known as the Von Armin letter) set out what was to be the practice within the Irish state in regard to the processing of claims for asylum. The courts later deemed the letter to be legally binding and it served as the legal basis for asylum procedures up until 1997. (Fraser, Ursula, “The asylum procedure”. In Fraser, Ursula and Harvey, Colin (2003). *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*. Dublin: IPA.

²⁵ Kenny, Catherine (2003). *Asylum in Ireland: The Appeal Stage: A Report on the Fairness and Sustainability of Refugee Determination at Appeal Stage*. Dublin: Irish Refugee Council.

In 1999-2000 the shortage of housing for asylum applicants became severe, particularly in the private rented sector in Dublin.²⁶ In January 2000, 2,600 asylum applicants were housed in emergency bed and breakfast accommodation in the Eastern Health Board area, including the greater Dublin area.²⁷ Emergency accommodation was also sourced at various other accommodation, including army barracks, outside this area (Quinn and Hughes, 2005b). With effect from 10 April 2000 the direct provision and dispersal systems became official government policy. Asylum applicants are now housed in dedicated centres, usually outside Dublin, and receive a weekly allowance. On 2 April 2001 the Directorate for Asylum Support Services was subsumed into the Reception and Integration Agency (RIA). This Agency assumed responsibility for the administration of the direct provision system in Ireland as well as for the provision of other supports to asylum applicants and integration supports to refugees.

The establishment of the Refugee Legal Service (RLS) in 1999 and the Garda National Immigration Bureau (GNIB) in 2000 were also important parts of the new institutional structure constructed at this time to deal with the unprecedented flows of asylum applications. The GNIB was established with an initial brief to execute deportation orders, primarily issued in respect of unsuccessful asylum applicants. Its scope has since increased and it is now responsible for all Garda matters pertaining to immigration on a national basis (P.A. Knowledge Limited, 2006).

With the various organisations of the asylum system in place the focus turned to processing times and the backlog of asylum cases that had accumulated. The Refugee Act 1996 was amended again by the Immigration Act 2003 which provided for a number of measures designed to speed up the asylum process namely:

- An increased duty to co-operate on the applicant: where this obligation is not met the application is deemed withdrawn and his/her application rejected.
- The Minister for Justice, Equality and Law Reform was empowered to designate 'safe countries of origin'²⁸ in consultation with the Minister for Foreign Affairs for the purpose of considering asylum applications from nationals of those States. Asylum seekers from these countries are presumed not to be refugees unless they can show reasonable grounds for the contention that they are refugees.
- The Minister for Justice, Equality and Law Reform was empowered to issue prioritisation directives for certain categories of applicants including apparently unfounded claims, apparently well-founded claims and cases of family reunification. These arrangements apply in the main to nationals of Nigeria, Croatia and South Africa. They also applied to Romania and Bulgaria prior to their accession to the EU on 1 January

²⁶ Until April 2000 asylum applicants were provided with the same welfare support as others in the State, i.e. means tested payments through the Supplementary Welfare Allowance scheme and, where applicable, rent supplement. Asylum applicants were required to lodge their claim in Dublin. The provision of accommodation to asylum applicants at that time fell mainly to the Eastern Health Board.

²⁷ Dáil Éireann. Vol. 517. 11 April 2000. Written Answers – Emergency Accommodation.

²⁸ Currently the 12 new EU member states plus Croatia and South Africa.

2007. A prioritisation directive requires ORAC and RAT to deal with the specified category of cases as soon as possible. By the end of 2003 40 per cent of all new cases were subject to a prioritisation directive.²⁹

- A more streamlined accelerated procedure was introduced at appeal stage aimed at those applicants found not to be refugees at first instance and whose cases display certain features considered to be indicative of abuse of the asylum process including a delay in making an application for asylum without reasonable cause and manifestly unfounded claims.

The Social Welfare (Miscellaneous Provisions) Act, 2003, which commenced in May 2003, restricted the awarding of a rent supplement to asylum seekers who wish to live outside the direct provision system. The Social Welfare (Miscellaneous Provisions) Act 2004 resulted in the withdrawal of child benefit from asylum seekers as a result of the Habitual Residency Condition (see below).

Asylum application processing times were quickly reduced after 2003 as a result of such changes and in the context of much lower rates of new applications. A large number of cases on hand were closed. The number of new asylum applications lodged per year fell quickly after the 2002 peak: new applications made in 2004 were just 40 per cent of the number made in 2002. The fall may be attributed in part to the changes designed to speed up the applications procedures described above, but also to changes in relation to citizenship and residency discussed in Section 3.2.2.1 below and to the introduction of carrier liability in the Immigration Act 2003 which means that carriers are now required to check that individuals have appropriate documentation before allowing that person to board a vehicle. The EURODAC system came into operation in January 2003 and had the effect of increasing the number of Dublin II transfers sought and effected. The Irish government also worked closely on a bilateral basis with the UK and France to tackle misuse of the asylum system. It is also worth noting that asylum applications made in industrialised countries generally dropped in the period (UNHCR, 2004a,b).

In 2006 the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) were introduced to give effect to the European Qualification Directive, which came into force in October 2006 and which provides, *inter alia*, for a system of subsidiary protection. The Minister for Justice, Equality and Law Reform is now responsible for considering applications for subsidiary protection after an application for refugee status is determined.³⁰

²⁹ Refugee Applications Commissioner (2004), Annual Report 2003. Dublin: Refugee Applications Commissioner.

³⁰ An applicant may be granted subsidiary protection if they a) are not a national of a Member State of the European Union, b) have been refused a declaration as a refugee in Ireland, and c) substantial grounds have been shown for believing that, if returned to the country of origin, or country of former habitual residence, an individual would face a real risk of suffering serious harm and are unable, or, owing to such risk, unwilling to avail of the protection of that country.

3.2.2 DEVELOPMENT OF THE MIGRATION SYSTEM

For the reasons discussed above the government prioritised the development of the asylum system from the late 1990s to mid 2000s. However the data in Tables 3.6 and 3.7, illustrate the fact that the immigration, citizenship and visa services were also under severe strain. Sufficient resources were not available to meet increased demand in these areas and this led to backlogs in dealing with applications as well as longer processing timeframes. Immigration policy evolved in an ad hoc manner, responding to problems as they arose.

The Immigration Act 1999 was enacted because in the case of *Laurentiu v Minister for Justice, Equality and Law Reform* the Aliens Act 1935 was found to be unconstitutional in the manner in which it gave the Minister for Justice, Equality and Law Reform the power to deport.³¹ The Illegal Immigrants (Trafficking) Act makes it an offence to organise or knowingly facilitate the entry into the State of an illegal immigrant or a person who intends to seek asylum. As mentioned above, the Immigration Act 2003 introduced carrier liability whereby a carrier can be held responsible and fined for bringing an undocumented immigrant to the State. The Immigration Act 2004 was also introduced in response to a court challenge to the Minister's right to operate immigration controls.

In the absence of a single legislative structure the administrative codes and practices followed were often not even formalised in policy documents. In 2004 within the Department of Justice, Equality and Law Reform the Immigration Operations Unit was responsible for permission to remain, state entry/re-entry, travel documents and EEA residence permits. General Immigration was responsible for family reunification, change of name, general permission to remain, diplomatic passports, without condition stamps and proposals to deport. Together, the two sections had a staff of 25. The Visa section considered visa applications related to work permits, studying in Ireland, business permissions and visits. With a staff of 23 they processed some 48,000 applications in 2004. (Unfortunately more up to date data on staff numbers and visas processed was not available.)

Table 3.6 Applications for Naturalisation Received 2000-mid 2007

Year	Applications for Naturalisation Received
2000	1,004
2001	1,431
2002	3,574
2003	3,580
2004	4,074
2005	4,523
2006	7,030
2007 (as at 3 July, 2007)	3,400

Source: Parliamentary question. Question no. 221 from the Dáil (lower house of parliament) debate of 5th July 2007 (Volume 637, No.7): <http://debates.oireachtas.ie/>

³¹ *Laurentiu v Minister for Justice, Equality and Law Reform* [2000] 1 ILRM (Supreme Court, 20/05/1999) and *Leontjava and Chang v Minister for Justice, Equality and Law Reform* [2005] 1 ILRM (Supreme Court, 24/06/2004). See Quinn, Stanley, Joyce and O'Connell (2008) for more information.

The Citizenship section managed applications for post-nuptial citizenship and naturalisation. With a staff of 22, it processed some 6,800 cases in 2004 (P.A. Knowledge Limited, 2005). Table 3.6 shows that the workload of the citizenship section multiplied many times between 2000 and 2006. The investigations carried out by the Department before citizenship may be granted are necessarily detailed and intensive. While updated data on staff numbers was not available associated processing times indicate that the increase in applications has not been matched by increases in resources in the processing section. In February 2008 an average application took 30 months to process.³²

In 2007 over 150,000 people registered at GNIB registration offices. This number is over three times the number registered in 2000, when only 47,000 people registered. The GNIB manage a database (GNIB information system) containing the details of legally resident non EEA nationals, asylum applicants and those persons evading deportation orders. Although the GNIB was established in 2000 as part the new asylum system, over the years asylum seekers have become a relatively small part of the GNIB caseload. Every non-EEA national resident in Ireland must register with GNIB and re-register as required.

Table 3.7: Persons Registered with GNIB (New Registrations Plus Renewals)

	No. Registered with GNIB
2000	47,000 ³³
2004	133,957
2007	155,253

Source: Department of Justice, Equality and Law Reform

Around 2004 to 2005 priority began to shift onto the areas of immigration, visas and citizenship. In March 2005 the Irish Naturalisation and Immigration Service (INIS) was established to provide a “one stop shop” for immigration, asylum, visas and citizenship services. The Visa Office of the Department of Foreign Affairs transferred to INIS in January 2006. In 2005 Outline Policy Proposals for an Immigration and Residence Bill were published. In 2007 an Immigration, Residence and Protection Bill was published with a broader than anticipated scope i.e. proposing to replace existing refugee legislation as well as codify the immigration systems in law. This Bill fell with the change of government in 2007 and a new Immigration, Residence and Protection Bill 2008 is currently moving through the legislative procedure.

In anticipation of this Bill, Irish immigration systems are being organised in a more consistent way, with information on procedures more accessible than before. Information on recent progress in relation to IT systems is provided at Section 4.6.

³² Source: Parliamentary question. Question no. 387 from the Dáil (lower house of parliament) debate of 13th February 2008 (Volume 647, No.1): <http://debates.oireachtas.ie/>.

³³ Approximate figure.

3.2.2.1 Developments in the Acquisition of Citizenship

There were very significant policy developments in relation to non-Irish nationals and Irish citizenship in recent years. In the past non-Irish parents of Irish-born children could apply for residency in Ireland based on the Irish citizenship of their child. This led to concerns that people were travelling to Ireland and having children in order to gain that status. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted in the Irish Nationality and Citizenship Act 2004, which commenced in January 2005. The 2004 Act provides that any person born in Ireland after 1 January 2005 to non-Irish parents will not be automatically entitled to be an Irish citizen unless one of the parents was lawfully resident in Ireland for at least three out of the four years preceding the child's birth. The Act has the effect that it is no longer possible for all persons born in Ireland to obtain automatic Irish citizenship.

An Irish Born Child Unit was established in 2005 to deal with applications for residency by family members of Irish Born Children. In January of that year the Department of Justice, Equality and Law Reform moved to clarify the position of the non-Irish national parents of Irish born children who had applied for residency on the basis of their Irish child but had had their claims suspended in 2003. Such persons were invited to apply under the Irish Born Child 2005 Scheme (IBC/05). This was a special Scheme under which non-Irish national parents of Irish children could apply for permission to remain in the State. Almost 18,000 applications were submitted under the Scheme. Of these, 16,693 were approved (Department of Justice, Equality and Law Reform, May 2006). During 2007 arrangements were put in place for the processing of applications for renewal under the IBC/05 Scheme.

3.2.3 DEVELOPMENT OF AN EMPLOYMENT PERMITS SYSTEM

Prior to 2002 work permits were issued to non EEA workers in any occupation. The numbers issued were relatively low: less than 6,000 in 1999 (Ruhs, 2005). A working visa/authorisation programme was introduced in 2000 to facilitate the recruitment of highly-skilled workers. A work visa/authorisation was a fast track employment permit issued to highly skilled non-EEA personnel mainly in IT, medical and construction sectors. Working visas were issued to nationals from visa-required countries, hence the term 'working visa' while work authorisations were issued to non visa-required countries. Tables A3.1 and A3.2 supply data on work permit and work visa/authorisation allocations respectively.

Ruhs (2005) characterises the development of the Irish work permit system (as distinct from work visa/authorisation system) as *laissez-faire* until April 2003 with more interventionist policies emerging after that date. Prior to the enactment of the first Employments Permit Act in April 2003 the work permit system was almost entirely employer-led with little government intervention. For example before 2002 there was a voluntary requirement on the employer to check on the availability of local workers before applying for a work permit for a non-EEA national. Since January 2002 employers must advertise their vacancy within the EU for four weeks before applying for a new permit and provide evidence of their search to the Department of Enterprise, Trade and Employment.

Since 2003 migration policy in relation to non-EEA states is to meet skills needs that cannot be met from within the EU by attracting workers with high or scarce skills and to attract workers to areas where there are labour shortages.³⁴ The emphasis has been on facilitating the participation of EU nationals in the Irish labour market. The Employment Permits Act 2003 was introduced to facilitate access to the Irish labour market to nationals of the new EU accession states after 1 May 2004. The Act also incorporated a provision whereby, for the first time, the requirements for employment permits in respect of non-Irish nationals working in Ireland are set out in primary legislation, together with penalties for non-compliance. Only Ireland, the UK and Sweden granted full labour market access to nationals of the enlarged EU in 2004. This led to concerns that huge demands could be put on the Irish social welfare system. As a result a Habitual Residence Condition (HRC) was introduced ahead of the 2004 accession. The basic requirement for a person to be deemed 'habitually resident' is to have been resident in Ireland or the UK for a continuous period of two years before making an application for social assistance.

In 2003 a list of occupations was published in which work permits could no longer be issued as it was believed there were sufficient personnel in the EU to meet labour demands. Late in 2003 the Department of Enterprise, Trade and Employment began to implement a policy of preference for work permit applications made in respect of accession country nationals. They sent applications made in respect of non accession state nationals back to employers, with an explanation of policy, in cases where experience had shown that the requisite skills were available in the accession countries. Employers were also informed that an application to fill the post in question with an accession state national would be more likely to succeed.³⁵

In February 2004 the Minister for Enterprise, Trade and Employment announced that the spouses of certain categories of migrant workers could apply to work in Ireland under a new spousal work permit scheme. Spouses still required a work permit to take up employment in Ireland but the procedure was simplified and made more favourable to the spousal applicant. A revised spousal permit scheme was introduced in 2007, extending the existing scheme to spouses of all permit holders and not just spouses of certain skilled non-EEA nationals working in Ireland.

Since 2003 there has been substantial immigration from the 10 EU countries that acceded in 2004, falling off slightly in April 2007 – April 2008 period due mainly to worsening economic conditions. Romania and Bulgaria acceded in January 2006 but it was announced by the Government that nationals from these countries would continue to require a work permit to access the Irish labour market. This decision will be kept under on-going review and will be assessed comprehensively before the end of 2011.³⁶

³⁴ See Quinn and O'Connell for further discussion on the development of Irish highly skilled migration policy.

³⁵ See Quinn and Hughes (2005a) for more information.

³⁶ Department of Enterprise, Trade and Employment, January 2009, "Position in relation to Employment Permits for Nationals of Bulgaria and Romania". <http://www.entemp.ie>.

In January 2007 a new Employment Permits Scheme was introduced that significantly altered the system of highly skilled labour migration to Ireland. As part of this scheme a green card has been introduced. This move is welcomed as a strategic, long-term policy development and the first complete highly skilled labour migration scheme in Ireland. The new green card applies to an extensive list of occupations with annual salaries of €60,000 and above, and for a more limited list of occupations with salaries between €30,000 and €60,000. Important incentives are being offered to attract potential green card holders discussed at Section 4. 4.2 below.

The newly implemented employment permits system also includes a reintroduced intra-company transfer scheme. A revised work permit scheme has been introduced mainly for non-green card occupations in the €30,000 to €60,000 annual salary range and for occupations with salaries below €30,000 in exceptional circumstances only. This new employment permits system further develops Ireland's policy of limiting non-EEA labour migration to areas of skills or labour shortages that cannot be met from within the EU.

4. ORGANISATION OF ASYLUM AND MIGRATION POLICY

4.1 Entry Procedures

4.1.1 ASYLUM

Section 9 (1) of the Refugee Act 1996 provides that a person who arrives at the frontiers of the state seeking asylum or otherwise indicating an unwillingness to leave the State for fear of persecution, shall be given leave to enter the State. The Refugee Act provides that persons arriving at the frontiers of the state seeking asylum are initially dealt with by an Immigration Officer.

An Immigration Officer conducts a preliminary interview with the applicant. The purpose of this interview, which is provided for in Section 8(2) of the Act, is to establish *inter alia*: whether the person wishes to make an application for a declaration for refugee status and, if so, the general grounds upon which the application is based, the identity of the person and their nationality, transport and route taken to reach Ireland as well as the legal basis for entry into or presence in the State. The Act also specifies that the interview shall be conducted in the presence of an interpreter where necessary and possible. Any person entering the state who declares that they intend to seek asylum in Ireland is required to report to the Office of the Refugee Applications Commissioner (ORAC) for the further processing of their application. Persons who do not present themselves at the frontiers of the State may apply directly at the ORAC office in Dublin. In such cases the preliminary interview is conducted by a designated official of ORAC. In practice, the vast majority applications are made directly at the Office of the RAC rather than at ports of entry.³⁷

Since 1998 under the Refugee Resettlement Programme Ireland has agreed to admit, on a yearly basis, a number of 'special case' refugees (and their close relatives) who do not come under the scope of Ireland's obligations under the Geneva Convention of 1951. 'Programme Refugees', in contrast to asylum applicants, are admitted for the purpose of permanent resettlement rather than for temporary protection. Some 735 persons were approved for resettlement in Ireland under the Programme between 1998 and 2007, and 636 admitted to the State. During 2007 Ireland continued to implement the Government's *Resettlement Programme* with 200 programme refugees approved for resettlement, and 114 admitted to the State.

³⁷<http://www.orac.ie/>

4.1.1.1 Family Reunification for Recognised Refugees

Persons granted Geneva Convention refugee status in Ireland may apply to the Minister for Justice, Equality and Law Reform for family reunification. Applications are made to INIS and then passed to the Office of the Refugee Applications Commissioner for investigation under the Refugee Act 1996. On completion of its investigation, ORAC submits a report to the Minister of Justice, Equality and Law Reform for a final decision. If a refugee is married, he/she may apply for his/her spouse (provided the marriage is subsisting on the date the application is made). A refugee may apply for permission for his/her children who are under the age of 18 and unmarried and refugees under 18 years of age may apply for their parents. The Minister for Justice, Equality and Law Reform also has discretion to grant permission for other dependent family members to be reunified with a Refugee (grandparent, parent, brother, sister, child, grandchild, ward or guardian of the Refugee) provided clear evidence of dependency is shown.³⁸ Where the Minister grants permission for family reunification, subjects of an application who are outside the State may then be instructed to apply for a visa. Subjects of an application over the age of 16 who are already present in the State may, on foot of a decision to grant an application, be instructed to register with GNIB. If the application is denied there is no way in which to appeal the decision unless significant new information becomes available in which case an application may be made again.

The total processing time in INIS from the date of receipt of a family reunification application to date of issue of a decision is approximately 24 months. The processing time for the investigation in ORAC from date of receipt of an application from INIS to the issue of Section 18 report under the Refugee Act, 1996 is approximately four months.³⁹

4.1.2 IMMIGRATION

4.1.2.1 Pre Entry visas

Visa related provisions are not yet on a statutory basis in Ireland and therefore the decision taking Visa Officer has a degree of discretion in deciding on an application. If enacted the Immigration, Residence and Protection Bill 2008 will provide a statutory basis for issuing and revoking visa applications together with definitions of various entry and transit visas. The system is currently based on administrative practices.

EEA nationals⁴⁰ and nationals of other specified countries specified in Statutory Instrument. No. 657 of 2006 Immigration Act 2004 (Visas) (No. 2) Order 2006 do not need an entry visa before arriving in Ireland. People from other countries need a valid Irish entry visa before arrival, whether by air, sea or land. An Irish visa is a certificate placed on the individual's passport or travel document to indicate that they are authorised to land in the State subject to any other conditions of landing being fulfilled.

³⁸ "Family Reunification Information Leaflet". Available at <http://www.inis.gov.ie/>.

³⁹ Office of the Refugee Applications Commissioner.

⁴⁰ Members of the EEA are the 27 countries of the European Union (EU), together with Iceland, Norway and Liechtenstein.

Statutory Instrument No. 657 of 2006 also includes a shorter list of transit visa-required countries. A Transit Visa does not permit the holder to leave the port/airport only to transit to an onward connection and the person must have a valid visa (if required) for their final destination.

From July 2008 if applicants live in a country where the online visa application facility is available they must apply for a visa online. Applications should be made at least 8 weeks before travel. If they cannot apply online they may download the application form from the INIS website or request a form from the Irish embassy or consulate designated for processing visa applications from their country. There are instructions on how to complete the application form in English and six other languages.

On application for a visa individuals intending to travel to Ireland must indicate:

- (1) Whether their travel will be for a short stay (C Visa: 90 days or less) or a long stay (D visa: over 90 days).
- (2) Whether their application is for a single journey or multiple journeys. It is not general practice to issue Multiple-Journey visas unless the applicant can show a compliant travel history to Ireland in the recent past.
- (3) The purpose of their travel: visit, tourist, business, to join spouse/parent (Irish, EEA or non Irish/EEA), conference/performance, medical treatment, study, employment, research, other, or with a Van der Elst Visa.⁴¹

Applicants must also supply personal and family details, information on previous visa applications and migration history, employment/college details in the country of origin, information on who the applicant will travel with, contact and (if relevant) employment/study information in Ireland. The completed application is then submitted online or to the Irish Embassy/Consulate or Visa office in or accredited to the applicant's country of permanent residence.

The application must be accompanied by a photograph and the relevant fee. The standard visa application processing fees are: single-journey visa €60, multiple-journey visa €100, transit visa €25. Some applicants are not required to pay a fee including visa-required spouses and certain family members of EEA citizens (including Irish nationals) provided that proof of the relationship is provided with the application. In addition, applicants from some countries are not required to pay a fee.

Applicants for a "Spouse of Irish/EU Visa" must meet additional documentary requirements including a marriage certificate, a copy of their spouse's passport, a full account of their relationship history (in the case of new marriages) and evidence of Irish/EU national's employment.

Applicants for a visa for employment must have their work permit/green card number to insert on the form as well as the details of

⁴¹ Holders of a Van der Elst Visa do not require a work permit to work in Ireland. To qualify for such a visa a person must be lawfully employed in another EU Member State.

their proposed employment. Applicants for a student visa must have been accepted onto a course and supply detailed information on their proposed studies. It is stated that the educational and other credentials of a college will be taken into consideration by the Department of Justice, Equality and Law Reform in reaching a decision on a visa application.⁴²

Green card holders may be accompanied by dependent family members or may make applications for reunification after arrival. Work permit holders must have been in employment for at least twelve months prior to the date of application for family reunification, must be in full time employment on the date of application and have an income above the threshold which would qualify the family for payment under the Family Income Supplement (FIS) Scheme.

In the majority of cases, visa applications are processed locally in the Department of Foreign Affairs staff (often seconded from the Department of Justice, Equality and Law Reform) at the Irish Embassy, Consulate or Visa Office in the country of application. Other applications are processed by Visa Officers in the Department of Justice, Equality and Law Reform in Dublin. Applicants receive a reference number which they may use to check the decision on their visa application online. An updated list is posted on the INIS website each week.

4.1.2.2 Carrier Liability

Under the Immigration Act 2003 where a vehicle arrives in Ireland from outside the Common Travel Area the carrier is responsible for ensuring that all persons on board the vehicle seeking to land are presented to an immigration officer for examination in respect of leave to land. Carriers are also required to check that travellers have a valid passport or other equivalent document which establishes his or her identity and nationality and, if required by law, a valid Irish transit visa or a valid Irish visa. Provision is also made for the return of persons refused leave to land, usually by the carrier responsible, to the point of embarkation

4.2 Admission Conditions

4.2.1 ASYLUM

Following the preliminary interview, a standard form (an ASY1 form) is completed and signed by the applicant. This contains the individual's biographical data and a brief outline of their claim. The applicant is then given a detailed questionnaire, which requires him or her to provide biographical and other personal details, travel particulars and the reasons for seeking asylum. The applicant is required to return the completed questionnaire to ORAC within 6 working days for prioritised applicants and 9 working days for non-prioritised applicants. Applicants may seek legal advice from the Refugee Legal Service (RLS), the free legal aid service for asylum seekers, in the completion of the questionnaire and in preparation for interview. They are also free to arrange for legal advice at their own expense.

⁴² In the case of students coming to Ireland to study English the course should be included on the list of English language programmes which are approved by the Department of Education and Science on the basis of the quality assurance/inspection scheme of the Advisory Council for English Language Schools (ACELS).

Applicants and their dependent minors are photographed, and then issued with a Temporary Residence Certificate/Card by ORAC. Applicants who are issued with a Temporary Registration Card do not have to register with GNIB. However, if granted refugee status they must register with GNIB as soon as possible and generally once a year thereafter. Applicants are also required to have their fingerprints taken and these are cross referenced with the EURODAC database which contains the fingerprints of asylum applicants across Europe.⁴³

A major advance in this area was the introduction in 2007 of an Automated Fingerprint Identification System (AFIS) for An Garda Síochána and the Irish Naturalisation and Immigration Service (INIS). As part of the phased introduction of the system electronic fingerprint capture equipment have been installed at the Office of the Refugee Applications Commissioner. This allows for the electronic taking and exchange of fingerprint data on persons seeking asylum with the central EU fingerprint database repository - EURODAC. Units have also been installed at a Dublin Garda station and prison, and a prison in Cork. Subsequent phases, which will be delivered during 2008/2009, will provide for the capture and storing of a person's fingerprints upon registration by the Garda National Immigration Bureau and also provide Garda Immigration authorities with the ability to capture and store prints at ports of entry including sea and air ports. Such information is currently stored on GNIB AFIS System.⁴⁴

The applicant is then referred to the Reception and Integration Agency (RIA), which has an office in the ORAC building. RIA is responsible for the planning, co-ordination and provision of reception services to asylum seekers. RIA has a number of reception centres in Dublin, where asylum seekers are accommodated initially. Applicants may subsequently be dispersed to another accommodation centre throughout the State. This accommodation is provided on a full board basis.

In order to investigate their application, the applicant is invited to a detailed interview in accordance with Section 11 of the Refugee Act. This substantive interview is carried out by an ORAC caseworker, with the assistance of an interpreter where required. An applicant is also entitled to have a legal representative present during the interview. In order to assist in evaluating the applicant's claim the ORAC caseworker researches country of origin information. They may do this with the help and resources of the ORAC Research Section, who may in turn source information from the Refugee Documentation Centre.

On the basis of the findings of the preliminary interview, the completed questionnaire, the substantive interview and any relevant documentation, including country of origin information, the caseworker prepares a report on the application which will incorporate a recommendation on whether or not refugee status should be granted as well as the reasons for this recommendation. Where it is recommended that the applicant be granted refugee status ORAC notifies the Minister for Justice, Equality and Law Reform, who is bound by the recommendation except where questions of

⁴³ Since January 2003, the fingerprints of anyone who applies for asylum in the European Union (except Denmark) and in Norway and Iceland, are stored the EURODAC database.

⁴⁴ Department of Justice, Equality and Law Reform, 2007.

national security or public policy arise. Where a recommendation is negative, the Minister still has the option to grant status. In either case the Minister issues the final decision.

Applicants who receive a negative recommendation following interview are entitled to appeal to the Refugee Appeals Tribunal. The normal procedure is that an appeal must be made within 15 working days of the sending of the negative decision and the applicant is entitled to request an oral hearing for their appeal. In certain circumstances, which are set out in the Refugee Act, the period within which an appeal must be made is shorter (10 working days) and the appeal will be dealt with by the Refugee Appeals Tribunal without an oral hearing.

In cases where applicants withdraw or fail to participate in the process (e.g. through non-attendance at interview) the applications will be deemed withdrawn and a negative recommendation is issued, against which there is no appeal.

4.2.2 IMMIGRATION

4.2.2.1 Permission to Land

All Non EEA nationals are required to seek leave to land in the State by reporting to an Immigration Officer at an Irish port of entry. The Immigration Officer may grant leave to enter for a maximum period of three months.

The Statutory Instrument Aliens Order 1946 made under the 1935 Aliens Act sets out the conditions under which a person may be refused permission to enter the State. EU/EEA/Swiss nationals may be refused permission to land only if they are suffering from a specified disease or disability or they represent a danger to public security or their presence would be contrary to public policy.

Nationals of other countries must get permission to land when they arrive in Ireland. An Immigration Officer may refuse permission if he or she believes that person:

- Has insufficient funds to support the person plus dependants;
- Intend to take up employment without the relevant permit;
- Suffers from certain specified conditions including TB, other infectious diseases, drug addiction and profound mental disturbance;
- Has been convicted of an offence which carries a penalty of a year's imprisonment or more;
- Does not have a requisite visa;
- Is the subject of a deportation order, an exclusion order or similar order;
- Does not have a valid passport;
- Intend to abuse the Common Travel Area;
- Poses a threat to national security or be contrary to public policy.

A person refused permission to land must be given the reasons in writing. Some people may be given permission to land but with conditions attached for example a restricted time period. If they wish to stay in Ireland for a longer time, they must get permission to remain by registering with the local immigration office. In Dublin this is in the Garda National Immigration Bureau (GNIB), and outside Dublin it is the local Garda district headquarters.⁴⁵ If a person refused leave to land wishes to apply for asylum they must be allowed to do so.

Persons refused permission to land are removed from the State. See Section 4.5 below.

4.3 Legal Residence

4.3.1 ASYLUM

Asylum applicants are not considered legally resident while a decision on their status is pending. If a person receives a declaration of refugee status by the Minister for Justice, Equality and Law Reform their rights are similar to those of an Irish citizen. Recognised refugees must register with the GNIB where they will receive a registration card endorsed with Stamp 4 that must be updated annually. Refugees are entitled to work without any further documentation and may access social welfare, medical and housing support. Refugees may also apply for a Travel document and with it may leave and return to Ireland without a visa. Refugees may also apply for family reunification (see Section 4.1.1.1).

In terms of processing times by April 2008 the average processing time for prioritised cases was 17-20 working days from the date of application and for non-prioritised cases approximately 22-23 weeks from the date of application. (Some cases take significantly longer to complete due to, for example, medical reasons, non-availability of interpreters or because of judicial review proceedings.)⁴⁶

Individuals who are not granted refugee status may make representations to the Minister for Justice, Equality and Law Reform for as to why they should be granted leave to remain (see Section 4.5.1) before a deportation order may be issued. Since October 2006 applicants may also apply for subsidiary protection under the European Communities (Eligibility for Protection) Regulations 2006.

Proposed changes under the Immigration, Residence and Protection Bill 2008 include a shift to a single protection determination procedure meaning that all protection claims, including claims for both asylum and subsidiary protection, would be examined under a single procedure. Applicants would be required to set out all of the grounds on which they wish to remain in the State (including non-protection-related reasons for permission to remain) at the outset of their claim, and all of these matters would be examined together. The Minister for Justice, Equality and Law Reform might then find that the person is (a) allowed to remain in the State on refugee grounds, (b) allowed to remain in the State on subsidiary protection grounds, (c) allowed to reside in the State on other discretionary

⁴⁵ <http://www.citizensinformation.ie/>

⁴⁶ Question no. 41 from the Dáil debate of 17 April 2008 (Volume 652, No.1): <http://debates.oireachtas.ie/>.

grounds, or (d) not allowed to remain in the State. The Bill proposes that functions currently being carried out by the Office of the Refugee Applications Commissioner with regard to protection would be carried out by the Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal would be replaced with a Protection Review Tribunal.⁴⁷

4.3.2 IMMIGRATION

4.3.2.1 *Permission to Remain*

If an immigrant is not a citizen of the EEA or Switzerland, there are various forms of residence rights (permission to remain) that allow them to live in Ireland. If the individual is granted permission to remain, a Certificate of Registration is endorsed on their passport by the Garda National Immigration Bureau (GNIB) or the local Garda registration office on payment of €150 fee.⁴⁸ There were 155,253 persons registered with GNIB. Of these 39,432 were first time registrations. The Certificate is issued by the GNIB to lawfully resident non-Irish nationals who expect to stay in the State for more than three months. It verifies that the person has registered with their registration officer. The Certificate of Registration contains the person's photo, registration number, relevant immigration stamp, and an expiry date. A certificate of registration card contains one of a number of different immigration stamps.

- Stamp number 1: issued to non-EEA nationals who have an employment permit or business permission;
- Stamp number 2: issued to non-EEA national students who are permitted to work under certain conditions;
- Stamp number 2A: issued to non-EEA national students who are not permitted to work;
- Stamp number 3: issued to non-EEA nationals who are not permitted to work;
- Stamp number 4: issued to people who are permitted to work without needing an employment permit or business permission for example: Spouses and dependants of Irish and EEA nationals; Convention and Programme refugees; Non-EEA nationals on intra-company transfer;
- Stamp number 4: (EU FAM) issued to non-EEA national family members of EU citizens who have exercised their right to move to and live in Ireland under the European Communities (Free Movement of Persons) Regulations 2006. People holding this stamp are permitted to work without needing an employment permit or business permission, and they can apply for a residence card under the 2006 Regulations;

⁴⁷ See Quinn, Stanley, Joyce and O'Connell 2008 for more information.

⁴⁸ Certain people are exempt from payment including: Convention Refugees; Persons who have been reunified with such refugees under section 18 of the Refugee Act 1996; Persons who are under 18 years of age at the time of registration; Spouses, widows and widowers of Irish citizens; Spouses and Dependants of EU nationals who receive a residence permit under EU Directive 2004/38/EC; Programme Refugees, as defined by section 24 of the Refugee Act, 1996.

- Stamp number 5: issued to non-EEA nationals who have lived in Ireland for at least eight years and who have been permitted by the Minister for Justice, Equality and Law Reform to remain in Ireland without condition as to time. Holders of this stamp do not need an employment permit or business permission in order to work;
- Stamp number 6: can be placed on the foreign passport of an Irish citizen who has dual citizenship, and who wants their entitlement to remain in Ireland to be endorsed on their foreign passport.

Non-EEA nationals must renew their registration with the GNIB in Dublin or local Garda registration office. The Immigration, Residence and Protection Bill 2008 proposes a new system comprising different residence permits allocated according to the category into which a foreign national falls. The Bill proposes factors to be considered by the Minister when determining an application for residency, and contains provisions for long-term residency.

There are number of categories of legally-resident third country nationals that warrant further discussion.

4.3.2.1.1 Long Term Residents

A long-term residence status is currently processed as an administrative scheme i.e. there is no statutory provision as yet. Persons who have been legally resident in the State for over five years (ie: 60 months) on the basis of employment permits may apply for a five year residency extension. In that context they may also apply to be exempt from employment permit requirements. A statutory long term residence in Ireland is proposed in the forthcoming Immigration, Residence and Protection Bill 2008. This status would be for an initial period of five years and foreign nationals granted long-term residency would be entitled to the same rights of travel as Irish citizens, to work in the State to the same extent as Irish citizens, and to the same medical care and services and social welfare benefits as Irish citizens.

4.3.2.1.2 Spouses of Irish Nationals

Non-EEA nationals who wish to reside in the State on the basis of their marriage to an Irish national must make an application for permission to remain in the State. If the applicant is currently in Ireland legally he or she may apply for permission to remain at their local Garda National Immigration Bureau Registration Office. If a non-EEA spouse is in Ireland illegally they must apply in writing to the “Marriage to Irish National Section” of the Immigration Operations Unit. Applications can take up to 12 months to process depending on the volume of applications on hand at any given time and the complexities involved.⁴⁹

⁴⁹ <http://www.inis.gov.ie/>

4.3.2.1.3 Spouses and Dependents of EEA Nationals

Statutory Instrument No. 310 of 2008 European Communities Free Movement of Persons (Amendment) Regulations 2008⁵⁰ states that dependent family members who are not nationals of an EU Member State must apply for a Residence Card which will confirm that he/she is a family member of an EU citizen residing in Ireland. This Residence Card can be used in place of an Irish re-entry visa, where the holder wishes to leave Ireland on a short journey and return to the State. EU citizens and their family members may apply, respectively, for a Permanent Residence Certificate or Permanent Residence Card after they have resided for a continuous period of 5 years in Ireland. Applications for the relevant certificate/cards are processed by the EU Treaty Rights Section of the Irish Naturalisation and Immigration Service.

A significant development in the new Regulations is that non-EEA nationals of whatever age who are family members of EU citizens resident in Ireland must now apply for the appropriate Residence Card. Prior to the introduction of the 2008 Regulations children under 16 years of age were specifically excluded from the requirement to register their presence in Ireland. The Regulations allow for the facilitation of the admission of the partner of an EU citizen where they are in a durable relationship which is duly attested.⁵¹

4.3.2.1.4 Naturalisation

Irish naturalisation is considered under the provisions of the Irish Nationality and Citizenship Act, 1956, as amended and is granted at the absolute discretion of the Minister for Justice, Equality and Law Reform. Applications for naturalisation are considered by the Citizenship Division. The average time for a decision on an application is 30 months. The number of applications for naturalisation made has increased rapidly in recent years see table 3.6. Persons other than refugees must pay the following processing fees: €200 for minors or the widow or widower whose spouse was an Irish citizen and €950 for all other applications.

4. 4.

Access to the Labour Market

4.4.1 ASYLUM

Asylum applicants may not legally access the Irish labour market while a decision on their status is pending.

4.4.2 IMMIGRATION

There are several types of permits that allow access to the Irish labour market:

⁵⁰ These amended Regulations arose from the European Court of Justice finding in case C-127/08-Metock and Ors v Minister for Justice, Equality and Law Reform. The previous Regulations transposing Directive 2004/38/EC provided that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland only if he is already lawfully resident in another Member State. The Court of Justice found that the application of the Directive was not conditional on previous lawful residence in another Member State, and that the Directive applied to all EU citizens who move to or reside in a Member State other than their State of origin, and to their family members who accompany or join them.

⁵¹ <http://www.inis.gov.ie>

- Green Cards;
- Work Permits;
- Spousal/Dependant permits;
- Intra-Company Transfer Permits;
- Graduate Scheme;

Each type of permit is issued by the Department of Enterprise, Trade and Employment and applications are processed by the Employment Permits Section of the Department.

Green Cards: Green cards were introduced in 2007 in order to attract highly earning workers (€60,000 and over) and those in occupations where Ireland is experiencing skills shortages. It is also available for a restricted list of occupations with annual salaries of €30,000 to €59,999 in the following sectors of employment: information and communications technology, healthcare, industry, financial services and research. The applicant must have a job offer from a company or employer who is registered with the Revenue Commissioners, trading in Ireland and registered with the Companies Registration Office and the job offer must be for 2 years or more. There is no requirement for a labour market needs test. The green card permit is issued for 2 years and a renewal permit is not required as it is intended to lead to the granting of long-term residence and holders of a green card permit can have their spouses and families join them immediately.⁵² Either prospective employers or employees may apply. Just under 3,000 green cards were issued in 2007.

Work Permit: A revised work permit scheme also formed part of the new employment permits system introduced in 2007. Work permits are now available for occupations with an annual salary of €30,000 or more and for a very restricted number of occupations with salaries below €30,000. There is a list of occupations considered ineligible for work permits. The permit is granted for 2 years initially, and then for a further 3 years. A labour market needs test is required with all work permit applications meaning that the employer must supply evidence that the vacancy has been advertised with the FÁS/EURES employment network and in local and national newspapers for 3 days. Either the employer or employee may apply for the employment permit, based on an offer of employment. The permit is granted to the employee and the employer is prohibited from deducting recruitment expenses from the employee's pay or retaining the employee's personal documents. Work permit holders must have been in employment for at least twelve months before applying for family reunification and must have an income above the threshold which would qualify the family for payment under the Family Income Supplement (FIS) Scheme. There is an undertaking in the most recent Partnership Agreement (Towards 2016) to introduce a requirement for non-EEA students to hold work permits before accessing the labour market.⁵³

⁵²<http://www.citizensinformation.ie>; <http://www.entemp.ie/labour/workpermits/guidelines.htm>

⁵³ Currently students may work for 20 hours during term time and full time during holidays.

Spousal/Dependent Permits: The spouses or dependents of employment permit holders may now apply for work permits without the need for a labour market test and these are exempt from the usual application fee.

Intra Company Transfers: This scheme is designed to facilitate the transfer of senior management, key personnel or trainees who are foreign nationals from an overseas branch of a multinational corporation to its Irish branch. Applications may be granted for a maximum period of up to 24 months in the first instance and may be extended upon application to a maximum stay of five years.

Graduate Scheme: Non-EEA students who graduated on or after 1 January 2007 with a primary, master's or doctorate degree are permitted to remain in Ireland for 6 months under the Third Level Graduate Scheme. This scheme is designed to allow them time to find employment and apply for a work permit or green card permit and during this 6-month period they may work full time. (The residency stamp on the graduate's passport is extended by the GNIB without the involvement of the Department of Enterprise, Trade and Employment.)

Processing times for the various permits are as follows: work permits: 15 working days. Spousal work permits 20 working days. Green cards: 5 working days. The work permit processing fee increased in 2002 to €50 to €400, depending on the duration of a permit and again in 2003 to €65 to €500, depending on the duration of a permit.⁵⁴ Under the current legislation, the fee €500 for a work permit of six months or less duration and €1,000 for a permit between 7 to 24 month permit. The fees apply to all permit types except for spousal applications where no fee is required.

4. 5 Return

4. 5.1 CATEGORIES OF RETURN

There are four relevant types of return and each is discussed below.

Assisted Voluntary Return: Assisted Voluntary Return is available to all non-EEA nationals who do not have a clear legal right to be in the State, including asylum applicants and irregular migrants. Persons in respect of whom a deportation order is made may no longer avail of assisted voluntary return. The International Organization for Migration runs various Voluntary Assisted Return Programmes (VARP) in Ireland. In 2007 there were 416 voluntary returns including those by individuals that left the State independently after contacting the Department of Justice, Equality and Law Reform and those that availed of an Assisted Voluntary Return programme.⁵⁵

Deportation: Those eligible for deportation from the State are mainly those who come legally and fail to comply with laws of State, particularly immigration requirements. Such people may be deported under Immigration Act 1999, Section 3, enforced by Section 5. In 2007, there were 135 deportations effected.⁵⁶

⁵⁴ The previous fee ranged from £25 to £125 and had not been increased since 1993.

⁵⁵ Department of Justice, Equality and Law Reform

⁵⁶ Department of Justice, Equality and Law Reform, 2008b.

Removal: Those eligible for removal from the State include irregular migrants who come to the State without permission or who over-stay⁵⁷; People who are refused permission to land at the Irish border on the grounds set out at Section 4 of the Immigration Act 2004 are removed as soon as possible under Immigration Act 2003, Section 5; Persons who claim asylum but are detained under the Refugee Act may decide to go home rather than pursue asylum claim and may be eligible for removal from the State.

Dublin II Transfer. Asylum applicants who had prior connection with another EU Member State may be transferred under the Dublin II Regulation,⁴ including those who are to be transferred to another EU member State for family unity purposes; those in respect of whom another Regulation State has issued a visa or work permit; those who regularly crossed the frontier of another Regulation State prior to applying for asylum in Ireland; those who have made an asylum claim in another Regulation State which has not yet been finalised, or was withdrawn or rejected. The GNIB reports that the vast majority of Dublin II returnees are people who fall into the latter category and are picked up on the EURODAC system. In the case of a EURODAC “hit” an asylum applicant may be transferred to the country in which they first lodged an application. ORAC sends the applicant’s file to the Repatriation Unit of the Department of Justice, Equality and Law Reform. A Transfer Order is signed by the Minister for Justice, equality and Law Reform and the GNIB enforces the Transfer Order. In 2007, 343 Orders were signed for transfer under Dublin II, with 225 effected.

4.5.2 DEPARTMENTS/AGENCIES INVOLVED IN RETURN

Under Section 3 of the Immigration Act 1999 the Minister for Justice, Equality and Law Reform must give each individual case consideration as to whether a deportation order should be issued or whether that person should be granted leave to remain in the State. This status is granted purely at the discretion of the Minister. An assessment of each case is made on the basis of eleven factors including the duration of residence in the State of the person; the nature of the person’s connection with the State, if any; humanitarian considerations and any representations made by or on behalf of the person. The majority of unsuccessful asylum applicants choose to make representations to the Minister as to why they should be allowed leave to remain on humanitarian grounds. In practice few are granted permission to remain and an unsuccessful application automatically results in a deportation order being issued⁵⁸

The primary government agency involved in processing leave to remain and, more generally, the organisation of return is the Repatriation Unit within INIS.

The Repatriation Unit is also responsible for actively encouraging voluntary repatriation to the country of origin. The Unit is responsible for

⁵⁷ Within the first 3 months of their stay they can be removed under a purely administrative procedure under the Immigration Act 2003, Section 5.

⁵⁸ A total of 1,420 people have been granted humanitarian leave to remain between 1999 and mid 2007. Almost half were granted the status between 2006 and mid 2007. See Quinn 2007a for more information.

giving effect to the transfer of persons under the EU Dublin Regulation to the appropriate EU State for their asylum applications to be determined there and for giving effect to the implementation of a bilateral readmission agreement with Nigeria.⁵⁹

All deportation orders or Dublin II transfer orders must be signed by the Minister for Justice, Equality and Law Reform.

The Garda National Immigration Bureau (GNIB), also under the aegis of the Department of Justice, Equality and Law Reform, is involved with the operational implementation of return.

4.6 Links with other Policy Areas

4.6.1 LINKS BETWEEN ASYLUM AND IMMIGRATION

Within INIS the Asylum Policy Division, the Immigration Policy Unit, and the Immigration and Citizenship Division work closely together on issues as they arise, for example on the implications of the recent *Metock* case.⁶⁰

Both asylum and immigration areas of INIS participate in the IGC (Intergovernmental Consultations on Migration, Asylum and Refugees) and in the GDISC (General Directors of Immigration Services Conference) depending on the agenda items under discussion. The Immigration and asylum Committee of the Commission is also a forum for discussing key issues, for example before draft legislation is presented member states may debate issues at this committee.

There is limited technical interoperability in terms of information systems in the immigration and asylum areas (INIS for example has over 40 databases). Instead relevant areas of the immigration and asylum systems have access to each other's information systems. In addition substantial investment has taken place on the following:

- AFIS electronic fingerprinting system. This system is now up and running for taking and storing fingerprints of asylum seekers (in ORAC) and migrants on registration with the GNIB;
- AVATS visa management system. This new system is now up and running;
- AISIP Management and Statistical Information System. This system is in development and will enable all business areas in INIS to operate of the same IT system; the management of the Reception and Integration Agency (RIA) accommodation system; the electronic tracking of all files. The specification of this system has been finalised but build has not yet begun. A country of origin information database is now in place as part of the first phase of AISIP.

⁵⁹ See <http://www.inis.gov.ie/>

⁶⁰ The European Court of Justice Case C-127/08-*Metock and Ors v Minister for Justice, Equality and Law Reform* which found that a national of a third-country who is a family member of a Union citizen may reside with or join that citizen in Ireland without having previously resided in another EU country.

It is planned that in due course an interoperability strategy will be finalised.

4.6.2 LINKS BETWEEN ASYLUM AND OTHER POLICY AREAS

The asylum-related structures are all located under the aegis of the Department of Justice, Equality and Law Reform although there are important operational links with other Departments.

For example asylum applicants are housed under the direct provision system meaning that they are accommodated under a full board arrangement and receive an allowance administered through the Department of Social and Family Affairs. In addition the Health Service Executive has responsibility for unaccompanied minors who enter the state and where applicable may make an application for asylum on their behalf. The HSE also provides screening and health care services to asylum applicants.

4.6.3 LINKS BETWEEN IMMIGRATION AND OTHER POLICY AREAS

Immigration Policy and Operations areas within INIS liaise closely with the Economic Migration Policy and Work Permits Section of the Department of Enterprise, Trade and Employment. This often involves individual cases, checking visas against employment permits, arranging residency stamps for workers in exceptional circumstances etc. INIS and the Department of Enterprise Trade and Employment also work closely on major policy initiatives such as the EU Directive on a Blue Card for highly skilled workers. Currently the GNIB Information System is updated with weekly “dump” from Department of Enterprise Trade and Employment system but work is underway on a system with improved linkages.

The Immigration Unit within INIS also work with the Department of Environment and Local government on housing, Department of Education and Science on primary and post primary education and the Department of Foreign Affairs on visas.

INIS work closely with the Department of Social and Family Affairs on implementation of the Habitual Residency Condition. Efforts have been made to cross-reference Department of Social and Family Affairs records with immigration data to ensure that individuals who have been deported and those who fail to comply with deportation orders no longer receive social welfare payments.

The Office of the Minister for Integration sits partly within the Department of Justice, equality and Law Reform and consults with INIS and the Department of Enterprise, Trade and Employment on policy initiatives.

5. ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

This report was compiled ahead of what is potentially a significant overhaul of the Irish asylum and in particular the immigration systems. Such changes are much anticipated: a public consultation document on immigration policy was launched in 2001 and extensive submissions were received. A cross-departmental group on immigration was then established a discussion document containing outline policy proposals for an Immigration and Residence Bill was published in 2005⁶¹. In September 2006 a *Scheme for a Proposed Immigration, Residence and Protection Bill* was published, followed by a Bill of the same name in 2007. This Bill fell with the change in government and in 2008 the Immigration, Residence and Protection Bill 2008 was introduced to the Dáil.

This draft legislation was generally welcomed by NGOs working with asylum applicants and immigrants in Ireland. In relation to asylum, groups welcomed the introduction of a single protection procedure in particular (see below), as well as the opportunity to modify various other parts of the system. Bodies working with migrant workers and other immigrants welcomed the draft bill as an attempt to draw various disparate, immigration-related instruments and administrative practices into one coherent code. However groups have expressed concern about the fact that the draft legislation deals with immigration and protection in one instrument. There is also significant debate around various details of the Bill. Some of the proposed changes and concerns expressed around those changes are discussed below.

5.1 Asylum

The Irish statutory asylum system has been in development since approximately 1996 and in earnest only since the commencement of the Refugee Act in 2000. It is a relatively new system which continues to develop as international and domestic conditions change. The asylum system was established at a time of exponentially increasing numbers of applicants and it is perhaps unsurprising that this time was one of repeated problems. One of the most obvious problems was that of excessive processing times which have since been significantly reduced. As discussed in Section 3.2.1 this can be attributed in part to the introduction of

⁶¹ Department of Justice, Equality and Law Reform (2005b).

measures designed to speed up the asylum system such as prioritisation directives and the designation of safe countries of origin.

A number of current issues associated with the asylum system are to be addressed in the Immigration, Residence and Protection Bill 2008, if and when it is enacted.

Single protection procedure: As discussed at Section 4.3.1 under the current system unsuccessful asylum applicants may subsequently apply for subsidiary protection and may make representations to the Minister for Justice, Equality and Law Reform as to why they should be allowed leave to remain in Ireland before a deportation order is issued. In a submission on the draft legislation, the Irish Refugee Council (2008) point out that under the current system a final decision may take years – a situation that is difficult for the individual, as well as being costly to the State.

If the Bill as it stands is enacted an applicant will be asked to set out all of the grounds on which they wish to remain in the State (including non-protection-related reasons for permission to remain) at the outset of their claim, and all of these matters would be examined together by the Minister for Justice, Equality and Law Reform. It is hoped that these changes will facilitate speedier processing of an application without jeopardising the fairness of the decision reached. The Irish Refugee Council has stressed that the introduction of a single procedure increases the imperative that the system is fair, rigorous and transparent.

Judicial review: As discussed at Section 2.2 certain immigration and asylum related decisions may be challenged only by way of judicial review and in some cases more stringent rules apply than in normal applications for judicial review. Controversially the draft Immigration, Residence and Protection Bill 2008 proposes that all decisions arising from that Act would be subject to more stringent judicial review rules similar to those set out in Section 5 of the Illegal Immigrants (Trafficking) Act 2000.

There is an ongoing issue about the number of immigration and asylum related applications for judicial review made every year, in particular judicial reviews of proposed deportations/transfers. Where the courts rule in favour of the applicant and find that, for example, a deportation order is based upon an unsound decision, or if the Department chooses to settle matters in favour of the applicant, then the challenged decision is void and the applicant's costs are usually paid from the Minister's Vote. The Department of Justice, Equality and Law Reform has stated that the volume and cost of judicial reviews now being taken has major human and financial resource consequences.⁶²

The official figures do not provide a breakdown of judicial review applications and outcomes by agency, but figures published by The Irish Times indicate the RAT paid out €4.29 million in respect of 190 cases in 2007, a cost considerably higher than that incurred by the ORAC or INIS in the same period.⁶³ There have been concerns raised in recent years about

⁶² Department of Justice, Equality and Law Reform, 2007a.

⁶³ The Irish Times, March 2008. '1,000 Asylum Review Cases Last Year'. Available at <http://www.irishtimes.com/>.

the decisions reached by the current Refugee Appeals Tribunal.⁶⁴ The Bill proposes replacing the Refugee Appeals Tribunal with a Protection Review Tribunal (PRT). While welcoming the replacement of the RAT groups representing asylum applicants have voiced reservations about the independence of the proposed PRT. This is due in part to the fact that the Chairperson of the Refugee Appeals Tribunal will automatically become Chairperson of the PRT and that the Minister for Justice, Equality and Law Reform may appoint part time members to the PRT.⁶⁵

In a related development the new legislation proposes changes to the suspensive effects of judicial reviews. Currently an applicant for judicial review of a deportation order may secure an injunction which suspends their removal while proceedings are underway. An injunction is granted as a means of maintaining the status quo in order to safeguard against returning a person to a potentially dangerous situation. The Immigration, Residence and Protection Bill 2008 proposes that this suspensive effect is removed in the future, a measure which has been criticised by the Irish Refugee Council (2008).

Publication of and access to RAT decisions: After a legal challenge⁶⁶ the Refugee Appeals Tribunal was obliged to provide appellants with access to previous decisions. At present a database of decisions may be searched by the legal representatives of appellants for the purposes of preparing their clients' cases. Under the proposed Immigration, Residence and Protection Bill 2008 legal representatives would need to apply to the Chairperson for previous decisions. Access would only be granted where the Chairperson considers that the request is reasonable and there exists a decision which is legally relevant to an applicants appeal. This provision has been strongly criticised by groups such as the Irish Refugee Council (2008). There is also an obligation on the legal representative to use the decision given only in support of the applicant's appeal and it would be made an offence not to comply with this section.

The Refugee Appeals Tribunal began to publish certain of its decisions in 2006. However to date just 22 decisions have been published and the draft legislation provides that the Chairperson may at his or her discretion publish decisions deemed to be of legal importance.

Carrier sanctions: Provisions for Carrier sanctions introduced in the Immigration Act 2003 are restated and there is a new obligation proposed for a carrier to detain a person where required to do so by an Immigration Officer. UNHCR (2008) among others have expressed concern that by requiring carriers to check travel documents and, if applicable visas, people seeking protection may be prevented from reaching the borders of the State. The Refugee Information Service (2008) recommends that the Bill be amended to include a provision whereby carriers are exempt from penalties where the protection seeker makes a successful application for protection.

⁶⁴ The Irish Times, 10th March 2008, "Call for review of up to 1,000 rejected asylum applications". The Irish Times, 4th March 2008. 'Evidence of disharmony among members of refugee appeal process'. Available at <http://www.irishtimes.com/>.

⁶⁵ Irish Refugee Council 2008; UNHCR 2008.

⁶⁶ See P. A. A. & Ors v The Refugee Appeals Tribunal & Ors, [2007] 4 IR 94; [2006] IESC 53, Supreme Court, 26/07/2006.

Detention: There has been widespread criticism of the provisions in the Bill around detention, in particular the scope for detaining asylum applicants. The Minister for Justice, Equality and Law Reform has offered assurances that detention of asylum applicants may only be for short periods to facilitate the issuing of Temporary Residence Cards.⁶⁷ However a number of groups argue that the powers to detain will be too extensive and will go beyond those provided for in international law and best practice as recommended by the UNHCR.⁶⁸

EU Directives: The 2008 Bill gives effect to the Procedures Directive – 2005/85/EC and the Temporary Protection Directive 2001/55/EC.

5.2 Immigration

Unlike the asylum system the immigration system is mainly still on an administrative footing. As a result the system is marked by a lack of clarity around procedures and entitlements for immigrants for varying status. NGOs representing immigrants report lengthy delays and inconsistencies in decision making. If and when it is enacted the Immigration, Residence and Protection Bill 2008 will make major changes in this regard.

Visas: The Bill proposes a statutory basis for issuing and revoking visa applications. Definitions of visas and transit visas are proposed. Where the Minister refuses to grant a visa, he or she would be required to inform the applicant whether a review is available and, if a review is available, how it may be sought. The Bill proposes a visa review application procedure.

Long term residence: A new system of residence permits is proposed and the factors to be considered by the Minister when determining an application for residency are listed. Provision for a long-term residency status is made as an “acknowledgement of the contribution that many migrants make to their adopted society.”⁶⁹ Foreign nationals granted long-term residency would be entitled to the same rights of travel as Irish citizens, to work in the State to the same extent as Irish citizens, and to the same medical care and services and social welfare benefits as Irish citizens. While this provision has been broadly welcomed some groups have expressed concerns about unclear eligibility requirements and the potential for more vulnerable migrant groups to find themselves excluded from accessing long term residence, as a result for example of accessing social welfare (Migrant Rights Centre Ireland, 2008). The Immigrant Council of Ireland has expressed regret that long term residence refers to a period of five years rather than permanent status (2008).

Return: While most of the existing provisions related to return are restated this Bill also proposes that a foreign national may be summarily removed without notice and that a removed person could be made liable for the costs of their detention and removal, and their accommodation and maintenance while being detained and removed. Migrant Rights Centre Ireland (2008) argue that many people who become undocumented do so through reasons beyond their control (for example through workplace

⁶⁷ Dáil second stage debate on Immigration, Residence and Protection Bill 2008. Quoted in Irish Refugee Council, 2008.

⁶⁸ UNHCR, 2008; Refugee Information Service, 2008; Irish Refugee Council, 2008a.

⁶⁹ Department of Justice, Equality and Law Reform, 2008c.

exploitation) and that they should be given the opportunity to present their case and challenge any intended deportation.

Marriage: The Bill proposes that the marriage of a foreign national and an Irish citizen would not, of itself, confer a right on the foreign national to enter or be present in the State. Controversially it is provided that a marriage where one or both of the parties is a foreign national, would be invalid unless the Minister for Justice, Equality and Law Reform is given three months notification, of the intention to marry. It is made an offence to be involved with a marriage that contravenes the new rules.

Trafficking: The draft Bill includes some provisions designed to offer protection to the victims of trafficking but it is argued by many that the provisions do not go far enough. Migrant Rights Centre Ireland (2008) stress that the recovery and reflection period for victims of trafficking should be increased from 45 days and that renewable residence permits issued to victims of trafficking should not be made conditional on their participation in criminal proceedings.

Appeals: It is argued that an independent appeals mechanism should be put in place for immigration-related decisions. The only recourse available at present, or under the proposed Bill, is via the judicial review system and this is considered an insufficient means of recourse (Immigrant Council of Ireland, 2008; Migrant Rights Centre Ireland, 2008).

While much will be clarified in the forthcoming legislation some significant issues are not dealt with. The Immigrant Council of Ireland (2008) highlights in particular the need for a system for family reunification for immigrants to be set out in primary legislation. The government have stated that a family reunification scheme will subsequently be set out in secondary legislation. However the Immigrant Council of Ireland argues that the current draft legislation leaves too much to secondary legislation which may be formulated at the discretion of the Minister for Justice, Equality and Law Reform without the scrutiny of the Oireachtas. The inclusion of a right to family reunification for refugees and persons with subsidiary protection in the Bill is welcomed. However the Refugee Information Service (2008) has argued that an opportunity to provide a right to family reunification for programme refugees is missed and that the definition of a family member is too narrow.

As mentioned above, groups such as the Immigrant Council of Ireland and the Irish Human Rights Commission (2008) have expressed concern about the fact that the draft legislation deals with immigration and protection in one instrument. The Immigrant Council of Ireland argues that this will perpetuate confusion around the very different statuses of asylum applicants and other immigrants, and that provisions related to entry to the state in particular should be quite separate for the two groups.

It is expected that the Immigration, Residence and Protection Bill will become law in 2009 and the exact details of the legislation may change in the interim.

APPENDIX A1: LIST OF IRISH IMMIGRATION, ASYLUM & CITIZENSHIP LEGISLATIVE INSTRUMENTS

- S.I. No. 340 of 2008 Immigration Act 2004 (Registration Certificate) (Amendment) Regulations 2008
- S.I. No. 310 of 2008 European Communities (Free Movement of Persons) (Amendment) Regulations 2008
- S.I. No. 294 of 2008. Irish Nationality and Citizenship (Fees) Regulations 2008
- Immigration, Residence and Protection Bill 2008
- S.I. No. 656 of 2006 - European Communities (Free Movement of Persons) (No. 2) Regulations 2006
- S.I. No. 657 of 2006 - Immigration Act 2004 (Visas) (No. 2) Order 2006
- S.I. No. 518 of 2006 - European Communities (Eligibility for Protection) Regulations 2006
- S.I. No. 253 of 2006 - Immigration Act 2004 (Registration Certificate Fee) Regulations 2006
- Irish Nationality and Citizenship Act Commencement Order 2004
- S.I. No. 730 of 2005 - Civil Legal Aid (Refugee Appeals Tribunal) Order 2005
- Immigration Act 2004 (Visas) Order 2005
- Refugee Act 1996 unofficial restatement updated to 2004
- S.I. No. 55 of 2005 - Immigration Act 1999 (Deportation) Regulations 2005
- S.I. No. 56 of 2005 - Immigration Act 2003 (Removal Places of Detention) Regulations 2005
- Irish Nationality and Citizenship Act 1956 as amended by the Irish Nationality and Citizenship Act 2004: informal consolidation
- Irish Nationality and Citizenship Act 2004
- S.I. No. 714 of 2004 - Refugee Act 1996 (Safe Country of Origin) Order 2004
- Irish Nationality and Citizenship Bill 2004
- Immigration Act 2004
- S.I. No. 708 of 2003 - Aliens (Visas) Order 2003
- S.I. No. 444 of 2003 - Immigration Act 2003 (Removal Places of Detention) Regulations 2003
- S.I. No. 423 of 2003 - Refugee Act 1996 (Section 22) Order 2003
- S.I. No. 424 of 2003 - Refugee Act 1996 (appeals) Regulations 2003
- S.I. No. 422 of 2003 - Refugee Act 1996 (Safe Countries of Origin) Order 2003
- Immigration Act 2003
- Immigration Act 1999 (as amended to date: unofficial restatement)
- Irish Nationality and Citizenship Acts 1956 to 2001: unofficial restatement
- S.I. No. 103 of 2002 - Immigration Act 1999 (Deportation) Regulations 2002
- S.I. No. 36 OF 2001 - Aliens (Visas) Order 2001
- Illegal Immigrants (Trafficking) Act 2000
- Immigration Act 1999
- Refugee Act 1996
- S.I. No. 128/1975 Aliens (Amendment) Order 1975
- S.I. No. 395/1946 Aliens Order 1946
- Aliens Act 1935

APPENDIX A2: DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM, ORGANISATIONAL CHART (DEPARTMENT OF JUSTICE, EQUALITY AND LAW REFORM, 2008A)

MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM. Dermot Ahern T.D.						
Minister of State Seán Power T.D.		Minister of State Conor Lenihan T.D.		Minister of State Mr. Jimmy Devins T.D.		Minister of State Brendan Smith T.D.
Secretary General, Mr. Seán Aylward						
Supporting An Garda Síochána and Tackling Crime	Developing Justice Services	Provision of Asylum/ Immigration and Related Services	Promotion of a Caring Integrated and Equitable Society	Promotion of a Secure and Peaceful Society	Law Reform	Business Delivery
<ul style="list-style-type: none"> • Garda Division Finance & Resources • Human Resources • Accountability • Governance & Performance Policy • Garda 1 Administration • Crime 1, Crime 2 (Drugs and Organised Crime), Crime 3 (Security & Northern Ireland, Crime 4 (Firearms & Explosives) • Mutual Assistance & Extradition • International Policy Division 	<ul style="list-style-type: none"> • Prisons & Probation Policy • Courts Policy 	<ul style="list-style-type: none"> • Irish Naturalisation and Immigration Service <ul style="list-style-type: none"> ○ Immigration ○ Visa ○ Citizenship ○ Repatriation ○ Asylum ○ Reception & Integration Agency 	<ul style="list-style-type: none"> • Disability Equality • Diversity & Equality Law • Gender Equality 	<ul style="list-style-type: none"> • Security & Northern Ireland 	<ul style="list-style-type: none"> • Criminal Law Reform • Civil Law Reform • Human Rights 	<ul style="list-style-type: none"> • Corporate Services • Financial Shared Services Centre • Financial Management Unit • IT • Human Resources • Organisation Development Unit • Project Development • Press and Communications • FOI
<ul style="list-style-type: none"> • Garda Síochána • Garda Síochána Complaints Board • Garda Inspectorate • Garda Síochána Ombudsman Commission • Cosc • Forensic Science Laboratory • National Crime Council • Private Security Authority • State Pathology Service 	<ul style="list-style-type: none"> • Irish Prison Service • Courts Service • Probation Service • Irish Youth Justice Service • Parole Board • Legal Aid Board • National Property Services Regulatory Authority 	<ul style="list-style-type: none"> • Office of the Refugee Applications Commissioner • Refugee Appeals Tribunal 	<ul style="list-style-type: none"> • National Disability Authority • Equality Tribunal • Equality Authority • Office of the Minister for Integration 			<ul style="list-style-type: none"> • Office of the Film Censor • Censorship of Publications Office • Office of the Data Protection Commissioner • Criminal Injuries Compensation Tribunal • Property Registration Authority

APPENDIX A3: STATISTICAL DATA RELATED TO EMPLOYMENT PERMITS

Table A3.1 Work Permits Issued and Renewed 1998 – 2008

Year	Permits Issued	Permits Renewed	Total	Percentage Renewed
1998	3,830	1,886	5,716	42.0
1999	4,597	1,660	6,262	29.0
2000	15,735	2,271	18,006	36.3
2001	29,951	6,485	36,446	36.0
2002	23,759	16,562	40,321	45.4
2003	22,512	25,039	47,551	62.1
2004	10,821	23,246	34,567	48.9
2005	8,166	18,970	27,134	54.8
2006	8,524	16,600	24,854	61.1
2007	10,147	13,457	23,604	54.1
2008	8,481	5,086	13,567	21.5

Source: Department of Trade Enterprise and Employment website

<http://www.entemp.ie/labour/workpermits/>

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

Table A3.2: Work Visa/Authorisations Issued 2000–2006

Year	No. of permits
2000	1,383
2001	3,749
2002	2,610
2003	1,158
2004	1,444
2005	2,585
2006	2,713
Total	15,642

Source: Department of Trade Enterprise and Employment

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