

# PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION: IRELAND

Emma Quinn and  
Gillian Kingston

*March 2012*

# EMN

European Migration Network



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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN has been established via Council Decision 2008/381/EC.

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

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## Abbreviations and Irish Terms

AFIS	Automatic Fingerprint Identification System
ALOs	Airline Liaison Officers
An Garda Síochána	Police
AVATS	Automated Visa Application Tracking System
CISs	Citizens Information Services
CISC	Client Information Services Control
CTA	Common Travel Area
CTAF	Common Travel Area Forum
Dáil	Parliament
Doras Luimni	Migrant Support Agency
EASO	European Asylum Support Office
ECHR	European Court Human Rights
EHC	European Home Care Ltd
EURODAC	European Fingerprint Database
EUTR	EU Treaty Rights
FRA	The Fundamental Rights Agency
FRAN	The Frontex Risk Analysis Network
FRIM	Fundamental Rights of Irregular Migrants study
Gardaí	Police
GDISC	General Directors of Immigration Services Conference
GNIB	Garda National Immigration Bureau
IBIS	Irish Border Information System
ICI	Immigrant Council of Ireland
IGC	Intergovernmental Consultation on Migration, Asylum and Refugees
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
MRCI	Migrant Rights Council Ireland
NASC	The Immigrant Support Centre
NERA	National Employment Rights Agency
NGO	Non-Governmental Organisation
Oireachtas	Parliament

ORAC	Office of the Refugee Applications Commissioner
PPSN	Personal Public Service Numbers
PSNI	Police Service of Northern Ireland
PULSE	Police Using Leading Systems Effectively system
SCIFA	Strategic Committee for Immigration, Frontiers and Asylum
UKBA	UK Border Agency
VARRP	Voluntary Assisted Return and Reintegration Programme

## EXECUTIVE SUMMARY

Irish policy towards irregular migration is influenced by the State's geographical position, at the north-western periphery of Europe, by the Common Travel Area (CTA) shared with the UK the Isle of Man, Jersey and Guernsey and by the fact that the State is an island with one land border between the Republic of Ireland and Northern Ireland. In addition, Ireland and the UK have discretion as to whether the States opt in to EU measures relating to immigration and asylum.

The "Clandestino Project" concluded that in 2008 there was between 1.9 and 3.8 million irregular foreign residents in the EU. Given Ireland's peripheral geographical position and recent migration history, it is unlikely that the irregular population in Ireland represents a significant share of the EU total. Reliable statistics on the irregular migrant population in Ireland do not exist and certain problems with data availability make even an estimate difficult.

The definition of an irregular migrant used in this study is: 'someone who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorised to remain in the host country'. Among the objectives of this EU-wide study is to present practical approaches, mechanisms and measures developed by the Member States to reduce the number of irregular migrants in the EU; accordingly the main target audience is policymakers at national and EU levels.

In terms of recent changes to relevant policy and legislation, the impact of the Free Movement Directive has been notable. Non-EU family members of EU citizens resident in Ireland may submit an application for residency on the basis of EU Treaty Rights to the Irish Naturalisation and Immigration Service (INIS). Since 2007 INIS has received between 2,100 and 2,700 residency applications per year. Officials interviewed for the study expressed concern that some of these applications for residency are based on suspected marriages of convenience. Recent case law (*Izmailovic & Anor v. The Commissioner of An Garda Síochána & Ors*) has shown that the State is constrained in intervening to prevent a marriage even if Government institutions believe the reason for marriage is questionable.

Chapter 2 provides an overview of Irish law and policy in relation to irregular migration. Policy in relation to irregular migrants and their "stay" within the State is likely to change when the Immigration, Residence and Protection Bill 2010 is enacted. It is anticipated that the 2010 Bill will set out more clearly a "binary distinction" between illegal and legal residence with the effect that a person will be lawfully present in the State only if he or she has a current valid entry or residence permission to be in the State. If they do not hold the relevant permission, persons are under an immediate and continuing obligation to leave. Increased information sharing between service providers will be facilitated and, in relation to marriages, the Bill seeks to remove the potential for an irregular

migrant to benefit from a marriage of convenience. The Bill also seeks to restrict access to services by irregular migrants. Currently access to services is often at the discretion of individual providers. Article 42 of the Irish Constitution declares that the State shall provide for free primary education. However it is notable that in order to receive educational certification official documentation such as a Birth Certificate is required.

In terms of the institutional framework relevant to irregular migration, the Department of Justice and Equality and the Garda National Immigration Bureau (GNIB) are key bodies. Within the INIS, the Immigration and Citizenship Policy Unit is responsible for devising overall migration policy in co-operation with other units such as the Visa Unit, while the Immigration and Citizenship (Operations) Division is responsible for policy implementation. The EU Treaty Rights section, also within INIS, processes applications from people seeking to reside in the State based on the EU Free Movement Treaty rights of their EU family member. The Repatriation Division within INIS together with the GNIB co-ordinate the return of irregular migrants. Data sharing with the UK falls under the remit of the newly established Central Investigations Unit within INIS. The Office of the Refugee Applications Commissioner (ORAC) works with INIS and GNIB on various information sharing exercises designed to reduce irregular migration to the state. The National Employment Rights Authority (NERA) is an agency of the Department of Jobs, Enterprise and Innovation which investigates compliance with employment permits legislation, along with a wide range of other duties.

### **Practical Measures to Reduce Irregular Migration**

Chapter 3 provides examples of practical measures taken by the State to reduce irregular migration. In relation to pre-entry measures the Irish Border Information System (IBIS) was announced in 2009 as an advance passenger information system to be introduced on all sea and air traffic from the UK. The announcement in part responds to the UK's efforts to introduce "e-borders". Commitment to the development of IBIS has recently been restated in a Joint Ireland-UK Statement on the CTA.

Ireland is engaged in data sharing with the UK regarding visa applications. INIS and the UK Border Agency (UKBA) currently exchange data automatically on visa applications lodged in Nigeria and Ghana, for checking against Irish and UK national immigration records. The stated objective is to prevent persons who would seek to abuse the CTA from travelling to the UK and Ireland. Joint Memoranda of Understanding, arising from the Joint Agreement recently signed between the UK and Ireland, will have the effect that visa application data (such as fingerprint biometrics and biographical details) from additional countries deemed to be "high risk" will be automatically shared between INIS and UKBA.

Since the signing into law of the European Communities (Communication of Passenger Data) Regulations 2011 in October 2011, airlines are asked to provide data on passengers in advance of flights arriving in Ireland, and to transmit the

data captured to the Irish Immigration authorities after the completion of a flight's check-in. Significantly, the new provisions apply only to flights to Ireland originating outside the EU, which are relatively few in number.

Ireland's major airports are in Dublin, Cork and Shannon while major sea ports include: Rosslare; Dun Laoghaire; Waterford; Cork; and Dublin. During 2010 89 per cent of all passengers arriving in Ireland did so by air, while the remaining 11 per cent arrived by sea. Some 56 per cent of overseas visits to Ireland by non-residents originated from within the CTA.

Regarding practical measures undertaken to identify and detect irregular migrants at the border, Ireland shares information with the UK automatically, meaning that passports may be swiped to bring up "adverse" immigration history from the UKBA. Immigration Officers at sea and air ports may also cross-check data from the following sources when deciding whether to grant a person leave to land: the GNIB Information System; employment permits information from the Department of Jobs, Enterprise and Innovation; visa information via the AVATs system; data on asylum applications from the ORAC; and information from the Department of Social Protection. Due to the fact that Immigration Officers are also Police Officers they have access to the PULSE Gardaí information system if required.

The GNIB uses a number of resources to deal with fraudulent documents, both at the border and on the territory. GNIB and Immigration Officers have access to I 24-7 Interpol databases and FADO, a European image-archiving system. GNIB also maintain a database containing details of documents intercepted at the Irish border or inland.

When interviewed the GNIB stated that Ireland does not have a requirement for major technological investment at the border. CO<sub>2</sub> detectors are used at sea ports to test for the presence of CO<sub>2</sub> in freight containers, which indicates the presence of people in cargo. Other high-tech equipment has been borrowed on occasion from the UK and tested at Irish Sea ports, but such exercises have not indicated a high risk level. The GNIB indicated that 437 persons were apprehended and refused leave to land by the Border Immigration Unit in Dundalk, in 2011, 506 people in 2010, 557 people in 2009 and 751 in 2008. It was widely accepted by all officials and NGO representatives interviewed that the majority of the irregular population in Ireland have overstayed their permission to visit or reside in the State, rather than entered illegally.

In terms of controls within the State, GNIB officers stated that the police act on concerned citizen reports regarding undocumented migrants, but prefer to pursue a policy of "proportional policing". In general, it was reported that spot checks on the street are rare. This stated approach is somewhat at odds with the findings of a study conducted by the Migrant Rights Council Ireland (MRCI), which found that immigrants are regularly stopped and questioned on the street in Ireland. The recent study published by the Fundamental Rights Agency (FRA), on the fundamental rights of migrants in an irregular situation (FRIM), found that

Ireland was one of just five EU Member States in which the apprehension of migrants in an irregular situation took place in a regular manner at or near service providers such as health and education (Cyprus, Denmark, Greece, Ireland and Sweden).

Data supplied by INIS indicate that 75 per cent of applications for residence based on EU Treaty Rights in 2010 were based on marriage to an EU national. INIS point to “unusual” marriage patterns as evidence of abuse of EU free movement rights. Over 40 per cent of EU Treaty Rights applications based on marriage in 2010 were based on marriages to EU nationals from Latvia, Lithuania and Poland. In terms of practical approaches to the perceived problem of misuse of EU Treaty Rights, INIS noted that significant constitutional protection is afforded to marriage in Ireland and consequently there is very little that the State can do to stop a suspected marriage of convenience taking place.

INIS also engage in data sharing with the UK in relation to immigrants on the territory. ORAC and the UKBA co-operate by sharing fingerprint data with a view to ascertaining whether asylum applicants in this country have an existing UK immigration history. The Central Investigations Unit also works with the UK on a joint approach to identifying social welfare abuses within the two States.

The Automatic Fingerprint Information System (AFIS) is operated by An Garda Síochána Technical Bureau. Although not yet fully rolled out, this database will contain all fingerprint records for: asylum applicants; non-Irish nationals registered to live in Ireland; previous biometric visa records; and some fingerprints related to criminal cases.

The NERA recently began inspecting compliance with the Employment Permits Acts, 2003, and 2006. Preliminary data are available on the new inspection regime: of the 212 non-Irish employees found to be working illegally, 36 per cent were Romanian nationals; 4 per cent Bulgarian nationals; 9 per cent asylum applicants; and 15 per cent were students working hours in excess of their permission. It is stressed by NERA that no overall conclusion regarding the level of compliance should be drawn based on this limited sample.

In relation to opportunities to regularise irregular status, the current system is such that in order to make representations as to why the Minister should not deport them, a non-national must be issued with a 15-day letter which sets out the following options: to make representations to the Minister as to why the person should be given leave to remain in the State or to apply for subsidiary protection; to leave the State voluntarily within a short period; to consent to the making of the deportation order within 15 working days. The number of applicants granted leave to remain is very low and processing times can be long. If the Minister accepts the representations a temporary permission to remain in the State is granted. An unsuccessful application for leave to remain automatically terminates in a deportation order being issued. Therefore it can be argued that irregular migrants who wish to regularise their status are currently “channelled” towards deportation.

The Immigration, Residence and Protection Bill 2010 proposes significant changes to this regime including a single protection procedure, within which all grounds (refugee status, subsidiary protection or otherwise, including leave to remain) on which a person may wish to remain in the State will be considered together. The Bill would also mean that a person who is unlawfully in the State will be under an immediate and continuing obligation to leave. If the person fails to comply with this obligation, then he or she may be removed from the State and if necessary may be arrested and detained for that purpose. This provision has led to concerns about the risk of summary deportation with insufficient time for checks.

Ireland has limited experience of regularisation schemes. Between October and December 2009 a scheme was available for persons who had become undocumented through no fault of their own (for example by exploitation on the part of employers) to apply to have their immigration status regularised. INIS reported that just 185 applications were received. One possible reason for low take-up of the scheme was that people were not confident that they could prove the problem with their status was not of their making. As a general policy INIS officials stated that Ireland does not favour regularisation

INIS stated that due to the fact that Ireland has very few direct flights to the main countries of return, flights must often be chartered for the specific purpose. A total of 280 non-EU nationals were deported from the State in 2011. In the period Ireland returned 111 persons on seven chartered deportation flights, all of which were organised in conjunction with Frontex. Three flights went to Nigeria, one to the DR Congo, one to both Nigeria and the DR Congo, one to Pakistan and one to Georgia. A further 169 persons were deported by way of scheduled commercial aircraft in 2011. INIS stated that Ireland does not deport unaccompanied minors, except in a limited number of cases in which the parent has already left. In relation to returning deportees with medical conditions, it was stated that Ireland will deport unless the actual act of removal would cause death; this also applies to elderly migrants.

### **Co-operation with Other States**

Transnational co-operation in reducing irregular migration is discussed in Chapter 4. Co-operation with the UK is most significant in this respect, although Ireland also participates in Frontex activities and is involved with other European and international initiatives. The Joint Agreement signed by Ireland and the UK in December 2011 restates each country's commitment to preserving the CTA and commitment to a joint programme of work on measures to increase the security of the external CTA border. Among the stated aims of the joint programme are: to prevent individuals intent on abusing the arrangement from travelling to the CTA; to support and facilitate the return of individuals to their country of origin where they do reach or enter the CTA unlawfully; and to develop ways of challenging the credibility of visa and asylum applications where appropriate and develop mechanisms of re-documentation.

## **Impact of EU Legislation**

The impact of EU legislation and policies on irregular migration in Ireland is discussed in Chapter 5. Ireland has not opted in to several key instruments relating to irregular immigration, often citing preservation of the Common Travel Area with the UK as a primary reason. EU Treaty provisions and legislative measures on citizenship rights, including free movement rights, have however required Ireland to adapt certain domestic laws and policies to facilitate rights of entry to the State and residence in the State for non-EU national family members of EU citizens.

## **Estimates and Statistics on the Irregular Migrant Population**

Chapter 6 presents national statistics related to irregular migration derived from Eurostat and other national statistics on irregular migration. These statistics provide a profile of illegally present migrants in Ireland, the profile of migrants refused entry at the border, the profile of migrants ordered to leave, the profile of migrants who are returned following an order to leave and the number of asylum applications rejected following a first and final decision. The total number of Third Country Nationals found to be illegally present peaked in 2009 when 5,035 persons were found to be illegally present; an increase of 1,850 persons or 58 per cent since 2008. The total number of Third Country Nationals found to be illegally present declined by 14 per cent in 2010 to 4,325 persons. Between 2005 and 2010 INIS issued 6,710 deportation orders, of which 1,677 were effected. The enforcement of deportation orders is a challenge, and there are many more deportation orders signed each year than voluntary assisted returns completed. The total number of Third Country Nationals ordered to leave (after being found illegally present) peaked at 1,615 in 2009 and decreased slightly to 1,495 persons in 2010.



# Chapter 1

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## Introduction

The current report is the Irish contribution to a European Migration Network (EMN) study on Practical Responses to Irregular Migration. A similar study will be conducted in each EU Member State<sup>1</sup> plus Norway and an EU-wide synthesis report will then be produced.<sup>2</sup> The current report was compiled according to common specifications which explicitly exclude investigation of trafficking as a form of irregular migration. The study specifications focus on practical migration management and do not examine the social situation, including access to services or fundamental rights, of irregular migrants.<sup>3</sup> Among the key objectives of the study is to present the policy and legal frameworks with regard to preventing, detecting, addressing and reducing irregular migration. The synthesis report should provide an overview of practical approaches, mechanisms and measures developed by the Member States to reduce the number of irregular migrants in the EU; accordingly the main target audience is policymakers at national and EU levels.

The “Clandestino Project” estimated that there were between 1.9 and 3.8 million irregular foreign residents in the EU in 2008 (Clandestino Project, 2009). Although no reliable stock of irregular migrants in Ireland exists, it is unlikely that the irregular population in Ireland represents a significant share of the EU total, given the State’s peripheral location and tradition of emigration rather than immigration. It is also likely that the population is falling for the following reasons: there is consensus among both State officials and NGOs working in the area that most irregular migrants “overstay” their immigration permission rather than enter illegally and as Figure 1.1 shows immigration has fallen since 2007 and the State has returned to net emigration. Irregular migrants also come to work, as access to alternative supports such as social welfare is usually not available. Given that the severe economic downturn Ireland has experienced since 2007/2008 has resulted in much reduced work prospects, it is likely that some irregular migrants have moved elsewhere in search of employment. Those that remain face increased unemployment and underemployment. NGOs such as the Migrant

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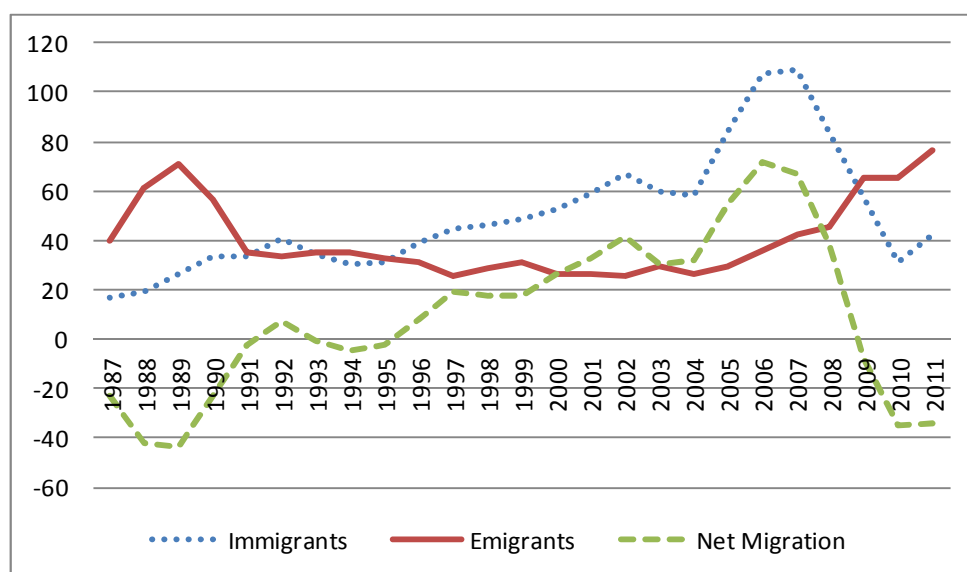
<sup>1</sup> Except Denmark which participates in the EMN only as an observer.

<sup>2</sup> This will be made available at <http://www.emn.europa.eu>.

<sup>3</sup> For recent research on these issues see: Fundamental Rights Agency (2011). *Fundamental Rights of Migrants in an Irregular Situation in the European Union*. Fundamental Rights Agency: Vienna.

Rights Centre Ireland (MRCI) report increased experience of homelessness and poverty among the irregular population.<sup>4</sup>

**Figure 1.1** Immigration, Emigration and Net Migration 1987-2011



**Source:** CSO, Population and Migration Estimates, Various releases

There have been several legal and policy developments in recent years that are relevant to irregular migration in Ireland, which are discussed in Chapter 2. Arguably the most significant piece of legislation in this regard, the Immigration, Residence and Protection Bill 2010, is pending enactment. This is a key piece of draft legislation which is intended to modernise the Irish immigration system and will impact on Ireland's approach to irregular migration. The legislation has been in preparation for almost a decade and has encountered repeated delays in becoming law. This has been in part because of the complex nature of the Bill, which resulted in a large number of amendments, changes in government, and shifting priorities at a time of economic crisis. It is expected that the 2010 Bill will resume the legislative process at Committee stage in Spring 2012. INIS officials have stated that significant substantive progress has been achieved to date in terms of building wide agreement on the provisions of the bill.

As will be discussed in Section 2.1.2, Ireland's immigration system is still based on various Acts beginning with the 1935 Aliens Act.

Practical examples of how Irish policymakers have tried to reduce irregular migration are discussed in Chapter 3. The policy priority accorded to maintaining the Common Travel Area (CTA) and guarding both states from irregular migration emerges strongly here. Policy responses to other current matters, including the implementation of the Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the EU and EEA Member States (Free Movement Directive) and apparent increases in marriages of convenience, are also discussed. Transnational

co-operation in reducing irregular migration is outlined in Chapter 4 and the impact of EU policy and legislation is discussed in Chapter 5. Chapter 6 includes tables of available statistical data which indicate characteristics and trends regarding irregular migration in Ireland, including Third Country Nationals who are found to be illegally present; refused entry; ordered to leave after being found illegally present; as well as deportation orders issued and evaded. The study concludes in Chapter 7.

## Methodology

Due to a lack of documentary material on policy and practice regarding irregular migration in Ireland, expert interviews were a key source for the current study. Officials from a broad range of units/divisions within the Irish Naturalisation and Immigration Service (INIS) were consulted including: the Immigration and Citizenship Policy Unit; the Immigration and Citizenship (Operations) Division; the Repatriation Division; Central Investigations Unit; EU Treaty Rights Unit; the Visa Unit; and the Reporting and Analysis Unit. The Garda National Immigration Bureau (GNIB) was also an important source of expert knowledge and statistical data. Officials from the National Employment Rights Agency (NERA) were consulted and interviews were held with the MRCI. Comments and input were also received from the Office of the Refugee Applications Commissioner (ORAC) and expert legal input was included.

## Definitions

The definition of an irregular migrant used in this study has been drawn from the EMN Glossary<sup>5</sup>: ‘In a global context someone who, owing to illegal entry or the expiry of his or her legal basis for entering and residing, lacks legal status in a transit or host country. The term applies to migrants who infringe a country’s admission rules and any other person not authorised to remain in the host country.’

Illegal stay is defined as “The presence on the territory of a Member State, of a Third Country National who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.”

The illegal employment of a legally resident Third Country National refers to the ‘Employment of a legally staying Third Country National working outside the conditions of their residence and/or without a work permit. This is subject to each Member State’s national law.’ (While members of this group are not considered to be irregular migrants in Ireland, policy and practice regarding compliance with employment permit conditions is of relevance and will be discussed in Section 3.3.2.3)

## Statistics

Irregular migrants constitute by definition a hidden population which is difficult to access or accurately describe. Reliable statistics on the irregular migrant population do not exist and certain issues with data availability in Ireland make even an estimate problematic: the last published Census (2006) is likely to have significantly undercounted the migrant population,<sup>6</sup> in addition Ireland does not maintain a detailed register of resident non-EEA nationals. Although statistics on registration certificates (or stamps) may be drawn from the GNIB registrations database, this database is not designed to produce accurate statistics and those that are available are very limited. The data are only available as non-cumulative (snap-shot) figures once in the year (31 December), at a time when registrations are highest.<sup>7</sup> The registrations database excludes minors under 16 years of age who are currently not required to register; Ireland does not have exit checks so it is not known how many migrants may overstay their permission to be in the State and furthermore, persons who plan to stay less than 90 days are not required to register within the State and therefore do not appear on the register.

An estimate of the irregular population in Ireland was derived from the Clandestino Project based on extrapolation from UK data only. This estimate of 30-62,000 in 2008 is marked as “low quality”. The MRCI published a figure of 30,000 in 2010 based on data from the Department of Justice and Equality Annual Report and data on regularisations from the International Centre for Migration Policy Development (ICMPD) (MRCI, 2010).

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<sup>6</sup> The preliminary population estimate from the 2011 Census was 4.58 million; this constitutes a difference of 97,000 persons in the population total recorded in the annual series *Population and Migration Estimates*, which builds upon Census 2006. The Central Statistics Office has indicated it will publish revised population estimates for the years 2007 to 2011 (i.e. the period over which this differential arose) in 2012, once a thorough analysis at a detailed level of the differences with the final Census results has been completed.

<sup>7</sup> On 31 December each year a large number of registrations expire. The individuals concerned have 3 months to register before their file becomes locked. During the year the number of live registrations builds up again.

# Chapter 2

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## Policy and Legal Framework in Relation to Irregular Migration in Ireland

### 2.1 NATIONAL POLICY AND LEGISLATION TOWARDS IRREGULAR MIGRATION

#### *2.1.1 Overview of Current National Policy and Approach Towards Irregular Migration in Ireland*

The Minister for Justice, Equality and Defence is the Minister responsible for setting overall immigration policy. The Irish Naturalisation and Immigration Service (INIS), an executive office of the Department of Justice and Equality, is the body responsible for devising and implementing policy in relation to migration including irregular migration. Irish policy towards irregular migration is influenced by Ireland's geographical position, at the north-western periphery of Europe; by the Common Travel Area shared with the UK the Isle of Man, Jersey and Guernsey; and by the fact that the State is an island with one land border between the Republic of Ireland and Northern Ireland. In addition Ireland and the UK have negotiated discretion as to whether the States opt in to EU measures relating to immigration and asylum.

##### **2.1.1.1 Pre-Entry**

Ireland and the UK lie outside the Schengen zone and the issuing of both short and long-term visas is a national competence. An Irish visa is a pre-entry clearance which carries no clear entitlement to enter the State. It is viewed as the "first line of defence"<sup>8</sup> in the Irish immigration system. Statutory Instruments made under Section 17 of the Immigration Act 2004 set out the categories of persons that do, and do not, require a visa when travelling to Ireland. The most recent of these Orders, the Immigration Act 2004 (Visas) (No. 2) Order 2011<sup>9</sup>, identifies the groups that are visa-exempt when travelling to Ireland, including passport holders of 89 specified states. These lists are regularly reviewed and updated (Quinn, 2011). The UK maintains a similar list of visa-exempt States, citizens of which do not require a visa to travel. The two States recently undertook to co-operate 'to the fullest extent possible to align the list of

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<sup>8</sup>

Interview with visa officials, INIS.

<sup>9</sup>

S.I. No. 345 of 2011.

nationals who are visa required for travel to the two countries' (Department of Justice and Equality, 2011).

The *Outline Policy Proposals for an Immigration and Residence Bill*, published by the Department of Justice and Equality in 2005, contained a statement of intent regarding irregular migration and the need for active border controls, which reflects current policy, despite the continued delays in enacting the Immigration, Residence and Protection Bill 2010:

*It is not sufficient in the modern world for Irish Immigration Officers to be stationed solely at Irish ports and airports waiting to deal with illegal immigration issues only when the persons concerned arrive at the border. It is important that a proactive approach is taken, seeking to prevent illegal immigration and deal with the issues before the persons concerned arrive in Ireland.*

*Immigration Officers must co-operate with their counterparts abroad and with international transport companies to try to deal with illegal immigration in its countries of origin or transit, rather than in the intended destination. If an illegal immigrant arrives in Ireland it represents a failure of our system and a success for those who facilitate or traffic illegal immigrants.*

Department of Justice and Equality, 2005.

The practical ways in which these stated policies have been pursued are discussed in Chapters 3 and 4.

#### 2.1.1.2 Entry

Ireland polices the land border shared with Northern Ireland lightly, reflecting in part integration processes between Northern Ireland and the Republic of Ireland, as well as Ireland's peripheral geographic position in Europe. However the porous land border shared with Northern Ireland as well as reduced immigration controls within the CTA means that there are opportunities for irregular entry to the State. In practice the CTA currently means that there are no passport or visa controls in operation for Irish and UK citizens travelling between the two States. UK and Irish citizens may be required by carriers operating within the CTA to carry an acceptable form of photo-identification which shows their nationality. Non-EEA travellers are bound by law to carry travel documents in both jurisdictions. Immigration checks may still apply to persons who are not Irish or British citizens upon their arrival in the State, even when coming from Britain or Northern Ireland. In the context of security and irregular migration, Ireland and the UK may be viewed as having somewhat co-ordinated immigration systems with common borders to an extent.

Co-operation between Ireland and the UK regarding immigration grew significantly in the late 1990s and early 2000s. Prior to the introduction of the e-

Borders system in the UK,<sup>10</sup> Ireland also began to tighten security at the border. Random checks on trains and buses from the north were reintroduced by the Irish government in 2006 as an unwelcome but necessary response to “economic migrants”, asylum-seeking, smuggling and increased security risks. At this time Ireland undertook to develop an Irish Border Information System (IBIS). In effect technological improvements facilitated the introduction of an “electronic CTA” (Meehan, 2011). Commitment to the development of IBIS has recently been restated in the Joint Ireland-UK Statement on the CTA (Department of Justice and Equality, 2011). Data sharing with the UK in relation to visa applications has escalated significantly in recent years, as will be discussed in Section 3.1.2.1.

All non-EEA nationals, whether visa-required or not, 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 is responsible for checking the main prerequisites for admission.

### 2.1.1.3 Stay

Section 5(1) of the Immigration Act 2004 states that ‘No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister’. Section 5(12) provides that ‘A non-national who is in the State in contravention of subsection (1) is for all purposes unlawfully in the State’.

As will be discussed in Section 2.1.5.3 policy in relation to irregular migrants and their “stay” within the State is likely to change significantly if and when the Immigration, Residence and Protection Bill 2010 is enacted. INIS has indicated that the 2010 Bill seeks to set out more clearly a “binary distinction” between illegal and legal residence with the effect that a person will be lawfully present in the State only if he or she has a current valid entry or residence permission to be in the State.<sup>11</sup> It was stated that this binary distinction will facilitate removal from the State, discussed further in Section 3.4.1.

It is current policy that all persons in the State may access a Personal Public Service Number (PPSN) and with that number they may access a range of public services. In 2005 the Department of Justice and Equality commented

*...There may be provisions for universal entitlements which (sic) applies to all residents regardless of nationality. While such universal-type provisions have advantages in terms of social equity and simplicity of administration, in recent times it has been clear that they also potentially present attractions to persons entering the State illegally.*

While the Immigration, Residence and Protection Bill 2010 is pending, the access of irregular migrants to services remains the responsibility of the Government

<sup>10</sup>

An electronic system of pre-entry checks on potential travellers before they begin their journey.

<sup>11</sup>

Interview with INIS officials.

departments concerned and often varies on a case-by-case basis. Exceptions relate to education and emergency health services, which are generally available on the basis of need in the case of medical services, and up to age 18 in the case of education. The access of irregular migrants to services will be discussed in Section 2.1.6.

#### 2.1.1.4 Return

Currently a person who does not have permission to be in the State may be removed within 3 months of his or her arrival in the State under an administrative procedure under Section 5 of the Immigration Act 2003. Persons refused entry to the State are removed under the same mechanism. This type of removal does not preclude future re-entry to the State. A person may also be forcibly removed after being issued with a deportation order under Immigration Act 1999, Section 3, enforced by Section 5. A deportation order carries with it exclusion from the State.

As discussed in Section 3.4.1 the Minister must have regard to 11 specific criteria before making a deportation order, as well as giving consideration to *non-refoulement* considerations. This process is known as an “application for leave to remain”. Several issues are associated with the leave to remain procedure: very few applicants are granted the status, processing times can be very long and there is no official temporary status given to applicants while they wait for a decision. A positive decision results in a temporary permission to reside in the State while a negative decision results in the automatic issuing of a deportation order. These issues are discussed further in Section 3.4.1.

Prior to issuing a deportation order requiring an individual to leave the State, that person is sent a ‘15-day letter’. This letter sets out the following options: to make representations to the Minister as to why the person should be given leave to remain in the State or to apply for subsidiary protection; to leave the State voluntarily within a short period; to consent to the making of the deportation order within 15 working days. The recipient of such a letter may avail of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented by the International Organization of Migration (IOM), funded by the Department of Justice and Equality. Prior to March 2009 all asylum applicants and irregular migrants without the financial means to return home could submit an application to IOM-assisted voluntary return programmes. Since March 2009 the programmes are open to asylum applicants and “vulnerable” irregular migrants who fulfil eligibility criteria (Quinn, 2009). No provision for assisted voluntary return exists in Irish law.

A further issue with current return policy is the high incidence of judicial reviews arising. Costs incurred by the Department of Justice and Equality Judicial Review Unit arise primarily from judicial review proceedings taken against decisions made in repatriation matters, when the State loses or settles before court. Table



2.1 shows that legal costs paid by the Department of Justice and Equality Repatriation Judicial Review Unit have increased very significantly in recent years.

**Table 2.1 Legal Costs Department of Justice and Equality Repatriation Judicial Review Unit 2002-2010**

	Costs €m
2002	0.10
2003	0.42
2004	0.94
2005	2.60
2006	2.30
2007	1.96
2008	2.96
2009	3.67
2010	5.70

**Source:** Irish Naturalisation and Immigration Service (INIS)

The Immigration, Residence and Protection Bill 2010 is expected to significantly change this situation and to facilitate the removal of a migrant from the state who is believed to be illegally present. As stated previously there are concerns that insufficient checks apply to Return as proposed under the Bill.

Ireland does not participate in the “Return Directive”<sup>12</sup> and does not participate in EU-level readmission agreements (aside from the Agreement with Hong Kong, which is seldom used). A bilateral agreement with Nigeria on immigration matters, including readmission, was concluded in 2001 between the Government of Ireland and the Government of Nigeria. While the agreement has not yet been formally ratified by the Nigerian Government, in 2009 it was stated by the then Minister for Justice, Equality and Defence that both sides are ‘...operating in the spirit of the agreement, particularly in the area of repatriation’.<sup>13</sup>

### ***2.1.2 Overview of National Legislative Framework Relating to Irregular Migration in Ireland***

Prior to 1999, the Aliens Act 1935 was the primary legislation governing the entry and residence of non-Irish nationals in the State. The 1946 and 1975 Aliens Orders, made by the Minister pursuant to the 1935 Act, dealt with leave to land, deportation, and detention. After the constitutionality of parts of the 1935 Act and those orders were challenged in litigation in the superior courts, new legislation, beginning with the Immigration Act, 1999, came into force. Relevant instruments are as follows:

12 Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying Third Country Nationals.

13 Written Answers - International Agreements. Wednesday, 22 April 2009 Dáil Éireann Debate. Vol. 680 No. 3.

*Aliens Act 1935 (as amended)*

- Section 6(1) (as amended by Section 10 of the Immigration Act 1999) provides for penalties in relation to immigration-related offences;
- Section 7 (as amended by the Immigration Act 2004) provides powers for An Garda Síochána to search any dwelling, building, vehicle etc.; to search any persons found there and to require them to identify themselves.

*The Child Trafficking and Pornography Act 1998*

The Child Trafficking and Pornography Act 1998 makes it an offence, liable on conviction to indictment for life, for any person who organises or knowingly facilitates the entry into, transit through or exit from the State of a child (i.e., aged under 17) for the purpose of his or her sexual exploitation, or the provision of accommodation for a child for such a purpose while in the State.

*The Immigration Act 1999*

The Immigration Act 1999 sets out the law for deportation.

- Section 3(1) provides for deportation and in Irish law this entails removal and indefinite exclusion;
- Section 3(1A) (as amended by the Illegal Immigrations (Trafficking) Act 2000) provides for the detention of people with a deportation order for the purpose of ensuring deportation;
- Section 3(2) specifies who can be subjected to a deportation order. The following categories of persons may be issued with a deportation order:
  - a person whose deportation has been recommended by a court following an indictment or charge with a crime or offence;
  - a person who has been required to leave the State under Regulation 14 of the European Communities (Aliens) Regulations, 1977 (Statutory Instrument S.I. No. 393 of 1977);
  - a person to whom Regulation 19 of the European Communities (Right of Residence for Non-Economically Active Persons) Regulations, 1997 (S.I. No. 57 of 1997) applies;
  - a person whose application for asylum has been transferred under the Dublin Regulation;
  - a person whose application for asylum has been refused;
  - a person to whom leave to land in the State has been refused;
  - a person who has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State;
  - a person whose deportation would be conducive to the common good.

- Under Section 3(3) a person in respect of whom deportation is proposed may make representations to the Minister not to be deported, within 15 working days of the notification of the deportation order being sent. (Note that S.I. 518 of 2006 also provides that it is in this context that an unsuccessful asylum seeker in respect of whom deportation is proposed may apply to the Minister for Subsidiary Protection);
- Section 4 provides for exclusion of any person if the Minister for Justice, Equality and Defence considers it to be in the interests of national security or public policy (distinct from the exclusion provision inherent in deportation);
- Provisions for the arrest, detention and removal of people with a deportation order are set out in Section 5 (as amended by the Illegal Immigrations (Trafficking) Act 2000). It is provided that if a person initiates a Court challenge to their deportation order the Court may release that person under conditions it considers appropriate;
- Section (6)(a) sets out that a person shall not be detained under this section for a period or periods exceeding 8 weeks in aggregate.

#### *Illegal Immigrants (Trafficking) Act 2000*

- The Illegal Immigrants (Trafficking) Act 2000 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. The power to detain vehicles is also provided for.

#### *The Immigration Act 2003*

- The Immigration Act 2003 introduced carrier liability, making it a punishable offence for a carrier to bring an immigrant without permission to land to the State;
- Under Section 2 of the Act, a carrier that arrives from outside the State must supply, on request by an Immigration Officer, a list specifying the name and nationality of passengers, as well as any other information relating to the identity of the passengers as may be prescribed;
- Carriers are therefore required to check that individuals have appropriate documentation before allowing that person to board their vehicle; they are required to check that all persons on board disembark in compliance with directions given by Immigration Officers; and that all persons are presented to Immigration Officers;
- Irregular migrants who come to the State without permission or who overstay may, within the first 3 months of their being in the State, be removed under Section 5 of this Act;

- 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 under Section 5 of the Immigration Act 2003.

*The Social Welfare (Miscellaneous Provisions) Act 2003*

- The Social Welfare (Miscellaneous Provisions) Act 2003 provides that asylum seekers are no longer entitled to receive a rent supplement, and are obliged to enter the State's full board direct provision accommodation system in order to qualify for weekly allowance;
- The Social Welfare (Miscellaneous Provisions) Act 2004 added a Habitual Residence Condition for applicants for welfare benefits.

*The Immigration Act 2004*

The Immigration Act 2004 regulates the entry and residence of non-Irish nationals in the State.

- Section 4 sets out grounds on which a person may be refused permission to enter the State. Under this section an Immigration Officer may refuse "leave to land" if he or she believes that person:
  - Has insufficient funds to support the person plus dependants;
  - Intends to take up employment without the relevant permit;
  - Suffers from certain specified conditions including TB, other infectious diseases, drug addiction or 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 a determination by the Minister that it is conducive to the public good that he or she remain outside the State;
  - Does not have a valid passport;
  - Intends to abuse the CTA;
  - Poses a threat to national security or that their admission to the State be contrary to public policy;
  - Intends to enter the State for reasons other than those expressed by the foreign national.
- Section 5 provides for unlawfulness in the State as follows:
  - No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the

passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister;

- A non-national who is in the State in contravention of subsection (1) is for all purposes unlawfully present in the State;
- This section does not apply to:
  - a) a person whose application for asylum under the Act of 1996 is under consideration by the Minister;
  - b) a refugee who is the holder of a declaration (within the S.5 meaning of that Act) which is in force;
  - c) a member of the family of a refugee to whom section 18(3)(a) of that Act applies; or
  - d) a programme refugee within the meaning of Section 24 of that Act.

*European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) (as amended)*

- The European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No 656 of 2006) (as amended) transposes the provisions of Directive 2004/38/EC (the Free Movement Directive) and includes provisions relating to the removal, exclusion and detention of beneficiaries under that Directive.

### ***2.1.3 Issues Arising From Existing National Legislation Relating to Irregular Migration in Ireland***

#### **2.1.3.1 Legal Remedies and Suspension of Deportation**

While there is no right of appeal against the issuance of a deportation order, an applicant may seek to revoke or amend a deportation order under S.3(11) of the 1999 Act. Where S.3(11) is invoked prior to removal, this remedy does not suspend the deportation order and an applicant will be dependent on the Minister giving an undertaking not to effect deportation pending determination of the request or application or seek an injunction from the High Court restraining removal. An applicant may, alternatively, seek judicial review of a deportation order; a remedy which again does not have suspensive effect.

#### **2.1.3.2 Exclusion**

A deportation order contains (a) a measure requiring the non-national to leave the State within such period as may be specified in the order, and (b) a measure requiring the non-national to remain thereafter out of the State.

The exclusion measure inherent in deportation was raised in *J.B. (a minor) and Ors v. Minister for Justice, Equality and Law Reform*.<sup>14</sup> The Court found that the deportation order made against the mother of an Irish citizen child could mean that she could never be entitled to visit her child in the State as she grows up. Leave was granted for judicial review on the ground that in making a deportation order against the applicant child's mother, the Minister did not sufficiently consider any less restrictive measure available to him to control the mother's presence in the country.

The matter was again considered in *U & Ors v. The Minister for Justice, Equality and Law Reform*<sup>15</sup>, where the Court agreed with the reasoning in *J.B.* in respect of the exclusionary effect of deportation, and went on to find that the Minister had no discretion in the respect of S.3(1) of the Immigration Act 1999 in that, even if he had wanted to, the Minister had no power to stipulate a lesser period of exclusion in the deportation order itself as the Act specifies the consequences of a deportation order and takes the matter out of the Minister's hands.

In the case of *B.S. & Ors v. The Minister for Justice and Equality*<sup>16</sup>, the Nigerian father of an Irish citizen child was deported in 2003, soon after his marriage to the child's mother, and just before the birth of his son. The applicants sought judicial review to quash the Minister's decision not to revoke the deportation order. The applicants argued that the deportation and apparently permanent exclusion of the Nigerian national husband and father from the State infringed the family's legal, constitutional and family rights under the European Convention on Human Rights (ECHR). In quashing the refusal to revoke the deportation order, the Court found that the constitutional rights of the child and Irish resident spouse were very strong and that it could not be a proportionate decision to expect those applicants to move to Nigeria, or to refuse to revoke the deportation order juncture simply on the basis of immigration control.

### 2.1.3.3 Detention

Under certain specific circumstances Irish law permits the detention of: asylum applicants; persons refused leave to land; persons in respect of whom a deportation order has been issued; and persons who are to be transferred under the Dublin Regulation. The provisions relating to each group are discussed below.

The Refugee Act 1996 Section 9(4), as amended, provides that an asylum applicant shall not leave or attempt to leave the State without the consent of the Minister, or seek or enter employment or carry on any business, trade or profession during the period before the final determination of his or her application for a declaration.

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<sup>14</sup> Unreported, High Court, 14 July 2010, Cooke, J.

<sup>15</sup> Unreported, High Court, 13 December, 2010, Hogan, J.

<sup>16</sup> Unreported, High Court, 13 October 2011, Clark, J.

Section 9(8) of the Refugee Act 1996 provides for the detention of asylum applicants under the following circumstances:

Where an Immigration Officer or a member of An Garda Síochána, with reasonable cause, suspects that an applicant:

- a) Poses a threat to national security or public order in the State;
- b) Has committed a serious non-political crime outside the State;
- c) Has not made reasonable efforts to establish his or her true identity;
- d) Intends to avoid removal from the State in the event of his or her application for asylum being transferred to a convention country pursuant to Section 22;
- e) Intends to leave the State and enter another state without lawful authority; or
- f) Without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents.

Both GNIB and INIS stated that it is not common practice for asylum applicants to be routinely detained in Ireland.

Persons aged over 18 years who are refused permission to land or who are apprehended within the borders within 3 months of their arrival may be arrested and detained pending removal under Section 5 of the Immigration Act 2003, for a maximum aggregate of eight weeks.

Persons in respect of whom a deportation order has been issued may be detained for the purposes of executing that order under Section 3(1)(a) of the Immigration Act 1999 as amended. In addition Section 5(1) of the Immigration Act 1999 as amended provides that:

Where an Immigration Officer or a member of An Garda Síochána, with reasonable cause, suspects that a person against whom a deportation order is in force:

- a) Has failed to comply with any provision of the order or with a requirement in a notice under Section 3(3)(b)(ii);
- b) Intends to leave the State and enter another state without lawful authority;
- c) Has destroyed his or her identity documents or is in possession of forged identity documents; or
- d) Intends to avoid removal from the State;

he or she may arrest him or her without warrant and detain him or her in a prescribed place.

A concluded intention to deport is required in order to detain for the purpose of deportation<sup>17</sup>; as soon as the intention to deport ceases the individual cannot generally be detained. It must also be evident that the deportation can actually be effected within the eight-week period.<sup>18</sup>

Finally, persons who receive a Dublin Regulation Transfer Order may be detained pending removal although INIS stated that this is not common practice. The legal basis for detention pending Dublin II transfer is Section 22 of the Refugee Act, 1996 as amended, and Section 7(5) of S.I. 423 of 2003.

#### ***2.1.4 Penalties / Sanctions to be Imposed in Cases of Irregularity***

Irish law provides for penalties and sanctions to be imposed in cases of irregularity. Penalties and sanctions are imposed on those who are guilty of offence under immigration legislation. Penalties/sanctions are imposed on persons for a number of reasons including those who contravene provisions of Acts, provide false documents, evade deportation orders, or who provide false information.

##### *Aliens Act 1935*

- Section 6(1) of the Aliens Act 1935 (as amended by S.10 of the Immigration Act 1999) provides for penalties in relation to immigration-related offences. Convicted persons are liable to a fine not exceeding £1,500<sup>19</sup> or to imprisonment for a term not exceeding 12 months or to both;
- Section 7 (as amended by the Immigration Act 2004) provides that a person who obstructs An Gardaí in carrying out searches or investigations with a warrant, or gives a name or address which is false or misleading, shall be guilty of an offence and shall be liable to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or both.

##### *Refugee Act 1996*

- Section 9(3)(d) of the Refugee Act 1996, as amended, provides that if a person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures the forging or fraudulent alteration of a certificate, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or to both;
- Section 9(4) of the Refugee Act 1996, as amended, provides that an asylum applicant shall not leave or attempt to leave the State without the consent of the Minister, or seek or enter employment or carry on any

<sup>17</sup> BFO v. Governor of Dóchas Centre [2005] 2 IR 1.

<sup>18</sup> Om v. Governor of Cloverhill Prison, Unreported, Hogan, J., 1 August 2011.

<sup>19</sup> Legislation pre-dates introduction of the Euro. The Euro Changeover (Amounts) Act 2001 provides a schedule for the substitution of amounts in Irish pounds with amounts in Euro.



business, trade or profession during the period before the final determination of his or her application for a declaration;

- Section 9(4A)(a) of the Refugee Act 1996, as amended, provides that an applicant shall inform the Commissioner of his or her address and of any change of address as soon as possible, and 9(4A)(b) provides that where 5 working days have elapsed since the making of an application for a declaration and the applicant has not informed the Commissioner of his or her address, the application shall be deemed to be withdrawn;
- Section 9(5)(a) of the Refugee Act 1996, as amended, provides that an Immigration Officer or an authorised person may, by notice in writing, require an applicant (i) to reside or remain in particular districts or places in the State, or (ii) to report at specified intervals to an Immigration Officer or person or persons authorised by the Minister or member of An Garda Síochána specified in the notice, and the applicant shall comply with the requirement;
- Section 9(7) of the Refugee Act 1996, as amended, provides that a person who contravenes subsections (4), (4A) or (5) is guilty of an offence and liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 1 month or to both;
- Section 20(2) of the Refugee Act 1996, as amended, provides that if a person, for the purposes of or in relation to an application for asylum, gives or makes statements or information (to the relevant authorities) which is to his or her knowledge false or misleading in any material particular, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both;
- Section 20(3) of the Refugee Act 1996, as amended, provides that if a person, for the purposes of or in relation to an application for a declaration, destroys or conceals the identity documents of an applicant or of a person who subsequently makes an application for a declaration with intent to deceive, he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both;
- Section 20(4) of the Refugee Act 1996, as amended, provides that if a person forges, or fraudulently alters, or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered any identity documents for reward and such documents are used or intended to be used in connection with an application for a declaration, that person shall be guilty of an offence and shall be liable (i) on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or (ii) on conviction on indictment to a fine not

exceeding £60,000 or to imprisonment for a term not exceeding 3 years or to both;

- Section 20(5) of the Refugee Act 1996, as amended, provides that if a person sells or supplies, or has in his or her possession for the purpose of sale or supply, forged identity documents and such documents are used or intended to be used in connection with an application for a declaration, that person shall be liable (a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment, to a fine not exceeding £100,000 or to imprisonment for a term not exceeding 5 years or to both.

#### *Immigration Act 1999*

- Section 3(10) provides that a person who contravenes, inter alia, a provision of a deportation order is guilty of an offence;
- Section 4(2) provides that a person who contravenes a provision of an exclusion order is guilty of an offence;
- Section 8(1) provides that a person against whom a deportation order has been made (a) shall not by act or omission, obstruct or hinder a person authorised by the Minister to deport a person from the State pursuant to the order while the person is engaged in such deportation, (b) shall, for the purpose of facilitating his or her deportation from the State, co-operate in any way necessary to enable a person so authorised to obtain a travel document, ticket or other document required for the purpose of such deportation and, in particular, shall comply with any request from a person so authorised to sign a document in that connection or to affix his or her fingerprints to such a document, and (c) shall not behave in a manner likely to endanger the safety of himself or herself or the safety of others in the course of his or her deportation from the State. Section 8(2) provides that a person who contravenes any of the above is guilty of an offence;
- Section 9 of the Immigration Act 1999 states that a person guilty of an offence under the Act shall be liable to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both.

#### *Illegal Immigrants (Trafficking) Act 2000*

- Section 2 of the Illegal Immigrants (Trafficking) Act 2000 provides for trafficking-related offences and states that a person who organises or knowingly facilitates the entry into the State of a person, whom he or she knows or has reasonable cause to believe to be an illegal immigrant or a person who intends to seek asylum, shall be guilty of an offence. Such a

person is liable on summary conviction to a fine not exceeding £1,500<sup>20</sup> or to imprisonment for a term not exceeding 12 months or to both. If convicted on indictment the person is liable to a fine or to imprisonment for a term not exceeding 10 years or to both.

#### *Immigration Act 2004*

- Section 4(2) provides that a non-national coming by air or sea from a place outside the State shall, on arrival in the State, present himself or herself to an Immigration Officer, and apply for a permission to land or be in the State. Section 4(9) makes it an offence to contravene this subsection;
- Section 4(5) provides, inter alia, that a non-national who is not exempt from the requirement to have an Irish visa shall have a valid Irish visa; that a non-national arriving in the State in order to work in the State must, within 7 days of entering the State, comply with certain registration requirements; and that a non-national to whom the subsection applies shall not remain in the State for longer than one month without the permission of the Minister. Section 4(9) makes it an offence to contravene any of the above;
- Section 4(6) provides that an Immigration Officer may, inter alia, and subject to certain conditions, attach to a non-national's permission to land or be in the State such conditions as to duration of stay and work in the State as he or she may think fit. Section 4(7) provides for the renewal or variance of such conditions. Section 4(9) makes it an offence to contravene any of the above;
- Section 6 provides that a non-national coming by sea or air from outside the State shall not, without the consent of the Minister, land elsewhere than at a prescribed approved port, and that a non-national who lands in the State at a place other than at an approved port is guilty of an offence;
- Section 7(3) provides that any non-national landing or embarking at any place in the State shall, on being required so to do by an Immigration Officer or a member of An Garda Síochána, make a declaration as to whether or not he or she is carrying or conveying any documents and, if so required, shall produce them to the officer or member. Section 7(4) makes contravention of this provision an offence;
- Section 9(2), (3) and (4) require non-nationals to comply with certain registration requirements, contravention of which subsections constitute offences under Section 3(8);

<sup>20</sup>

Legislation pre-dates introduction of the Euro. The Euro Changeover (Amounts) Act 2001 provides a schedule for the substitution of amounts in Irish pounds with amounts in Euro.

- Section 10(1) provides that it shall be the duty of the keeper of certain premises to keep a register of all non-nationals staying at those premises. Section 10(4) makes it an offence to contravene this duty;
- Section 11(1), as amended, provides that every person (other than a person under the age of 16 years) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes the person's identity and nationality. Section 11(2) requires every person landing in or embarking from the State to furnish to an Immigration Officer, upon request, (a) a passport or other equivalent document, and (b) such information as the Immigration Officer may reasonably require. Section 11(3) makes it an offence to contravene this section;
- Section 12(1), as amended, also provides that every non-national present in the State (other than a non-national under the age of 16 years) shall produce on demand a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes the person's identity and nationality, and (b), where applicable, a registration certificate;
- Section 13 provides that a person guilty of an offence under the Act shall be liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both.

### **2.1.5 Recent Changes to Policy and Legislation Over the Last Five Years.**

#### **2.1.5.1 Detention of Foreign Nationals Without ID**

The Immigration Act 2004 was amended by the Civil Law (Miscellaneous Provisions) Act 2011 as a result of the judgment passed in *Dokie v. Minister for Justice and Equality*.<sup>21</sup> The Court struck down as unconstitutional the original Section 12 of the 2004 Act, which created an offence in cases whereby non-nationals did not produce, on demand to an Immigration Officer or member of An Garda Síochána, a valid passport or other equivalent document which establishes identity and nationality or to give a satisfactory explanation of the circumstances preventing the non-national from doing so. The Court held that the offence was ambiguous and imprecise and that it lacked the necessary clarity to create a criminal offence, stating:

*... I am of the view that, while S.12 was designed as an immigration control mechanism, its vagueness is such as to fail basic requirements for the creation of a criminal offence. As drafted it gives rise to arbitrariness and legal uncertainty. It also offends the principle that a*

<sup>21</sup>

E.D. v. Director of Public Prosecutions at the suit of Garda Thomas Morley, 25 March 2011.

*person be not obliged to incriminate himself. I find it unconstitutional for those reasons.*

The new Section 12 again contains a requirement for every non-national aged 16 and over present in the State to produce on demand by the Minister, any Immigration Officer or a member of An Garda Síochána, a valid passport or other equivalent document which establishes his or her identity and nationality, and where relevant, his or her registration certificate. It is an offence not to comply with this section. Under the amended provision, it is a defence for the person concerned to prove that he or she had “reasonable cause” for not complying with the requirements of the section.

#### 2.1.5.2 Impact of Free Movement Directive<sup>22</sup>

Under EU law, EU citizens exercising their right to free movement have a right to family unity, meaning that they are entitled to be accompanied by their spouse/partner, their children and their dependent relatives. Non-EU family members of EU citizens resident in Ireland may submit an application for residency on the basis of EU Treaty Rights<sup>23</sup> to the INIS. (Accompanying non-EU family members may need an entry visa if they are moving within EU borders, but this should be granted free of charge.)<sup>24</sup> Since 2007 INIS has received between 2,100 and 2,700 applications for residency based on EU Treaty Rights per year (see Table 3.2). Officials interviewed for the study expressed concern that some of these applications for residency are based on suspected marriages of convenience<sup>25</sup> but the High Court has found that the State is constrained in intervening to prevent a marriage.

In *Izmailovic & Anor v. The Commissioner of An Garda Síochána & Ors*<sup>26</sup> the High Court heard an application under Article 40.4.2 of the Constitution of Ireland.<sup>27</sup> Shortly before a marriage solemnisation was about to take place between a Lithuanian and an Egyptian national in the State, two GNIB officers arrived at the registry office and objected to the proposed marriage on the ground that it was a marriage of convenience under investigation by the GNIB. The Egyptian national was arrested and detained and the proposed marriage did not take place. The Court held that the arrest of a person at a registry office immediately prior to their marriage calls for a high degree of justification. As the institution of

<sup>22</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>23</sup> “Exercising your EU Treaty Rights” is defined in the Directive under Article 7 ‘Rights of residence for more than three months’. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they satisfy a number of conditions. The Directive applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them (Article 3 of the Directive 2004/38/EC).

<sup>24</sup> In Case C-434/09, *McCarthy v. Secretary of State for the Home Department* it was found that the European Court of Justice ruled that EU citizens who have never exercised their right of free movement cannot invoke Union citizenship to regularise the residence of their non-EU spouse.

<sup>25</sup> Interview with INIS officials.

<sup>26</sup> Unreported, 31 January 2011, Hogan J., [2011] IEHC 32.

<sup>27</sup> i.e., an application for habeas corpus.

marriage is protected by Article 41.3.1 of the Constitution of Ireland, it was held that the courts must be especially astute to ensure that agents of the State do not seek to prevent what would otherwise be a lawful marriage without compelling justification. The Court held that no matter how well intentioned, An Garda Síochána are not empowered to prevent the solemnisation of a marriage on the grounds that they suspect - even with very good reason - that the marriage is one of convenience.

The State's "practical" response to marriages of convenience in the context of EU Treaty Rights is discussed in Section 3.3.2.1.

### **2.1.5.3 Changes Proposed in the Immigration, Residence and Protection Bill 2010**

The Immigration, Residence and Protection Bill 2010 sets out a legislative framework for the management of inward migration to Ireland. It also contains new principles governing the presence in the State of non-Irish nationals, and sets out statutory processes for applying for a visa, for entry to the State, for residence in the State and for being required to leave. This wide-ranging draft legislation therefore reflects the direction Irish policymakers intend to take in relation to irregular migration. However the passing of various iterations of the Bill<sup>28</sup> into law has been pending since 2007. Delays have been due in part to the complex nature of the Bill which resulted in a large number of amendments; changing priorities at a time of economic crisis; and most recently, a change in government in March 2011. It is expected that the 2010 Bill will resume the legislative process at Committee stage in Spring 2012.

Key proposed changes in the Bill include:

- The introduction of a binary distinction between lawful and unlawful presence in the State. The Bill seeks to eliminate "grey areas" by setting out that a person will be lawfully present in the State only if he or she has a current valid entry or residence permission to be in the State;<sup>29</sup>
- If a person is unlawfully in the State, then he or she is automatically under an immediate and continuing obligation to leave. Under the present system the Minister must have consideration to various factors under Section 3 of the Immigration Act 1999 before making a deportation order. This provision has given rise to an extensive debate regarding the risks associated with the summary deportation of non-Irish nationals without sufficient checks in place. This issue is discussed further in Section 3.4.1;
- Provisions for the restriction of services to those lawfully in the State. Education, emergency medical services and other emergency provisions that may be prescribed, are exempt. (Policymakers consulted for the

<sup>28</sup> Immigration, Residence and Protection Bill 2007; Immigration, Residence and Protection Bill 2008; Immigration, Residence and Protection Bill 2010.

<sup>29</sup> Interview with INIS officials.

study indicated that the priority will be to restrict access to services that provide economic support to irregular migrants, for example: social welfare; driving licences; employment; licensing to set up a business, but such details are not contained in the Bill);

- Increased information sharing between service providers. For example immigration authorities may be entitled to know a person is attending hospital (but not what they attend for);<sup>30</sup>
- In relation to marriages, the Bill seeks to remove the potential for a non-EEA national to benefit from a marriage of convenience. It is stated that marriage does not, of itself, create any entitlement for a foreign national to be allowed to enter or reside in the State. The Bill also provides for an onus on a non-Irish national concerned to satisfy the Minister that the marriage is not a marriage of convenience. Failure to do so will allow the Minister, in making his or her determination in relation to any immigration matter, to disregard the particular marriage as a factor bearing on that determination;
- The new Bill will require children aged 16 and under to register with the GNIB;
- The Bill will also provide for a single protection procedure within which all grounds (refugee status, subsidiary protection or otherwise) on which a person may wish to remain in the State will be considered together. The outcome of this single investigation could be that the person is i) allowed to remain in the State on refugee grounds or subsidiary protection grounds and is granted a protection declaration ii) not granted protection but allowed to remain in the State on other discretionary grounds and is granted a residence permit on that basis, or iii) not allowed to remain in the State and is thus required to leave or be removed.

### ***2.1.6 Policies / Legislation Which Impact Indirectly on Irregular Migration***

The level of access to services by irregular migrants in Ireland is unclear and often at the discretion of individual service providers. Article 42 of the Irish Constitution declares that the State shall provide for free primary education. However it is notable that in order to receive educational certification official documentation such as a Birth Certificate is required. In a recent study into the fundamental rights of irregular migrants (FRIM) the FRA found that in 11 (including Ireland) out of 19 EU Member States for whom data is available, migrants in an irregular situation are entitled to emergency healthcare but must pay for it. It is stated that this could mean that healthcare providers may seek verification of ability to pay before treating the individual. Irregular migrants in Ireland do not have access to other state health services such as mental health care. The FRIM study also found

<sup>30</sup>

Interview with INIS officials.

that there is no entitlement for free ante-natal and post-natal care in Ireland however some instances of discretion being exercised by service providers regarding payment for maternity services were detected (FRA, 2011b).

The MRCI, an NGO consulted for the study, observed that the level of access of irregular migrants to services such as health can depend on the discretion of individuals and that some may be prepared not to ask potentially difficult questions. The risk is that uncertainty as to whether immigration status will be questioned, or payment requested, can lead irregular migrants not to present at service providers at all.

Personal Public Service Numbers (PPSNs) are unique reference numbers which are necessary to access social welfare benefits and public services such as education and health. It is current policy that all persons in the State may obtain a PPSN. The MRCI indicated that in practice this is not always the case and that some irregular migrants face problems obtaining PPSNs, such as newborn children or workers without an employment permit. It was observed by MRCI that officials are more strictly enforcing documentary requirements. Non-EEA nationals are required to show a passport or certificate of registration (immigration card); evidence of address; and 'if available' supporting documentation of either birth, work, unemployment, residency, tax liability or education history. It is also stated in Department of Social Protection guidelines that, in general, an application for a PPSN should only be refused if there is evidence of identity fraud, and that documents should be thoroughly checked for that reason. If an officer suspects fraud they are asked to contact the Client Information Services Control (CISC). CISC provides information, advice and training on document examination including fraud alerts, document manuals and updates (Department of Social Protection, 2010).<sup>31</sup>

In relation to housing, the FRIM study found that long-term homeless shelters may be reluctant to accommodate irregular migrants either because they do not receive funding from local or central public sources to accommodate irregular migrants or because they want to discourage police raids. The FRIM study also found that the existence of very restrictive policies regarding overstaying family members of legally residing non-EEA nationals, contributed to irregularity in Ireland.

In a further study focussing on healthcare the FRA found that migrants in an irregular situation tend to associate contact with any authority in Ireland (healthcare, social or social services) with the risk of being reported to immigration authorities (FRA, 2011a). Currently Section 8 of the Immigration Act 2003 contains a duty for public authorities to share information concerning non-nationals for the purposes of implementing the law on entry and removal. As noted above the Immigration, Residence and Protection Bill 2010 contains a

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<sup>31</sup> In the context of the economic downturn, several of those interviewed, including the GNIB and NERA, commented on an increased awareness of potential fraud and more priority being accorded to the immigration status by service providers within the State.



broader information exchange requirement on service providers. This is contrary to FRA recommendations arising from the FRIM study:

*...certain detection strategies and approaches, such as arresting migrants near service providers or data exchange with public service providers, are particularly problematic. They discourage migrants in an irregular situation from making use of essential public services, such as healthcare or education for their children, or prevent them from approaching religious, humanitarian or other civil society structures which provide assistance, advice or support. (FRA, 2011b).*

## 2.2 INSTITUTIONAL FRAMEWORK

### 2.2.1 Official (Governmental) Institutions that Make and Implement Policy to Tackle Irregular Migration in Ireland

The Department of Justice and Equality, headed by the Minister for Justice for Justice, Equality and Defence, currently Alan Shatter T.D., is tasked with creating and implementing policy regarding migration, including irregular migration. The INIS, an executive office of the Department of Justice and Equality, is the body responsible for administering the statutory and administrative functions of the Minister for Justice, Equality and Defence in relation to asylum, immigration and citizenship matters. INIS was established in 2005.

While overall policy development in relation to irregular migration is the responsibility of the Minister for Justice, Equality and Defence, operational strategies in this area are the responsibility of An Garda Síochána, the national police service of Ireland. An Garda Síochána has personnel specifically dealing with immigration in every Garda district and in all approved ports and airports.

The GNIB, a subdivision of An Garda Síochána, has responsibility nationally for law enforcement matters pertaining to immigration. The GNIB was established in 2000 and is tasked with carrying out deportations, border controls and investigations relating to irregular immigration and human trafficking. The Bureau monitors the movement of non-Irish nationals at air and sea ports and along the border with Northern Ireland, with a view to the prevention of, and detection of, irregular immigration. The GNIB also maintain a register of legally resident non-EU nationals who remain in Ireland longer than 90 days and issue immigration permissions in the form of Stamps on registered persons' passports.<sup>32</sup> All district headquarters have staff assigned to immigration duties; Burgh Quay in Dublin is one of 90 registration offices in the State.

Within INIS the Immigration and Citizenship Policy Unit is responsible for devising overall migration policy while the Immigration and Citizenship (Operations)

<sup>32</sup>

During 2010 there were 162,398 residency permissions issued by the GNIB (Joyce, 2011).

Division within INIS is responsible for the implementation of policy in relation to the admission of non-EEA nationals to the State, their residence in the State, for applications for permission to remain in the State referred from the GNIB and the granting where appropriate of Irish citizenship.<sup>33</sup> Data sharing with the UK falls under the remit of the newly established Central Investigations Unit within INIS. To date the emphasis has been on strengthening data sharing co-operation with the UK but once the unit is fully operational the intention is to explore the potential for enhanced co-operation with other EU Member States. The objectives of the Unit are to prevent persons from entering the state illegally; to deal with abuses within the State, for example regarding access to social welfare; and to protect the CTA with the UK.

#### 2.2.1.1 Pre-Entry

The Department of Justice and Equality is responsible for setting overall visa policy. All applications for Irish entry visas must be submitted online and hard copy documents related to the application must be submitted to a designated Irish Embassy, Consulate General or Honorary Consulate. Some of these bodies may be able to process the full application locally (responsibility for deciding certain straightforward applications for short-term visas is delegated to the Department of Foreign Affairs and Trade), others may forward the application on to one of six INIS “branch offices” in Irish embassies in Abuja, Abu Dhabi, Beijing, London, Moscow and New Delhi or to INIS in Dublin. (See Quinn 2011 for a more detailed discussion on visa application and decisions procedures and relevant institutional structures). Within INIS the Visa Unit and the Immigration and Citizenship Policy Unit work with a range of other units and Departments on the development of pre-entry policy.

GNIB Airline Liaison Officers (ALOs) are deployed to hub airports overseas where they are responsible for monitoring whether passengers have complied with immigration requirements and providing advice to the Department of Justice and Equality.

#### 2.2.1.2 Entry

The GNIB operate two main border control offices within Ireland: the Border Control unit in Dundalk, and the GNIB Immigration Control Point at Dublin Airport. The GNIB oversees all incoming air traffic, ensuring that the relevant immigration legislative provisions are enforced to prevent and detect breaches of the criminal law at ports of entry to the State.<sup>34</sup>

Any person entering the state who declares that they intend to seek asylum in Ireland is required to report to the ORAC<sup>35</sup> for the further processing of their

<sup>33</sup> <http://www.inis.gov.ie/en/INIS/Pages/Immigration%20information>.

<sup>34</sup> Written Answer by Minister for Justice, Equality and Defence to Parliamentary Question, Wednesday 14 September 2011. <http://debates.oireachtas.ie/dail/2011/09/14/00470.asp>.

<sup>35</sup> [www.orac.ie](http://www.orac.ie).

application. The Refugee Applications Commissioner is statutorily independent and the Office is tasked with investigating applications from persons seeking a declaration for refugee status and to issue appropriate recommendations to the Minister for Justice, Equality and Defence. ORAC works with INIS and GNIB on various information sharing exercises designed to reduce irregular migration to the state.

### 2.2.1.3 Stay

As stated above the Immigration and Citizenship (Operations) Division implements policy in relation to the stay of non-EU nationals in the State. The EU Treaty Rights section also within INIS processes applications from people seeking to reside in the State based on the EU Free Movement Treaty Rights of their EU family member. See Sections 2.1.5.2 and 3.3.2.1. This Division also works with the Immigration and Citizenship Policy Unit to devise related policy in this regard. The Central Investigations Unit brings together expertise from existing units in INIS including staff from the Visa Section and EU Treaty Rights Section, other Departments and the UK in order to address fraud within the State and more broadly within the CTA.

The NERA<sup>36</sup> is an agency of the Department of Jobs, Enterprise and Innovation, established with the stated aim of achieving a 'national culture of employment rights compliance'. The irregular employment of Third Country Nationals is monitored and investigated by NERA. NERA assumed responsibility for inspecting on grounds of Employment Permits legislation in 2009 but did not actively focus on migrant workers until 2011. This was in part because officers were not sufficiently trained to inspect migrant workers, many of whom hold complex and ill-defined statuses, for example Stamp 4 status.<sup>37</sup> It was also stated that because penalties are high it was essential that Officers were fully trained. NERA Inspection Services headquarters and the Midlands and Southeast sub-regional office are based in Carlow with additional sub-regional offices in: Northeast-Dublin, Northwest-Sligo, Mid-west-Shannon, and South-Cork. NERA currently (January 2011) has a staff of 112, this includes 57 Inspectors and 9 Inspector-Team Managers.<sup>38</sup>

### 2.2.1.4 Return

The Repatriation Division within INIS has a range of functions relating to return including: voluntary return, forced removals, and Dublin transfers. The Unit also contains the Ministerial Decisions Unit, which takes the final decision on asylum claims, as well as the Judicial Review Unit. If a person is served a Deportation Order they are required to present themselves at the offices of the GNIB on a

<sup>36</sup> <http://www.employmentrights.ie/en/>.

<sup>37</sup> This status comprises a broad range of non-EEA nationals including spouses and dependants of Irish and EEA nationals, people who have permission to remain on the basis of parentage of an Irish child; Convention and Programme refugees; people granted leave to remain; and non-EEA nationals on intra-company transfer.

<sup>38</sup> <http://www.employmentrights.ie/>.

specified date and time in order to make arrangements for their deportation from the State. From this point on, the enforcement of the Deportation Order becomes an operational matter for the GNIB. ORAC is responsible for the investigation and determination of transfers under the Dublin Regulation, and implementation of the transfer is carried out by the Repatriation Division of INIS with GNIB.

### ***2.2.2 Other Stakeholders/Informal Actors Working in the Field of Irregular Migration***

There are relatively few non-State organisations in Ireland working in the field of irregular migration and involved in the implementation of policy relevant to irregular migrants. The International Organization for Migration (IOM) works with the Irish government to implement assisted voluntary return policy. IOM opened an office in Ireland in 2001 and Ireland became a full Member State of the IOM organisation in 2002. In Ireland, IOM's activities relate mainly to the operation of the Voluntary Assisted Return and Reintegration Programme (VARRP). The VARRP is open to migrants from non-EEA countries who wish to return home voluntarily but do not have the means, including the necessary documentation, to do so. IOM Dublin can assist with obtaining the necessary travel documentation, as well as covering the financial costs of the travel from Ireland to the country of origin. In addition, a small reintegration grant is available to all returnees to help cover the costs of an income generating activity, such as education, professional training and/or business set-up. Since March 2009 the programmes are open to asylum applicants and "vulnerable" irregular migrants who fulfil eligibility criteria. In 2010 the IOM returned 376 people through the VARRP programme.<sup>39</sup>

The MRCI is a Non-Governmental Organisation which provides support services for undocumented migrants. MRCI provides information and assistance to many migrants who have become, or are at risk of becoming undocumented in Ireland. Other NGOs who work with irregular migrants include the Crosscare Migrant Project, which is an information, advocacy and referral organisation for migrants in vulnerable situations including irregular migrants.<sup>40</sup> The Immigrant Council Ireland (ICI) provides information, support, advocacy and legal services for undocumented migrants.<sup>41</sup> NASC<sup>42</sup> and Doras Luimní<sup>43</sup> also provide information and supports to irregular migrants in Ireland.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on a wide range of public and social services. Citizens Information Services (CISs) provide free, impartial and confidential

<sup>39</sup> <http://www.iomdublin.org/images/pdf/publications/iom%20dublin%20avr%20statistical%20overview%202001%20-%202010.pdf>

<sup>40</sup> <http://www.migrantproject.ie/>.

<sup>41</sup> <http://www.immigrantcouncil.ie/>.

<sup>42</sup> <http://www.nascireland.org/>.

<sup>43</sup> <http://www.dorasluimni.org/>.

information. Citizens Information is provided by 42 Citizens Information Services in 268 locations. These consist of 106 Citizens Information Centres (54 full-time and 52 part-time) and 162 outreach services. The Citizens Information Board also maintains the Citizens Information website, [www.citizensinformation.ie](http://www.citizensinformation.ie), and supports the voluntary network of Citizens Information Centres and the Citizens Information Phone Service.<sup>44</sup>

### ***2.2.3 Interaction and Co-operation Between Institutions***

There are indications that interaction and co-operation between institutions relating to irregular migration and migration-related fraud in Ireland is increasing.<sup>45</sup> Two officers from the Department of Social Protection work with the GNIB to ensure that persons without permission to be in the State do not receive social welfare payments. The Documents and Intelligence unit in GNIB liaises on a daily basis with INIS and the Department of Social Protection. The recently established Central Investigations Unit (INIS) works on data sharing within the State, liaising with the Department of Social Protection, the Revenue and the GNIB.

NGOs including the MRCI contact the relevant State departments on a case by case basis, in order to attempt to regularise the status of irregular migrants. Most MRCI clients were at one time employment permit holders, therefore MRCI interacts frequently with the Department of Jobs, Enterprise and Innovation on their behalf. MRCI also works with the General Immigration and Citizenship (Operations) Unit, in order to try to secure bridging visas for irregular migrants who have become irregular through no fault of their own (e.g., through exploitation or redundancy). This permission allows the migrant four months to attempt to secure an employment permit from the Department of Jobs, Enterprise and Innovation. If MRCI believes they cannot assist an undocumented migrant it refers them on to other services such as Citizens Information, private solicitors and IOM.

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<sup>44</sup> <http://www.citizensinformationboard.ie>; <http://www.citizensinformation.ie/en/>.

<sup>45</sup> Interviews with officials from INIS and GNIB.

# Chapter 3

## Practical Measures to Reduce Irregular Migration

### 3.1 PRE-ENTRY: PRACTICAL MEASURES UNDERTAKEN TO ADDRESS IRREGULAR MIGRATION BEFORE THE MIGRANT ARRIVES IN IRELAND

#### 3.1.1 Overview

Ireland has pursued a variety of actions designed to intercept and deter irregular migrants before they reach the border. In 2005 the Department of Justice and Equality published *Outline Policy Proposals for an Immigration and Residence Bill*<sup>46</sup> which state:

*Success against illegal migration networks requires action at or close to its source, disrupting the operations of those who exploit vulnerable people. In practice this co-operation will involve:*

- *the active implementation of advance passenger information systems;*
- *use of information technology and the sharing of intelligence internationally;*
- *involvement in international operations to combat illegal immigration and trafficking in human beings; and*
- *use of airline liaison and immigration liaison officer networks.*

However, given Ireland's geographically peripheral position, and history of emigration, such measures do not tend to attract major investment, relative to other EU Member States such as the UK. The pilot e-Visa project discussed below represented a somewhat unusual level of investment in pre-entry migration control measures costing €1.39 million. INIS has signalled that it would like to roll the system out to other states, notably Pakistan, but funding is not available (Quinn, 2011). The Irish Border Information System (IBIS) was announced in 2009 as an advance passenger information system to be introduced in 2010 on all sea and air traffic from the UK. The announcement in part responds to the UK's efforts to "export the border" with the introduction of e-borders (Department of Justice and Equality, January 2009; Meehan, 2011). The IBIS has not been prioritised and the fiscal situation is such that this became an in-house project

<sup>46</sup> Department of Justice and Equality (2005). Available at: <http://www.inis.gov.ie/en/INIS/discussion.pdf/Files/discussion.pdf>.

within INIS. A prototype has been developed by the Department of Justice and Equality IT Unit which is close to being made available for testing. Commitment to the development of IBIS has recently been restated in the Joint Ireland-UK Statement on the CTA (Department of Justice and Equality, 2011). In this context the opt-in to the Advance Passenger Information Directive, discussed below, was in line with national priorities.

Carrier sanctions which were introduced under the 2003 Immigration Act apply only to aircraft and ships that originate outside the CTA. Carriers must ensure that all persons seeking to land in the state pass through a port in the State; that everybody is presented to an Immigration Officer for examination; and that all passengers have the necessary identification and travel documents. If the carrier fails in these obligations the Immigration Officer refuses the person leave to land and a notice is issued against the carrier in question. The matter is then examined by an Inspector or Superintendent to see whether a carrier fine is appropriate depending on the circumstances; it may have been, for example, that a high quality fraudulent document was used. Fines against carriers are €1,500 per passenger rising to €3,000 if the carrier takes the matter to Court. A total of 363 carriers were fined in 2011; 373 in 2010 and 358 in 2009.<sup>47</sup>

### **3.1.2 Examples of Practical Measures**

#### **3.1.2.1 Visa Application Data Sharing with the UK**

INIS and the UKBA currently exchange data automatically on visa applications lodged in Nigeria and Ghana, for checking against Irish and UK national immigration records. The stated objective is to prevent persons who would seek to abuse the CTA from travelling to the UK and Ireland.<sup>48</sup>

In the period July to October 2011, biographical data (such as names, dates of birth, passport numbers) on 1,600 Irish visa applications were exchanged. Matches were made against UK records in 49 per cent of cases sent by Ireland. INIS reported that, of the 26 per cent of persons with an adverse UK immigration history, in the majority of instances the history related to a previous visa refusal. However the search found that there was also a 'significant number' of immigration encounters/offences deemed to be more serious, such as refusal of leave to land in the UK, removal from the UK, and convictions in the UK of immigration-related offences.<sup>49</sup>

In December 2011 Ireland and the UK signed a Joint Agreement reinforcing their commitment to preserving the CTA (Department of Justice and Equality, December 2011). Joint Memoranda of Understanding arising from this agreement will have the effect that visa application data (such as fingerprint biometrics and

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<sup>47</sup> Irish Naturalisation and Immigration Service (INIS).

<sup>48</sup> Interview with Central Investigations Unit within INIS.

<sup>49</sup> Interview with Central Investigations Unit within INIS.

biographical details), from countries deemed to be “high risk” will be automatically shared between INIS and UKBA.<sup>50</sup>

Data sharing between Ireland and the UK on visa applicants began locally between embassies in Nigeria. The arrangement became more formalised after the introduction of biometric testing by UKBA when the number of Irish visas applied for in Nigeria almost doubled between 2007 and 2008 to reach 11,400. A small-scale pilot project of cross-checking UK and Irish visa applicants’ data was undertaken to investigate the extent of overlap between visa applicants to the two States. The Irish Visa Office supplied the UKBA with data on a selection of cases in which a passport had been issued very recently or else displayed a lack of travel activity that was deemed to be suspicious. Just over 6,300 cases were referred to UKBA of which 1,209 (19 per cent) resulted in a positive or probable match of identity, based on biographical data only (names, dates etc.) in UKBA’s records. INIS stated that almost all 1,209 cases had been previously refused visas by the UK. Based on such findings, in March 2010 Ireland introduced biometric (fingerprint) data collection as part of the visa application procedure in Nigeria, a project known as e-Visa (see Quinn, 2011).

### 3.1.2.2 Advance Passenger Information

Since the signing into law of the European Communities (Communication of Passenger Data) Regulations 2011 in October 2011, airlines are required to provide advance passenger data to Irish Immigration authorities for the stated purpose of ‘improving border control and combating illegal immigration.’ These Regulations transpose European Council Directive 2004/82/EC of 29 April 2004 (on the obligation of carriers to communicate passenger data) into Irish law.

Airlines are asked to provide data on passengers in advance of flights arriving in Ireland and to transmit the data captured to the Irish Immigration authorities after the completion of a flight’s check-in. The Directive provides that upon the request of the authorities carrying out border checks, air carriers must communicate the following data in respect of a passenger (found in the machine readable zone of passports):

- The number and type of the travel document used by him or her, as provided to the carrier concerned;
- His or her nationality, as provided to the carrier concerned;
- His or her full names, as provided to the carrier concerned;
- His or her date of birth, as provided to the carrier concerned;
- The port at which the person is to arrive in the State;
- The mode of transport used;
- The scheduled departure and arrival times of the aircraft concerned;



- The total number of passengers carried on that aircraft; and
- The initial point of embarkation.

The Department for Justice and Equality stated that these new requirements will facilitate checks by immigration authorities in Ireland against watch lists, deportation orders etc. in order to identify persons of interest before passengers arrive at border control (Department of Justice and Equality, October 2011). Significantly, the new provisions apply only to flights to Ireland originating outside the EU, which are relatively few in number and tend to be limited to flights from the United Arab Emirates, the US, Moscow and very infrequent flights from North Africa. Most flights arriving in Ireland come from CTA or EU check-in ports.

The Regulations provide for deletion of the passenger data within 24 hours or in the case of “a person of concern” up to 3 years or until he or she is no longer considered “a person of concern”, whichever is the earlier (Department of Justice and Equality, October 2011).

The Advance Passenger Information requirements build on carrier sanctions, which were introduced under the 2003 Immigration Act, discussed above.

### **3.2 ENTRY: PRACTICAL MEASURES UNDERTAKEN TO IDENTIFY AND DETECT IRREGULAR MIGRANTS AT BORDERS**

#### **3.2.1 Overview**

Permanent immigration checks are not in place on the one land border shared with Northern Ireland, which is instead controlled by way of spot checks on public and private transport by An Gardaí, and the Police Service of Northern Ireland (PSNI). Immigrations checks take place for air travellers, selective on sea crossings and occasionally for land crossings. The provisions of the common travel area are for the benefit of Irish and UK nationals only. Other persons availing of it require a passport or national identification and a visa if required. Arising from growing evidence that the common travel area was being abused by persons who were not entitled to avail of it, an amendment was made to the Aliens Orders in June 1997 by the then Government, which gave Immigration Officers the power to carry out the same checks on persons arriving in the State from the UK as for persons arriving from outside the common travel area. These checks are carried out by Immigration Officers who are members of An Garda Síochána and INIS. Irish Immigration Officers have the power to carry out checks on people arriving in the State from the UK and to refuse them entry to the State on the same grounds as apply to people arriving from outside the Common Travel Area. These checks are carried out selectively.

In December 2011 Ireland and the UK signed a Joint Agreement restating each country’s commitment to preserving the CTA. The agreement states that “Operation Gull” - the joint operation between An Garda Síochána, PSNI and the UKBA on the land border with Northern Ireland and ports in Northern and

Southern Ireland - has been highly successful. Figures on persons apprehended under Operation Gull are not available as apprehensions take place by the UK authorities. The GNIB indicated that 437 persons were apprehended and refused leave to land by the Border Immigration Unit, Dundalk, in 2011, 506 in 2010, 557 in 2009 and 751 in 2008.

Ireland's major airports are in Dublin, Cork and Shannon while major sea ports include: Rosslare; Dun Laoghaire; Waterford; Cork; and Dublin. During 2010 89 per cent of all passengers arriving in Ireland did so by air while the remaining 11 per cent arrived by sea.<sup>51</sup> Table 3.1 shows that 56 per cent of overseas visits to Ireland by non-residents originate from within the CTA.

**Table 3.1 Overseas visits to Ireland by non-residents: route of travel**

Overseas visits to Ireland by non-residents	2009	
	Thousands	%
Air Cross-Channel (within CTA)	3,114	45%
Sea Cross-Channel (within CTA)	784	11%
Continental European	2,429	35%
Transatlantic	601	9%
Total Overseas Visits	6,927	100%

**Source:** Tourism and Travel Q4 2009. Central Statistics Office, 2010.

When interviewed, the GNIB stated that Ireland does not have a requirement for major technological investment at the border. CO<sub>2</sub> detectors are used at sea ports to test for the presence of CO<sub>2</sub> in freight containers, which indicates the presence of people. Other high-tech equipment has been borrowed on occasion from the UK and tested at Irish sea ports, but such exercises have not indicated a high risk level. It was also stated by the GNIB that Ireland's geographical situation is such that EU initiatives, such as Frontex border guards training etc., can be of limited relevance to Irish Immigration Officers.

### 3.2.2 Examples of Practical Measures

#### 3.2.2.1 Data Sharing at the Border

Ireland shares information with the UK automatically at the border. Passports are swiped, bringing up "adverse" immigration history from the UKBA in the form of, for example, a deportation order or refused visa. In the event of a match the Immigration Officer is alerted that some negative immigration history exists in the UK and he or she follows up with a phone call to the UKBA to find out more. Immigration Officers do not have a means of finding out about non-immigration related offences committed in the UK, even if serious. At Dublin airport and other major ports, Immigration Officers also have access to data from the AFIS, discussed below (although persons seeking leave to land do not routinely have their fingerprints taken). Nigerian nationals seeking permission to enter at the border may have their fingerprints, gathered through e-Visa, checked against

<sup>51</sup>

records in AFIS at Dublin airport. It is not clear how frequently these checks are performed at present as it was stated by GNIB that they can be time consuming.

Immigration Officers at sea and air ports may cross-check data from the following sources when deciding whether to grant leave to land: the GNIB Information System; employment permits information from the Department of Jobs, Enterprise and Innovation; visa information via the AVAT system; data on asylum applications from the ORAC; and information from the Department of Social Protection. Due to the fact that currently Immigration Officers are also Police Officers<sup>52</sup> they also have access to the PULSE system<sup>53</sup> if required.

### 3.2.2.2 Identification and Registration of Fraudulent Documents

The GNIB uses a number of resources to deal with fraudulent documents, both at the border and on the territory. It was observed by officials interviewed that intercepting a fraudulent document at the border is particularly important because, following entry, that document may then be used to secure bona fide documents and detection becomes increasingly difficult.

GNIB and Immigration Officers have access to I 24-7 Interpol databases. Several key Interpol databases are available including those on stolen and lost travel documents and stolen motor vehicles. The lost and stolen travel documents database holds information on more than 30 million travel documents reported lost or stolen by 161 countries.<sup>54</sup>

GNIB also has access to FADO, a European image-archiving system, not yet fully operational, which is being set up for the purpose of exchanging information concerning, and copies of, documents including: images of false and forged documents; images of genuine documents from each participating State (EU27 plus Iceland, Norway and Switzerland); summary information on forgery techniques; and summary information on security techniques. FADO is available to Immigration Officers at Dublin airport.

GNIB maintain a database containing details of documents intercepted at the Irish border or inland. At the border, however, the document must often be returned with someone refused leave to land, before adequate details are recorded. Customs also seize documents, the details of which are recorded in the GNIB documents database. All ports and Dublin airport have document labs. Training in identifying fraudulent documents is provided to Immigration Officers.

<sup>52</sup> The Immigration Residence and Protection Bill 2010 proposes that Immigration Officers will also include civilian staff in order to deploy Gardaí to the front line.

<sup>53</sup> The acronym PULSE stands for Police Using Leading Systems Effectively. The system records data on all persons An Gardaí come into contact with.

<sup>54</sup> <http://www.interpol.int/INTERPOL-expertise/Databases>.

### 3.3 STAY: PRACTICAL MEASURES UNDERTAKEN TO CONTROL IRREGULAR MIGRATION IN IRELAND'S TERRITORY

#### 3.3.1 Overview

It is widely accepted by all officials and NGO representatives interviewed that the majority of the irregular population in Ireland have overstayed their permission to visit or reside in the State. The MRCI report *Life in the Shadows* found that the vast majority of irregular migrant participants in the sample (n = 54) entered the country legally: 31 arrived on work permits, 14 on tourist visas, 8 on student visas and 1 arrived seeking asylum. The remaining 6 participants entered the country without legal permission (MRCI, 2007). In terms of controls within the State GNIB officers stated that the police act on concerned citizen reports regarding undocumented migrants, but prefer to pursue a policy of “proportional policing”. In general, it was reported, irregular migrants can come to the attention of the police if they commit a misdemeanour such as a traffic offence, shop-lifting or by being arrested for being drunk and disorderly and spot checks on the street are rare.<sup>55</sup> This stated approach is at odds with the findings of a study conducted by the MRCI, which found that immigrants are regularly stopped and questioned on the street in Ireland. The recent study published by the FRA, on the fundamental rights of migrants in an irregular situation (FRIM), found that Ireland was one of just five EU Member States in which the apprehension of migrants in an irregular situation took place in a regular manner at or near service providers such as health and education (Cyprus, Denmark, Greece, Ireland and Sweden). “Operation Hyphen” was a police operation in 2002 which targeted irregular migrants. The Operation involved approximately 200 Gardaí in the Dublin metropolitan region and 400 outside the Dublin region; 294 premises were visited and 140 persons were detained (Quinn and Hughes, 2005). GNIB officers interviewed stated that activity of this scale has not been repeated since.

Document fraud was reported by the GNIB to be a particular challenge within the State as opposed to at the borders, partly because bank officials, social welfare officers and even Gardaí may not have received specialist training in document identification.

#### 3.3.2 Examples of Practical Measures

##### 3.3.2.1 Responses to “Marriages of Convenience”<sup>56</sup>

INIS officials interviewed reported that marriages of convenience represent a challenge to migration management in Ireland, particularly following the 2008 Metock judgement of the European Court of Justice.<sup>57</sup> Such marriages are defined

<sup>55</sup> Interview with GNIB.

<sup>56</sup> <http://emn.intrasoft-intl.com/Glossary/index.do>.

<sup>57</sup> The Metock case (Case C-127/08) involved asylum seekers in Ireland who were also married to EU citizens resident in Ireland exercising their EU Treaty right of free movement. In this case the European Court of Justice (ECJ) found that free movement rights of entry and residence apply to non-EU/EEA national spouses and family members of EU citizens, irrespective of when a marriage took place, or how a foreign national family member

in the EMN Glossary as ‘Contracting a marriage (or partnership or adoption) for the sole purpose of enabling the person concerned to enter or reside in a Member State’. Under the terms of the ‘Free Movement Directive’<sup>58</sup> non-EU family members may apply to reside in Ireland with an EU national family member who is exercising his or her EU Treaty Right of Free Movement. (Prior to the Metock judgment Ireland held that in order to avail of EU Treaty Rights a non-EU family member must have resided in another Member State before applying to reside in Ireland). More recently, in the case of Zambrano,<sup>59</sup> the Court of Justice found that under certain circumstances Article 20 of the TFEU precludes a Member State from refusing a Third Country National, upon whom his EU citizen minor children are dependent, a right of residence in the Member State of residence and nationality of those children.

Refusal rates of applications to reside based on EU Treaty Rights are reported by INIS to be very low. Table 3.2 shows the number of applications for residence on this basis since 2006, while table 3.3 shows the type of application made in 2010 by the nature of the relationship with the EU national concerned; 75 per cent of applications for residence in 2010 were based on marriage to an EU national. It is important to note that non-EEA nationals benefiting from freedom of movement rights are not irregular migrants; the concern expressed by officials of both INIS and the GNIB relates to family relationships which are not genuine being used to access those rights.

**Table 3.2 Applications for Residence in Ireland under the Terms of the Free Movement Directive**

Year	Applications for residence
2006	1,535
2007	2,276
2008	2,160
2009	2,705
2010	2,539
2011	2,270*

**Source:** Irish Naturalisation and Immigration Service (INIS)

**Note:** \* Estimated figure.

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joined his EU spouse. The Court held that Directive 2004/38/EC precludes legislation of a Member State which requires a Third Country National spouse of a Union citizen, residing in that Member State but not possessing its nationality, to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that Directive. It was found that such spouses benefit from the provisions of that Directive, irrespective of when and where their marriage took place and of how the Third Country National entered the host Member State.

<sup>58</sup> Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>59</sup> Case C-34/09.

**Table 3.3 Applications for residence based on EUTR by Type of Application, 2010**

Nature of relationship with EU national	Number of applications	%
Marriage/civil partnership	1,917	76%
De facto relationship	186	7%
Dependent child	213	8%
Dependent parent	85	3%
EU citizen 10 year certificate (EU2)	107	4%
Other family members (permitted members)	31	1%
Total	2,539	100%

**Source:** Irish Naturalisation and Immigration Service (INIS)

Data supplied by INIS indicate that residence applications from Pakistani and Nigerian nationals accounted for 29 per cent of applications for residence based on EU Treaty Rights in 2010 and that 13 per cent of applications in 2010 were made by unsuccessful asylum applicants. INIS point to “unusual” marriage patterns as evidence of marriages of convenience. Over 40 per cent of EU Treaty Rights applications based on marriage in 2010 were based on marriages to EU nationals from Latvia, Lithuania and Poland. Table 6.19 provides additional information on applications for residence based on marriages contracted between non-EU nationals and citizens of Latvia, Lithuania and Poland. INIS stated that although Latvian authorities have expressed concern that some young women are being trafficked into such marriages, the GNIB have not found evidence of such a trend in Ireland. NGOs such as the ICI have cautioned against making any assumptions on the legitimacy of a marriage based on a person's nationality or immigration status.<sup>60</sup>

In terms of practical approaches to the perceived problem of misuse of EU Treaty Rights, INIS noted that significant constitutional protection is afforded to marriage in Ireland and consequently there is very little the State can do to stop a suspected marriage of convenience taking place. Under the GNIB “Operation Charity”, launched in November 2009, 80 suspected marriages of convenience have been prevented. However as discussed in Section 2.1.5.2 the High Court recently held that the fact that the immigration authorities or Registrar suspected a marriage of convenience did not constitute grounds for preventing that marriage. The GNIB made 16 arrests in the period since the launch of Operation Charity for offences such as bigamy and the production of false documentation. INIS have also introduced interviews of selected applicants for residency based on EU Treaty Rights and their EU spouses. These interviews are based on guidelines agreed at EU Level.<sup>61</sup> This approach was reported by INIS to be time consuming (which is a problem given that the Free Movement Directive requires that decisions on residency applications must be given within 6 months) and resource intensive. Officials further stated that refusals or revocations of residency, based

<sup>60</sup>

The Irish Times, “Gardaí object to 57 suspected ‘sham’ marriages”. 18 August 2010.

<sup>61</sup>

Commission Document COM (2009) 313 Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

on the interview process, may later be successfully contested in the courts or the applicants may subsequently claim residency under EU Treaty Rights under a new set of circumstances (for example parentage of an Irish child following the Zambrano judgement).<sup>62</sup>

Updated Guidelines for Registrars for Marriage Notification were issued to all Superintendent Registrars of Marriage on 2 September 2010. The guidelines contain stricter conditions on proof of identity which have the effect that applicants for marriage must now provide letters of authentication of birth certificates from their embassy. This move is intended to bring potential marriages of convenience to the attention of the Member State of the EU national in question. INIS stated that in the longer term the policy is to prevent people benefiting from marriages of convenience and the Immigration, Residence and Protection Bill 2010 contains provisions in that regard, see Section 2.1.5.3. It was also stated that the General Registrations Office (GRO) is examining the Civil Registration Act with a view to possible legislative action and that INIS is working with the GRO on a co-ordinated approach ahead of the resumption of the Immigration, Residence and Protection Bill 2010. Ireland participates in FREEMO, an Expert European Commission Committee which provides a forum for the discussion of the implementation of the Freedom of Movement Directive. In addition the Irish Minister for Justice, Equality and Defence liaises directly with Ministers in other Member States, for example Latvia.<sup>63</sup>

### 3.3.2.2 Data and Intelligence Sharing

ORAC and the UKBA co-operate by sharing fingerprint data with a view to ascertaining whether asylum applicants in this country have an existing UK immigration history. ORAC officials stated that this exchange is conducted under the Dublin Regulation which provides that any state which issues a visa to an individual is, within certain limits, responsible for any asylum claim of that individual if that individual leaves that state and makes an asylum claim in another contracting State to the Dublin Regulation.<sup>64</sup> ORAC stated that there is evidence of persons entering the Irish asylum system as undocumented migrants after their UK visa expires.

INIS has undertaken a data sharing exercise with the UKBA in respect of unsuccessful asylum applicants whose cases are currently being considered by INIS for leave to remain and/or subsidiary protection. This involves the referral by INIS of applicants' fingerprints to the UKBA for checks against UK immigration records. The purpose of the exchange is to establish immigration information known to the UKBA which may assist INIS in processing cases to final decision and facilitating removals where appropriate. This initiative is targeted at addressing a

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<sup>62</sup> Interview with officials from the EU Treaty Rights Section, INIS.

<sup>63</sup> Interview with officials from the EU Treaty Rights Section, INIS.

<sup>64</sup> Correspondence with officials from the Office of the Refugee Applications Commissioner.

“legacy” issue when co-operation of this nature was not systematically carried out with the UKBA.<sup>65</sup>

During 2011 to date, the fingerprints of approximately 1,200 leave to remain/subsidiary protection applicants have been cross-checked against UK immigration records. Matches have been made in 31 per cent of cases. In general the UK immigration history of these individuals relates to either a visa application to the UK or a previous failed asylum claim in the UK. INIS states that in the majority of cases matched, the identity (e.g. name, nationality) as recorded by the UK has been shown to be different to the identity declared to INIS. This is interpreted by INIS to demonstrate a high level of identity swapping. For example, a very significant proportion of persons who claim to be Somali nationals are known to the UKBA as Tanzanian, having applied for UK visas in Tanzania using a Tanzanian passport.<sup>66</sup>

Currently fingerprints collected at asylum application stage are automatically stored on EURODAC and, as appropriate, referred to the UKBA for checks to establish if the applicant has a UK immigration history which cannot be established through EURODAC, such as a previous UK visa application. The Central Investigations Unit is also working with the UK on a joint approach to identifying social welfare abuses within the two States.

### 3.3.2.3 Measures to Prevent Irregular Work

The Employment Permits Acts 2003 and 2006 give labour inspectors extensive powers to inspect premises, seize vehicles, etc. NERA co-operates on occasion with the GNIB, Revenue and the Department of Social Protection on such inspections. Approximately 10-15 per cent of NERA inspections are based on complaints, often from business competitors or NGOs. NERA may also cross-check the databases of Department of Social Protection; the employment permits database at the Department of Jobs, Enterprise and Innovation; and Revenue data (P45 information is available via Department of Social Protection) to look for potential cases for inspection. NERA may also request information from the GNIB and ORAC.

It has also been found that non-EU nationals who have lived in an EU country may show documentation/ID card from that country leading the employer to assume they may access the labour market freely. NERA also report that employers may be reluctant to query an employee’s nationality in case they are perceived as being discriminatory. The need for an awareness-raising campaign regarding requirements under Employment Permits legislation and targeting employers was raised in interviews.

<sup>65</sup> Since January 2003, the fingerprints of anyone who applies for asylum in the European Union (except Denmark) and in Norway and Iceland, are stored in the EURODAC database.

<sup>66</sup> Interview with Central Investigations Unit within INIS.



Following legislative and procedural training of inspectors in the area of Employment Permits enforcement, NERA has recently launched a new campaign of inspections, targeting places of employment of non-Irish nationals. Preliminary data is available. In the period 1 October – 15 November 2011, 441 employers were inspected and 88 were found to be in breach of employment permits legislation. Of the 212 employees found to be working illegally 36 per cent were Romanian nationals; 4 per cent Bulgarian nationals;<sup>67</sup> 9 per cent asylum applicants;<sup>68</sup> and 15 per cent students working hours in excess of their permission.<sup>69</sup> It is stressed by NERA that this inspection period included a large number of night inspections and that businesses open at night (predominantly in the services sector) would tend have a higher proportion of migrant workers. It is recommended that no overall conclusion regarding the level of compliance should be drawn based on this limited sample.

NERA also conducted a pilot exercise into domestic workers during 2010. NERA inspectors are limited in this domain because they cannot enter private premises. Another problem experienced in this area is that in order to draw a sample of domestic workers NERA are limited to checking Revenue records for instances of single employees. Otherwise inspections of domestic homes rely on reports on abuses.

If someone is found working in breach of Employment Permits legislation in Ireland they must stop working immediately and apply for a permit or leave the State. NERA cannot seek to defend the rights of persons working illegally, as to do so would be to seek to enforce an illegal contract. However the employer is still bound by employment law, for example the National Minimum Wage Act, and may be prosecuted for breaches of same. Employment Rights Commissioners and the Labour Courts have found in favour of irregular migrants in the recent past.<sup>70</sup>

A GNIB exercise is planned in one non-Dublin registration region before the end of 2011 that will focus on checking immigration status of people in workplaces. There will be a sizeable sample but immigrants tend to be clustered. This suggests we could use the results of this exercise to compare against lawful registrations. (NERA do similar inspections but those are announced.)

<sup>67</sup> Romanian and Bulgarian nationals continue to require an employment permit to access the Irish labour market. Asylum applicants may not take up employment in Ireland.

<sup>68</sup> Asylum applicants are not permitted to seek or enter into employment in Ireland.

<sup>69</sup> Non-EEA students may work for up to 20 hours per week during term and full-time during vacation periods provided they are pursuing an approved course. An issue exists as to whether schools may set their own holidays.

<sup>70</sup> The recent “Poppadom” case involved a worker originally from Pakistan who was awarded €86,000 by a Rights Commissioner following an official complaint about alleged breaches of employment rights. The Labour Court recently ruled that the employer must pay the award due. Muhammad Younis worked at the Poppadom restaurant for seven years until 2009; he worked 77 hours per week, well below minimum wage, and had no day off. He was required to work without a contract of employment and paid no tax, or social insurance contributions. The case is significant in that although the employee was irregularly in the State, his employer having failed to renew his work permit, the Rights Commissioner and Labour Court found in his favour. Labour Court, 9 September 2011: Amjad Hussein T/A Poppadom And Muhammad Youris (Represented By MRCI).

### 3.3.2.4 Automated Fingerprint Information System (AFIS)

The AFIS is operated by An Garda Síochána Technical Bureau. Although not yet fully rolled out this database will contain all fingerprint records for: asylum applicants; non-Irish nationals registered to live in Ireland; previous biometric visa records; and some fingerprints related to criminal cases. (Note that due to industrial relations issues fingerprints are not currently captured from immigrants who register at GNIB headquarters in Dublin.) At time of writing fingerprints could be held on file for ten years. Current Irish legislation does not provide for the capture of prints for foreign nationals who are refused “leave to land”. If enacted, Section 124 of the Immigration, Residence and Protection Bill 2010 will allow for the fingerprints of migrants apprehended in the State for immigration-related reasons to be captured for the first time.

## 3.4 PATHWAYS OUT OF IRREGULARITY

### 3.4.1 Means of Regularisation of Status

Under Section 4(1) of the Immigration Act 2004, an Immigration Officer may, on behalf of the Minister, give a non-national documentary evidence of his or her permission to be in the State (usually by way of a document, or inscription on his or her passport). Section 4(7) of the same Act states that this permission may be renewed or varied by the Minister, or by an Immigration Officer on his or her behalf, on application by the non-national concerned.

Under Section 3(3) of the Immigration Act 1999 a person in respect of whom deportation is proposed may make representations to the Minister not to be deported, within 15 working days of the notification of the deportation order being sent. Section 3(6) of the Act requires the Minister to have regard to representations on the following eleven criteria before deciding whether to proceed with the making of a deportation order:

- a) The age of the person;
- b) The duration of residence in the State of the person;
- c) The family and domestic circumstances of the person;
- d) The nature of the person's connection with the State, if any;
- e) The employment (including self-employment) record of the person;
- f) The employment (including self-employment) prospects of the person;
- g) The character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- h) Humanitarian considerations;
- i) Any representations duly made by or on behalf of the person;
- j) The common good; and

- k) Considerations of national security and public policy, so far as they appear or are known to the Minister.

The Minister must also take account of any matters relevant to *non-refoulement* under Section 5 of the Refugee Act, 1996. Where an applicant makes representations against his or her deportation, this is commonly known as an application for “leave to remain”. This is also the context in which the Minister can consider Article 3 and Article 8 of the European Convention on Human Rights matters.

The current system is such that in order to make representations as to why the Minister should not deport them, a non-national must be issued with a 15-day letter which sets out the following options: to make representations to the Minister as to why the person should be given leave to remain in the State or to apply for subsidiary protection; to leave the State voluntarily within a short period; to consent to the making of the deportation order within 15 working days. The number of applicants awarded leave to remain is very low - 659 were issued the status in 2009 - and processing times can be very long: as of end of December 2009, some 12,076 cases were awaiting a decision (Stanley, Joyce and Quinn, 2010). If the Minister accepts the representations a temporary permission to remain in the State is granted. An unsuccessful application for leave to remain automatically terminates in a deportation order being issued. Effectively therefore it can be argued that irregular migrants who wish to regularise their status are currently “channelled” towards deportation (Quinn, 2007).

As discussed in Section 2.1.5.3 the Immigration, Residence and Protection Bill 2010 proposes significant changes to this regime including a single protection procedure, within which all grounds (refugee status, subsidiary protection or otherwise, including leave to remain) on which a person may wish to remain in the State will be considered together. It is unclear what exactly will happen to the leave to remain procedure under Section 3(3) of the Immigration Act 1999 after enactment of the Bill. The Bill would mean that a person who is unlawfully in the State will be under an immediate and continuing obligation to leave. If the person fails to comply with this obligation, then he or she may be removed from the State and if necessary may be arrested and detained for that purpose. This provision has led to concerns about the risk of summary deportation with insufficient time for checks (ICI, 2008).

Ireland has limited experience of regularisation schemes. Between October and December 2009 a scheme was available for persons who had become undocumented through no fault of their own (for example by exploitation on the part of employers) to apply to have their immigration status regularised. INIS reported that just 185 applications were received. One possible reason for low take-up of the scheme was that people were scared to risk a negative decision and were not confident that they could prove the problem with their status was not of their making. In 2005 a scheme known as the Irish Born Child 2005 Scheme (IBC/05) was introduced for the processing of residency claims made by non-EEA

nationals who had had their prior application for residency suspended pending changes in the Irish citizenship law. Just fewer than 18,000 applications were submitted under the Scheme, of which almost 16,700 were approved. INIS stated that IBC/05 was a once-off scheme that responded to a very specific issue.<sup>71</sup>

As a general policy INIS officials stated that Ireland does not favour regularisation.<sup>72</sup> The Migrant Rights Council Ireland (MRCI) a Non-Governmental Organisation, actively campaigns for regularisation, in particular an “earned regularisation” scheme which would allow undocumented migrants to earn permanent residency status for example through working, paying tax and contributing to the community (MRCI, 2011).

NGOs such as MRCI and the ICI also work on a case-by-case basis to regularise the status of irregular migrants who have become undocumented through no fault of their own, for example by exploitation by an employer or administrative error/delays in processing the necessary residence or employment permissions.

### 3.4.2 Return

Current policy regarding return in Ireland is discussed in Sections 2.1.1.4 while legislative provisions are set out in Section 2.1.2. Practices regarding detention are discussed in Section 2.1.3.3.<sup>73</sup>

### 3.4.3 Situations in which Removal is Difficult

The FRA (2011b) draws attention to the existence of sometimes large populations of migrants in EU Member States who cannot be returned to their country of origin for a variety of practical and technical reasons. INIS officials interviewed stated that currently in Ireland there are approximately 400 people living within the direct provision system<sup>74</sup> with deportation orders who cannot be removed because: judicial review is pending and they have secured an injunction against their removal;<sup>75</sup> they are the parent of a child with a protection claim outstanding; or they have no documents. The officials interviewed stated that the latter cases are the most difficult to resolve. It is likely that there are many more such migrants living in Ireland outside the direct provision system. Furthermore there are many additional reasons for non-enforcement of deportation orders.

<sup>71</sup> Most of these cases concerned non-EEA nationals who were the parents of children born in Ireland. Prior to 2005 all children born on the island of Ireland automatically became Irish citizens. After a referendum in 2004 and a subsequent Constitutional amendment, changes in citizenship provisions were enacted which mean that any person born in Ireland after 1 January 2005 to non-Irish parents are not 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.

<sup>72</sup> Interview with INIS officials.

<sup>73</sup> See also Quinn, 2007, 2009.

<sup>74</sup> System of food and lodging provided to protection applicants in Ireland.

<sup>75</sup> Note such injunctions maintain the status quo pending a determination on whether a deportation order should be quashed. In cases where judicial review is unsuccessful, deportation may then proceed in due course. In cases where judicial review is successful it follows that removal would have been based on a false premise and the deportation order is therefore quashed.

The FRA state that the situation of migrants issued with a return decision, but not returned, requires more policy attention from EU Member States and that the fundamental rights of such persons are at risk in situations of protracted non-return. As discussed previously in Section 3.4.1 it is unclear if and how the current leave to remain process will be replaced if the Immigration, Residence and Protection Bill is enacted. At the end of December 2009, over 12,000 cases were awaiting a decision on an application for leave to remain (Stanley, Joyce and Quinn, 2010).

The sourcing of documentation is considered by INIS to be a key barrier to removal and the problem is more pronounced with some States than others, for example Ireland has a good working relationship with Nigeria on this issue at present and less so with other States. INIS and GNIB work with embassies (often located in London) to try to identify the nationality of undocumented persons who they wish to return.

INIS stated that due to the fact that Ireland has very few direct flights to the main countries of return, flights must often be chartered for the specific purpose. A total of 280 non-EU nationals were deported from the State in 2011. In the period Ireland returned 111 persons on seven chartered deportation flights, all of which were organised in conjunction with Frontex. Three flights went to Nigeria, one to the DR Congo, one to both Nigeria and the DR Congo, one to Pakistan and one to Georgia. A further 169 persons were deported by way of scheduled commercial aircraft in 2011. The scheduled commercial deportations take place via a hub airport (e.g. Amsterdam, Frankfurt, Paris, Madrid, London Heathrow).<sup>76</sup> The numbers returned by charter flights and associated costs to Ireland are reported in Table 3.4.

**Table 3.4 Charter Flight Costs and Numbers Returned 2007-2011**

	Numbers deported by chartered flight	Cost
2007	9	€223,998
2008	72	€677,947
2009	197	€843,136
2010	202	€705,037
2011	111	€653,496

**Source:** Repatriation Division, Irish Naturalisation and Immigration Service (INIS)

INIS officials interviewed stated that it is not practice for Ireland to deport unaccompanied minors aged less than 18 years but that minors may be deported with a parent. In relation to returning deportees with medical conditions it was stated that Ireland will deport unless the actual act of removal would cause death; this also applies to elderly migrants.<sup>77</sup> The ECHR case *D. v. UK*<sup>78</sup> was cited by INIS as the main case referred to when formulating policy in this regard. In that case, the European Court of Human Rights found that Article 3 of the

<sup>76</sup> Repatriation Division, INIS.

<sup>77</sup> Interview with officials from the Repatriation Division of INIS.

<sup>78</sup> *D. v. UK* (1997) 24 ECHR 423.

European Convention on Human Rights does not require contracting states to undertake the obligation of providing non-nationals indefinitely with medical treatment. It is only where there are exceptional circumstances (in this case, the individual was suffering in the final stages of AIDS and his removal would most likely have caused death) that the return of an applicant to his/her country may amount to a breach of Article 3.

INIS officials also stated that notice is taken of the UK case *N. (FC) v. Secretary of State for the Home Department*<sup>79</sup> where the court held that: "... the Strasbourg court has constantly reiterated that in principle aliens subject to expulsion cannot claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social and other forms of assistance provided by the expelling state. Article 3 imposes no such 'medical care' obligation on contracting states. This is so even where, in the absence of medical treatment, the life of the would-be immigrant will be significantly shortened."

In terms of domestic case law INIS has regard to the High Court judgment in *Agbonlahor v. Minister for Justice, Equality and Law Reform*<sup>80</sup> where the Court was satisfied that the principles in the case of *N. (FC) v. Secretary of State for the Home Department* applied. The Court was satisfied that the decision in "*N*", while relating to Article 3 of the European Convention on Human Rights, provides guidance to the correct approach to be taken in relation to Article 8 rights. In particular, it was held that 'In the *N. v. Home Secretary* case the House of Lords determined that the deportation of *N.* from the United Kingdom which would result in a withdrawal of treatment which would shorten *N.*'s life expectancy did not make her expulsion amount to inhuman treatment purposes of Article 3. This court is satisfied that that case and decision provides guidance to the correct approach to be taken by this court in relation to Article 8 rights. The approach and analysis adopted by the House of Lords in the *N* case, albeit in relation to Article 3 rights, represents in this court's view a correct and proper approach to the Article 8 rights sought to be protected in this case.' The Court was satisfied that the Minister is entitled to have regard to the effect on the State's medical services of allowing persons who are not legally entitled to be in the State to remain for the purposes of availing of those services.<sup>81</sup>

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<sup>79</sup> [2005] UKHL 31.

<sup>80</sup> [2006] IEHC 56.

<sup>81</sup> Correspondence with Repatriation Division, INIS.

# Chapter 4

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## Transnational Co-operation in Reducing Irregular Migration

### 4.1 CO-OPERATION AGREEMENTS

As previously mentioned, Ireland has a bilateral agreement with Nigeria on immigration matters, including readmission. The agreement was concluded in 2001 but has not yet been formally ratified by the Nigerian government. In 2009 it was stated by the then Minister for Justice and Equality that both sides are ‘...operating in the spirit of the agreement, particularly in the area of repatriation’.<sup>82</sup> GNIB officers interviewed for the current study confirmed this is still the case.

### 4.2 OTHER FORMS OF (NON-LEGISLATIVE) CO-OPERATION

#### 4.2.1 *The Common Travel Area*

The CTA shared with the UK has been in existence since the 1920s. Early joint initiatives to control entry to the CTA included the holding of shared lists of names known as “suspect indexes”; there was agreement that no-one was allowed to land in one state who would not be allowed to in the other; and consultation took place on lists of visa-required States. In the 1950s and 60s the arrangement evolved to include stricter provisions about information exchange regarding persons allowed to land. The CTA became formally acknowledged in the Treaty of Amsterdam, signed in 1997. At the time of drafting of that Treaty, Ireland and the UK sought opt-outs from parts of its application, specifically exemption from removing internal EU border controls, while maintaining the right to opt-in to some of the “flanking measures” such as on intelligence and policing. The Irish government also made a Declaration to the effect that the Irish position stemmed solely from a desire to maintain the CTA which could not be done if one state opted-in while the other did not (Meehan, 2011).

Co-operation between Ireland and the UK regarding immigration grew significantly in the late 1990s and early 2000s. Meehan (2011) identifies three key reasons for this: growing numbers of asylum applicants; perceptions of a growth in irregular immigration; and a larger than expected immigration to both Ireland and the UK following the EU enlargement in 2004.<sup>83</sup> In 1997, the Irish Minister

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<sup>82</sup> Written Answers - International Agreements. Wednesday, 22 April 2009 Dáil Éireann Debate. Vol. 680 No. 3.

<sup>83</sup> Ireland, the UK and Sweden did not apply transitional measures, restricting the access of EU10 nationals to the labour market.

for Justice, Equality and Defence authorised Immigration Officials to make random, which later became regular, checks on travellers entering Ireland over the land border with Northern Ireland and on routes from Great Britain. Also in 1997 officials of the two states agreed upon a programme of work to enhance co-operation and formalised twice-yearly meetings. Prior to the introduction of e-Borders in the UK, Ireland also began to tighten security at the border. Random checks on trains and buses from Northern Ireland were reintroduced by the Irish government in 2006 and technological improvements have facilitated data sharing with the UK in as discussed in Sections 3.1.2.1, 3.2.2.1 and 3.3.2.2.

A cross border policing strategy between An Garda Síochána and the PSNI, published in 2010, states the objective of 'Building on existing practical co-operation to support a proactive multi-agency immigration strategy for the policing of the borders between An Garda Síochána, Police Service of Northern Ireland, United Kingdom Border Agency and Irish Naturalisation and Immigration Service' (An Garda Síochána and the PSNI, 2010).

As discussed in Section 3.1.2.1, in December 2011 Ireland and the UK signed a Joint Agreement restating each country's commitment to preserving the CTA and to a joint programme of work on measures to increase the security of the external CTA border. Among the stated aims of the joint programme are:

- To prevent individuals intent on abusing the arrangement from travelling to the CTA;
- To support and facilitate the return of individuals to their country of origin where they do reach or enter the CTA unlawfully;
- To develop ways of challenging the credibility of visa and asylum applications where appropriate, and develop mechanisms of re-documentation.

The agreement states that Operation Gull, the joint operation between An Garda Síochána, PSNI and the UKBA on the land border with Northern Ireland and ports in Northern and Southern Ireland, has been highly successful. Additional initiatives such as joint training, sharing Immigration Liaison Officer resources and immigration information and biometric exchanges will be further developed. It is stated that the joint UK-Ireland Common Travel Area Forum (CTAF) and the Operational and Policy sub-groups of this forum will drive the implementation of this programme of work and will be responsible for reporting to respective Ministers (Department of Justice and Equality, 2011).

#### **4.2.2 Other**

GNIB officers interviewed stated that the GNIB works closely with immigration authorities in hub transport cities in France, Spain and the Netherlands. The GNIB have Immigration Liaison Officers in each of these States. GNIB may also locate officers in particular European airports for short periods, based on intelligence reports and patterns of behaviour at Irish and European airports. GNIB review



information from around Europe in order to assess whether irregular migrants are transiting to Ireland from a particular airport. GNIB may then start a process of intelligence checks on aircrafts arriving from those airports. The stated objective is to intercept the irregular migrant at a point when he or she can still be returned, before he or she reaches the state and to avoid migrants presenting at the Irish border without documents. On occasion GNIB will perform immigration checks on an aircraft rather than allowing disembarkation.

### 4.3 CO-OPERATION WITH EU OR INTERNATIONAL ORGANISATIONS

Ireland participates in the following bodies, networks and institutions:

The General Directors of Immigration Services Conference (GDISC)<sup>84</sup> is a network established in order to facilitate practical co-operation on immigration matters. Comprised mainly of EU Member States, GDISC also includes Turkey, Switzerland, Croatia and Norway. Both asylum and immigration areas of INIS participate in GDISC, depending on the agenda items under discussion.

The Strategic Committee for Immigration, Frontiers and Asylum (SCIFA)<sup>85</sup> is a forum for exchange of information among EU Member States in the fields of asylum, immigration and frontiers in order to implement a European Union strategic approach. The Director General of INIS represents Ireland at meetings of the Strategic Committee on Immigration and Asylum.<sup>86</sup> The continuation of SCIFA is to be reviewed in the coming months, as since the Lisbon Treaty, the Committee has had a somewhat eroding role.

The European Asylum Support Office (EASO) is a new agency, established in 2010, to play a key role in the development of the Common European Asylum policy.<sup>87</sup> Ireland is represented on the EASO Management Board by the ORAC. The stated aim of EASO is to help to improve the implementation of the Common European Asylum system, to strengthen practical co-operation among Member States on asylum and to provide and/or co-ordinate the provision of operational support.<sup>88</sup>

The Intergovernmental Consultation on Migration, Asylum and Refugees (IGC) is an informal, non-decision-making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows. The IGC brings together 17 participating states, the UNHCR, the IOM and the EC.<sup>89</sup> Representatives from the asylum and immigration areas of INIS participate in the IGC on behalf of Ireland.

<sup>84</sup> <http://www.gdisc.org/>.

<sup>85</sup> <http://emn.intrasoft-intl.com/Glossary/viewTerm.do?startingWith=S&id=271>.  
[http://www.se2009.eu/en/meetings\\_news/2009/7/6/strategic\\_committee\\_on\\_immigration\\_frontiers\\_and\\_asylum\\_scifa.html](http://www.se2009.eu/en/meetings_news/2009/7/6/strategic_committee_on_immigration_frontiers_and_asylum_scifa.html).

<sup>86</sup> <http://www.inis.govie/en/INIS/Pages/WP07000059>.

<sup>87</sup> [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_easo\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_easo_en.htm).

<sup>88</sup> ORAC Annual Report (2010). Available at: <http://www.orac.ie/pdf/PDFCustService/AnnualReports/Office%20of%20the%20Refugee%20Applications%20Commissioner%20-%20Annual%20Report%20-%202010.pdf>.

<sup>89</sup> <http://www.igc.ch/>.

Frontex<sup>90</sup> is tasked with co-ordinating the operational co-operation between Member States in the field of border security. As a non-Schengen State Ireland may not fully participate in Frontex and makes an annual contribution of €250,000 to the central budget (Joyce, forthcoming). However INIS and GNIB officials interviewed commented on the value of joint return operations undertaken with Frontex. Ireland's peripheral position and lack of direct flights to countries of origin mean that such operations present opportunities for significant savings. Destinations of flights are agreed centrally every 6 months and the GNIB make representations at such meetings on Ireland's priorities in terms of countries of return.

The GNIB and INIS participate in border control training with Frontex where relevant e.g. joint return operations. The GNIB also uses intelligence from FRAN, the Frontex risk analysis network.<sup>91</sup> In order to investigate and monitor the use of fraudulent documents the GNIB uses resources FADO and various Interpol databases as discussed in Section 3.2.2.3.

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<sup>90</sup> <http://www.frontex.europa.eu/>.

<sup>91</sup> [http://www.frontex.europa.eu/structure/operations\\_division/risk\\_analysis/](http://www.frontex.europa.eu/structure/operations_division/risk_analysis/).

# Chapter 5

## Impact of EU Policy and Legislation

### 5.1 IMPACT OF EU POLICIES AND LEGISLATION, INCLUDING READMISSION AGREEMENTS, ON NATIONAL POLICY ON IRREGULAR MIGRATION

The impact of EU legislation and policies on irregular migration in Ireland has been somewhat limited. Ireland has not opted in to several key instruments relating to irregular immigration, often citing preservation of the CTA with the UK as a primary reason, as well as other domestic concerns.<sup>92</sup> Ireland does not participate in the “Returns Directive”<sup>93</sup>, which seeks to establish common EU rules on the deportation of illegal immigrants; Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air; or the Employers Sanctions Directive<sup>94</sup>, which seeks to penalise employers of illegal immigrants and thereby discourage clandestine working. Officials from INIS have indicated that Ireland may review its position regarding opting in to the Employers Sanctions Directive in line with possible shifts in priority in this field. As a non-Schengen State Ireland may not participate in the Frontex Regulation (2007/2004). Ireland has opted in to both Council Regulation (EC) No 1030/2002, laying down a uniform format for residence permits for Third Country Nationals, and Council Regulation (EC) No 308/2008 amending regulation 1030/2002.

At present Ireland participates in only one EU Readmission Agreement with Hong Kong. INIS stated that readmission is however an emerging policy priority and that Ireland intends to honour a political commitment entered into previously to participate more actively in Agreements which are currently in force including, for instance, the Readmission Agreements with Georgia (adopted) and Turkey (not yet adopted). As the UK is participating in all of the EU Readmission Agreements adopted to date there are no particular concerns regarding the CTA.

The European Communities (Communication of Passenger Data) Regulations 2011 were signed into law in October 2011. The Regulations require airlines to

<sup>92</sup> As discussed briefly in Chapters 1 and 2 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 in to the measure by notifying the Council that it wishes to take part in the adoption and application of any such proposed measure. Ireland has given an undertaking to opt in to measures that do not compromise the CTA with the UK.

<sup>93</sup> Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying Third Country Nationals.

<sup>94</sup> Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying Third Country Nationals.

provide advance passenger data to Irish Immigration authorities for the stated purpose of “improving border control and combating illegal immigration.” These Regulations transpose European Council Directive 2004/82/EC of 29 April 2004 (on the obligation of carriers to communicate passenger data) into Irish law and will apply to all passengers on inbound flights to Ireland from outside the EU.

Ireland opted in to Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence. The most relevant implementing domestic legislation is the Immigration Act 2003, which provides for carrier liability, and the Illegal Immigrants (Trafficking) Act 2000. Ireland currently does not participate in Regulation No 377/2004 or Regulation No 493/2011, which creates an Immigration Liaison Officers network, but may do so in the future. Ireland opted in to Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; however transposition was required by 5 December 2004 and as yet no domestic legislation that was expressly designed to give effect to this Framework Decision has been introduced. INIS officials stated that provisions of the Immigration, Residence and Protection Bill 2010 will provide the necessary legislative framework in this regard. Directive 2001/40/EC deals with the mutual recognition of decisions on the expulsion of Third Country Nationals in which Ireland does not participate. It is notable that when issuing people with a proposal to deport, the Minister for Justice, Equality and Defence states that there may be consequences for the person in seeking entry to other Member States due to this Directive.

EU law in respect of EU citizenship and free movement of EU citizens, although not directly related to migration from outside the Member States of the EU, has had a more significant impact on Irish immigration law and policy. As discussed in Sections 2.1.5.2 and 3.3.2.1 in relation to marriages of convenience, such EU law impacts on national policy on irregular migration. As EU citizenship and free movement law is distinct from EU immigration law, Ireland does not have discretion as to whether to ‘opt in’ to the relevant EU legislation. EU Treaty provisions and legislative measures on citizenship rights, including free movement rights, have required Ireland to adapt certain domestic laws and policies to facilitate rights of entry to the State and residence in the State for non-EU national family members of EU citizens. The “Free Movement Directive”<sup>95</sup> transposed into Irish law by the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) is important in this regard. Also relevant are Articles 20 and 21 of the Treaty on the Functioning of the European Union (TFEU).

<sup>95</sup>

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

## 5.2 THE EXTERNAL BORDERS FUND AND THE EUROPEAN RETURN FUND

Ireland does not participate in Decision No. 574/2007/EC of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as the legal base of this measure is in Schengen. Ireland does however participate in Decision No. 575/2007/EC establishing the European Return Fund for the Period 2008 to 2013.

The European Return Fund is a common fund that Member States may draw from to improve the management of Return. A preference for voluntary return is stated. The Fund is also intended to support joint return actions which involve several Member States. The overall budget of the European Return Fund for 2008 -2013 is €676 million. Table 5.1 supplies details on projects funded under the 2009 and 2010 Return Fund in Ireland.

**Table 5.1 Projects Funded Under the 2009 and 2010 Return Fund in Ireland**

	Beneficiary	Project	Budget	Forced/Voluntary
<i>2009 Annual Programme (runs 1/1/2009-31/3/2012)</i>				
Priority 1	IOM	I-VARRP*	€488,449	Voluntary
Priority 2	GNIB	Two forced returned flights funded	€499,281	Forced
Priority 3	IOM/UCC	Research project	€107,660	Voluntary
<i>2010 Annual Programme (runs 1/1/2010-31/3/2013)</i>				
Priority 1	IOM	I-VARRP*	€512,876	Voluntary
Priority 2	GNIB	Two forced returned flights funded	€558,780	Forced
Priority 3	EHC <sup>96</sup>	Voluntary Return Hotline project	€67,321	Voluntary

**Source:** Repatriation Division, Irish Naturalisation and Immigration Service (INIS)

**Note:** \*Voluntary Assisted Return and Reintegration Project

# Chapter 6

## Estimates and Statistics on the Irregular Migrant Population

### 6.1 NATIONAL STATISTICS (EUROSTAT) RELATED TO IRREGULAR MIGRATION

National statistics on apprehensions and deportations are available via the Eurostat website. These statistics provide a profile of illegally-present migrants in Ireland, the profile of migrants refused entry at the border, the profile of migrants ordered to leave, the profile of migrants who are returned following an order to leave and the number of asylum applications rejected following a first and final decision. In-depth data is available via Eurostat for all EU Member States from 2008 onwards when the *Migratory Statistics Regulation (EC) No. 862/2007/EC* was adopted; data is not yet available for 2011.

Table 6.1 shows the total number of Third Country Nationals found to be illegally present in the period 2008-2010. This number peaked in 2009 when 5,035 persons were found to be illegally present, an increase of 1,850 persons or 58 per cent since 2008. The total number of Third Country Nationals found to be illegally present declined by 14 per cent in 2010 to 4,325 persons.

**Table 6.1 Total Number of Third Country Nationals Found to be Illegally Present 2008-2010**

2008	2009	2010
3,185	5,035	4,325

**Source:** Eurostat

Table 6.2 provides a breakdown of age group of migrants found to be illegally present 2008-2010. More than half of all migrants found to be illegally present between 2008 and 2010 were aged 18-34, in 2008 55 per cent of illegally-present migrants were aged 18-34, in 2009 and 2010 the proportion decreased marginally to 54 per cent. In 2010 only 2 per cent of illegally present migrants were aged 14 to 17 years, 19 per cent were aged fewer than 14 years and 25 per cent were aged 35 years or over.

**Table 6.2 Age of Migrant Found to be Illegally Present 2008-2010**

	2008	2009	2010
Fewer than 14 years	515	765	820
From 14 to 17 years	75	115	105
From 18 to 34 years	1,745	2,720	2,340
35 years or over	850	1,435	1,060

**Source:** Eurostat

Table 6.3 shows data on the sex of migrants found to be illegally present between 2008 and 2010. The data shows that the ratio of male to female migrants found

to be illegally present remained constant through 2008 to 2010, with a larger proportion of males found to be illegally present across each year. In 2008, 62 per cent (1,990) of illegally present people were males and 38 per cent (1,195) were female. In 2009 63 per cent (3,180) were male and 37 per cent (1,855) were female. In 2010 again 63 per cent (2,725) of illegally present were male and 37 per cent (1,600) were female.

**Table 6.3 Sex of Migrants Found to be Illegally Present 2008-2010**

	2008	2009	2010
Male	1,990	3,180	2,725
Female	1,195	1,855	1,600

**Source:** Eurostat

Table 6.4 reports that in the period 2008-2010 the overall main country of citizenship for illegally-present migrants was Nigerian; Nigerian nationals accounted for 22 per cent of all illegally present migrants in 2010. The second overall main country of citizenship of illegally-present migrants from 2008-2010 was China: in 2010 295 Chinese nationals were found to be illegally present. The overall proportion of Pakistani nationals found to be illegally present increased annually from 2008-2010: in 2010 Pakistani nationals accounted for 9 per cent (385) of all illegally present migrants.

**Table 6.4 Main Countries of Citizenship of Illegally Present Migrants 2008-2010**

2008		2009		2010	
Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
Nigeria	995	Nigeria	1,150	Nigeria	930
China (including Hong Kong)	225	China (including Hong Kong)	375	China (including Hong Kong)	395
Moldova	150	Pakistan	315	Pakistan	385
Georgia	145	Georgia	250	Democratic Republic of the Congo	155
Sudan	125	Moldova	180	Zimbabwe	140
Democratic Republic of the Congo	105	Democratic Republic of the Congo	180	Somalia	140
Pakistan	95	Brazil	160	Ghana	135
South Africa	80	Zimbabwe	135	Georgia	120
Ghana	75	Ghana	120	Sudan	115
Iraq	75	South Africa	115	Brazil	110

**Source:** Eurostat

Table 6.5 indicates the total number of Third Country Nationals refused entry at the Irish border in the period 2005-2010. The proportion of Third Country Nationals refused entry to Ireland increased steadily from 4,807 persons in 2005 to a peak of 6,272 persons in 2007. The number of Third Country Nationals steadily decreased from 2008 onwards; 2,790 persons were found to be illegally present in 2010. This represents a 56 per cent decrease in persons found to be illegally present since 2007.

**Table 6.5 Total number of Third Country Nationals Refused Entry at the Irish border 2005-2010**

2005	2006	2007	2008	2009	2010
4,807	5,885	6,272	5,260	3,560	2,790

Source: Eurostat

Table 6.6 shows the type of border where entry was refused in the period 2008-2010. In this period the main port of entry at which people were refused was at an airport and each year more than 70 per cent of all persons refused were refused entry when travelling by air. The number of people refused entry at each port of entry declined in the period 2008-2010. In 2008 3,970 persons were refused entry at an airport, by 2010 this number had declined to 1,985 persons. Refusals at a sea port accounted for the least number of refusals overall; in 2010 9 per cent (240) of all refusals were at a sea border. Refusals at a land border accounted for the second category of refusals; in 2010 20 per cent (560) of refusals took place at land borders.

**Table 6.6 Type of Border Where Entry Was Refused 2008-2010**

	2008	2009	2010
Land	860	630	560
Sea	430	225	240
Air	3,970	2,710	1,985

Source: Eurostat

Table 6.7 shows the grounds for refusal at the Irish border in the period 2008-2010. The principal grounds for refusal recorded across 2008 to 2010 was for persons using a 'false visa or residence permit'. In 2008 43 per cent (2,260) of refusals at the border were due to migrants presenting a false visa or residence permit; in 2010 39 per cent (1,090) of refusals were for this reason. The second most recorded ground for refusal across 2008-2010 was for persons presenting with 'no valid visa or residence permit', 29 per cent (800) of refusals in 2010 were for this reason. Between 2008 and 2010 there were no recordings of persons refused entry at a border for already staying 3 months in a 6 months period.

**Table 6.7 Grounds for Refusal at the Irish Border 2008-2010**

	2008	2009	2010
No valid travel document	835	630	605
False/counterfeit/forged travel document	355	150	115
No valid visa or residence permit	1,135	885	800
False visa or residence permit	2,260	1,510	1,090
Purpose and conditions of stay not justified	170	135	60
Person already stayed 3 months in a 6-months period	0	0	0
No sufficient means of subsistence	450	200	85
An alert has been issued	25	10	5
Person considered to be a public threat	30	35	35
Total	5,260	3,555	2,795

Source: Eurostat

The total number of persons ordered to leave after being found illegally present has remained relatively constant between 2008 and 2010, with 1,285 people



ordered to leave in 2008; 1,615 in 2009; and 1,495 in 2010. The data in Table 6.8 represents the total number of Third Country Nationals ordered to leave; the data in table 6.10 represents the actual number of persons returned following an order to leave. This data shows that in the period 2008-2010 there was a higher number of orders to leave issued (4,395), than persons returned (2,325). In 2010, 1,495 orders to leave were made whilst 805 migrants were returned following an order to leave; this represents a return rate of 54 per cent. It is important to note that orders to leave made (especially deportation orders) may not be effected in the same year.

**Table 6.8 Total Number of Third Country Nationals Ordered to Leave (after being found illegally present)**

2008	2009	2010
1,285	1,615	1,495

Source: Eurostat

Table 6.9 shows the main countries of citizenship of Third Country Nationals ordered to leave in the period 2008-2010. Nigerian citizens dominated the numbers ordered to leave between 2008-2010: in 2008 Nigerian citizens accounted for 31 per cent (400) of all persons ordered to leave, rising to 45 per cent (725) of persons in 2009 and 30 per cent (445) of persons in 2010. Brazilian nationals accounted for the second highest number of persons ordered to leave in 2008 and 2009, and represented 8 per cent (120) of the total persons ordered to leave in 2010.

**Table 6.9 Main Countries of Citizenship of Third Country Nationals Ordered to Leave 2008-2010**

2008		2009		2010	
Country of citizenship	Total	Country of citizenship	Total	Country of Citizenship	Total
Nigeria	400	Nigeria	725	Nigeria	445
Brazil	375	Brazil	200	Georgia	135
Moldova	135	Moldova	140	Brazil	120
China (including Hong Kong)	90	South Africa	110	Moldova	105
Mauritius	25	Georgia	45	South Africa	105
South Africa	20	China (including Hong Kong)	30	Pakistan	65
Pakistan	20	Ghana	25	Cameroon	50
Malaysia	20	Pakistan	20	China (including Hong Kong)	40
Serbia	15	Russia	20	Mauritius	35
Ukraine	15	Mauritius	15	Somalia	30

Source: Eurostat

Table 6.10 shows the total number of Third Country Nationals returned following an order to leave in the period 2008-2010. The number of Third Country Nationals returned following an order to leave in 2008 was 690; this number peaked at 830 in 2009, and fell slightly to 805 in 2010. All Third Country Nationals ordered to leave in 2008, 2009 and 2010 were returned to a third country following an order to leave.

**Table 6.10 Total Number of Third Country Nationals Returned Following an Order to Leave 2008-2010**

	2008	2009	2010
Total number of Third Country Nationals returned to a third country following an order to leave	690	830	805

*Source:* Eurostat

Table 6.11 shows the main countries of citizenship of those returned following an order to leave in the period 2008-2010. The nationality breakdown of those returned is consistent over the period; the main countries of citizenship of those returned are Nigeria, Brazil and Moldova. In 2010, 30 per cent (240) of persons returned were Nigerian citizens, 14 per cent (115) were Brazilian citizens and 11 per cent (85) were from Moldova.

**Table 6.11 Main Countries of Citizenship of those Returned Following an Order to Leave 2008-2010**

2008		2009		2010	
Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
Brazil	270	Nigeria	240	Nigeria	240
Nigeria	115	Brazil	200	Brazil	115
Moldova	75	Moldova	95	Moldova	85
China (including Hong Kong)	35	Georgia	55	Georgia	85
Georgia	20	South Africa	35	South Africa	35
Serbia	15	China (including Hong Kong)	20	Mauritius	30
Ukraine	15	Pakistan	20	Pakistan	20
South Africa	15	Russia	15	Russia	15
Iraq	15	Mauritius	15	China (including Hong Kong)	10
Russia	10	Ukraine	10	Ukraine	10

*Source:* Eurostat

Table 6.12 shows the main countries to which Third Country Nationals are returned following an order to leave in the years 2005 and 2010. In 2005 and 2010 Nigeria was the main country to which Third Country Nationals were returned to following an order to leave. In 2005 Romania was the second main country to which Third Country Nationals were returned to following an order to leave; returns to Romania and Bulgaria were common until their accession to the EU in January 2007.

**Table 6.12 Main Countries to which Third Country Nationals are Returned Following an Order to Leave 2005 and 2010**

2005		2010	
Country of citizenship	Total	Country of citizenship	Total
Nigeria	135	Nigeria	240
Romania	122	Brazil	117
China	18	Moldova	87
Croatia	17	Georgia	85
South Africa	17	Mauritius	32
Moldova	15	South Africa	32
Brazil	13	Pakistan	19
Algeria	11	Albania	11
Kosovo	10	Mongolia	11
Bulgaria	6	Ukraine	11

**Source:** 2005 data; Quinn (2007) Return Migration: The Irish Case.

**Source:** Irish Naturalisation and Immigration Service (INIS).

Table 6.13 presents the total number of Third Country Nationals whose application for asylum has been rejected in the first instance and following a final decision, in the period 2008-2010. The total number of Third Country Nationals whose application for asylum was rejected in the first instance decreased in the period 2008-2010: in 2008 3,325 applications were rejected at first instance, by 2010 this number had decreased by 53 per cent to 1,575 applications. In 2010 37 per cent (1,575) of asylum applications were rejected in the first instance, 63 per cent of all applications (2,655) were rejected following a final decision.

**Table 6.13 Third Country Nationals whose Application for Asylum has been Rejected 2008-2010**

		2008	2009	2010
Total number of Third Country Nationals whose application for asylum has been rejected	at the first instance	3,325	3,010	1,575
	following a final decision	2,165	3,160	2,655

**Source:** Eurostat

Table 6.14 demonstrates the sex of migrants whose application for asylum have been rejected following a first and final decision in the period 2008-2010. Overall, more male applicants were rejected following a first and final decision in the years 2008-2010. In 2010, 555 female applicants were rejected in the first instance compared with 1,020 male applicants with 41 per cent (1,100) of applications rejected following a final decision representing female applicants.

**Table 6.14 Sex of Migrant whose Application for Asylum has been Rejected 2008-2010**

		2008	2009	2010
Applications rejected in the first instance	Male	2,040	1,950	1,020
	Female	1,285	1,060	555
	Unknown	0	0	0
Applications rejected following a final decision	Male	1,260	1,925	1,555
	Female	905	1,235	1,100
	Unknown	0	0	0

Source: Eurostat

Table 6.15 and 6.16 show the main countries of citizenship of applications rejected at first instance, and following a final decision, 2008-2010. Nigerian applicants dominate across 2008-2010 in rejections following first and final decision. Traditionally Nigerian asylum applicants have a particularly low recognition rate compared to other national groups (Quinn, 2011). Asylum applications data show that since the early 2000s Nigerian nationals have accounted for the largest number of asylum applications lodged per year. In 2010 applicants of Nigerians represented 25 per cent (670) of applicants whose application had been rejected in the final instance.

**Table 6.15 Main Countries of Citizenship of Applicants whose Applications have been Rejected in the First Instance 2008- 2010**

2008		2009		2010	
Country of citizenship	Total	Country of citizenship	Total	Country of citizenship	Total
Nigeria	1,025	Nigeria	595	Nigeria	340
Pakistan	195	Pakistan	290	Pakistan	170
Democratic Republic of the Congo	165	Democratic Republic of the Congo	145	Afghanistan	70
Iraq	135	Georgia	140	Somalia	60
Georgia	135	Somalia	135	Cameroon	60
Sudan	115	Ghana	115	Ghana	55
Zimbabwe	105	Iraq	110	China (including Hong Kong)	50
Moldova	105	Zimbabwe	105	Democratic Republic of the Congo	50
Afghanistan	80	Moldova	95	Georgia	45
Somalia	60	Sudan	95	Zimbabwe	45

Source: Eurostat

**Table 6.16 Main Countries of Citizenship of Applicants whose Applications have been Rejected in the Final Instance 2008-2010**

2008		2009		2010	
Name of the country of citizenship	Total	Name of the country of citizenship	Total	Name of the country of citizenship	Total
Nigeria	825	Nigeria	825	Nigeria	670
Democratic Republic of the Congo	125	Pakistan	260	Pakistan	220
Georgia	85	Georgia	190	Democratic Republic of the Congo	140
Somalia	75	Democratic Republic of the Congo	155	Zimbabwe	115
Pakistan	75	Zimbabwe	110	Ghana	110
Ghana	70	Moldova	100	Somalia	90
Moldova	65	Ghana	85	Sudan	85
Sudan	65	Sudan	75	Iraq	80
Afghanistan	40	Afghanistan	75	Cameroon	75
Iraq	35	Albania	70	South Africa	70

Source: Eurostat

## 6.2 OTHER NATIONAL STATISTICS ON IRREGULAR MIGRATION

Reliable statistics on the irregular migrant population do not exist and certain issues with data availability in Ireland make even an estimate problematic. An official estimate of stock of irregular migrants in Ireland does not exist, nor is there a specific indicator used to measure or even estimate irregular migration. The Clandestino Project (2009) estimated that there were 30,000 to 62,000 illegally-present migrants in Ireland in 2008; to date this has been one of the few unofficial estimates of stock made.

The statistics presented below indirectly monitor irregular migration. The Repatriation Unit of INIS does not collect demographic data on returnees, forced or voluntary assisted, beyond nationality.

Table 6.17 presents the total number of deportation orders issued and evaded in the period 2005-2010. The table presents the number of deportation orders enforced each year; it should be noted that deportation orders issued may not be enforced within the same year. In total, 6,710 deportation orders were issued in this period. One quarter (1,677) of the deportation orders were enforced in this period. In 2005, the number of deportation orders issued peaked at 2,178; 395 of those orders were enforced. In 2010, 1,021 orders were issued and 343 orders were enforced. The enforcement of deportation orders is a challenge, and there are many more deportation orders signed each year than voluntary assisted returns completed (Quinn, 2010).

**Table 6.17 Deportation Orders Issued and Evaded 2005-2010**

Year	Deportation Orders issued	Deportation Orders Enforced
2005	2,178	395
2006	1,375	301
2007	402	139
2008	685	161
2009	1,049	338
2010	1,021	343
Total	6,710	1,677

**Source:** Irish Naturalisation and Immigration Service (INIS)

Table 6.18 shows the main nationality of persons who were returned following an enforced deportation order in 2010. In 2010, Nigerian nationals were the largest single national group deported, 209 (61 per cent) of all enforced deportation orders were Nigerian nationals. Some 45 (13 per cent) persons deported were Georgian nationals and 10 persons (3 per cent) deported were Moldovan nationals.

**Table 6.18 Main Countries of Nationality of Enforced Deportation Orders, 2010**

Nationality	No. Deported
Nigeria	209
Georgia	45
Moldova	10
Brazil	9
South Africa	9
Russia	8
Kosovo	6
China	5
Albania	4
Mauritius	4
Others	34
Total	343

**Source:** Irish Naturalisation and Immigration Service (INIS)

Table 6.19 shows the total number of applications for EU Treaty Rights<sup>97</sup> based on marriage; the data indicates that in 2010, 43 per cent of applications based on marriage in Ireland were made by nationals of three EU Member States; Latvia, Lithuania and Poland. In 2010, 43 per cent of Latvian applications for EUTR based on marriages were based on marriages with Pakistani nationals; 23 per cent Lithuanian applications were based on marriages to Pakistani nationals and 13 per cent of Polish EUTR marriage applications were based on marriages to Pakistani nationals. In total, 1,917 applications were made in 2010 by non-EU nationals for residence based on marriage to an EU national in Ireland under EU

<sup>97</sup>

“Exercising your EU Treaty Rights” is defined in the Directive under Article 7 ‘Rights of residence for more than three months’. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they satisfy a number of conditions. The Directive applies to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members who accompany or join them (Article 3 of the Directive 2004/38/EC).

Treaty Rights (EUTR) legislation. The numbers involved almost equalled asylum application numbers in Ireland in the same period. In 2010 Pakistani nationals represented nearly 20 per cent of all applications under EU Treaty Rights based on marriages (Department of Justice and Equality, January 2011).

**Table 6.19 Applications for EUTR based on Marriage by Nationality of EU National and Spouse 2010**

Country of origin of EU MS National	Country of origin of Third Country National	Number of residence applications based on EU Treaty Rights	
Latvia	Pakistan	173	
	India	54	
	Ukraine	32	
	Other	142	
	<i>Total</i>	401	21%
Lithuania	Pakistan	39	
	Ukraine	25	
	Russia	18	
	Other	90	
	<i>Total</i>	172	9%
Poland	Brazil	33	
	Pakistan	32	
	Nigeria	28	
	Other	161	
	<i>Total</i>	254	13%
Others		1,090	57%
<i>Total applications for EUTR based on marriage</i>		1,917	100%

**Source:** Irish Naturalisation and Immigration Service (INIS)

# Chapter 7

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## Conclusions

Data limitations are such that it is not currently possible to assess the number of irregular migrants in the State or whether that number has fallen in response to practical measures taken by the State. It is likely that the size of the irregular migrant population is smaller in Ireland than in other EU states with a more central location and/or a well-established tradition of immigration. Investment in high-tech border equipment is therefore not necessary. It was widely accepted by all officials and NGO representatives interviewed that the majority of the irregular population in Ireland have overstayed their permission to visit or reside in the State, rather than entered illegally.

The recent signing of an Ireland-UK joint agreement restating each country's commitment to preserving the CTA and committing to a joint programme of work on measures to increase the security of the external CTA border suggests that the CTA is currently high on the policy agenda, both in terms of facilitating legal migration and deterring illegal migration. The policy priority accorded to the CTA emerges in many of the practical examples of measures taken to address irregular migration discussed in this report: prior to arrival at the border, Ireland and the UK share visa application data (including fingerprints where available); at the border, UK immigration history may be checked by way of a passport swipe; while on the territory, INIS and the UKBA undertake data sharing exercises often regarding asylum applicants and in co-operation with ORAC.

Ireland has developed information systems within the State to address irregular migration. Immigration Officers at sea and air ports may now cross-check data from the following sources when deciding whether to grant a person leave to land: the GNIB Information System; employment permits information from the Department of Jobs, Enterprise and Innovation; visa information via the AVATs system; data on asylum applications from the ORAC; and information from the Department of Social Protection. The Automatic Fingerprint Information System (AFIS) operated by An Garda Síochána Technical Bureau contains all fingerprint records for: asylum applicants; non-Irish nationals registered to live in Ireland; previous biometric visa records; and some fingerprints related to criminal cases. In addition commitment to the development of the Irish Border Information System (IBIS) has recently been restated in a Joint Ireland-UK Statement on the CTA.

Information sharing within the State is currently being pursued to prevent social welfare fraud as well as abuse of the CTA. The priority attached to such activities



is evidenced by the recent establishment of the Central Investigations Unit which brings together expertise from existing units in INIS, including staff from the Visa Section, EU Treaty Rights Section, other Departments and the UK, in order to address fraud within the State and more broadly within the CTA. The Immigration, Residence and Protection Bill 2010 contains measures to facilitate such information exchange. The FRA (2011b) has warned that such data exchange with public service providers could discourage migrants in an irregular situation from making use of essential public services. Policymakers consulted for the study indicated that the priority will be to restrict access to services that provide economic support to irregular migrants, for example: social welfare; driving licences; employment etc., but such details are not contained in the Bill.

Some of the current challenges identified by policymakers in relation to irregular migration in Ireland relate to the impact of the Free Movement Directive. Non-EU family members of EU citizens resident in Ireland may submit an application for residency on the basis of EU Treaty Rights to INIS. Officials interviewed for the study expressed concern that some of these applications for residency are based on suspected relationships, often marriages, of convenience. Just over 40 per cent of EU Treaty Rights applications for residency in respect of Third Country Nationals were based on marriages to EU nationals from Latvia, Lithuania and Poland.

In terms of practical approaches to the problem of misuse of EU Treaty Rights, Ireland has introduced interviews of parties to suspected marriages of convenience who apply for residency based on EU Treaty Rights. However INIS noted that significant constitutional protection is afforded to marriage in Ireland and consequently there is little the State can do to stop a suspected marriage of convenience taking place. The Immigration, Residence and Protection Bill seeks to limit the potential for an irregular migrant to benefit from a marriage of convenience.

INIS officials interviewed for the study stated that as a general policy Ireland does not favour regularisation. There are currently limited ways in which an irregular migrant may regularise their status. Arguably the current system acts to channel irregular migrants towards deportation: such migrants may seek leave to remain only after a deportation order is issued. The number of applicants granted leave to remain is very low. If the Minister accepts the representations, a temporary permission to remain in the State is granted. An unsuccessful application for leave to remain automatically terminates in a deportation order being issued.

While the Immigration, Residence and Protection Bill 2010 proposes significant changes to this regime, including a single protection procedure within which all grounds on which a person may wish to remain in the State will be considered together, it is unclear exactly how the current leave to remain process will be replaced, if and when the Bill is enacted. In addition the Bill would mean that a person who is unlawfully in the State would be under an immediate and continuing obligation to leave. If the person fails to comply with this obligation,

then he or she may be removed from the State and if necessary may be arrested and detained for that purpose. This provision has led to concerns about the risk of summary deportation with insufficient time for checks.

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